SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203 Certiorari to the Court of Appeals Case No. 17CA2038 **Petitioner-Appellees**: A.R. and The People of the State of Colorado in the Interest Of Minor Child, A.R. **v.** **Respondent-Appellant** : D.R.	▲ COURT USE ONLY ▲ Case No. 18SC919
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Brief of Amicus Curiae NACC for Respondent-Appellant D.R.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with all requirements of C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

1. The brief complies with the applicable word limit set forth in C.A.R. 29. It contains 4639 words.

2. The brief complies with C.A.R. 29, including compliance with rule 28(a)(2) and (3).

The undersigned acknowledges that the brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

s/ Brooke Silverthorn
s/ Christopher Church

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IDENTITY OF *AMICUS CURIAE* AND INTEREST IN THE CASE

Founded in Denver, Colorado in 1977, NACC is a non-profit child advocacy and professional membership association dedicated to enhancing the well-being of America's children. NACC works to strengthen legal advocacy for children and families by promoting well resourced, high quality legal advocacy; implementing best practices; advancing systemic improvement in child serving agencies, institutions and court systems; and promoting a safe and nurturing childhood through legal and policy advocacy. Through the *amicus curiae* program, NACC has filed numerous briefs involving the legal interests of children and families in state and federal appellate courts and the Supreme Court of the United States.

ARGUMENT

Children's interest in permanency is served when all parties have access to competent counsel. The quality of counsel is significant because of the tremendous role that attorneys play in promoting good outcomes for children and families involved in the dependency court system. In fact, studies have repeatedly shown that outcomes for children and families improve when parents have competent counsel. Therefore, the Colorado Supreme Court should uphold the fundamental fairness standard adopted by the Court of Appeals because it is more likely to raise the standard of attorney competence, which ultimately benefits both children and their parents.

I. CHILDREN'S RIGHT TO FAMILY INTEGRITY AND THEIR INTEREST IN TIMELY PERMANENCY IS SERVED WHEN ALL PARTIES HAVE COMPETENT LEGAL COUNSEL.

A parent's right to the care, custody, and control of their children is one of the oldest and most revered liberty interests protected by the courts and the U.S. constitution. *Troxel v. Granville*, 530 U.S. 57 (2000). Respecting parent's rights serves children's interests, and the Constitution presumes that fit parents act in their children's best interests. *Troxel*, 530 U.S. at 68; *Parham v. J.R.*, 442 U.S. 584, 602 (1979). Moreover, while the law is frequently framed as a matter of parental rights, children enjoy a reciprocal right to family integrity. *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 854 (1977); *see also in re K.S.,* 33 Colo. App. 72 (1973). As such, when the state seeks to intervene in the parent-child relationship, the Constitution mandates that it meet certain criteria. First, the state may only intervene upon a showing that the parent is unfit. *Stanley v. Illinois*, 405 U.S. 645 (1972). Second, federal and state law codify a range of procedures to protect children's and parent's right to family integrity, especially hearings on parental fitness, and to ensure family courts make accurate decisions. *See id.* (requiring hearings on parental fitness before removing children from parents); 42 U.S.C. § 675(5) (requiring states to adopt procedural safeguards); 42 U.S.C. § 5106a(b)(2)(A)(xix) (caseworkers must be trained on their legal duties in order to protect the legal rights and safety of children and parents). Therefore, state action

that intrudes on the family relationship is judged not only by statutory standards, but also constitutional standards. When a state seeks to permanently sever parental rights, the state must provide, and the court must ensure, fundamentally fair procedures. *See Santosky v. Kramer*, 455 U.S. 745, 752-754 (1982); *see also Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 551 (1977).

In the context of abuse and neglect proceedings, the constitutional framework is premised on the belief that children's best interests are served by remaining in their parent's custody and protecting their parent's constitutional liberty interest in family integrity. Termination of parental rights is the most severe consequence in a dependency court proceeding, and so courts must take great care in ensuring that both parents and children have full due process protections. *People in Interest of E.A.*, 638 P.2d 278, 285 (Colo. 1981) (courts must "exercise extreme caution when considering the termination of parental rights."); Gatowski, S., *et.al*. (2016) *Enhanced Resource Guidelines: Improving court practice in child abuse and neglect cases*, <u>National Council of Juvenile and Family Court Judges</u>, pg. 339 [Hereinafter *Enhanced Resource Guidelines*].

