SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203

Certiorari to the Colorado Court of Appeals, 23CA1613
District Court, Arapahoe County, 23JV30006

Petitioner:
R.G.,
v.
Respondent:
The People of the State of Colorado,

In the Interest of Minor Children:
C.G. and N.G.

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Case No. 2024SC337

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with all requirements of C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

1. The brief complies with the applicable word limit set forth in C.A.R. 29. **It contains 4,418 words.**

2. The brief complies with C.A.R. 29, including compliance with rule 28(a)(2) and (3).

The undersigned acknowledges that the brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

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IDENTITY OF AMICI-CURIAE AND INTEREST IN THE CASE

The Colorado Office of Respondent Parents' Counsel (ORPC) is an independent state agency established because "[r]espondent parents' counsel play a critical role in helping achieve the best outcomes for children involved in dependency and neglect proceedings by providing effective legal representation for parents in dependency and neglect proceedings . . .." C.R.S. § 13-92-101(1)(a).

Spanning more than a century, "the interest of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Such a deeply rooted fundamental right must be protected by a legal system that is fairly implemented and is one in which the laws, regulations, and rules of that system are strictly followed by the government who created it. When such a system purports to protect the best interests of children and reunite families, that system must minimize trauma and suffering for everyone involved. It must also leave the family better off than before the government intruded. Failing to do so pays little more than lip service to the protection of Colorado families. For these reasons, the ORPC has an interest in the outcome of this case.

The American Civil Liberties Union (ACLU) of Colorado is a nationwide, non-partisan, non-profit organization with almost 2 million members, dedicated to

safeguarding the principles of civil liberties enshrined in the federal and state constitutions for all Americans. The ACLU of Colorado, with over 45,000 members and supporters, is a state affiliate of the ACLU. Because the ACLU of Colorado is committed to protecting the civil liberties of all Coloradans, the organization has an interest in protecting a parent's right to a jury trial and ensuring that that right is not lost because of circumstances beyond an individual's control. Accordingly, the ACLU has an interest in the outcome of this case.

The Colorado Cross-Disability Coalition (CCDC) is Colorado's largest statewide non-profit disability rights membership organization dedicated to promoting social justice and combining individual and systemic advocacy as effective agents for change that can benefit people of all ages with all types of disabilities. The phrase "cross-disability" signifies that CCDC works to assist, represent and include people with all kinds of disabilities. CCDC promotes self-reliance and full participation in all aspects of life by people with disabilities through organizing, advocacy, education, legal initiatives, training and consulting, policy development, and legislation. CCDC is committed to preserving, expanding and enforcing the rights of people with disabilities to enjoy their fundamental and constitutional liberties, including those at issue in this case, with the reasonable modifications to policies, practices and procedures to which they are entitled, without encountering discrimination. Accordingly, the CCDC has an

interest in the outcome of this case, and specifically signs onto and adopts the arguments regarding people with disabilities and the Americans with Disabilities Act.

Disability Law Colorado (DLC) is a nonprofit organization designated by the Governor of the state of Colorado as that state's federally-mandated Protection and Advocacy System. DLC works to protect the rights of people with disabilities in facilities and in the community through direct advocacy, systemic litigation, and policy development. DLC works with individuals with all types of disabilities from birth through death on issues including, but not limited to, abuse, neglect, and discrimination in a variety of settings. DLC is part of a nation-wide system of Protection and Advocacy Systems. For these reasons, the DLC has an interest in the outcome of this case and specifically signs onto and adopts the arguments regarding people with disabilities and the Americans with Disabilities Act.

SUMMARY OF THE ARGUMENT

The procedures afforded to secure the right to a jury trial in dependency and neglect cases must comport with both due process and equal protection under the Fourteenth Amendment. To protect the right to fair and equal procedures, any relevant statutes and rules must be interpreted and applied correctly. This includes the proper interpretation and application of the Children's Code, the Americans with Disabilities Act (ADA or Act), the Colorado Rules of Juvenile Procedure (C.R.J.P.), and the

Colorado Rules of Civil Procedure (C.R.C.P). This Court should find that the Court of Appeals erred in concluding that Mother waived her right to a jury trial when she did not physically appear, but her counsel was present. Any other holding will have grave consequences for indigent parents and parents with disabilities whose circumstances prevent them from arriving in court at the scheduled time.

