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**SUPREME COURT OF THE STATE OF WASHINGTON**

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In re the Dependency of:

S.K-P.,

A Minor Child.

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**DEPARTMENT OF SOCIAL AND HEALTH SERVICES'  
ANSWER TO AMICUS CURIAE BRIEFS**

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ROBERT W. FERGUSON  
Attorney General

BRIAN G. WARD  
Assistant Attorney General  
WSBA No. 45584  
1250 Pacific Avenue, Suite 105  
P.O. Box 2317  
Tacoma, WA 98401-2317  
(253) 593-5243  
OID No. 91117

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. ARGUMENT .....2

    A. The Reasoning of the *In re Dependency of MSR* Decision Applies Here and Directs a Case-by-Case Analysis of Each Child’s Circumstances to Determine Whether Counsel Should Be Appointed.....2

    B. This Court Should Decline Amici’s Invitation to Engage in Policy-Making .....5

    C. Washington’s Dependency Procedures Satisfy Due Process .....8

        1. A child is not deprived of his or her physical liberty simply by being in a dependency proceeding.....9

        2. This Court should follow *In re Dependency of MSR*’s assessment of a child’s private interests in a dependency proceeding .....13

        3. Washington’s dependency procedures ensure that the risk of error in not appointing counsel is low .....15

    D. The Court of Appeals Was Proper to Engage in a *Gunwall* Analysis in Finding S.K-P.’s Due Process Rights Were Preserved and Further Instruction on the Application of *Gunwall* is Not Needed.....18

III. CONCLUSION .....20

## TABLE OF AUTHORITIES

### Cases

<i>Bellevue Sch. Dist. v. E.S.</i> , 171 Wn.2d 695, 257 P.3d 570 (2011).....	12-13, 18
<i>Braam v. State</i> , 150 Wn.2d 689, 81 P.3d 851 (2003).....	14
<i>City of Woodinville v. Northshore United Church of Christ</i> , 166 Wn.2d 633, 211 P.3d 406 (2009).....	19
<i>Gagnon v. Scarpelli</i> , 411 U.S. 778, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973).....	3-5
<i>In re Gault</i> , 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).....	11
<i>Hardee v. Dep't of Soc. &amp; Health Servs.</i> , 172 Wn.2d 1, 256 P.3d 339 (2011).....	15
<i>In re Dependency of MSR</i> , 174 Wn.2d 1, 271 P.3d 234 (2012).....	1-3, 10, 13-14, 17
<i>King v. King</i> , 162 Wn.2d 378, 174 P.3d 659 (2007).....	18
<i>Lassiter v. Dep't of Soc. Servs. of Durham Cty., N. C.</i> , 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981).....	4-5, 9, 13
<i>League of Women Voters of Washington v. State</i> , 184 Wn.2d 393, 355 P.3d 1131 (2015).....	9
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).....	2, 15
<i>Reno v. Flores</i> , 507 U.S. 292, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993).....	9-11, 13
<i>State v. Foster</i> , 135 Wn.2d 441, 957 P.2d 712 (1998).....	19

<i>State v. Gunwall</i> , 106 Wn.2d 54,720 P.2d 808 (1986).....	18
<i>State v. Hirschfelder</i> , 170 Wn.2d 536, 242 P.3d 876 (2010).....	3
<i>Taylor ex rel. Walker v. Ledbetter</i> , 818 F.2d 791 (11th Cir. 1987) .....	9-10

**Statutes**

42 U.S.C. § 1983.....	9
42 U.S.C. § 5106a(a)(2)(B)(ii).....	8
42 U.S.C. § 5106a(b)(2)(B)(xiii) .....	8
42 U.S.C. §§ 5101-5116i .....	8
Pub. L. No. 111-320.....	8
RCW 13.34 .....	12, 16
RCW 13.34.065 .....	12
RCW 13.34.090 .....	16
RCW 13.34.100 .....	1, 9, 17
RCW 13.34.100(6).....	9, 16
RCW 13.34.105(1).....	16
RCW 13.34.130 .....	12
RCW 13.34.165 .....	12
RCW 74.15.020(1).....	12
RCW 74.15.030(2).....	12
RCW 74.15.090 .....	12