One of the due process protections Colorado affords in a termination of parental rights is the statutory right to counsel for parents. §19-3-602(2), C.R.S. (2018). Implicit in the right to counsel is the right to "effective assistance" of counsel. *People in Interest of A.R.*, 2018 COA 176 (Colo. App., 2018) at ¶37. In

this case, the Court of Appeals correctly recognized that the right to counsel is meaningless unless it includes the right to the effective assistance of that counsel. *Id.* at ¶¶37-39.

Competent legal counsel for parents and children in child welfare proceedings is necessary to ensure a well-functioning child welfare system. In 2017, the United States Dept. of Health & Human Services, Administration for Children and Families, Children's Bureau (Hereinafter Children's Bureau) charged state child welfare systems with making competent legal representation a nationwide priority: "[t]he Children's Bureau strongly encourages all child welfare agencies and jurisdictions to work together to ensure that high quality legal representation is provided to all parties in all stages of child welfare proceedings." Children's Bureau Information Memorandum 17-02, *High Quality Legal Representation for All Parties in Child Welfare Proceedings* (Jan. 17, 2017).

This emphasis on the quality of counsel is significant because of the tremendous role that attorneys play in promoting shared outcomes for children and families involved in the dependency court system. At the outset of the case, all parties are typically aligned on reunification of the child with their caretaker as the primary goal. To achieve this goal, attorneys in child welfare proceedings represent their client through a series of hearings that may span years, and often build upon each other. Findings in one hearing form the basis for future decisions made by the

court in subsequent hearings. *See, e.g.,* Josh Gupta-Kagan, *Filling the Due Process Donut Hole: Abuse and Neglect Cases between Disposition and Permanency*, 10 Conn. Pub. Int. L.J. 13 (2010-2011). Consider Colorado's TPR statute, which requires a finding by clear and convincing evidence that a child has been or is adjudicated dependent or neglected. §19-3-604 (1) (a-c), C.R.S. 2018. Similarly, after adjudication, Colorado law requires that courts conduct a dispositional hearing in which they approve an "appropriate treatment plan" for parents in order to remedy the issues that formed the basis for the court's adjudication. §19-3-508(1)(e), C.R.S. 2018. At required intervals after disposition, courts hold judicial reviews, in which a court determines the parent's compliance with the treatment plan and makes findings and issues orders based on the level of compliance. At these review hearings, the courts "look backward" to determine what should happen next. For example, the Colorado Court of Appeals noted:

> Proceedings in dependency or neglect affect important rights so there must be substantial compliance with statutory requirements for the conduct of those proceedings. The statutorily prescribed periodic judicial review of an out-of-home placement proceeding is an important proceeding to the parties. This is so because the trial court considers the propriety of continued deprivation of custody, often together with the parties' performance under the provisions of the court approved treatment plan….[T]hese proceedings may form a foundation for and presage the filing of a motion for termination of the parent-child legal relationship….

People in Interest of J.B., 702 P.2d 753, 754 (Colo. App. 1985) (citing *People in Interest of A.M.D.*, 648 P.2d 625, 631 (Colo. 1982)). Incompetent counsel at these early stages is as significant as incompetent counsel at a termination of parental rights proceeding because something as benign as a change in the permanency plan early in the case can become a "fait accompli" for a subsequent termination of parental rights" proceeding. *Filling the Due Process Donut Hole*, at 45. Mistakes, errors or omissions made early in the case can cause disastrous downstream effects:

> Errors such as an unnecessary removal, an unexplored relative placement, an inappropriate suspension of visits, or a false allegation of substance abuse or mental illness affect both short and long-term decisions in the case, the parties' involvement in the case plan and the relationships between parents and children. Thus, unsurprisingly, state policymakers, courts and commentators have all emphasized the important role that parents' counsel play....to reduce the likelihood that this type of contamination will occur.

Sankaran, Vivek. *No Harm No Foul: Why Harmless Error Analysis Should Not Be Used to Review Wrongful Denials of Counsel to Parents in Child Welfare Cases*. S. C. L. Rev. 63, no. 1 (2011).

Competent legal counsel, therefore, plays a critical role in parents' ability to navigate the child welfare system from the outset of the case by assisting parents with understanding what is required of them, advising them of their legal options,

accompanying them to important meetings with caseworkers and agency staff, and ensuring case plans provide for needed services to parents without imposing onerous or unnecessary barriers to reunification.

