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Supreme Court No. 94798-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Dependency of E.H.;
In re the Dependency of S.K.-P.,
Minor Children,

Petitioners,

SUPPLEMENTAL BRIEF OF PETITIONER S.K.-P.

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I. INTRODUCTION

S.K.-P., the Petitioner, was removed from her home and placed into state custody by the Department of Social and Health Services (DSHS). Clerk's Papers (CP) 1-6. DSHS' actions commenced a complex civil proceeding known as a dependency, triggering one of the most traumatic events in the lives of children in foster care: removal from home. The lives of thousands of children like S.K.-P. are dramatically changed and controlled by the State in dependency proceedings.

Feeling voiceless, S.K.-P. requested appointment of counsel to represent her interests in the ongoing dependency. CP 115-139. S.K.-P. was the only person who was not represented by counsel in the dependency process. Children have strong liberty interests at stake in such proceedings, yet children in Washington are not afforded an automatic right to counsel. Liberty interests of children include where they are physically placed, what services they receive, and visitation with their families. Children also face the most imminent and lasting harm from dependency. Experts agree that any amount of time spent in foster care may be harmful to children's growth, development, and well-being.¹ Yet the court denied S.K.-P.'s request for appointment of counsel. CP 327-

¹ American Academy of Pediatrics Committee on Early Childhood, Adoption, and Dependent Care, *Developmental Issues for Young Children in Foster Care*, 106 *Pediatrics* 1145 (2000), available at: <http://pediatrics.aappublications.org/content/106/5/1145.full>.

330. As a result, S.K.-P. was unable to assert her rights regarding visiting with her half-siblings or her half-siblings' grandparents, living with her mother, staying in the same school, limiting visits with her estranged father, or receiving adequate mental health services. CP 4, 27, 39, 42, 67-69, 83, 94, 187.

This case, and the consolidated case, *In re the Dependency of E.H.*, provides this Court the opportunity to address whether the U.S. and Washington constitutions require the appointment of counsel for children in dependency. There is no decision by this Court² or the U.S. Supreme Court that addresses whether children in dependency proceedings have a constitutional right to counsel. By holding that due process requires that children in dependency have the right to counsel, the Court would assure that these children have a voice in the complex proceedings that affect every aspect of their lives, mitigating the harms of a dependency.

² In 2012, this Court did rule on whether the federal Constitution provides a right to counsel for children in cases involving termination of parental rights. *In re the Matter of the Dependency of M.S.R.*, 174 Wn.2d 1, 271, P.3d 234 (2012) (“*M.S.R.*”). In that opinion, this Court referenced children in dependency, but did not rule on the right to counsel in such proceedings, stating, “[w]e recognize that this is an appeal of a termination order. Nothing in this opinion should be read to foreclose argument that a different analysis would be appropriate during the dependency stages.” *Id.* at 22 n.13.

II. SUMMARY OF ARGUMENT

Whether state or federal constitutional due process requires counsel for children in dependency proceedings³ is a matter of law reviewed *de novo*. *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 503, 198 P.3d 1021 (2009).

All children in dependency have physical and fundamental liberty interests at stake.⁴ It follows that our State Constitution's Due Process Clause, Art. 1 § 3, guarantees children the right to counsel in dependency proceedings. Under the U.S. Constitution, courts may apply a uniform *Mathews*⁵ analysis to all children in dependency proceedings. Because all children are similarly situated within the context of the proceeding, the Court should reject the Court of Appeals' conclusion that case-by-case appointment of counsel is constitutionally sufficient to protect the liberty interests of children in dependency. A proper *Mathews* analysis guarantees

³ A dependency is initiated when DSHS receives a report that a child has been abused, neglected, or abandoned. RCW 13.34.010, et seq. After investigating, DSHS decides whether to file a dependency petition with the court. *Id.*; RCW 13.34.050. If the child is removed, the next step is the shelter care hearing, where the court decides whether it is in the "best interests of the child" to go home or stay in state custody. RCW 13.50.065. A parent can voluntarily agree to the dependency, RCW 13.34.110(3)(a), or contest the dependency, whereupon a "fact-finding hearing" is held, RCW 13.34.110. A dependency proceeding continues until one of the following things happens: (a) reunification with the parent(s), (b) establishment of a guardianship, (c) legal adoption, or (d) the child ages out of the system. RCW 13.34.136.

⁴ See Section III. A, *infra*.

⁵ *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

all children a right to counsel in dependency proceedings under the Fourteenth Amendment.

