

CHILDREN’S FAST TRACK APPEAL

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN THE INTEREST OF: E.D.A., III., a Minor 20 MAP 2024
Appeal of T.W.A., Mother

IN THE INTEREST OF E.J.A., a Minor 21 MAP 2024
Appeal of T.W.A., Mother

IN THE INTEREST OF R.M.A., a Minor 22 MAP 2024
Appeal of T.W.A., Mother

IN THE INTEREST OF A.B.A., a Minor 23 MAP 2024
Appeal of T.W.A., Mother

IN THE INTEREST OF B.W., a Minor 24 MAP 2024
Appeal of T.W.A., Mother

CONSOLIDATED

BRIEF OF COMMUNITY LEGAL SERVICES,
JUVENILE LAW CENTER, AND THE DEFENDER ASSOCIATION OF
PHILADELPHIA AS *AMICI CURIAE* IN SUPPORT OF APPELLANT T.W.A.

Caroline Buck
ID No. 322699
COMMUNITY LEGAL
SERVICES
100 N 18th St, Ste 3400
Philadelphia, PA 19103
215-981-3733
cbuck@clsphila.org

Marsha L. Levick, ID No.
22535
Riya Saha Shah, ID No.
200644
Courtney M. Alexander, ID
No. 24082614*
JUVENILE LAW CENTER
1800 JFK Blvd, Ste. 1900B
Philadelphia, PA 19103
215-625-0551
mlevick@jlc.org
rshah@jlc.org
calexander@jlc.org

Keisha Hudson, ID No.
89352
Mimi Laver, ID No. 59811
DEFENDER ASSN OF
PHILADELPHIA
1441 Sansom St
Philadelphia, PA 19102
215-586-3190
khudson@philadefender.org
mlaver@philadefender.org

*Admitted to practice in TX

Counsel for Amici Curiae

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STATEMENT OF INTEREST OF AMICI CURIAE¹

Community Legal Services of Philadelphia provides free legal assistance to low-income individuals on a broad range of civil matters, including public benefits, landlord/tenant, utilities, mortgage foreclosure, employment, and other areas of great need in Philadelphia. For more than 30 years, the Family Advocacy Unit (FAU) has provided high quality, multidisciplinary representation to hundreds of parents each year in Philadelphia dependency and termination of parental rights proceedings. As part of its mission, the FAU works to ensure that low-income families involved with the child welfare system receive the due process to which they are entitled and have meaningful access to justice in these extremely important proceedings. In addition to individual client representation, the FAU engages in policy advocacy and continuing legal education at both a statewide and local level to improve outcomes for children and families.

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.

Founded in 1975, Juvenile Law Center is the first non-profit public interest

¹ Pursuant to Rule 531, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

law firm for children in the country. Juvenile Law Center’s legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed 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.

The Defender Association of Philadelphia provides high-quality, client-centered legal representation, connection to social services, and support to adults and juveniles in Philadelphia, engaging in advocacy and community collaboration to improve the lives of our clients, protect the Constitution, and ensure a fair and equitable justice system. The Defender Association is a non-profit corporation created in 1934 by a group of Philadelphia lawyers dedicated to the ideal of high-quality legal services for indigent criminal defendants. The Defender’s commitment to this ideal continues today. Defender attorneys represent more than 70 percent of defendants in adult and juvenile state courts and civil and criminal mental health hearings. Since 1974, Defender attorneys and social workers also serve as child advocates for dependent children. The Defender Association seeks to promote dignity, social justice and better outcomes for all its clients.

SUMMARY OF ARGUMENT

The right to family integrity is one of “the oldest of the fundamental liberty interests recognized” by the U.S. Supreme Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). This constitutional right to family integrity not only benefits the parent, but it also supports positive child development. As this Court has aptly noted, “[w]e cannot underestimate the importance of a child’s relationship with his or her biological parent.” *In re Adoption of Charles E.D.M., II*, 708 A.2d 88, 93 (Pa. 1998). An abundance of research affirms the importance of family connections for a child’s present and future wellbeing, and the significant harm resulting from the permanent severance of family attachments through legal proceedings. *See infra* Sections I.A & I.B. Research also highlights the harm of family separation to communities generally, and the extent to which termination proceedings intensify profound racial disparities in our child welfare system rooted in the United States’ long legacy of devaluing families of color, and particularly Black families. *See infra* Sections II.A & II.B.

