

IN THE SUPREME COURT OF MARYLAND

SCM-REG-0060-2025
September Term, 2025

In re: K.B.
(SEALED CASE)

On Writ of Certiorari to the Supreme Court of Maryland
from the Appellate Court of Maryland Case No. CSA-REG-0464-2025

**BRIEF OF AMICI CURIAE NATIONAL ASSOCIATION OF COUNSEL FOR
CHILDREN, JUVENILE LAW CENTER, CHILDREN'S LAW CENTER,
CHILDREN'S RIGHTS AND NATIONAL CENTER FOR YOUTH LAW
IN SUPPORT OF PETITIONER**

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STATEMENT OF INTEREST

The **National Association of Counsel for Children** (“NACC”) is a 501(c)(3) non-profit child advocacy and membership association that advances children’s and parent’s rights by supporting a diverse, inclusive community of child welfare lawyers to provide zealous legal representation and by advocating for equitable, anti-racist solutions co-designed by people with lived experience. Its members include child welfare attorneys and judges, as well as professionals from the fields of medicine, social work, mental health, and education. NACC’s work includes policy advocacy, the national Child Welfare Law Specialist attorney certification program, a robust training and technical assistance arm, and an amicus curiae program.

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Juvenile Law Center’s legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Juvenile Law Center files influential amicus briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children’s unique developmental characteristics and human dignity.

Children’s Rights is a national advocacy organization that uses litigation, policy, and public education to advance children’s constitutional rights and protect the fundamental right to family integrity. Children’s Rights has a strong interest in this case because a child’s right to be present and meaningfully participate in their own child welfare

proceedings is essential to due process and to ensuring fair, accurate decisions about their family and future.

The **National Center for Youth Law** (“NCYL”) is a non-profit organization working to build a future in which every child has the freedom, support, and power to thrive. Since 1971, NCYL has advocated side-by-side with young people and their communities to ensure that children and youth have full and fair opportunities to achieve the future they envision for themselves. NCYL represents youth in cases that have broad impact and has extensive experience using litigation to enforce the rights of young people interacting with the foster system, the juvenile legal system, the immigration system, the education system, and the healthcare system.

Children’s Law Center (“CLC”) is a non-profit public interest law firm that serves as appointed counsel for the over 20,000 abused and neglected children under the jurisdiction of the juvenile dependency courts in Los Angeles, Placer, and Sacramento California. As the largest legal services organization in the nation representing children in dependency proceedings, CLC has a substantial interest in protecting and promoting the safety, permanency, and wellbeing of children in foster care. CLC also engages in legislative and administrative advocacy at the federal, state, and county levels to promote foster care system reforms.

INTRODUCTION

This appeal has ramifications beyond the facts of this case, setting the stage for the generalized exclusion of children from the courtroom in their own cases without any individualized analysis. Under the decision of the Circuit Court, judges can exclude

children from their own hearings regardless of the child’s maturity, capacity, and history of attending hearings. This precedent is not consistent with Maryland law as discussed in Petitioner’s Brief¹ nor is it consistent with the law of the majority of other states or federal law. It also contradicts best practice and undermines fairness and equity in the courtroom. This Brief of *Amici* will address the Constitutional rights of youth to be present in the courtroom for their own dependency proceedings, the federal and state precedents of including children in hearings, and the best and common practices utilized by other courts.

Amici Curiae adopt by reference the Statement of the Case, Questions Presented, Statement of Facts, and Standard of Review set forth in the brief of Petitioner.

ARGUMENT

I. The U.S. Constitution Protects the Rights of Youth and Their Right to Family Integrity

The Supreme Court of the United States has long recognized that children are persons under the Constitution and possess constitutional rights. *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976) (“Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.”); *In re Gault*, 387 U.S. 1, 13 (1967) (holding that “neither the Fourteenth Amendment nor the Bill of Rights is for adults alone”).² Those Constitutional rights include the right to family

¹ The discussion of Maryland law set forth in Petitioner’s Brief is adopted herein by reference.

² Maryland’s Constitution would provide rights no less than that of the United States Constitution, and therefore, the same protections apply in Maryland. Md. Const. Decl. of

integrity. *See, e.g., Jordan by Jordan v. Jackson*, 15 F.3d 333, 345-46 (4th Cir. 1994) (children have a “substantial private interest” in nurture, companionship, and integrity of family).

The right to family integrity is the right of families to remain together and make their own decisions free from state interference. *DeShaney v. Winnebago Cnty. Dept. Soc. Servs.*, 489 U.S. 189, 203 (1989) (stating that there are legal protections against state actors “improperly intruding into the parent-child relationship.”); *Santosky v. Kramer*, 455 U.S. 745, 760 (1982) (“[U]ntil the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.”). A child who is the subject of a dependency proceeding has a profound interest in the outcome: whether the child will remain in the home, be placed in foster care, or be subject to termination of parental rights. *In re Adoption/Guardianship No. 6Z970003 in Dist. Ct. for Montgomery Cnty.*, 731 A.2d 467, 474 (Md. 1999) (recognizing that children’s liberty interest in their relationships with biological parents cannot be disrupted without due process). These interests implicate the child’s right to familial association, which is protected under the First and Fourteenth Amendments. *Moore v. City of East Cleveland, OH*, 431 U.S. 494, 503–04 (1977) (recognizing the sanctity of family relationships as a fundamental constitutional value). In dicta, the United States Supreme Court noted there is

Rts. art. 2 (“The Constitution of the United States, and the Laws made, or which shall be made, in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are, and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution or Law of this State to the contrary notwithstanding.”)

