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**SUPREME COURT OF THE STATE OF WASHINGTON**

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In re the Welfare of:

M.B.,

Minor Child.

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**DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES'  
RESPONSE TO AMICUS CURIAE BRIEF**

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## I. INTRODUCTION

Amicus Washington Defender Association offers three legal arguments, none of which demonstrate that N.B.'s due process rights were violated during the hearing on the Department's petition to terminate his parental rights. First, its assertion that article I, section 3 of the Washington Constitution provides greater due process protections than the federal counterpart is not accompanied by the necessary *Gunwall* analysis and is inconsistent with numerous post-*Gunwall* decisions of this Court. Second, the record shows that N.B. received effective assistance of counsel who communicated with him, cross-examined all witnesses, presented his testimony, made objections, and offered exhibits. N.B. has not claimed otherwise. Amicus's assumptions about the impact of its perceived deficiencies in N.B.'s trial do not include explanation or analysis, and are not supported by citation to the record, nor can they be, as they are not supported by the record. Finally, contrary to Amicus's claim, N.B.'s case is consistent with the principles identified in *In Interest of Darrow*, 32 Wn. App. 803, 649 P.2d 858 (1982). N.B. received due process, and this Court should affirm.

## II. ARGUMENT

### A. **This Court Has Not Determined That Article I, Section 3 Provides Broader Protection than Its Federal Counterpart in Termination of Parental Rights Cases, and Amicus Provides No *Gunwall* Analysis Necessary to Support Such a Conclusion Here**

Without providing the required analysis under *State v. Gunwall*, 106 Wn.2d 54, 58-63, 720 P.2d 808 (1986), to support an independent interpretation of the state constitution, Amicus asserts that article I, section 3 of the Washington Constitution provides greater protection than its federal counterpart—a categorical constitutional right to counsel in proceedings to terminate parental rights. Br. of Amicus Curiae at 6-8, 13. This issue is not properly before the Court here for two reasons.

First, the Appellant has not argued that the state constitution guarantees a right to counsel in proceedings to terminate parental rights, and this Court “will not address arguments raised only by amicus.” *City of Seattle v. Evans*, 184 Wn.2d 856, 861 n.5, 366 P.3d 906 (2015) (quoting *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 631, 71 P.3d 644 (2003)); *see also* Pet.’s Mot. for Discretionary Review and Suppl. Br. of Pet. (referring to due process without distinguishing between the state and federal due process clauses).

Second, absent adequate briefing on the *Gunwall* factors, this Court has repeatedly declined to consider an independent due process claim under

article I, section 3 of the Washington Constitution. See *In re Dependency of M.S.R.*, 174 Wn.2d 1, 20 n.11, 271 P.3d 234 (2012). When determining whether our state constitution extends broader protection than the federal constitution, the Court considers the six *Gunwall* factors. E.g., *Matter of Dependency of E.H.*, 191 Wn.2d 872, 885-87, 427 P.3d 587 (2018). The only recognized exception to the *Gunwall* briefing requirement is when the parties provide argument and citation, and the special protections of the state constitution have been previously recognized. See, e.g., *City of Woodinville v. N. Shore United Church of Christ*, 166 Wn.2d 633, 641-42, 211 P.3d 406 (2009). That exception does not apply here because there is no precedent firmly establishing that article I, section 3 extends broader protection than the Fourteenth Amendment such that a *Gunwall* analysis is unnecessary. Instead, recent authority found the opposite—that “article I, section 3 should *not* be interpreted independently from its federal counterpart . . .” *E.H.*, 191 Wn.2d at 885-87 (emphasis added).

Amicus’s implication that *In re Luscier’s Welfare*, 84 Wn.2d 135, 524 P.2d 906 (1974), holds that article I, section 3 provides a categorical right to counsel at public expense in termination proceedings is misguided. See Br. of Amicus Curiae at 7. In *Luscier*, this Court held that the federal and Washington due process clauses, which the Court treated as coextensive, required appointed counsel for indigent parents in termination

proceedings. 84 Wn.2d at 138-39. A year later, this Court extended *Luscier* to require appointed counsel in dependency cases. *In re Myricks' Welfare*, 85 Wn.2d 252, 533 P.2d 841 (1975). But in *Lassiter v. Dep't of Soc. Servs. of Durham County, N. C.*, 452 U.S. 18, 31-32, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981), the United States Supreme Court held that federal due process does not require automatic appointment of counsel to parents in proceedings to terminate parental rights; it is sufficient to make that determination on a case-by-case basis. *Lassiter* thus removed the federal constitutional footing underlying *Luscier* and *Myricks*. In Washington, indigent parents in termination cases have a statutory right to counsel at public expense under RCW 13.34.090(2), but not an absolute constitutional right.

