IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE D.P., A Person Coming Under the Juvenile Court Law	)	No. S267429
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent,	)	Court of Appeal No. B301135 Los Angeles No. 19CCJP00973
v. T. P. Objector and Appellant.	)	

APPLICATION TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER AND PROPOSED AMICUS CURIAE BRIEF BY LEGAL SERVICES FOR PRISONERS WITH CHILDREN, LOS ANGELES DEPENDENCY LAWYERS INC., EAST BAY FAMILY DEFENDERS, AND EAST BAY COMMUNITY LAW CENTER

After the Unpublished Decision by the Court of Appeal
Second District, Division Five
Filed February 10, 2020

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Under California Rules of Court, rule 8.520(f), Legal Services for Prisoners with Children, Los Angeles Dependency Lawyers Inc., East Bay Family Defenders, and East Bay Community Law Center request leave to file the attached amicus curiae brief. The brief addresses the second issue on which the Court granted review: "Is an appeal of a juvenile court's jurisdictional finding moot when a parent asserts that he or she may be barred from challenging a current or future placement on the Child Abuse Central Index as a result of the finding?"

Legal Services for Prisoners with Children (LSPC) organizes communities impacted by the criminal justice system and advocates to release incarcerated people, restore civil and human rights to the currently and formerly incarcerated, and reunify families and communities. LSPC advocates for families involved in the juvenile dependency system, paying particular attention to how juvenile dependency involvement leads to criminal justice involvement and vice versa.

Los Angeles Dependency Lawyers, Inc. (LADL) was formed as a non-profit in December 2006 to represent parents in juvenile dependency proceedings in Los Angeles County, and to assure parents receive a fair and reasonable opportunity to parent their child. The parents in the instant appeal were represented by LADL attorneys during the juvenile dependency proceedings and share experiences that are common to many other LADL clients.

LADL attorneys provide consistent legal representation to their clients through the life of the dependency case and observe the impact appellate court decisions have on the clients' lives past the closure of a juvenile dependency case.

East Bay Family Defenders (EBFD) represented parents in juvenile dependency cases in Alameda County from September 2018 through October 2021. EBFD follows a model of high-quality interdisciplinary representation that is designed to help parents make good decisions for their children and get out of the challenging circumstances that destabilized the family. Its interdisciplinary team takes a holistic view of a family's circumstances, recognizing that many parents are simultaneously involved in other civil, criminal or immigration proceedings and may suffer collateral consequences of a welfare agency's actions or a juvenile court's rulings, including CACI listings.

East Bay Community Law Center (EBCLC) is the largest legal services provider in Alameda County. EBCLC's Clean Slate unit works on criminal record remedies, fines and fees advocacy, traffic issues, and employment advocacy, including background check advocacy and occupational licensing. We see on a regular basis how individuals' ability to thrive in life can be stunted by outdated records or inaccurate information.

Amici support Petitioner's request that the Court reverse the Court of Appeal's dismissal of the appeal as moot. Dismissal will unfairly prejudice Petitioner if it results in issue preclusion

pursuant to Penal Code section 11169, subdivision (e) and prevents Petitioner from challenging a future Child Abuse Central Index (CACI) listing at a CACI grievance hearing. We alternatively urge the Court, if it instead affirms the Court of Appeal, to clearly state that the juvenile court order will *not* have such preclusive effects at a later CACI hearing.

The attached amicus curiae brief will assist the Court in deciding this case because it argues that issue preclusion following affirmance of the Court of Appeal's dismissal would be fundamentally unfair for two reasons not discussed in the parties' briefs. First, two well-established requirements of issue preclusion are absent – the issues are not identical and parents lack a full and fair opportunity to litigate CACI issues in a juvenile dependency proceeding. Second, issue preclusion following a dismissal for mootness ("mootness preclusion") is always unfair and, in the specific context of CACI, violates due process and legislative intent. On this second point, our brief (a) describes the origins of mootness preclusion in California case law, (b) explains how concerns about the unfairness of mootness preclusion have led to inconsistent approaches to mootness in juvenile dependency appeals, and (c) argues that mootness preclusion should be disapproved by this Court because it is (i) contrary to the Restatement of Judgments, (ii) unsupported by current statutory authority, (iii) inconsistent with recent Supreme Court authority, and (iv) out of alignment of judicial procedural norms.

We respectfully ask the Court to accept the attached brief for consideration.

Dated: November 1, 2021

/Rita Himes/_____

Rita Himes
Counsel for Amici

PROPOSED AMICUS CURIAE BRIEF
OF LEGAL SERVICES FOR PRISONERS WITH CHILDREN,
LOS ANGELES DEPENDENCY LAWYERS INC.,
EAST BAY FAMILY DEFENDERS,
AND EAST BAY COMMUNITY LAW CENTER

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CERTIFICATION PURSUANT TO RULE 8.520(f)(4)

I, Rita Himes, counsel for Proposed Amici Curiae Legal Services for Prisoners with Children, Los Angeles Dependency Lawyers Inc., East Bay Family Defenders, and East Bay Community Law Center certify that no party or counsel for a party in this case authored the proposed amicus brief in whole or part or made a monetary contribution intended to fund preparation or submission of the brief. Nor has any person or entity made a monetary contribution intended to fund preparation or submission of the brief other than amici, their members, or their counsel. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and based on my personal knowledge.

Dated: November 1, 2021

/Rita Himes/_____
Rita Himes
Counsel for Amici

INTRODUCTION

This amicus brief addresses only the second question presented: "Is an appeal of a juvenile court's jurisdictional finding moot when a parent asserts that he or she may be barred from challenging a current or future placement on the Child Abuse Central Index as a result of the finding?"

The gist of the second question is whether the instant appeal was improperly dismissed as moot because the dismissal will affirm the juvenile court order, giving it *issue preclusive (collateral estoppel) effect* concerning any future challenge to a Child Abuse Central Index (CACI) listing based on the same underlying incidents. Issue preclusion regarding CACI hearings occurs pursuant to Penal Code section § 11169, subdivision (e) (hereafter, section 11169(e))[1] of the Child Abuse and Neglect Reporting Act (§§ 11164-11174.3; CANRA),[2] which provides that an administrative process to challenge a CACI listing "shall be

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[1] All future statutory references are to the Penal Code unless otherwise indicated.

[2] Amici agree with both Petitioner's and Respondent's general description of the CANRA statutory scheme (POB 38-40; RB 31-36) and do not repeat that background information here.

denied when a court of competent jurisdiction has determined that suspected child abuse or neglect has occurred."

The Court should reverse the Court of Appeal's dismissal because there is a clear danger of issue preclusion under section 11169(e), which would be fundamentally unfair for two reasons. First, section 11169(e) issue preclusion based on a prior juvenile dependency jurisdiction finding is unfair because two well-established requirements of issue preclusion are absent: an identity of issues and a full and fair opportunity and incentive to litigate the issue in the first action. Second, issue preclusion following dismissal of an appeal for mootness (what we refer to as "mootness preclusion") is unfair because the party facing preclusion was denied appellate review of the preclusive finding on the merits through no fault of their own. Mootness preclusion is inconsistent with the Restatement of Judgments, based on outdated statutory authority, contrary to due process, in tension with recent Supreme Court authority, and contrary to judicial norms designed to ensure reliable factfinding and judicial economy.

To avoid the double unfairness of issue preclusion in these circumstances, the Court should reverse the Court of Appeal's

dismissal of the appeal. Alternatively, if the Court affirms the Court of Appeal, it should clearly state that the juvenile court judgment will not thereafter have preclusive effect at a CACI hearing.

(This brief takes no position on whether the Court of Appeal decision should otherwise be affirmed or reversed based on stigma alone.)

ARGUMENT

I. A Future CACI Listing and Section 11169(e) Hearing Denial Are Possible in this Case.

A. A Future CACI Listing is Possible.

As a preliminary matter, Respondent Los Angeles County Department of Children and Family Services (Department) is incorrect when it argues that a CACI listing is no longer possible in this case. (RB 37) It is necessary to refute this argument because, if correct, it would make the second question presented unnecessary for this Court to decide.

First, CANRA does *not* place a time limit on the Department's *duty* to send the Department of Justice (DOJ) a report of "*every* case it investigates of known or suspected child

abuse or severe neglect that is determined to be substantiated." (§ 11169, subd. (a) [hereafter, § 11169(a); italics added].) The Department describes the duty as if it applies during and only during an *initial* investigation of suspected reportable conduct. (RB 34, 36) But the statute includes no such limitation. And such a limitation would contravene the purpose of the law: "to protect children from abuse and neglect." (§ 11164, subd. (b).) CANRA includes a requirement to inform DOJ if a CACI referral was made in error: "If a report has previously been filed which subsequently proves to be not substantiated, the [DOJ] shall be notified in writing of that fact and shall not retain the report." (§ 11169(a).) It only makes sense that. if a social worker initially determines a report is not substantiated and the report later proves to be substantiated (e.g., after admissions in court or the examination of evidence at a contested hearing), the social worker should have a similar duty to inform DOJ of that new determination (assuming the social worker is informed of the development and agrees a relevant allegation has been substantiated).

The Department argues the alleged conduct found true by the juvenile court is not clearly reportable under CANRA even if

substantiated because it falls within a gap in the statutory scheme. (RB 41-42) CANRA requires CACI referrals for substantiated cases of "child abuse or severe neglect," but not "general neglect." (§ 11169(a).) As relevant here, severe neglect is defined as "neglect where any person having the care or custody of a child *willfully* causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered." (§ 11165.2, subd. (a) [italics added]; see § 11165.3.) General neglect is defined as "the *negligent* failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision *where no physical injury to the child has occurred*." (§ 11165.2, subd. (b) [italics added].) The Department plausibly argues that Petitioner's conduct, as found by the juvenile court, does not fit within the definition of "general neglect" because physical injury to the child occurred, yet it also does not fit within the definition of "severe neglect" because the court found Petitioner acted negligently and not willfully. In other words, CANRA is silent as

to the reportability of nonwillful negligent[3] conduct where a physical injury to the child occurred, as was found in this case.