“little doubt that the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children’s best interest.” *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (citation modified).

Eight U.S. Circuit Courts of Appeals and several U.S. District Courts in other circuits have held that children have a right to family integrity, and no federal court of appeals has ruled to the contrary. Among them is the Fourth Circuit, which has stated, “[j]ust as parents possess a fundamental right with respect to their children, children also enjoy a familial right to be raised and nurtured by their parents.” *D.B. ex rel. R.M.B. v. Cardall*, 826 F.3d 721, 740 (4th Cir. 2016); *see also, Suboh v. Dist. Att’y’s Off. of Suffolk Dist.*, 298 F.3d 81, 91 (1st Cir. 2002); *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977); *Rivera v. Marcus*, 696 F.2d 1016, 1026 (2d Cir. 1982); *Southerland v. City of New York*, 680 F.3d 127, 142 (2d Cir. 2012); *Jordan ex rel. Jordan v. Jackson*, 15 F.3d 333, 346 (4th Cir. 1994); *Wooley v. City of Baton Rouge*, 211 F.3d 913, 921 (5th Cir. 2000); *Berman v. Young*, 291 F.3d 976, 983 (7th Cir. 2002); *Brokaw v. Mercer County*, 235 F.3d 1000, 1018–19 (7th Cir. 2000); *Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987), *overruled on other grounds, Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999) (en banc); *United States v. Wolf Child*, 699 F.3d 1082, 1091 (9th Cir. 2012); *Wallis ex rel. Wallis v. Spencer*, 202 F.3d 1126, 1136 (9th Cir. 1998); *J.B. ex rel. L.B. v. Washington County*, 127 F.3d 919, 927 (10th Cir. 1997); *Starkey ex rel. A.B. v. Boulder Cnty. Soc. Servs.*, 569 F.3d 1244, 1253 (10th Cir. 2009); *de Robles v. Immigr. & Naturalization Serv.*,

485 F.2d 100, 102 (10th Cir. 1973); *Franz v. United States*, 707 F.2d 582, 595 (D.C. Cir. 1983); *Butera v. District of Columbia*, 235 F.3d 637, 655 (D.C. Cir. 2001); *Kenny A. ex rel. Winn v. Perdue*, 356 F. Supp. 2d 1353, 1359 (N.D. Ga. 2005); *see also* Shanta Trivedi, *My Family Belongs to Me: A Child's Constitutional Right to Family Integrity*, 56 Harv. C.R.-Civ. Lib. L. Rev. 267, 282 (2021) (collecting cases).

The Appellate Court of Maryland has likewise held that children have “a liberty interest” in their relationships with their parents. *In re Adoption/Guardianship No. 6Z970003 in Dist. Ct. for Montgomery Cnty.*, 127 Md. App. 33, 51, 731 A.2d 467, 477 (1999), *disapproved of on other grounds by In re Adoption/Guardianship No. T97036005*, 358 Md. 1 (2000) [*hereinafter*, T97036005]. In T97036005, this Court declined to reach the question of whether a child had a constitutional right to a hearing to protect her interest in the parent-child relationship because the statute already provided such right to a hearing. *Id.* at 13 (referencing Md. Code Ann., Fam. Law § 5-313). *See also Green v. Sollenberger*, 338 Md. 118, 127 (1995) (holding that a principal objective of Maryland’s statutory adoption scheme is “to protect children from unnecessary separation from their natural parents[.]”) (citation modified).

Other state appellate courts have also recognized children’s constitutional rights to family integrity. *E.g.*, *In re Melody L.*, 962 A.2d 81, 99 (Conn. 2009); *Amanda C. ex rel. Richmond v. Case*, 749 N.W.2d 429, 438 (Neb. 2008). For example, in 2012 the Washington Supreme Court held that “children have fundamental liberty interests at stake in termination of parental rights proceedings,” including “in maintaining the integrity of

the family relationships, including the child’s parents, siblings, and other familiar relationships.” *In re Dependency of M.S.R.*, 271 P.3d 234, 244 (Wash. 2012) (en banc).

Similarly, in proceedings regarding foster care where children have the right to safety, they must be able to participate in adjudicatory proceedings that concern whether they will enter foster care. *See R. F. J. v. Fla. Dep’t of Children & Families*, 398 F. Supp. 3d 1268, 1275 (M.D. Fla. 2019) (recognizing that children in foster care have a Fourteenth Amendment substantive due process liberty interest in reasonably safe living conditions); *Smith v. Beasley*, 775 F. Supp. 2d 1344, 1355 (M.D. Fla. 2011) (finding that under the Fourteenth Amendment, foster children have a constitutional right to be free from unnecessary pain and a fundamental right to continuing physical safety while in state care).