Two years after *Lassiter*, Division Three of the Court of Appeals issued an opinion in *In re Moseley*, 34 Wn. App. 179, 660 P.2d 315 (1983), a case upon which Amicus relies. In that pre-*Gunwall* case examining effective assistance of counsel in termination proceedings, the Court presumed, without analysis, that the state constitution's due process clause was more protective than the federal. *Id.* at 184-85. Both *Moseley* and Amicus mistakenly treat *Luscier* as having demonstrated an independent state analysis of article I, section 3. *See Moseley*, 34 Wn. App. at 185; Br. of Amicus Curiae at 7-8. Their approach is flawed for two reasons.

First, *Luscier* addressed the federal and state constitutional provisions as equivalent, relied on federal and state authorities interchangeably, and gave no indication that it was interpreting the state constitution more broadly. 84 Wn.2d 135. In numerous subsequent opinions, this Court has acknowledged that *Luscier* did not analyze whether the state constitution provided broader protection than its federal counterpart, and that it was an open question whether the state constitutional underpinnings remained valid. *E.g.*, *M.S.R.*, 174 Wn.2d at 14 (*Luscier* did not consider what due process was due under the U.S. Constitution as opposed to the state constitution); *Bellevue Sch. Dist. v. E.S.*, 171 Wn.2d 695, 712, 257 P.3d 570 (2011) (stating that “[i]t remains undetermined” whether *Lassiter* eroded the constitutional underpinnings of *Luscier* because the Court did not separately analyze the state and federal constitutions in *Luscier*); *King v. King*, 162 Wn.2d 378, 383 n.3, 174 P.3d 659 (2007) (declining to address continuing constitutional validity of *Luscier* because the right to counsel for parents had been codified).

Second, numerous post-*Gunwall* and post-*Luscier* opinions have found that the state constitution does not provide greater due process protection. *E.H.*, 191 Wn.2d at 884-87; *In re A.W.*, 182 Wn.2d 689, 701-02, 344 P.3d 1186 (2015); *Bellevue Sch. Dist.*, 171 Wn.2d at 714; *King*, 162 Wn.2d at 393; *In re Dyer*, 143 Wn.2d 384, 20 P.3d 907 (2001);

*State v. Ortiz*, 119 Wn.2d 294, 304, 831 P.2d 1060 (1992). While these subsequent opinions are not conclusive in every context, they confirm that *Luscier* does not establish an independent due process analysis under the state constitution.

This Court has never engaged in an independent analysis of the state constitution of any kind in the context of the right to counsel for parents. Amicus provides no *Gunwall* analysis here, and this Court should decline to consider an independent due process claim under the state constitution. *See M.S.R.*, 174 Wn.2d at 20 n.11 (declining to review state constitutional claim absent an adequate and timely *Gunwall* analysis).

**B. N.B. Received Effective Assistance of Counsel and Has Not Claimed Otherwise**

The Appellant, N.B., raised only one issue for review: whether the trial court violated his right to procedural due process by denying him a meaningful opportunity to participate in the trial. *See* Suppl. Br. Pet. at 20. Amicus raises a new argument, asserting that N.B. was denied his right to effective assistance of counsel. Br. Amicus Curiae at 5, 9-11. Because, as noted above, this Court does not address arguments raised only by amicus, Amicus's ineffective assistance of counsel argument is not properly before this Court. In any event, Amicus has not overcome the strong presumption that N.B. received effective assistance of counsel.

