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FILING ID #	1746508	**TRIAL COURT DOCKET #**	FN-13-000147-22 FN-13-000147-22
APPELLATE #	A-003789-23	**TRIAL COURT COUNTY**	MONMOUTH
CASE TITLE	DCPP V. C.J. (DECEASED) AND R.A. (DECEASED) I/M/O C.J. AND A.K.A.		
CASE TYPE	FAMILY	**DISPOSITION DATE**	06/18/2024
CATEGORY	CHILD ABUSE/NEGLECT		
TRIAL COURT JUDGE	TERESA ANN KONDRUP-COYLE		

PARTY/ATTORNEY

PARTY NAME	PARTY ROLE	PARTY DESIGNATION	FIRM NAME - ATTORNEY NAME / ATTORNEY ROLE	ADDRESS
C.J.	OTHER	APPELLANT	OFFICE OF LAW GUARDIAN APPELLATE - MEREDITH ALEXIS POLLOCK (ATTORNEY OF RECORD) OFFICE OF LAW GUARDIAN - SAMANTHA VERWILT (CO-COUNSEL) OFFICE OF LAW GUARDIAN - CECILY JOVAN VELEZ-TOLIVER (CO-COUNSEL) TODD WILSON, LLC - TODD S WILSON (DESIGNATED COUNSEL)	, 840 BEAR TAVERN ROAD 2ND FLOOR EWING, NJ 08628 609-530-3623 ALEXIS.POLLOCK@OPD.NJ.GOV; DANIELLE.CHARLES@OPD.NJ.GOV; LAWGUARDIAN.APPELLATE@OPD.NJ.GOV , 630 BANGS AVENUE 3RD FLOOR ASBURY PARK, NJ 07712 732-869-2268 SAMANTHA.VERWILT@OPD.NJ.GOV; CARMEN.JONES@OPD.NJ.GOV; SHAREE.WELLS@OPD.NJ.GOV , 630 BANGS AVENUE 3RD FLOOR ASBURY PARK, NJ 07712 732-869-2268 CECILY.VELEZ@OPD.NJ.GOV; SHAREE.WELLS@OPD.NJ.GOV 609 MAIN ST, STE 201 TOMS RIVER, NJ 08753 732-350-7646 TWILSON@TODDWILSONLAW.COM
CHILD-ADVOCACY ORGANIZATIONS	OTHER	MOVANT	VENABLE LLP - PATRICK J BOYLE (ATTORNEY OF RECORD) VENABLE LLP - MICHAEL A GUERRA (ON THE BRIEF)	151 W 42ND ST, 49TH FL NEW YORK, NY 10036 212-307-5500 pboyle@venable.com; nylitigationdocketing@venable.com 151 W 42ND ST, 49TH FL NEW YORK, NY 10036 212-307-5500 maguerra@venable.com; jnovikov-carles@venable.com; nylitigationdocketing@venable.com
NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY	PLAINTIFF	RESPONDENT	ATTORNEY GENERAL LAW - SOOKIE BAE-PARK (FORMER) ATTORNEY GENERAL LAW - LORI J DE CARLO (ATTORNEY OF RECORD) ATTORNEY GENERAL LAW - SOOKIE BAE-PARK (OF COUNSEL) ATTORNEY GENERAL LAW - CHRISTINA ANNE DUCLOS (CO-COUNSEL) ATTORNEY GENERAL LAW - ELIEZER DAVID	25 MARKET ST, PO BOX 112 TRENTON, NJ 08625-0112 609-984-3900 dol.appeals@law.njoag.gov 153 HALSEY STREET, 8TH FLOOR NEWARK, NJ 07102 973-565-8185 LORI.DECARLO@LAW.NJOAG.GOV;

			SANCHEZ-SILVER (CO-COUNSEL) ATTORNEY GENERAL LAW - MIRA OGRIZOVIC (CO-COUNSEL) ATTORNEY GENERAL LAW - CYNTHIA J SCHAPPELL (CO-COUNSEL) ATTORNEY GENERAL LAW - MICHAEL A THOMPSON (CO-COUNSEL) ATTORNEY GENERAL LAW - LEAH A SCHMIDT (CO-COUNSEL) ATTORNEY GENERAL LAW - WESLEY G HANNA II (FORMER) ATTORNEY GENERAL LAW - WESLEY G HANNA II (CO-COUNSEL)	JEANNA.KEITT@LAW.NJOAG.GOV 25 MARKET ST, PO BOX 112 TRENTON, NJ 08625-0112 609-984-3900 DOL.APPEALS@LAW.NJOAG.GOV 25 MARKET ST, PO BOX 112 TRENTON, NJ 08625-0112 609-984-3900 CHRISTINA.DUCLOS@LAW.NJOAG.GOV 25 MARKET ST, PO BOX 112 TRENTON, NJ 08625-0112 609-984-3900 ELIEZER.SILVER@LAW.NJOAG.GOV 25 MARKET ST, PO BOX 112 TRENTON, NJ 08625-0112 609-984-3900 MIRA.OGRIZOVIC@LAW.NJOAG.GOV 25 MARKET ST, PO BOX 112 TRENTON, NJ 08625-0112 609-984-3900 CYNTHIA.SCHAPPELL@LAW.NJOAG.GOV; SUSAN.MILLER@LAW.NJOAG.GOV 25 MARKET ST, PO BOX 112 TRENTON, NJ 08625-0112 609-984-3900 michael.thompson@law.njoag.gov 25 MARKET ST, PO BOX 112 TRENTON, NJ 08625-0112 609-984-3900 LEAH.SCHMIDT@LAW.NJOAG.GOV; KANDY.TORRES@LAW.NJOAG.GOV; SUSAN.MILLER@LAW.NJOAG.GOV 401 WHITE HORSE ROAD, SUITE 101 VOORHEES, NJ 08043 856-770-6265 DCFSOUTH@LAW.NJOAG.GOV; WESLEY.HANNA@LAW.NJOAG.GOV
RUTGERS CHILD ADVOCACY CLINIC AND ADVOCATES FOR CHILDREN OF NEW JERSEY	OTHER	AMICUS	RUTGERS CHILD ADVOCACY CLINIC - RANDI S MANDELBAUM (ATTORNEY OF RECORD)	123 WASHINGTON ST, NEWARK, NJ 07102 973-353-3196 RMANDELBAUM@KINOY.RUTGERS.EDU

DOCUMENTS

DOCUMENT / FILE NAME	FILING PARTY	FIRM NAME / ATTORNEY ATTENTION	CATEGORY / DOCUMENT TYPE	SOURCE	DATE DOCUMENT CREATED	STATUS
MOTION TO APPEAR AS AMICUS CURIAE (M-003204-25)	CHILD-ADVOCACY ORGANIZATIONS	VENABLE LLP - PATRICK J BOYLE	MOTION - TO APPEAR AS AMICUS CURIAE	SYSTEM GENERATED	01/28/2026	SUBMITTED
Motion Supporting Document	CHILD-ADVOCACY ORGANIZATIONS	VENABLE LLP - PATRICK J BOYLE	MOTION SUPPORTING DOCUMENTS/ ANSWERS/ OPPOSITIONS/ ATTACHMENTS - MOTION CERTIFICATION/SUPPORTING	UPLOAD	01/28/2026	SUBMITTED

			DOCUMENT			
AMICUS CURIAE BRIEF	CHILD-ADVOCACY ORGANIZATIONS	VENABLE LLP - PATRICK J BOYLE	BRIEF AND APPENDIX - AMICUS CURIAE BRIEF	UPLOAD	01/28/2026	SUBMITTED
CERTIFICATION OF CONFIDENTIAL IDENTIFIERS	CHILD-ADVOCACY ORGANIZATIONS	VENABLE LLP - PATRICK J BOYLE	APPELLATE DOCUMENTS - CERTIFICATION OF CONFIDENTIAL IDENTIFIERS	SYSTEM GENERATED	01/28/2026	SUBMITTED
PROOF OF SERVICE	CHILD-ADVOCACY ORGANIZATIONS	VENABLE LLP - PATRICK J BOYLE	APPELLATE DOCUMENTS - PROOF OF SERVICE	SYSTEM GENERATED	01/28/2026	SUBMITTED

FEES AND PAYMENTS

Fee Type	Fee Amount	Fee Status	Fee Paid	Payment Date	Payment Type	Amount Due
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RELATED APPEALS

CASE TYPE	APPELLATE #	TRIAL COURT/ AGENCY DOCKET #	CASE TITLE	DISPOSITION DATE	STATUS
No record found.					

