

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

In re N.R.,)	No. S274943
)	
A Person Coming Under the)	Court of Appeal No.
Juvenile Court Law.)	B312001
_____)	
)	
LOS ANGELES COUNTY DEPT. OF)	Los Angeles County No.
CHILDREN & FAMILY SERVICES,)	20CCJP06532A
)	
Plaintiff and Respondent,)	
)	
v.)	
)	
O.R.,)	
)	
Defendant and Appellant.)	
_____)	

**APPLICATION OF PERSONS WITH LIVED EXPERIENCE
IN THE CHILD WELFARE SYSTEM FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN SUPPORT OF O.R.**

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**APPLICATION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF**

Pursuant to California Rules of Court, rule 8.200(c), Persons with Lived Experience in the Child Welfare System respectfully request permission to file the attached amicus curiae brief in support of O.R. Amici, Persons with Lived Experience in the Child Welfare System, are listed in Appendix A to this Application.

STATEMENT OF INTEREST

Amici are persons with lived experience in the Child Welfare / Juvenile Dependency System in California and elsewhere. Amici, as persons who have experienced the system, are extremely concerned about the harm that unnecessary and unwarranted intervention into the family by child welfare agencies inflicts upon parents and children in California.

To allow the juvenile court to find children to be persons described by Welfare and Institutions Code section 300, subdivision (b)(1), declare them dependents and order their removal from parental custody on a “I’ll know it when I see it” definition of substance abuse, grants far too much discretion to the juvenile court and risks the unnecessary separation of children and parents and the infliction of harm upon those children and their parents. Similarly, allowing the juvenile court to determine that jurisdiction is warranted based solely on a presumption of risk arising from this nebulous finding of parental substance abuse and the “tender” age of the child, rather than requiring actual evidence of a substantial risk of serious physical

harm, will also result in an unwarranted interference into the family and the infliction of harm on the parents and children involved. Indeed, amici have experienced and witnessed these harms directly.

Accordingly, Amici are interested in the outcome of the proceedings to ensure that the juvenile courts are required to utilize the objective and scientifically based definition of substance abuse accepted by medical and mental health professionals when determining whether a child is a person described by Welfare and Institutions Code section 300, subdivision (b)(1), due to parental substance abuse. Amici are also interested in the outcome of the proceedings to ensure that juvenile courts are required to find the requisite substantial risk of serious physical harm to that child based on actual evidence before intervening into the privacy of the family.

BRIEF OF AMICI CURIAE WILL ASSIST THIS COURT

Substance use disorder impacts many families throughout California and, sometimes, the effects of substance use disorder can be harmful to children. However, on the other hand, the unnecessary intervention of the state and county into the family also inflicts harm on the very children that intervention seeks to protect. Understanding and balancing these harms is critical to the actual protection of children who are being abused and/or neglected and those at risk of such abuse and/or neglect.

Amici offer real life lived experiences that are directly relevant to the questions presented for review in this case, namely: 1) whether the Legislature intended the juvenile court to

utilize the objective and scientifically based definition of substance abuse accepted by medical and mental health professionals when determining whether a child is a person described by Welfare and Institutions Code section 300, subdivision (b)(1), or whether it intended to adopt a separate and more expansive definition of substance abuse, not recognized or accepted by medical and mental health professionals; and

2) whether proof of parental substance abuse can constitute prima facie evidence of risk to a child of “tender years” or whether affirmative evidence of risk must be required to justify intervention into the privacy of the family. It is the position of Amici that an objective and scientifically based definition of substance abuse (now referred to as substance use disorder) must be utilized and that affirmative evidence of risk must be required before juvenile court jurisdiction can be asserted over a child. Any other approach to these questions can and will allow unwarranted intervention into the family, cause adverse impacts to children and parents in California, and do significantly more harm than good.

Granting leave to file the attached amicus brief will not delay or complicate the proceedings in this case. The parties will have ample time to respond to the points discussed in this brief prior to oral argument. Moreover, no party or counsel for any party has authored the attached proposed amicus brief, in whole or in part, or funded the preparation of this brief.

CONCLUSION

For the foregoing reasons, Persons with Lived Experience in the Child Welfare System request that this Court grant this application and accept and file the attached *amicus curiae* brief.