III. ARGUMENT

A. Children Have Liberty Interests at Stake in Dependency Proceedings

All children in dependency proceedings, regardless of the unique circumstances of each individual child, have physical and fundamental liberty interests at stake.⁶ As this Court has held, children have fundamental liberty interests at stake under the Fourteenth Amendment to the United States Constitution including an

...interest in being free from unreasonable risks of harm and a right to reasonable safety; [and] in maintaining the integrity of the family relationships, including the child's parents, siblings, and other familiar relationships; and in not being returned to (or placed into) an abusive environment over which they have little voice or control.”⁷

In re Dependency of M.S.R., 174 Wn.2d at 20. More specifically, “[i]n a dependency or termination proceeding ... the child is at risk of not only losing a parent but also relationships with sibling(s), grandparents, aunts, uncles, and other extended family.” *Id.* at 15. Unlike the parent, the child

⁶ In this case, the Court of Appeals acknowledged that children in dependency proceedings have a liberty interest at stake. *In re the Dependency of S.K.-P.*, 200 Wn.App. 86, 114-115, 401 P.3d 442 (Div. II, 2017). But the Court of Appeals erred when it held that children do not have a uniform right to counsel. *Id.* at 92.

⁷ Dependency and termination are separate proceedings with separate cause numbers and have different standards, focuses, and purposes. *See* Section III. C, *infra*. *M.S.R.* addresses termination of parental rights proceedings, not dependencies. *See* footnote 2, *supra*. However, dependencies implicate all the liberty interests listed in *M.S.R.*

also faces the loss of physical liberty because the child “will be physically removed from the parent’s home” and “may face the daunting challenge of having his or her person put in the custody of the State as a foster child, powerless and voiceless, to be forced to move from one foster home to another.” *Id.* at 16. Additionally, this Court in *M.S.R.* recognized that a child “who is the subject of a dependency or termination proceeding is at risk of being returned by the State to an abusive or neglectful home,” and reiterated *Braam’s* confirmation about foster children’s right to be free from harm and to be safe. *Id.* at 17 (quoting *Braam*, 150 Wn.2d at 699).

A federal court held that abuse and neglect proceedings pose a real threat to a child’s physical and fundamental liberty interests under the federal Constitution. *Kenny A. ex rel. Winn v. Perdue*, 356 F. Supp. 2d 1353 (N.D. Ga 2005).

Children in the dependency system also have significant educational rights under federal and state law, including the right to an education under the Washington Constitution, as well as the right to special education for children with disabilities. 20 U.S.C. §§ 1400, *et seq.*; RCW 74.13.550, RCW 28A.150.510; Wash. Const. Art. IX, § 1; RCW 28A.155. Additionally, foster children have rights related to privacy, RCW 9.02.100, religion, WAC 388-148-1520(8), culture, 25 U.S.C. §§ 1901, *et seq.* (Indian Child Welfare Act); RCW 13.34.040; RCW

13.34.070(10); WAC 388-70; the speedy resolution of their dependency proceedings, RCW 13.34.020, and freedom of speech, *see, e.g., Herbert v. Wash. State Pub. Disclosure Comm'n*, 136 Wn. App. 249, 257, 148 P.3d 1102 (2006). All of these rights are implicated for children in dependency proceedings.⁸

A constitutional analysis in this case must consider the threat to a child's physical and fundamental liberty interests in the dependency context. *M.S.R.* and *Braam* make it clear that physical and fundamental liberty interests are directly implicated for children in dependencies.

B. Children Are Entitled to State and Federal Due Process Protections Given the Liberty Interests at Stake in Dependency Proceedings

Children are entitled to due process when their well-established liberty interests in dependency proceedings are impaired. This Court has the responsibility to determine the degree of due process that should be afforded to children in dependency. *See, e.g., McCleary v. State*, 173 Wn.2d 477, 515, 269 P.3d 227 (2012) (judiciary has primary responsibility for interpreting the Constitution); *In re Gault*, 387 U.S. 1, 72, 87 S. Ct.

⁸ The protection of these rights is critical because children who age out of foster care have poorer outcomes in health, well-being, and life. They are disproportionately likely not to obtain a high school diploma or GED; not to gain employment; to earn much lower annual incomes; to have higher rates of physical and mental health problems and substance abuse; and to experience greater rates of incarceration. *See generally* M.E. Courtney, et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Ages 23 and 24* (2010), available at http://www.chapinhall.org/sites/default/files/Midwest_Study_Age_23_24.pdf.

