

**COURT OF APPEAL, STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION TWO**

In re W.T.,)	Court of Appeal No. A151843
)	
Person Coming Under)	Superior Court No. OJ4023406
the Juvenile Court Law.)	
_____)	Related Appeal Nos.:
)	A150147
ALAMEDA COUNTY SOCIAL SERVICES)	A150706
AGENCY,)	A151481
)	A151482
Plaintiff and Appellant,)	A151791
)	
v.)	
)	
D.H.,)	
)	
Defendant and Respondent.)	
_____)	

FIRST APPELLATE DISTRICT, DIVISION TWO

**BRIEF OF AMICUS CURIAE
CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF
ALAMEDA COUNTY SOCIAL SERVICES AGENCY**

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INTRODUCTION

This case presents questions of statewide importance to child welfare agencies, foster parents, dependent children, and judicial officers by invoking one of the most fundamental doctrines of American jurisprudence—the separation of powers. The Constitution of the State of California codifies this bedrock principle as follows:

"The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (Cal. Const., Art. III, § 3.)

In practice, the legislative, executive, and judicial branches of California's government share common, interdependent boundaries. Consequently, there is a "'sensitive balance' underlying the tripartite system of government [which] assumes a certain degree of mutual oversight and influence." (*People v. Bunn* (2002) 27 Cal.4th 1, 14.) "Despite this interdependence, the Constitution does vest each branch with certain 'core' or 'essential' functions that may not be usurped by another branch" without violating the separation of powers doctrine. (*Ibid.*, internal citations omitted.)

The California Association of Counties (CSAC),¹ Amicus Curiae, respectfully submits the sensitive balance of powers has been disrupted in this case. When the juvenile court ordered the Appellant, Alameda County

¹ The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties. San Diego County has been designated to write this amicus curiae brief on behalf of CSAC.

Social Services Agency (Alameda SSA), to provide public funds, indefinitely,² to a specific person³ who was no longer licensed or approved to provide foster care to dependent children, the court usurped the essential core functions of the California Legislature, the California Department of Social Services, and Alameda SSA. Reversal of the juvenile court's July 2017 prospective funding order is necessary, as a matter of law, to restore the balance of power between juvenile court judges; child welfare agencies charged with licensing, approving, and distributing funding to foster care providers; and the legislative branch that oversees funding and budgetary matters for the entire state.

**CALIFORNIA STATE ASSOCIATION OF COUNTIES' INTEREST
IN THIS CASE**

Please see Application for Leave to File Amicus Brief of the California State Association of Counties (CSAC) in Support of Reversal of the Judgment filed concurrently with this brief.

² The juvenile court ordered funding for W.T.'s caregiver, Respondent, on a monthly basis in an amount equivalent to the foster care rate she previously received when her home was licensed for as long as W.T. remains in her home. (Appellant's Opening Brief [AOB], p. 7.) At this time and for purposes of this briefing, CSAC submits it is reasonable to assume this funding order will remain in effect for an indefinite term of years if this Court does not reverse the order on appeal. The juvenile court has already ordered W.T. to remain in D.H.'s unlicensed, unapproved home indefinitely. To CSAC's knowledge, that related placement order was the subject of a petition for extraordinary writ relief by Alameda SSA, which was denied by this Court on January 5, 2018. (*Alameda County Social Services Agency v. Superior Court* (Jan. 5, 2018, A151481)[nonpub. opn.])

³ Respondent, D.H.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

CSAC has not had access to the record on appeal in this case. It has reviewed the briefs filed by the parties in this matter (A151843) pursuant to California Rules of Court, rule 8.401(b)(2). CSAC recognizes extensive briefing has also been filed with this Court by the parties in related matters. (See AOB, p. 6; Respondent's Brief [RB], p. 11.) This Court previously declined to consolidate those matters with this appeal. Appellant's Amended Motion to Consolidate Appeals, which is now unopposed, remains pending at this time.⁴ Thus, any references by CSAC to facts or procedural history in this brief will cite to the parties' briefing in this matter (A151843) where such information is discussed.

ARGUMENT

I

THE JUVENILE COURT'S JULY 2017 PROSPECTIVE FUNDING ORDER VIOLATED THE SEPARATION OF POWERS DOCTRINE BY USURPING THE CORE FUNCTIONS OF THE EXECUTIVE AND LEGISLATIVE BRANCHES

The California Constitution vests the legislative, executive, and judicial branches with certain core or essential functions that may not be usurped by another branch without violating the separation of powers doctrine. (*People v. Bunn, supra*, 27 Cal.4th 1, 14.) For example, although the three branches of government are mutually dependent in many respects, the judiciary may not use its power of judicial review to evaluate the

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(<http://appellatecases.courtinfo.ca.gov/search/case/scheduledActions.cfm?dist=1&doc_id=2212551&doc_no=A151843&request_token=NiIwLSIkXkw9WzBVSSFdXE1IMEg6UVxfJiJOJz5TQCAgCg%3D%3D> [as of Feb. 8, 2018].)

wisdom of the policies embodied in the statutes enacted by the Legislature. (See *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 53.) In the absence of a constitutional prohibition, the choice among competing policy considerations is a core function of the Legislature. (*Ibid.*)

Similarly, although the executive branch may expend public funds as part of its core functions, it may not do so in a manner that disregards the Legislature's prescribed directives and limits pertaining to the use of such funds. (*Superior Court v. County of Mendocino, supra*, 13 Cal.4th 45, 53.) It follows, then, that the judiciary may not *order* the executive branch to expend public funds in a manner that violates legislative directives and limits upon the use of such funds. Nor may the judiciary consider a public funding dispute before the parties have exhausted their administrative remedies. (*In re Darlene T.* (2008) 163 Cal.App.4th 929, 932.) CSAC submits the juvenile court's July 2017 prospective funding order violates both principles and must therefore be reversed, as a matter of law, according to the doctrine of separation of powers.

