



**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-001801-24**

**DCPP
V.
J.G., JR., D.B., H.G., AND R.F.
I/M/O
J.G. III, I.G., AND H.G.**

Notice of Motion:

MOTION TO APPEAR AS AMICUS CURIAE

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

MICHAEL T WOLF, Esq.
MICHAEL T. WOLF, PC
1109 S MAIN ST
PLEASANTVILLE, NJ 08232

KELLY M DONEGAN, Esq.
OFFICE OF LAW GUARDIAN
20 EAST CLEMENTON RD
STE 301 NORTH
GIBBSBORO, NJ 08026

DANIEL L J ADAMEK, Esq.
OFFICE OF LAW GUARDIAN
APPELLATE
840 BEAR TAVERN ROAD
2ND FLOOR
EWING, NJ 08628

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

**WILLIAM THOMAS HARVEY
JR, Esq.**
ATTORNEY GENERAL LAW
25 MARKET ST
PO BOX 114
TRENTON, NJ 08625-0114

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

**ELIZABETH HELMS
WALLACE, 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

**ADRIENNE MARIE
KALOSIEH, Esq.**
OFFICE PARENTAL
REPRESENTATION
APPELLATE
31 CLINTON STREET
12TH FLOOR
NEWARK, NJ 07102

LYNETTE RENTE, Esq.
OFFICE PARENTAL
REPRESENTATION
APPELLATE
31 CLINTON STREET
12TH FLOOR
NEWARK, NJ 07102

**JOHN ANDREW ALBRIGHT,
Esq.**
OFFICE PARENTAL
REPRESENTATION
APPELLATE
31 CLINTON STREET
12TH FLOOR
NEWARK, NJ 07102

LYNETTE RENTE, Esq.
OFFICE PARENTAL
REPRESENTATION
APPELLATE
31 CLINTON STREET
12TH FLOOR
NEWARK, NJ 07102

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

**ROBERT FERGUSON PRO
SE**

837 EAST LANDIS AVENUE
VINELAND, NJ 08360

DEBRA PORTER PRO SE

1404 SPRING GARDEN RD
MILLVILLE, NJ 08332

Trial court #: FN-06-000087-23
Trial court disposition date: 01/08/2025 (*)
Category: CHILD ABUSE/NEGLECT
Type: FAMILY
County: CUMBERLAND (*)

Trial Court Judge name: TARIQ H. CHAUDHRI (*)

For: MOVANT,
CHILD ADVOCACY ORGANIZATIONS
s/ PATRICK J BOYLE, Esq.
VENABLE LLP
BAR ID#: 036081997 Date: 02/06/2026
EMAIL: pboyle@venable.com;
nylitigationdocketing@venable.com



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-06-000087-23	09/20/2024	CUMBERLAND	TARIQ H. CHAUDHRI

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.

J.G., JR., D.P., H.G., AND R.F.,

Defendants-Respondents,

In the Matter of J.G. III, I.G.,

Minors-Appellants, and

H.G.,

Minor-Respondent.

APPELLATE DIVISION DOCKET
NOS. A-001801-24T2 and A-
0011802-24T2

CIVIL ACTION

On Appeal from a Final Order in the
Superior Court of New Jersey,
Chancery Division, Family Part,
Cumberland County
FN-06-87-23

SAT BELOW:
Hon. Tariq H. Chaudrhi, J.S.C.

TRIAL COURT DOCKET
NO. FN-06-000087-23

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 *Amicus Curiae* Child-Advocacy Organizations”).

2. I respectfully submit this Certification in support of the Proposed *Amicus Curiae* Child-Advocacy Organizations’ 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 *Amicus Curiae* Child-Advocacy Organizations’ 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 *Amicus Curiae* Child-Advocacy Organizations 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 *Amicus Curiae* Child-Advocacy Organizations 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. Rule 1:13-9(a) contemplates that amici seeking leave to appear will identify “the nature of the applicant’s special interest, involvement or expertise” as it relates to the issues presented. The Proposed *Amicus Curiae* Child-Advocacy Organizations satisfy that requirement because their work directly concerns the protection of foster children’s rights and property interests, including the safeguarding of federal benefits intended for foster children’s current and future needs while they are in state custody.