In light of the liberty interest at stake and the irreversible and harsh consequences of family separation for children and families, the State alone bears the burden of presenting evidence that is so “clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction [that the grounds for termination have been met], without hesitance.” *In re Adoption of C.M.*, 255 A.3d

343, 358 (Pa. 2021) (quoting *Charles E.D.M.*, 708 A.2d at 91). Further, reviewing courts have a “duty to ensure that the trial court has satisfactorily fulfilled the requirements of examining **all evidentiary resources**, conducting a full hearing and setting forth its decision in a full discursive opinion.” *In re K.P.*, 872 A.2d 1227, 1231 (Pa. Super. 2005) (internal citations omitted) (emphasis added). It is the reviewing court’s responsibility “to ensure that the record represents a comprehensive inquiry and that the hearing judge has applied the appropriate legal principles to that record.” *In re R.W.J.*, 826 A.2d 10, 12 (Pa. Super. 2003).

In this case, although the trial court heard testimony from ten witnesses, it relied on the testimony of only one witness and focused heavily on “environmental concerns” in the home as well as the family’s finances when issuing its decision to terminate parental rights. Because of the psychological, emotional, and physical damage termination of parental rights inflicts on children - damage which is disproportionately inflicted upon Black children, families, and communities - it is imperative that trial courts carefully consider and weigh the *totality* of the evidence presented, and a termination of parental rights should never be based upon a family’s housing or income.

For these reasons, *Amici* ask that this Court reverse the termination of parental rights below.

ARGUMENT

I. MAINTAINING LIFELONG FAMILY RELATIONSHIPS PROVIDES VITAL SUPPORT FOR CHILD DEVELOPMENT AND WELLBEING

The Constitution rigorously protects the relationship between parent and child. “Without doubt, [liberty] denotes not merely freedom from bodily restraint but also the right of the individual to . . . establish a home and bring up children” *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

The 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. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life.

Santosky v. Kramer, 455 U.S. 745, 753-54 (1982). The fundamental nature of the right to family integrity and the “significant gravity of a termination of parental rights, which has far-reaching and intentionally irreversible consequences for the parents and the child,” necessarily demands a high evidentiary burden. *In re Adoption of C.M.*, 255 A.3d 343, 358 (2021).

A growing body of research affirms the importance of these Constitutional protections, highlighting that maintaining lifelong connections to family members supports positive development and wellbeing for children. Thus, especially in a termination of parental rights proceeding where family relationships may be permanently severed, trial courts are responsible for carefully considering and

weighing the entirety of the evidence and testimony presented.

A. Preserving Family Bonds Promotes Positive Outcomes for Children.

“Our human wisdom, practice experience, and research evidence point to children needing more than just *a* family to thrive; instead, they need *their own* family to thrive” Amelia Franck Meyer, *Harm Caused by the Adoption and Safe Families Act*, 1 FAM. INTEGRITY & JUST. Q. 84, 86 (2022) (emphasis added). Every child exists within a relational context of unique and meaningful connections – their family, community, and culture. The continuity of these connections and the sense of belonging they foster promote psychological safety and better long-term outcomes for children. *Id.* at 88.

Psychological and sociological research reinforces “the importance of the biological parent-child relationship as a determinant of the child’s personality, resilience and relationships with others, regardless of whether the child in fact lives with that parent.” Eliza Patten, *The Subordination of Subsidized Guardianship in Child Welfare Proceedings*, 29 N.Y.U. REV. L. & SOC. CHANGE 237, 240 (2004). During childhood, maintaining close family relationships can act as a “buffer” against developmental stress, ameliorating the impact that trauma and adversity have on long-term physical health outcomes. Edith Chen et al., *Childhood Close Family Relationships and Health*, 72 AM. PSYCH. 555, 558 (2017).

For children who have been removed from their homes, maintaining family

connections supports a positive sense of identity and leads to higher self-esteem by “mitigating feelings of loss, rejection, self-blame and abandonment” Debbie B. Riley & Ellen Singer, *Connections Matter: Relationships with Birth Families are Important for Foster, Adopted Children*, Imprint (Aug. 2, 2019), <https://imprintnews.org/adoption/connections-matter-relationships-with-birth-families-are-important-for-foster-adopted-children/36174>. Further, multiple studies have found that children who maintain ties to their birth family, even after adoption, experience less anxiety and feel more at ease. Vivek S. Sankaran, *Ending the Unnecessary Pain Inflicted by Federal Child Welfare Policy*, 1 FAM. INTEGRITY & JUST. Q. 26, 29 (2022) (citing Gabrielle Glazer, *American Baby: A Mother, a Child and the Shadow History of Adoption* 270 (2021)).

