No. 25-1354

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Ocean S. et al.,
Plaintiffs-Appellees,

v.

County of Los Angeles et al.,
Defendants-Appellants.

On Petition for Permission to Appeal from the
Central District of California No. 2:23-cv-06921-JAK-E
The Honorable John A. Kronstadt

BRIEF OF AMICI CURIAE HON. WILLIAM A. THORNE AND HON. MARGARET S. HENRY IN SUPPORT OF PLAINTIFFS AND APPELLEES

Gregory N. Pimstone, David Boyadzhyan,
Patrice S. Ruane, Brent D. Dinino
MANATT, PHELPS & PHILLIPS, LLP
2049 Century Park East, Suite 1700
Los Angeles, CA 90067-3119
(310) 312-4000 ♦ Fax (310) 312-4224
GPimstone@manatt.com

Counsel for Amici Curiae
Hon. William A. Thorne and Hon. Margaret S. Henry

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

INTEREST OF AMICI CURIAE[1]

Amici are two retired state judicial officers who have deep experience with, and knowledge about, juvenile court systems. Specifically:

The **Honorable William A. Thorne, Jr.** (retired) served on the Utah Court of Appeals from May 2000 through September 2013. Before his appointment to the Court of Appeals, he served on the Utah Third Circuit Court and on the Utah Third District Court. Judge Thorne is a former member of the Board of Directors for National Court Appointed Special Advocates ("CASA"), a nonprofit group that provides volunteer representation for abused and neglected children in court. He is also (1) a former member of the PEW Commission on Children in Foster Care; (2) a former member of the Board of Directors for the Evan B. Donaldson Adoption Institute (a nonprofit seeking to improve the level of research and practice related to adoptions); (3) a former member of the Board of Trustees for the National Council of Juvenile and Family Court Judges; (4) a former board member for the North American Council on Adoptable Children; (5) a former member of the ABA Steering Committee on the Unmet Legal Needs of Children; (6) the

[1] No counsel for any party authored this brief in whole or in part. No person or entity, other than amicus and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

former Chair of the Board for Child Trends, Inc. (a non-profit devoted to research dealing with children and families); (7) a former Chair of the Utah Juvenile Justice Task Force of the Commission on Criminal and Juvenile Justice; (8) the former Vice-Chair of the Utah Board of Youth Corrections; (9) a member of the Advisory Council for the Capacity Building Center for Tribes of the U.S. Children's Bureau; and (10) a member of the advisory board for the National Child Welfare Workforce Initiative.

The **Honorable Margaret S. Henry** (retired) served on the Los Angeles County Superior Court from 2001 to 2019, including as the Supervising Judge of the Dependency Division of the Court from 2005 to 2015. Judge Henry proposed and presided over the 18 and Up Courtroom, a courtroom devoted exclusively to serving nonminor dependent youths and the first of its kind in the state. As Supervising Judge, Judge Henry led several initiatives related to, among other things, civil court access for youths injured in foster care, access to government benefits for foster parents and relative caretakers, and dental healthcare, and she arranged monthly trainings for judicial officers in juvenile dependency court relating to law and to legal procedures, as well as for services available to children and families. Judge Henry has (1) served as the Vice Chair and Chair of the of the Juvenile Court Judges of California ("JCJC"), a section of the California Judges Association; (2) served on several collaborative committees of

the National Council of Juvenile and Family Court Judges ("NCJFCJ"); and (3) served as Lead Judge for the NCJFCJ Model Courts initiative. She was named Juvenile Court Judge of the Year by the JCJC in 2017.

Judge Thorne and Judge Henry have a personal and professional interest in the Court's correct understanding of what it means to serve as a judge in a state dependency court system, and they seek to offer their unique perspectives on the challenges and limitations of the dependency courts to assist this Court in its consideration of the underlying appeal.

INTRODUCTION

The juvenile dependency system in this country struggles to adequately meet the needs of transition-age youths, who are already burdened by trauma, displacement, and neglect. These young people are then thrust into a public child welfare system that has historically struggled to meet their complex needs, despite the earnest efforts of judges, social workers, and attorneys all trying to make available the resources the youths within the dependency court system need and to which they are entitled.

The concerns raised in this litigation cannot be fixed solely within the California dependency court system. State juvenile courts can address only one case at a time and lack the jurisdictional authority and capacity to address the unmet needs of the youths who depend upon them. Effective redress of the types of issues raised in this

litigation requires systemic reform. Thus, federal court intervention may be necessary to address some of the critical problems that have plagued the system and inhibited the ability to more readily ensure positive outcomes for foster youths transitioning into adulthood.

ARGUMENT

A. California's Dependency Judges Are Responsible for Addressing the Needs of Vulnerable Youths.

California's dependency court system is one of the largest and most complex of its kind in the nation. These courts address the needs of vulnerable children from the first referral of the child or the family to the Department of Children and Family Services ("DCFS") through a jurisdictional determination, removal (if necessary), temporary and/or permanent placement, and potentially up to three years of services when the child becomes a nonminor dependent at the age of 18 (under AB12). This court system is administered at a county-by-county level by the California Superior Courts, and appeals can be taken through the California Courts of Appeal.