Dated: April 5, 2023

Respectfully submitted,



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APPENDIX A: Description of Amici Curiae
Persons with Lived Experience in the Child Welfare System

- Ashley A. – Ashley was a foster child in Washington state from the age of nine until she aged out. Ashley was also involved in the child welfare system as a parent, her parental rights were terminated and her children were adopted.
- Fidel C. – Fidel was involved in the child welfare system in California as a parent. Fidel’s parental rights were terminated and his child was adopted.
- Arise C. – Arise was involved in the child welfare system in California as a parent on two separate occasions. Arise’s parental rights were terminated as to two children and she reunified with the third child.
- Joyce M. – Joyce was involved in the child welfare system in New York as a parent and successfully reunified with her children. Joyce is the founder of JMAC For Families, an organization that advocates for changes to the child welfare system.
- T.S. – T.S. was involved in the child welfare system in California as a child for three years before being reunified with her mother. T.S. currently works at a community center whose mission is to abolish the nation’s juvenile and criminal systems.
- Tatiana R.– Tatiana was involved in the child welfare system in Massachusetts as a child and as a parent.
- K.A. – K.A. was involved in the child welfare system in California as a child. K.A. is as an attorney who specializes in Child Welfare Law.

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PERSONS WITH LIVED EXPERIENCE IN THE CHILD
WELFARE SYSTEM IN SUPPORT OF O.R.**

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ARGUMENT

I.

UTILIZING ANY DEFINITION OF SUBSTANCE ABUSE OTHER THAN THE OBJECTIVE AND SCIENTIFIC DEFINITION AND APPROVING THE JUDICIALLY CREATED “TENDER YEARS” DOCTRINE CAN AND WILL HAVE ADVERSE IMPACTS ON CHILDREN AND WILL ALLOW UNNECESSARY INTERVENTION INTO THE FAMILY, WHICH WILL DO SIGNIFICANTLY MORE HARM THAN GOOD.

There is no doubt that substance abuse is a very serious problem in the United States, and in California particularly. ([https://www.addictionhelp.com/addiction/statistics/.](https://www.addictionhelp.com/addiction/statistics/)) Nearly seven percent of all Americans over the age of 12 suffer from substance use disorder (SUD). (*Ibid.*) In California, nearly nine percent of people over the age of 12 suffer from SUD in a given year. (California Health Care Almanac, *Substance Use in California: Prevalence and Treatment* (2022) p. 5; [https://sbtreatment.com/blog/california-addiction-rates-vs-the-world/.](https://sbtreatment.com/blog/california-addiction-rates-vs-the-world/))

Parents suffering from a substance use disorder *may* pose a risk to their children. (See e.g. Colleen Henry, Nicole Liner-Jigmian, Sarah Carnochan, Sarah Taylor & Michael J. Austin, *Parental substance use: How child welfare workers make the case for court intervention*, Children and Youth Services Review (2018) pp. 69-78; Therese Grant, *Child Custody and Mothers with SUD: Unintended Consequences* ADAI (2015) p. 1 [available at https://adai.uw.edu/pubs/pdf/2015child_welfare.pdf.]; Rachel N. Lipari & Struther L. VanHorn, *Children Living with Parents Who Have a*

Substance Use Disorder, SAMHSA (Aug. 24, 2017) [available at https://www.samhsa.gov/data/sites/default/files/report_3223/Short-Report-3223.html]; Laura Lander, Janie Howsare & Marilyn Byrne, *The Impact of Substance Use Disorders on Families and Children: From Theory to Practice* (2013) Soc Work Public Health 28 at pp.194-205 [available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3725219/>.] However, much of the logic of the literature detailing these risks is circular: the literature determines child maltreatment has occurred if a social worker says it has occurred, and a social worker determines child maltreatment has occurred if they find evidence of substance use. (Movement for Fam. Power, *How the Foster System Has Become Ground Zero for the Drug War* (2020) 21 [available at <https://www.movementforfamilypower.org/ground-zero>].)

On the other hand, separation of children from parents who suffer from substance use disorder may well do more harm than good to both the parent and the child. (See Shanta Trivedi, *The Harm of Child Removal*, 43 New York University Review of Law & Social Change 523 (2019) [available at: https://scholarworks.law.ubalt.edu/all_fac/1085]; Grant, *Child Custody and Mother's with SUD: Unintended Consequences*, *supra*, pp. 1-2; Lander, Howsare & Byrne, *The Impact of Substance Use Disorders on Families and Children: From Theory to Practice*, *supra*.) Indeed, separation from a parent, even a parent suffering from SUD, can have a negative impact on the child's ability to attach and can lead to significant trauma. (UPenn Collaborative on Community

Integration; *Removal from the Home: Resulting Trauma* [available at <http://tucollaborative.org/wp-content/uploads/2017/04/Trauma-The-Impact-of-Removing-Children-from-the-Home.pdf>]; Lander, Howsare & Byrne, *The Impact of Substance Use Disorders on Families and Children: From Theory to Practice, supra.*)