A. Due Process Protects a Child’s Right to Family Integrity

The Fourteenth Amendment’s Due Process Clause guarantees that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. The Supreme Court has established a flexible balancing test for determining what process is due in a given proceeding. *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Under *Mathews*, courts must consider: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the government’s interest, including the functional and administrative burdens of additional procedures. *Id.*; *see also Goldberg v. Kelly*, 397 U.S. 254, 263–66 (1970) (applying procedural due process analysis to government actions affecting individual

rights). Each of these factors weigh heavily in favor of recognizing a child's right to be present in dependency proceedings.

First, the private interest at stake is extraordinary. As explained above, a child's interests in the integrity of the family unit, in remaining with their parents or siblings, and in having a stable and permanent home, are among the most significant interests recognized in our jurisprudence. The child also has a distinct interest in being heard and in having the court understand their perspective, needs, and wishes. *See Parham v. J.R.*, 442 U.S. 584, 602–03 (1979) (recognizing children's substantial liberty interests requiring procedural protections). A child who is excluded from the courtroom is effectively silenced at the very moment when the child's voice matters most. *See In re Gault*, 387 U.S. at 27–28 (emphasizing the importance of procedural protections to prevent unfairness to the individual in the context of a juvenile delinquency proceeding).

Second, excluding a child from dependency proceedings creates a substantial risk of erroneous deprivation. When a child is absent, the court is deprived of critical information that only the child can provide: the child's own account of conditions in the home, the child's relationship with parents and caregivers, and the child's preferences regarding placement. *See Sophie I. Gatowski, et al., Nat'l Council of Juv. & Fam. Ct. Judges, Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases 72-73* (2016) (emphasizing that children's participation improves the quality and accuracy of court findings). Counsel for the child, no matter how skilled, cannot fully substitute for the child's own presence, which can provide the court with invaluable information and offer the chance to observe the child's demeanor and emotional responses.

See, Emmie Henderson-Dekort, Hedwig van Bakel & Vernoica Smits, *Gathering Perspectives on Expert Approaches to the Capacity and Rights of Children: Working to Inform a Capacity Assessment Tool for Children to Participate in Family Law Proceedings*, 63(1) J. Divorce & Remarr. 35, 43 (2022), <https://doi.org/10.1080/10502556.2021.1993010> (last accessed Apr. 20, 2026) (“In one qualitative interview, a judge noted: It’s so easy to forget the child, especially when you haven’t seen or met them With children under 12 that you never meet in person, it is really hard to think it is about the child. And you really have to help yourself remember that this involves a child if they are not there . . . so it is difficult”). When a child is present in court, the court can observe the strength of the parent-child relationship and has an opportunity to identify developmental delays or other medical issues that may have been, up to that point, unknown or ignored. Elizabeth W. Barnes, Andrea Khoury & Kristin Kelly, *Seen, Heard, and Engaged: Children in Dependency Court Hearings*, Technical Assistance Bulletin, 8 (Nat’l Council of Juv. & Fam. Ct. Judges, Reno, Nev., Aug. 2012) (the child is “more easily able to answer questions, to speak for the things which are important to them, and to provide guiding information to the court to assist the judge in safety, permanency, and well-being decision-making”); *cf. Kentucky v. Stincer*, 482 U.S. 730, 745 (1987) (recognizing that the defendant’s presence contributes to the fairness of proceedings); *Snyder v. Massachusetts*, 291 U.S. 97, 106–107 (1934)(recognizing the value of a party’s presence in assessing testimony and advising counsel).

Moreover, the child’s absence may lead the court to rely disproportionately on the accounts of adults like case workers, parents, and other professionals, whose perspectives,

while important, may not fully capture the child’s experience; these gaps in understanding may be exacerbated by a cultural divide between professionals working on the cases and the children they represent. *See, e.g.,* Anna Arons, *Prosecuting Families*, 173 U. Pa. L. Rev. 1029, 1047 (2025) (describing the high turnover for caseworkers in child welfare systems and the divergent pressures on caseworkers to reunify families but also to end efforts at reunification within a short timeframe); Annette Ruth Appell, *Representing Children Representing What? Critical Reflections on Lawyering for Children*, 39 Colum. Hum. Rts. L. Rev. 573 (2008) (noting that lawyers for children are limited by “the age, developmental, and educational differences,” and most strikingly, the “class and race differences” between them and their clients. Attorneys may not “appreciate, or even apprehend” the social dimension of the presenting problem and may “discount the child’s clearly stated preferences.”); Amy Mulzer, Tara Urs, *However Kindly Intentioned: Structural Racism and Volunteer Casa Programs*, 20 CUNY L. Rev. 23 (2016)(highlighting the gap between the understanding of Court Appointed Special Advocates and the children they purport to represent in light of the structural biases in the child welfare system). Youth must be present in court so that they can, in real-time, observe the proceedings and assist counsel in interrogating evidence.