A. Foster Care Licensing, Approval, and Funding are Core Functions of the Child Welfare Agency as Directed by the Legislature.

The preliminary question for a separation of powers analysis in this case is whether the licensing, approval, and funding of foster homes are core functions of the child welfare agency (executive branch) or the juvenile court (judicial branch). The answer is clearly the former. Over the past several decades, the California Legislature has enacted and revised complex statutes vesting the executive branch—specifically state and county social services/child welfare agencies—with the authority and responsibility to license, approve, and fund foster homes for dependent children.

In the early 1970s, the California Legislature identified an urgent

need to establish a coordinated and comprehensive statewide services system of quality care for children and adults who were mentally ill, developmentally and physically disabled, or otherwise in need of care or services from a licensed provider. (Health & Saf. Code, § 1501, subd. (a).) In response, it enacted the California Community Care Facilities Act (CCCF Act). (Health and Saf. Code, §§ 1500 et seq.) The CCCF Act requires the California Department of Social Services (CDSS) to license and regulate various out-of-home facilities and placements for children in foster care and imposes training requirements on foster parents. (Legis. Counsel's Dig., Assem. Bill No. 403 (2015-2016 Reg. Sess.) ¶ 1.) A violation of the CCCF Act is a misdemeanor. (*Ibid.*)

More recently, the California Legislature revised the Health and Safety Code to simplify the licensing and approval process for caregivers:

"Pursuant to subdivision (a) of Section 16519.5 of the Welfare and Institutions Code, the State Department of Social Services shall implement a unified, family friendly, and child-centered resource family approval process to replace the existing multiple processes for licensing foster family homes, . . . approving relatives and nonrelative extended family members as foster care providers, and approving adoptive families." (Health & Saf. Code, § 1517, subd. (a)(1), effective January 1, 2016.)

In regards to the separation of powers, the language of these statutes is unambiguous; the Legislature delegated the authority for approving and licensing foster caregivers—including relative caregivers, nonrelative caregivers, and adoptive families—to the executive branch, not the juvenile court.

Regarding foster care funding, the CCCF Act establishes the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, under which counties provide payments to foster care providers using a combination of federal, state, and county funds. (Legis. Counsel's Dig.,

Assem. Bill No. 403 (2015-2016 Reg. Sess.) ¶ 2; *In re Joshua S.* (2007) 41 Cal.4th 261, 267, fn. 3.) In providing these and other services to families, county child welfare agencies are acting as administrative agencies of the executive branch, subject to supervision by CDSS. (See *In re Ashley M.* (2003) 114 Cal.App.4th 1, 7.) The CCCF Act also requires CDSS to create procedures for recovering overpayments made to foster care providers. (Legis. Counsel's Dig., Assem. Bill No. 403 (2015-2016 Reg. Sess.) ¶ 2.)

In order to be eligible for AFDC-FC, a child *shall* be placed in one of the placement types specified by statute including, as relevant here, the *licensed* family home of a nonrelative. (Welf. & Inst. Code, § 11402, subd. (a)(3)⁵; see also § 11402, subd. (a) – (l).) The Legislature also requires CDSS to make rules and regulations for the proper maintenance and care of needy children and for the administration of AFDC-FC payments. (§ 11209.) These rules and regulations are binding upon county child welfare departments and other institutions. Any agency or institution that fails to comply with such provisions, rules, and regulations shall no longer receive aid for so long as it remains out of compliance. (*Ibid.*)

More broadly, the creation of a state budget with its associated funding allocations is an essential core function of the California Legislature, not the judicial branch. (See Cal. Const., art. IV, § 12.)

"The budgetary process entails a complex balancing of public needs in many and varied areas with the finite financial resources available for distribution among those demands. It involves interdependent political, social and economic judgments ***which cannot be left to individual officers acting in isolation***; rather, it is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of the limited revenues

⁵ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

available." (*County of Butte v. Superior Court* (1985) 176 Cal.App.3d 693, 699, emphasis added.)

In other words, the complex and consequential task of allocating finite government resources *cannot* be delegated to an individual juvenile court judge any more than it can be delegated to an individual legislator.

This rule makes particular sense in the context of juvenile dependency proceedings. If afforded the power to allocate unlimited government funding, one can easily imagine judges deciding to order significant, ongoing monetary assistance to *all* of the needy children, parents, and caregivers appearing in juvenile court, many of whom have suffered significant trauma and other set-backs in their lives. These judges would be motivated by very generous and noble intentions, of course, but the allocation of finite funds to one person or group of people necessarily takes those funds away from others who may be equally as deserving. Consequently, California's child welfare system relies upon elected representatives in the Legislature to collectively determine how best to allocate limited government resources to a vast number of worthy causes.