7. As detailed in Appendix A, several of the Proposed *Amicus Curiae* Child-Advocacy Organizations have expertise in child-welfare advocacy and reform, including through impact litigation, legislative advocacy, and training for attorneys and other stakeholders who work with foster youths. These organizations include Children’s Rights, Facing Foster Care in Alaska, and

Nebraska Appleseed Center for Law in the Public Interest. Their experience provides the Court with a perspective on how the challenged practices affect children in foster care in real-world settings and how courts and agencies have addressed these issues in other jurisdictions.

8. In addition, some Proposed *Amicus Curiae* Child-Advocacy Organizations, including Juvenile Law Center, Lawyers for Children, and Legal Aid Society provide direct legal representation to children in foster-care proceedings. Their experience representing foster youths provides practical insight into the fiduciary issues implicated when a state agency acts as a child's representative payee and the consequences to children when benefits intended for them are instead used to reimburse the State for the cost of foster care. Collectively, the Proposed *Amicus Curiae* Child-Advocacy Organizations have a special interest in the outcome of this appeal and offer expertise that will assist the Court beyond the arguments of the parties.

9. 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 amicus brief.

10. 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 amicus 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: February 6, 2026

By: /s/ Patrick J. Boyle
Patrick J. Boyle (ID# 036081997)

APPENDIX A TO BOYLE CERTIFICATION: LIST OF CHILD-ADVOCACY AMICUS ORGANIZATIONS SIGNING AMICUS 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 through 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.

LANGUAGE

TRANSLATOR

GAMES

SCHOOLS



Collins

in trust



AI Assistant

BETA



English Dictionary | French | German | Italian | Spanish

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

Collins COBUILD Advanced Learner's Dictionary.

Copyright © HarperCollins Publishers

You may also like



Wordle Helper



Scrabble Tools

Quick Word Challenge

Question: 1 - Score: 0 / 5

SPORTS

Drag the correct answer into the box.



table tennis

track cycling

windsurfing

skateboarding

[Cookies Settings](#)

By clicking "Accept All Cookies", you agree to the storing of cookies on your device to enhance site navigation, analyze site usage, and assist in our marketing efforts.

Accept All Cookies

[LANGUAGE](#)

[TRANSLATOR](#)

[GAMES](#)

[SCHOOLS](#)



[English Dictionary](#) | [French](#) | [German](#) | [Italian](#) | [Spanish](#)

See full dictionary entry for [trust](#)

Webster's New World College Dictionary, 5th Digital Edition. Copyright © 2025 HarperCollins Publishers.

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](#)

Most material © 2005, 1997, 1991 by Penguin Random House LLC. Modified entries © 2019 by Penguin Random House LLC and HarperCollins Publishers Ltd

New collocations added to dictionary

Collocations are words that are often used together and are brilliant at providing natural sounding language for your speech and writing.

FEBRUARY 13, 2020

[READ MORE](#)



[LANGUAGE](#)

[TRANSLATOR](#)

[GAMES](#)

[SCHOOLS](#)



≡ **Collins**

 **AI Assistant**
BETA

English Dictionary | [French](#) | [German](#) | [Italian](#) | [Spanish](#)

company HarperCollins.

We welcome feedback: [report an example sentence to the Collins team.](#) [Read more...](#)

Politicians have given away powers that they held in trust for the people.

TIMES, SUNDAY TIMES (2009)

All land held by emperor in trust for people.

CHRISTIANITY TODAY (2000)

The powers that our politicians are giving away are powers that they hold in trust for the people.

TIMES, SUNDAY TIMES (2008)

By clicking "Accept All Cookies", you agree to the storing of cookies on your device to enhance site navigation, analyze site usage, and assist in our marketing efforts.

[LANGUAGE](#)

[TRANSLATOR](#)

[GAMES](#)

[SCHOOLS](#)



AI Assistant

BETA

Collins

English Dictionary | [English](#) | [French](#) | [German](#) | [Italian](#) | [Spanish](#)

[in trust](#)

[in truth](#)

[in tune with/out of tune with](#)

[in tune/out of tune](#)

[All ENGLISH words that begin with 'I'](#)

[Related terms of](#)

in trust

[In God We Trust](#)

Collins

Elevate your vocabulary

Sign up to our newsletter to receive our latest news, exclusive content and offers.