Dependency jurisdiction is predicated on protecting the child who is the subject of the proceeding and may be appropriate when "[t]he child has suffered, or there is a substantial risk that the child will suffer," serious non-accidental physical harm inflicted by a parent or guardian, harm or illness as a result of neglect or inadequate supervision, serious emotional damage as a result of a caretaker's

conduct or neglect, or sexual abuse by a parent or guardian; when a child under five years of age has "suffered severe physical abuse" by a parent or any person if the parent knew or reasonably should have known the abuse was occurring; or when the parent or guardian "caused the death of another child through abuse or neglect"; among other qualifying conditions. Cal. Welf. & Inst. Code, § 300(a)-(j).[2]

That is, children become subject to the jurisdiction of the dependency court when they have already suffered, or are at risk of suffering, severe harm, illness, neglect, or abuse, ***not*** when the child has themself done anything wrong. The California Legislature was abundantly clear that the dependency system exists to care for the individual children who come within the ambit of the dependency courts: "[T]he purpose of the provisions of this chapter relating to dependent children is to ***provide maximum safety and protection for children*** who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ***ensure the safety, protection, and physical and emotional well-being of children*** who are at risk of that harm." § 300.2(a) (emphasis added).

To that end, dependency courts have flexibility ***on a case-by-case basis*** to "make any and all reasonable orders for the care, supervision,

[2] Subsequent undesignated statutory references are to the California Welfare and Institutions Code.

custody, conduct, maintenance, and support of the child, including medical treatment." § 362(a). This includes the ability to require the child's parents or guardians to participate in services and to "direct [] reasonable orders" to the parents or guardians, including directions to participate in counseling or educational programs. § 362(c)-(d). But while dependency courts have flexibility to fashion orders to help the ***individual*** child in a particular proceeding, that ability is not unlimited.

First, an agency must determine that the child or nonminor dependent is eligible for the services in question, and the court "***has no authority to order services***" otherwise. § 362(b)(2) (emphasis added).

Second, the child becomes ineligible for foster care—and therefore falls outside of the state judge's ability to help provide services—upon turning 18, unless the child voluntarily participates as a nonminor dependent *and* (1) is "completing secondary education or a program leading to an equivalent credential"; (2) is enrolled in postsecondary or vocational education; (3) is "participating in a program or activity designed to promote, or remove barriers to employment"; (4) is employed for at least 80 hours per month; or (4) is incapable of one of the above based on a medical condition. § 11403(b); *see also In re Jonathan C.M.*, 91 Cal.App.5th 1039, 1046 (2023).

Third, the judges' impact is limited by ordinary jurisdictional constraints. Dependency court proceedings concern the individual

youths who are the subject of the proceeding, and state dependency court judges are not enabled to examine on a case-by-case basis the systemic issues that also adversely impact the life of the young person appearing before them. There is no mechanism that would allow dependency judges to afford relief to the Plaintiffs and the putative class they represent from such systemic issues.

B. Transition-Age and Nonminor Dependent Youths Face Unique Individual and Class-Wide Challenges That Cannot Be Addressed Within the State Dependency Court System.

Transition-age youths, including 16- to 18-year-olds and nonminor dependents aged 18 to 21, represent one of the most complex populations in a juvenile court system. Beyond navigating their own adolescence, these youths face significant challenges confronting the systemic problems and limitations of the juvenile court system. And if they do remain in the system, it is because a judge has made a determination that the youth needs ongoing support and care that the system should provide. They age out of the system by operation of law—not because they have attained independence or the requisite services to which they are entitled—at age 21.

Judicial officers in Los Angeles routinely set hearings every six months for each dependent or non-minor dependent. If it appears at a hearing that different or better services are needed, they are ordered. DCFS is charged with following those orders. The only way a judicial

officer finds out about compliance with an order is through a report presented at a hearing. It may be six months before a judicial officer finds out that compliance with an order has been inadequate. A placement may be changed or new mental health providers put in place, but it may be six months before the court learns that the new placement or provider is just as inadequate as the former. Progress reports can be set for particularly important orders, but it can take several hearings before a court is informed that there are no adequate services, be it supportive housing, mental health, or other needed services, available. In the meantime, the youth is coming closer to aging out of the system.

Moreover, the availability of services may vary widely from one part of a state (or county) to another. Judges in one state or part of the state may not know of the existence of a service or benefit that is available in another part of the state and, therefore, may be unable to match the available supportive or therapeutic service to the needs of the particular youth. The same is true for attorneys representing youths, and even the youths themselves, as no one can advocate for someone to receive help if they do not know that help exists in the first place.

For all these reasons, case-by-case proceedings cannot fix the systemic challenges addressed in this litigation.

