

State of Minnesota
In Court of Appeals

In the Matter of the Welfare of the Child(ren) of: V. L.M. L., Parent,

BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION
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STATEMENT OF INTEREST

Founded in 1977, the National Association of Counsel for Children (“NACC”), is a 501(c)(3) non-profit child advocacy and professional 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. A multidisciplinary organization, its members primarily 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 federal and state level policy advocacy, the national Child Welfare Law Specialist attorney certification program, a robust training and technical assistance arm, and an *amicus curiae* program. Through the *amicus curiae* program, NACC has filed numerous briefs promoting the legal interests of children in state and federal appellate courts, as well as the Supreme Court of the United States. More information about NACC can be found at www.naccchildlaw.org.¹

INTRODUCTION

NACC seeks to provide in-depth information on relevant law, persuasive authority, and policy considerations regarding proper application of the strict scrutiny standard in termination of parental rights cases. The trial court’s analysis in this case fell short of what

¹ No counsel for any party authored this brief, in whole or in part. No person or entity, other than the *amicus curiae*, its members, or counsel made a monetary contribution to the preparation or submission of the brief. Minn. R. Civ. App. P. 129.03.

strict scrutiny requires, and, if upheld, leaves Minnesota children without the legal protections demanded by the United States and Minnesota constitutions.

ARGUMENT

I. PARENTS AND CHILDREN ENJOY A FUNDAMENTAL RIGHT TO FAMILY INTEGRITY WHICH IS SUBJECT TO THE STRICT SCRUTINY TEST.

1. The Fourteenth Amendment of the United States Constitution grants a Fundamental Right to Family Integrity to *both* Parents *and* Children.

According to the Supreme Court of the United States, parents have a fundamental right to “the companionship, care, custody, and management of [their] children” *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). This fundamental right to family integrity is “the oldest of the fundamental liberty interests recognized” *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

Importantly, this “fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.” *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Termination of parental rights proceedings inflict a “unique kind of deprivation” of this fundamental right since the government “seeks not merely to infringe that fundamental liberty interest, but to end it.” *See Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 27 (1981); *Santosky*, 455 U.S. at 759. Because “[f]ew consequences of judicial action are so grave as the severance of natural family ties” parents “faced with forced dissolution of their parental rights have a more critical need for . . .

protections than do those resisting state intervention into ongoing family affairs.” *Santosky*, 455 U.S. at 753 (majority opinion); *id.* at 787 (Rehnquist, J., dissenting).

Providing significant protection against destruction of the parent-child relationship rests at the core of the Fourteenth Amendment’s protection of family integrity. The Fourteenth Amendment was adopted in the aftermath of the Civil War and the ravages of slavery. *See* Note, Luray Buckner, *A Right Denied by a Duty: The Original Understanding of Parental Rights*, 37 Notre Dame J. of L., Ethics & Pol’y 493, 503 (2023). Public discourse around slavery rightly focused on one of its cruelest elements: how slavery permitted owners to sell children away from parents and parents away from children, effectively terminating the parent-child relationships. *See id.* at 501. Providing legal protection to these relationships was a central goal of the abolitionists who successfully advocated for the Fourteenth Amendment and among members of Congress who crafted it and other post-Civil War amendments and statutes. *See id.* at 501-03.

A parent’s right to care and custody of their child is not a one-way street: children have a reciprocal right to grow up in their parent’s care. *Santosky*, 455 U.S. at 760 (“[U]ntil the State proves parental unfitness, **the child** and his parents **share** a vital interest in preventing erroneous termination of their natural relationship.”) (emphasis added); *see also Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (“We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected.”). The Supreme Court of the United States has long acknowledged 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) (stating that “neither the Fourteenth Amendment nor the Bill of Rights is for adults alone”).

While the Eighth Circuit has not weighed in, federal courts in other circuits have consistently affirmed that children enjoy a right to family integrity. *See, e.g., D.B. ex rel. R.M.B. v. Cardall*, 826 F.3d 721, 740 (4th Cir. 2016); *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, 923 (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); *Wallis v. Spencer*, 202 F.3d 1126, 1136 (9th Cir. 2000); *J.B. v. Washington County*, 127 F.3d 919, 927 (10th Cir. 1997); *Franz v. United States*, 707 F.2d 582, 595 (D.C. Cir. 1983), *opinion supplemented*, 712 F.2d 1428 (D.C. Cir. 1983); *Kenny A. ex rel. Winn v. Perdue*, 356 F. Supp. 2d 1353, 1360 (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 and stating that the Eighth Circuit is silent on the issue). And, while not explicitly stating it as a right to family integrity, the Eighth Circuit has recognized that “[c]hildren and parents also share a liberty interest in

their mutual care and companionship.” *Mitchell v. Dakota County Soc. Servs.*, 959 F.3d 887, 897 (8th Cir. 2020).