**Regulations**

WAC 388-25-0010..... 12  
WAC 388-148..... 12

**Other Authorities**

Senate Bill 5363 ..... 6

*Children’s Advocacy Institute and First Star, A Child’s Right to Counsel, A National Report Card on Legal Representation for Abused and Neglected Children (3rd ed. 2012), available at [http://www.cachildlaw.org/Misc/3rd\\_Ed\\_Childs\\_Right\\_to\\_Counsel.pdf](http://www.cachildlaw.org/Misc/3rd_Ed_Childs_Right_to_Counsel.pdf) (last visited Oct. 31, 2017)*..... 6-8

## I. INTRODUCTION

Amici seek a ruling from this Court that would require appointment of counsel for all children in dependency proceedings, no matter how young the child, no matter how closely the child's interests align with other parties' interests, and no matter any other circumstances of the child or the reasons for dependency. Such a decision is not required by the due process clauses of the Washington or United States Constitutions. Rather, as this Court held in addressing nearly identical arguments in *In re Dependency of MSR*, 174 Wn.2d 1, 271 P.3d 234 (2012), RCW 13.34.100 satisfies due process by relying on the sound discretion of trial courts in determining on a case-by-case basis whether an attorney should be appointed.

Because there is no constitutional requirement that counsel be appointed for every child in every dependency proceeding, the procedure for making such appointments is appropriately left to the Legislature. While amici would choose a different procedure, the Legislature's choice comports with due process.

Rather than focusing on amici's public policy contentions, which should be addressed to the Legislature, this Court should apply well-settled constitutional principles and hold that: (1) Washington's statute requiring the appointment of an independent guardian ad litem to represent a child's best interests and authorizing the discretionary appointment of counsel for

children in dependency proceedings satisfies the due process rights of children; (2) the trial court in the present case soundly exercised its discretion in weighing the factors in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), and determining that court-appointed counsel was not required; and (3) the Washington State Court of Appeals correctly affirmed the appropriateness of the *Mathews* test in this case and its application by the trial court.

## II. ARGUMENT

### A. **The Reasoning of the *In re Dependency of MSR* Decision Applies Here and Directs a Case-by-Case Analysis of Each Child's Circumstances to Determine Whether Counsel Should Be Appointed**

This Court's rationale in *In re Dependency of MSR*, 174 Wn.2d 1, 271 P.3d 234 (2012), applies here, and directs exactly the type of case-by-case analysis the trial court conducted to decide that the child, S.K-P., was not constitutionally entitled to court-appointed counsel.

In *In re Dependency of MSR*, the Court endorsed a case-by-case analysis of the *Mathews* factors to determine if due process requires appointment of counsel for a child in a hearing to permanently terminate the parent and child relationship. *Id.* at 21-22.<sup>1</sup> In doing so, the Court noted that

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<sup>1</sup>*In re Dependency of MSR* was a termination proceeding. A footnote in that decision left open the possibility that a different analysis might be appropriate in dependency proceedings. *In re Dependency of MSR*, 174 Wn.2d at 22 n.13. As explained in this brief, the rationale of the Court's opinion is equally applicable to dependencies.

“each child’s circumstances will be different.” *In re Dependency of MSR*, 174 Wn.2d at 21. The Court provided an example to demonstrate that the *Mathews* factors may weigh differently when applied to different children by explaining that “[a]n infant who cannot yet form, articulate, or otherwise express a position on any relevant issue will not benefit as much” from counsel’s advocacy for the right to be heard as an older child. *Id.* at 21. The Court held that “the due process right of children who are subjects of dependency or termination proceedings to counsel is not universal.” *Id.* at 22. The Court endorsed a case-by-case analysis by the juvenile court judge, who “should apply the *Mathews* factors to each child’s individual and likely unique circumstances to determine if the statute and due process requires the appointment of counsel.” *Id.*<sup>2</sup>