[Sign up now](#)

Choose your language

[English](#)

Collins Dictionaries

[Browse all](#)

About Collins

[About Us](#)

[Contact Us](#)

Useful Links

[Advertise with us](#)

[B2B Partnerships](#)

By clicking "Accept All Cookies", you agree to the storing of cookies on your device to enhance site navigation, analyze site usage, and assist in our marketing efforts.

[LANGUAGE](#)

[TRANSLATOR](#)

[GAMES](#)

[SCHOOLS](#)



≡ **Collins**

 **AI Assistant**
BETA

English Dictionary | [French](#) | [German](#) | [Italian](#) | [Spanish](#)

By clicking "Accept All Cookies", you agree to the storing of cookies on your device to enhance site navigation, analyze site usage, and assist in our marketing efforts.

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

THE LAW DICTIONARY

THELAWDICTIONARY.ORG

Your Free Online Legal Dictionary • Featuring Black's Law Dictionary, 2nd Ed.



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.








Related Stories from The Law Dictionary

- HOMICIDE EXCUSABLE thelawdictionary.org/homicide-excusable/

- HEIRS AND ASSIGNS [REDACTED]thelawdictionary.org/heirs-and-assigns/)
- HORNBOOK [REDACTED]thelawdictionary.org/hornbook/)

Latest Articles

-  What is an LLC? FAQs and Answers for LLC Formation [REDACTED]thelawdictionary.org/article/what-is-an-llc/)
-  Tailor Brands: Legal Services Review [REDACTED]/thelawdictionary.org/article/tailor-brands-review/)
-  ZenBusiness vs. LegalZoom: Comparison [REDACTED]/thelawdictionary.org/article/zenbusiness-vs-legalzoom/)
-  How Much Does It Cost To Form an LLC? [REDACTED]/thelawdictionary.org/article/cost-start-llc/)
-  How to Create an LLC Operating Agreement [REDACTED]thelawdictionary.org/article/llc-operating-agreement/)

Articles Related to Held In Trust



Plausible Deniability
Definition, Examples, & Laws

Nepotism, Cronyism, &
Favoritism: Illegal Or
Unethical?

Prenup: Why Prenup, What It
Is, and Do You Need One?

What Does Fed OASDI/EE
Mean on a Paycheck?

Where to Find Recent Arrests

Browse Areas of Law

Bankruptcy Law

[REDACTED]thelawdictionary.org/letter/bankruptcy/)

Beyond the Law

[REDACTED]/thelawdictionary.org/letter/beyond-the-law/)

Business Formation

[REDACTED]/thelawdictionary.org/letter/business-formation/)

Business Law

[REDACTED]thelawdictionary.org/letter/business/)

Child Custody/ Support

[REDACTED]thelawdictionary.org/letter/child-custody-support/)

Criminal Law

[REDACTED]/thelawdictionary.org/letter/criminal-law/)

Divorce

[REDACTED]/thelawdictionary.org/letter/divorce/)

Employment & Labor Law

[REDACTED]thelawdictionary.org/letter/employment-labor-law/)

Estate Planning

[REDACTED]thelawdictionary.org/letter/estate-planning/)

Family Law

[REDACTED]thelawdictionary.org/letter/family-law/)

Immigration Law

[REDACTED]thelawdictionary.org/letter/immigration-law/)

Landlord-Tenant Law

[REDACTED]/thelawdictionary.org/letter/landlord-tenant/)

Legal System and Process

[REDACTED]/thelawdictionary.org/letter/legal/)

Motor Vehicle Accidents

[REDACTED]thelawdictionary.org/letter/motor-vehicle-accidents/)

Personal Injury Law

[REDACTED]thelawdictionary.org/letter/personal-injury/)



Constitutional Law

[\[REDACTED\]thelawdictionary.org/letter/constitution/](#))

Contracts

[\[REDACTED\]thelawdictionary.org/letter/contracts/](#))

Finance

[\[REDACTED\]thelawdictionary.org/letter/finance/](#))

Finance Dictionary

[\[REDACTED\]thelawdictionary.org/letter/finance-dictionary/](#))

Real Estate Law

[\[REDACTED\]thelawdictionary.org/letter/real-estate/](#))

Tax Law

[\[REDACTED\]thelawdictionary.org/letter/taxes/](#))

Traffic Violations

(<https://thelawdictionary.org/letter/traffic-violations/>)

About Us

Powered by Black's Law Dictionary, Free 2nd ed., and The Law Dictionary.