ARGUMENT

I. The procedures afforded to secure the right to a jury trial in dependency cases must comport with the due process and equal protection requirements of the Fourteenth Amendment.

In the context of the right to appeal, the Colorado Court of Appeals held that any steps necessary to secure a statutory procedural right must comport with due process and equal protection. *People ex rel. T.D.*, 140 P.3d 205, 214 (Colo. App. 2006) (abrogated on other grounds). *T.D.* relied on precedent of the Supreme Court of the United States recognizing that, while the Court "has never held that the States are required to establish avenues of appellate review . . . it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966).

In *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), "the Supreme Court concluded Mississippi's requirement that an indigent mother pay for a transcript before she could appeal a decree terminating her parental rights violated her rights to due process and

equal protection." *T.D.*, 140 P.3d at 213. In so holding, the Supreme Court recognized that "'[d]ue process and equal protection principles converge' in cases concerning access to judicial processes, and that 'due process concern homes in on the essential fairness of the state-ordered proceedings . . ..'" *Id.* (quoting *M.L.B.*, 519 U.S. at 120).

As with the statutory right to appeal, procedures required to secure Colorado's statutory right to a jury trial must comport with due process and equal protection. Essential fairness in dependency cases requires the courts to correctly interpret and faithfully apply the relevant state statutes, regulations, and rules in all cases—including those involving a parent whose indigency or disability interferes with their ability to appear in court. Moreover, because the right to fair procedures necessary to secure the statutory right to a jury trial is constitutional, a waiver of that right must be voluntary, knowing, and intelligent. *El Paso Cnty. Sch. Dist. No. 11 v. Bunger*, 713 P.2d 935, 937 (Colo. App. 1985).[1] Here, Mother did not voluntarily, knowingly, and intelligently waive her right to a jury trial and reversal is required.

[1] *See also People In Int. of T.M.S.*, 454 P.3d 375, 381 (Colo. App. 2019) (holding that while "[o]ur supreme court has not addressed whether the constitutional harmless error standard applies with respect to a parent's constitutional rights in dependency or neglect proceedings. . . [f]or purposes of this opinion, we will assume that it does.") (internal citations omitted).

II. The appearance of counsel is sufficient to preserve the crucial right to a jury trial in dependency cases.

"[P]arents retain a vital interest in preventing the irretrievable destruction of their family life." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Jury trials are a critical safeguard in preserving that interest, in part because "juries deliberate, and most often, the collective judgments of diverse groups are superior to judgments reached by individuals."[2]

Additionally, jurors "bring to the process values that reflect the conscience of the community."[3] This is particularly important in dependency and neglect cases, where marginalized and vulnerable populations are overrepresented. While "[j]udges have, do, and probably always will occupy the upper end of the social strata,"[4] almost 90% of parents involved in dependency and neglect proceedings are indigent.[5] Further, while

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[2] Richard Lempert, *The American Jury System: A Synthetic Overview*, 90 Chi.-Kent L. Rev. 825, 839 (2015); *see also* Chris Guthrie et. al., *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 827 (2001) ("[G]roup decision making can mitigate some of the hindsight bias's influence, suggesting that juries might more successfully avoid the hindsight bias than judges.").

[3] Jennifer K. Robbennolt, *Evaluating Juries by Comparison to Judges: A Benchmark for Judging?*, 32 Fla. St. U. L. Rev. 469, 503 (2005).

[4] Nino C. Monea, *Vanguards of Democracy: Juries as Forerunners of Representative Government*, 28 UCLA Women's L.J. 169, 187 (2021).

[5] Colo. Judicial Branch, Colo. State Ct. Administrator's Off., State Court Data Access System (analyzed September 2024).

"judges may . . . unconsciously factor race into their determinations of guilt,"[6] "[m]any scholars, judges, and litigants argue that a racially-mixed jury may become a critical lever to overcome racial biases, improve the fairness of trial proceedings, and enhance public respect and acceptance of criminal and civil verdicts."[7] Likewise, "[j]uries with diverse membership overcome prejudice and consider the implications of evidence better than individuals."[8] Accordingly, the right to a jury trial must not be denied lightly—and it must not be denied in ways that will have a disproportionate impact on the most vulnerable, including indigent parents and parents with disabilities.

In the present case, the Court of Appeals found that the presence of counsel in lieu of a physical appearance by a party at a jury trial does not satisfy the "appearance" requirement of C.R.C.P. 39(a)(3). *C.G*, 23CA1613, ¶ 17. In other words, if a party is not physically present – even when counsel for the party is – the party has waived their right to a jury trial. *Id.* This finding is problematic for several reasons.

