

In the
Supreme Court of Georgia

In the Interest of D.B., et al., Children

On Writ of Certiorari to the Court of Appeals of Georgia
Court of Appeals Case No. A25A0616

**BRIEF OF *AMICUS CURIAE*
NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN
IN SUPPORT OF NEITHER PARTY**

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

The National Association of Counsel for Children (“NACC”) is a 501(c)(3) non-profit child advocacy and professional membership association, founded in 1977, that advances children’s and parents’ 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.

This case presents questions of significance in Georgia and nationally: When, and under what circumstances, may the State remove children from their family without prior notice or a contested hearing? And does the absence of meaningful limits on that authority harm the very children the system is designed to protect? *Amicus* takes no position on the factual record below or on

the outcome of this appeal, and it submits this brief in support of neither party. Its interest and expertise lie in the legal standard that governs *ex parte* removal, a subject on which *amicus* is well situated to assist the Court given its familiarity with federal and state law; with the recently adopted Restatement of the Law, Children and the Law; and with child welfare practice nationwide.

ARGUMENT

The family, with a reciprocal parent-child relationship at its core, is “the first and vital cell of society.” *In the Interest of K.R.*, 367 Ga. App. 668, 673 n.24 (2023) (cleaned up). Reflecting “the high value society places on the integrity of the family unit” as its building block, *id.* (cleaned up), the Federal and Georgia Constitutions enshrine the complementary duties and rights of parents and children.

Because the parent-child relationship is constitutionally protected, *infra* Part I, the default rule is that the State must give parents and children notice and a hearing before it even temporarily removes a child from parental custody. That rule yields only within narrow limits. There must be probable cause that the child faces an imminent, unmitigable threat of serious harm, that there is no time for a contested hearing first, and that this threat outweighs the inherent harms of removal. That is the rule the American Law Institute adopted in 2024 as black-letter law. Restatement of the Law,

Children and the Law § 2.13 (a) (Am. L. Inst. 2024) (hereinafter “Restatement”). It is also what the Federal and Georgia Constitutions and Georgia’s Juvenile Code require. Those limits matter because separation harms children from the moment it begins, and that harm persists even after reunification. *Infra* Part II.

Part I explains that the common law, the Federal and Georgia Constitutions, and the decisions of federal and sister-state courts protect the reciprocal rights of parents and children in their relationship. It also explains how the Restatement organizes those authorities into a graduated scheme that permits removal when all elements are met. Part II describes the harms that follow when the narrow exception permitting temporary removal before a contested hearing is allowed to swallow the rule. Part III explains that the “exceptional circumstances” standard in O.C.G.A. § 15-11-132(b) should be construed in alignment with the Restatement because that construction follows the statute’s own text and is consistent with the Federal and Georgia Constitutions, while protecting children and families from trauma and lasting harm.

I. Pre-deprivation process is the constitutional default for removing a child from home, and federal and state law narrowly confine exceptions to that rule.

The right to family integrity, the shared right of parents and children to maintain their bond free from State interference, is among the oldest liberties

our law recognizes. Its roots run to the common law, and its modern constitutional dimensions have been affirmed by the United States Supreme Court, this Court, and other state and federal courts.

The Restatement distills those authorities into a graduated scheme rather than a set of unrelated standards. Restatement §§ 2.11–2.16. A contested removal hearing, preceded by notice, is the default. In exceptional circumstances, the State may ask a court for an *ex parte* order, but such requests should only be granted if they satisfy a “stringent standard”: “[t]here must be probable cause that the child faces an imminent, unmitigable threat of serious harm, that there is no time for a contested hearing first, and that this threat outweighs the inherent harms of removal.” *Id.* § 2.12.

The Restatement’s exact language states that an *ex parte* removal request may only be granted if there is probable cause to believe that:

- (1) because of abuse or neglect, continuing in the care of the parent or guardian presents an imminent threat of serious harm to the child’s life, health, or safety;
- (2) taking the time for the court to set and hold a contested removal hearing pursuant to § 2.14 would subject the child to the imminent threat of serious harm;
- (3) the removal is necessary because the imminent threat of serious harm cannot be mitigated (A) with the immediate provision of family services and supports..., or (B) by any other means that leave the child in the care of a parent or guardian; **and**
- (4) the risk of harm to the child from removal is outweighed by the risk of harm the child faces by remaining in the care of the parent or guardian. (emphasis added).

Id.