1428, 18 L. Ed. 2d 527 (1967) (“Court may guarantee the fundamental fairness of the proceeding, and yet permit the State to continue development of an effective response”). It is within the court’s authority to find that both state and federal due process guarantee all children in dependency the right to counsel.

1. The Washington State Constitution’s Due Process Clause is more protective than its federal counterpart

This Court has held that the Washington State Constitution’s Due Process Clause⁹ is more protective of an individual’s liberty interests than the Fourteenth Amendment. Most notably, whereas the Fourteenth Amendment mandates counsel only where physical liberty interests are at stake, *Lassiter v. Dep’t of Soc. Services of Durham County, N.C.*, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981), Washington’s Due Process Clause also requires counsel where fundamental liberty interests are at stake. *In re Dependency of Grove*, 127 Wn.2d 221, 897 P.2d 1252 (1995) (relying on *In re the Welfare of Luscier*, 84 Wn.2d 135, 542 P.2d 906 (1974)). This decision was reaffirmed in *King v. King* in a ruling that the right to counsel extends to cases in which “a fundamental liberty interest ... is at risk.” 162 Wn.2d 378, 394, 174 P.3d 659 (2007) (quoting *Grove*, 127 Wn.2d at 237) (internal quotation marks omitted). Washington’s Due

⁹ “No person shall be deprived of life, liberty, or property, without due process of law.” Wash. Const. Art. I, § 3.

Process Clause supports a ruling that all children have a right to counsel in dependency proceedings.¹⁰

2. Since children’s liberty interests are at least as great as their parents’ liberty interests in dependency proceedings, the Court should extend State Due Process right to counsel to children

As previously noted, this Court has already interpreted the Washington Due Process Clause to confer the right to counsel where fundamental liberty interests are at stake. The Court first conferred the right to counsel to parents in dependencies almost four decades ago. In 1974, this Court held that a “parent’s right to counsel in [proceedings addressing the termination of their parental rights] is mandated by the constitutional guaranties of due process under the fourteenth amendment of the [U.S.] Constitution and article I, section 3 of the Washington Constitution.” *Luscier*, 84 Wn.2d at 138. The next year, this Court extended these guarantees to parents in dependencies. *In re Welfare of Myricks*, 85 Wn.2d 252, 253, 533 P.2d 841 (1975). The Legislature codified these rights soon thereafter in RCW 13.34.090. Laws of 1977, 1st Ex. Sess., ch. 291, § 37.¹¹

¹⁰ This Court need not apply the analysis laid out in *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986), which is reserved for situations where there is already federal jurisprudence on point. See *City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, 641, 211 P.3d 406 (2009). However, S.K.-P. provided a full *Gunwall* analysis in her Court of Appeals brief. Brief of Appellant at 20-30.

¹¹ Six years after *Luscier* and *Myricks*, the U.S. Supreme Court in *Lassiter* held that parents facing termination of their parental rights do not have a uniform right to counsel under the Fourteenth Amendment. 452 U. S. at 31-34. In so holding, the U.S. Supreme

There can be no question that children in dependency have both physical and fundamental liberty interests at stake—this Court found that dependent children “have vital liberty interests at stake,” interests that are “very different from, but *at least* as great as, the parent’s [interests].” *M.S.R.*, 174 Wn.2d at 5, 17-18 (emphasis added).¹² For example, children, like their parents, have a liberty interest in family integrity. Children also have a right “in maintaining the integrity of the family relationships, including the child’s parents, siblings, and other familiar relationships...”. *M.S.R.*, 174 Wn.2d at 20. Dependency proceedings also implicate the physical liberty interests of children, but not parents. *See Braam*, 150 Wn.2d at 698 (physical liberty interests of children in dependency gives rise to due process protections); *M.S.R.*, 174 Wn.2d at 16 (it is the child who is physically placed in the custody of the State).

Because parents have a state constitutional due process right to counsel in dependency proceedings, it follows that children in dependency have a right to counsel as well, since they have at least the same degree of

Court overruled only the federal constitutional component in *Luscier*. The state constitutional component of *Luscier* and *Myricks* remains good law.

¹² The Court of Appeals in *S.K.-P.* recognized that *M.S.R.* held that “children’s liberty interests are equal to those of parents...” *S.K.-P.*, 200 Wn. App. at 109. But when the Court of Appeals focused on the “notably different” interests between children and parents, *id.* at 108, it undervalued the holding of *M.S.R.* and the liberty interests of children.

liberty interests, and arguably more. And as is true for parents, only counsel can protect children's liberty interests implicated in dependency.