First, C.R.S. § 19-3-202 does not authorize a waiver of the right to a jury trial. Because a waiver is not authorized, any waiver must be personally made by the party.

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[6] Hiroshi Fukurai & Darryl Davies, *Affirmative Action in Jury Selection: Racially Representative Juries, Racial Quotas, and Affirmative Juries of the Hennepin Model and the Jury De Medietate Linguae*, 4 Va. J. Soc. Pol'y & L. 645, 676 (1997).

[7] *Id.* at 647.

[8] Monea, *supra* note 4.

See e.g., *People v. Walker*, 318 P.3d 479, 483 (Colo. 2014). Further, because a waiver is not statutorily authorized, a waiver analysis is not relevant and neither C.R.J.P. 4.3 nor C.R.C.P. 39 are applicable. *See e.g.*, *Antero Treatment LLC v. Veolia Water Techs., Inc.,* 546 P.3d 1140, 1146 (Colo. 2023) ("Recall that our separation-of-powers jurisprudence dictates that if the affected matter is substantive, the statute prevails, but if the matter is procedural, the rule prevails.").

Second, the Juvenile Rules make clear that dependency cases "are civil in nature and **where not governed by [the C.R.J.P.]** . . . shall be conducted according to the Colorado Rules of Civil Procedure." C.R.J.P. 1 (emphasis added). However, jury trials and the waiver thereof are both addressed in the Juvenile Rules. Specifically, C.R.J.P. 4.3(a) states that "[u]nless a jury is demanded or ordered, it shall be deemed waived." *See In Int. of M.K.D.A.L.*, 410 P.3d 559, 560 (Colo. App. 2014) (negative-implication canon of construction states "the inclusion of certain items implies the exclusion of others."). Because both jury trials and their waiver are governed by the Juvenile Rules, the Civil Rules are not implicated and there is only one possible method for waiving a jury trial – failing to demand one.

Third, the lower court erred when it found that the plain language of C.R.C.P. 39(a) did not permit counsel to be present in lieu of a physical appearance by a party. Specifically, the Court of Appeals held, "[i]f the drafters of the rules intended

that a waiver would occur only when the party *and* counsel failed to appear, they would have said so explicitly." 23CA1613, ¶ 16 (emphasis in original). However, C.R.C.P. 39(a)(3) does not require a party to appear "in person." Indeed, there is no limitation in the rule whatsoever regarding *how* a party must appear.[9] As such, the Court of Appeals erred when it grafted new language into the rule. *See People v. McLaughlin*, 530 P.3d 1206, 1212 (Colo. 2023) (appellate courts "do not add words to or subtract words from rules.") (internal quotation marks and citation omitted).

The Colorado Supreme Court's choice not to limit *how* a party must appear is critical in dependency cases. In FY 22-24, approximately 89% of Colorado's dependency cases had at least one respondent who was indigent.[10] Indigent parents face innumerable barriers, both within and without the child welfare system.[11] Indeed, "[t]he

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[9] *See also* Chief justice Directive 23-03, *Virtual Proceedings Policy*, ¶ IV(A)(1) ("The following proceedings require an In-Person appearance **unless the court finds good cause** pursuant to Section VI of this Directive . . . a. Jury trial for any case type.") Emphasis added. Additionally, "Presumptively Flexible Appearances" include non-evidentiary proceedings in a dependency proceeding. https://www.coloradojudicial.gov/sites/default/files/2023-07/23-03%20%20Signed%206.20.2023%20eff.%208.1.2023%20WEB.pdf

[10] Colo. Judicial Branch, *supra* note 5.

[11] *See e.g.*, Human Rights Watch, *If I wasn't Poor, I Wouldn't be Unfit: The Family Separation Crisis in the US Child Welfare System*, November 17, 2022, https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare.; *see also* COLO. JUDICIAL BRANCH, COLO. OFC. OF RESPONDENT PARENTS' COUNS., FISCAL YEAR 2024-25 BUDGET

most common reason why child welfare agencies become involved with families is neglect . . . [and the] definition is inextricably linked to poverty."[12] Barriers attendant to poverty include unstable housing, unstable employment, lack of health care, lack of education, lack of child care, and a lack of reliable transportation.[13]

These barriers were highlighted in a recent study on failure to appear at court hearings in Lake County, Illinois.[14] In that study, 28% of participants—50 individuals who had failed to appear in a criminal proceeding—reported that if they attended their court hearing, they "would risk losing basic needs like food or shelter."[15] Participants in the study also "described the reoccurring challenges and responsibilities of consistently moving, securing shelters, and navigating homelessness."[16] Critically, "[a]n

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REQUEST 5-6, https://coloradoorpc.org/wp-content/uploads/2023/10/FINAL-ORPC-FY-2024-25-Budget-Request.pdf.