Each rung of that ladder becomes available only when the rung above it is genuinely unavailable, and every rung requires the same substantive showing—removal is necessary to protect the child from an imminent risk of harm to life, safety, or health. Restatement §§ 2.12–2.14. The same is true of emergency removal without any prior court order, which the Restatement treats as the final rung of that same ladder and subjects to the same substantive standard rather than a lesser one. That structure matters here, because it means the authority to proceed *ex parte* is defined by objective threats to child safety, not by the mere novelty of a family’s circumstances. *Infra* Part III.A.

A. The reciprocal duties and rights of parents and children are rooted in the common law.

“[T]he most universal relation in nature . . . [is] that between parent and child.” 1 William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 434 (1765). The “duties that reciprocally result from this connection” run in both directions, 2 James Kent, COMMENTARIES ON AMERICAN LAW 190, 204 (1889), for a “parent does not enjoy the right to the custody of the child solely for [their] own benefit, but also and principally for the benefit of the child.” Joseph R. Long, A TREATISE ON THE LAW OF DOMESTIC RELATIONS § 161 (1905); 2 WORKS OF JAMES WILSON 328 (J. Andrews ed. 1896) (“The decent reserve which the

common law has shown, with regard to the relation between parent and child, should be admired”). Thus, “[a]t common law, a parent ‘possessed the paramount right to the custody and control of [their] minor children.’” *Patten v. Ardis*, 304 Ga. 140, 142 (2018) (citation omitted).

That paramount right was “controllable, in general, by the court only in the case of very gross misconduct, injurious to the child.” *Id.* (citation omitted). The common law rule recognized the “emotional attachments that derive from the intimacy of daily association” between parents and children, *Smith v. Org. of Foster Fams. for Equal. & Reform*, 431 U.S. 816, 844 (1977), and reflected the principle that “natural bonds of affection lead parents to act in the best interests of their children,” *Parham v. J.R.*, 442 U.S. 584, 602 (1979). Those mutual attachments are the foundation of modern constitutional doctrine on family relations, which acknowledges that “the relationship of love and duty in a recognized family unit is an interest in liberty entitled to constitutional protection.” *Lehr v. Robertson*, 463 U.S. 248, 258 (1983).

B. Federal due process protects the parent-child bond as a fundamental liberty interest belonging to both parents and children.

The Fourteenth Amendment constitutionalized the common law’s protection of the parent-child bond. As scholars have documented, public discourse around slavery focused on one of its cruelest features: it permitted owners to sell children away from parents, terminating the parent-child

relationship. See Peggy Cooper Davis, *Neglected Stories: The Constitution and Family Values* (1998). Protecting those relationships was a central aim of the abolitionists who advocated for the Amendment and of the Congress that framed it. *Id.*; see also Luray Buckner, Note, *A Right Denied by a Duty: The Original Understanding of Parental Rights*, 37 Notre Dame J.L. Ethics & Pub. Pol’y 493, 501–03 (2023). Because family separation was so central to ratification, the Due Process Clause’s protection of familial integrity is at its apex when even brief, government-compelled separation is at issue.

The “liberty . . . guaranteed” by the Due Process Clause therefore includes the right of parents to “establish a home and bring up children.”¹ *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); see also *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (parents’ interest in “the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests”).

That liberty interest is not the parent’s alone. Children are persons under the Federal Constitution and possess constitutional rights. *In re Gault*, 387 U.S. 1, 13 (1967) (“neither the Fourteenth Amendment nor the Bill of Rights is for adults alone”). Among them is a child’s reciprocal interest in

¹ Apart from constituting a liberty interest, a parent’s right to “rear[] her children” also constitutes a “sacred private interest.” *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944); *id.* at 166 (noting that there is “a private realm of family life which the state cannot enter”); see also *Smith*, 431 U.S. at 845 (discussing “the liberty interest in family privacy”).

growing up in a parent’s care. *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.”). *Stanley v. Illinois* recognized that children have distinct interests whenever the State removes them from parental custody, even temporarily, explaining that “children suffer from uncertainty and dislocation” from short-term separations—a harm the Court identified in the context of temporary foster placement, not permanent termination. 405 U.S. 645, 647 (1972).