II. COURTS RELY ON COMPETENT COUNSEL TO MAKE ACCURATE AND WELL-INFORMED DECISIONS WHICH PROMOTE CHILDREN'S INTEREST IN PERMANENCY.

For judges to make accurate and well-informed decisions, they depend on competent and reliable evidence. *See Enhanced Resource Guidelines* at 43. Much of the information that judges receive, and upon which decisions are based, comes through the presentation of evidence, the filing of legal pleadings, and the adversarial nature of contested proceedings in which the evidence is tested by those who oppose it. *Id*. The National Council of Juvenile and Family Court Judges instruct courts to ensure that parties in child welfare court proceedings "have access to competent representation," because attorneys are the source of much of the information that judges hear in order to make well-informed decisions. *Id*. at 42. A judge's ability to make well-informed decisions is inhibited when counsel fails to perform his or her role sufficiently or competently.

In this case, the trial judge's ability to make an informed decision about whether there was a less drastic alternative to termination was clearly inhibited by the failure of mother's counsel to timely litigate the issue. Mother's counsel could

have worked with the mother to identify a preferred placement early in the case and advocated for that placement. Mother's counsel could have responded to the maternal grandmother's "expressed interest in participating in the case and raising the child." *People in Interest of A.R.*, 2018 COA at ¶17. Mother's counsel could have challenged the termination of parental rights petition by arguing the maternal grandmother was a less drastic alternative, as required by federal and Colorado law. *Id.* at ¶19. Prior to granting parental rights but at a subsequent hearing, mother's counsel could have joined the Department in requesting APR to the paternal step grandmother or could have requested an evidentiary hearing to advocate for APR with the maternal grandmother. *Id*. at ¶23. Mother's counsel did none of this, and the trial court terminated her parental rights. *Id.* at ¶25. When the information came to light regarding the maternal grandmother's request for custody, after the termination had been granted, the trial judge felt compelled to acknowledge that had the "court known of extended family," it was likely the court "would have denied" the motion to terminate mother's parental rights. *Id.* at ¶5. In this case, the court's lack of knowledge about relative placement options and less drastic alternatives are the direct result of mother's counsel's failure to provide competent representation.

A. The Fundamental Fairness Test is the Most Appropriate Test to Evaluate Claims of Ineffective Assistance of Counsel in Dependency Proceedings in Colorado.

Under Colorado law, due process requires the assistance of counsel in proceedings that may result in a termination of parental rights *and* the core concern of due process under Colorado law is fundamental fairness: it is axiomatic then that the prejudice test in evaluating a parent's ineffective assistance of counsel claim in a termination of parental rights proceeding is one that focuses on fundamental fairness. *See A.M. v. A.C.*, 2013 CO 16 (Colo., 2013); *People ex rel. R.D.*, 2012 COA 35 (Colo. App., 2012) (citing *People in Interest of L.B.*, 254 P.3d 1203, 1206 (Colo.App.2011)). The United States Supreme Court has long held that parent's fundamental liberty interest in their children's care and custody "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Santosky*, 455 U.S. at 753. And because termination of parental rights interferes with this liberty interest, "[w]hen the State moves to destroy weakened family bonds, it must provide parents with fundamentally fair procedures." *Id*. at 752-754. Therefore, the fundamental fairness test articulated by the Colorado Court of Appeals in this case is a more appropriate manner to evaluate ineffective assistance of counsel claims in termination of parental rights cases.

B. Courts Should Not Automatically Apply the *Strickland* Standard to Termination of Parental Rights Cases.

Although criminal defendants facing a loss of physical liberty and parents facing the permanent loss of their parental rights both have significant fundamental liberty interests at stake, there are important differences that merit diversion from the traditional *Strickland* test in termination proceedings. *See Strickland v. Washington*, 466 U.S. 668 (1984). As a former Maine Associate Supreme Court Justice suggested:

> [i]nstead of assuming that *Strickland* should apply to termination cases because it applies to criminal cases, courts should focus on the purpose of the requirement for effective counsel in termination cases, and on how a particular ineffectiveness standard will effect that purpose. Courts should also consider whether there are additional purposes to be achieved by the ineffectiveness standard.