[12] Human Rights Watch, *supra* note 11.

[13] *See e.g.,* Hannah Lieberman Consulting et al., *Overcoming Barriers that Prevent Low-Income Persons from Resolving Civil Legal Problems* vi (September 2011) https://www.lsc.gov/sites/default/files/attach/resources/LegalNeedsStudy-MinnesotaBarAssociation.pdf.

[14] Shannon Magnuson et al., *Understanding Court Absence and Reframing "Failure to Appear"* (2023), https://justicesystempartners.org/wp-content/uploads/2023/05/SJC-Lake-County-Getting-to-Court-as-Scheduled-Reframing-Failure-to-Appear.pdf.

[15] *Id.* at 9.

[16] *Id.* at 25.

obstacle in even one of these areas can shatter the tenuous stability of [indigent people's] lives."[17]

A fundamental goal of the Children's Code is to "remove a child from the custody of his parents **only when** his welfare and safety or the protection of the public would otherwise be endangered . . ." C.R.S. § 19-1-102(1)(c) (emphasis added). As such, the protections of a jury trial – which is a "critical lever to overcome racial biases [and] improve the fairness of trial proceeding"[18] – should not be denied to society or a parent because the parent cannot make it to court in person due to the threat of losing their job, a lack of childcare, a lack of transportation, or a lack of reasonable accommodations, when counsel can and does appear on the parent's behalf.

III. When determining whether a party with a known disability has waived their right to a jury trial in dependency cases, Colorado courts are constitutionally required to consider whether the ADA was properly interpreted and applied.

Where—as in this case—a parent's disability requires appearance through counsel rather than in-person appearance, the court violates the ADA, equal protection,

[17] Lieberman Consulting et al., *supra* note 13, at vi.

[18] Fukurai & Davies, *supra* note 6, at 647.

and due process of law by finding a parent's appearance through counsel to constitute a waiver of their right to a jury trial.

In passing the ADA more than three decades ago, Congress found that "physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society…." 42 U.S.C. § 12101(a)(1). Because of that right to fully participate, a major purpose of the Act was "to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment . . . in order to address the major areas of discrimination faced day-to-day by people with disabilities." 42 U.S.C. § 12101(b)(4). That power includes addressing discrimination from state and local governments and courts. 42 U.S.C. § 12132.[19] To avoid discriminating against people with disabilities, state and local courts must ensure that "no qualified individual with a disability . . . be excluded from participation in or be denied the benefits of the services, programs, or activities," of the court. *Id.* This view has been fully embraced by Colorado. Specifically, the Colorado Judicial Department has declared that:

> People with disabilities are to be given an equal opportunity to access, use and fully participate in court services and programs, and not be discriminated against because of their disability. . . Whenever reasonable, policies, practices or procedures **must be** modified to make court services

[19] *See also Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004) ("we conclude that Title II [of the ADA], as it applies to the class of cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress' § 5 authority to enforce the guarantees of the Fourteenth Amendment.").

> and programs readily accessible to and useable by, people with disabilities.[20]

Additionally, the applicability of the ADA is intentionally broad, and when a court knows of an individual's need for reasonable accommodations, it is required to provide those accommodations – even in the absence of a specific request. 42 U.S.C. § 12102(4)(A);[21] *Robertson v. Las Animas Cnty. Sheriff's Dept.*, 500 F.3d 1185, 1197–98 (10th Cir. 2007) ("a public entity is on notice that an individual needs an accommodation when it knows that an individual requires one, either because that need is obvious or because the individual requests an accommodation."); *Steger v. Franco, Inc.*, 228 F.3d 889, 894 (8th Cir. 2000) ("the ADA is a remedial statute and should be broadly construed to effectuate its purpose") (citations omitted); *see also Bax v. Doctors Med. Ctr. of Modesto, Inc.*, 52 F.4th 858, 869 (9th Cir. 2022) ("It is axiomatic that an entity's duty to

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[20] COLORADO JUD. DEP'T, ACCESS TO THE COURTS: A RESOURCE GUIDE TO PROVIDING REASONABLE ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES FOR JUDICIAL OFFICERS, PROBATION AND COURT STAFF (2004), https://www.coloradojudicial.gov/sites/default/files/2023-10/ADAResourceGuide.pdf (emphasis added).