Eight Federal Courts of Appeals have recognized a child’s right to family integrity, and none has held otherwise.² A federal court in Georgia agreed,

² See, e.g., *D.B. ex rel. R.M.B. v. Cardall*, 826 F.3d 721, 740 (4th Cir. 2016) (“[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”); *Suboh v. Dist. Att’y’s Off. of Suffolk Dist.*, 298 F.3d 81, 91 (1st Cir. 2002); *Southerland v. City of New York*, 680 F.3d 127, 142 (2d Cir. 2012) (“children have a parallel constitutionally protected liberty interest in not being dislocated from the emotional attachments that derive from the intimacy of daily family association”); *Wooley v. City of Baton Rouge*, 211 F.3d 913, 923 (5th Cir. 2000) (“a child’s right to family integrity is concomitant to that of a parent”); *Berman v. Young*, 291 F.3d 976, 983 (7th Cir. 2002); *Wallis v. Spencer*, 202 F.3d 1126, 1136 (9th Cir. 2000); *J.B. v. Washington Cnty.*, 127 F.3d 919, 925 (10th Cir. 1997) (“[t]he forced separation of parent from child, even for a short time, represents a serious impingement upon both the parents’ and child’s rights”) (cleaned up); *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). And while it has not adopted the label, the Eighth Circuit likewise recognizes that “[c]hildren and parents also share a liberty interest in their mutual care and

holding that children are “entitled to constitutionally adequate procedural due process when their liberty or property rights are at stake,” and that those interests include “maintaining the integrity of the family unit and . . . having a relationship with his or her biological parents.” *Kenny A. ex rel. Winn v. Perdue*, 356 F. Supp. 2d 1353, 1359–60 (N.D. Ga. 2005). While not binding here, this line of precedent carries persuasive weight, particularly given its reflection of U.S. Supreme Court doctrine and common-law precepts already woven into Georgia law.

C. Because that liberty interest belongs to parents and children alike, the State cannot interfere with the parent-child relationship, absent exigent circumstances, without first affording notice and an opportunity to be heard.

Outside narrow, exigent circumstances, the State cannot even briefly impede the parent-child bond without due process, *supra* Parts I.A–B, and “[t]he fundamental requisite of due process of law is the opportunity to be heard.” *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). That opportunity “must be granted at a meaningful time and in a meaningful manner,” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), which ordinarily means “some kind of a hearing before the State deprives a person of [a] liberty or property” interest,

companionship.” *Mitchell v. Dakota Cnty. Soc. Servs.*, 959 F.3d 887, 897 (8th Cir. 2020); *see also* Shanta Trivedi, *My Family Belongs to Me: A Child’s Constitutional Right to Family Integrity*, 56 Harv. C.R.-C.L. L. Rev. 267, 282–83 (2021) (collecting cases).

Zinerman v. Burch, 494 U.S. 113, 127 (1990). Brevity does not place a deprivation beyond the reach of due process. Indeed, “the Fourteenth Amendment draws no bright lines around three-day, 10-day or 50-day deprivations,” so even “a temporary, nonfinal deprivation” is “a ‘deprivation’ in the terms of the Fourteenth Amendment.” *Fuentes v. Shevin*, 407 U.S. 67, 85 (1972); see also *Connecticut v. Doeher*, 501 U.S. 1, 12 (1991).

Applied to the familial context, parents are generally “entitled to a hearing on [their] fitness as a parent before [their] children [are] taken from [them].” *Stanley*, 405 U.S. at 649. Proceeding without one “needlessly risks running roughshod over the important interests of both parent and child” in “[t]he integrity of the[ir] family unit.” *Id.* at 651, 657. And the “fundamental liberty interest of natural parents . . . does not evaporate simply because they have not been model parents.” *Santosky*, 455 U.S. at 753. Children are likewise entitled to be heard before they are removed from their families. *Supra* Part I.B. Narrow, exigent circumstances may warrant departure from these requirements, but that is the exception, not the rule. The Restatement embodies this constitutional ordering: the contested hearing is the baseline, and each departure from it must be justified by a showing of an unmitigable, imminent threat of serious harm. Restatement §§ 2.11–2.15; see *infra* Part III.

“While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is

not decisive of the basic right to a prior hearing of some kind.” *Fuentes*, 407 U.S. at 86. And where “the state is in a position to provide for predeprivation process,” it must generally do so. *Hudson v. Palmer*, 468 U.S. 517, 534 (1984). That is doubly true where the State “already claims to provide an immediate post-deprivation hearing,” because it then “cannot seriously plead additional financial or administrative burdens involving predeprivation hearings.” *Doehr*, 501 U.S. at 16. The Restatement reflects that allocation of burdens by requiring the State to show not only a serious, imminent threat but also that the threat cannot be addressed by any measure short of removal. Restatement § 2.13 (a) (3), cmts. d–e.

D. Georgia law also protects the right of parents and children to pre-deprivation due process absent exigent circumstances.