The conclusion in *In re Dependency of MSR* follows United States Supreme Court precedent applying a case-by-case review to determine whether due process requires appointment of counsel. In 1973, the Court rejected an “inflexible constitutional rule” requiring appointment of counsel in every adult probation revocation proceeding, and instead endorsed a

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<sup>2</sup> Amicus Northwest Justice Project’s Article 1 Section 12 argument ignores the rationale adopted in *In re Dependency of MSR* concerning the individual and unique circumstances of different children subject to dependencies and improperly insists this Court now find the opposite—that all dependent children are “similarly situated.” This Court should not consider this argument because it is raised only in this amicus brief; it has not been raised by the parties, was never briefed or argued below, and was not addressed by the Court of Appeals. The Court need not address issues raised only by amici. *State v. Hirschfelder*, 170 Wn.2d 536, 552, 242 P.3d 876, 884 (2010).

case-by-case analysis. *Gagnon v. Scarpelli*, 411 U.S. 778, 790, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973). The Court observed that in some cases, a disputed issue can be fairly represented only by an attorney, but not in all cases. *Id.* While the Court had rejected a case-by-case analysis in past rulings arising from criminal trials, the Court emphasized that a probation revocation hearing is not a criminal trial, and endorsed a case-by-case approach to furnishing counsel in revocation hearings. *Id.* at 788-89. “[D]ue process is not so rigid as to require that the significant interests in informality, flexibility, and economy must always be sacrificed.” *Id.* at 788. Thus, the decision as to the need for counsel in revocation hearings could be made based on a case-by-case analysis. *Id.* at 790.

In 1981, the United States Supreme Court again used a case-by-case analysis to decide whether due process required appointment of counsel—this time for parents in termination of parental rights proceedings. *Lassiter v. Dep’t of Soc. Servs. of Durham Cty., N. C.*, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981). In assessing the demands of “fundamental fairness,” the Court distinguished a termination proceeding, in which a parent’s relationship to her child may be permanently severed, from a criminal proceeding, in which a defendant faces imprisonment. *Id.* at 26-27. The Court adopted the approach endorsed in *Gagnon*, and noted that in a given case, if a parent’s interests are at their strongest, the State’s at their

weakest, and the risk of error at its peak, then the presumption against the right to appointment of counsel may be overcome. *Lassiter*, 452 U.S. at 31-32 (referencing *Gagnon*, 411 U.S. 788)). But since these factors will not always be so aligned, the Constitution does not require appointment of counsel for parents in all termination proceedings. *Lassiter*, 452 U.S. at 31-32. As such, the Court left to trial courts the decision whether due process requires such appointment. *Id.*

As directed by this Court and the United States Supreme Court, the trial court in this case appropriately conducted an individualized *Mathews* analysis based on circumstances of the child and determined that appointment of counsel was not required.

**B. This Court Should Decline Amici’s Invitation to Engage in Policy-Making**

This Court should decline to engage in the policy-making amici advance as to the additional procedures that could be applied for children in dependency proceedings. As the United States Supreme Court stated in *Lassiter*, additional procedures may reflect “wise public policy,” but they are not constitutionally mandated. *Lassiter*, 452 U.S. at 33. Nevertheless,

one amicus brief encourages this Court to engage in such policy-making. That endeavor should be left to the Legislature.<sup>3</sup>

The legislative choices of other states do not determine whether there is a constitutional right to appointed counsel for every child in every dependency proceeding in Washington. Moreover, other states' legislative policy choices with respect to the representation of children in dependency proceedings is not nearly as monolithic or divergent from Washington's approach as amici suggest. The *National Report Card on Legal Representation for Abused and Neglected Children* demonstrates the wide range of approaches states have adopted with regard to when a dependent child may be appointed an attorney, and the varying nature of that representation. *See generally* Children's Advocacy Institute and First Star, *A Child's Right to Counsel, A National Report Card on Legal Representation for Abused and Neglected Children* at 22-131 (3rd ed. 2012), available at [http://www.caichildlaw.org/Misc/3rd\\_Ed\\_Childs\\_Right\\_to\\_Counsel.pdf](http://www.caichildlaw.org/Misc/3rd_Ed_Childs_Right_to_Counsel.pdf) (last visited Oct. 31, 2017) (National Report Card).