Susan Calkins, *Ineffective Assistance of Counsel in Parental-Rights Termination Cases: The Challenge for Appellate Courts*, 6 J. App. Prac. & Process 179 (2004). As the Court of Appeals noted in this case, since *Santosky*, "fundamental fairness has also been the benchmark by which our supreme court has measured the sufficiency of procedures afforded to parents in termination proceedings." *People in Interest of A.R.*, 2018 COA at ¶48 (citing, *A.M.D.*, 648 P.2d at 636). Hence a main purpose in requiring effective assistance of counsel for parents in termination proceedings is to provide fundamentally fair procedures, which necessarily includes the assistance of effective counsel. Moreover, fundamentally fair

procedures include, among other actions, ensuring courts have sufficient information to make accurate and well-informed decisions about the children and families that appear before them. As discussed above, this responsibility begins long before the filing of a termination petition. For example, failing to ensure that the court is aware of a kinship placement option, as was the case here, prevents the court from making accurate and informed decisions about the child's possible placement, and shapes later permanency litigation, including a potentially unnecessary contested termination of parental rights proceeding.

Additionally, defendants in criminal proceedings, even relatively minor ones, are afforded procedural safeguards that are not available to parents and children in termination of parental rights hearings, increasing the risk of error when parents lack competent counsel in termination cases. Susan Calkins, *Ineffective Assistance of Counsel* at 229. For example, the standard of proof in criminal trials is the higher beyond a reasonable doubt standard, whereas the standard in Colorado termination of parental rights hearings is by clear and convincing evidence. §19-3-604(1) C.R.S. 2018. Indeed, in approving the clear and convincing standard of proof, the Supreme Court explicitly acknowledged that termination of parental rights cases involve "issues difficult to prove to a level of absolute certainty, such as a lack of parental motive, absence of affection between parent and child, and

failure of parental foresight and progress." *Santosky*, 455 U.S. at 769. Additionally, as the Supreme Court noted in *Santosky*:

> [t]he disparity between the adversaries' litigation resources is matched by a striking asymmetry in their litigation options. Unlike criminal defendants, natural parents have no "double jeopardy" defense against repeated state termination efforts. If the State initially fails to win termination... it always can try once again to cut off the parents' rights after gathering more or better evidence.

Id. at 764. As the COA also noted, in deciding whether to terminate parental rights, juvenile courts must find that termination is "in the child's best interest." *C.H.*, 166 P.3d at 289.; *see also A.M.*, ¶26. This standard is "difficult to prove to a level of absolute certainty" and thus gives discretion to the juvenile court in making a termination of parental rights decision. *Id.* These factors all bolster the importance of competent counsel for parents. When inaccurate or incomplete information forms the basis of a court's decision to permanently deprive a parent of a fundamental liberty interest, the State ultimately targets and eliminates far more than "the exact source of the evil it seeks to remedy," tantamount to a miscarriage of justice. *Frisy v. Schultz*, 487 U.S. 474, 475 (1988).

III. THE PERMANENT SEVERING OF PARENTAL RIGHTS IS NOT NECESSARY FOR ACHIEVING PERMANENCY, AND PURSUIT OF SUCH A TERMINATION DELAYS PERMANENCY.

“The Colorado Children’s Code recognizes children’s interest in timely permanency.” *See* Amicus Curiae OCR Brief, p. 3. This statement is reinforced by four pages of arguments rooted in social science, children’s health, and court efficiency. *Id*. at 2-5. The *Guardian ad litem* likewise highlights the importance of ensuring children do not unnecessarily “linger in the system,” pointing out that the “child in this case has now been out of home nearly three years in total.” *See* GAL Opening Brief, p. 24, 43. Upholding the Court of Appeals decision, the *Guardian* concludes, would reset the case “nearly to the beginning - and the goal of obtaining permanency for this young child in a reasonable period is further thwarted.” *Id.* at 43.

Children, parents, and the Department certainly have an interest in timely permanency, and this Court’s decision will undoubtedly impact the time children remain in foster care. The fundamental fairness test incentivizes accurate decision making throughout the life of a dependency case. As discussed above and as is the situation in this case, even when a parent cannot care for his or her child, there are alternatives to termination of parental rights and adoption. Had mother’s counsel in this case provided competent representation, this case would likely be resolved. *People in Interest of A.R.*, 2018 COA at ¶26. This case also reinforces the importance of providing competent representation at all stages of child welfare proceedings, which has been shown to lead to more timely permanency. A

Strickland prejudice test, on the contrary, lowers accountability for competent counsel and allows for too many errors early in a case to lead to unnecessary termination of parental rights. This is certainly what happened in this case, where termination of parental rights was neither a necessary nor sufficient step for finalizing permanency after return to mother was ruled out.