Georgia’s Constitution independently secures the rights of parents and children to maintain their bond. Echoing the Ninth Amendment, “[t]he enumeration of rights . . . shall not be construed to deny to the people any inherent rights which they may have hitherto enjoyed.” GA. CONST. ART. I, § I, ¶ XXIX; *cf. Stanley*, 405 U.S. at 651 (“The integrity of the family unit has found protection in . . . the Ninth Amendment.”). Among those “inherent rights that are derived from the law of nature” is “[t]he right of parents to the care, custody, and control of their children.” *Patten*, 304 Ga. at 141; *see also Nix v. Dep’t of Human Res.*, 236 Ga. 794, 795 (1976) (“[t]here can scarcely be imagined

a more fundamental and fiercely guarded right”). The “right of familial relations” therefore “preexists government,” *In the Interest of E.G.L.B.*, 342 Ga. App. 839, 848 (2017), and no statute may cut it back.

Georgia’s Due Process Clause likewise provides that “[n]o person shall be deprived of life, liberty or property except by due process of law.” GA. CONST. ART. I, § I, ¶ I. “Parents have comparable interests under [Georgia’s] state constitutional protections of liberty and privacy rights” concerning their children. *Brooks v. Parkerson*, 265 Ga. 189, 192 (1995); *see also In the Interest of M.F.*, 298 Ga. 138, 144–45 (2015); *Clark v. Wade*, 273 Ga. 587, 596 (2001) (plurality). That “right to raise one’s children is a fiercely guarded right in our society and law, and a right that should be infringed upon only under the most compelling circumstances.” *In the Interest of J.C.*, 242 Ga. 737, 738 (1978).

Georgia law recognizes the child’s side of the family bond as well. “Just 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.” *In the Interest of V.G.*, 352 Ga. App. 404, 417 n.18 (2019) (Dillard, P.J., concurring fully and specially) (cleaned up). Indeed, this Court has recognized that “in most instances it will be found that the legal right[s] of the parent and the interest of the child are the same.” *J.C.*, 242 Ga. at 738 (cleaned up). Accordingly, “wresting a child away from the care and custody of [his or her] parents . . . is so drastic that it should be attended only by the most stringent

procedural safeguards.” *In the Interest of R.B.*, 346 Ga. App. 564, 570 (2018) (Dillard, C.J., concurring fully and specially). None of this is idiosyncratic to Georgia. It tracks the standard the American Law Institute drew from the decisions of sister-state courts and the statutes of sister-state legislatures.³

II. Even temporary removal without meaningful limits causes affirmative harm to children.

The legal analysis does not exhaust the reasons for why removals before

³ Sister-state high courts protect the same reciprocal interests. See *In re Dependency of M.S.R.*, 271 P.3d 234, 244 (Wash. 2012) (en banc) (“children have fundamental liberty interests at stake” in proceedings affecting their families, including an interest “in maintaining the integrity of the family relationships”); *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); *In re Nikolas E.*, 720 A.2d 562, 565 (Me. 1998). Sister-state legislatures likewise condition *ex parte* removal on imminent risk rather than on circumstances that are merely uncommon. Connecticut requires that a child “is in immediate physical danger” and that “immediate removal . . . is necessary to ensure the child’s . . . safety.” Conn. Gen. Stat. § 46b-129 (b). Virginia requires an “imminent threat to life or health to the extent that severe or irremediable injury would be likely to result.” Va. Code Ann. § 16.1-251 (A) (1). New Hampshire requires “imminent danger” and that “immediate removal appear[] necessary to protect the child.” N.H. Rev. Stat. Ann. § 169-C:6-a. Utah requires probable cause of “a threat of substantial harm” and that “removal is necessary . . . to avoid the harm.” Utah Code Ann. § 78A-6-106 (3) (a). Indiana requires the absence of “a reasonable opportunity to obtain an order of the court” and that child safety “preclude[] the immediate use of family services to prevent removal.” Ind. Code § 31-34-2-3. And New York’s highest court holds that “[i]mminent danger . . . must be near or impending, not merely possible,” and that a court “must do more than identify the existence of a risk of serious harm,” weighing instead “whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal.” *Nicholson v. Scopetta*, 820 N.E.2d 840, 844-5, 852-53 (N.Y. 2004). The Restatement compiles these and other comparable authorities. See Restatement § 2.13, Reporters’ Notes to cmts. b-d.

a contested hearing must remain a narrow exception. *Supra* Part I. From a social science perspective, removal is a serious intervention that risks injuring children and the parent-child relationship even when it lasts only days, and the injury attaches from the moment of separation.

A. Removal, no matter how brief, risks harming the parent-child bond and family unit at every stage of childhood development.