The Department claims authority to fill in the gap in CANRA coverage by administrative interpretation. (RB 42 [citing *Chevron, U.S.A., Inc. v. NRDC, Inc.* (1984) 467 U.S. 837, 844-845 (interpreting *federal* administrative law)].) It claims that the Department has done so and has concluded such conduct is not reportable. Therefore, it argues, the Court can determine that no future CACI referral is possible because it must be assumed that

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[3] CANRA also defines "child abuse and neglect" to include "physical injury or death inflicted by other than accidental means upon a child by another person." (§ 11165.6.) The Department suggests that the conduct in this case is not reportable as physical abuse (i.e., "child abuse") with respect to Petitioner because there was insufficient evidence that he was the direct perpetrator of the physical injuries to the child. (RB 40)

CANRA further defines "child abuse and neglect" to include the "the willful harming or injuring of a child," i.e., a situation where a person "willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain" (§§ 11165.3, 11165.6), and "unlawful corporal punishment or injury," i.e., "a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition" (§§ 11165.4, 11165.6). The Department does not address these provisions, but it can be inferred that the Department deems them inapplicable because there was insufficient evidence Petitioner was the direct perpetrator of physical abuse or that his conduct was willful.

the Department's employees will perform their official duties. (Evid. Code, § 644.)

The Court should not decide the issue of whether CANRA is in fact silent about whether such conduct is reportable or, if so, whether county welfare departments may fill that gap via administrative interpretation – neither issue has been adequately briefed on appeal. The Court also need not reach these issues because, even assuming both propositions are true, the Department has not shown that it had adopted a clear policy that such conduct is *not* reportable to DOJ, thus justifying the presumption that its employees will not report the conduct in the future.

The Department cites its Policy #0070-548.17, "Completion and Submission of the BCIA 8583 Child Abuse or Severe Neglect Indexing Form," Rev. 7/26/18 (hereafter, Policy). (Mo. Aug. Record or for Jud. Notice, Exh. 2; RB 43; see also RB 33-34, 37, 40-41.) However, it merely notes that the Policy says DOJ "does not require notice of allegations of general neglect."[4] (RB 43) The

[4] The Department argues: "Based on [Policy], substantiated referrals based on general neglect are not reported to the DOJ. That policy does not distinguish between general neglect referrals that involve an injury and those that do not involve an

Policy does not address the alleged gap in CANRA coverage, independently define "general neglect," or affirmatively state whether general neglect resulting in physical injury is reportable. (Policy at 1-7.) Rather, it simply lists CANRA statutes as the source of definitions for these terms. (Policy at 6.) In the Department's view, those statutes are *ambiguous* regarding the reportability of nonwillful neglect resulting in physical injury. Therefore, it cannot be presumed that Department employees would understand the conduct in this case is nonreportable and thus would not report it to DOJ.

In sum, the Department's argument that no future CACI listing is possible in this case is unpersuasive.

B. Denial of a CACI Hearing Based on the Juvenile Court Findings is Likely Following a Department CACI Referral.

A second preliminary issue is whether, in the event of a future CACI listing, the Department would deny Petitioner a CACI hearing based on the juvenile court's jurisdiction findings

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injury." (RB 43) But "general neglect" is defined in CANRA as neglectful conduct that does *not* result in an injury, so the Policy's statement that general neglect are not reportable simply means general neglect that does not result in injury is not reportable – a rule not applicable to Petitioner's case.

following a dismissal of his appeal of those findings for mootness. If there were no danger of such issue preclusion, the Court would not need to decide whether the danger of such preclusion is a sufficient ground for deciding an appeal on the merits rather than dismissing it as moot.

The Department does not dispute that such issue preclusion would follow from dismissal of Petitioner's appeal, assuming a CACI referral was later made about Petitioner. We agree that, *as a matter of actual agency practice*, if the Department refers Petitioner to CACI it is also likely to deny Petitioner a CACI hearing based on the juvenile court's jurisdiction findings against Petitioner. In amici's experience and as confirmed to us by other juvenile dependency firms who represent parents across the state (see also Amicus Brief of Tate Lounsbery, Esq.), county welfare agencies such as the Department routinely deny CACI hearings pursuant to section 11169(e) based on juvenile dependency jurisdiction findings. Moreover, as discussed further *post*, courts frequently apply issue preclusion following dismissal of an appeal for mootness (mootness preclusion) and the Department therefore is likely to do the same.

We argue in this brief that both practices are unlawful. This case provides the Court the opportunity to clarify the law and stop these continuing unlawful practices in the administrative and judicial spheres.

II. Section 11169(e) Issue Preclusion Following Dismissal of the Appeal Would Be Unfair Because Two Requirements of Issue Preclusion are Absent.

If the Court of Appeal is affirmed and section 11169(e) issue preclusion is thereafter applied based on the juvenile court findings, Petitioner would be unfairly prejudiced because two well-established requirements of issue preclusion are missing: an identity of issues and a full and fair opportunity and incentive to litigate the issue in the first action. Indeed, these elements are missing in every or nearly every case where a CACI hearing is denied based on prior juvenile dependency findings: a jurisdiction finding is not the same issue as would be decided in a CACI grievance hearing, and parents or guardians (hereafter for simplicity, parents) do not have a full and fair opportunity and incentive to litigate CACI issues in a juvenile dependency proceeding.

A. Issue Preclusion Requires an Identity of Issues.

The well-established elements of issue preclusion are: " '(1) after final adjudication (2) *of an identical issue* (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party.' " (*Samara v. Matar* (2018) 5 Cal.5th 322, 327 [italics added].) The plain terms of section 11169(e) are consistent with the traditional "identical issue" requirement. The statute bars a CACI grievance hearing only if a court of competent jurisdiction "made a finding concerning whether the suspected child abuse or neglect was substantiated." (§ 11169(e)) This is the same finding (a) the grievance officer must make in a CACI hearing, (b) the trial court must decide de novo on writ review, and (c) the court of appeal must review for substantial evidence. (See *Gonzalez v. Santa Clara County Department of Social Services* (2014) 223 Cal.App.4th 72, 84-85, 101 (*Gonzalez*).)

B. There is No Identity of Issues in a Juvenile Dependency Jurisdiction Hearing and a CACI Grievance Hearing.

Findings made during a juvenile dependency jurisdiction hearing are rarely if ever identical to findings that would be

made in a CACI grievance hearing. (See also amicus curiae brief of Tate Lounsbery, Esq.)

The purpose of juvenile dependency proceedings is to protect children from a current risk of harm where the children's parents or guardians cannot provide that protection. "Dependency jurisdiction attaches to a child, not to his or her parent." (*In re D.M.* (2015) 242 Cal.App.4th 634, 638.) "Although the harm or risk of harm to the child must generally be the result of an act, omission or inability of one of the parents or guardians, the central focus of dependency jurisdiction is clearly on the child rather than the parent." (*In re R.T.* (2017) 3 Cal.5th 622, 626.)

Accordingly, the determination made at a jurisdiction hearing is whether a minor is at substantial risk of harm at the time of the hearing due to a parent or guardian's misconduct or *inability* to protect the minor from harm. At least three possible bases for jurisdiction require *no showing of parental fault* whatsoever. (*In re R.T., supra,* 3 Cal.5th at pp. 624, 629 [Welf. & Instit. Code § 300, subd. (b)(1), first clause]; *id.* at p. 630 [Welf. & Instit. Code § 300, subd. (b)(1), fourth clause]; *id.* at p. 633 [Welf. & Instit. Code § 300, subd. (b)(2)].) Several others require only

negligent conduct. (*Id.* at p. 630 [Welf. & Instit. Code § 300, subd. (b)(1), second and third clauses, (d), (e), (f), and (i)].)

The purpose of a CACI listing, on the other hand, is to identify people who have committed *criminal* conduct – criminal culpability is required and the listing occurs even if the child is no longer at risk of harm. (See *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 267 [CANRA's reporting laws "contemplate criminal acts"]; *Gonzalez, supra,* 223 Cal.App.4th at pp. 88-89 [CANRA's "placement in the code governing criminal culpability and prosecution tends to suggest that it was addressed to conduct that was criminal in character"].)

The findings required for a CACI listing, which are the same as the findings required at a CACI grievance hearing to maintain the listing (§ 11169(e)), are defined in language almost identical to that used in criminal child abuse statutes. CANRA requires a CACI referral when an investigator substantiates an allegation of "child abuse or neglect" (§ 11169(a); see § 11165.12 [referencing § 11169.6]), and "[a]s used in this article, the term 'child abuse or neglect' " is defined in a series of other statutes (§ 11165.6 [referencing §§ 11165.1-11165.4].)

"[C]hild abuse or neglect" under CANRA includes direct physical or mental abuse of children. That is, CANRA requires CACI listings for persons who "willfully cause or permit any child to suffer, or inflict thereon, unjustifiable physical pain or mental suffering." (§§ 11165.3, 11165.6.) This language mirrors the language of section 273a, subdivisions (a) and (b) in defining the crime of child abuse: one who "willfully causes or permit any child to suffer, or inflict thereon unjustifiable physical pain or mental suffering." (See CA Crim. Jury Inst. No. 823 ["Child Abuse"].) CANRA also requires listings for persons who "willfully inflict upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition" (§§ 11165.4, 11165.6), which mirrors the language of section 273d, subdivision (a) in defining the crime of corporal punishment or injury of a child: one who "willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition." (See CALCRIM No. 822 ["Inflicting Physical Punishment on Child"].)