[21] *See also* U.S. DEP'TS OF JUSTICE & HEALTH AND HUMAN SERVS., *Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts Under* [*the ADA*] . . . *and Section 504* (2015) at 7, https://www.ada.gov/resources/protecting-parent-rights/#:~:text=Protecting%20the%20Rights%20of%20Parents%20and%20Prospective%20Parents%20with%20Disabilities.

look into and provide a reasonable accommodation may be triggered when the need for accommodation is obvious, even if no request has been made.") (internal quotation marks and citations omitted); *Pierce v. D.C.*, 128 F. Supp. 3d 250, 269 (D.D.C. 2015) ("the District's insistence here that prison officials have no legal obligation to provide accommodations for disabled inmates unless the inmate specifically requests such aid—and even then, only if it actually turns out that the inmate really needs the requested accommodation—is untenable and cannot be countenanced."); C.R.S. 24-34-805(2)(e) ("Carrie's Law") ("In a dependency and neglect case . . . when a respondent parent's disability is alleged to impact the health or welfare of a child, **the court shall find whether reasonable accommodations and modifications . . . were provided** to avoid nonemergency removal on the basis of disability.") (emphasis added); *People In Int. of S.K.,* 440 P.3d 1240, 1248 (Colo. App. 2019) (holding that when a parent has a known disability, "the Department must provide appropriate screening and assessments

of a parent . . .."");[22] *but see id.* ("the parent should also identify any modifications that he or she believes are necessary to accommodate the disability.").[23]

In the present case, the Court of Appeals purported to adopt the analysis of *C.C.* to determine whether Mother voluntarily waived her right to a jury trial. *C.C.*'s analysis requires that, "before a court determines whether a waiver has occurred, it should

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[22] In ORPC's view, *S.K.* is in accord with federal law, finding "the Department **must** provide appropriate screening and assessments of a parent" to, in part, determine appropriate accommodations. 440 P.3d at 1248 (emphasis added); *see also In the Interest of S.Z.S.*, 524 P.3d 1209, 1214 (Colo. App. 2022) ("the department has **an affirmative duty** to make reasonable accommodations for a parent with a qualifying disability when providing rehabilitative services to that parent.") (emphasis added); *People In Int. of C.Z.*, 360 P.3d 228, 233 ("the ADA imposes **an affirmative duty** on a public entity to make reasonable accommodations for qualified individuals with disabilities."); *Pierce*,128 F. Supp. 3d at 269 ("Title II mandate[s] that entities **act affirmatively** to evaluate the programs and services they offer and to ensure that people with disability s will have meaningful access to those services.) (emphasis altered); **Affirmative Duty**, Black's Law Dictionary (11th ed. 2019) ("A duty to take a positive step to do something.").

To the extent *S.K.* holds that a parent's failure to make a specific request for accommodations absolves the department or court from providing them–or has been interpreted to do so–those interpretations were wrongly decided and are contrary to federal law. *See e.g. Armstrong v. Newsom*, --- F.Supp.3d ----, No. 94-CV-02307 CW, 2024 WL 1221955, at *22 (N.D. Cal. Mar. 20, 2024) ("A public entity's policies and procedures do not comply with the ADA if they require people who the public entity knows are disabled to request accommodations as a condition to providing the accommodations.").

[23] *See* Sarah M. Morris, *Carrie-ing on: Advancing Justice for Disabled Parents After Colorado's Carrie Ann Lucas Parental Rights for People with Disabilities Act*, 77 Okla. L. Rev. 195, 207 (2024).

inquire further about the parent's whereabouts **and the circumstances concerning her absence** before converting a jury trial to a bench trial." 519 P.3d at 766 (emphasis added). But the Court of Appeals did not fully inquire into the circumstances concerning Mother's absence.