CDSS and the Legislature must also ensure California's child welfare system meets certain federal requirements in order to remain eligible for federal funding. Federally eligible states must maintain an approved state plan for foster care and adoption assistance that includes, in relevant part:

- A State authority or authorities that *shall* be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with national standards (42 U.S.C. § 671(a)(10)(A), emphasis added)
- That said standards *shall* be applied by the State to *any* foster family home or child care institution receiving federal Title IV-E funds (42 U.S.C. § 671(a)(10)(B), emphasis added)

- That a waiver of any standards established by the State authority may be made only on a case-by-case basis for nonsafety standards (as determined by the State) in relative⁶ foster family homes for specific children in care (42 U.S.C. § 671(a)(10)(D), emphasis added)
- That a State shall provide an opportunity for a fair hearing before the State agency to any individual whose claim for benefits pursuant to 42 U.S.C. § 670 et seq. is denied or not acted upon with reasonable promptness (42 U.S.C. § 671(a)(12))
- That a State shall have a process for checking the criminal records and child abuse and neglect records for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child, regardless of whether or not the placement will be provided with Title IV-E funding (42 U.S.C. § 671(a)(20)(A)-(C))

Federal law defines a foster family home as a home for children that is licensed by the State or approved by the State licensing agency as meeting the standards established for such licensing. (42 U.S.C. § 672(c); 45 C.F.R. §1355.20(a).)

B. The Juvenile Court's July 2017 Prospective Funding Order Usurped the Core Functions of the Child Welfare Agency and the Legislature.

It is clear from the examples in Argument I, Section A., *ante*, that both federal and California law require foster family homes to be licensed through a process administered by the executive branch, and foster care funding is contingent upon such licensure. Thus, county child welfare agencies may not expend public funds in a manner that disregards those

⁶ Respondent is not a relative of W.T.

directives and limits without usurping the core functions of the Legislature. (See *Superior Court v. County of Mendocino*, *supra*, 13 Cal.4th 45, 53.) Likewise, a juvenile court may not order a county child welfare agency to expend public funds in such a manner without usurping the core functions of the Legislature *and* an administrative agency of the executive branch. When child welfare agencies or juvenile courts act in contravention to the statutes and the corresponding rules and regulations from CDSS, they place their county's ability to receive future foster care funding for *all* needy children in jeopardy. (§ 11209.)

Here, the juvenile court ordered Alameda SSA to pay approximately 688 dollars per month in public funds to Respondent, D.H., for as long as W.T. remains in Respondent's home. (RB, pp. 11, fn. 4, 14.) In doing so, the juvenile court usurped the foster care licensing, approval, and funding functions of the child welfare agency as directed by the Legislature and rendered them meaningless. If an unlicensed person can obtain public funds to take care of a dependent child indefinitely pursuant to juvenile court order—and without exhausting their administrative remedies—why would any prospective foster parent or prospective adoptive parent pursue licensure or re-licensure through the child welfare agency? Indeed, the unintended consequence of the juvenile court's order in this case would be to strip California's child welfare agencies of the ability to ensure safe, quality foster care for dependent children through the foster care licensing process, as mandated by the Legislature. It would also disrupt the complex balancing of public needs in county and state budgets and create chaos in the juvenile courts as private individuals begin to bring their licensing disputes and financial assistance requests to court. (*County of Butte v. Superior Court*, *supra*, 176 Cal.App.3d 693, 699.)

C. The Juvenile Court Also Acted in Excess of its Role as a Court of Limited Jurisdiction and Usurped the Administrative Review Process.

In issuing the July 2017 prospective funding order, the juvenile court also overstepped its role as a court of limited jurisdiction. Courts of limited jurisdiction may make only those limited determinations authorized by the Legislature through the juvenile court statutes. (*In re David B.* (2017) 12 Cal.App.5th 633, 645.) And it cannot reasonably be said that the juvenile court's July 2017 prospective funding order was "'incidentally necessary'" to the performance of its statutory functions. (*Ibid.*, citing *In re A.R.* (2012) 203 Cal.App.4th 1160, 1170.) On the contrary, there is already a separate, statutory process in place for individuals who believe they have been wrongfully denied foster care payments to seek administrative and judicial review. Such persons have the right to a state hearing, and priority is given to any cases where aid is not being provided pending the outcome of the hearing. (§ 10950.) Further, the individual may seek judicial review of the validity of any final administrative order made at the conclusion of the state hearing pursuant to the California Code of Civil Procedure. (Cal. Code Civ. Proc. § 1094.5; *In re Darlene T.*, *supra*, 163 Cal.App.4th 929, 939.)

For all these reasons, the juvenile court's July 2017 prospective funding order clearly exceeded the juvenile court's limited jurisdiction and circumvented the established administrative and judicial review process, thereby violating the separation of powers doctrine.

D. A Juvenile Court's Authority (Or Lack Thereof) to Order Public Funds to a Private Individual is a Distinct Legal Issue From the Juvenile Court's Authority to Order a Child to Remain in a Prospective Adoptive Placement; It Therefore Requires a Thorough and Distinct Separation of Powers Analysis.

CSAC recognizes this appeal is the last in a series of related appellate matters, and the parties have litigated this case intensely for many

months. In doing so, and in the interests of judicial economy, the parties have incorporated portions of the prior appellate records and briefing in the related matters by reference in the current matter. (See, e.g., AOB, pp. 6, 9; RB, pp. 5, 6, fn. 2, 16.) Consequently, it is imperative to recognize that there are distinct legal issues of statewide importance pending in the current matter, which have not yet been decided in the prior matters.