Third, the government’s interest does not counsel against the child’s presence. The State of Maryland has an interest in the welfare of children within its borders, and that interest is advanced, not hindered, by ensuring that the child is present and able to participate in proceedings that affect the child’s future. *See Parham v. J.R.*, 442 U.S. at 600 (recognizing the state’s interest as *parens patriae* in the welfare of children). The State

has an interest in an accurate and just decision, which is less likely to occur if the youth who is the very subject of the proceeding is excluded from it.

B. Youth’s Constitutional Rights Can Only Be Protected Through Presence in Court and Engagement in the Attorney-Client Relationship

A child’s constitutional right to counsel is rendered meaningless if the child is arbitrarily excluded from the courtroom. The Due Process Clause guarantees the right to the effective assistance of counsel, and this right depends upon the client’s ability to be present, to observe the proceedings, and to communicate with counsel. When a child is excluded from the courtroom, the child cannot hear the testimony of witnesses, cannot observe the demeanor of those who testify about the child’s life, and cannot provide real-time input to counsel. *Cf.*, *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987) (recognizing that the right to be present is rooted in due process and the right to effective assistance of counsel); *United States v. Gonzales-Flores*, 701 F.3d 112, 118 (4th Cir. 2012) (“the whole point of the right to be present . . . is to permit the defendant to contribute in some meaningful way to the fair and accurate resolution of the proceedings against him.”). Counsel is left to advocate on the basis of secondhand information, unable to confirm or correct the record as it develops. *Cf.*, *Geders v. United States*, 425 U.S. 80, 88–89 (1976) (recognizing the importance of client-counsel communication during trial proceedings). This fundamentally frustrates the attorney-client relationship and deprives the child of the effective representation that the Constitution demands. *See Strickland v. Washington*, 466 U.S. 668, 686 (1984) (“the right to counsel is the right to the effective assistance of counsel”). Allowing a represented child to attend court serves another value as well: it

builds trust with counsel, strengthening the attorney-client relationship. A child who watches their attorney argue on their behalf can have confidence that counsel is faithfully presenting their interests to the court. In this case, K.B. did not have the opportunity to watch her attorney argue her case. This deprived K.B. and counsel of an opportunity to build trust and strengthen the attorney-client relationship.

In juvenile delinquency and criminal cases, the right to be present in court stems from the right to confront one's accusers, afforded because of the severe loss of liberty at issue. *In re Gault*, 387 U.S. at 56–57 (recognizing that juveniles charged with delinquency have a right to confront and cross-examine witnesses); *see also Pointer v. Texas*, 380 U.S. 400, 405 (1965) (“[T]he right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country’s constitutional goal.”). The gravity of the right at issue here – the fundamental right to remain with family – similarly supports the right to observe the proceedings and to correct errors in real time with the assistance of counsel. Although dependency proceedings are civil in nature, the interests at stake are no less significant than those in delinquency matters: children can be removed from their homes; separated from siblings, belongings, pets, school, and communities; moved between placements; and even permanently legally separated from their parents. The child’s entire family structure and living situation hang in the balance. *M.L.B. v. S.L.J.*, 519 U.S. 102, 124 (1996)(emphasizing the need for procedural fairness in proceedings with life-altering consequences for children). When a child is present, the child can alert counsel to inaccuracies in testimony, provide context that may not be available from any other source, and ensure that the court’s understanding of the child’s

circumstances is complete and accurate. *See infra*, II.a. Excluding the child eliminates this critical safeguard and creates a situation where the individual most directly affected by a court’s decision is not present. *See Illinois v. Allen*, 397 U.S. 337, 338 (1970) (describing the right to be present as “one of the most basic of the rights”). The child’s exclusion sends a message that the child’s perspective is less important than that of the adults involved, when in reality, it is the child who bears the greatest consequences of the court’s decisions. *See* Sophie I. Gatowski, et al., Nat’l Council of Juv. & Fam. Ct. Judges, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 68-69 (2016) (emphasizing that children’s participation in hearings improves both the quality of court decisions and outcomes for children); Rachel Kennedy, *A Child’s Constitutional Right to Family Integrity and Counsel in Dependency Proceedings*, 72 *Emory L.J.* 911, 942- (2023) (describing short- and long-term trauma of dependency proceedings and removal from the home).

II. Effective Legal Representation for Child Clients Requires They Be Permitted to Attend Court

Beyond the constitutional imperatives discussed above, practical considerations reinforce that children should be invited to their dependency proceedings and established practices exist to accomplish this.