“When children are removed from their parents, whether at birth or otherwise, they experience trauma.” Ctr. for the Rights of Abused Child., *Asserting, Arguing, and Appealing the Constitutional Rights of Children in Foster Care: A Practice Manual for Lawyers* at 32 (2024). Pediatric authorities have concluded that even brief, forced separation causes toxic stress, which “can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health.” Colleen Kraft, *AAP Statement Opposing Separation of Children and Parents at the Border*, Am. Acad. of Pediatrics (May 8, 2018). That harm persists “even if there is subsequent reunification.” Johayra Bouza et al., Soc’y Rsch. Child Dev., *The Science Is Clear: Separating Families Has Long-Term Damaging Psychological and Health Consequences* 1 (Soc’y for Rsch. in Child Dev. 2018), <https://www.srcd.org/research/science-clear-separating-families-has-long-term-damaging-psychological-and-health> (last visited Sept. 9, 2026). The harm begins at separation, not when a court later finds the removal

unwarranted.

This psychological injury has a ripple effect evident at every stage of development. *See, e.g., Santosky*, 455 U.S. at 760 n.11. Young children are “especially vulnerable to these [separation] stresses,” *Nicholson v. Scoppetta*, 344 F.3d 154, 163 (2d Cir. 2003), and they report “feelings of abandonment, rejection, worthlessness, guilt, and helplessness,” Rosalind D. Folman, “*I Was Taken*”, 2 Adoption Q. 7, 11 (1998). For school-aged children, the disruption compounds. They are “often forced to move away from their neighborhood, their daycare or school, their childhood friends, and their extended family,” Ctr. for the Rights of Abused Child., *supra*, at 33, which necessarily impacts children’s academic performance, behavior, confidence and self-esteem, and social adjustment skills. Foster placement compounds these harms further.⁴

⁴ “The grief that consumes children’s lives when they are separated from their parents can result in depression, helplessness, distress, anxiety, and ambiguity. As familiarity wanes, ambiguity can consume the lives of children as they question why they are in foster care (placement reason ambiguity), what foster care is (structural ambiguity), how long foster care will last (temporal ambiguity), where they will be living (placement context ambiguity), who they are living with (relationship ambiguity), and how placement into foster care will affect their role within their family (role ambiguity). Each of these ambiguities can evoke trauma and further threaten child wellbeing. Children have reported that separation from their parents, family, and community is a traumatic experience that affects them for a lifetime.” CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND AGENCIES IN NEGLECT, ABUSE, AND DEPENDENCY CASES 240-41 (4th ed. 2022). Parents experience comparable ambiguities, which can persist for years as a constant state of anxiety and other mental health burdens tied to the continued possibility that their children will be removed. *Id.*

Brevity does not prevent the harm children experience when forcibly removed from their parents. Even short-term stays in foster placement could cause trauma that negatively impacts a child's development. See Vivek S. 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 (2016). Research also shows that “children in foster care may blame themselves for being in foster care, which can negatively affect self-worth, self-esteem, and hopefulness.” *Child Welfare Law and Practice*, *supra*, at 241. Removed children often experience behavioral and mental health issues, lower earnings, and greater likelihood of arrest and addiction as compared to children who remain at home in less-than-ideal circumstances. Catherine Lawrence et al., *The Impact of Foster Care on Development*, 18 Dev. & Psychopathology 57 (2006).

Foster care also carries risks of its own. Children are more likely to endure abuse while in foster care than in the general population, and they may be placed in as many as fifteen homes in a single year, “intensify[ing] existing trauma.” Trivedi, *supra*, at 542–45. Yet “courts rarely, if ever, consider the dangers inherent to the foster care system itself” when deciding whether to remove children from their parents. *Id.* at 542.

In short, “[a]part from extreme cases of imminent physical harm to children, the family unit is the preferable place for children to grow and

thrive.” Mical Raz & Vivek Sankaran, *Opposing Family Separation Policies for the Welfare of Children*, 109 Am. J. Pub. Health 1529, 1529 (2019). The common law recognized as much centuries ago. *Supra* Part I.A. As such, an emergency removal without pre-removal process can only occur if specific findings are established, including that “the risk of harm to the child from removal is outweighed by the risk of harm the child faces by remaining in the care of the parent or guardian.” Restatement § 2.13 (a) (4); *see also Nicholson v. Scopetta*, 820 N.E.2d 840, 852–53 (N.Y. 2004) (requiring courts to weigh the risk of harm from removal against the risk the child faces by remaining at home).

B. Pre-deprivation process, and enforceable limits on any exceptions, prevent removals and harm that should never happen.