Superior Court of New Jersey

Appellate Division

Docket Nos. A-003789-23T4 and A-003791-23T4 (consolidated)

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY, *Plaintiff-Respondent,* vs. C.J. (DECEASED) and R.A. (DECEASED), *Defendants.* In the Matter of C.J. and A.K.A., *Minors-Appellants.*	:	CIVIL ACTION ON APPEAL FROM A FINAL ORDER OF THE SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, MONMOUTH COUNTY DOCKET NO. FN-13-147-22 Sat Below: HON. TERESA ANN KONDRUP-COYLE, J.S.C.

BRIEF OF *AMICI CURIAE* CHILD-ADVOCACY ORGANIZATIONS

VENABLE LLP
Attorneys for Amici Curiae
151 West 42nd Street
New York, New York 10036
(212) 307-5500
pjboyle@venable.com
maguerra@venable.com

On the Brief:
PATRICK J. BOYLE
Attorney ID# 036081997
MICHAEL A. GUERRA
Attorney ID# 089092013

Date Submitted: January 28, 2026

CP COUNSEL PRESS (800) 4-APPEAL • (389978)

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Amici curiae are national and state child-advocacy nonprofit organizations listed in Appendix A to the accompanying certification (together, the "Child-Advocacy Amici"). Undersigned *pro bono* counsel submits this brief on their behalf in support of their motion for leave to appear, pursuant to Rules 1:13-9 and 2:8-1. The Child-Advocacy Amici respectfully request that the Court grant the Motion of Child-Advocacy Amici to appear, file this brief, and argue at oral argument.

PRELIMINARY STATEMENT

The issues raised in this case are of profound importance not only to foster children in New Jersey, but also to foster children nationwide who receive federal benefits while in state foster-care systems, due to their own disability (SSI benefits) or due to the death of a parent (survivor's OASDI benefits). Federal law requires that these benefits be utilized in the child's best interests.[1] For years, the State of New Jersey, through its foster care agency, the Division of Child Protection and Permanency (the "Division"), acted contrary to those interests. After becoming a foster child's representative payee ("RP"), a

[1] Benefits may be used "only for the use and benefit of the beneficiary…. A payee must use benefits to provide for the beneficiary's current needs… or for reasonably foreseeable needs. If not needed for these purposes,… the payee must conserve or invest benefits on behalf of the beneficiary." Soc. Sec. Admin., *Program Operations Manual System (POMS) GN 00602.001 (Use of Benefits)*.

fiduciary role, the State was taking the foster child's federal benefits as income to the State's general fund, ostensibly to reimburse itself for the cost of the child's basic care, rather than using those benefits for a child's current special needs, or conserving them so that they are available when the child ages out of foster care or is reunified. As discussed below, this practice is not required by federal law, is now contrary to federal policy (as discussed *infra*), and is in fact contrary to New Jersey law.

This issue is of paramount importance to scores of foster children in New Jersey who are receiving or will receive these federal benefits. Nationally, based on the most recently available data, approximately 5.3% of all foster children receive SSI or OASDI benefits, and an estimated 10% or more are eligible for them.[2]

Depriving foster children of access to their own funds has a tremendous immediate and long-term impact on them. For example, it is well understood that children aging out of the foster care system are at a crucial crossroads. Many of them "struggle to find their footing once they leave care, experiencing

[2] Cong. Res. Serv., *Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions* 8, 24 (2021) (noting that one study estimated that 20% of foster children have qualifying disabilities); *see also* Eli Hager & Joseph Shapiro, *State Foster Care Agencies Take Millions of Dollars Owed to Children in Their Care* (NPR, Apr. 22, 2021).

negative outcomes in a range of areas."[3] Approximately 29% of youth who remain in foster care beyond their 17th birthday experience homelessness between the ages of 19 and 21.[4] Less than 3% eventually obtain bachelor's degrees.[5] Not only may these children require access to their benefits to address their special needs that the state does not meet, but these benefits can also provide an irreplaceable lifeline for a child leaving the foster care system. In recognition of the importance of foster children having access to their own federal benefits, New Jersey along with ten other states (Arizona, Illinois, Kansas, Maryland, Massachusetts, Missouri, Nevada, New Mexico, Ohio, and Oregon) and the District of Columbia have enacted legislation or issued rules to prohibit or limit this practice.[6] While this appeal was pending, Governor Murphy signed into law S-3153/A-4543, which formally codifies a policy of conserving federal benefits received by youth in out-of-home placement and

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[3] Peggy Kelly, *Risk and Protective Factors Contributing to Homelessness Among Foster Care Youth: An Analysis of the National Youth in Transition Database*, 108 Child. & Youth Servs. Rev. 104589 (2020).

[4] *Id.*

[5] Molly Sarubbi et al., Education Comm'n of the States, *Strengthening Policies for Foster Youth Postsecondary Attainment* (2016).

[6] *See, e.g.,* Ariz. Rev. Stat. Ann. § 8-468 (2025) (requiring that federal benefits be saved for children's own use when they exit foster care instead of being used to pay for the cost of care while in Department of Child Safety's custody); Md. Code Ann., Fam. Law § 5-527.1(c) (2025) (requiring the Department of Human Services, when serving as representative payee for a child's federal benefits, to allocate an increasing percentage of benefits for the child's needs rather than reimbursing the State for care costs).

prohibits the State from using those benefits to offset the cost of foster care, except to the extent necessary to maintain eligibility—the very practice at issue in this appeal. The statute affirms that federal benefits belong to the children they were intended to support and reflects a bipartisan legislative recognition of the harms that can flow from diversion of those funds.

However, because the statute is not retroactive, it does not undo the Division's prior practices or address whether the Family Part may review or remedy past diversions of benefits, including the diversions at issue here. Accordingly, Callie and Ava's[7] appeals remain ripe and their claims for return of funds wrongfully withdrawn and declaratory relief under New Jersey law remain essential to vindicate rights not remedied by the new legislation.

These legal issues affect significant numbers of foster children. More than ten similar cases are currently pending in the Appellate Division. *See, e.g.*, *N.J. Div. of Child Prot. & Permanency v. J.L.P. & B.J.W.*, No. A-000097-24T2 (N.J. Super. Ct. App. Div.); *N.J. Div. of Child Prot. & Permanency v. A.R. & P.W.*, No. A-003075-23T1 (N.J. Super. Ct. App. Div.). Recognizing the recurring nature of these legal issues, on October 16, 2025, the Appellate Division ordered eight related cases to be calendared as back-to-back appeals before the same

[7] Consistent with the briefing this case, this letter uses pseudonyms for the children to protect their confidentiality pursuant to R. 1:38-3(d). The "children" refer to Callie and Ava together.

panel, including this case. *See N.J. Div. of Child Prot. & Permanency v. D.K.L.H. & T.T.H., Sr., I/M/O T.T.H. Jr. & C.C.P.H.*, No. A-003391-23T2 (N.J. Super. Ct. App. Div. Oct. 16, 2025) (order granting motion to consider related cases back-to-back).