"[C]hild abuse or neglect" under CANRA also includes severe neglect of a child. That is, CANRA requires a CACI listing for a person who, "having the care or custody of any child,

willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered." (§§ 11165.2, subd. (a), 11165.3, 11165.6.) This mirrors the following additional language of section 273a, subdivision (a) in defining the crime of child abuse: one who, "having the care or custody of any child, . . . willfully causes or permits that child to be placed in a situation where his or her person or health is endangered."

Finally, CANRA defines "child abuse and neglect" to include sexual assault or exploitation, which it in turn defines by *direct reference* to penal statutes that define sexual crimes against children. (§§ 11165.1, 11165.6.) That is, CANRA requires CACI listings whenever a social worker investigates and determines the person committed one of the listed crimes.

Unlike juvenile dependency findings, which focus on the *ability* of a parent or guardian to protect a child from harm – frequently regardless of fault – CACI listings are based on determinations of criminally culpable conduct by the listed person. The crime associated with "severe neglect" under CANRA, for example, requires proof of criminal negligence, " ' "a standard of conduct that is rigorous. *Ordinary negligence will not*

suffice. . . . The negligence must be aggravated, culpable, gross, or reckless, that is, the conduct of the accused must be such a departure from what would be the conduct of an ordinarily prudent or careful [person] under the same circumstances as to be incompatible with a proper regard for human life ... or an indifference to consequences." ' " (*People v. Valdez* (2002) 27 Cal.4th 778, 788 [italics added]; see *id.* at p. 781.) Ordinary neglect that fails to protect a child from a substantial risk of harm, however, is sufficient to establish juvenile dependency jurisdiction.

Section 11169(e) applies where a *criminal* court or jury has found that child abuse or neglect occurred within the meaning of criminal statutes, which are equivalent to "child abuse or neglect" under CANRA. It does not apply simply because a juvenile court has found that juvenile dependency jurisdiction exists within the meaning of Welfare and Institutions Code section 300. Nevertheless, when county agencies investigate and substantiate allegations that a child has suffered physical injury in the parent's or guardian's care, the agencies routinely make a CACI referral to DOJ and file a dependency petition. If a court finds the petition true and takes jurisdiction over the child, the agencies

regularly and improperly deny CACI hearings, claiming authority to do so under section 11169(e).

Nevertheless, as noted *ante*, county welfare agencies routinely deny CACI hearing pursuant to section 11169(e) based on juvenile dependency findings that are not equivalent to "child abuse or neglect" as defined by CANRA.

Here, the juvenile court found jurisdiction established under the first "or" second clause of section 300(b)(1). The first clause does not require a showing of fault, and the second clause allows jurisdiction to be established based on mere neglect. (*In re R.T., supra,* 3 Cal.5th at pp. 624, 629-630.) The court found that "neglectful" acts by the parents placed the child at risk of harm, but specifically *declined* to find that the acts were "deliberate" or "unreasonable." Thus, the court made no finding of "child abuse or neglect" within the meaning of CANRA. However, Petitioner cannot be assured that he will not be denied a CACI grievance hearing because of the prevalent and illegal practice of county welfare agencies of denying CACI hearings based on juvenile dependency jurisdiction findings. This Court can put an end to the practice and ensure that CACI serves its intended function – listing persons found to have committed *criminal* child abuse – by

clarifying that juvenile dependency jurisdiction findings are not the same issue as those that will be decided in a CACI grievance hearing and therefore do not trigger application of section 11169(e).

C. A Full and Fair Opportunity and Incentive to Litigate in the First Action is a Requirement of Issue Preclusion.

Even if there were a case where the juvenile court's jurisdiction finding satisfied a definition of "child abuse or neglect" under CANRA, the finding could not be given preclusive effect in a CACI hearing without violating due process.

Where "the party to be estopped was a party who participated in the earlier proceeding, *due process requires* that this party must have had an *adequate incentive* to fully litigate the issue in the prior proceeding [citation], and must have had a *fair opportunity* to pursue his claim the first time." (*Murphy v. Murphy* (2008) 164 Cal.App.4th 376, 404 (*Murphy*) [italics added].) Stated differently, "Even if the minimal requirements for its application are satisfied, the [issue preclusion] doctrine should not be applied if considerations of policy or fairness outweigh the doctrine's purposes as applied in a particular case. [Citations] '. . . [A] court must balance the need to limit litigation against the

right of a *fair adversary proceeding* in which a party may fully present his case.' " (*Bostick v. Flex Equip. Co.* (2007) 147 Cal.App.4th 80, 97 [italics added].)

D. Parents in Juvenile Dependency Proceedings Do Not Have a Full and Fair Opportunity and Incentive to Litigate CACI Issues at a Jurisdiction Hearing.

Parents in juvenile dependency proceedings do not have a full and fair opportunity and incentive to litigate CACI issues at a jurisdiction hearing.[5]

Naturally, the primary preoccupation of parents in juvenile dependency proceedings is to maintain custody of and control over the care of their children. Doing so often requires overcoming the problems that brought them to the attention of the county welfare agency in the first place – which may include drug addiction, homelessness, domestic violence, and incarceration – while meeting with a new attorney, keeping up with court filings, meeting with social workers, attending court

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[5] The description of juvenile dependency proceedings in this section is based on amici's experience, information received from other juvenile dependency firms who represent parents across the state, the facts of cases recited in published and unpublished appellate case law, and the juvenile dependency statutory scheme.

hearings, participating in services, and contacting family members for possible placements. All of this occurs on short timelines: a detention hearing must be held within days of a child's being taken into protective custody (Welf. & Instit. Code, §§ 311, 315); a jurisdiction hearing must be held within 15-30 days of detention or the filing of a petition (Welf. & Instit. Code, § 334); and a disposition hearing must be held within 30 days of a jurisdiction hearing (Welf. & Instit. Code, § 358, subd. (a)).

Meanwhile, CACI referrals are typically made at the same time an agency files a dependency petition, so the parent is likely to receive notice of the CACI listing (SOC 832) just as the parent is initially dealing with the trauma and demands of the dependency case. The time frame for contesting a CACI listing is only 30 days, which is just about when the jurisdiction hearing will typically take place. (Mo. Aug. Record or for Jud. Notice, Exh. 3, #2(b).) Parents are not entitled to appointed counsel for the CACI hearing (*id.*, Exh. 3), and appointed juvenile dependency counsel do not receive a copy of the SOC 832. Indeed, juvenile dependency attorneys often are unaware of potential CACI issues and unfamiliar with CACI law.

Further, the fate of the parents' children depends heavily on the recommendations of the child welfare agency, which in turn depend on whether social workers consider the parents cooperative. Any challenge to dependency allegations based on a desire to avoid a future section 11169(e) hearing denial may be viewed by social workers as lack of insight into the problems that led to the dependency case or an indication the parents are resistant to services and unlikely to resolve the underlying issues and reunite with their children.

If not aware of possible CACI collateral consequences, parents and their counsel may have no incentive to dispute elements of a dependency petition's allegations that are critical to a CACI listing but irrelevant to jurisdiction. Such issues include whether a physical injury was inflicted willfully or resulted from negligence, and whether alleged neglect was the absence of due care or a higher level of recklessness that amounted to criminal negligence. (See section II.A, *ante*.) Similarly, parents and their counsel have little incentive in the context of a juvenile dependency case to dispute an erroneous jurisdictional allegation about them if at least one other allegation against either parent is supported by substantial evidence, which is sufficient to

establish jurisdiction. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492.) The unchallenged allegation might nevertheless result in a CACI listing.

Further, parents in an intact relationship may have little incentive to litigate the issue of which parent was responsible for a risk of harm to the child, even though this assignment of responsibility is critical to whether a CACI listing is warranted for a particular parent. Parents in intact relationships generally want to minimize misconduct by the other parent, out of sympathy toward their partner and a desire to maintain the existing relationship and intact family, and minimize evidence of risk to the child in the household. Stated differently, as to disputed issues between such parents, there is little or no incentive to litigate *in an adversarial manner* during the juvenile dependency proceeding. In such situations, issue preclusion is inappropriate. (See *Bostick, supra,* 147 Cal. App. 4th at p. 97 [" 'Parties who are not adversaries to each other under the pleadings in an action involving them and a third party are bound by and entitled to the benefits of issue preclusion with respect to issues they actually litigate fully and fairly as

adversaries to each other and which are essential to the judgment rendered.' (Rest.2d Judgments, § 38, p. 378.)"].)

E. Conclusion

If issue preclusion would be applied to deny Petitioner a CACI hearing following a dismissal of his appeal, Petitioner would be unfairly prejudiced by an affirmance of the Court of Appeal's dismissal. We therefore urge the Court to reverse and give Petitioner the opportunity to contest the findings on the merits on appeal, which may avoid not only unfair preclusion at a CACI hearing but also unfair stigma and other collateral consequences in subsequent juvenile dependency or family court proceedings. Even if the Court affirms the dismissal, it can avoid unfair prejudice by clearly stating that section 11169(e) issue preclusion cannot apply at a CACI hearing in this case based on prior juvenile dependency jurisdiction findings.

III. Issue Preclusion at a CACI Hearing Following Dismissal of the Appeal as Moot ("Mootness Preclusion") Would Be Unfair Because Petitioner was Denied Appellate Review on the Merits.

Another reason the Court should reverse the Court of Appeal's dismissal is that courts frequently, and in our view incorrectly, regard a dismissal for mootness as affirming the underlying judgment in the sense of giving it issue preclusive effect ("mootness preclusion"). Mootness preclusion would be unfair here because Petitioner appealed the judgment but was denied appellate review on the merits through no fault of his own. Affirmance of the Court of Appeal would be appropriate only if the Court clearly stated that mootness preclusion will not follow from the Court of Appeal's dismissal.