Pre-deprivation due process guards against removals that should never happen, and so do narrow, enforceable limits on the exceptions to it. Testing the State’s allegations before a child is removed allows courts to identify cases where a safety plan or in-home services would protect the child without any separation. Federal courts accordingly require the State to “consider all potential alternatives and resources that can be provided to keep the family together” before separating a child, and permit removal only as “the least restrictive means of safety,” confined to the “rare circumstance[s] in which the time would be so fleeting and the danger so great” that the risk cannot “be

mitigated by reasonable efforts to avoid removal.” *Nicholson v. Scoppetta*, 116 F. App’x 313, 316 (2d Cir. 2004). Every removal avoided on that basis is potential childhood trauma averted. *Supra* Part II.A.

Judicial review before even temporary removal is not a formality. It is the baseline due-process requirement. As the Restatement explains, “[e]x ante judicial authorization of removal . . . plays a critical role in safeguarding family integrity and promoting the well-being of the child,” because it “makes it less likely that a child will be removed in a circumstance in which the removal may harm, rather than protect, the child.” Restatement § 2.13 cmt. a. That is true, however, only when the reviewing court applies the stringent standard set out above, *supra* Part I. *Id.* § 2.13 (a) (3), cmts. d–e. Absent that standard, judicial review supplies little protection, and the harms *Stanley* identified fall on children who should never have been separated from their parents. *Supra* Part II.A.

III. An imminent threat requirement protects children from unnecessary separation from their parents.

Construing “exceptional circumstances” to require an objective showing of imminent, serious threat and necessity is not a novel imposition on child welfare agencies. It reflects the black-letter rule, drawn from the common law and from the modern consensus across jurisdictions. Restatement § 2.13. And Georgia law already conditions an *ex parte* removal order on written findings

of “the necessity for such child’s removal,” O.C.G.A. § 15-11-132 (b), a finding that cannot be made without a defined threat against which to measure it. To the extent the statutory phrase “exceptional circumstances” creates any ambiguity, the canon of constitutional doubt requires that it be construed consistent with the Restatement’s requirements for *ex parte* removal orders, because any broader reading would raise serious constitutional questions. *Cobb Cnty. Sch. Dist. v. Barker*, 271 Ga. 35, 37 (1999); *see infra* Part III.B.

A. The Juvenile Code’s text requires an objective, particularized showing of imminent risk of serious harm and of the necessity of removal.

O.C.G.A. § 15-11-132 (b) provides that, “when a child is taken into custody under *exceptional circumstances*,” the juvenile court must issue a written order with “findings of fact supporting the *necessity* for such child’s removal . . . to safeguard such child’s welfare.” *Id.* (emphases added). It thus requires an exceptional circumstance *and* a finding that removal is *necessary*. A necessity finding presupposes a defined harm that removal will prevent; without such, the necessity prong cannot be assessed at all. Read together with that requirement, “exceptional circumstances” must refer to a probable, unmitigable, imminent threat of serious harm that cannot await a contested hearing, and that outweighs the inherent harms of removal—that is, the risk of harm to the child from removal must be outweighed by the risk of harm the child faces by remaining in the care of the parent or guardian. That is the

Restatement’s standard, § 2.13 (a), and adopting it enforces O.C.G.A. § 15-11-132, rather than rewriting it.

B. So construed, the standard is administrable and serves the Juvenile Code’s purposes.

The standard is administrable because it would require the juvenile court to do nothing it is not already equipped to do. A juvenile court asked to authorize removal before a contested hearing would ask a discrete set of questions: (1) whether there is probable cause of abuse or neglect; (2) whether present conditions pose an imminent (not merely possible) threat of serious harm to each child individually;⁵ (3) whether that risk can be mitigated by services, supports, or an order directed at an adult rather than the child; (4) whether the threat is so immediate that a contested hearing cannot be convened first; and (5) whether the potential threat outweighs the inherent harms of removal. Restatement § 2.13 (a) & cmts. b–g. Each question can be answered on the sworn information ordinarily before a juvenile court at the *ex parte* stage.

So construed, the statute serves the General Assembly’s purpose to “preserve and strengthen family relationships.” O.C.G.A. § 15-11-1. It tethers removal to the Code’s dual commitments of protecting children from

⁵ The seriousness of the harm and its imminence are related but distinct inquiries: the harm must be serious, and the threat must be imminent. Restatement § 2.13, cmt. c.

maltreatment and from unnecessary removal, and it prompts DFCS to pursue safety planning, kinship support, and in-home services first. It would also align Georgia with the national norm reflected in the Restatement and in its peer states' statutes. *Supra* Part I.D & n.3. Nothing suggests the General Assembly meant to depart from that norm.

