

No. 85729-6

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SUPREME COURT OF THE STATE OF WASHINGTON

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IN RE THE TERMINATION OF  
M.S.R. (D.O.B. 10/10/00) and T.S.R. (D.O.B. 10/10/00)  
D.S.H.S., STATE OF WASHINGTON

Respondent,

v.

NYAKAT LUAK,

Appellant.

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**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF**

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Advocacy Institute, Juvenile Law Center,  
Professor Michael Dale, and Professor  
Theodor Liebmann

## **I. RELIEF REQUESTED**

KidsVoice, the National Center for Youth Law, First Star, the National Association of Counsel for Children, the Children’s Law Center of California, the Children’s Advocacy Institute, the Juvenile Law Center, Professor Michael Dale, and Professor Theodor Liebmann (collectively, “*Amici*”) request permission to file the attached *Amici Curiae* Brief in Support of M.S.R. and T.S.R. (the “Children”) pursuant to RAP 10.6. Respondent Washington Department of Social and Health Services (“DSHS”) consents to the filing of the attached *Amici Curiae* Brief.

## **II. IDENTITY OF *AMICI CURIAE***

KidsVoice ([www.kidsvoice.org](http://www.kidsvoice.org)) is a non-profit organization founded in 1908 as the Legal Aid Society of Pittsburgh. KidsVoice represents approximately 4,000 children each year in dependency cases, including termination of parental rights proceedings. Pennsylvania requires the appointment of an attorney as a guardian *ad litem* to advocate in court for the best interests of every abused and neglected child. KidsVoice is recognized as a national leader in providing children multi-disciplinary services and representation. KidsVoice provides every child with an advocacy team comprised of an attorney and a social service

professional – one of twenty KidsVoice staff members with expertise in social work, mental health, education, child development, case management or substance abuse services. KidsVoice has worked with the states of Connecticut, Louisiana, Wyoming and Colorado, and in Travis County, Texas (Austin), to develop child advocacy offices using the KidsVoice practices or multi-disciplinary approach. KidsVoice is one of five partners—and the only direct service child advocacy organization—working on a five-year, \$6 million federal Quality Improvement Center Project for legal representation of abused and neglected children funded by the Children’s Bureau of the Department of Health and Human Services and awarded to the University of Michigan as the lead agency.

The National Center for Youth Law ([www.youthlaw.org](http://www.youthlaw.org)) is a non-profit organization that works to improve the lives of poor children nationwide, in part by providing legal counsel to children and adolescents in litigation.

First Star ([www.firststar.org](http://www.firststar.org)) is a non-profit organization that advances causes on behalf of abused and neglected children in the United States, including its Campaign for a Child’s Right to Counsel.

The National Association of Counsel for Children (“NACC”) ([www.naccchildlaw.org](http://www.naccchildlaw.org)), is a 501(c)(3) non-profit child advocacy and professional membership association dedicated to enhancing the well

being of America's children. Founded in 1977, NACC works to strengthen the delivery of legal services to children, enhance the quality of legal services affecting children, improve courts and agencies serving children, and advance the rights and interests of children. NACC programs that serve these goals include training and technical assistance, the national children's law resource center, the attorney specialty certification program, the model children's law office program, policy advocacy, and the *amicus curiae* program. Through the *amicus curiae* program, NACC has filed numerous briefs involving the legal interests of children in state and federal appellate courts and the Supreme Court of the United States. NACC uses a highly selective process to determine participation as *amicus curiae*. *Amicus* cases must past staff and Board of Directors review using the following criteria: the request must promote and be consistent with the mission of the NACC; the case must have widespread impact in the field of children's law and not merely serve the interests of the particular litigants; the argument to be presented must be supported by existing law or good faith extension of the law; there must generally be a reasonable prospect of prevailing. The NACC is a multidisciplinary organization with approximately 2,000 members representing all 50 states and the District of Columbia. NACC membership is comprised primarily of attorneys and judges, although the

fields of medicine, social work, mental health, education, and law enforcement also are represented.

The Children's Law Center of California, formerly known as The Children's Law Center of Los Angeles, ([www.clcla.org](http://www.clcla.org)) is a non-profit organization that serves Los Angeles and Sacramento counties, where it provides counsel for abused children. It has been providing children with representation for 20 years and serves a greater number of children than any such organization in the country.

The Children's Advocacy Institute ("CAI") ([www.caichildlaw.org](http://www.caichildlaw.org)), founded at the nonprofit University of San Diego School of Law in 1989, is an academic, research, and advocacy law firm. CAI represents the interests and rights of children and youth in impact litigation, legislative and regulatory advocacy, research and public education projects, and public service programs. CAI's academic component trains law students and attorneys to be effective child advocates. Active at both the state and federal levels, CAI's advocacy program seeks to improve the status, health and well-being of children and youth in all areas of their lives, with special emphasis on improving the child protection and foster care systems and enhancing resources that are available to youth aging out of foster care and homeless youth.

Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies, such as abused and neglected children who are separated from their families and placed in foster care. JLC works to ensure that the rights of children are respected and supported and that they are treated fairly by the systems that are supposed to help them. Since its founding, Juvenile Law Center has represented hundreds of abused and neglected children in child welfare proceedings and played a prominent role in ensuring that children in Pennsylvania have access to counsel at all stages of dependency and child welfare proceedings, including termination of parental rights. Juvenile Law Center's work is guided by the view that children have a constitutional right to counsel in all matters where the state is restricting their liberty or altering the familial relationships that are central to the future well being of the child.

Michael J. Dale is a Professor of Law at Nova Southeastern University Law Center in Fort Lauderdale, Florida, where he has taught courses in family law, juvenile law and in the family and juvenile clinic since 1985. He also teaches litigation courses including civil procedure, conflicts of laws, evidence, trial advocacy, judicial administration and

international litigation. Before joining the faculty at Nova Southeastern, Professor Dale spent time in private law practice in Phoenix and was Executive Director of the Youth Law Center in San Francisco. Prior to that, he served as Attorney in Charge of the Special Litigation Unit of the Juvenile Rights Division of the Legal Aid Society of the City of New York. He has been a practicing lawyer specializing in civil rights litigation for 35 years.

Theodor Liebmann is a professor at the Hofstra University School of Law. Professor Liebmann has directed the interdisciplinary Hofstra Child Advocacy Clinic since its inception. In his capacity as Attorney-in-Charge, he supervises law students and mental health trainees working together to advocate on behalf of youth involved in the immigration and child welfare legal systems. Professor Liebmann and his students have represented hundreds of youth in cases involving physical abuse, sexual abuse, and neglect, as well as related delinquency, custody and guardianship matters. Prior to his current position at Hofstra, Professor Liebmann was a lawyer for children in maltreatment and juvenile delinquency cases at the Manhattan office of the Legal Aid Society's Juvenile Rights Division. Professor Liebmann serves as Director of the National Institute for Trial Advocacy's Training the Lawyer to Represent the Whole Child program, frequently leads workshops on topics such as

the role of the law guardian and immigrant youth issues, and co-authors regular columns in the New York Law Journal on children and the law.

### **III. INTEREST OF *AMICI***

Termination of parental rights proceedings often result in deprivation of liberty and other serious consequences for children. As non-profit organizations and academicians advocating the rights and interests of children across the nation, *Amici* seek to ensure enforcement of children's right to counsel where such results are at stake.

### **IV. FAMILIARITY WITH ISSUES**

*Amici* are organizations and academicians dedicated to advocacy for children and have extensive legal and practical expertise in issues regarding the appointment of legal counsel for children in termination proceedings.

### **V. SPECIFIC ISSUES TO BE ADDRESSED**

The Brief of *Amici* will discuss the need for court-appointed counsel for children in termination hearings. It will augment Appellant's brief by: (1) describing an overview of the current national landscape regarding children's right to counsel in termination proceedings, (2)



contrasting national practices with that of Washington state, (3) describing the conclusions and recommendations of the American Bar Association and other children's law organizations on the issue, and (4) discussing the position taken by the international community with regard to children's right to counsel in termination proceedings.

#### **VI. NEED FOR ADDITIONAL ARGUMENT**

*Amici* believe that their specific experience with legal representation for children in termination proceedings will assist the Court in analyzing this case. This Court relied on *Amicus Curiae* briefs for statistics and studies with particular relevance to the issue in *In re Dependency of A.K.*, 162 Wn.2d 632, 655, 174 P.3d 11 (2007) (Madsen, J. concurring). *Amici* here are in the unique position of being able to aid the Court with information pertaining to the appointment of legal counsel for children in termination proceedings.


## VII. CONCLUSION

*Amici* request that this Court allow them to file the attached *Amici Curiae* Brief in Support of the Children.

DATED this 16th day of September, 2011.

Respectfully submitted,

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## DECLARATION OF SERVICE

I declare, under penalty of perjury, under the laws of the State of Washington, that on the date below I served a copy of the foregoing document by emailing and mailing the same, properly addressed and prepaid, to:

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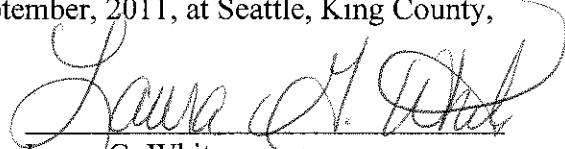
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