The positive effects of preserving family connections stretch beyond childhood. One study found that foster care alumni who reported maintaining close connections with birth parents as well as other parental figures were more likely to achieve age-appropriate employment, education, and financial security, and were less likely to suffer from mental health issues, substance abuse, homelessness, and involvement with the criminal legal system. Gretta Cushing et al., *Profiles of Relational Permanence at 22: Variability in Parental Supports and Outcomes Among Young Adults with Foster Care Histories*, 39 CHILD. AND YOUTH SERV. REV. 73, 79-80 (2014).

Children themselves also describe ongoing family relationships as essential to their wellbeing. Youth with lived experience in foster care “have called for the rejection of traditional notions of permanency, which requires the severance of relationships, and have instead demanded **relational permanency**, the nurturing and preservation of *all relationships* that matter to a child.” Sankaran, *supra*, at 29 (emphasis added) (citing Nancy Rolock & Alfred G. Pérez, *Three Sides to a Foster Care Story: An Examination of the Lived Experiences of Young Adults, Their Foster Care Case Record, and The Space in Between*, 17 QUALITATIVE SOC. WORK 195, 198 (2018)). Youth value relational permanency far more than the legal permanency that is prioritized by courts and child welfare professionals. Randi Mandelbaum, *Re-Examining and Re-Defining Permanency from a Youth’s Perspective*, 43 CAP. U. L. REV. 259, 277-79 (2015). As one youth described, “[l]egal permanence could be taken off the list and I wouldn’t miss it. You can have legal permanency—but without relational or physical permanency, what’s the point? . . . Without the last two, the first is not important.” *Id.* at 279 (alteration in original) (quoting Reina M. Sanchez, *Youth Perspectives on Permanency* 10 (2004)).

The U.S. Department of Health and Human Services Children’s Bureau also emphasizes the critical importance of “relational permanency” for children, observing that “[c]hildren have inherent attachments and connections with their families of origin that should be protected and preserved whenever safely possible,”

and “[w]hen these relationships are prioritized, protective factors are increased, which promotes current and future well-being.” Children’s Bureau, U.S. Dep’t of Health & Hum. Servs., *Achieving Permanency for the Well-Being of Children and Youth* 2, 10 (2021), <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2101.pdf>. The Children’s Bureau has thus instructed courts and child welfare professionals that “[c]hildren in foster care should not have to choose between families.” *Id.* at 10. Rather, children should be offered “the opportunity to *expand* family relationships, not replace or sever them.” *Id.* (emphasis added).

B. Family Separation and Termination of Parental Rights Inflicts Lasting Emotional and Psychological Damage on Children and Families.

While often done under the guise of a “child’s best interest,” research consistently demonstrates that removal from family “may be ‘more damaging to the child than doing nothing at all.’” *See, e.g.,* Lynn F. Beller, *When in Doubt, Take Them Out: Removal of Children from Victims of Domestic Violence Ten Years After Nicholson v. Williams*, 22 DUKE J. GENDER L. & POL’Y 205, 216 (2015) (quoting *Nicholson v. Williams*, 203 F.Supp.2d 153, 204 (E.D.N.Y. 2002)). “The act of removal is itself an extraordinarily traumatic event that has long-term emotional and psychological consequences.” Kele M. Stewart, *Re-Envisioning Child Well-Being: Dismantling the Inequitable Intersections Among Child Welfare, Juvenile Justice, and Education*, 12 COLUM. J. RACE & L. 630, 639 (2022) (citing Shanta Trivedi, *The*

Harm of Child Removal, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 531–32 (2019)); see also Monique B. Mitchell, *The Neglected Transition: Building a Relational Home for Children Entering Foster Care* 4-5 (2016). Being disconnected from relationships and community “contributes to feelings of sadness, loss, isolation, and anxiety.” Stewart, *supra*, at 640.