The Department agrees with Amicus that the right to counsel, whether constitutional or statutory, includes the right to effective counsel. *In re Welfare of J.M.*, 130 Wn. App. 912, 922, 125 P.3d 245 (2005). There are two possible standards when evaluating claims of ineffective assistance of counsel: the “fair hearing” standard in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), and the “meaningful hearing” standard adopted in Division Three’s pre-*Strickland* termination of parental rights case, *In re Moseley*. No Washington court has clearly defined which standard should apply to claims of ineffective assistance of counsel in parental rights cases. *See J.M.*, 130 Wn. App. at 920-22 (declining to differentiate between the “fair hearing” standard adopted in *Strickland* and the “meaningful hearing” adopted in *Moseley*). Under either standard, courts give great deference to trial counsel’s performance and begin their analysis with a strong presumption that counsel was effective. *Strickland*, 466 U.S. at 689; *Moseley*, 34 Wn. App. at 184. Independent of these tests that evaluate counsel’s effectiveness, the government can violate the right to counsel through certain types of interference. *See Strickland*, 466 U.S. at 686. Here, under any of these three standards, N.B.’s right to effective assistance of counsel was not violated.

**1. The trial court did not deprive N.B. of effective assistance of counsel**

The “[g]overnment violates the right to effective assistance when it interferes *in certain ways* with the ability of counsel to make independent decisions about how to conduct the defense.” *Strickland*, 466 U.S. at 686 (emphasis added). This is not, as Amicus argues, part of the “fair hearing” standard that examines the “actual effectiveness” of counsel. *Compare* Br. of Amicus Curiae at 9 *with Strickland*, 466 U.S. at 686. The types of government interference Amicus relies upon in *Geders* and *Brooks* are not present in N.B.’s case.

In *Geders v. United States*, 425 U.S. 80, 82, 96 S. Ct. 1330, 47 L. Ed. 2d 592 (1976), the trial court forbid the defendant, who was also a witness, from consulting with his attorney “about anything” during a regular overnight recess between his direct and cross-examination. The trial court entered this prohibitive order notwithstanding the defense attorney’s objection and assurance that he would appropriately confine the conversation to issues relating to the trial, not his client’s imminent cross-examination. *Id.* The Court held that this order violated the defendant’s Sixth Amendment right to counsel, reasoning that to the extent a conflict exists between the defendant’s right to counsel and the prosecutor’s desire to cross-examine the defendant without the risk of improper coaching, the

conflict must be resolved in favor of the defendant's Sixth Amendment right. *Id.* at 90. The Court declined to opine on "limitations imposed in other circumstances." *Id.*

In *Brooks v. Tennessee*, 406 U.S. 605, 92 S. Ct. 1891, 32 L. Ed. 2d 358 (1972), the Court held that a state statute providing that a defendant in a criminal proceeding who "desir[es] to testify shall do so before any other testimony for the defense is heard by the court trying the case" violated the defendant's privilege against self-incrimination under the Fifth Amendment and his right to due process under the Fourteenth Amendment. The Court observed that whether a criminal defendant will testify is both a tactical decision and a matter of constitutional right. *Id.* at 612. The state statute at issue deprived the defendant of the "guiding hand of counsel" by depriving counsel of an opportunity to evaluate evidence and plan a defense. *Id.* at 612-13. This decision does not hold that "court procedures that restrict a lawyer's tactical decision-making during trial unconstitutionally abridge the right to counsel." Br. of Amicus Curiae at 9-10. As a dissent noted, evidentiary and procedural rules, such as a rule forbidding defense counsel to ask leading questions of the defendant, may restrict tactical decision-making or interfere with the "guiding hand of counsel" but have not been declared unconstitutional. *Id.* at 616 (Burger, C.J., dissenting).

These cases are not analogous to N.B.'s case. Amicus's claims to the contrary include no analysis or citation to the record that supports their application here, and there is no basis to do so. Amicus simply concludes, without factual support, that N.B.'s absence "interfered" with his attorney's decision to cross-examine or recall witnesses and his attorney's ability to meet basic professional obligations, including "evidentiary objections, presenting witnesses, cross-examining witnesses, and preparing and presenting exhibits." Br. of Amicus Curiae at 10-11. But the record shows N.B.'s trial counsel cross-examined all of the Department's witnesses, made evidentiary objections, arranged for N.B.'s testimony, and offered exhibits into evidence. *E.g.*, cross-examination (RP 52-54, 69-83, 129-33, 136-38, 141-53, 169-77, 203-23, 226-31, 279-91, 295-99, 301-03), objections (RP 19, 22, 26-28, 31, 46, 48, 50, 55, 62-63, 67-68, 111, 116, 122-23, 136, 155, 159, 161, 165, 167, 199, 269, 271, 292-93 ), N.B.'s testimony (RP 240-78), offering exhibits (RP 79, 250, 253, 257-58, 260, 279; *see* RP 141).