Any broader reading strains the Juvenile Code's own guardrails. In Georgia, a preliminary protective hearing need not occur for up to 72 hours after placement, and longer if that period ends on a weekend or holiday. There is no statutory right to accelerate it. O.C.G.A. § 15-11-145 (a). That means parents and children may spend five or six days apart, in limbo, waiting for the first chance to tell their side of the story. That result contradicts the Juvenile Code, which "countenanc[es] the removal of a child from his or her home *only* when state intervention is *essential* to protect such child." O.C.G.A. § 15-11-1 (emphasis added). It also undermines the constitutional rights the Code must be read to protect. *In the Interest of R.B.*, 346 Ga. App. at 575 (Dillard, C.J., concurring fully and specially) ("[I]n making any decision or taking any action that interferes with a parent-child relationship, [Georgia's] Juvenile Code is subordinate to and must be construed in light of the fundamental rights recognized by the federal and Georgia constitutions.").

A broader reading would also raise constitutional difficulties, and the canon of constitutional doubt supplies an independent reason to reject it.

Where a statute is susceptible to more than one construction, this Court adopts the construction that avoids constitutional infirmity. *Cobb Cnty. Sch. Dist. v. Barker*, 271 Ga. 35, 37 (1999). The canon applies squarely here. “Exceptional circumstances” is undefined in the Juvenile Code, and no Georgia appellate decision had construed the phrase before now. The Court of Appeals reached its reading through dictionary definitions, settling on “uncommon or unusual situations” while acknowledging that the phrase “might encompass exigent or emergency situations” but “does not require such circumstances.” *In the Interest of D.B.*, 376 Ga. App. 403, 417 (2025). A term that required dictionaries to construe, and that the court below conceded may encompass emergencies without requiring them, is not clear. The narrow construction *amicus* urges is at least equally compelling, and as Presiding Judge McFadden explained, a provision so construed “does not raise the constitutional issues the majority addresses.” *Id.* at 424 (McFadden, P.J., concurring in part and dissenting in part).

C. The standard accords with the federal due-process authority governing *ex parte* removal.

Construing “exceptional circumstances” in conformity with the Restatement complies with federal authority governing *ex parte* removal. *K.W. ex rel. K.A. v. City of New York*, 177 F.4th 127 (2d Cir. 2026), confirms that *ex parte* removal orders may issue consistent with due process, and *amicus* does

not argue otherwise. But *K.W.*, a civil rights action brought under 42 U.S.C. § 1983 addressing constitutional rights at issue in removals, also supplies the constitutional rule that an “uncommon circumstances” reading of O.C.G.A. § 15-11-132 (b) lacks. The Second Circuit explained that the two candidate standards, probable cause and exigent circumstances, “require the same showing”: “the presence of emergent, imminent danger to the child, such that there is no time to obtain a court order without endangering the child’s health and safety.” *Id.* at 143. The official must have “an objective basis to conclude that there is immediate risk of harm to the child that forecloses the possibility of obtaining a court order before removal.” *Id.* And the court reaffirmed the settled rule that “[i]f the danger to the child is not so imminent that there is reasonably sufficient time to seek prior judicial authorization, *ex parte* or otherwise, for the child’s removal, then the circumstances are not emergent.” *Id.* at 142. Each of those formulations is keyed to risk and to urgency. None turns on whether the situation is merely out of the ordinary.

Requiring an objective, particularized showing of imminent risk of serious harm and necessity also comports with *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The private interests at stake are among the weightiest the law recognizes: a parent’s interest in the care and custody of their child, and a child’s reciprocal interest in family integrity. *Supra* Part I.B; *see also Stanley*, 405 U.S. at 651. If courts may act on an undefined showing of merely

uncommon circumstances, the risk of erroneously depriving those interests is substantial. Requiring particularized findings of imminent risk and necessity reduces that risk at negligible cost, because the Juvenile Code already directs the juvenile court to find that removal is necessary to safeguard the child's welfare. O.C.G.A. §§ 15-11-132 (b), 15-11-134 (a). Nor does the third *Mathews* factor tip the balance the other way. The State's *parens patriae* interest in child welfare is substantial, but by the General Assembly's own terms it warrants removal "only when state intervention is *essential* to protect such child." O.C.G.A. § 15-11-1 (emphasis added). Confining *ex parte* removal to cases of imminent, serious, unmitigable risk therefore advances the State's interest rather than burdening it. Removing children who face no imminent danger, by contrast, inflicts serious harm on them and their families, *supra* Part II.A, and the State has no interest in such outcomes.