In this case, the minor appellants, Callie and Ava, entered foster care following the death of their mother (and later, the death of Ava's father) and became eligible for OASDI survivor benefits as a result. After obtaining custody of the children, the Division applied to the SSA to become RP and thereafter diverted the children's monthly benefits to the State, rather than conserving those funds or using them for the children's individual needs. Through their counsel, the children sought review of the Division's actions in the Family Part, arguing that New Jersey statutes require the State to pay for the maintenance of children in its custody and that the Division's practice of receiving the children's benefits and applying those funds toward state maintenance obligations was therefore unlawful.

Despite a strong statutory mandate and exclusion, discussed below, the Family Part held that it lacked jurisdiction to review the Division's use of the children's survivor benefits because federal law preempted state-court review of the Division's conduct as representative payee. The court concluded that oversight of the Division's use of federal benefits rested solely with the Social

Security Administration, not New Jersey courts, and any challenge to the Division's conduct had to be pursued through federal administrative processes and federal court.

The children's appeal presents three important issues, all warranting reversal of the decision below: (1) whether federal procedures and substantive law supplant state law (*i.e.*, whether exhaustion and preemption prohibit the Family Part from considering these issues); (2) whether New Jersey law prohibits the Division from taking the benefits; and (3) whether the practice violates the New Jersey Constitution (where amici largely incorporate the arguments raised by Appellants).

LEGAL ARGUMENT

I. Federal Law Does Not Prevent New Jersey Courts from Deciding Whether the Division Violated New Jersey Law When It Used Appellants' Federal Benefits to Reimburse the State for Foster Care Maintenance Costs.

The Family Part erred in ruling that Appellants had to exhaust federal administrative remedies and procedures before they could raise the issue in their Family Part cases and that federal law preempts application of state law and the authority of state courts to decide how federal benefits may be utilized. Regarding exhaustion, no authority holds that a party must exhaust federal remedies before proceeding in state court to challenge a state agency's patent violation of state law where the federal agency (i) has no authority to decide

state law; (ii) is in fact prohibited by federal law from issuing any financial remedy against the state agency; and (iii) therefore cannot provide relief for the claimed violation. A federal preemption ruling is even more at odds with the facts: (i) not only does federal law not address this issue (state-law violations by state agencies) and thus does not supplant clear state-law prohibitions, but federal policy supports Appellants' claims; (ii) federal law expressly bars the federal government from enforcing the children's financial rights against the Division; and (iii) notwithstanding the supposed preemption of state law on the issue, the New Jersey Legislature has indeed enacted the specific state-law prohibition that the Appellants asked the Family Part to make, and the Governor signed the bill into law, thereby reaffirming that no preemption applies.

A. Exhaustion.

The Family Part's determination that Callie and Ava had to first challenge the Division's diversion of funds through federal administrative proceedings at the SSA is wrong for the simple reason that no federal remedy is available to them against the Division.[8] In other words, such a process would be futile, and

[8] Although the Family Part did not use the term "exhaustion" expressly in its June 4, 2024 Order & Statement of Reasons, it repeatedly ruled that challenges to the Division's use of the children's federal benefits must be pursued through the SSA and then, if at all, through federal court, and that the Family Part therefore lacked authority to grant relief. *See* Ma397–405. As this ruling applies both exhaustion and preemption principles, Amici address both here; the concepts of exhaustion, preemption, and exclusive federal jurisdiction are

the law is settled that the exhaustion rule does not apply to futile processes. *See Abbott v. Burke*, 495 A.2d 376, 391 (N.J. 1985) (explaining exceptions to the exhaustion doctrine include "when the administrative remedies would be futile"); *Deal Gardens, Inc. v. Bd. of Trs.*, 226 A.2d 607, 611 (N.J. 1967) (holding that plaintiff was not required to exhaust its remedy before the board of adjustment because doing so would have been futile); *Rumana v. City of Passaic*, 936 A.2d 971, 981 (N.J. Super. Ct. App. Div. 2007) ("[W]here the issue is a question of law and the application of administrative expertise is not required, the interests of justice and expediency negate the requirement of exhaustion."); *cf.* N.J. Ct. R. 4:69-5 ("Except where it is manifest that the interest of justice requires otherwise, actions under R. 4:69 shall not be maintainable as long as there is available a right of review before an administrative agency which has not been exhausted."); N.J. Ct. R. 2:2-3 (authorizing appellate review of decisions of state administrative agencies unless administrative remedies remain, "unless the interest of justice requires otherwise"); *McCarthy v. Madigan*, 503 U.S. 140, 148–49 (1992) (discussing prior decisions where exhaustion rule was not applied in light of futility).

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closely intertwined in the decision below and in the Division's arguments more broadly. Moreover, the requirement to pursue federal administrative remedies before seeking state-court relief has been raised explicitly in related appeals scheduled for back-to-back consideration with this case.

Adjudicating an administrative claim against the Division within the SSA would be futile for two reasons: (1) no federal remedy against the Division is available; and (2) the SSA lacks constitutional authority and subject-matter jurisdiction to consider a claim that a *state agency* is violating *state law* in its administration of the children's federal benefits.

First, Ava and Callie do not have available a federal remedy to compel the Division to repay them the funds wrongfully taken in violation of state law. The Social Security Act expressly prohibits SSA from requiring state and local agencies to return funds that they misused in their fiduciary capacity as a beneficiary's representative payee:

> If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is ***not a Federal, State, or local government agency*** has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

42 U.S.C. § 405(j)(7)(A) (emphasis added). No provision of the Social Security Act mandates a state or local governmental agency to provide restitution to a beneficiary, let alone restitution that is required by state law, as opposed to

federal law. The Family Part simply did not address this key statutory limitation in the SSA's jurisdiction.

Second, not only is the SSA prohibited from compelling the Division to repay Callie and Ava, but it also has no power to determine whether the Division's diversion of benefits violates New Jersey's statutory scheme. Callie and Ava's claim arises under state law, not federal law: they contend that New Jersey's statutory scheme places responsibility for the cost of foster care on the State itself and prohibits the Division from using benefits it holds in trust to reimburse the State. Federal agencies lack jurisdiction to adjudicate alleged state-law violations by state agencies; this is a fundamental feature of the constitutional system of dual sovereignty, which vests states, not the federal government, with the exclusive jurisdiction over the states' police power. *See, e.g.*, *Printz v. United States*, 521 U.S. 898, 922 (1997) ("The power of the Federal Government would be augmented immeasurably if it were able to impress into its service — and at no cost to itself — the police officers of the 50 States."). This is doubly the case here, where the issue is whether a state agency is violating state law—a question that the federal government has no business deciding in our system of federalism and the Eleventh Amendment's strict prohibition against judicial decrees intruding upon the State's sovereign immunity (especially with regard to monetary claims). *See, e.g.*, *Seminole Tribe*

v. Florida, 517 U.S. 44, 65 (1996) ("the entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by private parties against a State without consent given") (cleaned up, citations omitted). If, as *Seminole Tribe* squarely held, even in establishing Article III judicial power in federal courts, Congress cannot abrogate state sovereign immunity beyond the Fourteenth Amendment, surely an Article I federal agency cannot do so. This is especially true where Congress has prohibited the very recovery sought. Indeed, the very notion that a federal agency—contrary to federal statute—could compel a state agency to forfeit funds because it violated state law is absurd. Putting aside the extraordinary fact that a state agency is advocating for such an extraordinary surrender of its sovereignty, the fact remains that federal Article I agencies simply lack the jurisdiction to enforce state laws against errant state agencies.

