

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Case No. 25-1354

OCEAN S., JACKSON K., ROSIE S., ERYKAH B. JUNIOR R., ONYX G.,
MONAIE T., individually and on behalf of all similarly situated individuals,

Plaintiffs and Appellees,

v.

COUNTY OF LOS ANGELES, the LOS ANGELES DEPARTMENT OF
CHILDREN AND FAMILY SERVICES, and the LOS ANGELES
DEPARTMENT OF MENTAL HEALTH,

Defendants and Appellants.

On Appeal from the
United States District Court for the Central District of California
Case No. 2:23-cv-06921-JAK-E
The Honorable John A. Kronstadt

**AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE
ASSOCIATION OF COUNTIES IN SUPPORT OF DEFENDANTS
AND APPELLANTS COUNTY OF LOS ANGELES ET AL.**

JENNIFER BACON HENNING, SBN 193915
Litigation Counsel
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814
Tel: (916) 327-7535
jhenning@counties.org

Attorney for Amicus Curiae
California State Association of Counties

TABLE OF CONTENTS

| | |
|--|----|
| TABLE OF AUTHORITIES | ii |
| I. CORPORATE DISCLOSURE STATEMENT..... | 1 |
| II. AMICUS IDENTITY STATEMENT AND INTEREST IN THE CASE. | 1 |
| III. STATEMENT OF AUTHORSHIP AND FINANCIAL SUPPORT | 2 |
| IV. STATEMENT CONCERNING CONSENT TO FILE..... | 3 |
| V. INTRODUCTION | 3 |
| VI. ARGUMENT..... | 5 |
| A. The Appropriateness of an NMD’s Housing Placement and Transition Planning is a Central Focus of the Dependency Court’s Supervision in Appellees’ Ongoing Dependency Proceedings | 5 |
| 1. Dependency Court Supervision | 8 |
| 2. State Performance Measures and Regulatory Oversight | 12 |
| B. The Larger Public Policy Questions About How to Address Nationwide Foster Care Shortages Are Ill-Suited for Resolution Via Federal Class Action..... | 13 |
| VII. CONCLUSION | 17 |
| CERTIFICATE OF COMPLIANCE..... | 18 |
| CERTIFICATE OF SERVICE | 19 |

TABLE OF AUTHORITIES

Cases

| | |
|---|------|
| <i>In re Nicole S.</i> , 39 Cal. App. 5th 91, 252 Cal. Rptr. 3d 82 (2019) | 8 |
| <i>Younger v. Harris</i> , 401 U.S. 37 (1971)..... | 2, 3 |

Statutes

| | |
|---|------|
| Cal. Welf. & Inst. Code § 317 | 11 |
| Cal. Welf. & Inst. Code § 366 | 9 |
| Cal. Welf. & Inst. Code § 366.21 | 9 |
| Cal. Welf. & Inst. Code § 366.3 | 9 |
| Cal. Welf. & Inst. Code § 366.31 | 9 |
| Cal. Welf. & Inst. Code § 385 | 11 |
| Cal. Welf. & Inst. Code § 388 | 11 |
| Cal. Welf. & Inst. Code § 391 | 9 |
| Cal. Welf. & Inst. Code § 10600 | 12 |
| Cal. Welf. & Inst. Code § 10605 | 13 |
| Cal. Welf. & Inst. Code § 11400(y)..... | 7 |
| Cal. Welf. & Inst. Code § 16001(a)..... | 6 |
| Cal. Welf. & Inst. Code § 16501.1(a)..... | 7 |
| Cal. Welf. & Inst. Code § 16501.1(g)..... | 6, 7 |

Other Authorities

| | |
|--|----|
| California Courts, Form JV-462, Findings and Orders after Nonminor Dependent Status Review Hearing..... | 10 |
|--|----|

Rules of Court

| | |
|--|-------|
| Cal. Rules of Court, Rule 5.660(g) | 11 |
| Cal. Rules of Court, Rule 5.708..... | 9 |
| Cal. Rules of Court, Rule 5.903..... | 9, 10 |