A. Research Shows the Overwhelming Benefit of Permitting Children to be Present in the Courtroom

Research consistently demonstrates that meaningful participation in legal proceedings promotes a child’s sense of justice, acceptance, and finality—even when the outcome is not what the child desired. Katie Chilton, *Did Anyone Ask the Child?:*

Recognizing Foster Children’s Rights to Make Mature Decisions Through Child-Centered Representation, 72 Emory L. J. 385, 431 (2022) (citing ABA Model Act at 21). Children who attend and participate in proceedings believe that by participating, they are helping to facilitate the court in making informed decisions and thus reach better outcomes. See Vicky Weisz et al., *Children’s Participation in Foster Care Hearings*, *Child Abuse & Neglect*, 35(4) at 267-272 (2011). These children are more likely than children who do not attend to feel they understand what is happening and to trust the judge’s decision for their family. *Id.* at 270. “Make sure that we too have a voice. I can’t speak for everyone, but I feel better advocating for myself. Who knows the situation better than me anyway?” Voice for Adoption, *Youth Voices for Permanency: Courtroom Guide on How Courts and Judges Can Make a Difference*, at 6 (May 2016), available at <https://tinyurl.com/yvst57d3> (last accessed Apr. 20, 2026). Conversely, denying children a chance to participate “strips children of the opportunity to come to terms with their past and move on and precludes children from having a sense of involvement in and control over planning their future[.]” Elizabeth W. Barnes, Andrea Khoury & Kristin Kelly, Nat’l Council of Juv. & Fam. Ct. Judges, *Seen, Heard, and Engaged: Children in Dependency Court Hearings*, Technical Assistance Bulletin, (Aug. 2012).

Courts and litigants sometimes assume that a child’s presence in the courtroom may expose the child to re-traumatization, particularly in cases involving allegations of abuse or neglect. However, being allowed to participate in permanency hearings can actually mitigate trauma and anxiety by giving a child a sense of control over the direction of her life. A child subjected to violence or abuse may want more input, not less, in decisions

related to placement. *Cf.*, Judy Cashmore & Patrick Parkinson, *Children’s Participation in Family Law Disputes: The Views of Children, Parents, Lawyers and Counsellors*, 82 *Family Matters* 15, 20 (2009), <https://tinyurl.com/bdetdmu> (last accessed Dec. 24, 2024). One meta-analysis of studies found psychological benefits to participation, strengthened relationships with family members and social workers, and an increase in both self-esteem and sense of control over their lives. Svein Arild Vis et al., *Participation and Health – A Research Review of Child Participation in Planning and Decision-Making*, 16 *Child & Fam. Soc. Work* 325, 330 (2011); *see also*, Joshua Hanson, *Considering the Child’s Wishes—But How? Allowing Children to Speak in Their Custody Matters*, 129 *Dick. L. Rev.* 1171, 1189 (2025). Conversely, children who are excluded from proceedings experience the exclusion itself as a form of trauma, compounding the harm that the dependency proceeding is intended to address. *See* Rachel Lev-Wiesel, et al., *High-Conflict Custody Disputes as Perceived by Young Adults Who Were the Child in Dispute*, 21 *J. Fam. Trauma, Child Custody & Child Dev.* 306, 315 (2024) (study participants who were silenced or excluded from decision-making process felt “disappointment, anger, insult, and even betrayal”).³

³ The Appellate Court of Maryland’s opinion in this case elides the trial court’s actual reasoning for excluding K.B. from the courtroom. The trial court’s comments made clear that the trial court was more concerned about K.B.’s school attendance than any assessment of whether K.B.’s presence at her own dependency hearing would be harmful to K.B. or disruptive to the proceedings. *See Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 608 (1982) (requiring individualized, case-by-case findings before excluding parties from proceedings). The Appellate Court, in affirming the trial court, devoted considerable discussion to the issue of possible sexual abuse testimony, manufacturing a depth of analysis that the trial court never performed on the record. Because K.B.’s central argument is that no individualized assessment was made, the Appellate Court’s post hoc

B. Leading National Standards State that the Best Practice Is to Have Children Present in the Courtroom

Leading national standards, backed by decades of research and endorsed by coalitions of practitioners, recognize that children should be present in and participate in their dependency proceedings. The American Bar Association urges the enactment and enforcement of a presumption of child presence, advocating for the position that:

the child, in consultation with the child’s attorney, has the sole right to choose not to be present and reasons such as age, disability, scheduling conflicts, lack of transportation, or perceived trauma which is not documented, [should not be] used to rebut the presumption.” *ABA House of Delegates Resolution 613* (Am. Bar Ass’n 2022) [hereinafter, ABA Resolution 613] “Decisions often permanently change the composition of family and personal relationships under law. As a result, dependency court and administrative hearings require an understanding of who a child is as a unique individual, including each child’s racial, cultural, ethnic, linguistic, sexual orientation, and gender identities, as well as specific needs that relate to those identities. Assessing unique needs and identity is best understood by engaging the child as a part of legal hearings in their own dependency cases, regardless of age.”

ABA Resolution 613. These standards reflect a commitment to child-centered legal procedure that places the child’s needs, perspectives, and developmental capacity at the center of the legal process. *See* NACC, *Recommendations for Representation of Children in Abuse and Neglect Cases* § 4 (2021) (recommending that a child’s attorney ensure the child has the opportunity to attend hearings).

Guidelines encourage counsel for children to view attendance in court as the default, and to advocate rigorously when a court deems otherwise:

rationalization cannot cure the deficiency. An appellate court cannot supply reasoning the trial court did not articulate when K.B.’s due process rights are at stake.