State courts have likewise recognized a child’s constitutional right to family integrity. *See, e.g., In re Dependency of M.S.R.*, 271 P.3d 234, 244 (Wash. 2012) (en banc); *In re Christina M.*, 908 A.2d 1073, 1081 (Conn. 2006); *Amanda C. ex rel. Richmond v. Case*, 749 N.W.2d 429, 438 (Neb. 2008).

As exemplified in Federal and State law, the fundamental right to family integrity derived from the Fourteenth Amendment applies to *both* parents *and* children. *See* U.S. CONST. amend. XIV, § 1; MINN. CONST. art. I, § 7; *Santosky*, 455 U.S. at 760; *State v. Holloway*, 916 N.W.2d 338, 344 (Minn. 2018) (“The due process protection provided under the state constitution is ‘identical to the due process guaranteed under the Constitution of the United States.’” (quoting *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988))). A child’s reciprocal fundamental right to family integrity aligns with the Supreme Court’s pattern of extending constitutional rights to children to promote child welfare.

2. Infringements on Fundamental Rights Require a Strict Scrutiny Review.

When challenged, fundamental rights are reviewed under the standard of strict scrutiny, the most rigorous level of review. *See Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *Reno v. Flores*, 507 U.S. 292, 301-02 (1993); *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978). Strict scrutiny is a two-pronged test that requires the state to demonstrate (1) a compelling interest in the subject matter being challenged; and (2) that state actions

to achieve that goal are narrowly tailored, meaning they use the least restrictive means available to achieve the compelling interest. *See McCullen v. Coakley*, 573 U.S. 464, 478 (2014).

Minnesota courts have endorsed strict scrutiny for facial challenges. *See SooHoo v. Johnson*, 731 N.W.2d 815, 821 (Minn. 2007). The *SooHoo* court stated that “[s]trict scrutiny is the appropriate standard of review when fundamental rights are at issue and, . . . the Court has declared that a parent’s right to make decisions concerning the care, custody, and control of his or her children is a protected fundamental right.” *Id.* (citing *Troxel*, 530 U.S. at 65). Minnesota case law suggests that the same constitutional standard applies to an as-applied challenge as to a facial challenge. *See Rew v. Bergstrom*, 845 N.W.2d 764, 778 (Minn. 2014) (“Stated more succinctly, facial and as-applied challenges differ in *the showing* required to invalidate a statute, not in the underlying substantive standard that applies to each type of challenge.”). To the extent there is any ambiguity, the Court should extend strict scrutiny to as-applied challenges because the United States Supreme Court has been clear that there are as-applied challenges in fundamental rights cases. *See Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522, 541-42 (2021).

Although the United States Supreme Court has not yet had the opportunity to opine on the level of scrutiny for termination of parental rights (“TPR”) actions, many state courts have done so. *See, e.g., In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 132-33 (Minn. 2014) (applying to equal protection challenge); *In the Matter of the Appeal in Maricopa Cnty. Juv. Action No. JS-7359*, 766 P.2d 105, 109 (Ariz. Ct. App. 1988); *In re Welfare of C.B.*, 139 P.3d 1119, 1122 (Wash. Ct. App. 2006); *Ailport v. Ailport*, 507 P.3d 427, 433,

440 (Wyo. 2022); *In re Aaliyah W.*, 2011 WI App 244, ¶ 14, 797 N.W.2d 936 (Wis. Ct. App. 2011); *In Interest of P.S.*, 766 S.W.2d 833, 840 (Tex. Ct. App. 1989); *In re D.C.D.*, 105 A.3d 662, 676 (Pa. 2014); *Doe v. Doe*, 411 So. 3d 1083, 1085 (Miss. Ct. App. 2017); *Pitts v. Moore*, 90 A.3d 1169, 1174–75 (Me. 2014); *In re Adoption of K.A.S.*, 499 N.W.2d 558, 564 (N.D. 1993); *In re Adoption of J.K.W.*, No. E2006-00906-COA-R3-PT, 2007 WL 161048, at *4 (Tenn. Ct. App. Jan. 23, 2007); *Matter of BAR*, 582 P.3d 922, 927 (Wyo. 2026) (“In a termination of parental rights case, the following standard of review applies: ‘Due to the tension between the fundamental liberty of familial association and the compelling state interest in protecting the welfare of children, application of statutes for termination of parental rights is a matter for strict scrutiny.’” (quoting *Matter of PML*, 545 P.3d 856, 860 (Wyo. 2024))); *Matter of Dependency of M.-A.F.-S.*, 421 P.3d 482, 494 (Wash. Ct. App. 2018) (“Because parents have a fundamental liberty interest in the care and custody of their children, we examine the termination statutes under the strict scrutiny standard.”).