Virtually every state, including Washington, provides for the appointment of an adult to communicate the stated interests of the child to

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<sup>3</sup> In fact, the Legislature recently considered a bill that would provide all children subject to dependency proceedings attorneys and the Legislature chose not to adopt it into law. *See* Senate Bill 5363 (Feb.10, 2017).

the trial court and to advocate for the best interests of the child, usually called a guardian ad litem (GAL). *Id.* The most common model appears to be one in which children are appointed a GAL who is an attorney, but the attorney must advocate for the best interest of the child rather than the child's stated interest. *E.g., id.* at 22, 33, 36, 72, 94 (discussing Alabama, California, Colorado, Michigan, and North Carolina). In other states, including Washington, the GAL is not required to be an attorney, but there are provisions for discretionary appointment of counsel. *E.g., id.* at 27, 54, 56, 78, 84, 86 (discussing Arizona, Illinois, Indiana, Missouri, Nevada, and New Hampshire). In some areas, an attorney is appointed as a GAL, but the law provides for discretionary appointment of a second attorney to advocate for the stated interest of the child. *E.g., id.* at 43, 45 (discussing the District of Columbia and Florida). Some states require appointed counsel only for children of a certain age. *E.g., id.* at 74, 90, 121 (discussing Minnesota, New Mexico, and Virginia). The variety of models described in the National Report Card demonstrates that Washington is not an outlier with respect to providing due process for children in dependency proceedings.

Moreover, Washington's statute for appointment of counsel for children in dependency proceedings meets the requirements of applicable federal law. The Child Abuse Prevention and Treatment Act (CAPTA) is the operative federal legislation that addresses a number of children's

issues, including the representation of abused and neglected children in dependency proceedings. *See* 42 U.S.C. §§ 5101-5116i, as amended by Pub. L. No. 111-320 (Dec. 20, 2010). CAPTA requires only that these children be appointed an independent representative, who may be a GAL. 42 U.S.C. § 5106a(a)(2)(B)(ii) (requiring states to have “provisions for the appointment of an individual appointed to represent a child in judicial proceedings”); 42 U.S.C. § 5106a(b)(2)(B)(xiii) (providing that a GAL who may be an attorney or a court-appointed special advocate shall be appointed to represent the child in judicial proceedings and make recommendations regarding the child’s best interests).

During CAPTA reauthorization in 2010, a number of advocates, including some amici here, unsuccessfully sought changes to require that every child in a dependency case should be appointed an attorney as “legal counsel” for the child (not to represent the child’s best interests). National Report Card at 7. Their advocacy failed. *Id.* Congress was presented with the option to impose additional representation requirements for the states, and elected not to do so. This Court should decline amici’s invitation to engage in this form of legislative policy-making.

**C. Washington’s Dependency Procedures Satisfy Due Process**

By arguing that every child in every dependency proceeding has a constitutional right to counsel, amici and the appellant bring what amounts

to a facial challenge to the constitutionality of RCW 13.34.100. But the appellant and amici fail to demonstrate that there is no set of circumstances under which RCW 13.34.100 would be valid, as is required in a facial challenge of a statute. *See Reno v. Flores*, 507 U.S. 292, 301, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993); *League of Women Voters of Washington v. State*, 184 Wn.2d 393, 423, 355 P.3d 1131 (2015), *as amended on denial of reconsideration* (Nov. 19, 2015). RCW 13.34.100(6) satisfies due process requirements as described in *Lassiter* and *In re Dependency of MSR* because it allows for the appointment of counsel on a case-by-case basis, requires the appointment of an independent GAL, and requires the GAL and Department of Health and Social Services social worker to ask children 12 years old or older whether they wish to be appointed counsel and to report the children's wishes to the court.