For these two reasons, if the exhaustion doctrine were to apply here, it would leave foster children like Callie and Ava without any meaningful viable forum to vindicate their property and statutory rights, or would require them to go through a hollow exercise of pursuing federal administrative remedies that simply do not exist. In other words, the Family Part's decision requires foster children to pursue a federal administrative remedy that federal law expressly denies them. Forcing children to exhaust SSA remedies in this context

effectively insulates the Division from judicial review of its compliance with New Jersey's child welfare laws and deprives the children of a forum for redress, a clear denial of the core elements of due process: the rights to be heard and seek redress. New Jersey's exhaustion doctrine does not require such a labyrinthine, futile path to assert their clear rights under state law. The Family Part plainly erred in insisting that the children pursue federal remedies that do not exist and proceed in a federal forum that cannot hear their state-law claims.

B. Preemption.

The Family Part's ruling that the Social Security Act preempts Callie and Ava's claim also is wrong for multiple reasons: (i) the Social Security Act has no explicit or implicit prohibition against enforcement of state laws restricting state agencies' use of the funds, and, indeed, federal policy supports the very rule advocated by Callie and Ava here; (ii) the Social Security Act's provision clarifying that the SSA does not remediate the misuse of a child's benefits when the state agency is the representative payee flatly contradicts the Family Part's ruling that the Social Security Act reserves to the federal government an exclusive right to control the state's actions as representative payee; and (iii) the Legislature's recent enactment of statutory reforms abolishing the Division's practice demonstrates and confirms New Jersey's plenary power to curtail the practice.

First, the Family Part's ruling misapplies the preemption doctrine. Courts must assume that Congress did not intend to displace state courts' authority over historic regulatory powers, like oversight of their own state agencies' conduct, or their concurrent jurisdiction as to federal matters, and will not find preemption absent an "explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Tafflin v. Levitt*, 493 U.S. 455, 459–60 (1990) (citation omitted); *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 85 (1994) ("matters left unaddressed in such a [comprehensive and detailed federal] scheme are presumably left subject to disposition provided by state law"). Courts must apply that "deeply rooted presumption in favor of concurrent state court jurisdiction." *Tafflin*, 493 U.S. at 459. The presumption against preemption is rebuttable only where Congress has expressly or unmistakably divested state courts of authority. *Id.* The presumption is especially powerful here given the Family Part's exercise of historic state police power. State courts, not federal courts, have primary jurisdiction in the child welfare arena, with *parens patriae* oversight over the state's care of children. "[F]ederal courts consistently have shown special solicitude for state interests" in these areas. *Lehman v. Lycoming Cnty. Children's Servs. Agency*, 458 U.S. 502, 512 (1982)

(rejecting federal habeas jurisdiction over state-court decision terminating parental rights).

Under this principle, federal regulation "should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that Congress has unmistakably so ordained." *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963). In other words, "exclusive federal court jurisdiction over cases arising under federal law has been the exception rather than the rule." *Tafflin*, 493 U.S. at 459. When considering the effect of this presumption, "[t]he Supreme Court has repeatedly stated that 'the mere existence of a federal regulatory scheme,' even a particularly detailed one, 'does not by itself imply pre-emption of state remedies.'" *Holk v. Snapple*, 575 F.3d 329, 339 (3d Cir. 2009) (quoting *English v. Gen. Elec. Co.,* 496 U.S. 72, 87 (1990)); *see also Hillsborough Cnty. v. Automated Med. Labs., Inc*., 471 U.S. 707, 713 (1985). The Division has not identified any express prohibition against state-court adjudication (express preemption), any direct conflict between state and federal law for that matter (conflict preemption), or such comprehensive federal regulation that leaves no room for any state law to govern how state agencies may act when holding foster children's federal funds (implied "field" preemption).

As to field preemption, any contention that the federal government has occupied the field and left no room for state independence on the issue is flatly contradicted by federal policy calling upon state agencies to take exactly the same steps that Ava and Callie advocate here: letting the foster children keep their federal benefits. *See* Joseph Shapiro, *Trump administration tells states to end 'orphan tax' on foster kids* (NPR, Jan. 12, 2026) (discussing the Administration's recognition that taking benefits is immoral and should no longer occur); U.S. Dep't of Health & Human Servs., Admin. for Children & Families, *ACF Notifies 39 Governors That States Are Diverting Foster Youths' Earned Social Security Survivor Benefits* (Dec. 11, 2025). Indeed, the federal government agency responsible for foster care, the Administration for Children and Families ("ACF"), has expressly affirmed in formal guidance that state law may control how state foster-care agencies utilize their fiduciary control over the children's benefits: "In addition to SSA's rules, [state foster-care] agency payees ***may be subject to state or local rules on the use of benefits***." *See* Soc. Sec. Admin. & U.S. Dep't of Health & Human Servs., *Dear Colleague Letter on Representative Payees for Children in Foster Care* (Aug. 17, 2023) (emphasis added).

The preemption doctrine does not operate in a policy vacuum. When a federal agency indicates its intent to defer to state power on an issue, the

presumption against preemption should apply. *See Holk*, 575 F.3d at 338–39 (noting in support of applying presumption against preemption "the FDA has stated that it does not intend to occupy the field") (citing *Wyeth v. Levine*, 555 U.S. 555, 576 (2009) ("we have attended to an agency's explanation of how state law affects the regulatory scheme")). The federal government's recognition that state law should apply here and its concurrence with Ava and Callie's position that the practice is harmful to children and should end is more than enough to preclude any application of the preemption principle to shield the Division's contrary actions and policies.

Second, the Social Security Act's express prohibition against SSA's authority to obtain refunds from state agencies when they misuse their authority representative payees, 42 U.S.C. § 405(j)(7), discussed *supra*, itself precludes preemption. If the federal government cannot provide a remedy when state agencies violate state law and profit from the foster children they serve, the field is left open to the state itself to do so. Preemption obviously does not apply to a subject where federal law *disables* the federal government from taking necessary restitutionary action against the state agency. If anything, this is reverse preemption: Congress has expressly prohibited SSA from acting, leaving (if not compelling) the state to police itself against a rogue agency violating state law. It is hard to imagine a more compelling instance for applying the

presumption against preemption than where federal law requires the federal government to leave the state alone.

Even where recoveries against representative payees are permitted, the Social Security Act does not preclude state-court jurisdiction. For example, 42 U.S.C. § 405(j)(1)(A) expressly confers concurrent jurisdiction on *either* the SSA Commissioner "*or a court of competent jurisdiction"* to determine whether a representative payee "has misused" a benefit, such that SSA may withdraw certification of the RP and a *private* RP may be liable for repayment. Although some courts have applied circular reasoning to conclude that a "court of competent jurisdiction" must mean a federal court only, nothing in the term itself connotes such a narrow meaning. To the contrary, the U.S. Code elsewhere defines the term to *include* state courts.[9] Again, the statutory scheme is entirely compatible with state-court jurisdiction.