Indeed, foster care itself can be harmful to children. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 541 [“Often the harm created by removing a child from its parents may be more serious than the harm which the state intervention seeks to prevent.”].) Children in foster care are at a significantly higher risk of having learning disabilities, developmental delays, behavioral issues, obesity and depression. (<https://www.universityofcalifornia.edu/news/study-shows-foster-care-bad-your-health>.) They generally do not graduate from school on time and many experience teen pregnancy and homelessness. (<https://www.foster-america.org/the-problem>.) In comparison to children living in their own homes, foster children suffer poor mental and physical health. (<https://americanspcc.org/impact-of-foster-care/>.) They have more relationship issues, financial troubles and trouble with the law. (*Ibid.*) They are twice as likely to suffer post-traumatic stress disorder. (<https://www.safy.org/ptsd-in-foster-care/>.)

These harms to both the parents and the children involved in the child welfare system are very real. For example, in her recently published book “We Were Once a Family: A Story of Love, Death, and Child Removal in America,” Roxanna Asgarian details the heartbreaking story of two sibling sets who were

removed from their birth families based on a risk of harm resulting from substance use and mental health issues, later adopted into the same family, and ultimately murdered by their adoptive parents. While this example is extreme and deeply unsettling, Amici attest that many children and parents live their lives with the scars from a system purportedly designed to protect the child and preserve the family.

Consider the case of Ashley A. Having lost her father as an infant, Ashley was removed from her mother's custody at the age of nine because her mother suffered from substance use disorder and had mental health problems. Ashley was placed with her grandmother and, at the age of 18, aged out of the system. Although Ashley's mother eventually achieved sobriety, the timeline for reunification had elapsed, and she was unable to regain custody. While Ashley was in foster care, because of what she was told by social workers and service providers, she came to believe her mother chose drugs over her children and that her mother was a bad person. She was never told that her mother's addiction was a disease and that, absent that disease, she was a good person. Ashley became very angry at her mother and very confused, too. When people compared Ashley to her mother, she questioned how it was that those people could love her if she was so much like that bad person. Ashley suffered undiagnosed mental health issues related to the trauma of her removal from her mother's custody and her experiences in foster care. In her teens, Ashley started a downward spiral – she was a victim of domestic violence, she got pregnant at 14 and had her first child

at 15, she ran away a lot, and she wound up incarcerated multiple times. At the age of 23, Ashley's three children were removed from her custody because she tested positive for marijuana when giving birth to her youngest child. She was unable to reunify, her parental rights were terminated, and her children were adopted. To Ashley, the trauma caused by foster care far outweighed any danger she was exposed to due to her mother's substance abuse.

Or look at the case of Fidel C. On September 27, 2016, Fidel's daughter was taken into protective custody because her mother tested positive for opiates when giving birth. The mother explained she had been prescribed opiates (Tylenol with codeine) by a dentist and even provided proof of the prescription to the agency. Although Fidel thought that was the end of the investigation, it was not. Fidel and the mother were asked to drug test and told to appear in court, but told nothing else. Eventually, Fidel learned that there were allegations regarding his history of using substances and his criminal history. Although Fidel tested negative for all substances during the life of the case, the agency labeled him as a substance abuser strictly because of his past use. When he tried to fight the allegations, he was labeled aggressive and challenging. Fidel was subsequently bypassed for reunification due to his criminal history, his parental rights were terminated, and in 2019, his daughter was adopted. Fidel will never be the same.

Then, there is the case of Arise C. Arise's daughters were removed from her custody in 2019 based on allegations that Arise

suffered from substance abuse. In reality, Arise suffered from a medical condition which the social workers mistook for substance abuse. Although the agency presented no evidence of a diagnosis of substance use disorder and Arise presented evidence from doctors at Stanford University showing she did not suffer from substance use disorder, the allegations were sustained. In 2020, Arise's parental rights were terminated and her daughters were ultimately adopted. Also in 2020, Arise gave birth to a son. He, too, was removed from her custody, but she was able to reunify with him. Arise misses her daughters every day and cannot understand the different standards which were applied to her children.