Similarly, Amicus simply asserts that without N.B. present at trial, his attorney could not confer with him about witness credibility and cross-examination, or "during recesses either throughout the court day or between court days (overnight)." Br. of Amicus Curiae at 10. But again, no evidence in the record supports this conclusion. Unlike in *Geders*, the trial court here did not forbid N.B. from talking to his attorney during recesses. *See*

*Geders*, 425 U.S. at 82. In fact, seven days after the first two witnesses provided testimony, N.B.'s attorney advocated for his stated interests, implying that they had been conferring about the case. *See* RP 92-93 (N.B.'s attorney responding to the trial court's question by stating what N.B. wants).

Furthermore, although criminal ineffective assistance of counsel cases provide guidance in termination of parental rights cases, this Court should be cautious about solely relying on such cases in this instance, for two reasons. First, unlike parents in termination proceedings, criminal defendants have an express right to be present at trial under the Washington Constitution. Wash. Const. art. I, § 22. Similarly, under the federal constitution, "a criminal defendant has a fundamental right to be present at all critical stages of a trial." *State v. Irby*, 170 Wn.2d 874, 880, 246 P.3d 796 (2011) (citing *Rushen v. Spain*, 464 U.S. 114, 117, 104 S. Ct. 453, 78 L. Ed. 2d 267 (1983)). To a large extent, this right is rooted in the confrontation clause of the Sixth Amendment to the United States Constitution. *Id.* The presence of a criminal defendant is also a condition of due process "to the extent that a fair and just hearing would be thwarted by his absence." *Id.* at 881.

Because ineffective assistance of counsel cases in the criminal context evaluate whether an attorney's performance fell below an objective standard of reasonableness, a defendant's constitutional right to be present

necessarily informs that analysis. *See Strickland*, 466 U.S. at 687. But because parents in termination of parental rights cases do not have the same constitutional rights as criminal defendants, criminal ineffective assistance of counsel cases should be interpreted cautiously.

Second, as courts in other jurisdictions have observed, the presence of a child's interest is a key difference when the court considers the interests in a termination of parental rights proceeding, rather than a criminal trial. *In re R.E.S.*, 19 A.3d 785, 789 (D.C. 2011). "Unlike a criminal proceeding, which implicates the personal liberty interest of a criminal defendant, a termination proceeding involves more than a parent's fundamental liberty interest in the care, custody, and control of his child. The child's interests in stability, safety, security, and a normal family home are also at stake, as well as the prompt finality that protects those interests." *John M. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 320, 324, 173 P.3d 1021 (2007); *see also* RCW 13.34.020.

**2. Amicus has not overcome the strong presumption of effective assistance of counsel**

When evaluating the actual effectiveness of counsel in the underlying trial, courts give great deference to trial counsel's performance and begin their analysis with a strong presumption that counsel was effective. *Strickland*, 466 U.S. at 689; *Moseley*, 34 Wn. App. at 184.

The challenging party has the burden of establishing deficient performance. See *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); *Moseley*, 34 Wn. App. at 184-85. Amicus has not overcome this presumption under the “fair hearing” standard in *Strickland* or the “meaningful hearing” standard in *Moseley*.

Under the “fair hearing” standard in a criminal case, a defendant claiming ineffective assistance of counsel must show that (1) his attorney’s performance fell below an objective standard of reasonableness, and (2) there was a resulting prejudice. *Strickland*, 466 U.S. at 687. To establish prejudice, a defendant must demonstrate that, but for the deficient representation, the outcome of the trial would have been different. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002). This demonstration requires showing that counsel’s errors were so serious as to deprive the defendant of a “fair” trial, or a trial whose result is reliable. *State v. Lord*, 117 Wn.2d 829, 883, 822 P.2d 177 (1991). Under the “meaningful” hearing standard, counsel’s effectiveness is presumed unless the parent can show that he or she did not receive a meaningful hearing. *J.M.*, 130 Wn. App. at 920 (citing *Moseley*, 34 Wn. App. at 184). A meaningful hearing, at minimum, requires “the opportunity to argue the strength of one’s own position and to attack the State’s position.” *Id.* at 925.