The Restatement of Judgments rejects mootness preclusion. It takes the position that issue preclusion does not apply if "[t]he party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action." (Rest. (2d) of Jgts, § 28 (1) (1982).)[6] "Such cases

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[6] The Restatement (First) of Judgments similarly stated: "Where a party to a judgment cannot obtain the decision of an appellate court because the matter determined against him is . . . moot, the judgment is not conclusive against him in a subsequent action on a different cause of action." (Rest. (1st) of Jgts § 69,

can arise, for example, because the controversy has become moot." (*Id.*, com. (a).)

Nevertheless, mootness preclusion has been a recurrent feature of California civil procedure for decades. Early court decisions held that a former civil procedure statute, since superseded, required issue preclusion following dismissal of an appeal as moot. The statute, former Civil Procedure Code section 955 (former section 955), provided that any dismissal of an appeal was "in effect an affirmance of the judgment or order appealed from" unless expressly made without prejudice. Many courts, including this Court, interpreted the quoted language as imbuing a simple dismissal (i.e., one not expressly made "without prejudice") for mootness with issue preclusive effect, often while expressly recognizing the unfairness of the rule. Unfortunately, language from these old cases has been inappropriately carried forward into modern case law despite material revisions to the Code of Civil Procedure.

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subd. (2) (1942); see *id.*, com. on subd. (2), com. (d) ["Where a judgment has been rendered against a party by a court of first instance, and on his appeal the appellate court refuses to review the proceedings because the controversy has become moot, the judgment is not binding in a subsequent action between the parties based upon a different cause of action"].)

A. The Mootness Preclusion Rule Is Based on Superseded Statutory Authority.

1. Former Section 955 Provided that Dismissal of an Appeal Was In Effect an Affirmance Unless Expressly Made "Without Prejudice."

From at least 1893 to 1968, former section 955 provided: "The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal." (In *Minor v. Lapp* (1963) 220 Cal.App.2d 582 (*Minor*) [quoting former § 955]; *Linn v. Weinraub* (1948) 85 Cal.App.2d 109, 110 [same]; *Howard v. Howard* (1927) 87 Cal.App. 20, 26-27 [same]; see *Garibaldi v. Garr* (1893) 97 Cal. 253, 253 ["the dismissal of the former appeal was in its effect an affirmance of the judgment. Section 955 Code Civil Proc."].)

In the lead case of *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129 (*Paul*), this Court impliedly held that mootness preclusion was required by former section 955, but recognized the unfairness of the rule and found a way around it. After explaining that it would dismiss the appeal before it as moot because the challenged regulation had been superseded (*id.* at

pp. 131-134), the Court wrote: "Ordinarily, of course, when a case becomes moot pending an appellate decision 'the court will not proceed to a formal judgment, but will dismiss the appeal.' [Citation.] But Code of Civil Procedure section 955 declares that (with an exception not here relevant) 'The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from * * *.' " (*Id.* at p. 134.) Recognizing this result would be unfair following a dismissal for mootness, the Court wrote: "As we do not reach the merits of the appeal in the case at bench, it is appropriate to avoid . . . 'impliedly' affirming a judgment . . . [s]ince the basis for that judgment has now disappeared." (*Id.* at p. 134.) Rather than simply dismiss the appeal, the Court reversed the judgment and remanded with instructions to dismiss the entire action as moot.[7] (*Id.* at pp. 134-135; see *Robinson v. U-Haul Company of California* (2016) 4 Cal.App.5th 304, 322 (*Robinson*) [interpreting *Paul* as reversing rather than

[7] The Restatement (Second) of Judgments indirectly recognizes the *Paul* approach to avoiding mootness preclusion: "Note: With respect to controversies that have become moot, it is a procedural requirement in some jurisdictions, in order to avoid the impact of issue preclusion, that the appellate court reverse or vacate the judgment below and remand with directions to dismiss." (Rest. (2d) of Jgts, § 28(1), com. (a).)

dismissing "so as to avoid having the underlying judgment become subject to res judicata"]; *Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2011) 198 Cal.App.4th 939, 943-944 & fn. 4 (*Yucaipa*) [identifying one reason for *Paul* disposition as avoiding affirmance of the judgment below, which would give it possible preclusive effect].)

Other courts have similarly recognized the unfairness of mootness preclusion pursuant to former section 955, and found other ways to avoid this unfairness. In *Hartke v. Abbott* (1930) 106 Cal.App. 388 (*Hartke*), the court explained, "If we dismiss the appeal [as moot], and the dismissal becomes final, it will be tantamount to an affirmance of the judgment. [Citation.] We would by such affirmance *forever preclude appellant from having an appellate tribunal determine whether the trial court erred . . .*" (*Id.* at p. 394 [italics added].) The court cited a rule from other jurisdictions that " 'whenever the judgment, if left unreversed, will preclude the party against whom it is rendered as to a fact vital to his rights, such as to the validity of a contract upon which his rights are based, *it cannot properly be said that there is left before the appellate court but a moot question*, ...' " (*Ibid* [citing cases and secondary sources].) It then held that a

material question remained to be decided and declined to dismiss the appeal as moot. (*Id.* at pp. 394-395; see *In re Merrill's Estate* (1946) 29 Cal.2d 520, 524-525 [declining to dismiss appeal as moot based on satisfaction of judgment by co-obligor because of unfair preclusive effect of an affirmance by dismissal]; *Metcalf v. Drew* (1946) 75 Cal.App.2d 711, 720-722 [same].)

In *Minor*, the court adopted a third approach. The court first cited the Restatement (First) of Judgments for the rule: " 'Where a party to a judgment cannot obtain the decision of an appellate court because the matter determined against him is * * * moot, the judgment is not conclusive against him in a subsequent action on a different cause of action.' " (*Minor, supra,* 220 Cal.App.2d at p. 584 [citing Rest. (1st) Jgts, § 69, subd. (2) (1942) and secondary sources showing the "rule has been followed in several jurisdictions"].) The court then dismissed the appeal "without prejudice" to avoid mootness preclusion, explaining: "By implication [former section 955] accepts the rule enunciated [in the Restatement] where the appeal is dismissed without prejudice." (*Ibid.*)

In sum, to avoid the unfairness of mootness preclusion, these early court decisions adopted three alternatives to straight

dismissal of a moot appeal: (1) reversing with instructions to dismiss the action rather than simply dismissing the appeal, (2) deeming the appeal not moot because the potentially preclusive issue is a material issue left for the court to decide; or (3) dismissing the appeal "without prejudice."

2. Former Section 955 Has Been Repealed, But the Old Case Law Continues to be Cited and Followed.

Effective 1969, former section 955 was replaced with current Code of Civil Procedure section 913 (section 913), which provides: "The dismissal of an appeal shall be with prejudice to the right to file another appeal within the time permitted, unless the dismissal is expressly made without prejudice to another appeal." (§ 913; see Stats. 1968, ch. 385, § 1 [repealing former § 955], § 2 [adding § 913].) The statute no longer provides that a dismissal "is in effect an affirmance of the judgment or order appealed from." The statute's plain language expressly limits the effect of a dismissal not made "without prejudice" to barring the appellant from filing another appeal within the statutory time to appeal. It says nothing about the preclusive effect of a lower court ruling following dismissal of an appeal. The plain language of the statute controls. (See *Diamond Multimedia Systems, Inc. v.*

Superior Court (1999) 19 Cal.4th 1036, 1047 [" 'If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs' "].)[8]

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[8] The limited legislative history of the 1968 enactment sheds little light on the purpose of the change from former section 955 to current section 913. The history includes only one bill analysis for the Legislature, which states that the bill "repeals existing Title 13 of Part 2 of the Code of Civil Procedure, relating to appeals and stays in civil actions, and then adds *a substantially revised* Title 13." (See Exh. A, p. 2 [italics added].) Other legislative materials simply state that the bill would revise the civil procedure statutes on appeals and stays. (See *id.* at pp.4-6 ["Enrolled Bill Memorandum to Governor"]; [letter from the Legislative Counsel to the Governor].) A letter from the bill's sponsor to the Governor describes the bill as a "comprehensive revision" of the code that eliminates or clarifies "confusing, conflicting, and in some cases obsolete and archaic provisions." (*Id.* at p. 7.) An attachment to the sponsor letter claims the change from former section 955 to new section 913 is "without substantive change." (*Id.* at p. 12 [page 4 of the attachment].) However, neither a sponsor letter nor its attachments hold much if any weight in statutory interpretation analysis. (See *Hassan v. Mercy American River Hosp.* (2003) 31 Cal.4th 709, 722-723; *Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 120.) Moreover, ambiguous legislative history can never trump the plain language of a statute. (See *People v. Belleci* (1979) 24 Cal.3d 879, 884-886; *Riley v. Robbins* (1934) 1 Cal.2d 285, 287-288.) In any event, the sponsor writes that new section 913 "*restates* the rule that the dismissal of an appeal is *with prejudice*, unless expressly declared by the court to be without prejudice *to another appeal*." (*Id.* at p. 12 [page 4 of the attachment; italics added].) This language strongly implies that the Bar understood former section 955 to do only what proposed section 913 would do -- prevent a second appeal following a simple dismissal of an appeal. Nothing in the attachment or the cover letter indicates that the Bar understood section 913 to support mootness

Nevertheless, the supposed rule that "dismissal of an appeal operates as an affirmance" continues to be cited in modern case law concerning dismissals for mootness. (See *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2016) 2 Cal.App.5th 586, 590 (*La Mirada*) [citing *Paul*]; *Yucaipa, supra,* 198 Cal.App.4th at p. 943 [citing *Paul*]; *San Bernardino Valley Audubon Soc. v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382, 404 (*San Bernardino*); *County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1005 (*Shelton*); *Lee v. Davis* (1983) 141 Cal.App.3d 989, 992 (*Lee*) [citing *Paul*].) This includes juvenile dependency appeals. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 413 ["Normally the involuntary dismissal of an appeal leaves the judgment intact"] [9]; *In re C.C.* (2009) 172 Cal.App.4th 1481, 1488-1489 [citing *In re Jasmon O.*]; *In re Adam D.* (2010) 183

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preclusion. The statement that the change was "without substantive change" must be read in this context.