In one of the prior related appellate matters, this Court determined the juvenile court had authority pursuant to statute and case law to order W.T. to *remain* placed in a prospective adoptive home, notwithstanding the fact that Respondent caregiver does not currently meet the statutory standards for foster care placement. (*Alameda County Social Services Agency v. Superior Court* (Jan. 5, 2018, A151481) [nonpub. opn.], citing § 366.26, subd. (n)(3)(B); *In re T.W.* (2012) 203 Cal.App.4th 30, 46.) But that fact-specific, unpublished *placement* decision did not address the legal issue in the current matter of whether or not a juvenile court can order *public funding* to a private individual who is not licensed to provide foster care. It is this distinct legal issue of statewide importance which must now be thoroughly analyzed under the separation of powers doctrine.

In reaching its placement decision in the related appellate matter, this Court relied upon the case of *In re T.W.*, *supra*, 203 Cal.App.4th 30, 46. (*Alameda County Social Services Agency v. Superior Court* (Jan. 5, 2018, A151481) [nonpub. Opn.], at p. 4.) That case also involved a prospective adoptive parent whose home was determined to be in violation

of foster care placement standards.⁷ But the *T.W.* appellate court ultimately reversed the juvenile court's placement decision, so the child in that case did not remain in an unlicensed foster home. Consequently, the *T.W.* appellate court was never called upon to analyze any public funding issues under the separation of powers doctrine.

The public funding issue also did not arise in the subsequent published decision, *In re M.M.* (2015) 235 Cal.App.4th 54, that relied on *In re T.W.* to reverse a juvenile court order removing a dependent child from the prospective adoptive parent and placing the child with a relative. (*In re M.M.* (2015) 235 Cal.App.4th 54, 62, 64.) The prospective adoptive parent in *M.M.* was a licensed foster parent, and both she and the relative were deemed appropriate placement options for the child. (*Id.* at pp. 56, 64.)

E. In Contrast to the Placement Issue, Existing Statutes and Case Law Clearly Do Not Provide the Juvenile Court with Authority to Order Public Funding Equivalent to AFDC-FC Payments to an Unlicensed Individual.

CSAC submits it would be a significant departure from existing statutes and case law for this Court to determine not only that the juvenile court can order a child to remain in an unlicensed foster home under certain case-specific circumstances, but *also* that the juvenile court can order prospective, public funds for that caregiver in any amount it sees fit. In

⁷ The placement violation at issue in that case was the child welfare agency's belated decision to reverse course and to no longer allow the dependent minor to live in the same foster (and prospective adoptive) home as an adjudicated ward of the juvenile court. (§ 16514, subd. (c)(1); *In re T.W.*, *supra*, 203 Cal.App.4th 30, 33-34.) The appellate court determined the child welfare agency had explicit, statutory discretion to determine whether or not to permit such an arrangement, but the appellate court was troubled by the agency invoking that discretion eight months into the placement and several months after the Agency was informed the other child in the home was in juvenile hall. (*Ibid.*)

contrast to the placement issue, there is no statutory or case law authority suggesting the juvenile court has the power to order approximately 688 dollars per month in public funds to Respondent, D.H., for as long as W.T. remains in her home. (RB, pp. 11, fn. 4, 14.)

This does not mean the California Legislature has never considered the issue of court-ordered funding for dependent children. In fact, there is an entire article in the Welfare and Institutions Code devoted to "Support of Wards and Dependent Children." (Welf. & Inst. Code Div. 2, Pt. 1, Ch. 2, Art. 25, § 900 et seq.) While this article gives the court the authority, in conjunction with the Judicial Council, to determine the costs of dependency-related legal services and record sealing, only the county board of supervisors can determine the costs of care, support, and maintenance of minors who are in custody pursuant to juvenile court orders, with one limited statutory exception. (§§ 900, 904, subd. (a).) That exception is located in section 900, and it permits the juvenile court to order a maximum of 20 dollars per month in county treasury funds as necessary for the support and maintenance of a dependent child of the juvenile court. (§ 900, subd. (a).) Alternatively, section 900 authorizes the board of supervisors of each county—*not* the juvenile court—to establish an alternative maximum monthly amount, either generally or for individual dependent children or classes of dependent children. In counties where this has occurred, the juvenile court may order county treasury funds up to the alternative maximum amount for the support and maintenance of a dependent child. (*Ibid.*)

If the maximum amount is insufficient to pay the entire expense of support and maintenance of a dependent child, the juvenile court may order the additional amount be paid out of the earnings, property, or estate of the dependent child; by the parents or guardian of the dependent child; or by any other person liable for the child's support or maintenance *to the county*

officers who shall in turn pay the amount to the person caring for the dependent child. (§ 902, subd. (a).) No order for payment shall exceed the actual cost of supporting and maintaining the dependent child. (§ 901.)

Taken together, these provisions establish the following rule: *the juvenile court may not order monthly public funds to a dependent child's caregiver that exceed, (1), 20 dollars or the alternative maximum amount set by the county board of supervisors, or (2), the actual cost of supporting and maintaining the dependent child if such cost is lower than the maximum amount.* (§§ 900, 901, 902, subd. (a), 904, subd. (a).) The juvenile court's July 2017 prospective funding order clearly violated this rule. CSAC submits these statutory provisions also do not provide any authority for the juvenile court to order public funding to an *unlicensed* caregiver in light of the plainly evident state and federal public policy that dependent children be placed in licensed foster homes. (See Argument I, Section A., *ante*.)