The emotional and psychological impact of family separation also manifests physically in children. In the immediate moments of separation, children’s cortisol levels (“the stress hormone”) skyrocket, their blood pressure rises, and their heart rates accelerate. See Am. Bar Ass’n, *Trauma Caused by Separation of Children from Parents*, p. 6-10 (2020), at https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/child-separation-memo/parent-child-separation-trauma-memo.pdf. In the long-term, children who are separated from their families for extended periods and, therefore, are subjected to sustained periods of stress, experience significantly higher rates of cardiovascular diseases, autoimmune conditions, and respiratory diseases. Edith Chen et al., *Childhood Close Family Relationships and Health*, 72 AM. PSYCH. 555, 558 (2017).

Ongoing family separation creates a remarkable risk of long-term harm for children, including chronic exposure to toxic stress, the destruction of essential attachments, grief, loss, “anxiety, emotional distress, behavioral problems,

depression, and lifelong health consequences.” Stewart, *supra*, at 639 (citing Trivedi, *supra*, at 549-50). Grief can further manifest in “guilt, post-traumatic stress disorder, isolation, substance abuse, anxiety, low self-esteem, and despair.” Mitchell, *supra*, at 4-5.

Termination proceedings exacerbate these negative effects because the State seeks not only to temporarily disrupt a child’s relationships and connections, but to end them. The severity of the loss itself is devastating; when parental rights are terminated, children lose their legally recognized relationship with their parents, siblings, and the entirety of their extended family networks. The grave impact of termination proceedings on children and families has been emphasized by social science researchers and legal professionals alike. For example, as the American Bar Association has emphasized:

Many people with lived experience in foster care note that even in situations where they could not remain with their birth parents, a termination of parental rights carries greater consequences than the law recognizes. A TPR not only ends the relationship with birth parents, but often results in cutting connections to other family members, grandparents, cousins, aunts, uncles, even siblings.

Am. Bar Ass’n, *Resolution 606* 11-12 (2022), <https://www.americanbar.org/content/dam/aba/administrative/news/2022/08/hod-resolutions/606.pdf>.

The obliteration of the parent-child relationship through the legal system generates a unique type of harm. “[U]nlike other types of losses like death, which bring with them a sense of certainty and finality, terminating parental rights creates

an ambiguous loss” because children’s emotional and psychological ties to their birth families persist but they lack the legal relationship to the parent. Sankaran, *supra*, at 28. This raises “a ‘lifetime of questions’” about identity and belonging, and leads to “feelings of fear, anger, abandonment, shame, embarrassment, and low self-esteem.” *Id.* at 28-29 (first quoting Gina Miranda Samuels, *Ambiguous Loss of Home: The Experience of Familial (Im)permanence Among Young Adults with Foster Care Backgrounds*, 31 CHILD. & YOUTH SERVS. REV. 1229, 1230 (2009), and then citing Glaser, *supra*, at 186, 189, 270). The consequences are severe and lasting because “there is no end to the uncertainty, and therefore no hope for true closure.” Gina Miranda Samuels, Chapin Hall Ctr for Child. at the Univ. of Chi., *A Reason, A Season, or a Lifetime: Relational Permanence Among Young Adults with Foster Care Backgrounds* 13 (2008), <https://assets.aecf.org/m/resourcedoc/UC-AReasonaSeasonoraLifetime-2008.pdf>.

Acknowledging these harms, Courts have made it abundantly clear that while numerous factors must be considered in a termination proceeding, the “utmost attention” should be paid to discerning “the effect on the child of permanently severing [the parental] bond.” *In re C.M.S.*, 884 A.2d 1284, 1287 (Pa. Super. 2005); *see also, e.g., In re E.M.*, 620 A.2d 481, 484 (Pa. 1993). Additionally, it is imperative that trial courts carefully consider and weigh the totality of evidence presented when making these potentially life-altering decisions for children and families. Such

attention and care is especially important given the racist origins of the child welfare system, the racially disproportionate infliction of termination of parental rights, and our country's long legacy of devaluing Black family bonds. *See infra* Section II.