Government Publications

CDSS, *An Analysis of California Counties’ Child Welfare System Improvement Plans* (2007) 13

Articles

Eilis O’Neill, *Washington State’s New Solution for Foster Parents and Child Care*, KUOW (Jan. 4, 2023) 15

Mark Courtney et al., *Report from CalYOUTH: Findings on the relationships between extended foster care and youths’ outcomes at age 21*, Chapin Hall at the University of Chicago (2018) 8

Megan Butler, *Critics Say Bills to Slow Influx of Foster Children in Georgia Ignore Root Causes*, Courthouse News Service (Mar. 8, 2023)..... 15

Diane Reed & Kate Karpillow, *Understanding the Child Welfare System in California*; California Center for Research on Women and Families, Public Health Institute (2nd ed. 2009) 12

**I. CORPORATE DISCLOSURE STATEMENT
[F.R.A.P., Rule 29(a)(4)(A), 26.1]**

Amicus Curiae California State Association of Counties (“CSAC”) is a non-profit corporation. CSAC does not have a parent corporation, and no publicly held corporation owns 10% or more of the Association’s stock. Pursuant to Circuit Rule 26.1-1 (effective December 1, 2024), a Form 34 Disclosure Statement has also been filed with this brief.

**II. AMICUS IDENTITY STATEMENT AND INTEREST IN THE
CASE [F.R.A.P. Rule 29(a)(4)(D)]**

CSAC is a non-profit corporation whose members consist of the 58 California counties. CSAC sponsors a Litigation Coordination Program administered by the County Counsels’ Association of California and overseen by the Association’s Litigation Overview Committee, comprised of county counsels throughout the State. The Litigation Overview Committee monitors litigation of concern to counties statewide and determined that this case is a matter that concerns all counties.

Appellees’ allegations in this putative class action depict some of the steep challenges associated with Nonminor Dependents (“NMDs”), transition-age youth participating in California’s child welfare system. California is one of 11 states in which each county administers its own child welfare program, under the regulatory oversight of the California

Department of Social Services (“CDSS”). Counties are the primary governmental entities that directly interact with children and families to protect children from abuse and neglect; keep families safely together; and, where needed, provide housing placement and a wide range of other services to dependent youth in collaboration with, and under the close supervision of, the Juvenile Dependency Court (“Dependency Court”).

Counties have an exceptionally strong interest in working collaboratively with the Dependency Court and attorneys for NMDs, as contemplated by California’s comprehensive state scheme for child welfare intended to serve the best interests of dependent youth. CSAC’s member counties, therefore, have a direct interest in the issue of what is required to establish standing in institutional reform litigation, such as this case, and the proper criteria for abstention of the federal courts under *Younger v. Harris*, 401 U.S. 37 (1971) or other legal principles from a lawsuit seeking to reform, restructure and monitor the state child welfare system.

**III. STATEMENT OF AUTHORSHIP AND FINANCIAL SUPPORT
[F.R.A.P. Rule 29 (a)(4)(E)]**

No party’s counsel authored this amicus brief in whole or in part. No party or party’s counsel contributed money intended to fund preparation or submission of this amicus brief. No one other than amicus and its counsel

contributed money intended to fund preparation or submission of this amicus brief.

IV. STATEMENT CONCERNING CONSENT TO FILE [F.R.A.P. Rule 29(a)(2)]

All parties have consented to the filing of this brief.

V. INTRODUCTION

In *Younger*, the Supreme Court noted that since this country's beginnings, Congress has manifested the importance of permitting state courts to try their cases free from federal court interference. *Younger v. Harris*, 401 U.S. 37, 43 (1971). This idea emerges from the deep-rooted principles of comity and federalism that are distinct to our nation. The balance of power between state and national authorities represents a system where both sovereigns must be mindful of and safeguard each other's legitimate interests. *Id.* at 46. Writing for the majority, Justice Black stated, "the National Government, anxious as it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Id.* at 44-45.