C. The Proper *Mathews* Analysis Guarantees the Right to Counsel to Children in Dependency Proceedings Without Requiring a Case-by-Case Analysis

While the Washington Constitution's Due Process Clause is more protective than its federal analog, children in dependency are also entitled to counsel under the federal Due Process Clause. The standard applied is the three-part test articulated by the U.S. Supreme Court in *Mathews*, 424 U.S. at 335. This test requires the weighing of three factors: (1) the private interests at stake; (2) the risk of error involved under the current procedures and the probable benefits of additional procedural protections; and (3) the government's interests in the proceeding, including the fiscal and administrative burdens. *Id.*

Since all children in dependencies are similarly situated, applying *Mathews* in the context of dependency proceedings establishes that appointment of counsel is always appropriate and obviates the need for a case-by-case analysis. Requiring children affirmatively to request counsel conflicts with the liberty interests at stake in a dependency. This Court has found that children lack capacity and "the experience, judgment, knowledge and resources to effectively assert their rights." *DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 146, 960 P.2d 919 (1998); *see also*

In re Dependency of Lee, 200 Wn. App. 414, 445, 404 P.3d 575 (Div. I, 2017) (finding that the child was “unable to act as a pro se litigant.”). A case-by-case analysis unduly burdens child litigants and is unworkable. Here, S.K.-P. had to find counsel in order to request counsel; an undertaking she would not have been able to do on her own.

The case-by-case approach adopted in *M.S.R.* for children in parental termination cases is not workable in dependency cases, which are different in notable ways from parental termination cases.¹³ While a termination proceeding is serious in nature, it is a dependency that initially transfers custody to the State and that determines “the welfare of the child and his best interest.” *Welfare of Becker*, 87 Wn.2d 470, 476, 553 P.2d 1339 (1976).¹⁴ The dependency court, in determining children’s “best interest,” makes life-changing decisions about their placement, access to family members, what school they will attend, whether to institutionalize them, whether they will be required to take psychotropic medication, and what services will be provided. RCW 13.34.130. Thus, a dependency proceeding more directly implicates children’s liberty interests. On the other hand, a court’s decision in a parental termination proceeding is based

¹³ In *S.K.-P.*, the Court of Appeals held that “a case-by-case application of the *Mathews* factors is sufficient to protect children’s procedural due process rights.” *S.K.-P.*, 200 Wn. App. at 114. However, the Court of Appeals’ finding fails to recognize the many dangers of a case-by-case approach.

¹⁴ In a dependency, “the likelihood of eventual permanent deprivation is substantial.” *Myricks*, 85 Wn.2d at 253.

on the fundamental rights of *parents*, and parental fitness to care for a child. *In re Welfare of A.B.*, 168 Wn.2d 908, 920, 232 P.3d 1104 (2010), *as amended* (Sept. 16, 2010). If the termination results in the severance of the parent-child relationship, the dependency continues until the child has a permanent placement or ages out of the dependency system. RCW 13.34.136. The decision-making regarding the best interest of the child continues to be a function of the dependency both before and after termination of parental rights. RCW 13.34.138.

1. The private interests at stake for any child in a dependency proceeding are always high

The first prong of *Mathews* should always weigh in favor of appointment of counsel since the liberty interests of a child in a dependency proceeding are always high. Children in dependency proceedings always have a “fundamental liberty interest” at stake. *M.S.R.*, 174 Wn.2d at 17-18. *See also Kenny A.*, 356 F. Supp. 2d at 1360 (N.D. Ga. 2005) (applying the *Mathews* factors and holding that there is a constitutional due process right to counsel for a child of any age at every stage of dependencies since such proceedings implicate children’s physical and fundamental liberty interests).¹⁵

¹⁵ The growing trend is towards appointment of counsel, making Washington State an outlier. “Thirty-two states and the District of Columbia provide children a categorical right to court-appointed counsel in dependency proceedings. Additionally, the American Bar Association has promulgated a ‘Model Act Governing the Representation of Children

Thus, the first *Mathews* factor should always weigh in favor of appointment of counsel without any need to compare which of the child's liberty interests are most jeopardized or debate how these interests are more or less like the interests of other traumatized children. Such an application of the case-by-case approach creates an oppressive, subjective standard.