About The Law Dictionary [\[REDACTED\]thelawdictionary.org/about/](#))

Terms and Conditions [\[REDACTED\]thelawdictionary.org/terms-of-service/](#))

Privacy Policy [\[REDACTED\]thelawdictionary.org/privacy-policy/](#))

Copyright © 2026 The Law Dictionary. All rights reserved.

Superior Court of New Jersey
Appellate Division

Docket Nos. A-001801-24T2, A-001802-24T2

NEW JERSEY DIVISION OF	:	CIVIL ACTION
CHILD PROTECTION AND	:	
PERMANENCY,	:	ON APPEAL FROM A FINAL
	:	ORDER OF THE SUPERIOR
<i>Plaintiff-Respondent,</i>	:	COURT OF NEW JERSEY,
	:	CHANCERY DIVISION,
vs.	:	FAMILY PART,
	:	CUMBERLAND COUNTY
J.G., J.R., D.P., H.G., and R.F.,	:	FN-06-87-23
	:	
<i>Defendants-Respondents,</i>	:	
	:	
In the Matter of J.G. III, I.G.,	:	Sat Below:
	:	
<i>Minors-Appellants,</i>	:	HON. TARIQ H. CHAUDRHI,
	:	J.S.C.
and	:	
	:	
H.G.,	:	
	:	
	:	
<i>Minor-Respondent.</i>	:	

**BRIEF OF *AMICUS CURIAE* CHILD-ADVOCACY
ORGANIZATIONS IN SUPPORT OF APPELLANTS**

On the Brief:

PATRICK J. BOYLE, ESQ.,
Lead Counsel
Attorney ID# 036081997
MICHAEL A. GUERRA, ESQ.
Attorney ID# 089092013

Of Counsel (pro hac vice):

MITCHELL Y. MIRVISS
JESSIE F. BEEBER
STEPHANIE P. DIU

VENABLE LLP
Attorneys for Amicus Curiae
151 West 42nd Street
New York, New York 10036
(212) 307-5500
pboyle@venable.com
maguerra@venable.com
mymirviss@venable.com
jbeeber@venable.com
spdiu@venable.com

Date Submitted: February 6, 2026



TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT.....	1
LEGAL ARGUMENT	6
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.....	6
A. Exhaustion	7
B. Preemption	12
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.....	23
III. The Division’s Practice Violates Due Process and Equal Protection	26
CONCLUSION.....	28

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Abbott v. Burke</i> , 495 A.2d 376 (N.J. 1985).....	7
<i>Catlett v. Catlett</i> , 561 N.E.2d 948 (Ohio Ct. App. 1988).....	18
<i>Deal Gardens, Inc. v. Bd. of Trs.</i> , 226 A.2d 607 (N.J. 1967).....	8
<i>English v. Gen. Elec. Co.</i> , 496 U.S. 72 (1990).....	14
<i>Florida Lime & Avocado Growers, Inc. v. Paul</i> , 373 U.S. 132 (1963).....	14
<i>Grace Thru Faith v. Caldwell</i> , 944 S.W.2d 607 (Tenn. Ct. App. 1996).....	18
<i>Hillsborough Cnty. v. Automated Med. Labs., Inc.</i> , 471 U.S. 707 (1985).....	14
<i>Holk v. Snapple</i> , 575 F.3d 329 (3d Cir. 2009).....	14, 16
<i>In re Estate of Kummer</i> , 461 N.Y.S.2d 845 (N.Y. App. Div. 1983)	18
<i>In re J.G.</i> , 652 S.E.2d 266 (N.C. Ct. App. 2007).....	18
<i>In re Ryan W.</i> , 76 A.3d 1049 (Md. 2013).....	20
<i>Jahnke v. Jahnke</i> , 526 N.W.2d 159 (Iowa 1994).....	18
<i>Jordan v. Heckler</i> , 744 F.2d 1397 (10th Cir. 1984).....	18
<i>Lehman v. Lycoming Cnty. Children’s Servs. Agency</i> , 458 U.S. 502 (1982).....	14