II. TO APPLY STRICT SCRUTINY, THE COURT MUST FIND A COMPELLING GOVERNMENTAL INTEREST PURSUED THROUGH NARROWLY TAILORED MEANS.

1. First, the government must show a compelling government interest in pursuing TPR in each case.

Under strict scrutiny, terminations of parental rights are unconstitutional if they do not satisfy a compelling government interest, which is the government’s burden to demonstrate. *See, e.g., Fisher v. Univ. of Texas at Austin*, 570 U.S. 297, 310 (2013). The government’s compelling interest in these types of cases is often in finding the child a

legally permanent caregiving arrangement when a parent cannot be a primary caregiver. But it also must consider a growing body of research suggesting that the termination of parental rights may have harmful consequences for children. Specifically, experts have explained that TPRs affect a child profoundly because, unlike death or other types of traumas, the termination of parental rights causes an “ambiguous loss,” meaning “a lack of clarity about a loved one’s physical and/or psychological presence.” Vivek S. Sankaran & Christopher E. Church, *The Ties that Bind Us: An Empirical, Clinical, and Constitutional Argument Against Terminating Parental Rights*, 61 Fam. Ct. Rev. 246, 257 (2023) (quoting Monique B. Mitchell, *The Family Dance: Ambiguous Loss, Meaning Making, and the Psychological Family in Foster Care*, 8 J. Fam. Theory & Rev. 360, 361 (2016)). Due to this lack of certainty, TPR can be the most distressing type of loss a child will face in their lifetime, leading to pain, denial, and externalized behaviors like bullying and expressions of anger. *Id.* at 257–58; *see also* Matthew B. Johnson, *Examining Risks to Children in the Context of Parental Rights Termination Proceedings*, 22 N.Y.U. Rev. L. & Soc. Change 397, 414 (1996) (equating TPR to a “grief-type experience, as though there were the death of a loved one”).

Additionally, the child may go on to grieve “the loss of their identities and their role within their psychological family.” Sankaran & Church, *supra*, at 258 (quoting Mitchell, *supra*, at 369). They may experience anger, fear, shame, embarrassment, as well as low self-esteem. *Id.* The child may also face bonding and attachment challenges, due to loss or separation from their primary attachment figure, which may impact the child starting in childhood and later in life. *See* Dawn J. Post & Brian Zimmerman, *The Revolving*

Doors of Family Court: Confronting Broken Adoptions, 40 Cap. Univ. L. Rev. 437, 496 (2012) (identifying healthy attachment as clinically associated with healthy interpersonal relationships).

The negative ripple effects of TPR extend beyond immediate relationships with parents. Scholars have noted that TPR “can also lead to a series of collateral consequences including severing sibling relationships, family bonds, and community ties.” Sankaran & Church, *supra*, at 249. They also may face compounding problems related to housing, incarceration, and unemployment. *Id.* at 258-59.

Experts in other contexts, such as child custody disputes, recognize that children benefit from maintaining a parental relationship, even if the parent is unable to care for them. *See id.* at 259; Marsha Garrison, *Why Terminate Parental Rights*, 35 Stan. L. Rev. 423, 454 (1983); *see also* Johnson, *supra*, at 415 (“Mental health experts (and the courts) typically recognize the value of maintaining each child’s relationship with the noncustodial parent following divorce . . .”).

Acknowledging the risks discussed above, the federal government has urged caution around TPR actions. In 2021, the Department of Health and Human Services’ Administration on Children, Youth and Families issued a formal memorandum to states describing best practices, resources, and recommendations for achieving permanency. U.S. Dep’t of Health & Hum. Servs., Admin. on Children, Youth & Families, ACYF-CB-IM-21-01, *Achieving Permanency for the Well-being of Children and Youth* (2021). It explains that “[c]hildren in foster care should not have to choose between families. We should offer them the opportunity to expand family relationships, not sever or replace them.” *Id.* at 10.