2. The current procedural safeguards are inadequate to protect a child's liberty interests in dependency proceedings

The second *Mathews* factor requires the trial court to consider the risk of erroneous deprivation of the interests at stake in the proceedings. 424 U.S. at 335. Here, the risk of error in the absence of counsel for children is particularly high given the subjective "best interest" standard used in dependency proceedings. As the U.S. Supreme Court found, this standard is imprecise and "leave[s] determinations unusually open to the subjective values of the judge" and serves to "magnify the risk of erroneous factfinding." *Santosky v. Kramer*, 455 U.S. 745, 762, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982), *cited in Kenny A.*, 356 F. Supp. 2d at 1361.

in Abuse, Neglect, and Dependency Proceedings' (2011), which recommends independent counsel to children in every child welfare case. In 2015, the Washington State Bar Association Board of Governors adopted a resolution in support of attorney representation for children in all dependency proceedings." *S.K.-P.*, 200 Wn. App. at 107 n.15. (citations omitted).

Further compounding the risk of erroneous deprivation is the “strong empirical evidence that [the State] makes erroneous decisions on a routine basis that affect the safety and welfare of foster children.” *Kenny A.*, 356 F. Supp. 2d at 1361. The State inevitably encounters conflicts between its “broad programmatic needs” and “the specific needs of the individual child.” *Kenny A.* at 1359 n.6. *See also, e.g., Braam*, 150 Wn.2d at 704 (finding that children’s substantive due process rights violated by DSHS resulted in harm).¹⁶ DSHS cannot be said to represent and protect the child’s interest.

Parents of children in dependency are also incapable of representing their children’s interests. The Court of Appeals in *S.K.-P.* acknowledged this fact. 200 Wn. App. at 116 n.19. The very nature of a dependency proceeding, in which DSHS has alleged that the parent is unfit, shows that the interests of parents and children do not align. *See Kenny A.*, 356 F. Supp. 2d at 1359. There is an inherent conflict of interest for parents who have been found to be neglectful or abusive towards their child to be charged with protecting the legal interests of the child. In no other legal proceeding would a person be represented by someone found to have violated his or her interests. For example, in a tort case, the injured party’s

¹⁶ The Court of Appeals in *S.K.-P.* agreed that “children are not always free from harm once the State orders their placement.” 200 Wn. App. at 115. However, it erred by giving more weight to the individual factual circumstances of children in dependency than to the collective risks and conflicts relevant to all children. *Id.* at 118.

interests would never be represented by the party that breached its duty. Parents, therefore, cannot adequately represent their child's interests.

There is no existing party in a dependency who can protect children from the risk of error. The most recent Court of Appeals decision considering a child's right to counsel, *Lee*, 200 Wn. App. 414, highlights this concern. This case held that Lee had a right to counsel largely because there was "no one 'able to represent the child's interest or whose interests align with the child's.'" *Id.* at 454 (citing *M.S.R.*, 174 Wn.2d at 18). Although parents, medical providers, and DSHS workers were involved, none of them represented Lee's interests. His request for counsel in the dependency court was denied. Without the services he needed, and without counsel to help him request those services, he almost lost his life. *Id.* at 439.

In S.K.-P.'s dependency case, although DSHS and the court-appointed Guardian ad Litem (GAL) observed that she was "reluctant" to visit with her estranged father and presented "elevated anxiety," "behavioral outbursts" and "additional anxiety" surrounding the visits, CP 68, 83, neither DSHS nor the GAL reported consulting with her therapist about visitation before initiating visits. CP 20, 67, 83. To the contrary, the GAL supported unsupervised overnight visits in her estranged father's home over her increasingly vocal objections. CP 111.

To fully develop the record, assist the court in arriving at a well-informed decision, and ensure that children's rights are protected, children in dependency need counsel.

3. Only counsel for children in dependency proceedings can mitigate the risk of erroneous deprivation of children's liberty interests

The second *Mathews* factor also requires the court to consider the value of additional safeguards. *Mathews*, 424 U.S. at 335. Only counsel can mitigate the risk of erroneous deprivation of a child's liberty interests. *See, e.g., Kenny A*, 356 F. Supp. 2d. at 1361 ("protection can be adequately ensured only if the child is represented by legal counsel."); *Lee*, 200 Wn. App. at 448 (the court "need not know the outcome of the lawyer's efforts in order to be comfortable in the belief that...[the child] might, indeed, benefit from such efforts.").