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[9] *See*, *e.g.*, 18 U.S.C. § 2711(3) ("the term 'court of competent jurisdiction' includes— … (B) a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants"); 18 U.S.C. § 2037(2) ("term 'court of competent jurisdiction' means— … (B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device"). As discussed in *In re J.G.*, 652 S.E.2d 266, 272 (N.C. Ct. App. 2007), multiple courts have held "that state courts have concurrent jurisdiction to hear disputes between a representative payee and a beneficiary concerning the use of Social Security funds." *See Jordan v. Heckler,* 744 F.2d 1397, 1399 (10th Cir. 1984) (recognizing that common-law restitution "claims could however go against the representative as an individual with state law remedies available"); *Jahnke* v. *Jahnke,* 526 N.W.2d 159, 163 (Iowa 1994); *Grace Thru Faith v. Caldwell,* 944

As a New York court aptly put it, "[t]he Supremacy Clause … does not preclude the State from promulgating additional procedural safeguards governing the handling of social security benefits by State payees." *Shields v. Katz*, 533 N.Y.S.2d 451, 453 (N.Y. App. Div. 1988) (requiring due process for state psychiatric hospital patients subject to a statutory scheme appointing the hospitals as representative payees for the patients and authorizing the hospitals to use Social Security benefits to pay for the patients' care and maintenance). In a similar case, future Third Circuit chief judge Edward R. Becker ruled that the Social Security Act's provisions touching on notice and representative payees preclude states from applying additional non-conflicting due-process safeguards pursuant to general state law principles:

> [W]hen the SSA chooses to make a state revenue agent the recipient of a patient's social security benefits it is within a state's power to require simply that the agent should still act in accordance with his state legislative directives. … There is positively nothing in the Social Security Act or the SSA regulations which requires Pennsylvania to offer its revenue agents for unconditional service as representative payees.
>
> ***
>
> We do not, of course, dispute the general proposition that federal law supersedes inconsistent state law. The flaw in the defendants' supremacy argument, however, is their seeming presumption that the operation of any federal law at all on the subject of the appointment of a payee is automatically and necessarily exclusive.

S.W.2d 607, 609–13 (Tenn. Ct. App. 1996); *Catlett v. Catlett,* 561 N.E.2d 948, 953 (Ohio Ct. App. 1988); *In re Estate of Kummer,* 461 N.Y.S.2d 845, 860–61 (N.Y. App. Div. 1983).

Vecchione v. Wohlgemuth, 426 F. Supp. 1297, 1304 (E.D. Pa.), *aff'd*, 558 F.2d 150 (3d Cir. 1977). So, too, here. The lack of any indication that the Act's safeguards are exclusive, especially regarding foster children in state custody, leaves significant holes in the federal scheme, rendering field preemption inapt.

Third, the recent statutory prohibition against the Division's actions puts the Family Part's preemption ruling to a direct test: if state judicial power to prevent the Division from taking the children's benefits is preempted by the Social Security Act, so too is state legislative power. Preemption applies to state law in general; it does not distinguish between one form of state law (i.e., a judicial decree) and another (a statute). Yet the Division has not suggested that the new statute is preempted by federal law, nor has the federal government, nor have the other jurisdictions that have enacted similar reforms. Indeed, the federal government is openly encouraging states to halt their policies and practices of seizing the children's benefits for the states' own financial compensation. But overturning these statutes would be the clear and inevitable consequence of a ruling here that state law is preempted by the Social Security Act.[10]

[10] It should be noted that courts in two other jurisdictions have held that state due-process requirements are not preempted but substantive state-laws are supplanted by the federal statutory and regulatory regimen. *See Off. Children's Servs. v. Z.C. ex rel. Kaufman*, 569 P.3d 1153 (Alaska 2025); *In re Ryan W.*, 76 A.3d 1049 (Md. 2013). Those distinctions are wrong under the preemption

The statutory amendments also end any argument by the Division that the Supreme Court's decision in *Wash. State Dep't of Soc. and Health Servs. v. Guardianship Est. of Keffeler*, 537 U.S. 371 (2002), precludes state-court action here. *Keffeler* principally involved a question of federal statutory construction that is not at issue here, so the Division relies on dicta, not a holding by the Supreme Court. *See id.* at 375 (framing the sole issue as whether the State of Washington violated the Social Security Act's anti-attachment provision). Moreover, the dicta discuss the need to defer to state policy on how best to utilize the funds and manage resources, and here the Legislature has rejected the Division's policy choice. In any event, the dicta were based largely upon SSA's interpretation of the law, applying *Chevron* deference, *see id.* at 390–91, and thus no longer have persuasive weight given the Supreme Court's abrogation of *Chevron* in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024).

In sum: where the federal government has encouraged states to act, and where New Jersey has made it clear that the funds belong to the children and should not be used to reimburse the Division for paying for the children's cost of foster care, the preemption doctrine does not apply. Indeed, amici understand

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principles discussed above, as the dissent in *Ryan W.* explains, *see id*. at 1170–74 (Adkins, J., dissenting), but, in any event, they did not consider the specific arguments here, such as the express prohibition on federal action in 42 U.S.C. § 405(j)(7).

that the Family Division, Union County, has reached this conclusion in a new decision issued two weeks ago. Appellants' challenge is corroborated by another Family Part decision analyzing the same statutory scheme, underscoring the errors in the ruling below.

At bottom, the preemption and exhaustion rulings suffer from the same flaw. Why would Congress want to immunize state agencies from obeying the strictures of state law governing their operation—laws that prevent discrimination, require due process, and protect foster children's assets from being pocketed by the State? The silence in federal law speaks volumes. There simply is no reason to believe that Congress intended to supplant state laws that protect foster children from voracious state agencies hoping to pocket the very assets the agencies are required to protect and administer for the benefit of the children. Without clear Congressional intent, the preemption doctrine simply does not apply.

II. New Jersey Law Has Long Prohibited the Division from Utilizing the Funds It Holds in Trust for Foster Children for the State's Benefit

New Jersey's statutory scheme is clear that the State, not the child, is responsible for the cost of maintaining children in foster care. At the time of the proceedings below and all pertinent times beforehand, it expressly required the State to seek reimbursement only from "legally responsible persons," and

only adults, not children, can be responsible persons. N.J.S.A. 30:4C-29.1.[11] Although N.J.S.A. 30:4C-22 authorizes the Division, in its discretion, to apply a child's funds toward maintenance in certain limited circumstances, it expressly prohibits doing so when the funds are held in the corpus of a trust. As the foster children's fiduciary, the Division holds their federal benefits in trust and must use the funds in the children's best interest.

The term "corpus of a trust" is generic and refers to the funds held in trust—here, the children's federal benefits, which are held by the Division as fiduciary for the benefit of the foster child. *See, e.g.*, *Trust corpus*, Black's Law Dictionary (12th ed. 2024) ("The body of the trust and the principal of the trust, referring to all funds and other real and personal property transferred to the trust.").

Black's Law Dictionary makes clear that a trust relates to the relationship of holding property on behalf of another—not the existence of a formal trust instrument. *See Trust*, Black's Law Dictionary (12th ed. 2024) ("1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title;" or "2. A fiduciary relationship regarding property and charging the person with title to the property with equitable duties

[11] Section 29.1 was repealed earlier this year to prevent the Division from seeking reimbursement from responsible persons. This repeal reinforces the impropriety of the policy of self-reimbursement from foster children.

to deal with it for another's benefit;" or "3. The property so held; corpus"); *see also In trust*, Collins Dictionary (2026) ("If something valuable is kept in trust, it is held and protected by a group of people or an organization on behalf of other people.") (attached as Appendix B to the accompanying certification); *Held in trust*, The Law Dictionary (2026) ("A term used to describe property held by a person who is not the owner but who is a trustee or an agent.") (attached as Appendix C to the accompanying certification). Accordingly, because the Division takes, holds, and applies the funds in its status as a fiduciary (and indeed must, pursuant to federal law, keep them in a segregated account until expended), the funds plainly are the corpus of a trust and may not be taken by the Division to reimburse the State for the foster child's maintenance.