When a parent has a known disability, "the circumstances concerning [a party's] absence" includes an analysis of the ADA and the reasonable accommodations needed to ensure that "no qualified individual with a disability . . . [is] excluded from participation in or [is] denied the benefits of the services, programs, or activities," of the court. 42 U.S.C. § 12132. This reading is consistent not only with the plain language of *C.C.*, but also with the proper interpretation and faithful application of the ADA.

Further, the Equal Protection Clause of the Constitution of the United States commands that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV § 1. And "[t]he purpose of the ADA is to place those with disabilities on an equal footing with those without disabilities . . ." *See e.g.*, *Duvall v. Georgia-Pac. Consumer Prod., L.P.*, 607 F.3d 1255, 1262 (10th Cir. 2010) (quoting *Kornblau v. Dade County*, 86 F.3d 193, 194 (11th Cir. 1996)). Failing to consider the ADA, including failing to consider reasonable accommodations necessary for a person with a disability to avail themself of the statutory right to a jury trial, violates both the Equal Protection Clause and the ADA. *See T.D.*, *M.L.B.*, and *Rinaldi*, *supra.*

Said differently, the court must consider reasonable accommodations – such as allowing an appearance by counsel – and failing to do so is a violation of the ADA. Likewise, failing to do so denies those with a disability equal protection to the right of a jury trial. These glaring violations of both the ADA and Fourteenth Amendment must not be condoned by this Court.

Further, while the ADA applies to all litigants with disabilities, it is even more critical in dependency cases. In FY 22-24, of the cases in which a parent or other respondent was appointed counsel in a Colorado dependency case, almost half of parents/respondents (45%) have a disability.[24] This stands in stark contrast to the population of Colorado, of which approximately 24% are people with disabilities.[25] In other words, people with disabilities are overrepresented in dependency cases by almost 100%.[26]

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[24] ORPC Internal Data, Parent Disability FY22-FY24, RESPONDENT PARENT PAYMENT SYSTEM, (analyzed September 2024).

[25] *Id.*

[26] *See also* NAT'L COUNCIL ON DISABILITY, *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children* 77 (2012) (noting that parents who had a disability label in their school record were 237% more likely to experience child welfare involvement and of those people who did experience such involvement, a disabled person was 326% more likely to have a termination of their parental rights.), https://www.ncd.gov/report/rocking-the-cradle-ensuring-the-rights-of-parents-with-disabilities-and-their-children/.

And that is not the end of the disproportionate harm people with disabilities face in Colorado dependency proceedings. In FY 22-24, parents/respondents without disabilities were reunited with their children in dependency cases approximately 63% of the time.[27] For parents/respondents with disabilities, the reunification rate plummets to 47%.[28] Worse yet, parents/respondents without disabilities had their parental rights terminated approximately 10% of the time.[29] For those with a disability, the termination rate more than doubled to 22%.[30] Put plainly, parents/respondents with a disability were almost twice as likely to be pulled into the child welfare system and, once in, were more than twice as likely to have their parental rights terminated.

In light of these statistics, ensuring every jury trial waiver analysis in dependency cases includes the proper application of the ADA is critical. This includes analyzing potential reasonable accommodations needed to ensure due process and equal protection to the right of a jury trial for parents with disabilities. Accommodations to ensure that a parent with a disability has access to a jury trial could include allowing the parent to appear remotely, ensuring the availability of auxiliary communication devices, allowing a parent to take frequent breaks or to exit the courtroom without advance

[27] ORPC Internal Data, Parent Disability FY22-FY24, *supra* note 24.
[28] *Id.*
[29] *Id.*
[30] *Id.*

authorization, including a support person or animal at parent's table, or allowing appearance of the parent through counsel alone when other accommodations would not be successful. Failing to consider accommodations necessary to secure the right to trial for a parent with a disability is a violation of both the ADA and the Constitution of the United States.

CONCLUSION

The procedures afforded to secure the right to a jury trial must comport with due process and equal protection under the Fourteenth Amendment. Amici urge this Court to preserve the right to a jury trial for indigent people and people with disabilities who might face obstacles to appearing in court and to find that the appearance of counsel is sufficient to preserve the crucial right to a jury trial in dependency cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 8th day of October 2024, a true and correct copy of the foregoing **BRIEF OF AMICI CURIAE** was served electronically via Colorado Courts E-Filing:

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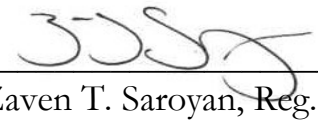

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