Amicus relies in part on *In re V.R.R.*, 134 Wn. App. 573, 586, 141 P.3d 85 (2006), in which the Court of Appeals concluded that the father received ineffective assistance of counsel under either the “fair hearing” standard in *Strickland* or the “meaningful hearing” standard in *Moseley*. Br. of Amicus Curiae at 10. In that case, although the father’s attorney had represented him in the underlying dependency proceeding, he was appointed to represent the father in the termination proceeding only the day before trial. *V.R.R.*, 134 Wn. App. at 576, 579, 585. He had not received discovery, had no opportunity to review the documents identified by the Department in its Notice of Intent to Admit, had no opportunity to interview witnesses listed by the Department, and had no opportunity to obtain an independent evaluation of the father. *Id.* at 585. In light of these limitations, he informed the court that he did not believe he could adequately represent the father and that his “professional duty would not permit” him to go forward. *Id.* at 585-86. The trial court denied a continuance and proceeded with trial anyway, thereby denying the father effective assistance of counsel. *Id.* at 580, 586.

None of these facts are present here. Amicus claims that N.B.’s absence “directly interfered with his ability to communicate with, defend, and rebut evidence through his attorney” as well as meet basic and professional obligations. Br. of Amicus Curiae at 11 (citing as a footnote

Rule of Professional Conduct 1.4). But Amicus cites no evidence from the record and provides no analysis of the record supporting these claims.

In fact, the record here reflects none of the concerns present in *V.R.R.* Instead of being appointed the day before trial, N.B.'s attorney appeared in the termination matter on November 16, 2017, almost ten months before the trial in September 2018. CP 9-11. Unlike the attorney in *V.R.R.*, who did not receive discovery, trial was continued from July 18, 2018, to September 5, 2018, to ensure all parties had access to necessary records. CP 103-05. Both the Department and N.B.'s attorney filed witness lists, demonstrating that N.B.'s attorney had an opportunity to review the case and the Department's witnesses. CP 109-11, 125-26.

Importantly, unlike the attorney in *V.R.R.*, N.B.'s attorney never informed the court that she could not adequately represent her client or that her professional duties prevented her from going forward. *See V.R.R.* at 585-86. N.B.'s attorney took advantage of the opportunity to argue N.B.'s case and to attack the Department's position by cross-examining all the Department's witnesses, objecting to evidence, arranging N.B.'s testimony, and offering exhibits into evidence. *See* citations to the record at page 10, above. In contrast, the father's attorney in *V.R.R.* did not cross-examine the only witness or otherwise participate in the trial. 134 Wn. App. at 580. Under either the "fair hearing" or the "meaningful hearing" standard, the

representation by N.B.'s attorney easily defeats Amicus's claim of ineffective assistance of counsel, particularly where Amicus has postulated—but not identified any—prejudice. *See Strickland*, 466 U.S. at 687; *see also McNeal*, 145 Wn.2d at 362.

**C. Following *Darrow*'s Precedent Does Not Require N.B.'s Physical Attendance at Trial**

Amicus misunderstands *In Interest of Darrow*, 32 Wn. App. 803, 649 P.2d 858 (1982), as a case addressing the circumstances in which incarcerated parents should be transported to hearings on petitions to terminate their parental rights. *See* Br. of Amicus Curiae at 11-13 (arguing that *Darrow* reasons that transport of an incarcerated parent should occur if it can be done safely and timely). In fact, *Darrow* addresses how to afford due process to incarcerated parents who do not personally attend such hearings. *Darrow*, 32 Wn. App. 803 at 808. As applied to N.B.'s case, *Darrow* illustrates why N.B.'s trial comported with due process requirements.

*Darrow* involved a father who was incarcerated in Arizona while the Department's petition to terminate his parental rights was pending. *Id.* at 805. His counsel moved to arrange his in-person attendance for the hearing on the Department's petition. *Id.* Arizona prison officials were amenable to transporting the father to Washington for the hearing, but

neither state agreed to assume the expenses associated with his transport, care, and custody. *See id.* Accordingly, the trial court refused to issue the order, and the trial occurred in the father's absence but with representation by counsel. *Id.* During the trial, the father had access to the court "through alternative methods such as letters, photographs, depositions, or a possible continuance after the State's case in chief to provide additional information." *See id.* at 806.