Thus, the State has no legal right under New Jersey law to use its control over foster children's property to reimburse itself for the cost of their care. Foster children are not "responsible persons" under the statute's express terms. This is consistent with the general statutory framework. The Division is authorized to make payments for maintenance from the funds appropriated by the Legislature. N.J.S.A. 30:4C-29. N.J.S.A. 30:4C-27, -29, and -30 place the duty of maintenance squarely on the State and county treasuries, which amplifies the statutory prohibition. Read together, these provisions make clear that the

Legislature intended the State to bear the financial responsibility for providing maintenance to a child in foster care, and to permit use of a child's funds only as a narrow exception, not as a general reimbursement policy. *See* N.J.S.A. 30:4C-22; N.J.S.A. 30:4C-29.1; N.J.S.A. 30:4C-31; N.J.S.A. 30:4C-56. The statutory framework reflects a deliberate legislative choice: when the State assumes custody of a child, it also assumes full financial responsibility for that child's care. The Union County Family Part's decision from two weeks ago shows that the Division's actions contradict core statutory constraints on state funding.

In sum: the Family Part incorrectly interpreted New Jersey state law. The combination of N.J.S.A. 30:4C-22 and 29.1 prohibited the Division from seeking reimbursement from foster children. N.J.S.A. 30:4C-27, -29, and -30 make clear that the State, not children in foster care, must bear the costs of maintenance. The New Jersey Legislature's recent enactment expressly prohibiting this practice does not suggest that the Division's prior conduct was lawful; rather, it confirms the Legislature's longstanding allocation of financial responsibility to the State. By allowing the Division to treat Callie and Ava's survivor benefits as reimbursement for state obligations, the decision below undermines this legislative mandate and diminishes the rights of children in out-of-home placement. This is not merely a technical dispute about funding

streams; it is about whether foster children have meaningful rights to their own property while under state supervision.

III. The Division's Practice Violates Due Process and Equal Protection.

Finally, the case raises constitutional concerns of due process and equal protection.

Regarding equal protection, children in foster care who receive survivor or disability benefits are treated as second-class citizens by the State. Many of these children are disabled or orphaned, yet, instead of protecting their benefits for future needs, the Division diverts those funds to reimburse itself for foster care costs. No similar policy exists to seize the assets of non-disabled or non-orphaned children, such as wages from part-time jobs or inheritances. The result is that children with federal benefits are singled out to pay for their own foster care, while their peers without federal benefits receive the full value of state support. This disparate treatment discriminates against the most vulnerable children in New Jersey's foster care system and violates equal protection.

Two related cases have so ruled. In *State v. Reed*, 473 A. 2d 775, 781 (Conn. 1984), the Connecticut Supreme Court held that the state violated equal protection when it required hospitalized prisoners acquitted by reason of insanity to pay for their cost of hospitalization but did not require payment by hospitalized prisoners who were convicted but subsequently hospitalized for

severe mental health reasons and civil confinement while sentenced. And in *Veccione v. Wohlgemuth*, 377 F. Supp. 1361, 1370 (E.D. Pa. 1974), a three-judge panel found an equal protection violation when competent civilly-committed hospital patients had their Social Security survivor's benefits seized to pay for the cost of care without any notice, but incompetent hospitalized Social Security recipients were entitled to notice and guardianship proceeding if their assets exceed $2,500. The Division's disparate practices here discriminate among similarly situated foster children and thus also violate equal protection.

Regarding due process, as discussed above, other jurisdictions (Alaska in *OCS v. Z.C. ex rel. Kaufman* and Maryland in *In re Ryan W.*) have held that the lack of notice to foster children violates due process. Similarly, the federal three-judge panel in *Veccione* ruled that a state's "practice of taking custody and control of all [OASDI] monies" of state psychiatric hospital patients "deprives plaintiff of her rights to use of her property" and violates due process by denying notice and an opportunity to be heard. 377 F. Supp. at 1370. The violation was especially troubling given the state's dual role as fiduciary and creditor, where "the state interference with the plaintiff's right to use and control her property is in behalf of itself as creditor." *Id.*

Rather than repeat the arguments already before the Court, amici adopt Appellants' arguments on both issues.

CONCLUSION

For the foregoing reasons, the Child-Advocacy Amici respectfully request that the Court authorize them to appear, file this brief, and argue this appeal at oral argument. The Child-Advocacy Amici further respectfully urge the Court to reverse the Family Part's June 4, 2024 order, hold that New Jersey courts may adjudicate the legality of the Division's use of foster children's federal benefits under New Jersey law, and remand for further proceedings consistent with that holding.

Dated: January 28, 2026

Respectfully submitted,
VENABLE LLP

By: Patrick J. Boyle

Patrick J. Boyle (ID# 036081997)
Michael A. Guerra (ID# 089092013)
151 West 42nd Street, 49th Floor
New York, New York 10036
Tel.: (212) 307-5500
PJBoyle@venable.com
MAGuerra@venable.com

Pro Bono Counsel for Proposed Child-Advocacy Amici Curiae

Certification that Submission Contains No Confidential Information or Confidential Personal Identifiers

This form shall be completed by any party who files a document in a public court matter in the Supreme Court or in the Appellate Division of the Superior Court.

1. **Confidential information / confidential personal identifiers** (must select one):
   I certify that I have reviewed Rules 1:38-3, 1:38-5, and 1:38-7 and:

   ☐ This document does not contain any confidential information or any confidential personal identifiers; **OR**

   ☐ This document; previously contained confidential information or confidential personal identifiers, which have been redacted (meaning removed or made anonymous by using fictitious first names or initials, where applicable). The cover of the redacted version of the document contains the word "REDACTED." I acknowledge that a non-redacted version must be filed simultaneously with the redacted version in matters where the confidential information is necessary to the disposition of the matter: **OR**

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This certification pertains to the following documents included in this filing:

AMICUS CURIAE BRIEF, MOTION TO APPEAR AS AMICUS CURIAE, Motion Supporting Document

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

01/28/2026	**S/ PATRICK J BOYLE, Esq.**
Date	Signature of Attorney or Pro Se Litigant

(*) truncated due to space limit. Please find full information in the additional pages of the form.

New Jersey Judiciary
Superior Court - Appellate Division
NOTICE OF MOTION

PATRICK J BOYLE, Esq.
VENABLE LLP
151 W 42ND ST
49TH FL
NEW YORK, NY 10036
212-307-5500
pboyle@venable.com
nylitigationdocketing@venable.com

DOCKET NO: **A-003789-23**

DCPP
V.
C.J. (DECEASED) AND R.A. (DECEASED)
I/M/O
C.J. AND A.K.A.

Notice of Motion:

MOTION TO APPEAR AS AMICUS CURIAE

FOR ORAL ARGUMENT

PLEASE TAKE NOTICE that the undersigned hereby moves before the Superior Court of New Jersey, Appellate Division, for an Order granting the above relief:

In support of this motion, I shall rely on the accompanying brief or certification.