Although a youth (after thorough client counseling) may choose not to attend court, attorneys should not encourage their absence because of custom, practice, or convenience. Likewise, a proffer or judicial determination that the child or youth will be harmed by attendance at a hearing or court event should be interrogated and tied to legally sufficient evidence — such as independent expert testimony — specific to the case at hand, supporting the child’s exclusion against their wishes. Working within the confines of state law, the attorney should advocate that their client’s presence is only to be waived in exceptional circumstances (if the court finds that the youth has been given adequate notice of a court hearing at a conducive time, offered transportation, and still chooses not to attend, or after the court has received expert testimony and makes a finding that attending would be unduly harmful).

Id.; see also *ABA Model Act Governing the Representation of Child. in Abuse, Neglect, and Dependency Proceedings* § 9(a) (Am. Bar Ass’n 2011) [hereinafter, ABA Model Act] (“Each child who is the subject of an abuse and neglect proceeding has the right to attend and fully participate in all hearings related to his or her case.”). Indeed, the ABA Model Act requires a court to proactively determine the reason if a child was not present at a hearing related to her case, and to continue the hearing if the child wanted to attend but was unable to do so. *Id.* §§ 9(c), (d). In a dependency hearing, a court’s role is not to gatekeep, but to “enforce the child’s right to attend and fully participate in all hearings[.]” *Id.* § 9 cmt. “Having the child in court emphasizes for the judge and all parties that this hearing is about the child.” *Id.*

The child’s presence is not merely desirable, but essential to effective advocacy and sound judicial decision-making. See Sophie I. Gatowski, et al., Nat’l Council of Juv. & Fam. Ct. Judges, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 73 (2016) (“[C]ourts need to develop policies and protocols to ensure

that children have the opportunity to attend the preliminary protective hearing and subsequent hearings.”). “Having a child present in the courtroom can also highlight how quickly she is growing and just how important speedy, decisive action toward permanency is. Courtroom observations can also help inform decisions about placement, visitation, or therapeutic services.” Eva J. Klain, *Healthy Beginnings, Healthy Futures: A Judge’s Guide*, 119 (Am. B. Assoc. 2009); *see also*, Sophie I. Gatowski, et al., Nat’l Council of Juv. & Fam. Ct. Judges, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 73 (2016) (recommending that judges speak directly with children in court).

C. Accommodating Children in Courtrooms Is a Logistical Challenge, Not a Legal One

While there may be circumstances in which a child’s presence poses logistical challenges, such concerns do not justify a categorical exclusion of children from their own proceedings. *See Maryland v. Craig*, 497 U.S. 836, 857 (1990) (permitting accommodations for child witnesses but declining to eliminate the child’s participation entirely); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607–09 (1982) (striking down a blanket exclusion rule and requiring case-by-case determinations based on the child’s individual circumstances). Courts routinely accommodate the needs of vulnerable witnesses and parties through measures such as modified courtroom procedures, the use of support persons, and age-appropriate explanations of proceedings. *E.g.*, Sophie I. Gatowski, et al., Nat’l Council of Juv. & Fam. Ct. Judges, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (2016) (outlining best

practices for age-appropriate courtroom accommodations); Elizabeth W. Barnes, Andrea Khoury & Kristin Kelly, Nat'l Council of Juv. & Fam. Ct. Judges, *Seen, Heard, and Engaged: Children in Dependency Court Hearings*, Technical Assistance Bulletin, (Aug. 2012); Mary Coogan & Nancy Parello, *A Child's Voice: Involving Youth in Child Protection Court Hearings*, (Advocates Child. N.J. July 2011). The marginal administrative burden of accommodating a child's presence is far outweighed by the constitutional interests at stake. *Mathews*, 424 U.S. at 348 (weighing administrative burden against the individual's constitutional interests). *See also* Md. Code Ann., Cts. & Jud. Proc. § 3-823(j)(3) (allowing a court to conduct the hearing with a child remotely if the child is out of state).

D. Child's Presence in the Courtroom for Their Own Dependency Proceeding is a Long-Established Practice

The practice of including children in dependency proceedings is not a novel innovation, but instead a long-established tradition in American child welfare law. For decades, juvenile and family courts across the country have recognized the value of the child's presence in proceedings affecting the child's welfare. *See* Julian W. Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104, 119–20 (1909) (describing the juvenile court movement's emphasis on the child's direct participation in proceedings). Historically, juvenile courts were founded on the principle that the court acts in the best interest of the child, and the child's participation was considered integral to that mission. *See In re Gault*, 387 U.S. at 14–17 (tracing the history of juvenile courts and their emphasis on individualized consideration of each child). For example:

- 1982 – Institute of Judicial Administration/American Bar Association, *Standards for Juvenile Justice: A Summary and Analysis*, 148 (discussing the shift in courts toward “thoughtful attention to the respective roles of juveniles and parents, with full participation of both in the court process”);
- 1999 – U.S Department of Health and Human Services, *Adoption 2002: Guidelines for Public Policy and State Legislation Governing Permanence for Children*, pg. VII-15 (“In most circumstances the child should be present at significant court hearings regardless of whether the child will testify.”);
- 2004 – The Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care*, 15 (“To safeguard children’s best interests in dependency court proceedings, children and their parents must have a direct voice in court, effective representation, and the timely input of those who care about them. Courts should be organized to enable children and parents to participate in a meaningful way in their own court proceedings[.]”);
- 2006 – University of Nevada Las Vegas (UNLV) Conference, *Recommendations of the Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham*, 595-96 (“Attorneys should ensure that efforts are made to include children in their own proceedings unless the child chooses not to participate or the court finds that the child’s presence in court would be detrimental to the child.”);
- 2011 – American Bar Association, *ABA Model Act Governing the Representation of Child. in Abuse, Neglect, and Dependency Proceedings* § 9(a) (noting that each child has the right to attend and fully participate in abuse and neglect proceedings);
- 2016 – National Council of Juvenile & Family Court Judges, *Enhanced Resource Guidelines* 68-70, 72-73 (2016) (emphasizing that children’s participation improves the quality and accuracy of court findings);
- 2021 – U.S. Department of Health and Human Services funds 5-year grant for national Quality Improvement Center on Engaging Youth in Finding Permanency (<https://qic-ey.org/about/qic-ey-overview/>), focused on youth participation in case decisions, including court hearings. (“In court, professionals should ensure that the voices of children and youth are heard.)
- 2022 – National Association of Counsel for Children, *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings* (“Children and youth in dependency proceedings should have

the opportunity to personally express their wishes to the court and to fully participate in legal proceedings, meetings, and other case events.”); and

- 2022 – American Bar Association, *ABA House of Delegates Resolution 613* (urging legislatures and courts to ensure that a child “has the sole right to choose not to be present [in court] and reasons such as age, disability, scheduling conflicts, lack of transportation, or perceived trauma which is not documented, are not used to rebut the presumption”).

i. State and Federal Statutes Have Evolved to Embrace the Participation of Children in Dependency Proceedings

The evolution of child welfare law from the passage of the Child Abuse Prevention and Treatment Act (“CAPTA”) of 1974, Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101–5107), to the Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, and the Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949, reflects a consistent legislative trajectory toward greater recognition of children’s rights and participation in proceedings affecting them. *See* 42 U.S.C. § 675(5)(C) (requiring consultation with youth age 14 and older in case planning); 42 U.S.C. § 675a(b) (requiring that youth be provided with information about their case); Md. Code Ann., Cts. & Jud. Proc. § 3-813 (providing for representation of children in CINA proceedings and on-the-record examination by the court of the child); § 3-823(j) (explicitly for the purpose of determining “the child’s views on permanency”).

Likewise, the United States Department of Health and Human Services Administration for Children and Families has issued formal guidance about child welfare court hearings, explaining that federal law “requires procedural safeguards to ensure that in any permanency hearing . . . the court or administrative body conducting the hearing

consults with the child in an age-appropriate manner regarding the permanency or transition plan.” Children’s Bureau, ACYF-CB-IM-19-03, Engaging, empowering, and utilizing family and youth voice in all aspects of child welfare to drive case planning and system improvement (Aug. 1, 2019) <https://acf.gov/cb/policy-guidance/im-19-03>.

ii. Having Children Present in the Courtroom is Common Practice

The practice of permitting—and encouraging—children’s presence in dependency proceedings is the prevailing norm, not the exception. Many states either expressly guarantee the child’s right to attend dependency hearings by statute or court rule, or operate under a presumption that the child will be present. *See, e.g.*, Cal. Welf. & Inst. Code § 349(a) (providing child “is entitled to be present at the hearing”); N.Y. Fam. Ct. Act § 341.2 (McKinney) (child entitled to be present at abuse and neglect proceedings); N.J.S.A. 30:4C-61.2.b(2) (child entitled to attend permanency hearing). Other states have enacted legislation requiring that children above a certain age be notified of and given the opportunity to attend hearings in their cases. *See, e.g.*, Tex. Fam. Code Ann. § 263.302 (requiring that a child 10 years of age or older attend permanency hearings, unless specifically excused by the court).

This practice is not limited to any single region of the country, it is geographically widespread, reflecting a national consensus that children should be present in proceedings that affect their lives. This widespread and geographically diverse practice provides persuasive evidence that the right of children to be present in their dependency proceedings is deeply rooted in our legal traditions and is consistent with fundamental fairness. *See Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (examining whether an asserted

liberty interest is “deeply rooted in this Nation’s history and tradition” as part of substantive due process analysis).

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully urge this Court to rule in favor of Petitioner.

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

This brief contains 6,475 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2026, a copy of the foregoing Brief of *Amici* in the above-captioned matter has been served via MDEC and two paper copies will served in accordance with the Maryland Rules on the following:

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TEXT OF PERTINENT AUTHORITY

U.S. Const. amend. XIV, § 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Md. Const. Decl. of Rts. art. 2

The Constitution of the United States, and the Laws made, or which shall be made, in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are, and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution or Law of this State to the contrary notwithstanding.