The case of Joyce M. is compelling. In her case, the local child welfare agency "used a drug test as a parenting test." Joyce was a successful woman, with a lovely home and a great job in banking, and she was successfully raising an eight-year-old when she gave birth to her second child. After the birth, an anonymous report was made to the local child welfare agency that Joyce was using an illicit substance. During its investigation, the agency never questioned how the children were being cared for. When Joyce submitted to a drug test that was positive for the substance, the agency did not offer her any help. Instead, the agency removed her children and insisted that she participate in an inpatient substance abuse treatment program to reunify. Joyce was hardheaded and refused to complete the required treatment. When her children were removed, Joyce started a downward spiral – she began abusing substances, became an

addict, and was subsequently incarcerated. Eventually, she stopped using on her own, without treatment. She was released from incarceration into a shelter and found employment (the only person at the shelter to do so). After two-and-a-half years, her children were finally returned to Joyce after her attorney successfully convinced the court that formal treatment was not necessary for reunification. Although the local child welfare agency kept coming back into her life due to ongoing referrals, she never again lost custody of her children. Her children are now adults. In 2020, Joyce started JMAC For Families (Just Making a Change for Families), which works to abolish the current punitive child welfare system and to strengthen the system of supports which keep families and communities together.

Consider, too, the case of T.S. T.S. and her three younger siblings were removed from their mother when T.S. was six years old after their father shot a man in front of them and her mother was charged with failure to protect. They were all reunified when T.S. was nine years old. T.S. and her siblings were separated in foster care. T.S. had more than 10 different placements in the three years she was in foster care. She was molested in one placement. She was physically and emotionally abused in another placement. She was verbally abused in two placements. She was hit by one foster mother for going to a neighbor's house to use the bathroom when the foster mother was an hour late getting home and T.S. had to wait outside for the foster mother. She was told by another foster mother when she was ill that if

she threw up she would have to drink her own throw-up with a straw. Worst of all, T.S. suffered a stress induced stroke when she was only eight years old. After being reunified with her mother, T.S. did well in school and obtained a college degree. Now 27 years old, she still suffers from anxiety and a fear of not being safe and she has attachment issues because she does not trust that people will not leave her. T.S. worries about having children because she does not want any child of hers to be subjected to the child welfare system and/or foster care. She says that foster care caused significantly more trauma than seeing her father shoot a man. T.S. is currently employed at a community center whose mission is to abolish the nation's juvenile and criminal systems.

Next, consider Tatiana R.'s case. Tatiana was removed from her mother twice, the second time due to her mother's drug use. She was completely traumatized when removed from her mother. The foster care system put her at more risk than her mother ever did and the things she was exposed to in foster care were far worse than anything her mother had exposed her to. She was a victim of child sexual exploitation and became sexually active at an early age. Not one foster parent showed her love. As an adult, Tatiana was involved with the child welfare system due to domestic violence with her son's father and she eventually lost custody to her abuser. According to Tatiana, "taking a child away from their parent creates a void that no one else will ever be able to fill."

Finally, consider the case of K.A. At two years old, K.A. was living with her mother and father, two older sisters and a younger brother. Her parents used drugs socially, but the children were well taken care of with the assistance of their maternal grandmother. Eventually, when she could no longer assist the parents, her grandmother reached out to the local child welfare agency for help for the parents. Rather than provide help, the child welfare agency removed K.A. and her three siblings from their parents due to their drug use. K.A.'s eldest sister was temporarily placed in foster care, but was released to her father and stepmother. K.A. was placed in a foster home and her other sister and younger brother were placed together in a separate foster home. After the children were removed, K.A.'s mother hit rock bottom and began to self-medicate by using more substances to numb the pain. When her mother gave birth to her fifth child, a positive toxicology test resulted in his removal from the parents and placement in yet another different foster home. Eventually, this child's foster mother learned about the siblings and K.A., her older sister and her younger brother were placed with their baby brother. K.A. was nearly three-years old and this was her third foster home. When her mother gave birth to her sixth child, a boy, he was also removed from the parents due to a positive toxicology test and placed in the same foster home as K.A. – making a total of five siblings in that placement. The foster mother became the legal guardian for the five siblings and K.A. came to view her as her “mom.” K.A. had no contact with her birth parents. K.A.'s mother gave birth to her seventh child,

a boy, while incarcerated; he was not removed and was taken home from the hospital by the father, raised by the parents, without child welfare intervention, and is currently obtaining a Ph.D. degree. After her seventh child, her mother had an eighth child, a girl; she was removed due to substance abuse, placed in a different home and adopted, but she also visited the parents every weekend. While in the foster system, K.A. was told horrible stories about being left by her birth parents with no one to care for her and being sexually abused while in their care. However, K.A. was actually sexually abused in the home of her legal guardian. She was also subjected to instability because her legal guardian moved every time she thought the parents had found her and the children. K.A. was introduced by her “mom” to her grandmother and her eldest sister, but was never told who they were. When K.A.’s father was deported to Nigeria, she learned about her eldest sister and her youngest brother and sister. She also learned that the stories she had been told were not true. After K.A. connected with her birth family, her “mom” – who had raised her for almost her whole life – told her that she needed to make a choice – (a) get to know her birth family or (b) forfeit the only family she knew at that point in her life. K.A. had a pretty good life with her “mom” and the four siblings she was raised with and is grateful to her “mom.” Nevertheless, K.A. chose to explore her birth family because she had a burning desire to know more about her identity – where she came from – including her Nigerian heritage. Navigating these relationships is still complicated. Today K.A. is an attorney who seeks justice for