**1. A child is not deprived of his or her physical liberty simply by being in a dependency proceeding**

Absent the deprivation of a physical liberty interest, it is presumed that appointment of an attorney is not required. *Lassiter*, 452 U.S. at 31. Amici argue that a child is deprived of his or her physical liberty interest by being in a dependency proceeding.<sup>4</sup> While this Court has found that a

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<sup>4</sup> The amicus brief of Children's Rights, Inc., *et al.* incorrectly relies on *Taylor ex rel. Walker v. Ledbetter*, 818 F.2d 791, 797 (11th Cir. 1987), a case interpreting 42 U.S.C. § 1983, to support its claim that all dependent children's physical liberty is at risk. While it is true the court in *Ledbetter* indicated that there may be fact-specific

dependent child may face the loss of a physical liberty interest in a dependency or termination of parental rights proceeding, it did not find that all children in dependency proceedings are necessarily deprived of their physical liberty solely by being found dependent or placed in foster care. *See In re Dependency of MSR*, 174 Wn.2d at 16. Further, even having reached this conclusion, this Court did not find that the children in these proceedings are entitled to court-appointed counsel in all cases. *Id.* at 22-23. Instead, the Court endorsed a case-by-case *Mathews* analysis to determine whether court-appointed counsel was required. *Id.*

The *Reno* decision provides guidance for this Court's analysis of a child's fundamental interests in a dependency proceeding. *See Reno*, 507 U.S. 292. In *Reno*, the United States Supreme Court was asked to determine whether a rule violated substantive due process when it permitted children detained by the Immigration and Naturalization Service (INS) to be released to their parents, close relatives, a responsible adult, or a suitable placement facility. *Id.* at 297-98. The Court noted that while the facilities were deemed to be detention by INS, they were more accurately described

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situations where a child may bring a claim for civil rights violations resulting from harm while in state custody, the court limited its decision to the facts of the case. The court made clear that its "holding does not mean that every child in foster care may prevail in a section 1983 action against state officials" but that "if foster parents with whom the state places a child injure the child, and that injury results from state action or inaction, a balancing of interests may show a deprivation of liberty." *Id.* at 795-97.

as legal custody, because they were not correctional institutions, but instead met foster care and group home state licensing requirements and were operated without extraordinary security measures. *Reno*, 507 U.S. at 298. The physical liberty interest in the constitutional sense was not invoked because the children were held in circumstances more like foster care than incarceration. *Id.* at 302-06.<sup>5</sup>

The asserted “right” in *Reno* was one to be placed in the custody of a private custodian rather than a government-operated or selected institution. *Id.* But no court other than those ultimately reversed by the *Reno* decision had held that a child has such a right. *Id.* at 303. The Court concluded that “[w]here a juvenile has no available parent, close relative, or legal guardian, where the government does not intend to punish the child, and where the conditions of governmental custody are decent and humane, *such custody surely does not violate the Constitution.*” *Id.* (emphasis added).

This Court should apply the liberty interest analysis in *Reno*. Like the INS rule analyzed in *Reno*, the statutes governing Washington

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<sup>5</sup>In proceedings to determine delinquency, “which may result in commitment to an institution in which the juvenile’s freedom is curtailed,” due process requires that the child be appointed counsel. *In re Gault*, 387 U.S. 1, 41, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). The United States Supreme Court reasoned that a finding of delinquency carries with it the “awesome prospect of incarceration in a state institution until the juvenile reaches the age of 21.” *Id.* at 36-37.

dependency proceedings authorize placement of the subject children in the care of their parents, relatives, other suitable persons, or in foster care. *See* RCW 13.34.065; RCW 13.34.130. Foster care is defined by rule as “[24]-hour per day temporary substitute care for the child placed away from the child’s parents or guardians and for whom the department or a licensed or certified child placing agency has placement and care responsibility.” WAC 388-25-0010. Any home or facility that provides temporary substitute care for children for at least 24 hours must be licensed and must meet minimum licensing requirements. RCW 74.15.020(1); RCW 74.15.030(2); RCW 74.15.090; WAC 388-148. Mere placement in foster care does not authorize the confinement or detention of the child in the home or group care facility.