The guidance emphasizes the “continued focus on the importance of preserving family connections for children as a fundamental child welfare practice.” *Id.* at 2. It affirms that “children have inherent attachments and connections with their families of origin that should be protected and preserved whenever safely possible.” *Id.* Notably, the foregoing federal guidance has bipartisan support—it was issued during the first Trump Administration and was maintained by the Biden Administration.

On the state level, legislatures have increasingly recognized the harms of TPR and responded with practicable statutory solutions to restore these legal relationships when necessary. As of 2017, 24 states had enacted statutes creating avenues for reinstatement or restoration of parental rights.²

This is not to say that the government’s pursuit of a termination of parental rights order will never be compelling. It can be, but those circumstances and facts must show that the benefit to the child outweighs these extensive, well-researched, evidence-based, countervailing harms. For example, cases may exist where a young person has experienced abuse of such severity that the child requests termination of the parent-child relationship. Or the government may prove that an ongoing legal connection to the parent is harmful to the child, such as in sexual abuse cases. Crucially, case-specific evidence of how a TPR serves a compelling interest is necessary.

² See *How Have States Implemented Parental Rights Restoration and Reinstatement?*, 1 (Casey Family Programs), https://www.casey.org/media/SF_Parental_Rights_Restoration_Reinstatement_for_JET_v1-12.22.17_cm.pdf (Jan. 2018).

2. Second, the government must show that the TPR is narrowly tailored to accomplish its goal, meaning it uses the least restrictive means available.

Terminations of parental rights will not pass constitutional muster if they are not narrowly tailored to achieve the compelling governmental interest at hand. When a law or state action infringes upon a fundamental right, it must use “the least restrictive means available” to achieve the compelling interest at stake. *Bernal v. Fainter*, 467 U.S. 216, 219 (1984). That is, it can infringe upon that right “no more than the exact source of the ‘evil’ it seeks to remedy.” *Frisby v. Schultz*, 487 U.S. 474, 485 (1988). Where the state’s action is broader than necessary to achieve its goals, it is not narrowly tailored. *See Zablocki*, 434 U.S. at 389-90. Put another way, to survive strict scrutiny, the government must demonstrate it not only has a “constitutionally permissible and substantial” purpose, but also that it is “*necessary . . . to the accomplishment of its purpose . . .*” *In re Griffiths*, 413 U.S. 717, 721-22 (1973) (emphasis added) (quotation omitted).

a) Less restrictive alternatives are often available in foster care permanency cases.

Meeting the least restrictive means standard will often (but not always) be challenging in foster care permanency cases, which allow for a multitude of permanency outcomes that are less restrictive than TPRs. These include reunification, custody, guardianship, and other planned permanent living arrangements.

Contrary to popular belief, federal law does not require the child welfare agency or the court to prioritize adoption, nor does it create a hierarchy in which these permanency

options must be considered.³ While the Adoption and Safe Families Act (“ASFA”) imposes deadlines to file petitions for terminations of parental rights in an attempt to limit what is referred to as “foster-care drift,” this mandate applies only to grantees of federal funds (here, Hennepin County Human Services and Public Health Department). Beyond filing of the petition under these certain conditions, ASFA requires nothing more: it does not require state courts to schedule hearings on those petitions, nor to rule on them in any prescribed manner. Indeed, it does not even require the agency to further litigate a TPR petition past the point of filing.

Additionally, ASFA’s plain language does not require state agencies to file a termination of parental rights petition if “the child is being cared for by a relative.” 42 U.S.C. § 675(5)(E)(i). Practically speaking, there is no mandate on the child welfare agency to seek TPR in a case such as this where the child is already living with a relative. Elsewhere, ASFA’s provisions address adoption and legal guardianship in equipoise. For example, 42 U.S.C. § 675(5)(C) establishes minimum requirements for holding permanency hearings to evaluate permanency goals, including returning the child to their home, adoption, legal guardianship, or some other goal. The statute as written is not hierarchical and does not rank these goals in relation to one another.

ASFA’s implementation regulations similarly acknowledge the multiple forms of permanency goals without expressing a preference for adoption over the others. 45 C.F.R.

³ See, e.g., Tara Urs & Alexandria Cinney, *5 Ways to Correct the Misunderstanding that ASFA Prioritizes Adoption Over Guardianship*, ABA Litig. Sec. (Feb. 25, 2026), <https://www.americanbar.org/groups/litigation/resources/newsletters/childrens-rights/5-ways-correct-misunderstanding-asfa-prioritizes-adoption-guardians/?login>.