This Court is now being asked to consider whether these principles apply to Appellees' efforts to involve the federal courts in a significant reform and restructuring of California's dependency system. As Appellants

Los Angeles County, et al., have correctly argued, the issues raised by the Appellees here regarding the services available to transition age youth are a core focus of ongoing dependency proceedings taking place as part of a comprehensive state child welfare program designed to allow the Dependency Court, counties, and the attorneys for the parties to work in tandem to serve the interests of dependent youth. The appropriateness and reasonableness of services provided to Plaintiffs are primary subjects of those proceedings and the subject of regular findings by the Dependency Court. Allowing this suit to proceed would thus place this Court in precisely the position that *Younger* is intended to avoid – reviewing on an ad-hoc basis the regular findings of the Dependency Court in cases in which that court is, by design, intended to function as the ultimate case manager responsible for the well-being of the dependent youth under the umbrella of its protection.

Further supporting the policies underlying abstention is that to the extent that Appellees’ concerns stem from much larger policy and political problems surrounding the acute shortage of foster care placements plaguing states nationwide, assuming stewardship over the NMD services places the federal court in the untenable position of acting as an experimental laboratory for resolving high-stakes social problems with no clear solution. Unlike the California Legislature, the federal judiciary is not tasked with

allocating scarce resources among competing policy priorities, including administering a child welfare system that aims to address abuse and neglect while attempting to keep families safely intact, particularly in an arena in which many steep challenges remain notwithstanding the expenditure of significant resources.

This court should therefore find that appellees' claims are not appropriate for resolution by the federal courts, reverse the district court's order concluding otherwise, and order dismissal of appellees' claims.

VI. ARGUMENT

A. The Appropriateness of an NMD's Housing Placement and Transition Planning is a Central Focus of the Dependency Court's Supervision in Appellees' Ongoing Dependency Proceedings.

The provision of housing placement and support for transitional planning for NMDs by counties takes place in the context of a comprehensive, heavily regulated dependency scheme in which the reasonableness of counties' efforts and the adequacy of their planning are closely supervised by the Dependency Court and subject to regulatory oversight by CDSS. The state system is designed to tackle the many challenges associated with preventing abuse and neglect, keeping families together when safe and appropriate, and caring for dependent youth via a collaborative process among all parties and stakeholders in which the

Dependency Court acts as the ultimate case manager, with overarching responsibility for the well-being of youth under the umbrella of the court's protection.

Yet the Appellees' central allegations concerning housing placement and case planning are already addressed by California's dependency scheme.

Appellees urge, for example, that:

- State law requires counties to provide the youth with assistance and support in developing a personalized transition plan addressing housing, health insurance, education, and various services. First Amended Complaint (FAC) ¶ 179 (citing Cal. Welf. & Inst. Code §§ 16501.1(g)(16)(A)(ii), (g)(16)(B)).
- Counties are required to regularly evaluate their placement needs and resources, with technical assistance from the State, including the “ability to meet the emergency housing needs of nonminor dependents in order to ensure that all nonminor dependents have access to immediate housing upon reentering foster care or for periods of transition between placements.” FAC ¶ 27 (citing Cal. Welf. & Inst. Code § 16001(a)(2)).
- The policies, procedures, and operations of transitional housing providers (known as THPP-NMDs) are “heavily regulated at

the State and County level[,]” FAC ¶¶ 146-48, including via All-County Letters issued by CDSS relating to, among other pertinent matters, obligations to provide placement upon re-entry, FAC ¶ 66 n. 10, and the certification and statutory requirements for licensing of THPP-NMDs, FAC ¶ 146.

- Case plans must generally meet a dependent child’s needs and include the setting that is the least restrictive family setting that promotes normal childhood experiences and the most appropriate setting that needs the child’s individual needs ... and consistent with the selection of the environment best suited to meet the child’s special needs and best interests.” FAC ¶¶174-75 (citing Cal. Welf. & Inst. Code §§ 16501.1(a)(1), (d)(1), § 11400(y), § 16501.1(g) (16)).