[9] *In re Jasmon O.* cites *Conservatorship of Oliver* (1961) 192 Cal.App.2d 832, 835–836, which was decided when former section 955 was still in effect. *Oliver* involved dismissal of an appeal because of the appellant's express abandonment of the appeal, which raises different equities than a dismissal due to involuntary mootness. (See *Torrey Pines Bank v. Superior Court* (1989) 216 Cal.App.3d 813, 820-821 [preclusion applies to party who voluntarily dismissed first action with prejudice (retraxit)].)

Cal.App.4th 1250, 1258 [citing *In re Jasmon O.*]; *In re C.V.* (2017) 15 Cal.App.5th 566, 571 [citing *In re C.C.*].)

Courts continue to recognize the *unfairness* of mootness preclusion. In *Chamberlin v. City of Palo Alto* (1986) 186 Cal.App.3d 181 (*Chamberlin*), the court quoted *Minor*'s quotation of the Restatement mootness *non*preclusion rule as if it were a statement of California law (implicitly recognizing the unfairness of mootness preclusion) and declined to apply mootness preclusion. (*Id.* at p. 187 [quoting *Minor, supra,* 220 Cal.App.2d at p. 584].) Similarly, the *Robinson* court held that "[a] decision that a matter is moot is not a decision on the merits," and therefore cannot operate as collateral estoppel *even on application of the mootness doctrine.* (*Robinson, supra,* 4 Cal.App.5th at p. 322; see *id.* at pp. 321-322.) But see *Lyons v. Security Pacific Nat. Bank* (1995) 40 Cal.App.4th 1001, 1017-1018 (*Lyons*) [applying mootness preclusion after dismissal of an appeal that was not expressly made "without prejudice" and defending the doctrine as necessary to establish the finality of judgments].)

Many courts faced with a moot appeal assume mootness preclusion could follow a dismissal and avoid unfairness by

following one of the pre-1969 work-arounds. In *Yucaipa*, for example, the court recognized the injustice of mootness preclusion: "A trial court judgment rendered moot on appeal and dismissed has not been fully litigated in the sense that the appellate review begun on the merits was never completed. Nevertheless, this less-than-fully-litigated judgment may have a continuing preclusive effect on subsequent litigation—appellate courts have disagreed as to whether such a judgment may or may not be considered final so as to have res judicata or collateral estoppel effect." (*Yucaipa, supra,* 198 Cal.App.4th at p. 943.) Rather than take a position on whether mootness preclusion would apply, the *Yucaipa* court adopted the type of disposition used in *Paul* to avoid any unfair preclusive effect. (*Id.* at pp. 944-947 & fn. 4 [reversing with directions to dismiss the action].) Many other courts have either followed the *Paul* disposition,[10] or

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[10] See *Yucaipa, supra,* 198 Cal.App.4th at p. 943; *Giles v. Horn* (2002) 100 Cal.App.4th 206, 229; *San Bernardino, supra,* 71 Cal.App.4th at p. 404; *In re Marriage of Macfarlane & Lang* (1992) 8 Cal.App.4th 247, 257-258; *City of Los Angeles v. County of Los Angeles* (1983) 147 Cal.App.3d 952, 959; *Lee, supra,* 141 Cal.App.3d at pp. 992, 994; *Bell v. Board of Supervisors* (1976) 55 Cal.App.3d 629, 637; *Lovret v. Seyfarth* (1972) 22 Cal.App.3d 841, 853; *Callie v. Board of Supervisors* (1969) 1 Cal.App.3d 13, 19; *National Ass'n of Wine Bottlers v. Paul* (1969) 268 Cal.App.2d 741, 747-748; see also *Shelton, supra,* 66 Cal.App.4th at

decided an appeal on the merits despite technical mootness to avoid unfair preclusion.[11] All of these decisions fail to recognize that the statutory basis for the rule has long since been superseded.[12]

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p. 1005 [if court wishes to avoid mootness preclusion, it should follow *Paul* procedure]; cf. *La Mirada, supra,* 2 Cal.App.5th at pp. 590-591 [dismissing despite resulting mootness preclusion against appellant where mootness was created by the appellant].

[11] See *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1079 [citing *Hartke, supra,* 106 Cal.App. at p. 394]; *Long Beach Lesbian & Gay Pride, Inc. v. City of Long Beach* (1993) 14 Cal.App.4th 312, 328 ["were we to dismiss the appeal [as moot] without disturbing the declaratory portions of the judgment adverse to plaintiffs, plaintiffs would be bound by them without having received appellate review"]; *Viejo Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, 205 ["an appeal will not be dismissed as moot if '*any material question* remains to be determined' " and "[a] material questions exists when the judgment, if left unreversed, would preclude a party from litigating its liability on an issue still in controversy"]; *Estate of Sampo* (1985) 171 Cal.App.3d 767, 772 [deciding issue on merits because otherwise finding "would be binding by way of res judicata on that issue"].

[12] The Witkin treatise on California civil procedure does not clearly explain or defend the mootness preclusion rule.

When discussing the exception to dismissal for mootness where there is a "Material Question Remaining," the treatise quotes *Hartke, supra,* 106 Cal.App. at p. 394, for the view that appeals should *not* be dismissed if the resulting affirmance of the lower court judgment would preclude the appellant from litigating "a fact vital to his rights." (9 Witkin, Cal. Proc. (5th ed. 2008) Appeals § 757, p. 824.) The treatise also acknowledges *Paul*'s approach to avoiding the unfairness of mootness preclusion (*Id.,* § 749, p. 815 [cross-referencing § 761]; see *id.*, § 761, p. 834) – however, it incorrectly suggests that the *Paul* approach is appropriate only where "the judgment was . . .

B. Mootness Preclusion Conflicts with *Samara v. Matar* and Due Process Principles.

"[C]ollateral estoppel may be applied only if due process requirements are satisfied." (*Clemmer v. Hartford Ins. Co.* (1978) 22 Cal.3d 865, 875, overruled on another ground by *Ryan v. Rosenfeld* (2017) 3 Cal.5th 124, 135; see *Bernard v. Bank of America* (1942) 19 Cal.2d 807, 811.) As this Court explained in

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improperly rendered below." In fact, *Paul* makes clear that a reversal with directions to dismiss implies neither approval nor disapproval of the judgment below. (*Paul, supra,* 62 Cal.2d at pp. 134-135 [adopting reversal with directions disposition expressly to both "avoid . . . 'impliedly' affirming a judgment" and to "not imply approval of a contrary judgment."]; see *Yucaipa, supra,* 198 Cal.App.4th at pp. 945-947 [clarifying that *Paul* disposition is based not on a determination the lower judgment was erroneous, but on the unfairness of an affirmance after dismissal for mootness that results in issue preclusion].)

The treatise nowhere takes a clear position on whether mootness preclusion applies in California or explain the basis of the rule. The res judicata section of the treatise does not address the preclusive effect of affirmance following dismissal of *an appeal* as moot. (Cf. 7 Witkin, Cal. Proc. (5th ed. 2020 Suppl.) Judgments, § 379, pp. 300-301 [no issue preclusion following dismissal of action *in the trial court*].) A section addressing the "Effect of Dismissal" of an appeal quotes former section 955's language that dismissal is an affirmance (without addressing the issue preclusive effects of such an affirmance), and then quotes current section 913 *different* language, but does not address the effect of the language change. (9 Witkin, Cal. Proc. (5th ed. 2008) Appeals § 762, p. 835.)

Samara, a full and fair opportunity to *appeal* is an essential element of this due process protection: "We have repeatedly underscored the important role that the availability of appellate review plays in ensuring that a determination is sufficiently reliable to be conclusive in future litigation." (*Samara, supra,* 5 Cal.5th at p. 333; see *id.* at pp. 333-334 [summarizing cases].) "[A] ground reached by the trial court and properly challenged on appeal, but not embraced by the appellate court's decision, should not affect the judgment's preclusive effect. This approach aligns far better with the recognition that although trial court decisions are often thorough, thoughtful, and correct, litigants should be afforded more procedural fairness before being bound by all aspects of a trial court's challenged determination." (*Id.* at p. 334.) Specifically, the Court held that "when a litigant properly seeks appellate review of a ground underlying a trial court's determination, the fortuity that the judgment may be sustained on some other ground should not imbue the challenged ground with final and conclusive effect." (*Id.* at p. 333.)

Mootness preclusion is flatly inconsistent with the holding of *Samara, supra,* 5 Cal.5th 322. If a trial court ruling cannot be preclusive on an issue that was not reached in *an appellate*

decision on the merits (but based on a different ground), how could a trial court ruling logically be preclusive on an issue not reached on appeal *because there was no appellate decision on the merits at all*, the appeal having been dismissed as moot?

C. Mootness Preclusion Undermines Judicial Efficiency and Reasoned Decision Making.

Mootness preclusion undermines judicial efficiency and reasoned decision making. Under the current state of the law, the unfairness of mootness preclusion can be avoided only if the appellate court in the *first action* recognizes the potential *prospective* unfairness of a simple dismissal for mootness and chooses an alternative approach (adopting a *Paul* disposition, deciding the appeal on the merits, or dismissing "without prejudice") to avoid that unfairness. It would be much preferable for the Court to reject the mootness preclusion rule altogether.