§ 1356.21(b)(2)(i) (2012) (identifying, without preference, permanency goals of “reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement”).

The parity of these options in law and regulation comports with the reality that—contrary to popular belief—adoptions are not more legally stable than other avenues. Indeed, adoptive placements are vulnerable to disruption, both before finalization of the actual adoption and afterwards. According to data published in a 2012 federal report, approximately 1-5% of finalized adoptions later dissolve.⁴ “Older children face higher disruption rates, with estimates ranging from 5 to 20 percent for adoptions of children aged 12 and older.”⁵ Yet even these estimates may be a deep undercount due to the lack of federal tracking mandates. To wit, “[s]ome of the difficulty lies in the fact that children’s names may be changed, and that they are assigned different case numbers after they are adopted and return to court.” Post & Zimmerman, *supra*, at 441-42. “Frequently, a broken adoption only becomes known if volunteered by the adoptive parent or child or if it is included in the text of the filed petition Indeed, it appears that only a few states now keep track of children returned to the system during or after the adoption.” *Id.* A recent report from Colorado found that 9.7% of adoptions fail. Jennifer Brown, *Adoptions of*

⁴ See *Adoption Disruption and Dissolution* 6 (Child Welfare Information Gateway) https://www.govinfo.gov/content/pkg/GOVPUB-HE23_1200-PURL-gpo145740/pdf/GOVPUB-HE23_1200-PURL-gpo145740.pdf (June 2012).

⁵ Elisa Reiter & Daniel Pollack, *Broken Bonds: When Adoptions Unravel*, *The Legal Intelligencer* (Apr. 18, 2025), <https://www.law.com/thelegalintelligencer/2025/04/18/broken-bonds-when-adoptions-unravel>.

Colorado Foster Kids Fail 10% of the Time, Colo. Sun (July 27, 2026), <https://coloradosun.com/2026/07/27/foster-care-broken-adoptions/>.

b) Trial courts must adhere to a rigorous legal analysis before granting a TPR.

ASFA is a federal funding statute which is binding only for its grantees, not on state courts. Even after a TPR is filed, it remains firmly within the judiciary's purview to grant or deny it, after evaluating the information presented by all the parties within the adversarial system, making credibility determinations, determining an outcome that is legally and constitutionally sound, and finding that such an outcome is in the child's best interest.

Thus, the strict scrutiny analysis is a threshold step for trial courts, which must be addressed *before* considering the child's best interests. To put it another way, best interest is a distinct concept which is not embedded in strict scrutiny and which can only be reviewed *after* the judge determines that all options under consideration are constitutionally permissible.

This means that trial courts must carefully listen for evidence of less restrictive options when considering TPR cases. For example, when a proposed permanent caretaker supports termination of parental rights, as happened in this case, it is essential that trial courts analyze the caretakers' reasoning before accepting it as a *fait accompli*. Factors like personal convenience or a desire to avoid co-parenting challenges are not alone sufficient. Rather, the court must find a significant ongoing risk *to the child* that outweighs the harm of terminating the parent-child relationship, and then further find that TPR is necessary to

protect the child from that harm. The trial court itself must independently conduct this strict scrutiny analysis, not delegate it to a single witness or party without deeper probing.

Minnesota can look to case law from other states for examples of this process. *See P.M. v. Lee County Dep't of Human Resources*, 335 So. 3d 1163, 1172 (Ala. Civ. App. 2021) (reversing and remanding because evidence was insufficient “to support the conclusion that no viable alternatives to the termination of her parental rights existed”); *New Jersey Div. of Child Protection & Permanency v. D.A.*, 303 A.3d 690, 702 (N.J. 2023); *In re E.R.*, 306 A.3d 221, 228 (N.H. 2023) (observing that “[t]he termination of a parent’s legal bond to a child is a solemn and irreversible event” and affirming finding that termination of parental rights was not in the best interests of the children but remaining out of their mother’s care was); *People in Interest of A.M. v. T.M.*, 480 P.3d 682, 687 (Colo. 2021) (“Implicit in these criteria is the requirement that the trial court consider and eliminate less drastic alternatives.”).⁶