In violating the above statutory rule, the juvenile court's July 2017 prospective funding order violated the separation of powers doctrine. The child welfare agency and the juvenile court are bound by the limits set by the county board of supervisors and the California Legislature in the above statutes and may not substitute their own judgment for the judgement of the Legislature in expending public funds. (*County of Butte v. Superior Court*, *supra*, 176 Cal.App.3d 693, 699; *Superior Court v. County of Mendocino*, *supra*, 13 Cal.4th 45, 53.) The separation of powers violation in this case is exacerbated by the fact that the juvenile court can also control the duration of the public funding order—i.e., how long W.T. remains in Respondent's home—by withholding its assent to any future proposed placement changes under section 366.26, subdivision (n)(3).

Case law also does not support the juvenile court's July 2017 prospective funding order. On the contrary, as the California Supreme

Court explained in *In re Joshua S.*, the juvenile court has *no* authority to order services, including payments, unless it has been determined through the administrative process of an agency that the child is eligible for those services or payments. (*In re Joshua S.*, *supra*, 41 Cal.4th 261, 273-274; see also § 362; accord *In re Darlene T.*, *supra*, 163 Cal.App.4th 929.)

Respondent's Brief cites this same case to argue that Respondent cannot be deemed ineligible for foster care funding because the funding follows the child, and W.T. is generally eligible for AFDC-FC funding. (RB, pp. 17-18.) But this is a mischaracterization of the facts and decision in *In re Joshua S.*, *supra*, 41 Cal.4th 261. In actuality, the California Supreme Court determined the children in that case were *ineligible* for AFDC-FC payments because their relative caregiver lived in Canada. (*In re Joshua S.*, *supra*, 41 Cal.4th 261 at pp. 275-276.) In other words, an otherwise eligible (or potentially eligible) child may be rendered ineligible for foster care payments solely due to their caregiver's circumstances and living arrangements. (*Ibid.*) Moreover, in order to be considered a "foster family home"—a term of art in both federal and state law—Respondent must be licensed or approved. (See RB, p. 18; 42 U.S.C. § 672(c); 45 C.F.R. §1355.20(a); 22 C.C.R. § 89201(f)(3).)

Respondent further argues she is not ineligible for foster care funding because the CDSS administrative process to revoke her license is still underway. (RB, p. 17.) But, as previously noted, the juvenile court has *no* authority to order foster care payments without an administrative determination of *eligibility*, not *ineligibility*. (*In re Joshua S.*, *supra*, 41 Cal.4th 261, 273-274; see also § 362.) Phrased another way, the juvenile court may not presume someone eligible for foster care funding absent a completed administrative process. And Respondent admits she forfeited her foster care license in the interim by operation of law when she moved to Sacramento County. (RB, p. 17.) "Anything less than full licensure or

approval⁸] is insufficient for meeting [federal] title IV-E eligibility requirements." (45 C.F.R. § 1355.20(a).) Respondent must also possess a current, valid license under California's regulations before she may operate, establish, manage, conduct, or maintain a foster family home. (22 C.C.R. § 89205.)

In sum, the juvenile court's July 2017 prospective funding order violated the doctrine of separation of powers by usurping the core functions of the Legislature as well as state and county child welfare agencies. This is not a situation in which the juvenile court is assuming power in an area where the other two branches of government have remained silent.⁹ The Legislature and CDSS have already established an extensive foster care licensing, approval, and funding system, which includes rights for aggrieved individuals to administrative review followed, as necessary, by judicial review. The juvenile court cannot arrogate these functions to itself. (*Carmel Valley Fire Prot. Dist. v. State of California* (2001) 25 Cal.4th 287, 297.)

Moreover, by protecting and respecting the separation of powers in public funding disputes, courts not only protect the core functions of the executive and legislative branches, but also serve the interests of the judicial branch. When an individual is required to exhaust his or her administrative remedies before seeking judicial review, the superior court will receive a comprehensive administrative record as well as a final

⁸ Foster family homes that are "approved" must be held to the same standards as foster family homes that are "licensed." (45 C.F.R. § 1355.20(a).)

⁹ Though even that type of situation could run afoul of the separation of powers since the juvenile court is a court of limited jurisdiction guided by the juvenile court statutes. (*In re David B., supra*, 12 Cal.App.5th 633, 645.)

administrative determination to review. (*In re Darlene T., supra*, 163 Cal.App.4th 929, 941.) By contrast, a juvenile court's review of a licensing determination can only reasonably be expected to capture bits and pieces of the full administrative record within the context and time limits of a juvenile dependency proceeding. Appellate courts will then find themselves with confusing or incomplete records regarding what actually happened behind the scenes, so to speak, with a particular caregiver's license—particularly when those licensing violations involve confidential investigations of child abuse and neglect allegations concerning the caregiver and another child.¹⁰ For all these reasons, the juvenile court's July 2017 prospective funding order should be reversed as a violation of the separation of powers doctrine.