First, under current law, preclusion always applies after a simple dismissal for mootness, even if neither the parties[13] nor

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[13] Principles of waiver or forfeiture cannot justify applying preclusion when a party fails to raise the possible preclusive effect of a simple dismissal for mootness in the first action. Issue preclusion is not premised on a party's preservation, waiver or forfeiture of a claim. Rather, it is premised on the reliability and finality of fully-litigated judgments where due process protections have been observed. (See *Murphy, supra,* 164 Cal.App.4th at

the court anticipated a later action or appreciated the potential preclusive impact of the dismissal. This runs contrary to the truth-seeking structure of our judicial system. Litigation yields reliable results when it is fueled by vigorous adversarial advocacy, with parties fully conscious of the stakes of the controversy so they have maximum incentive to prove facts and persuade decision makers, and judges fully informed of the consequences of their rulings so they can make and articulate their decisions with care. The mootness preclusion rule turns this system on its head, allowing the dispositive decision (a

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p. 404.) To have preclusion depend on a party's anticipation of future preclusive effects at the time of dismissal of a prior action would be unfair and would invite error.

However, mootness preclusion might reasonably be preserved in cases where the appellant himself created the mootness. (See *La Mirada, supra,* 2 Cal.App.5th at pp. 590-591 [dismissing despite resulting mootness preclusion against appellant where mootness was created by the appellant].) When a litigant loses the opportunity for appellate review through her own conduct – for example, by failing to file a timely appeal, by affirmatively abandoning an appeal, or by causing the avoidable mootness of an appeal –generally it is fair and consistent with judicial economy to treat the underlying trial court ruling as final and preclusive if other requirements of issue preclusion are satisfied. (See, e.g., *Conservatorship of Oliver, supra,* 192 Cal.App.2d 832, 835–836 [voluntary abandonment of appeal]; cf. *Torrey Pines Bank v. Superior Court, supra,* 216 Cal.App.3d at pp. 820-821 [voluntary dismissal of action in trial court with prejudice (retraxit)].) The same could be true for self-created mootness.

simple dismissal versus a reversal with directions to dismiss the action) to be taken when the parties' and the court's incentives to litigate a *moot* controversy are at a low ebb. And the rule is in tension with principles of judicial economy, requiring busy appellate courts to labor over moot appeals to prevent speculative consequences down the judicial road. It makes much more sense to simply declare that, consistent with *Samara, supra,* 5 Cal.5th 322, and principles of due process, a dismissal for mootness *never* causes the underlying judgment to have issue preclusive effect because there was never appellate review on the merits of the issue.

Eliminating mootness preclusion would not bar courts from exercising *discretion* to decide technically moot questions and thereby provide a final decision that *will* be preclusive in a later action. Courts may want to exercise such discretion where the record fully addresses the issue, the current advocates are well-versed in the matter and have sufficient motivation to vigorously litigate the issue, or the court concludes it would be more efficient to resolve the issue and bring an end to litigation between the affected parties. However, rejection of mootness preclusion would allow this decision to be truly discretionary. It would protect

parties from the preclusive effects of a simple dismissal entered due to inattention, inadequate advocacy, or the simple press of other work.[14]

D. Mootness Preclusion Presents Unique Problems in the Juvenile Dependency Context, Which Helps Explain Inconsistency in Case Law on Moot Juvenile Dependency Appeals.

Mootness preclusion presents unique problems in the juvenile dependency context, which helps explain inconsistency in juvenile dependency decisions about how to address mootness on appeal.

Mootness preclusion is only indirectly addressed in juvenile dependency case law. The most direct reference is *Jasmon O.*'s statement that, "Normally the involuntary dismissal of an appeal leaves the judgment intact" (*In re Jasmon O., supra,* 8 Cal.4th at p. 413), a statement that has been relied on by other courts, as noted *ante*. *In re Jasmon O.* was decided under the former juvenile dependency scheme,[15] but its message is cited by courts

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[14] Rejecting mootness preclusion would not prevent a dismissal for mootness from affirming the judgment below for purposes other than issue preclusion, such as preventing a second appeal from the judgment. (See *Lyons, supra,* 40 Cal.App.4th at pp. 1017-1018.)

[15] *In re Jasmon O.* did not involve mootness preclusion. Under the old dependency scheme, a final juvenile dependency

applying the current dependency scheme, usually to explain why a court has chosen to decide a technically moot appeal on the merits. (See *In re C.C., supra,* 172 Cal.App.4th at p. 1489; *In re Adam D., supra,* 183 Cal.App.4th at pp. 1258, 1261; *In re C.V, supra,* 15 Cal.App.5th at p. 571.)

These cases can be understood as attempts to avoid the unfair effects of mootness preclusion. One leading case expressly relies on specific issue preclusive effects in related family law proceedings to justify deciding an otherwise moot appeal on the merits. (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548.) However, many other courts vaguely explain their refusal to dismiss moot appeals by citing *unspecified possible collateral effects* on subsequent proceedings – even admittedly "highly

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order was followed by a *separate* civil proceeding to terminate parental rights. (*In re Jasmon O., supra,* 8 Cal.4th at pp. 411-412.) In *In re Jasmon O.*, a parent had appealed both a final juvenile dependency order and a subsequent order terminating parental rights. After the court of appeal reversed the final dependency order, it dismissed the appeal from the termination order as moot. (*Id.* at pp. 410-411.) *In re Jasmon O.* held the dismissal was erroneous because it would have operated as an affirmance of order terminating parental rights, thus rendering the juvenile dependency proceeding moot (as it can only proceed against parents). (*Id.* at pp. 412-414.) The issue was not the application of *issue preclusion* in the dependency proceeding based on the affirmed termination order.

speculative" collateral effects. (*In re C.C., supra,* 172 Cal.App.4th at p. 1489; see *In re Nathan E.* (2021) 61 Cal.App.5th 114, 121 ["may impact any possible future dependency proceeding involving these or any children mother may have in the future"]; *In re Jonathan B.* (2015) 235 Cal.App.4th 115, 119 ["may be prejudicial to the appellant"; "may be used against mother in future dependency proceedings"]; *In re D.P.* (2014) 225 Cal.App.4th 898, 902 ["has the potential to impact future dependency proceedings"]; *In re Marquis H.* (2013) 212 Cal.App.4th 718, 724 [" 'has the undesirable result of insulating erroneous or arbitrary rulings from review' "]; *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015 ["could be prejudicial to her if she is involved in future child dependency proceedings"]; *In re Daisy H.* (2011) 192 Cal.App.4th 713, 716 ["could have severe and unfair consequences to Father in future family law or dependency proceedings"]; *In re C.V.*, *supra,* 15 Cal.App.5th at p. 571 ["possibility of prejudice to both mother and father in subsequent family law or dependency proceedings"].) Such collateral effects may include issue preclusion or more informal types of prejudice (e.g., influencing a future juvenile court's view of the parent).

The Department harshly criticizes courts that decline to dismiss moot juvenile dependency appeals based on such unspecified collateral consequences. (RB 22-30) Courts have made similar critiques. (See *In re N.S.* (2016) 245 Cal.App.4th 53, 58-63; *In re I.A., supra,* 201 Cal.App.4th at pp. 1492-1495; *In re D.M., supra,* 242 Cal.App.4th at pp. 644-648 [diss. opn. of Chavez, J.].) However, these courts' reliance on speculative collateral consequences can be explained by the difficulty of avoiding the unfair effects of mootness preclusion in juvenile dependency appeals by any method other than deciding the case on the merits – the alternatives (reversing with directions or dismissing without prejudice) are impractical in the juvenile dependency context.

For example, one common category of moot appeals involves challenges to jurisdiction findings when other jurisdiction findings (against the same or the other parent) remain unchallenged. These cases are moot because reversal of the challenged findings will not lead to a reversal of jurisdiction over the minor or often any change in disposition. (See cases deciding technically moot appeals on the merits: *In re Nathan E., supra,* 61 Cal.App.5th at p. 121; *In re M.W.* (2015) 238

Cal.App.4th 1444, 1452; *In re Jonathan B., supra,* 235 Cal.App.4th at p. 119; *In re D.P., supra,* 225 Cal.App.4th at p. 902; *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; *In re D.C., supra,* 195 Cal.App.4th at p. 1015. Cf. cases dismissing appeals as moot: *In re Madison S.* (2017) 15 Cal.App.5th 308, 327-330 ["not convinced our resolution of mother's claim would have 'a single specific legal or practical consequence' "]; *In re J.C.* (2014) 233 Cal.App.4th 1, 3-4; *In re I.A., supra,* 201 Cal.App.4th at pp. 1492-1495 [similar].) In such cases, if a court recognizes the unfairness of future issue preclusion following a dismissal for mootness, it cannot reverse with directions to dismiss the action because the case still presents a live controversy. A dismissal of the appeal "without prejudice" could prompt continuing collateral attacks on the juvenile dependency order on any ground. The only practical way to avoid the unfairness of mootness preclusion is to decide the issue despite the mootness – unless this Court abandons mootness preclusion altogether.