II. TERMINATION OF PARENTAL RIGHTS IS DISPROPORTIONATELY INFLICTED ON BLACK CHILDREN AND PERPETUATES THE RACIST ORIGINS OF THE CHILD WELFARE SYSTEM

The child welfare system is marked by stark racial inequity, an inevitable outcome of policies and practices originally designed to separate Black families for profit evolving into seemingly neutral laws “that obfuscate the role of race and class and operate in particularly pernicious ways in the same poor communities of color.” Stewart, *supra*, at 632. “Almost every policy pillar of the current family regulation system has been theorized to drive disproportionality and the destruction of Black families.” *Id.* at 638. This is readily apparent in the data at both the state and national level.

A. Black Children Experience TPR at More Than Twice the Rate of White Children Both in Pennsylvania and Nationally.

Both in Pennsylvania and nationally, Black children continue to be overrepresented in the child welfare system, and racial disparities permeate every stage of decision-making. *See* Children's Bureau, U.S. Dept. of Health & Hum. Servs., *Child Welfare Practice to Address Racial Disproportionality and Disparity* 3 (2021), www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf

(summarizing national data regarding racial disproportionality at various decision-making points in child welfare intervention); Pa. Dep't of Hum. Servs., *Racial Equity Report* 12-13 (2021), <https://www.dhs.pa.gov/about/Documents/2021%20DHS%20Racial%20Equity%20Report%20final.pdf>. Most troublingly, **one in forty-one** Black children will experience a termination of parental rights, which is **more than double** the rate of the general population. See Children's Rights, *Racial (In)justice in the U.S. Child Welfare System* 6 (2022) <https://www.childrensrights.org/wp-content/uploads/imported-files/Childrens-Rights-2022-UN-CERD-Report-FINAL.pdf>.

The racially disproportionate rates of family separation and termination of parental rights not only harms Black children and families as discussed *supra* in Section I, but it also serves to destabilize Black communities as a whole. “Families provide a base of support from which neighbors can join together to accomplish communal projects.” Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* 237 (2002). Placing large numbers of children in state custody “depletes a community’s social capital, weakening the group’s ability to form productive connections among its members and with people and institutions outside the community.” *Id.* at 239. It erodes a means of fighting injustice and “disrupt[s] the family and community networks that prepare children to participate in future

political life.” Stewart, *supra*, at 654 (citing Roberts, *Shattered Bonds* at 243). It also “negatively impacts neighbors’ sense of control over their lives and collective ability to get things done.” Stewart, *supra*, at 654 (citing Roberts, *Shattered Bonds, supra*, at 241). Because termination of parental rights permanently removes children from their communities, it only exacerbates these harms.

B. Racial Disproportionality in Terminations of Parental Rights Stems from the United States’ Long Legacy of Systematically Devaluing and Dismantling Black Families.

“Since its inception, the United States has wielded child removal to terrorize, control, and disintegrate racialized populations” Dorothy E. Roberts, *Torn Apart: How the Child Welfare System Destroys Black Families – And How Abolition Can Build a Safer World* 88 (2022) [hereinafter *Torn Apart*]. For more than 200 years, Black enslaved families lived under the constant threat of being violently separated by their white enslavers. “Slavery institutionalized the forced separation of Black families as a means of maintaining power and control by a system of White supremacy that is foundational to our country’s origins.” Alan J. Dettlaff, *To Address the Racist Inequities in Child Welfare Systems, Abolition is the Only Solution*, 1 CW360° 7, 7 (2021), https://cascw.umn.edu/wp-content/uploads/2021/08/360WEB_2021_508rev.pdf.

Even after slavery was abolished, “family separations between Black children and parents continued with frequency under the color of new laws.” Am. Bar Ass’n,

Resolution 606, *supra*, at 5. Vagrancy laws criminalized unemployment, which resulted in Black families being separated by reason of parental imprisonment. Ta-Nehisi Coates, *The Black Family in the Age of Mass Incarceration*, Atlantic (Oct. 15, 2015), www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/. Similarly, apprenticeship laws allowed the children of free Black parents to be “bound out” to work in white homes, often to the very people who had previously enslaved them, without the consent of their parents. *Torn Apart, supra*, at 97. In many states, Black children could be taken from their families and forced into an apprenticeship upon a finding of parental unfitness, destitution, or imprisonment. *Id.* at 96-102.