Dependency proceedings involve complicated legal and procedural issues. A lawyer's ability to spot legal issues and argue on behalf of the child's legal rights in the dependency context is critical. As this Court in *M.S.R.* acknowledged, GALs and Court-Appointed Special Advocates (CASAs) "are not trained to, nor is it their role to, protect the legal rights of the child." 174 Wn.2d at 21. CASAs and GALs serve as the "eyes and ears" of the dependency court; they do not, however, direct the course of

litigation in a dependency proceeding. Attorneys, on the other hand, do the following:

...maintain confidential communications, which are privileged in court, may provide legal advice on potentially complex and vital issues to the child, and are bound by ethical duties. Lawyers can assist the child and the court by explaining to the child the proceedings and the child's rights.

M.S.R., 174 Wn.2d at 21.¹⁷ Counsels' legal arguments on behalf of their child-clients are strengthened by the attorney-client privilege. See *M.S.R.*, 174 Wn.2d at 19 ("unlike a GAL, an attorney can maintain confidential communications with the child so the child is free to disclose the child's deepest secrets and concerns...").

Children's counsel can also utilize procedural tools to ensure that their clients' interests are protected. This Court in *M.S.R.* found that counsel "can facilitate and expedite the resolution of disputes, minimize contentiousness, and effectuate court orders." 174 Wn.2d at 21. The court in *Lee* said it best when it held that "[t]he ways that an attorney can assist a person in need...[are] limited only by the imagination, intellectual dexterity, and assertiveness of the lawyer." *Lee*, 200 Wn. App. at 454.

Dependencies are subjective proceedings in which the safeguard of having counsel is invaluable.

¹⁷ RPC 1.2(a) requires lawyers to "... abide by a client's decisions concerning the objectives of representation." No such obligation binds any other party as to decisions of a child.

4. The government's administrative and financial burden is outweighed by the interest in the safety and well-being of children

The third prong of *Mathews* weighs the government's interests, including the fact that "[f]inancial cost alone is not a controlling weight in determining whether due process requires a particular procedural safeguard..." *Mathews*, 424 U.S. at 348. In identifying significant constitutional due process rights for foster children, the Court has explained that "[l]ack of funds does not excuse a violation of the Constitution..." *Braam*, 150 Wn.2d at 710 (citing *Hillis v. State, Dep't of Ecology*, 131 Wn.2d 373, 389, 932 P.2d 139 (1997)). Thus, the government's pecuniary interest is weak.

Importantly, "the State has a compelling interest in both the welfare of the child and in 'an accurate and just decision' in the dependency and termination proceedings." *M.S.R.*, 174 Wn.2d at 18 (quoting *Lassiter*, 452 U.S. at 27). *See also, e.g., Kenny A.*, 356 F. Supp. 2d at 1361 ("As *parens patriae*, the government's overriding interest is to ensure that a child's safety and well-being are protected ... such protection can be adequately ensured only if the child is represented by legal counsel throughout the course of the...proceedings.") (internal citations omitted).

The goal of avoiding an unfair, mistaken, or arbitrary decision can only be accomplished if the court has a complete record providing it with

the information it needs to ensure that a child is receiving the necessary services. However, ensuring that the court has all the necessary information is only possible when the child has someone advocating and putting forth evidence on their behalf.

In sum, the private interest of children is always high given the liberty interest at stake, the risk of erroneous deprivation of the liberty interest is great, and the government's financial interest is low, while the government's *parens patriae* interest is furthered by appointment of counsel. Thus, only counsel can safeguard a child's liberty interests and mitigate the harm of erroneous deprivation of rights. It is therefore unnecessary to conduct individualized case-by-case determinations.

IV. CONCLUSION

No one has more at stake in dependency proceedings than children, who have physical and fundamental liberty interests at stake, yet are unique among the parties in not having counsel advocating for their interests. S.K.-P., like thousands of children in dependency, has been waiting for this Court to determine if she has a due process right to counsel under the Washington State and U.S. constitutions. This Court has the opportunity to protect the rights of those who are the most "vulnerable ... powerless and voiceless," in the proceedings that affect every aspect of their lives. *In re Parentage of L.B.*, 155 Wn.2d 679, 712 n. 29, 122 P.3d

161 (2005). S.K.-P. respectfully requests that this Court mandate a universal right to counsel to children in dependency.

RESPECTFULLY SUBMITTED this 22nd day of January, 2018.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on January 22, 2018, I caused a true and correct copy of the SUPPLEMENTAL BRIEF OF PETITIONER S.K.-P. to be served via electronic mail on the following:

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