Another category of moot juvenile dependency appeals involves cases where dependency termination has been terminated, sometimes with an exit order to the family court. (See cases deciding technically moot appeals on the merits: *In re*

I.C. (2018) 4 Cal.5th 869, 884, fn. 2; *In re Daisy H., supra,* 192 Cal.App.4th at p. 716; *In re C.C., supra,* 172 Cal.App.4th at pp. 1488-1489; *In re C.V, supra,* 15 Cal.App.5th at p. 571; *In re Joshua C., supra,* 24 Cal.App.4th at p. 1548. Cf. cases dismissing appeals as moot: *In re Rashad D.* (2021) 63 Cal.App.5th 156, 159, 164-165 [where alleged collateral consequence of jurisdiction finding was exit order and mother never appealed from order terminating jurisdiction and creating exit order]; *In re N.S., supra,* 245 Cal.App.4th at pp. 58-63; *In re Michelle M.* (1992) 8 Cal.App.4th 326, 328-330.) In this context too, the alternatives to avoiding the unfairness of mootness preclusion are impractical. A reversal with directions would vacate the exit order with its custody and visitation directives that are designed to protect the child and certain parental rights. A dismissal without prejudice might undermine other aspects of the final dependency order. Therefore, the only practical way to avoid the unfairness of mootness preclusion, therefore, is to decide the issue despite the mootness of the appeal – unless this Court abandons mootness preclusion altogether.

In sum, concerns about mootness preclusion have led to superficially extravagant applications of the material question

exception to mootness (see *Hartke, supra,* 106 Cal.App. at p. 394; *In re N.S., supra,* 245 Cal.App.4th at p. 59 [court has "inherent discretion to resolve an issue when there remain 'material questions for the court's determination' "]) in the juvenile dependency context because there is no alternative practical way to avoid the unfairness of the doctrine. The better approach is to reject mootness preclusion altogether. Courts hearing juvenile dependency appeals would then have true discretion to decide whether to decide a moot issue on the merits for the reasons canvassed above (e.g., full record and vigorous advocacy in the present appeal and a desire to bring an end to litigation) or to decline to do so (e.g., because possible future effects are speculative, for reasons of judicial economy) without undermining the appellant's due process rights in future proceedings.

E. The Court Should Specifically Hold that Mootness Preclusion in the Context of CANRA Section 11169(e) Violates Due Process and Legislative Intent.

Federal and state courts in California have repeatedly held that people listed on CACI are entitled to procedural due process, including an opportunity to challenge the listing in an administrative proceeding and thereafter in court. In 2004, the Fourth District held that a person listed on CACI has a due

process right to an administrative hearing to challenge the listing and that denial of such a hearing may be challenged by a traditional writ of mandamus. (*Burt v. County of Orange* (2004) 120 Cal.App.4th 273, 281-283, 285 [so holding in context of due process analysis]; see *Gonzalez, supra,* 223 Cal.App.4th at p. 100 [*Burt* "construed [CANRA] as impliedly providing a right of administrative review – implicitly recognizing, no doubt, that in the absence of such procedures it would offend due process"].) In 2009, the Ninth Circuit agreed and held the hearing "ought to be before someone other than the official who initially investigated the allegation and reported the name for inclusion in CACI, and the standards for retaining a name on the CACI after it has been challenged ought to be carefully spelled out." (*Humphries v. County of Los Angeles* (2009) 554 F.3d 1170, 1201 [hearing required for CACI listing by law enforcement],[16] reversed on

[16] As part of a litigation settlement in another case, county social service agencies agreed in 2008 to notify people about CACI listings and their right to a grievance hearing to challenge the listing. The settlement did not apply to listings by law enforcement agencies. (See Asm. Comm. Pub. Safety Bill Analysis of AB 717 (2011-2012 Reg. Session), as amended April 25, 2011, p. 3 [discussing *Gomez v. Saenz* settlement].) Amendments to CANRA that became effective in 2012 removed the authority of law enforcement agencies to make CACI

other grounds sub nom. *Los Angeles County v. Humphries* (2010) 562, U.S. 29, 30 [reversing on county liability only].) In 2011, the Fourth District held due process requires de novo review of the administrative findings in the trial court and substantial evidence review in the court of appeal – thus implicitly recognizing an appeal on the merits is part of the process due. (*Saraswati v. County of San Diego* (2011) 202 Cal.App.4th 917, 926, fn. 7, 928[17]; see *id.* at 929 [suggesting clear and convincing evidence standard of proof also applies].)

Effective 2012, the Legislature revised CANRA to expressly provide a right to an administrative hearing to challenge a CACI

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referrals. (See Sen. Comm. Pub. Safety Bill Analysis of AB 717 (2011-2012 Reg. Session), as amended June 9, 2011, at p. 3.)

[17] While *Saraswati* involved a CACI listing that was based on an inconclusive determination (which was allowed under the old statutory scheme), its due process analysis of the appropriate trial court standard of review was based on *Burt*'s analysis, which applied to CACI listings based on either inconclusive or substantiated determinations. (*Saraswati*, *supra,* 202 Cal.App.4th at pp. 927-928 [citing *Burt, supra,* 120 Cal.App.4th at pp. 285-286 as "address[ing] the issue of whether a parent listed on the CACI as a result of a determination that the child abuse allegation was *substantiated or inconclusive* must be afforded procedural due process"].) Therefore, we understand *Saraswati*'s analysis to apply to both types of listings, including those based on substantiated listings as permitted under the current statutory scheme. *Gonzalez* is consistent with this view. (*Gonzalez, supra,* 223 Cal.App.4th at pp. 75, 84-85 [following *Saraswati* in case involving substantiated determination].)

listing, and specified, "The hearing shall satisfy due process requirements." (Compare Stats. 2011, ch. 468 (AB 717) § 2 with Stats. 2004, ch. 842 (S.B. 1313), § 17.) This express due process requirement remains the law. (§ 11169, subd. (d).) Thus, both as a matter of federal and state constitutional law and as a matter of legislative intent, the administrative process must comport with due process requirements, including those that have been recognized in the court cases discussed above including a right to appeal. (See also Asm. Comm. Pub. Safety Bill Analysis of AB 717 (2011-2012 Reg. Session), as amended April 25, 2011, p. 2 ["This bill codifies several requirements addressed in court settlements as well as constitutional deficiencies noted in other cases"].)

The 2011 revision of CANRA also provided: "It is the intent of the Legislature that the hearing provided for by this subdivision shall not be construed to be inconsistent with hearing proceedings available to persons who have been listed on the CACI prior to the enactment of the act that added this subdivision." In *In re C.F.*, the court described the then-existing grievance process as follows: "At the hearing, counsel may be present, evidence is presented, and witnesses may be called to

testify. The grievance officer determines, based on the evidence presented at the hearing, whether the allegation of abuse or neglect is unfounded, inconclusive, or unsubstantiated." (*In re C.F.* (2011) 198 Cal.App.4th 454, 464.) An adverse administrative decision could then be challenged by administrative mandamus in the trial court, and the trial court's decision could be appealed. (*Id.* at pp. 458-459, 465.)

In short, the right to an appeal on the merits is an integral part of the process due to a person challenging a CACI listing, as a matter of both constitutional right and legislative intent. *Samara* clearly holds that issue preclusion violates due process if the party facing preclusion did not have a fair opportunity for appellate review of the issue on the merits. (*Samara, supra,* 5 Cal.5th at p. 333.) Section 11169(e) must be construed in this context. It was enacted in 2011 at the same time the Legislature guaranteed access to an administrative hearing that must be consistent with due process. To permit section 11169(e), a form of issue preclusion, to be applied in a matter that would allow mootness preclusion – i.e., allow a CACI grievance hearing to be denied based on a court ruling that was challenged on appeal but not addressed on the merits because the appeal was dismissed as

moot – would be fundamentally inconsistent with due process and legislative intent.

F. Conclusion

Mootness preclusion is fundamentally unfair. Therefore, the Court should reverse the dismissal of this appeal to prevent the unfair effects of mootness preclusion or, if it affirms the dismissal, clearly state that the dismissal will not result in mootness preclusion.

CONCLUSION

We urge the Court to reverse the Court of Appeal's dismissal of this appeal to prevent unfair issue preclusion based on the juvenile court judgment. If the Court chooses to affirm the Court of Appeal, we urge the Court to clearly state that the judgment will not have issue preclusive effects at any later CACI hearing.

Dated: November 1, 2021

/Rita Himes/_____
Rita Himes
Counsel for Amici

CERTIFICATE OF WORD COUNT

I, Rita Himes, counsel for Proposed Amici Curiae Legal Services for Prisoners with Children and East Bay Family Defenders, certify that the word count for this document, including footnotes, is 13,516 words, excluding the cover, tables, this certification, and attachments permitted by rule 8.520(h). I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and based on my personal knowledge.

Dated: November 1, 2021

/Rita Himes/_____
Rita Himes
Counsel for Amici

PROOF OF SERVICE

Supreme Court of the State of California

CASE NAME:	In re D.P.
Cal. Supreme Court Case Number:	S267429
Court of Appeal Case Number:	B301135
Los Angeles Superior Court Case No.:	19CCJP00973

I am over the age of 18 and not a party to this legal action. My business address is: 4400 Market Street, Oakland, CA 94608.

On date below I mailed a copy of the documents listed below to the Persons/Entities Served by Mail as follows: I enclosed a copy of the documents identified in envelopes and placed the envelopes for collection and mailing on the date and at the place shown below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the US Postal Service, in sealed envelopes with postage fully prepaid. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

On the date below I electronically served the Persons/Entities Served by Email the documents listed below from my electronic service address of rita@prisonerswithchildren.org.

DOCUMENTS SERVED:

APPLICATION TO FILE AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER BY LEGAL SERVICES FOR PRISONERS WITH CHILDREN, LOS ANGELES DEPENDENCY LAWYERS INC., EAST BAY FAMILY DEFENDERS, AND EAST BAY COMMUNITY LAW CENTER

THE PERSONS/ENTITIES SERVED BY MAIL:

Clerk, Court of Appeal
Second Appellate District, Div. 5
300 N. Spring Street, No. Tower
Los Angeles, CA 90013

Hon. Craig Barnes
Los Angeles Juvenile Court
201 Centre Plaza Dr., Ste. 7
Monterey Park, CA 91754

THE PERSONS/ENTITIES SERVED BY EMAIL:

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California Appellate Project: capdocs@lacap.com

Minor's Counsel: Springsong Cooper, Esq.: coopers@clc-la.org

Mother's Counsel: Landon Villavaso, Esq.: landon@lvlaw.org

Father's Trial Counsel: saraydarians@ladlinc.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and based on my personal knowledge.