Loper Bright Enters. v. Raimondo,
603 U.S. 369 (2024).....21

McCarthy v. Madigan,
503 U.S. 140 (1992)..... 8

Off. Children’s Servs. v. Z.C. ex rel. Kaufman,
569 P.3d 1153 (Alaska 2025)20, 27

O’Melveny & Myers v. FDIC,
512 U.S. 79 (1994).....13

Printz v. United States,
521 U.S. 898 (1997).....10

Rumana v. City of Passaic,
936 A.2d 971 (N.J. Super. Ct. App. Div. 2007)..... 8

Seminole Tribe v. Florida,
517 U.S. 44 (1996).....10

Shields v. Katz,
533 N.Y.S.2d 451 (N.Y. App. Div. 1988)18

State v. Reed,
473 A. 2d 775 (Conn. 1984).....27

Tafflin v. Levitt,
493 U.S. 455 (1990).....13, 14

Vecchione v. Wohlgemuth,
426 F. Supp. 1297 (E.D. Pa.), *aff’d*, 558 F.2d 150 (3d Cir. 1977)19

Veccione v. Wohlgemuth,
377 F. Supp. 1361 (E.D. Pa. 1974).....27, 28

*Wash. State Dep’t of Soc. and Health Servs. v. Guardianship
Est. of Keffeler*,
537 U.S. 371 (2002).....20, 21

Wyeth v. Levine,
555 U.S. 555 (2009).....16

Statutes and Other Authorities:

U.S. Const., Amend XIV11

18 U.S.C. § 2037(2).....18

18 U.S.C. § 2711(3).....17

42 U.S.C. § 405(j).....9, 16, 17, 20

Ariz. Rev. Stat. Ann. § 8-468..... 3

Md. Code Ann., Fam. Law § 5-527.1(c) 3

N.J. Ct. R. 1:38-3(d) 4

N.J. Ct. R. 2:2-3 8

N.J. Ct. R. 4:69-5 8

N.J.S.A. 30:4C-22.....23, 25

N.J.S.A. 30:4C-27.....25, 26

N.J.S.A. 30:4C-29.....25, 26

N.J.S.A. 30:4C-29.1.....23, 25

N.J.S.A. 30:4C-30.....25, 26

N.J.S.A. 30:4C-31.....25

N.J.S.A. 30:4C-56.....25

P.L. 108-203 (2004).....18

S3153, approved P.L.2025 (Dec. 19, 2025).....3, 22

Black’s Law Dictionary, *Trust; Trust Corpus*, (12th ed. 2024).....24

Collins Dictionary, *In Trust*, (2026).....24

Cong. Res. Serv., *Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions* (2021) 2

Eli Hager & Joseph Shapiro, *State Foster Care Agencies Take Millions of Dollars Owed to Children in Their Care* (NPR, Apr. 22, 2021) 2

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)..... 3

Molly Sarubbi *et al.*, Education Comm’n of the States, *Strengthening Policies for Foster Youth Postsecondary Attainment* (2016) 3

Joseph Shapiro, *Trump administration tells states to end ‘orphan tax’ on foster kids* (NPR, Jan. 12, 2026).....15

Soc. Sec. Admin., *Program Operations Manual System (POMS) GN 00602.001 (Use of Benefits)*..... 1

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)16

The Law Dictionary, *Held In Trust*, (2026).....24

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)15

Amici curiae are national and state child-advocacy nonprofit organizations listed in Appendix A to the accompanying certification (together, the “Child-Advocacy Organizations”). 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 Organizations respectfully request that the Court grant the Motion of Child-Advocacy Organizations 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

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, Joseph and Ishmael’s⁷ 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 Joseph and Ishmael 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, Joseph and Ishmael, each have disabilities that qualify them for SSI benefits. They entered foster care due to inadequate supervision and sexual abuse allegations by a non-relative residing in their home. After obtaining custody of the children, the Division applied to the SSA to become RP for their SSI benefits 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 SSI 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 Joseph and Ishmael 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. In other words, such a process would be futile, and 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).

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, Ishmael and Joseph 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 Joseph and Ishmael, but it also has no power to determine whether the Division's diversion of benefits violates New Jersey's statutory scheme. Joseph

and Ishmael’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.

The Family Part ruled that, under federal law, “misuse” claims must be brought before the SSA Commissioner. *See* 17T31:7–15. But a state-agency RP that illegally accesses foster children’s funds under state law is not misusing funds under *federal* law. There is no federal remedy for state-law violations and thus no federal administrative procedure that needs to be exhausted.