The available evidence indicates that participation in extended foster care helps youth who are transitioning into young adulthood to further their education and employment, avoid economic hardship and homelessness, save money, and decrease their likelihood of encountering the criminal justice system. *See, e.g.,* Mark Courtney et al., *Report from CalYOUTH: Findings on the relationships between extended foster care and youths’*

outcomes at age 21, Chapin Hall at the University of Chicago (2018).¹ But a state's decision to participate in, and its decisions concerning, the extended foster care program covering youth above age 18 necessarily involve balancing competing resource priorities in tackling complex and multi-faceted social problems that are not easily addressed. However, on a case by case basis, the Dependency Court, social workers, counsel representing minors and all other parties in the system, focus on the needs of the minors and have authority to raise and address individual concerns about a minor's placement and services. This is addressed through Dependency Court supervision and CDSS regulation and oversight.

1. Dependency Court Supervision

The Dependency Court has sweeping powers and broad responsibility to ensure that NMDs, like dependent children, receive appropriate care, housing placement, services, and case planning. Dependency proceedings involving an NMD are focused on the best interest of the dependent. *In re Nicole S.*, 39 Cal. App. 5th 91, 105, 252 Cal. Rptr. 3d 82, 92 (2019). In furtherance of this comprehensive juvenile welfare scheme, the Dependency Court conducts a hearing at least every six months to review, and make

¹ Available at: <https://www.chapinhall.org/research/improved-outcomes-at-age-21-for-youth-in-extended-foster-care/> (last accessed May 23, 2025).

findings concerning, the adequacy and appropriateness of an NMD's case or transition plan and to review the reasonableness of the county's efforts to assist the NMD. E.g., Cal. Welf. & Inst. Code §§ 366(a), 366.21, 366.3(d), (e), 366.31(b), 391; Cal. Rules of Court, Rules 5.708 (b), (f), 5.903(e).

As part of this regular review of the status and progress of an NMD, the Dependency Court makes specific findings as to whether, among other points:

- The NMD's current placement is appropriate;
- The county exercised due diligence in finding an appropriate relative with whom the NMD could be placed;
- The county made reasonable efforts and provided assistance to help the NMD satisfy the criteria for NMD status (generally, that the NMD is enrolled in an educational or employment program or employed);
- The transition plan was developed jointly by the county and NMD;
- The transition plan reflects the living situation and services that are consistent with the NMD's opinion of what the NMD needs to gain independence, and sets out the benchmarks that indicate how both the county and NMD will know when independence can be achieved;

- The transition placement includes appropriate and meaningful independent living skills services that will help the NMD transition from foster care to successful adulthood;
- The county made reasonable efforts to comply with the transition plan and prepare the NMD for independence;
- The county provided the NMD with the transition plan;
- The NMD made satisfactory progress in meeting the goals of the transition plan;
- The county made reasonable efforts to maintain relationships between the NMD and people who are important to them, including efforts to establish and maintain relationships with caring and committed adults who can serve as lifelong connections and relationships with siblings under the court’s jurisdiction; and
- The county provided required information, documents, and services. Cal. Rules of Court, Rule 5.903(e); California Courts, Form JV-462, Findings and Orders after Nonminor Dependent Status Review Hearing,
<https://www.courts.ca.gov/documents/jv462.pdf>.

NMDs are appointed state-compensated counsel for dependency proceedings with primary responsibility to “advocate for the protection,

safety, and physical and emotional well-being of the child or nonminor dependent.” Cal. Welf. & Inst. Code § 317(c)(2). These duties include conducting investigations, making recommendations to the court regarding the dependent's welfare, and participating in the proceedings to adequately represent the child. *Id.* § 317(e)(1).² The NMD’s counsel can seek modification of the Dependency Court’s orders—including those making findings relating to placement, services, or planning—at any time. Cal. Welf. & Inst. Code §§ 385, 388. Thus, the NMD remains at all times able to seek, through their counsel, to revisit the findings made during the regular status hearings and challenge the adequacy of their placement or services.