I hereby certify that I am submitting the original of this notice of motion and accompanying brief or certification to the Clerk of the Appellate Division, and submitting same upon my adversary by email notification. If delivery by non-electronic means, two copies of same will be served upon the following:

TO:

MEREDITH ALEXIS POLLOCK, Esq.
OFFICE OF LAW GUARDIAN
APPELLATE
840 BEAR TAVERN ROAD
2ND FLOOR
EWING, NJ 08628

SAMANTHA VERWILT, Esq.
OFFICE OF LAW GUARDIAN
630 BANGS AVENUE 3RD
FLOOR
ASBURY PARK, NJ 07712

CECILY JOVAN VELEZ-TOLIVER, Esq.
OFFICE OF LAW GUARDIAN
630 BANGS AVENUE 3RD

FLOOR
ASBURY PARK, NJ 07712

TODD S WILSON, Esq.
TODD WILSON, LLC
609 MAIN ST
STE 201
TOMS RIVER, NJ 08753

LORI J DE CARLO, Esq.
ATTORNEY GENERAL LAW
153 HALSEY STREET
8TH FLOOR
NEWARK, NJ 07102

SOOKIE BAE-PARK, Esq.
ATTORNEY GENERAL LAW
25 MARKET ST
PO BOX 112
TRENTON, NJ 08625-0112

CHRISTINA ANNE DUCLOS, Esq.
ATTORNEY GENERAL LAW
25 MARKET ST
PO BOX 112
TRENTON, NJ 08625-0112

ELIEZER DAVID SANCHEZ-SILVER, Esq.
ATTORNEY GENERAL LAW
25 MARKET ST
PO BOX 112
TRENTON, NJ 08625-0112

MIRA OGRIZOVIC, Esq.
ATTORNEY GENERAL LAW
25 MARKET ST
PO BOX 112
TRENTON, NJ 08625-0112

CYNTHIA J SCHAPPELL, Esq.
ATTORNEY GENERAL LAW
25 MARKET ST
PO BOX 112
TRENTON, NJ 08625-0112

MICHAEL A THOMPSON,

Esq.
ATTORNEY GENERAL LAW
25 MARKET ST
PO BOX 112
TRENTON, NJ 08625-0112

LEAH A SCHMIDT, Esq.
ATTORNEY GENERAL LAW
25 MARKET ST
PO BOX 112
TRENTON, NJ 08625-0112

WESLEY G HANNA II, Esq.
ATTORNEY GENERAL LAW
401 WHITE HORSE ROAD
SUITE 101
VOORHEES, NJ 08043

RANDI S MANDELBAUM, Esq.
RUTGERS CHILD ADVOCACY CLINIC
123 WASHINGTON ST
NEWARK, NJ 07102

For: MOVANT,
CHILD-ADVOCACY ORGANIZATIONS
s/ PATRICK J BOYLE, Esq.
VENABLE LLP
BAR ID#: 036081997 Date: 01/28/2026
EMAIL: pboyle@venable.com; nylitigationdocketing@venable.com

Trial court #: FN-13-000147-22
Trial court disposition date: 06/18/2024 (*)
Category: CHILD ABUSE/NEGLECT
Type: FAMILY
County: MONMOUTH (*)
Trial Court Judge name: TERESA ANN KONDRUP-COYLE (*)

New Jersey Judiciary
Superior Court - Appellate Division

NOTICE OF MOTION

Below are the additional trial court orders added by all parties.

Trial Court Docket #	Disposition Date	Trial Court County	Trial Court Judge
FN-13-000147-22	06/04/2024	MONMOUTH	TERESA ANN KONDRUP-COYLE

VENABLE LLP
Patrick J. Boyle (ID# 036081997)
Michael A. Guerra (ID# 089092013)
151 West 42nd Street, 49th Floor
New York, New York 10036
Tel.: (212) 307-5500
PJBoyle@venable.com
MAGuerra@venable.com

Pro Bono Counsel for Proposed Child-Advocacy Amicus Curiae

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY, *Plaintiff-Respondent*, v. C.J. (DECEASED) and R.A. (DECEASED), *Defendants,*	APPELLATE DIVISION DOCKET NOS. A-003789-23T4 and A-003791-23T4 (consolidated) CIVIL ACTION On Appeal from a Final Order in the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County FN-13-147-22 SAT BELOW: Hon. Teresa Ann Kondrup-Coyle, J.S.C.
In the Matter of C.J. and A.K.A., *Minors-Appellants*	TRIAL COURT DOCKET NO. FN-13-000147-22

CERTIFICATION OF PATRICK J. BOYLE

I, PATRICK J. BOYLE, hereby certify as follows:

1. I am a partner with the law firm Venable LLP, *pro bono* counsel to the national and state child-advocacy non-profit organizations listed in Appendix A to this certification (the "Proposed Child-Advocacy *Amici*").

2. I respectfully submit this Certification in support of the Proposed Child-Advocacy *Amici*'s motion for leave to participate and appear in this matter as *amicus curiae*, file their brief, and argue at oral argument.

3. As discussed in the Proposed Child-Advocacy *Amici*'s brief accompanying this motion, the issues raised in this case are of profound importance not only to foster children in New Jersey, but also to foster children nationwide who receive federal benefits while in state foster-care systems, due to their own disability or due to the death of a parent. After becoming a foster child's representative payee, a fiduciary role, the State of New Jersey uses the foster child's benefits to reimburse itself for the child's basic care, rather than using those benefits for a child's current special needs or conserving them so that they are available when the child ages out of foster care. This case challenges the legality of that practice and therefore could have significant impact for foster children nationwide.

4. As addressed in more detail in the accompanying Appendix A, the Proposed Child-Advocacy *Amici* are well-versed and uniquely situated to offer

this Court insight and perspective on the importance of reversing the Family Part's decision below.

5. The Proposed Child-Advocacy *Amici* are non-profits that specialize in youth advocacy and defending the rights of children, several of which with a particular focus on foster care, in states and jurisdictions across the country.

6. Appendix B is a true and correct copy of a dictionary definition of the term "in trust" from Collins Dictionary, which is cited in the amici brief.

7. Appendix C is a true and correct copy of a dictionary definition of the term "held in trust" from The Law Dictionary, which is cited in the amici brief.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 28, 2026

/s/ Patrick J. Boyle

By: _____

Patrick J. Boyle (ID# 036081997)

APPENDIX A TO BOYLE CERTIFICATION: LIST OF AMICI ORGANIZATIONS SIGNING AMICI BRIEF AND STATEMENTS OF ORGANIZATIONAL INTEREST

Children's Advocacy Institute (CAI).

> Children's Advocacy Institute, founded at the nonprofit University of San Diego School of Law in 1989, is an academic, research, and advocacy nonprofit organization working to improve outcomes for children and youth, with special emphasis on improving the child protection and foster care systems. In its academic component, CAI trains law students and attorneys to be effective child advocates, and its research and advocacy, conducted in offices in San Diego, Sacramento, and Washington, D.C., leverage change for children and youth through impact litigation; regulatory, administrative and legislative advocacy; and public education. CAI has advocated for federal, state, and local reform to preserve the federal benefits of foster youth for 17 years.

Children's Rights.

> Children's Rights is a national organization committed to improving the lives of children who are in or impacted by government child-serving systems. Through advocacy and legal action, Children's Rights investigates, exposes, and combats violations of the rights of children, and holds governments accountable for keeping kids safe, healthy, and supported. For 30 years, Children's Rights has achieved lasting, systemic change for hundreds of thousands of children across more than 20 jurisdictions throughout the United States. Children's Rights has specific experience related to improving the array of placements and services for older youth in the foster care system, including those designed to prevent grave outcomes for youth when they exit the foster care system.

Facing Foster Care in Alaska (FFCA).