families involved in juvenile dependency cases. K.A. wants to ensure that parents struggling with issues like substance use disorder have access to meaningful treatment options, such as inpatient treatment programs which allow parents to bring their children with them so that families can stay together and not be separated. She wishes her parents were given that option.

As demonstrated by these stories, interference into the family has far-reaching consequences for both the parents and children involved. These consequences are too high of a price to pay when it is entirely possible that the interference into the family was unwarranted. No child should be subjected to the child welfare system without solid evidence that that child is truly at a substantial risk of serious harm. Allowing a drug test to become a test to determine parental fitness risks unwarranted interference with the family, causing more harm than good. Yet that is exactly what occurred in this case and what the Los Angeles County Department of Children and Family Services advocates for in this Court. Parents should not be subjected to unwarranted interference in their parenting simply because they may *use* a substance – instead, there must be evidence that the parent is more than a casual user, has an actual substance use disorder or meets the criteria to be diagnosed with a substance use disorder, *and* evidence that the parent’s substance use disorder subjects their child or children to a substantial risk of serious physical harm. Otherwise, it is likely that the interference into the family will cause more harm to the parent and the child than it can possibly remedy. Therefore, this Court

should, perhaps must, find that “substance abuse” warranting juvenile court intervention cannot be defined by a subjective “I’ll know it when I see it” standard and must be defined by the objective “this person meets the criteria to be diagnosed with substance use disorder” standard. This Court also should, and again perhaps must, find that the child welfare agency must present actual evidence of a substantial risk of serious harm that is causally connected to the parent’s substance abuse – regardless of the age of the child over whom dependency proceedings are proposed.

CONCLUSION

For the reasons stated above, Amici respectfully request that this Court reverse the Court of Appeal’s decision, clarify that the juvenile court must utilize the objective and scientifically based definition of substance abuse (substance use disorder) accepted by medical and mental health professionals when determining whether a child is a person described by Welfare and Institutions Code section 300, subdivision (b)(1), and overrule the judicially created “tender years” presumption.

Dated: April 5, 2023

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

In compliance with California Rules of Court, rules 8.520(c)(1) and 8.204(b) and (c), I hereby certify that the foregoing brief of Amici Curiae Persons With Lived Experience In The Child Welfare System is set in Century Schoolbook 13 point font and consists of 3,079 words, excluding the cover, application, tables, declaration of service and this certificate, as counted by Word Perfect 2021, the computer program used to generate this brief.


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In re N.R.
Supreme Court No. S274943
Court of Appeal No. B312001
LA Cnty No. 20CCJP06523A

DECLARATION OF SERVICE

I, the undersigned, declare that I am over 18 years of age and not a party to the instant action. My business address is listed above and my e-service address is barry212303@gmail.com. On April 5, 2023, I served the **APPLICATION OF PERSONS WITH LIVED EXPERIENCE IN THE CHILD WELFARE SYSTEM FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF O.R.**, together with the **PROPOSED BRIEF OF AMICI CURIAE PERSONS WITH LIVED EXPERIENCE IN THE CHILD WELFARE SYSTEM IN SUPPORT OF O.R.** by placing true copies in a sealed envelope, with the correct postage, and depositing them in the United States Postal Service, to each of the following persons at the following addresses:

n/a

On April 5, 2023, I also transmitted a PDF version of this document, via True Filing (or email as indicated), to each of the following using the email address indicated:

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California Appellate Project – capdocs@lacap.com (via email)
County Counsel – dmiller@counsel.lacounty.gov
Samantha Bhuiyan, Esq. – appeals3@clcla.org
Sean Burleigh, Esq. – saburleigh@gmail.com
Amici – via email to confidential emails
Court of Appeal, Second District, Division Five

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

Executed on April 5, 2023, at Mays Landing, New Jersey.


LESLIE A. BARRY

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **IN RE N.R.**
Case Number: **S274943**
Lower Court Case Number: **B312001**

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: **barry212303@gmail.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
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Service Recipients:

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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.

4/5/2023

Date

/s/Leslie Barry

Signature

Barry, Leslie (212303)

Last Name, First Name (PNum)

Leslie A Barry

Law Firm