As the detailed allegations in the FAC concerning the experiences of the named plaintiffs in this case illustrate that understanding the challenges associated with providing housing and case planning for a particular NMD requires close consideration of their unique circumstances and personal history—an ongoing inquiry falling squarely within the purview of California’s Dependency Courts in supervising all aspects of the dependency

² The duties of an NMD’s counsel extend event “beyond the scope of the juvenile proceeding,” requiring counsel to advise the court of “other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings.” Cal. Welf. & Inst. Code § 317(e)(3). If this attorney “learns of any such interest or right, the attorney . . . must notify the court immediately and seek instructions from the court as to any appropriate procedures to follow.” Cal. Rules of Court, Rule 5.660(g).

as part of this comprehensive state scheme. The FAC does not allege, however, that these plaintiffs sought to address any of the stated concerns about housing and services in the Dependency Court via their court-appointed and state-compensated counsel as part of the ongoing, state-court dependency proceedings designed and intended to serve plaintiffs interests.

2. State Performance Measures and Regulatory Oversight

Under California’s child welfare system, each of California’s counties administers a child welfare program with CDSS serving as the regulatory oversight body “with full power to supervise every phase of the administration of” child welfare services. Cal. Welf. & Inst. Code § 10600. CDSS promulgates regulations and policies that direct every aspect of child welfare practice in the state, including by issuing All-County Letters and other guidance, and conducts audits and reviews of child welfare programs. *See generally* Diane Reed & Kate Karpillow, *Understanding the Child Welfare System in California*; California Center for Research on Women and Families, Public Health Institute (2nd ed. 2009), at 8.³

Counties are accountable to CDSS for accomplishing child welfare program measures, and CDSS has the power to take formal action against a

³ Available at: <https://www.phi.org/thought-leadership/understanding-the-child-welfare-system-in-california-a-primer-for-service-providers-and-policymakers-2nd-edition/> (last accessed on May 23, 2025).

county failing to comply with state and federal child welfare regulations. *See id.*; Cal. Welf. & Inst. Code § 10605. Counties work collaboratively with the State and other stakeholders to systematically measure their progress in, and develop strategic plans for, fulfilling statewide policy goals for children who come into contact with the child welfare system, including: (a) protecting children from abuse and neglect; (b) ensuring children are safely maintained in their homes where safe and appropriate; (c) preserving family relationships and connections; (d) securing permanency and stability without increasing reentry into foster care; and (e) ensuring that youth emancipating from foster care are prepared to transition into adulthood. *See, e.g.,* CDSS, *An Analysis of California Counties' Child Welfare System Improvement Plans* (2007).⁴

B. The Larger Public Policy Questions About How to Address Nationwide Foster Care Shortages Are Ill-Suited for Resolution Via Federal Class Action.

At the heart of the allegations in the FAC is a scarcity of resources, housing and providers. Indeed, many of the challenges and limitations on the court and the agencies providing services to NMDs stem in significant measure from the fundamental backdrop of a steep shortage in housing and

⁴ Available at: https://cfpic.org/wp-content/uploads/2020/12/SIP_ImpApp_A_0.pdf (last accessed May 23, 2025).

providers for dependent youth—not just in California, but across the country. That shortage is a significant policy concern for policymakers and legislators, but is ill-suited for redress by a federal court, which is neither charged with balancing priorities in allocating scarce resources nor tasked with experimenting with public policy approaches to ameliorating such challenging and multi-faceted policy problems. Indeed, in asking the federal court to wade into such complex matters, the FAC does not identify any specific measures that a district court could take to fix shortages in the array of housing placements in the foster care system or to design systematic changes to case planning to forestall all future difficulties in securing housing.