Additional laws and regulations further stripped Black families of wealth and opportunity, enabling the economic pathologizing of poor Black motherhood and the conflation of poverty with neglect. One of the earliest forms of public aid, mothers’ aid, was intended to prevent “deserving” single mothers from falling into poverty after the loss of a male breadwinner by reason of death, abandonment, or illness. Ife Floyd et al., Ctr on Budget & Pol’y Priorities, *TANF Policies Reflect Racist Legacy of Cash Assistance* 9 (2021), <https://www.cbpp.org/sites/default/files/8-4-21tanf.pdf>. This support was effectively unavailable to Black single mothers, as administrators either failed to establish programs in locations with large Black populations or adopted eligibility

criteria that disqualified Black mothers. *Id.* at 10 (finding that only 3 percent of families receiving aid in 1931 whose race was reported were headed by a Black mother). This trend continued when the Aid to Dependent Children program was established; even when Black families did qualify, they received lesser stipends. *Torn Apart, supra*, at 115.

In the 1950s, many states passed laws conditioning continued eligibility for public aid on a family's maintenance of a "suitable home," which allowed states to deny aid based on moral determinations of a home's fitness for children. Floyd et al., *supra*, at 13. The definition of "suitability" was left to the discretion of state legislatures, and often these laws targeted Black mothers. *Id.* After the enactment of these "suitability" laws, "tens of thousands of children were cut from public aid, almost all of them Black." Am. Bar Ass'n, Resolution 606, *supra*, at 6.

In 1961, the federal government issued an administrative rule (the Flemming Rule) prohibiting states from denying aid to families based on "unsuitability" unless the child was removed from the home. Laura Briggs, *Twentieth Century Black and Native Activism Against the Child Taking System: Lessons for the Present*, 11 Colum. J. Race & L. 611, 626 (2021). "The Flemming Rule . . . transformed [Aid to Dependent Children] and foster care from a system that ignored Black children to one that acted vigorously to take them." *Id.* at 626-27. When federal matching funds were made available to states to reimburse for the cost of foster care, *id.*, the foster

care population increased by 67 percent in one year. Am. Bar Ass’n, Resolution 606, *supra*, at 7. The racial composition of the foster care population also changed dramatically—Black children, who had thus far been mostly excluded from foster care services, were removed from their homes at an alarming rate. Briggs, *supra*, at 626-27.

“Welfare reform” legislation in the 1990s continued to cut financial assistance to Black families living in poverty and drive Black children into foster care. Chris Gottlieb, *Black Families are Outraged About Family Separation Within the U.S. It’s Time to Listen to Them*, Time (Mar. 17, 2021), <https://time.com/5946929/child-welfare-black-families/>. In 1999, shortly after welfare reform was enacted, the foster care population hit an all-time high of 567,000 – an increase of more than 570 percent since 1950. Am. Bar Ass’n, Resolution 606, *supra*, at 11.

“As opposed to any other racial group, it is far more likely that child removals for Black mothers resulted from poverty than maltreatment.” Gwendoline M. Alphonso, *Political-Economic Roots of Coercion—Slavery, Neoliberalism, and the Racial Family Policy Logic of Child and Social Welfare*, 11 COLUM. J. RACE & L. 471, 498 (2021) (citing Hyunil Kim & Brett Drake, *Child Maltreatment Risk as a Function of Poverty and Race/Ethnicity in the USA*, 47 INT’L. J. EPIDEMIOLOGY 780 (2018)); Stewart, *supra*, at 632. Of all Black children removed from their families, about 63% were removed for poverty related “neglect” – despite representing only

approximately 14% of the entire population. Children’s Rights, *Fighting Institutional Racism at the Front End of Child Welfare Systems* (2021), pg. 4, at https://www.childrensrights.org/wp-content/uploads/2021/05/Childrens-Rights-2021-Call-to-Action-Report.pdf?utm_source=dailykos&utm_medium=email&utm_campaign=ciofr (citing AFCARS 2019 Data Set).

The over-representation of Black children in poverty-related “neglect” removals is unsurprising and inevitable – Black communities have been systemically under-resourced for decades. Enduring consequences of racism, including residential segregation, discrimination in labor markets, unequal access to quality education, and implicit and explicit biases perpetuate the disproportionate concentration of Black families among the poor. See Emma P. Williams, *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy*, upEND, p. 7-10, <https://upendmovement.org/wp-content/uploads/2022/06/upEND-Regulation.pdf>.