On appeal, the father argued that Washington should have been compelled to arrange his attendance and bear the financial expense because "his attorney could only assist him in protecting his rights and that his presence was essential to his effective representation by counsel." *Id.* at 805-06. The court affirmed the termination order, holding that the right of an incarcerated parent to appear personally and defend against a petition to terminate his parental rights is "not guaranteed by due process so long as the prisoner was afforded an opportunity to defend through counsel and by deposition or similar evidentiary techniques." *Id.* at 808. This means that "[i]n those cases where the imprisoned parent's attendance cannot be procured safely and timely, the trial court should assure that the parent is afforded a full and fair opportunity to present evidence or rebut evidence presented against him." *Id.* at 809.

Amicus's assumption that "[t]he father and his attorney were irreparably hindered by the father's absence" was rejected by the court in *Darrow*. See Br. of Amicus Curiae at 12; see *Darrow*, 32 Wn. App. at 805-08. Under *Darrow*'s reasoning, N.B. was afforded due process as long as he had "an opportunity to defend through counsel and by deposition or similar evidentiary techniques." *Id.* at 808. And N.B. did.

Although he was not able to be physically present for the trial, N.B. was afforded the opportunity to defend through counsel who had represented him for about two years. Exs. 13, 17-19. His counsel communicated with him and sent him documents to review prior to the trial. RP 8; see RP 92-93 (advocating for N.B.'s stated interests). Rather than a deposition like the father in *Darrow*, N.B. provided live telephonic testimony. RP 240-78-78. He appeared by phone for the guardian ad litem's testimony and part of his attorney's cross-examination of the Department social worker. RP 278-305. In addition, he had the ability to recall witnesses later in the case. RP 37; see also *Darrow*, 32 Wn. App. at 809 ("[G]ranted a continuance after presentation of its case-in-chief is one means of assuring the parent's right to defend."). However, he chose not to do so. See Suppl. Br. of Resp. at 16-17.

The fact that N.B. *may* have been able to personally attend the trial if it had been continued a fourth time does not create a conflict with *Darrow*

for two reasons. *See* Br. of Amicus Curiae at 12. First, Amicus’s claim that N.B. could have been transported to trial “just one week later” is an assumption not supported by the record. *Id.*; *see also* Suppl. Br. of Resp. at 15-16 (explaining that no evidence in the record establishes that N.B. would have been able to personally attend the trial had it been continued another week).

Second, *Darrow* does not hold that incarcerated parents must always be transported to hearings on petitions to terminate their parental rights when transport can be done safely and timely. *See* Br. of Amicus Curiae at 11-13. To determine whether an incarcerated parent’s attendance at trial is necessary to satisfy due process, courts employ the *Mathews v. Eldridge* balancing test, as addressed in the Department’s Supplemental Brief. Suppl. Br. of Resp. at 7-18. This test includes factors that address safety and timeliness, as well as the child’s right to a “speedy resolution” of the dependency and termination proceedings. *See* Suppl. Br. of Resp. at 7-18; *see also* RCW 13.34.020. Here, a balancing of these interests demonstrates that the trial court was correct to proceed with the termination trial.

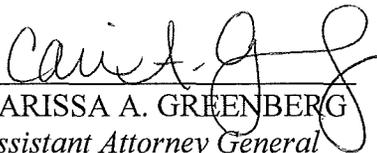
### III. CONCLUSION

Amicus’s contention that N.B. has broader due process rights under the Washington Constitution than under the federal constitution lacks the necessary *Gunwall* analysis for this Court’s consideration and does not align

with numerous post-*Gunwall* and post-*Luscier* opinions. Amicus's claims about the impact of the alleged trial deficiencies contain no analysis, explanation, or citation to the record. The trial court did not deprive N.B. of effective assistance of counsel. His attorney took advantage of the opportunity to argue N.B.'s case and attack the Department's position, consistent with *Darrow*. The trial afforded N.B. due process, and this Court should affirm.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of March, 2020.

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I certify under penalty of perjury under the laws of the state of  
Washington that the foregoing is true and correct.

DATED this 9<sup>th</sup> day of March, 2020, at Olympia, WA.

  
\_\_\_\_\_  
Ursula Konschak-Grover, Legal Assistant

**SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE**

**March 09, 2020 - 4:31 PM**

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**Appellate Court Case Number:** 97731-3  
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**Superior Court Case Number:** 17-7-02238-5

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Department of Children, Youth, and Families' Response to Amicus Curiae Brief

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