Termination of parental rights for purposes of pursuing adoption has long served as the default tool to achieve legal permanency for children in foster care whenever reunification with the caretaker cannot be achieved. *See* Josh Gupta-Kagan, *The New Permanency*, 91 U.C. Davis J. Juv. L. & Pol'y 1 (2008). However, there are a number of other permanent dispositions at the state agency's disposal which do not require a permanent severing of parental rights. Under Colorado law, if a child cannot be returned to his or her parent, alternatives to termination of parental rights and adoption include placement with a fit and willing relative and placement with a legal guardian or custodian. §19-3-702(4) C.R.S. (2018). Acknowledging that terminating parental rights is not merely an infringement on, but a permanent divestment of, a fundamental liberty interest, Colorado law requires courts to consider and reject less drastic alternatives. *See People in Interest of M.M.*, 726 P.2d 1108, 1123 (1986).

These less drastic, alternative permanency dispositions are critically important for children. The United States Supreme Court has recognized that

children have a legal interest in maintaining the "emotional attachments that derive from the intimacy of daily association" with their parents. *Smith*, 43 U.S. at 854. Likewise, the Colorado general assembly has declared that children in the child welfare system "are better served when family ties are preserved and strengthened because permanent family connections are critical to a child's overall well-being and development." § 26-5-110(1)(b) C.R.S. (2018). There is an expansive body of child-centered research documenting the profound effects of *temporary* separation of children from their parents: separation of a child from his or her parent causes complex grief and loss, which can result in lasting trauma that negatively impacts a child's well-being. Vivek Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less than Thirty Days in Foster Care*, 19 U. Pa. J.L. & Soc. Change 207, 210-213 (2017). A permanent separation would, at the very least, compound the child's trauma by indefinitely memorializing their ambiguous (or non-death) loss. Monique Mitchell, *No One Acknowledged My Loss and Hurt: Non-Death Loss, Grief, and Trauma in Foster Care,* 35 Child & Adolescent Soc. Work J. 1, 4-5 (2017). While termination of parental rights may be appropriate in some cases, it should be limited to those where necessary to provide permanency or otherwise protect children from harm. *See Matter of Dependency of M.-A.F.-S.*, 421 P.3d 482, 497 (Wash. App. 2018);

TR v. Washakie County Dept. of Public Assistance And Social Services, 736 P.2d 712, 715; *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 134 (Minn. 2014).

In this case, the child was placed with the paternal step grandmother immediately upon removal. *People in Interest of A.R.*, 2018 COA at ¶14. A month after the department moved to terminate parental rights, the maternal grandmother expressed interest in "participating in the case and raising the child." *Id*. at ¶17. She memorialized this interest by formally moving to intervene and requesting an allocation of parental responsibilities for the child. *Id.* The court rejected the motion, stating it would treat the maternal grandmother as a possible placement for the child after mother's rights were terminated." *Id*. at ¶18. The record is clear that a less drastic alternative to termination of parental rights existed, namely preserving familial bonds by a permanent placement with either grandparent. Yet it was rejected by the trial court, something mother's attorney seems to have not even been aware of. *Id*. at ¶17-19. The trial court itself acknowledges this error was avoidable, suggesting that had it been aware of the relative willing to take custody, it would have dismissed the petition to terminate parental rights. *Id*. at ¶26. This is a deficit of constitutional magnitude which cannot be overstated. Courts must carefully guard against the potential for unnecessary termination of parental rights.

Secondly, pursuit of termination of parental rights in cases like the instant matter delays permanency for children. The child in this case was fortunate enough to have two caring grandparents willing to assume parental duties. *Id*. at ¶25. A month after the department filed for termination, the maternal grandmother moved to intervene and asked the court to place the child with her. *Id*. at ¶17. Assuming the home was safe, the child was on the doorstep of permanency; that is, leaving foster care to live with his family. But rather than work with the maternal grandmother to finalize permanency without a termination of parental rights, the department focused its efforts on pursuing termination of parental rights, a process that involves significant time and resources, all the while unnecessarily crowding dockets. *See* § 19-3-601, C.R.S. 2018, *et.seq*. If timely permanency is core to child welfare, then it follows that legal discharges that minimize the time children spend in out-of-home care should be prioritized. Yet administrative data about children in foster care raise questions whether this is happening.