II

THE JUVENILE COURT'S JULY 2017 PROSPECTIVE FUNDING ORDER TO A PRIVATE INDIVIDUAL IS AN IMPERMISSIBLE GIFT OF PUBLIC FUNDS

The California Constitution prohibits the Legislature from making or authorizing any gift "... of any public money or thing of value to any individual..." (Cal. Const., Art. XVI, § 6.) By extension, judges do not have any power to order gifts of public funds. (*San Diego County Dept. of Social Services v. Superior Court* (2005) 134 Cal.App.4th 761, 766-767.) This constitutional prohibition is so strict that a judge may not even order funding for court-appointed counsel in the absence of legislative authorization for such compensation. (*Ibid.*)

The term "gift" includes all appropriations of public money for which there is no authority or enforceable claim, even if there is a moral or equitable obligation. (*San Diego County Dept. of Social Services v.*

¹⁰ CSAC does not have access to the record in this matter, but the briefing suggests a lack of factual clarity in this appellate record.

Superior Court, supra, 134 Cal.App.4th 761, 765; *Jordan v. California Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450.) In other words, moral and equitable concerns are *not* sufficient, in the absence of additional authority or an enforceable claim, to justify awarding public funds to a private individual. For example, an appropriation of public money to the survivors of the Battle of Gettysburg for travel expenses incurred to attend a fiftieth anniversary event is a constitutionally prohibited gift of public funds. (*McClure v. Nye* (1913) 22 Cal.App. 248.)

Just as the constitutional prohibition against gifts of public funds cannot be ignored by asserting a moral or equitable concern, it also cannot be ignored by asserting a theoretical legal obligation, such as reimbursement for payment of a past debt. (*Shaw v. People ex. rel. Chiang* (2009) 175 Cal.App.4th 577, 610-611.) Nor can it be ignored for reasons of budgetary convenience. (*Ibid.*)

The County of Alameda also specifically prohibits the unauthorized gifting of public monies through its county charter and corresponding administrative code. Section 4.04.050 of the administrative code states:

"The board of supervisors shall authorize the disbursement of all public monies except as otherwise specifically provided by law or by the Charter. No expenditures shall be made unless a specific appropriation shall have been made therefor in the annual appropriation ordinance, except as may be otherwise provided in the Charter." (Alameda County, California Administrative Code, § 4.04.050 – Expenditures—Limitation on., published by Municipal Code Corporation, <https://library.municode.com/ca/alameda_county/codes/administrative_code?nodeId=TIT4FI_CH4.04FIPRGE> [as of Feb. 8, 2018]; see also Charter of the County of Alameda, § 56, published by Municipal Code Corporation, <https://library.municode.com/ca/alameda_county/codes/administrative_code?nodeId=CH> [as of Feb. 8, 2018].)

Thus, the law is abundantly clear in the County of Alameda and the State of California that judges may not order gifts of public funds to private individuals.

A. The Constitutional Prohibition Against Gifts of Public Funds Still Applies to Juvenile Court Orders That Do Not Explicitly Specify "County Treasury Funds."

Of particular importance to the case at hand, the prohibition applies to the gifting of *any* public money or thing of value. (Cal. Const., Art. XVI, § 6.) Thus, the fact that the juvenile court refused to specifically order *county treasury* funds to pay the Respondent¹¹ is not dispositive—the order was still a gift of public money to a private individual. And where a caregiver like Respondent no longer qualifies for Title IV-E foster care funding from the state and federal government, Alameda SSA would necessarily have to pay any court-ordered funds from its own county coffers by process of elimination:

"Title IV-E of the Social Security Act (42 U.S.C. § 670 et seq.) establishes a cooperative assistance program under which counties provide payments to foster care providers on behalf of qualified children in foster care, *using a combination of federal, state, and county funds*. California participates in this federal program through its AFDC-FC program." (*In re Joshua S.*, *supra*, 41 Cal.4th 261, 267, fn. 3, emphasis added.)

Counsel for Alameda SSA informed the juvenile court as much, to which the juvenile court responded that it did not care where the money came from and that was "not [the court's] issue." (AOB, p. 8.) But that *is precisely* the issue before the court; an order for a public agency to provide funding is undeniably an order for public funds. Therefore, the court may not order those public funds expended upon a private individual in the

¹¹ See AOB, p. 8; RB, p. 18.

absence of sufficient legal justification to overcome the constitutional prohibition against gifts of public funds. In other words, it is incumbent upon the court to thoroughly explain its legal reasoning for such an order.

After reviewing the briefing pursuant to rule 8.401(b)(2), CSAC has been unable to locate any citations to statutory authority or case law provided by the juvenile court in support of its July 2017 prospective funding order.¹² According to Appellant's Opening Brief, the juvenile court stated, "It just seems to me that it's very clear that the order was initially that the child be funded. I don't care how it's funded. But *if a child is a dependent of this Court, my continued order is that he needs to be funded to the caregiver, specifically [D.H.],* at the amount that she should have been paid if the child was in a licensed foster home, which is what she'd always been paid." (AOB, p. 8, emphasis added.) Thus, it appears the juvenile court's basis for issuing a prospective public funding order to a specific private individual was simply that the child in that individual's care was a dependent of the juvenile court.

It is unclear if the juvenile court believed the child's dependency status—standing alone—provided moral, equitable, or budgetary reasons to order prospective funding for an unlicensed, unapproved caregiver. It is also unclear if the juvenile court believed the child's dependency status provided a theoretical legal obligation for Alameda SSA to pay the child's caregiver, irrespective of whether the caregiver was licensed or approved. What is clear, however, is that none of these reasons would be sufficient, as discussed above, to overcome the constitutional prohibition on gifts of public funds.

¹² As Amicus Curiae, CSAC does not have access to the court reporter's transcripts of the court hearings.