For these reasons, if the exhaustion doctrine were to apply here, it would leave foster children like Joseph and Ishmael 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 cannot provide and, even worse, 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 Joseph and Ishmael'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 Joseph and Ishmael 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) other than the inapt federal “misuse” rules.

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 undermined by federal policy calling upon state agencies to take exactly the same steps that Ishmael and Joseph 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).⁸ 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*

⁸ The federal guidance and enforcement actions referenced here address survivor benefits, not SSI benefits. However, the federal government’s reasoning that children’s benefits should not be diverted to reimburse state foster-care systems applies equally to SSI, which likewise is payable for the child’s benefit and subject to fiduciary duties imposed on representative payees.

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 Ishmael and Joseph’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, *see* 17T28:7–30:1 (citing cases), 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.

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

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

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 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).

The Family Part cited contrary decisions (none of which involved state agencies violating state law or addressed the clear definitions of the term in the U.S. Code) but concluded that the federal statute is ambiguous and thus relied on preemption. 17T28:7–29:18. Notably, the cases that interpret “concurrent jurisdiction” rely on a 2004 amendment to the representative-payee provisions of the Social Security Act that did not even address “concurrent jurisdiction.” Indeed, the legislative history to the Social Security Protection Act of 2004, P.L. 108-203 (2004), is silent: it does not indicate any intent to preempt rights or remedies, nor does it address *Jordan* or the other cases that allow concurrent state-court jurisdiction. The title of P.L. 108-203 (“An act to amend the Social Security Act ... to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes.”) (emphasis added) shows Congress’ intent to enact broader protections with additional safeguards, not to curtail constitutional rights.

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.

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

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

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 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 is not at issue here, so the Division relies on dicta regarding policy, 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). And 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. Under *Keffeler*’s logic, the Legislature’s decision should be respected and applied here to preclude preemption. 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).

Finally, the Family Part’s ruling that the SSI cap on allowable resources of \$2,000 per beneficiary supports preemption, 17T30:15–21, misapprehends the law. The court was concerned that allowing the children to conserve benefits would quickly render them financially ineligible and result in a loss of benefits. But New Jersey and federal law take care of this problem, as the funds may be placed in “ABLE accounts” or special-needs trusts (“SNTs”) and not count against the resource cap; indeed, the New Jersey law that prospectively requires the funds to go to foster children expressly *requires* the Division to establish qualified ABLE accounts or SNTs for the children as needed to avoid violating

federal asset or resource limits. *See* S3153, approved P.L.2025, c.162 (Dec. 19, 2025). Because SSI recipients already have been determined to have qualifying disabilities, Joseph and Ishmael fully qualify for ABLE accounts and SNTs. Other states that prohibit or limit state foster-care agencies from utilizing the funds for self-reimbursement have imposed similar requirements for years without any reported disruption in eligibility or occurrence of preemptive effect; Maryland has done so since 2018.

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 that the Family Division, Union County, has reached this conclusion in a new decision issued three weeks ago 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 funds held in trust—here, the children’s federal benefits, which are held by the Division as fiduciary

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.

for their benefit. *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 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 county treasuries, which amplifies the statutory prohibition. Read together, these provisions make clear that the Legislature intended the State to bear financial responsibility for maintenance of foster children and to permit use of their 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 three 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 Joseph and Ishmael's SSI 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 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 Organizations respectfully request that the Court authorize them to appear, file this brief, and argue this appeal at oral argument. The Child-Advocacy Organizations further respectfully urge the Court to reverse the Family Part’s September 20, 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: February 6, 2026

Respectfully submitted,
VENABLE LLP

By: Patrick J. Boyle
Patrick J. Boyle, Esq. (ID# 036081997)
Jessie F. Beeber, Esq. (*Pro Hac Vice* Motion
Pending)
Michael A. Guerra, Esq. (ID# 089092013)
Stephanie P. Diu, Esq. (*Pro Hac Vice*
Motion Pending)
151 West 42nd Street, 49th Floor
New York, New York 10036
Tel.: (212) 808-5678
Fax: (212) 307-5598
PBoyle@Venable.com
JBeeber@Venable.com
MAGuerra@venable.com
SPDiu@Venable.com

-and-

Mitchell Y. Mirviss, Esq. (*Pro Hac Vice*
Motion Pending)
750 E. Pratt Street, Suite 900
Baltimore, MD 21202
Tel.: (410) 244-7412
Fax: (410) 244-7742
MYMirviss@Venable.com

*Pro Bono Counsel to Proposed Amicus
Curiae Child-Advocacy Organizations*

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**
- This document contains confidential information, but redaction is not required because the document is excluded from public access pursuant to court order, Rule, statute, or other authority. If applicable, skip paragraphs 2 and 3.