III. TRENDS FROM OTHER STATES SUPPORT APPLYING STRICT SCRUTINY.

State courts have reversed terminations of parental rights where less severe permanency alternatives, such as a guardianship or a custody order, were available to provide the child stability while also preserving the parent-child relationship. *See, e.g., L.M.W. v. D.J.*, 116 So. 3d 220, 225-26 (Ala. Civ. App. 2012) (holding that, given the child’s and parent’s wishes to maintain a relationship, termination of parental rights was

⁶ Although it is in flux, the Minnesota African American Family Preservation and Child Welfare Disproportionality Act contains similar logic. *See* Minn. Stat. § 260.67.

not in the child’s best interest despite the grandparent’s preference for adoption); *see also In re A.K.O.*, 850 S.E.2d 891, 896-97 (N.C. 2020) (reversing termination of parental rights because child had a strong bond with their parents, did not consent to adoption, and termination was unnecessary for legal guardianship); *New Jersey Div. of Child Protection & Permanency*, 303 A.3d at 702-03 (remanding to consider other options, “and whether, under the circumstances, termination would not do more harm than good”); *In re E.R.*, 306 A.3d at 228 (affirming trial court decision that terminating parental rights was not in the best interest of the children at issue); *In re R.D.D.-G.*, 442 P.3d 1100, 1112-13 (Or. 2019) (agreeing that it was in the best interests of the child to not have mother’s parental rights terminated and noting that permanent guardianship could provide the security the child needed).

Like all courts nationwide, Minnesota must faithfully apply strict scrutiny when considering a state petition to terminate the legal relationship between a parent and child. Alabama stands out as a state that has applied strict scrutiny-like analysis to termination of parental rights proceedings for nearly four decades. *See* Christopher Church & Vivek Sankaran, *Applying Strict Scrutiny in Termination of Parental Rights Proceedings: Why Alabama’s Jurisprudence Should Reshape Child Protection Practice*, 76 Ala. L. Rev. 383, 389 (2024) (“*Applying Strict Scrutiny*”). Alabama’s approach requires an analysis of viable alternatives and examining the best interests of the child. *See P.M.*, 335 So. 3d at 1172; *P.L.G. v. Mobile County Dep’t of Human Resources*, 291 So. 3d 509, 513-14 (Ala. Civ. App. 2019); *L.M. v. Shelby County Dep’t of Human Resources*, 86 So. 3d 377, 389-90 (Ala. Civ. App. 2011); *Wishinsky v. State of Ala. Dep’t of Human Resources*, 512 So. 2d 122,

124 (Ala. Civ. App. 1987); *Buckhalter v. Dep't of Pensions & Sec.*, 484 So. 2d 1119, 1121 (Ala. Civ. App. 1986); *Hamilton v. State*, 410 So. 2d 64, 66 (Ala. Civ. App. 1982); *Glover v. Ala. Dep't of Pensions & Sec.*, 401 So. 2d 786, 789 (Ala. Civ. App. 1981). A recent Supreme Court of Alabama concurring decision also suggests that three elements must be met before a court terminates a parent's fundamental right to parenthood. *Ex parte Bodie*, 377 So. 3d 1051, 1064 (Ala. 2022) (Parker, J., concurring in part and concurring in the result). The three elements are: (1) "a ground for termination," (2) "the absence of a viable alternative to termination," and (3) "a showing that termination is in the best interests of the child." *Id.* The failure to meet any element would be an independent reason for a trial court to deny the termination of parental rights or reverse the termination of parental rights. *Id.* at 1068; *Applying Strict Scrutiny*, 76 Ala. L. Rev. at 388.

These are all compelling examples of courts applying the strict scrutiny test when reviewing termination of parental rights decisions. *See Sankaran & Church*, 61 Fam. Ct. Rev. at 249 ("[C]ourts have held that terminating parental rights should be done cautiously, and as a last resort only when needed to protect the safety and stability of children." (citing *M.E. v. Shelby Cty. Dep't of Hum. Res.*, 972 So. 2d 89, 102 (Ala. Civ. App. 2007))); *see also Matter of BAR*, 582 P.3d at 927; *Matter of Dependency of M.-A.F.-S.*, 421 P.3d at 494. NACC urges this court to align Minnesota with other states' approaches by faithfully applying strict scrutiny when considering a state petition to terminate the legal relationship between a parent and child.

CONCLUSION

Federal and state case law, research, and public policy all support the application of strict scrutiny to the termination of parental rights proceedings. While NACC does not take a position on the particular outcome of this case, it urges the Court to find that an as-applied strict scrutiny analysis is required in termination of parental rights proceedings.

Dated: August 3, 2026

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