CSAC respectfully submits the juvenile court's brief statement authorizing a prospective public funding order (apparently) any time a child is a dependent of the juvenile court without citation to legal authority or legal reasoning is insufficient, on its face, to overcome the strict constitutional prohibition against gifts of public funds. Consequently, the juvenile court's unsupported order must be reversed as a matter of law.

B. The Juvenile Court's July 2017 Prospective Funding Order Does Not Serve a Public Purpose, as Defined by the Legislature.

If this Court is not inclined to reverse the funding order as lacking sufficient legal justification on its face, then the primary inquiry in determining whether the constitutional prohibition has been violated is whether the money serves a public or a private purpose. (*San Diego County Dept. of Social Services v. Superior Court, supra*, 134 Cal.App.4th 761, 766.) If the money is for a public purpose, it is generally not regarded as a constitutionally prohibited gift of public funds. The Legislature is primarily responsible for determining what constitutes a public purpose, and its determination will not be disturbed by the courts so long as the determination has a reasonable basis. (*Ibid.*)

Thus, we look first to California's statutes to determine whether the juvenile court may order prospective public funding to specific private individuals for care of a dependent child. At first glance, such an order appears to track with the language of section 362, subdivision (a), which states:

"If a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court." (§ 362, subd. (a).)

This is not the end of the inquiry, however. The Supreme Court of California examined the powers of the juvenile court under section 362 in *In re Joshua S.*, and determined the statute does *not* give the juvenile court authority to order foster care payments without an administrative determination the children are eligible for those payments. (*In re Joshua S.*, *supra*, 41 Cal.4th 261, 273.) In other words, a juvenile court has no authority to order services—including AFDC-FC payments—unless it has been determined through the administrative process of an agency that has been joined as a party that the child is eligible for those services. (*Id.* at pp. 273-274; § 362, subd. (b)(2).) A little over 10 years have now passed since *In re Joshua S.* was published; if the Legislature disagreed with the California Supreme Court's interpretation of the statute in the context of foster care funding, it is reasonable to assume it would have amended the statute accordingly.

Further, the California Legislature specifically considered the issue of court-ordered funding for dependent children in the article titled "Support of Wards and Dependent Children" and limited the juvenile court's authority to order public funds, as discussed in Argument I, Section D., *ante*. (Welf. & Inst. Code Div. 2, Pt. 1, Ch. 2, Art. 25, § 900 et seq.)

Respondent argues the order serves a public purpose because the Agency has a duty to provide support for dependent children in its custody. (RB, p. 21.) This is plainly incorrect insofar as Respondent is referring to direct financial support for children in the homes of unlicensed caregivers. As explained in Argument I, *ante*, the state and federal legislatures have determined that limited public foster care funds should be expended only upon the neediest dependent children whose families are eligible for federal financial assistance and upon those foster caregivers who are licensed to ensure the provision of safe, quality care. (42 U.S.C. § 672(a)-(b).) This determination of the public purposes of foster care funds rests upon a

reasonable basis and must not be disturbed by the courts. (*San Diego County Dept. of Social Services v. Superior Court, supra*, 134 Cal.App.4th 761, 766.)

Hypothetically speaking, if individual child welfare agencies had an independent duty to provide direct financial support to all caregivers who—by their actions or their location—rendered the children in their homes ineligible for foster care funding, then there would be no *In re Joshua S.* or *In re Darlene T.* decisions. Instead, the juvenile courts in those cases would have just ordered the child welfare agencies to pay the relative caregivers in lieu of state or federal foster care payments, and the higher courts would have affirmed.

In determining what constitutes a public purpose for a gift of funds to an individual, it is not appropriate for courts to substitute their judgment about who should receive public funds or which public entities should pay those funds for the judgment of the Legislature. "States clearly have the freedom to make a bona fide determination that blind persons have a greater need than dependent children, that adults have a higher standard of need than children, that the aged have more need than the blind, and so forth." (*Jefferson v. Hackney* (1972) 406 U.S. 535, 578 (dis. opn. of Marshall, J.))

For all these reasons, the juvenile court's July 2017 prospective funding order violated the Constitutional prohibition on gifts of public funds and must be reversed on this basis as a matter of law.

III

IN RE JOSHUA S. PROVIDES GUIDANCE REGARDING THE APPROPRIATE ROLE OF A JUVENILE COURT WHEN PUBLIC FUNDING DISPUTES ARISE AS WELL AS THE APPROPRIATE DISPOSITION OF THIS APPEAL

The California Supreme Court case of *In re Joshua S.* establishes, by way of example, the proper role of the of the courts in the context of foster care funding disputes. As previously mentioned, in that case, the California Supreme Court rejected the Court of Appeal's broad interpretation that section 362 granted the juvenile court unfettered authority to order foster care payments without an administrative determination of the children's eligibility for those payments. (*In re Joshua S.*, *supra*, 41 Cal.4th 261, 273-274.) In doing so, the California Supreme Court affirmed the requirement for, and importance of, the administrative process:

"[C]ourts ordinarily accord administrative agencies the initial opportunity to address claims involving interpretation of their own regulations [...] To permit [the petitioner] retroactively to second-guess the [agency] would improperly dilute the [agency's] power to make, amend, and rescind its own regulations. ([Lab. Code] § 1144.)" (*Id.* at p. 274, citing *Lindeleaf v. Agricultural Labor Relations Bd.* (1986) 41 Cal.3d 861, 869, 870, internal quotations omitted.)