2. Return and resubmission:

I certify that if any confidential information is discovered in this submission and brought to the court's attention, the court will return the document to me, and I will be responsible to redact or remove the confidential information before resubmission. I understand the court could impose sanctions, including suppression of the brief, dismissal in extraordinary cases, and other measures for a failure to accurately make this certification or for the discovery of confidential information in a document that has been filed.

3. Briefs posted online:

I understand that the presence of confidential information or confidential personal identifiers in a document that has been posted on the Judiciary's public website will be grounds for the removal of such online posting, pending correction by the filing party, on an expedited timeline. The court in its discretion could postpone further proceedings pending the resubmission of the document.

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.

02/06/2026

Date

S/ PATRICK J BOYLE, Esq.

Signature of Attorney or Pro Se Litigant

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

Before Appellate Division,
Superior Court of New Jersey
DOCKET NO. A-001801-24

FAMILY

DCPP

V.

J.G., JR., D.B., H.G., AND R.F.

I/M/O

J.G. III, I.G., AND H.G.

PROOF OF SERVICE

I hereby certify that an original of the following documents, **AMICUS CURIAE BRIEF, CERTIFICATION OF CONFIDENTIAL IDENTIFIERS, MOTION TO APPEAR AS AMICUS CURIAE, Motion Supporting Document, PROOF OF SERVICE** were submitted and transmitted to the parties listed below in the following format:

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: MICHAEL T WOLF, Esq.

MICHAELTWOLFESQUIRE@YAHOO.COM

ATTORNEY NAME: KELLY M DONEGAN, Esq.

KELLY.DONEGAN@OPD.NJ.GOV; JOSE.VARGAS@OPD.NJ.GOV

ATTORNEY NAME: DANIEL L J ADAMEK, Esq.

DANIEL.ADAMEK@OPD.NJ.GOV; ALLIE.BLACK@OPD.NJ.GOV

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: WILLIAM THOMAS HARVEY JR, Esq.

WILLIAM.HARVEY@LAW.NJOAG.GOV; WILLIAM.HARVEY@DOL.LPS.STATE.NJ.US

ATTORNEY NAME: LEAH A SCHMIDT, Esq.

LEAH.SCHMIDT@LAW.NJOAG.GOV; KANDY.TORRES@LAW.NJOAG.GOV;

SUSAN.MILLER@LAW.NJOAG.GOV

ATTORNEY NAME: ELIZABETH HELMS WALLACE, Esq.

ELIZABETH.WALLACE@LAW.NJOAG.GOV

ATTORNEY NAME: WESLEY G HANNA II, Esq.

DCFSOUTH@LAW.NJOAG.GOV; WESLEY.HANNA@LAW.NJOAG.GOV

ATTORNEY NAME: ADRIENNE MARIE KALOSIEH, Esq.

ADRIENNE.KALOSIEH@OPD.NJ.GOV

ATTORNEY NAME: LYNETTE RENTE, Esq.
LYNETTE.RENTE@OPD.NJ.GOV; OPR.APPELLATE@OPD.NJ.GOV
ATTORNEY NAME: RANDI S MANDELBAUM, Esq.
RMANDELBAUM@KINYOY.RUTGERS.EDU
ATTORNEY NAME: MARY ELIZABETH COOGAN, Esq.
mcoogan@acnj.org

BY MAIL:
ROBERT FERGUSON
837 EAST LANDIS AVENUE
VINELAND NJ 08360
856-899-0339
()
02/06/2026

DEBRA PORTER
1404 SPRING GARDEN RD
MILLVILLE NJ 08332

(ILOVEMIKEY12345@GMAIL.COM)
02/06/2026

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: **02/06/2026**

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