Juvenile courts are authorized to place dependent children in detention pursuant to RCW 13.34 only if the court makes a civil contempt finding under RCW 13.34.165. Additional proceedings beyond entry of a dependency order or placement in foster care would be required to detain a dependent child. *See* RCW 13.34.165 (regarding civil contempt). However, the “mere possibility” that an order entered in a dependency proceeding may later serve as the predicate for an order placing the child in detention does not per se result in a finding that the child was deprived of a physical liberty interest. *See e.g., Bellevue Sch. Dist. v. E.S.*, 171 Wn.2d 695, 706,

257 P.3d 570 (2011) (ruling that the mere possibility that an order entered in an initial truancy hearing may be used as a predicate to later pursue contempt sanctions is insufficient to find deprivation of physical liberty).

A child is not deprived of his physical liberty interest solely by being found dependent, or by being placed in foster care. As in *Reno*, “freedom from physical restraint” was not invoked in this case; the appellant was not subject to “shackles, chains, or barred cells,” nor was any “right to come and go at will” impeded in the dependency proceeding—apart from the reality that a child is “always in some form of custody” because of the child’s need for care and guidance from adults. *Reno*, 507 U.S. at 302 (citation and quotation marks omitted). As such, this Court must consider whether the *Mathews* factors overcome the presumption that due process does not require the appointment of counsel. *Lassiter*, 452 U.S. at 31.

**2. This Court should follow *In re Dependency of MSR’s* assessment of a child’s private interests in a dependency proceeding**

In *In re Dependency of MSR*, this Court addressed issues common to termination and dependency proceedings, as well as some that arise only in dependency proceedings. Issues arguably common to both proceedings include the child’s ongoing relationship with parents, siblings, and extended family. *In re Dependency of MSR*, 174 Wn.2d at 15. The Court also observed that a child in a dependency proceeding may be removed from the

home of the parents and become a ward of the state. *In re Dependency of MSR*, 174 Wn.2d at 16. The Court noted that a foster child “may face the daunting challenge of having his or her person put in the custody of the State as a foster child” and may “be forced to move from one foster home to another.” *Id.*

Further, this Court observed, “[f]oster home placement may result in multiple changes of homes, schools, and friends over which the child has no control.” *Id.* (noting statistics regarding dependent children cited in the Amicus Curiae Brief of Columbia Legal Services and The Center for Children and Youth Services). The Court then stated that it had previously held that children in foster care “have a substantive due process right to be free from unreasonable risks of harm . . . and a right to reasonable safety.” *Id.* at 17 (quoting *Braam v. State*, 150 Wn.2d 689, 699, 81 P.3d 851 (2003)) (quotation marks omitted).

After conducting this full review of a child’s private interest in a dependency proceeding in *In re Dependency of MSR*, the Court ultimately concluded that “the child’s liberty interest in a dependency proceeding is very different from, but at least as great as, the parent’s.” *Id.* at 17-18. Despite this analysis, the Court still held that due process did not require appointment of counsel in all cases. *Id.* at 21-22. Thus, while the Court noted that the *In re Dependency of MSR* decision arose from an appeal of

an order terminating parental rights and did not foreclose other arguments in dependency proceedings, nearly all of its language and reasoning is equally applicable to dependency proceedings and should guide the Court's analysis here.

**3. Washington's dependency procedures ensure that the risk of error in not appointing counsel is low**

The second *Mathews* factor is “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards[.]” *Mathews*, 424 U.S. at 335. Here, the Court must evaluate the risk that the current dependency process will produce an erroneous result, and how much the risk would be reduced if all children were appointed stated-interest attorneys. Amici voice various concerns, but they fail to demonstrate any pervasive risk of erroneous deprivation of a child's liberty interest under the current procedures that is of such magnitude it demands to be served by universal appointment of counsel. *See Hardee v. Dep't of Soc. & Health Servs.*, 172 Wn.2d 1, 11, 256 P.3d 339 (2011) (under the second *Mathews* factor, “the current procedures must suffer from inadequacies that make erroneous deprivations readily foreseeable”).