How best to ameliorate this shortage is an important public policy and political question that is a focus of legislatures, government bodies, policymakers, and advocacy organizations across the country. But even experts in the field can disagree on which policy objectives to prioritize. There is a difference of opinion, for example, on whether resources are best devoted towards foster care placements or keeping struggling families

intact.⁵ There are experimental and pilots that test new rules and programs to better meet the need of foster youth and families.⁶

California’s Legislature also remains actively engaged in foster care policy, as evidenced by numerous pending or recently considered bills addressing various approaches to the significant challenges of administering a foster care system. There are dozens of bills pending in this legislative session alone addressing issues such as enhanced efforts to review eligibility for foster care benefits (Assem. B. 680, 2025-2026 Reg. Sess. (Cal. 2025)), increased requirements to provide trauma-informed services (Assem. B. 319, 2025-2026 Reg. Sess. (Cal. 2025)), requiring child welfare agencies to develop a placement transition planning policy for supporting foster children who are transitioning between placement settings and who are transitioning

⁵ See Megan Butler, *Critics Say Bills to Slow Influx of Foster Children in Georgia Ignore Root Causes*, Courthouse News Service (Mar. 8, 2023), available at <https://www.courthousenews.com/critics-say-bills-to-slow-influx-of-foster-children-in-georgia-ignore-root-causes/> (last accessed on May 26, 2025).

⁶ See, e.g., Eilis O’Neill, *Washington State’s New Solution for Foster Parents and Child Care*, KUOW (Jan. 4, 2023), available at <https://www.kuow.org/stories/new-washington-state-rule-aims-to-address-shortage-of-foster-parents-childcare> (last accessed on May 26, 2025). One of the models tested in Washington, known as the “Mockingbird Family,” which includes six to ten foster or kinship families connected to an experienced caregiver known as the “Hub Home” forming a “constellation,” just launched statewide on May 22, 2025. See <https://dcyf.wa.gov/services/foster-parenting/new-model-foster-care-launching-statewide> (last accessed on May 25, 2025).

from foster care to reunification (Assem. B. 896, 2025-2026 Reg. Sess. (Cal. 2025), and guaranteed minimum income pilot program for youth transitioning out of the foster care system (Assem. B. 661, 2025-2026 Reg. Sess. (Cal. 2025)). All these proposals require resources, likely at the expense of other important programs and services provided by the State. The Legislature is elected to make such difficult determinations through the legislative and budget process.

CSAC's member counties are deeply committed to supporting and increasing opportunities for NMDs. But district courts are not laboratories for exploring pilot solutions to such intractable policy and political problems. And, unlike the Legislature and relevant state agencies, federal courts are not tasked with resolving competing views about how to best allocate resources among competing, pressing priorities. Among the options state policymakers *could* adopt, it is not appropriate for a federal court to determine what they *should* adopt. Nor are federal courts tasked with reviewing on an ad hoc basis the ongoing findings of the Dependency Court in the child welfare scheme designed by the Legislature to address the more immediate concerns regarding Appellees' housing placements, case planning, and services.

///

VII. CONCLUSION

For these reasons, CSAC respectfully urges the Court to reverse the district court order and direct that the action be dismissed with prejudice.

Dated: May 27, 2025

Respectfully submitted,

By: /s/ Jennifer Bacon Henning

Jennifer Bacon Henning, SBN 193915

Counsel for Amici Curiae
California State Association of Counties

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(6) and (7)(B), I certify that the Amicus Brief OF the California State Association of Counties in support of Defendants and Appellants County of Los Angeles et al. is proportionately spaced, has a typeface of 14 points or more and contains 3,917 words.

Dated: May 27, 2025 Respectfully submitted,

By: /s/ Jennifer Bacon Henning

Jennifer Bacon Henning, SBN 193915

Counsel for Amicus Curiae
California State Association of Counties

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system on May 27, 2025.

I certify that all participants in the case are registered ACMS users and that service will be accomplished by the appellate ACMS system.

Dated: May 27, 2025 By: /s/ Jennifer Bacon Henning

Jennifer Bacon Henning, SBN 193915

Counsel for Amicus Curiae
California State Association of Counties