C. Dependency Courts Are Structurally Limited in the Solutions They Can Offer, and the Endemic Issues Raised by Plaintiffs Can Be More Effectively Addressed by the Federal Courts.

These systemic limitations of the state dependency system are exacerbated by resource scarcity and the limited enforcement mechanisms available to judges.

Dependency proceedings focus on the best interests of the individual who is the subject of that specific proceeding, and the authority of the dependency judge is strictly confined to the case immediately before the court. Within the confines of each hearing, which may last only 15 to 20 minutes, the judge must inquire into the needs of that individual youth, assess evidence (if any) presented by DCFS as to why funding, mental health services, housing, or other resources may not be available/provided, and try to fashion solutions that are tailored to *that* person at *that* specific time in her or his life. Youths may age out of the system before appropriate services are found. The system, for good reason, is designed to give each youth individualized attention, but that limits the ability of individual dependency court judges to address larger systemic issues that impact an individual young person.

Further, while judges can *order* services like transitional housing placements, supervised independent living placements, and various mental health and other supports, they cannot *ensure the availability* of

such services. Service orders frequently become aspirational "best efforts" mandates rather than enforceable orders. Judges are also confronted with the reality of working within a limited resource pool: allocating resources to one youth (if such resources are even available or being properly administered) can mean they are unavailable to another youth.

Even proactive judicial oversight, such as a finding that DCFS failed to make reasonable efforts to provide mandated services to a particular child, can have unintended repercussions. Judges making these findings risk potential federal funding cuts for youth placement, and federal funding provides the primary funding resource for youth placements. As a result, realistic judicial oversight of the availability and facilitation of the services ordered may be restrained.

Juvenile dependency courts can neither allocate resources nor compel systemic reform. Dependency court judges have many levers to pull, including negotiating between parties, issuing service orders, and appointing Court Appointed Special Advocates. But they cannot, as a matter of law and fact, redress the types of systemic injuries the Plaintiffs here have alleged.

A federal court faces no such limitations. The district court is not bound by the constraints of having dozens of hearings per day and hundreds of youths for whom to individually hear cases. The district court also does not have the same concerns or constraints as the state

dependency court about potential consequences of holding state or county officials in violation of state and federal laws, the Constitution, or court orders.

Amici have seen thousands of youths come through their courtrooms, many of whom have gone on to face uncertain futures and higher risks of negative outcomes such as incarceration, homelessness, mental health issues, and abuse. When Judge Thorne and Judge Henry made decisions on behalf of these young people, they accepted a responsibility to "watch out for" them, to vigilantly oversee efforts to protect them, and to help them find their way. Too often, judges have looked in vain for the "missing piece" that would better enable the youths to successfully launch into the world as a young adult. Juvenile judges have every desire to help these youths but are unfortunately faced with the realities of the limited tools at their disposal, the absence of adequate supportive services that match the needs of a particular young person, and the volume of dependents needing the assistance and benefits of those limited tools. Requiring each individual youth and their representative to fight for broader, more in-depth, and adequate resources and services is both wasteful of limited resources and unfortunately leaves too many youths with unmet needs. The federal district court is better positioned to afford the relief that Plaintiffs seek.

CONCLUSION

By and large, the California dependency court system, and Los Angeles's system in particular, is populated with individuals—judges, social workers, and attorneys on both sides—who care passionately about the lives and futures of the youths within the dependency system. Those youths face risks and obstacles that are both unique to their individual situation (including being victims of abuse, trauma, and other challenges) and yet commonplace to many in the dependency system (such as the absence of supportive families when learning how to navigate and succeed as a young adult). But while the vast majority of participants within the dependency system want to effect positive change in the lives of the youths, the consequences when the system does not work as intended fall harshly and irrevocably on the youths themselves.

Youths within the dependency court system are entitled to consistent and adequate support to address these issues, but the system is failing them. Despite their earnest efforts, state dependency court judges lack the authority, resources, and enforcement power to correct systemic failures. Judges are limited to individual cases and case-by-case orders, and too many young people do not get the support and assistance they need because the juvenile court system is unable to afford broader relief. Thus, federal intervention is necessary to address the systemic issues identified by the Plaintiffs in this litigation.

June 26, 2025

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP

By: *s/Gregory N. Pimstone*
Counsel for Amici Curiae
Hon. William A. Thorne (ret.)
and Hon. Margaret S. Henry (ret.)

Certificate of Compliance
for Briefs with Type-Volume Limit

1. This **Brief of Amicus Curiae** complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(g) and the word limit of Rule 29(a)(5) because, excluding the parts of the document exempted by Rule 32(f), this document contains **2,745** words (within the 6,500 words permitted).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Rule 32(a)(6) because this document has been prepared in a proportionally spaced typeface using the Microsoft Word (version Microsoft for Microsoft Word 365 MSO) word processing program in 14-point Century Schoolbook.

June 26, 2025

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP

By: *s/Gregory N. Pimstone*
Counsel for Amici Curiae
Hon. William A. Thorne (ret.)
and Hon. Margaret S. Henry (ret.)