> Facing Foster Care in Alaska is a lifeline for Alaska foster youth and alumni. A statewide network of current and former foster youth, it leads efforts in advocacy, training, and peer support to improve the lives of thousands of foster youth across Alaska. FFCA empowers current and former foster youth to share their lived-expertise to be heard in key decisions affecting children and families. It advocates for the rights of

Alaska foster youth to obtain and utilize their federal benefits to meet current and future needs.

Juvenile Law Center (JLC).

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. It 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, JLC is the first non-profit public interest law firm for children in the country. Its legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, JLC 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.

Lawyers For Children (LFC).

Lawyers for Children is a not-for-profit legal corporation dedicated to protecting the rights of individual children in foster care in New York City and compelling system-wide child welfare reform in New York State and throughout the country. This year, our attorney-social worker teams will represent children and youth in more than 5,000 proceedings in New York City Family Courts. In addition, LFC publishes guidebooks and other materials for both children and legal practitioners, conducts professional legal and social work training sessions, and works to reform systems affecting vulnerable children though legislative advocacy and impact litigation. LFC's experience, expertise and insight as amicus curiae on matters pertaining to court-involved children has been accepted by state and federal courts throughout the country. LFC's insight into the issues in this matter is borne of more than 40 years' experience acting as court-appointed attorneys for children in matters pertaining to their care and custody.

Legal Aid Society

The Legal Aid Society is the nation's largest and oldest provider of legal services to low-income families and individuals. The Society operates three major legal practices – Civil, Criminal and Juvenile Rights – providing comprehensive legal services throughout New York City. The

Legal Aid Society's Juvenile Rights Practice (JRP) represents approximately 90 percent of the children who appear before the New York City Family Courts in all five boroughs, typically serving as the attorney-for-the-child in approximately 30,000 proceedings annually. JRP represents children in proceedings dealing with allegations of abuse, neglect, juvenile delinquency, Persons in Need of Supervision, and other proceedings affecting children's rights and welfare. Its office represents most children placed in foster care in New York City, many of whom are or have been eligible for Supplemental Security Income and Old-Age, Survivors, and Disability Insurance. Collectively, its clients have had millions of dollars in federal benefits rerouted to pay for the foster care system. In addition to representing many thousands of children each year in trial and appellate courts, The Legal Aid Society pursues impact litigation and other law reform initiatives on behalf of our clients.

National Center for the Rights of Abused Children.

The Center for the Rights of Abused Children is a national public interest law firm that defends the constitutional and property rights of children in foster care. The Center has led successful reforms in Arizona, Colorado, Kansas, and Missouri to stop state agencies from seizing foster children's Social Security benefits and regularly trains attorneys and judges on safeguarding foster youths' Social Security benefits and property rights.

National Foster Youth Institute (NFYI).

The National Foster Youth Institute is a nonprofit organization dedicated to ensuring that current and former foster youth have a voice in shaping the policies and systems that affect their lives. NFYI has a strong interest in this case because the financial security and equitable treatment of current/former foster youth are central to its mission.

Nebraska Appleseed Center for Law in the Public Interest.

The Nebraska Appleseed Center for Law in the Public Interest is a public interest, legal advocacy organization that works to improve a variety of public systems Nebraskans interact with through community, policy, and legal advocacy. This includes over twenty years of extensive advocacy specifically focused on improving Nebraska's child welfare system to ensure families interacting with it have meaningful access to the supports and services they are entitled to receive. Recently, this has included

passing multiple pieces of legislation to increase the rights of Nebraska's foster youth receiving Social Security benefits and helping attorneys and child welfare professionals implement those in individual cases.

APPENDIX B TO BOYLE CERTIFICATION: definition of the term "in trust" from Collins Dictionary.

Definitions Summary Synonyms

Definition of 'in trust'

in trust

phrase

If something valuable is kept in trust, it is held and protected by a group of people or an organization on behalf of other people.

The British Library holds its collection in trust for the nation. [+ for]

Works of art are in trust to us during our lifetime.

See full dictionary entry for trust

You may also like

See full dictionary entry for trust

in trust

in American English

in the position of being left in the care or guardianship of another

She left money to her uncle to keep in trust for her children

See full dictionary entry for trust

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Times, Sunday Times (2008)

in trust

in truth

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in tune/out of tune

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APPENDIX C TO BOYLE CERTIFICATION: definition of the term "held in trust" from The Law Dictionary.

Held In Trust

Definition and Citations:

A term used to describe property held by a person who is not the owner but who is a trustee or an agent.

TLD Example: The parties to the contract agreed to have the down payment held in trust by the attorney for the seller until the transaction was completed.

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PATRICK J BOYLE, Esq.
VENABLE LLP
151 W 42ND ST
49TH FL
NEW YORK, NY 10036
212-307-5500
pboyle@venable.com
nylitigationdocketing@venable.com

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V.
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ELECTRONICALLY TO:
ATTORNEY NAME: MEREDITH ALEXIS POLLOCK, Esq.
ALEXIS.POLLOCK@OPD.NJ.GOV; DANIELLE.CHARLES@OPD.NJ.GOV; LAWGUARDIAN.APPELLATE@OPD.NJ.GOV
ATTORNEY NAME: SAMANTHA VERWILT, Esq.
SAMANTHA.VERWILT@OPD.NJ.GOV; CARMEN.JONES@OPD.NJ.GOV; SHAREE.WELLS@OPD.NJ.GOV
ATTORNEY NAME: CECILY JOVAN VELEZ-TOLIVER, Esq.
CECILY.VELEZ@OPD.NJ.GOV; SHAREE.WELLS@OPD.NJ.GOV
ATTORNEY NAME: TODD S WILSON, Esq.
TWILSON@TODDWILSONLAW.COM
ATTORNEY NAME: LORI J DE CARLO, Esq.
LORI.DECARLO@LAW.NJOAG.GOV; JEANNA.KEITT@LAW.NJOAG.GOV
ATTORNEY NAME: SOOKIE BAE-PARK, Esq.
DOL.APPEALS@LAW.NJOAG.GOV
ATTORNEY NAME: CHRISTINA ANNE DUCLOS, Esq.
CHRISTINA.DUCLOS@LAW.NJOAG.GOV
ATTORNEY NAME: ELIEZER DAVID SANCHEZ-SILVER, Esq.
ELIEZER.SILVER@LAW.NJOAG.GOV
ATTORNEY NAME: MIRA OGRIZOVIC, Esq.
MIRA.OGRIZOVIC@LAW.NJOAG.GOV
ATTORNEY NAME: CYNTHIA J SCHAPPELL, Esq.
CYNTHIA.SCHAPPELL@LAW.NJOAG.GOV; SUSAN.MILLER@LAW.NJOAG.GOV
ATTORNEY NAME: MICHAEL A THOMPSON, Esq.
michael.thompson@law.njoag.gov
ATTORNEY NAME: LEAH A SCHMIDT, Esq.
LEAH.SCHMIDT@LAW.NJOAG.GOV; KANDY.TORRES@LAW.NJOAG.GOV;

SUSAN.MILLER@LAW.NJOAG.GOV
ATTORNEY NAME: WESLEY G HANNA II, Esq.
DCFSOUTH@LAW.NJOAG.GOV; WESLEY.HANNA@LAW.NJOAG.GOV
ATTORNEY NAME: RANDI S MANDELBAUM, Esq.
RMANDELBAUM@KINOY.RUTGERS.EDU

BY MAIL:

I certify that the forgoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Attorney for MOVANT
CHILD-ADVOCACY ORGANIZATIONS

Dated: **01/28/2026**

By: **S/ PATRICK J BOYLE, Esq.**