42 U.S.C. § 675a(b)

§ 675a. Additional case plan and case review system requirements

(b) List of rights

The case plan for any child in foster care under the responsibility of the State who has attained 14 years of age shall include--

(1) a document that describes the rights of the child with respect to education, health, visitation, and court participation, the right to be provided with the documents specified in section 675(5)(I) of this title in accordance with that section, and the right to stay safe and avoid exploitation; and

(2) a signed acknowledgment by the child that the child has been provided with a copy of the document and that the rights contained in the document have been explained to the child in an age-appropriate way.

42 U.S.C. § 675(5)(C)

(5) The term “case review system” means a procedure for assuring that—

(C) with respect to each such child, (i) procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or only in the case of a child who has attained 16 years of age (in cases where the State agency has documented to the State court a compelling reason for determining, as of the date of the hearing, that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement, subject to section 675a(a) of this title, in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options, and, in the case of a child described in subparagraph (A)(ii), the hearing shall determine whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 14, the services needed to assist the child to make the transition from foster care to a successful adulthood; (ii) procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; (iii) procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to a successful adulthood, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child; and (iv) if a child has attained 14 years of age, the permanency plan developed for the child, and any revision or addition to the plan, shall be developed in consultation with the child and, at the option of the child, with not more than 2 members of the permanency planning team who are selected by the child and who are not a foster parent of, or caseworker for, the child, except that the State may reject an individual so selected by the child if the State has good cause to believe that the individual would not act in the best interests of the child, and 1 individual so selected by the child may be designated to be the child's advisor and, as necessary, advocate, with respect to the application of the reasonable and prudent standard to the child

Cal. Welf. & Inst. Code § 349

(a) A minor or nonminor dependent who is the subject of a juvenile court hearing, and any person entitled to notice of the hearing under Sections 290.1, 290.2, 291, 293, and 294 is entitled to be present at the hearing.

N.J.S.A. 30:4C-61.2.b(2)

(b) Written notice of the date, time and place of the permanency hearing shall be provided at least 15 days in advance to the following, each of whom shall be entitled to attend the hearing and to submit written information to the court:

(2) the child.

N.Y. Fam. Ct. Act § 341.2

1. The respondent and his or her counsel shall be personally present at any hearing under this article and at the initial appearance.

2. If a respondent conducts himself or herself in so disorderly and disruptive a manner that the hearing cannot be carried on with the respondent in the courtroom, the court may order a recess for the purpose of enabling the respondent's parent or other person responsible for his or her care and the respondent's counsel to exercise full efforts to assist the respondent to conduct himself or herself so as to permit the proceedings to resume in an orderly manner. If such efforts fail, the respondent may be removed from the courtroom if, after he or she is warned by the court that he or she will be removed, he or she continues such disorderly and disruptive conduct. Such time shall not extend beyond the minimum period necessary to restore order.

3. The respondent's parent or other person responsible for his or her care shall be present at any hearing under this article and at the initial appearance. However, the court shall not be prevented from proceeding by the absence of such parent or person if reasonable and substantial effort has been made to notify such parent or other person and if the respondent and his or her counsel are present.

Tex. Fam. Code Ann. § 263.302

The child shall attend each permanency hearing unless the court specifically excuses the child's attendance. A child committed to the Texas Juvenile Justice Department may attend a permanency hearing in person, by telephone, or by videoconference. The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan, if the child is four years of age or older and if the court determines it is in the best interest of the child. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing.

Md. Code Ann., Cts. & Jud. Proc. § 3-813

(a) Except as provided in subsections (b) and (c) of this section, a party is entitled to the assistance of counsel at every stage of any proceeding under this subtitle.

(b) Except for the local department and the child who is the subject of the petition, a party is not entitled to the assistance of counsel at State expense unless the party is:

- (1) Indigent; or
- (2) Otherwise not represented and:
 - (i) Under the age of 18 years; or
 - (ii) Incompetent by reason of mental disability.

(c) The Office of the Public Defender may not represent a party in a CINA proceeding unless the party:

- (1) Is the parent or guardian of the alleged CINA;
- (2) Applies to the Office of the Public Defender requesting legal representation by the Public Defender in the proceeding; and
- (3) Is financially eligible for the services of the Public Defender.

(d)(1) A child who is the subject of a CINA petition shall be represented by counsel.

(2) Unless the court finds that it would not be in the best interests of the child, the court shall:

- (i) Appoint an attorney with whom the Department of Human Services has contracted to provide those services, in accordance with the terms of the contract; and
- (ii) If another attorney has previously been appointed, strike the appearance of that attorney.

(e) In addition to, but not instead of, the appointment of an attorney under this section, the court, in any action, may appoint an individual provided by a Court-Appointed Special Advocate Program created under § 3-830 of this subtitle.

(f) The court may assess against any party reasonable compensation for the services of an attorney appointed to represent a child in an action under this subtitle.

Md. Code Ann., Cts. & Jud. Proc. § 3-823(j)(3)

Subject to the provisions of paragraph (2)(ii) of this subsection, if the child's placement is outside the State and, after a hearing or with the agreement of all parties, the court determines that it is not in the best interest of the child to be transported to the court, the court may use video conferencing to consult with the child on the record during the hearing.