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For Immediate Release

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Children's Advocacy Institute Files Amicus Curiae Brief Challenging the State of Alaska's Interception of Federal Benefits Belonging to Eligible Foster Youth

*Brief Urges Alaska Supreme Court to Require State Foster Care Agency to
Act in Best Interest of the Foster Youth, Not Itself*

SAN DIEGO, CA – June 2, 2022 -- The Children's Advocacy Institute (CAI) at the University of San Diego School of Law filed an amicus brief on May 20 in the Alaska Supreme Court seeking to prohibit the state of Alaska from seizing the federal Social Security survivor and disability benefits of Alaska foster children to reimburse the state for the cost of providing foster care. The brief supports an appeal by a class of plaintiff Alaska foster children challenging Alaska's policy of taking foster children's federal disability (SSI) and child survivor (OASDI) benefits to supplant its own fiscal obligations to pay for the cost of their care, leaving impacted disabled and orphaned foster youth with none of their benefits to address their unmet current and future needs.

CAI is joined in this brief by amici Facing Foster Care in Alaska; Children's Defense Fund; Children's Rights; First Focus on Children; Foundation for Research on Equal Opportunity; Gen Justice; Juvenile Law Center; National Association of Counsel for Children; National Center for Youth Law; Partnership for America's Children; and Prof. Daniel L. Hatcher.

Foster youth aging out of care have [elevated rates](#) of homelessness, poverty, mental health disorders, and incarceration. Those with a physical or mental disability receiving SSI, and those who have a working parent who has died face additional obstacles to achieving self-sufficiency.

An Alaska trial court [ruled](#) in 2019 that the state's failure to provide notice to foster children and their legal representatives when they applied for and then intercepted benefits violated their due process, but it dismissed the children's equal protection claims and requests to have their benefits restored. Those rulings have been appealed by the state and the foster children, respectively.

Amy Harfeld, CAI's national policy director stated, "This is about fairness, accountability, and equity. In Alaska, [66%](#) of youth in state custody identify as Alaska Native."

Courts have issued mixed decisions on this issue in the past. A U.S. Supreme Court [case](#) in 2003 was decided in favor of Washington State's similar practice, but it put off addressing Constitutional issues raised regarding due process and equal protection. Some leading national children's advocacy organizations, including the Children's Defense Fund, sided with the states in that case, but have since reversed position. Other [states](#) have ruled in [favor](#) of foster children, recognizing their due process rights, property rights, or both.

"State foster care agencies should act in the foster child's best interest, not their own," stated Mitchell Mirviss, *pro bono* counsel at Venable LLP who has worked on this issue for decades and drafted the brief in partnership with CAI.

In the wake of Pulitzer-recognized investigative [reporting](#) by National Public Radio and the Marshall Project over the last year, state legislatures and public agencies across the country are rapidly changing laws and policies to preserve these assets for foster youth. In the last year, Texas, Nebraska, Illinois, Connecticut, Minnesota, California, Hawaii, New York City, and Philadelphia have either introduced or passed policy reforms.

The Social Security Administration and the Administration for Children and Families have promised but not yet delivered federal administrative action, aligned with the Biden Administration's priorities to support vulnerable populations and lift up voices of lived experience. Congress is poised to reintroduce federal [legislation](#).

"When the Alaska Office of Children's Services covertly intercepts and pockets the benefits of its own children and youth, they become financial adversaries to the very children they removed from their families in the name of protection," says Harfeld. "Alaska has shown us they can do better, and they now have an opportunity to set meaningful precedent for others."

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The Children's Advocacy Institute, founded at the nonprofit University of San Diego (USD) School of Law in 1989, is one of the nation's premiere academic, research, and advocacy organizations working to improve the health, safety, and well-being of children and youth, with special emphasis on reforming the child protection and foster care systems and improving outcomes for youth aging out of foster care and other at-risk youth. In its academic component, CAI trains USD Law students to effectively advocate on behalf of children and youth. Conducted through offices in San Diego, Sacramento, and Washington, D.C., CAI's research and advocacy component leverages change for children and youth at the federal and state levels through impact litigation, legislative and regulatory advocacy, and public education. CAI's mission is to ensure that children's interests are represented effectively whenever and wherever government makes policy and budget decisions that will impact them. Visit www.caichildlaw.org.