The existing procedural protections provided by Washington statutes and court rules minimize risk of an erroneous deprivation of a

child's liberty interest. Attorneys represent the parents and the State in their adversarial dispute over the best interests of the child and whether the burdens and standards contained in RCW 13.34 have been met. RCW 13.34.090. A GAL protects the child's interests, advocates for the child's best interests, and communicates to the trial court the child's stated interests and whether the child wishes to be appointed counsel. RCW 13.34.105(1). If, pursuant to a *Mathews* analysis, the trial court determines that the child requires appointment of counsel, RCW 13.34.100(6) authorizes the appointment of counsel. These procedural protections guarantee that the risk of an erroneous deprivation of a child's liberty interest in a dependency proceeding is low.

An erroneous deprivation of a child's liberty interest in a dependency proceeding could include a failure to find the child dependent or to remove the child from the home. These outcomes could result in the exposure of the child to an unreasonable risk of harm. *See generally* RCW 13.34. Neither the appellant nor amici have demonstrated that an erroneous deprivation of a liberty interest is foreseeable in all dependency cases, nor have they demonstrated that one actually occurred or is readily foreseeable in this case. In fact, S.K-P. was not erroneously deprived of a liberty interest, nor was such a deprivation of liberty interest foreseeable.

When the trial court conducted a hearing on the subject motion below, the child had already been home with her mother, which she preferred.

Further, in cases where a child is not able to benefit from the appointment of an attorney bound to represent the child's stated interests—for example, because the child is not able to formulate such interests or to otherwise direct counsel, *see In re Dependency of MSR*, 174 Wn.2d at 21,—then the risk of error in not appointing counsel and having the child's best interests represented by a GAL may be reduced. In some circumstances, such as in the cases of some developmentally disabled children, there may be reasons for a court to differently assess the risk of error in appointing counsel. As directed by this Court in *In re Dependency of MSR*, though, a child's ability to direct and benefit from the attorney-client relationship is one appropriate consideration, among others.

There is no demonstration in this case that RCW 13.34.100 is facially unconstitutional. This Court should conclude that the trial court properly balanced the *Mathews* factors when applying RCW 13.34.100 and properly ordered that appointment was not required in this case.

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**D. The Court of Appeals Was Proper to Engage in a *Gunwall* Analysis in Finding S.K-P.’s Due Process Rights Were Preserved and Further Instruction on the Application of *Gunwall* is Not Needed**

The *Gunwall* analysis applies whenever a Washington State court needs to evaluate whether a provision of the Washington State Constitution provides broader protection than the corresponding United States Constitution provision. *See State v. Gunwall*, 106 Wn.2d 54, 61, 720 P.2d 808 (1986) (stating that the *Gunwall* factors are “relevant to determining whether, in a given situation, the constitution of the State of Washington should be considered as extending broader rights to its citizens than does the United States Constitution”). Courts have routinely applied the *Gunwall* factors to matters for which there is no exactly-corresponding federal precedent.<sup>6</sup>

Amicus Fred T. Korematsu Center (Korematsu Center) misunderstands the proper application of the *Gunwall* analysis. The Korematsu Center asserts that the *Gunwall* factors apply only when federal courts have adjudicated the exact issue now before the state court.

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<sup>6</sup> *See e.g. King v. King*, 162 Wn.2d 378, 392-93, 174 P.3d 659 (2007) (in which the Court used a *Gunwall* analysis to decide that counsel was not required for parents in a dissolution proceeding, despite the lack of federal cases on exactly that issue). *See also Bellevue Sch. Dist. v. E.S.*, 171 Wn.2d 695, 710-14, 257 P.3d 570 (2011) (in which the Court used a *Gunwall* analysis to decide that counsel was not required for a juvenile at a preliminary hearing in a truancy proceeding, despite the lack of federal cases on exactly that issue).

Br. of Amicus Korematsu Center at 6 (claiming that where “there is no ‘instructive’ federal precedent, a *Gunwall* analysis is unnecessary”). None of the cases it cites (in footnotes 3 and 4 of its brief) support that claim.