Nevertheless, the California Supreme Court determined the exhaustion of administrative remedies was not required in that case because the children were plainly and indisputably *ineligible* for foster care payments based on state and federal law.¹³ (*In re Joshua S.*, *supra*, 41 Cal.4th 261, 274-278.) More specifically, the Court determined the grandmother's home would

¹³ The Court relied upon the plain language of the state and federal foster care funding statutes, rather than the administrative regulations interpreting those statutes. (*In re Joshua S.*, *supra*, 41 Cal.4th 261, 274-278.)

never qualify as a "foster family home" under federal law because she lived in Canada, and a foster family home must be licensed by an agency in the state¹⁴ in which it is situated. (*Id. at p. 273-275.*) The California Supreme Court then reversed and remanded the case for further proceedings consistent with its opinion. (*Id. at p. 278.*) In other words, the lower court would need to conduct any further proceedings on the issues of the children's permanent plan and termination of jurisdiction *while accepting the fact that the children were not and would not be eligible for foster care funding in their grandmother's home in Canada.*

In keeping with the guidance of *In re Joshua S.*, CSAC submits this Court should reverse the juvenile court's July 2017 prospective funding order for the reasons discussed in Argument I and II, *ante*, and remand the case for further proceedings consistent with its opinion. In other words, the juvenile court would need to conduct any further proceedings involving W.T.'s placement and permanent plan *while accepting the fact that Respondent is ineligible for foster care funding for as long as Respondent's home remains unlicensed and unapproved.*

Unlike the grandmother's circumstances in *In re Joshua S.*, Respondent's circumstances could change in the future, depending on the

¹⁴ Canada is not a "[s]tate" for purposes of the federal law. (42 U.S.C. § 1301(a)(1).)

outcome of her pending administrative proceedings.¹⁵ Thus, CSAC submits it would be appropriate for the juvenile court to inquire of the parties, upon remand, as to the anticipated timeframe for resolution of the administrative process in this case, as well as the Respondent's willingness and ability to care for the child *without* foster care funding in both the short term and the long term. Moving forward, such information would assist the juvenile court in assessing W.T.'s needs for permanency and stability and in determining whether his best interests will continue to be served by remaining in Respondent's unlicensed, unfunded home.

CONCLUSION

Child welfare agencies and juvenile courts do not always agree on the appropriateness of a dependent child's specific placement, but it is undeniable that they share a common goal for all dependency cases: establishing safe, stable, and permanent homes for dependent children. In order to meet that laudable goal, child welfare agencies and juvenile courts must work together while also respecting one of the most important legal doctrines in American jurisprudence: the Separation of Powers.

Child welfare agencies and juvenile courts must also respect the

¹⁵ Respondent argues on appeal that she should not be required to exhaust her administrative remedies because she was not provided with sufficient due process when her funding was terminated. (RB, pp. 18-19.) She appears to be raising this argument for the first time on appeal, as she is requesting this Court take additional evidence to consider her position. (See RB, p. 19.) CSAC submits she forfeited this argument by failing to raise it in the trial court. (See *In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222.) In the alternative, CSAC agrees with Appellant that Respondent's arguments surrounding funding termination notice and due process are appropriate arguments to be made during the administrative review process and do not excuse her from participating in that process. (See AOB, p. 18; see also *In re Darlene T.*, *supra*, 163 Cal.App.4th 929, 939-940 [examples of exceptions and non-exceptions to the rule requiring exhaustion of administrative remedies].)

California Constitution's prohibition against gifts of public funds to private individuals. In this case, the juvenile court's July 2017 prospective funding order upset the delicate balance of powers by requiring Alameda SSA to pay hundreds of dollars per month to Respondent, who is neither licensed nor approved to provide foster care. On behalf of its 58 member counties, CSAC respectfully asks this Court to reverse the juvenile court's order and restore the balance.

DATED: February 8, 2018

Respectfully submitted,

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WORD COUNT CERTIFICATION

(Cal. Rules of Court, rule 8.360(b)(1))

The text of this brief consists of 9,047 words as counted by the Microsoft Word 2007 word-processing program used to generate the brief.

DATE: February 8, 2018

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PROOF OF SERVICE BY MAIL
 (CRC 8.212 & 8.817; Civ. Code Proc., § 1013(a).)
 (1st Civil No. **A151843**; In re : **W.T.**)

I, Arlene Martinez, declare that: I am over the age of 18 years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California, where the mailing occurs; and my business address is 5530 Overland Ave., Ste. 170, San Diego, California 92123. I further declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business. I caused to be served the following document(s): **BRIEF OF AMICUS CURIAE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF ALAMEDA COUNTY SOCIAL SERVICES AGENCY** by placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

HONORABLE URSULA JONES DICKSON
 JUVENILE COURT APPEALS DESK
 1225 FALLON STREET, ROOM 109
 OAKLAND, CA 94612

I then sealed each envelope and, with the postage thereon fully prepaid, I placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

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Furthermore, I, Arlene Martinez, declare my address is 5530 Overland Avenue, Suite 170, San Diego CA 92123, and I have electronically served the **same referenced document** from the electronic notification address of SDCCJD.Appeals@sdcounty.ca.gov, on 2/8/18 @ approximately 2:51:38 PM, to the electronic service addresses of the following entities:

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

Executed on February 8, 2018 _____
 Arlene Martinez, Confidential Legal Secretary