Dated: November 1, 2021

/Rita Himes/_____
Rita Himes
Counsel for Amici

EXHIBIT A

Assembly Committee on Judiciary
SB 442, 1968

SB 442, 607 and 622 (Moscone)

Introduced at request of State Bar as the result of a special study by its Committee on the Administration of Justice. SB 442 repeals existing Title 13 of Part 2 of the Code of Civil Procedure, relating to appeals and stays in civil actions, and then adds a substantially revised Title 13. The other two measures conform to and are expressly conditioned upon the passage of the main proposal, SB 442.

Governor's Chaptered Bill File
Chapter 385, 1968

ENROLLED BILL MEMORANDUM TO GOVERNOR		DATE June 25, 1968
BILL NO.	Senate Bill No. 442	AUTHOR Moscone

Vote—Senate
Ayes— Unanimous
Noes—

Vote—Assembly
Ayes— Unanimous
Noes—

Senate Bill No. 442 revises and recodifies the law relating to appeals in civil actions and proceedings.

The Attorney General and Legislative Counsel have no constitutional or legal objections to approval.

The bill was introduced at the request of the State Bar of California.

The Judicial Council supports the bill (per Joh Smock).

Senator Moscone, the author, requests approval.

Recommendation	Legislative Secretary
APPROVE	

17967-401 1-68 6M QUAD OSP

Ronald Reagan

To: Honorable ~~Edmund G. Brown~~
Governor of California

From: Office of the Attorney General

By Thomas K. McGuire
Deputy Attorney General

Bill Report

S. B. No. 442 (Moscone)

June 13, 1968 .

We have examined the above bill and find no substantial legal objection thereto.

Thomas K. McGuire

THOMAS K. McGUIRE
Deputy Attorney General

77299 12-62 6M SETS SPO

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CHIEF DEPUTY

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JIMMIE WING
DEPUTIES

Sacramento, California
June 13, 1968

Honorable Ronald Reagan
Governor of California
State Capitol
Sacramento, California

REPORT ON ENROLLED BILL

S. B. 442 — MOSCONE. Repeals Title 13 (commencing with Sec. 934), adds Title 13 (commencing with Sec. 901), Pt. 2, C.C.P., re appeals in civil cases.

SUMMARY: See Legislative Counsel's Digest on attached copy of bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

George H. Murphy
Legislative Counsel

By
L. Douglas Kinney
Deputy Legislative Counsel

LDK:MV

Two copies to Honorable George R. Moscone, pursuant to Joint Rule 34.

THE STATE BAR OF CALIFORNIA

HERBERT E. ELLINGWOOD
Legislative Representative

SUITE 475
INSURANCE & EXCHANGE BUILDING
455 CAPITOL MALL
SACRAMENTO 95814
TELEPHONE 444-2762
AREA CODE 916

June 24, 1968

Honorable Ronald Reagan
Governor of California
State Capitol
Sacramento, California 95814

Re: Senate Bill 442

Dear Governor Reagan:

We respectfully request your approval of Senate Bill 442.

This proposal is the result of a Special Project of the Committee on the Administration of Justice of the State Bar of California. In September, 1967, the Board of Governors of the State Bar of California placed this item on its 1968 Legislative Program.

This proposal repeals existing Title 13 (commencing with Section 934) of Part 2 of the Code of Civil Procedure, and adds a new Title 13 (commencing with Section 901) to Part 2 of the Code of Civil Procedure. This proposal is a comprehensive revision and reorganization of the statutes relating to appeals in civil actions and to the stay of judgments and proceedings pending appeal.

A comprehensive revision of Title 13 of Part 2 of the Code of Civil Procedure is long overdue. Many piecemeal changes in the statues governing civil appeals have been made since enactment of the original provisions in 1872. As a result, Title 13 has become inordinately lengthy, and is composed of confusing, conflicting, and in some cases obsolete and archaic provisions which impede efficient and effective appellate review.

In order to simplify the statutory law relating to civil appeals, the revision of Title 13 proposed by Senate Bill 442 will eliminate many duplicative sections, and will remove many obsolete provisions which have no application in modern practice. The proposal also divides Title 13 into two logical groupings based on the subject matter of the statutes -- Appeals and Stays Pending Appeal -- instead of the five chapters presently found in Title 13. In addition, certain statutes are relocated in the Title to reflect a logical and sequential arrangement of the code sections.

Senate Bill 442 reduces the length of Title 13 by about 5,000 words; this accomplishes a reduction in the length of the statutory material of more than 50%.

Senate Bill 442 proposes very few substantive changes, and those which are suggested are minor in nature and are designed largely to achieve needed uniformity and consistency among appeals from superior, as well as municipal and justice, courts. The proposed revision does not apply to or affect the procedures for appeals from the small claims courts. It prescribes uniform practices and procedures, whenever possible, in appeals from superior, municipal, and justice courts.

Attached is an analysis of each section of the proposed revision of Title 13, with reference to the sources of the proposed statutes as well as explanations of any significant changes in substance or language. The section numbers referred to as source material are, unless otherwise noted, references to existing sections of the Code of Civil Procedure.

Please do not hesitate to call upon us if we can be of further assistance in this matter.

Sincerely,

Harold F. Bradford

Harold F. Bradford
Ass't. Legislative Representative

HFB:dp
cc: Senator Moscone, Messrs. Finger, DeMeo, Elmore, Hayes, Macomber

CHAPTER 1. APPEALS IN GENERAL

901

Proposed Section 901 combines the essentials of existing Sections 936, 961 and 988j; no substantive change is intended.

Obsolete provisions are deleted, and superfluous and repetitive language is eliminated. Economy of words is sought through the use of more concise and general terms.

902

Proposed Section 902 is identical to existing Section 938, except for a minor change to accomodate appeals involving multi-party litigants.

903

Proposed Section 903 is derived from existing Sections 941 and 984. A substantive change is involved.

Sections 941 and 984 presently authorize the attorney of record, in the event of the death of a party having at the time of death a right of appeal, to "appeal" from the judgment "at any time before the appointment" of a personal representative. Proposed Section 903 provides that the attorney of record may file a notice of appeal if the client would have a right of appeal if he were still alive. This provision is designed to accomplish the purposes:

(1) It confers authority upon the attorney to file the jurisdictional notice of appeal, and notices incident thereto, and thus protect the right of appeal, regardless of the attorney's "technical status" with respect to other interested parties.

(2) It avoids difficulties that can arise when the statutory authority terminates upon appointment of a personal representative; such appointment may not become known immediately, or it may occur near the end of the appeal period.

(3) It preserves the right of appeal in cases where the party dies before entry of judgment, but after the jury verdict or submission of the case in a trial by the court; case decisions have left the law applicable to such situations in an unsettled state.

904, 904.1, 904.2, 904.3, 904.4, 904.5

Proposed Sections 904 and 904.1-904.5 cover provisions contained in existing Sections 963 and 983, with minor changes

exception of proposed Section 911.

911

With only minor drafting changes, proposed Section 911 is identical to existing Section 988t.

912

Proposed Section 912 combines the provisions of existing Sections 958 and 988g; variances in the procedures outlined in the existing statutes are eliminated by following the approach of 988g and removing unnecessary requirements of extra work on the part of the trial court clerk.

913

Proposed Section 913 combines, without substantive change, the provisions of existing Sections 955 and 988e, and restates the rule that the dismissal of an appeal is with prejudice, unless expressly declared by the court to be without prejudice to another appeal.

914

Proposed Section 916 is new, and without substantive change in existing law is designed as a "definition" section.

This section is intended to state the extent of the trial court's remaining jurisdiction notwithstanding appeal; it also indicates the distinction between a stay of proceedings and a stay of enforcement. Proposed Section 916 is generally comparable with existing Sections 946 and 949.

917.1

Proposed Section 917.1 consolidates provisions in existing Sections 942, 985(1) and 985.5, concerning stay of enforcement of judgments calling for the payment of money. It maintains the present rule that the undertaking on stay of enforcement of such judgments must be for twice the amount of the judgment, unless given by a qualified corporate surety, in which case it is for one and one-half the amount of the judgment. The proposed section also carries forward the provisions of existing 942 concerning the liability of individual sureties when the judgment exceed $2,000.

The detailed description of the money judgments covered by proposed Section 917.1 is designed to avoid technical gaps in the law, particularly with respect to special funds that may be held by persons who have no direct interest in the litigation.

917.2

Proposed Section 917.2 is based on existing Sections 943 and 985(2), concerning stay of enforcement of judgments ordering

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **IN RE D.P.**
Case Number: **S267429**
Lower Court Case Number: **B301135**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **rita@prisonerswithchildren.org**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	S267429 Amicus LSPC et al

Service Recipients:

Person Served	Email Address	Type	Date / Time
Landon Villavaso Attorney at Law 213753	landon@lvlaw.org	e-Serve	11/1/2021 9:22:48 PM
Lucrecia Villafan Children's Law Center, Unit 3 298957	appeals3@clcla.org	e-Serve	11/1/2021 9:22:48 PM
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Landon Villavaso Attorney at Law	office@lvlaw.info	e-Serve	11/1/2021 9:22:48 PM
William Thetford Los Angeles County Counsel Appellate group 133022	wthetford@counsel.lacounty.gov	e-Serve	11/1/2021 9:22:48 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

11/1/2021
Date

/s/Rita Himes
Signature

Himes, Rita (194926)
Last Name, First Name (PNum)

Legal Services for Prisoners with Children

Law Firm