D. The standard also aligns Georgia practice with other federal requirements that already govern every removal.

That reading also aligns O.C.G.A. § 15-11-132(b) with a federal requirement that already governs every removal Georgia undertakes. Since the Adoption Assistance and Child Welfare Act of 1980, federal foster care funding has been conditioned on two judicial determinations: (1) that continuation in the home would be contrary to the child's welfare, and (2) that the agency made reasonable efforts to prevent the need for removal. 42 U.S.C.

§§ 671(a)(15)(B), 672(a)(2)(A)(ii); 45 C.F.R. § 1356.21(b)(1), (c). The contrary-to-welfare finding must appear in the first court order that sanctions removal, even temporarily. 45 C.F.R. § 1356.21(c). Georgia has incorporated both requirements into its Juvenile Code. Every order authorizing removal “shall be based on a finding by the court that continuation in his or her home would be contrary to his or her welfare,” O.C.G.A. § 15-11-134(a), and the juvenile court “shall be required to review the appropriateness of” DFCS’s reasonable efforts “at each stage of the proceedings,” O.C.G.A. § 15-11-202(d).

The federal government has affirmed this further in its own guidance on administering the reasonable efforts requirement. The U.S. Children’s Bureau has explained that federal funding under Title IV-E of the Social Security Act will not be available for a case, if the state fails to make reasonable efforts prior to removal because “[i]t is impossible for the State to provide efforts to prevent the removal of a child from home after the fact,” and “there is a profound effect on the child and family once a child is removed from home, even for a short time, that cannot be undone.” U.S. Dep’t of Health & Human Servs., Admin. for Children & Families, *Child Welfare Policy Manual* § 8.3A.9b, Q&A 3, <https://www.acf.hhs.gov/cwpm> (last visited Sept. 9, 2026). Those requirements bear directly on the question before this Court. Reasonable efforts are, by definition, efforts to avoid removal, and they can be measured only against a defined danger. A court cannot ask whether services would have kept a child

safe at home without first knowing *from what* the child needed to be kept safe. Construing “exceptional circumstances” to require no risk at all would therefore leave the reasonable efforts inquiry with nothing to measure, and would set Georgia’s *ex parte* practice at odds with the federal condition on which its foster care funding depends. Thus, where the agency has offered no services and identified no danger that services could not have addressed, removal is not “necessary” within the meaning of O.C.G.A. § 15-11-132 (b), and the *ex parte* order should not issue.

E. A post-removal hearing cannot cure a wrongful *ex parte* removal.

A post-deprivation proceeding cannot undo the harm of a wrongful *ex parte* removal. Due process does not accept that “a wrong may be done if it can be undone.” *Stanley*, 405 U.S. at 647. Where a removal proves unjustified and children are returned after three to six days, the parent still “suffers from the deprivation of [their] children, and the children suffer from uncertainty and dislocation.” *Id.* Even as to real property, “[t]he harm of the original deprivation remained and could not be remedied with a post hoc proceeding.” *Green Meadows Hous. Partners, LP v. Macon-Bibb County*, 372 Ga. App. 724, 730 (2024). That is more plainly true of a child, for the harm of separation begins immediately and persists “even if [children] are later reunified.” Bouza et al., *supra*; see *supra* Part II.A. A post-removal hearing therefore returns the

family to a status quo that no longer exists. The exception must be construed narrowly: a post-deprivation hearing cannot undo the separation it reviews, leaving children and parents to carry harm that no later order can reverse.

CONCLUSION

For the foregoing reasons, *amicus* respectfully urges this Court to hold that the “exceptional circumstances” standard in O.C.G.A. § 15-11-132 (b) requires an objective, particularized showing that probable cause exists to believe that the child faces an imminent, unmitigable threat of serious harm, that there is no time for a contested hearing first, and that this threat outweighs the inherent harms of removal.

Where the agency seeks judicial authorization before removing a child, that showing must be made before the juvenile court may authorize *ex parte* removal. And where the danger is so immediate that the agency removes a child before obtaining any order, the same showing must be made to the juvenile court at the first opportunity. That construction enforces the statute’s necessity requirement, conforms Georgia practice to the Restatement and to the law of its peer states, and preserves the State’s power to act in genuine emergencies.

Georgia’s exception should not authorize as a matter of routine what the Constitution permits only as a matter of necessity. Construing it correctly protects children from both unsafe conditions and the well-documented harms

of unnecessary separation, and it advances “the best interests of [Georgia’s] children,” the “paramount child welfare policy of this state.” O.C.G.A. § 15-11-

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Respectfully submitted, this 10th day of September 2026.

This submission does not exceed the word-count limit imposed by Rule 20.

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