During the 2017 Federal Fiscal Year (FFY), just over 4800 exited foster care in Colorado. Children's Bureau, *Adoption and Foster Care Reporting System*, 2017 FFY File (Hereinafter AFCARS File)[1]. The median time from removal to

[1] The administrative data presented in this publication were made available by the National Data Archive on Child Abuse and Neglect (NDACAN), Cornell University, Ithaca, N.Y., and have been used with permission. Data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) are originally collected by the state's child welfare agency pursuant to federal reporting requirements. Staff at Fostering Court Improvement have analyzed the data and analyses are on file with them. Neither the collector of the original data, the funder, the Archive,

discharge to a fit and willing relative was 4 months. *Id.* The median time from removal to discharge to legal guardianship was 10.1 months. *Id.* Both of these options are considerably shorter than the median time from removal to an adoption discharge, which was 22.4 months. *Id.*

Presumably, part of this difference is driven by the fact that adoption requires termination of parental rights as a prerequisite, a procedurally lengthy process the other two dispositions do not require. During the 2017 FFY, the median time from removal to termination of parental rights alone was 12.4 months, two months longer than the median time to *discharge* to legal guardianship and more than double the median time to *discharge* to a fit and willing relative. *Id.* Simply overcoming the procedural prerequisite to adoption, terminating parental rights, takes longer than finalizing a permanent plan for a child by discharging them to the custody of a relative. If timely permanency for children is a priority, relative custody or subsidized kinship guardianship will help states achieve it. But to so blithely terminate parental rights in the face of a relative who formally requested allocation of parental responsibilities is a system in danger of becoming "a railroad with no stops and only one destination, in which judges act as mere

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conductors." *Alma S. v. Dept. of Child Safety*, 2018 WL 43744432 (Ariz. Sept. 14, 2018).

Perhaps more concerning is that this practice of terminating parental rights for the purposes of finalizing permanency with a relative is not uncommon in Colorado. There were just over 728 adoptions finalized in Colorado during the 2017 FFY, three-fourths of which contained information on the relationship between the child and adoptive parent. AFCARS File, 2017 FFY. Nearly half (45%) of the children that were adopted were adopted by either a relative or step-parent. *Id.* In those cases, the child welfare system destroyed the family in one instance and resurrected it in the next. Every moment spent pursuing termination of parental rights in those particular cases represents time children may have unnecessarily spent in foster care, and trauma children may have unnecessarily suffered as a result of the state terminating his or her familial identity.

While timely permanency is important for children, the United States Supreme Court has cautioned that the "Constitution recognizes higher values than speed and efficiency." *Stanley*, 405 U.S. at 656. Paradoxically, the child in this case was the subject of an unnecessary termination of parental rights, and one that, thus far, has only increased the amount of time he is a ward of the state.

CONCLUSION

Colorado parents and children in the D&N system are entitled to have their rights and interests protected by the courts. While the Office of Respondent Parent Counsel (ORPC) continues to assist Colorado parents involved in the dependency system receive effective and quality legal counsel, it is a state agency with limits of authority. As ORPC stated in its amicus brief, it cannot "mitigate due process violations." Amicus Curiae ORPC Brief p. 2. That responsibility falls on the courts of the State of Colorado. Overturning the Court of Appeals decision in this matter would render ineffective assistance of counsel claims a "legal tyrannosaurus rex without teeth." Robert R. Rigg, *The T-Rex without Teeth: Evolving Strickland v. Washington and the Test for Ineffective Assistance of Counsel*, 34 Pepp. L. Rev. 77, 78 (2007). Amicus Curiae NACC, therefore, respectfully requests this Court affirm the Colorado Court of Appeals decision applying the fundamental fairness standard for assessing prejudice in claims of ineffective assistance of counsel in dependency cases.

Respectfully submitted this 3rd day of June 2019.

/s/______________________________________
Brooke Silverthorn

/s/______________________________________
Christopher Church

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June 2019, a true and correct copy of the foregoing NACC Brief of Amicus Curiae in Support of the Mother, D.R., was served electronically via ICCES on Attorneys for Respondent Parent, the child, A.R., The People of the State of Colorado, Amicus Curiae Office of Child's Representative, and Amicus Curiae Office of Respondent Parent Counsel.

/s/ Brooke Silverthorn