The laws, policies, and practices that created racially disproportionate rates of family separation have also resulted in racially disproportionate rates of termination of parental rights. As national and international bodies have recognized, the legal profession has an obligation to address and dismantle racism in our laws and policies. A recent resolution adopted by the American Bar Association explains that

“legal professionals have a responsibility to untangle the child welfare field from [the] foundation rooted in racism by challenging laws, policies and practices that have the impact of devaluing Black parent and child bonds.” Am. Bar Ass’n, Resolution 606, *supra*, at 7-8. The resolution calls for “federal, state, local, territorial, and tribal governments and courts, as well as attorneys, judges, legislatures, governmental agencies, and policymakers” to:

- (1) Recognize implicit and explicit bias and acknowledge collective responsibility for challenging laws, policies, and practices that devalue Black families and normalize systemic racism and family separation;
- (2) Ensure all legal decisions, policies, and practices regarding children’s wellbeing respect the value of Black children and families’ racial, cultural, and ethnic identities and the connections, needs, and strengths that arise from those identities; and
- (3) Consult, listen to, and be led by Black parents, children, and kin with lived experience in child welfare to learn how to support constructive steps to end the legacy of Black family separation under the law.

Id. at 1.

The United Nations, too, has called on the United States to take action to eliminate racial disparity and disproportionality in the child welfare system, including the amendment or repeal of laws that have a disparate impact on families of racial and ethnic minorities. United Nations Comm. on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America* 10 (2022),

https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_10-12_49769_E.pdf.

This history and call to action provides important context for the matter before this Court. The trial court here heard testimony from several witnesses, including multiple case managers, in-home service providers, treatment providers, Mother, and Father. However, inexplicably, the trial court appears to credit the testimony of one case manager over the conflicting testimony of other witnesses without issuing credibility determinations, without resolving the conflicts in testimony, and without any indication that the testimony of the remaining nine witnesses was considered or weighed at all. Because Black children are far more likely to become subject to a termination of parental rights hearing, condoning this judicial oversight would only further exacerbate the child welfare system’s disparate treatment of Black children and continue the United States’ legacy of devaluing Black families and communities at large.

III. ENVIRONMENTAL FACTORS, SUCH AS HOUSING CONDITIONS AND INCOME, SHOULD NEVER BE THE BASIS FOR TERMINATION OF PARENTAL RIGHTS

Today, “[i]nadequacy of income, more than any other factor, constitutes the reason that children are removed.” Trivedi, *supra*, at 536 (quoting Duncan Lindsey, *The Welfare of Children* 175 (2004)). Of the 250,000 children removed from their homes in 2020, approximately 70% were removed from their families for poverty-

related “neglect.” Adoption & Foster Care Analysis & Reporting System (“AFCARS”) 2020 Data Set (with analysis by Children’s Rights’ Advocacy and Policy Department). Issues like “inadequate housing” or failure to provide “adequate nutrition” were the among the most cited sources of “neglect.” *Civil Legal Advocacy to Promote Child and Family Well-Being, Address the Social Determinants of Health, and Enhance Community Resilience*, Child.’s Bureau, Admin. for Child. & Families, Dep’t of Health & Hum. Servs. <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2102.pdf>.

State and federal law provide minimal guidance to assess the “adequacy” of a family’s home, furnishings, material provisions, and income, and what little guidance does exist is vague. *See* David Pimental, *Punishing Families for Being Poor: How Child Protection Interventions Threaten the Right to Parent While Impoverished*, 71 OKLA. L. REV. 885, 895-96 (2019). As a result, these assessments are left to the discretion of agency investigators and case managers who rely upon their own judgment and instincts to determine the “appropriateness” of a family’s home. *Id.* This creates a legal paradigm that is ripe for bias, and thus requires close judicial oversight to ensure that families are not separated and permanently severed for environmental conditions related to poverty.

The Adoption Act explicitly states that “[t]he rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing,

furnishings, income, clothing and medical care if found to be beyond the control of the parent.” 23 Pa.C.S. § 2511(b). However, in the instant matter, the trial court relied heavily on testimony from one agency case worker regarding “environmental concerns” in the family home as well as the parents’ alleged failure to provide documentation of sufficient income to support its decision to terminate parental rights. Inexplicably, the trial court failed to engage at all with the testimony of the in-home service providers who worked personally with Mother and Father and who had most recently visited the family home and found it to be appropriate for the children. The trial court’s failure to resolve this evidentiary conflict is not only an abuse of discretion, but it is also extremely problematic where the outcome was to permanently sever a family’s ties to one another. Additionally, the trial court’s focus on the cleanliness of the home and speculation about whether the parent’s income was “sufficient” to support their children upon reunification is plainly not a permissible basis to terminate parental rights.