First, amicus quotes *City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, 641, 211 P.3d 406 (2009): “[*Gunwall*] articulates standards to determine when and how Washington’s [C]onstitution provides different protection of rights than the United States Constitution.” Br. of Amicus Korematsu Center at 7 n. 3. Neither that decision nor the quoted passage limits the application of *Gunwall* to cases where a federal court has already adjudicated the exact issue at hand. That passage merely states what *Gunwall* is meant to do.

Amicus’s reliance on *State v. Foster*, 135 Wn.2d 441, 957 P.2d 712 (1998), is similarly misplaced. *Foster* says nothing that limits the application of the *Gunwall* analysis to situations in which there is a federal case on point. *Id.* To the extent the Court cites pertinent federal court decisions in any *Gunwall* analysis, those decisions are used to delineate the boundaries and extent of the relevant federal constitutional provision. *Id.* at 454-66. Those citations do not create a requirement under *Gunwall* that pertinent federal cases must exist for there to be a *Gunwall* analysis.

Here, a *Gunwall* analysis is appropriate because both article I, section 3 of the Washington Constitution and the due process clause of the

Fourteenth Amendment cover the right to counsel in civil proceedings, and both *Matthews* and *Lassister*—cases this Court found instructive in *In re Dependency of MSR* —provide clear guidance on the right to counsel in civil proceedings under the federal constitution.

### III. CONCLUSION

Amici offer policy reasons for the appointment of counsel, but they do not demonstrate the existence of any state or federal constitutional requirement that the State must appoint and supply counsel for every child in every dependency proceeding. The trial court properly applied the governing statute and properly conducted the appropriate due process analysis in concluding that it was not necessary to appoint counsel in this case. The Washington State Court of Appeals correctly affirmed after a careful and thorough review. This Court should deny the motion for discretionary review.

RESPECTFULLY SUBMITTED this 8th day of November, 2017.

ROBERT W. FERGUSON  
Attorney General



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BRIAN G. WARD  
Assistant Attorney General  
WSBA No. 45584

**DECLARATION OF SERVICE**

I, BETHANY KENSTOWICZ, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

On November 8, 2017, I caused a true and correct copy of the Answer to Amicus Curiae to be filed electronically with the Supreme Court of the State of Washington, and to be served via the Court's online filing system as indicated below:

Washington State Supreme Court Clerk  
supreme@courts.wa.gov

Candelaria Murillo & Sujatha Jagadeesh Branch,  
Attorneys for Petitioner, S.K-P.  
Columbia Legal Services  
Candelaria.Murillo@columbialegal.org &  
Sujatha.Branch@columbialegal.org

SIGNED in Tacoma, Washington, this 8th day of November, 2017.



BETHANY KENSTOWICZ  
Legal Assistant to Brian G. Ward  
1250 Pacific Avenue, Suite 105  
PO Box 2317  
Tacoma, WA 98401  
(253) 597-4463

**ATTORNEY GENERAL OF WASHINGTON - TACOMA SHS**

**November 08, 2017 - 10:37 AM**

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- debip@nwjustice.org
- jessica.levin@gmail.com
- laura.clinton@bakermckenzie.com
- levinje@seattleu.edu
- pcpatvecf@co.pierce.wa.us
- zydekbe@gmail.com
- Hillary Adele Madsen (Undisclosed Email Address)
- Sujatha Jagadeesh Branch (Undisclosed Email Address)
- Candelaria Murillo (Undisclosed Email Address)

**Comments:**

DEPARTMENT OF SOCIAL AND HEALTH SERVICES  ANSWER TO AMICUS CURIAE BRIEFS

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Sender Name: Bethany Kenstowicz - Email: bethanyk@atg.wa.gov

**Filing on Behalf of:** Brian G. Ward - Email: brian.ward@atg.wa.gov (Alternate Email: shstacappeals@atg.wa.gov)

Address:  
PO Box 2317  
Tacoma, WA, 98401  
Phone: (253) 593-5243

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