The trial courts tasked with deciding whether to permanently sever family relationships must not take that decision lightly. It is imperative that trial courts evaluate all the evidence and testimony presented, and it is equally imperative that appellate courts ensure that trial courts have carefully weighed and considered the totality of the record. In light of the proven benefits for children that result from maintaining lifelong family connections and the lasting harm that termination of

parental rights inflicts upon children, families, and communities, as well as the plain language of the Adoption Act, termination of parental rights should never be premised upon conditions of a family's housing or a family's finances.

CONCLUSION

WHEREFORE, for the foregoing reasons, we urge this Court to reverse the trial court's termination of Mother and Father's parental rights.

Respectfully submitted,

/s/

Caroline Buck, ID No. 322699
COMMUNITY LEGAL SERVICES
100 N. 18th St, Ste. 3400
Philadelphia, PA 19103
(215) 981-3733
cbuck@clsphila.org

/s/ Marsha L. Levick
Marsha L. Levick, ID No. 22535

/s/

Riya Saha Shah, ID No. 200644

/s/

Courtney M. Alexander, Texas ID
No. 24082614
JUVENILE LAW CENTER
1800 JFK Blvd, Ste. 1900B
Philadelphia, PA 19103
(215) 625-0551

mlevick@jlc.org
rshah@jlc.org@jlc.org
calexander@jlc.org

/s/

Keisha Hudson, ID No. 89352

/s/

Mimi Laver, ID No. 59811
DEFENDER ASSN OF PHILADELPHIA
1441 Sansom St
Philadelphia, PA 19102
khudson@philadefender.org
mlaver@philadefender.org
(215) 586-3190

Counsel for Amici Curiae

Dated: May 1, 2024

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 531 and 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 5,443 words. In preparing this certificate, I relied on the word count feature of Microsoft Word. I further certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that requires filing confidential information and documents differently than non-confidential information and documents.

Dated: May 1, 2024

/s/

Caroline Buck, Esq.

CHILDREN’S FAST TRACK APPEAL

COMMUNITY LEGAL SERVICES, INC.
BY: Caroline Buck, Esq.
PA Id. No. 322699
100 N. 18th Street, Suite 3400
Philadelphia, PA 19103
(215) 981-3733

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

In the Interest of E.D.A., II., a minor	:	No. 20 MAP 2024
In the Interest of E.J.A., a minor	:	No. 21 MAP 2024
In the Interest of R.M.A., a minor	:	No. 22 MAP 2024
In the Interest of A.B.A., a minor	:	No. 23 MAP 2024
In the Interest of B.W., a minor	:	No. 24 MAP 2024
	:	
Appeal of T.W.A., Mother	:	CONSOLIDATED
_____	:	

CERTIFICATE OF COMPLIANCE WITH Pa.R.A.P. 127

I hereby certify that the foregoing brief complies with Sections 7.0 and 8.0 of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.

Date: May 1, 2024

/s/

Caroline Buck, Esq.

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_____	:	

CERTIFICATION OF SERVICE

Caroline Buck, Esquire, hereby certifies that she served the foregoing *Brief* for *Amici Curiae*, on this date, by first class mail and electronic delivery via PacFile, to the following persons:

Andrea Fitzsimmons, Esq.
33 E Philadelphia St
York, PA 17401

Kristina Forrey, Esq.
119 E Market St
York, PA 17401

Thomas Gregory, Esq.
1 E Market St Ste 201
York, PA 17401

Brandy Hoke, Esq.

119 E Market St
York, PA 17401

Thomas Kearney, Esq.

Ferro Law Firm
345 E Market St
York, PA 17403

Martin Miller, Esq.

1 East Market Street, Suite 201
York, PA 17401

Christopher Moore, Esq.

101 E Philadelphia St
York, PA 17401

Laura Smith, Esq.

115 E Philadelphia St
York, PA 17401

David Worley, Esq.

101 E Philadelphia St
York, PA 17401

Date: May 1, 2024

/s/

Caroline Buck, Esq.
Community Legal Services, Inc.