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SCWC-12-0000521

IN THE SUPREME COURT OF THE STATE OF HAWAII

IN THE INTEREST OF

T.M.

FC-S No. 10-002K

APPEAL FROM THE
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER TERMINATING
PARENTAL RIGHTS ISSUED
ON MAY 3, 2012

Family Court of the Third
Circuit

Hon. Aley K. Auna, Jr.

**AMENDED MOTION FOR LEAVE TO FILE BRIEF IN SUPPORT OF
MOTHER/PETITIONER-APPELLANT'S APPLICATION FOR
WRIT OF *CERTIORARI*
BY *AMICI CURIAE* LEGAL AID SOCIETY OF HAWAII,
HAWAII APPLESEED CENTER FOR LAW & ECONOMIC JUSTICE, &
AMERICAN CIVIL LIBERTIES UNION OF HAWAII FOUNDATION**

MEMORANDUM IN SUPPORT OF MOTION

CERTIFICATE OF SERVICE

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Legal Aid Society of Hawai'i ("Legal Aid"), Hawai'i Appleseed Center for Law & Economic Justice ("Hawai'i Appleseed"), and the American Civil Liberties Union of Hawai'i Foundation ("ACLU"), by and through their attorneys, hereby move this Court for leave to appear as *amici curiae* and to file a brief in support of Mother/Petitioner-Appellant's Application for Writ of *Certiorari*.

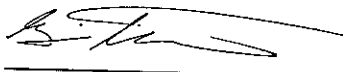
This Motion is made pursuant to Rules 27(a) and 28(g) of the Hawai'i Rules of Appellate Procedure and is based upon the attached memorandum.

DATED: Honolulu, Hawai'i, October 8, 2013.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE
BRIEF IN SUPPORT OF MOTHER/PETITIONER-APPELLANT'S
APPLICATION FOR WRIT OF *CERTIORARI*
BY *AMICI CURIAE* LEGAL AID SOCIETY OF HAWAI'I,
HAWAI'I APPLESEED CENTER FOR LAW & ECONOMIC JUSTICE, &
AMERICAN CIVIL LIBERTIES UNION OF HAWAI'I FOUNDATION**

The Legal Aid Society of Hawai'i, the Hawai'i Appleseed Center for Law & Economic Justice, and the American Civil Liberties Union of Hawai'i respectfully request that the Court grant them leave to file an *amicus curiae* brief in support of Mother/Petitioner-Appellant's Application for Writ of *Certiorari*.

The Legal Aid Society of Hawai'i ("Legal Aid") is Hawaii's largest private non profit law firm servicing Hawaii's low income population. It is a Statewide organization with offices on all major Hawaiian Islands. Legal Aid's mission is to address critical legal needs through high quality legal advocacy, outreach and education in the pursuit of fairness and justice. Since 2001 it has represented thousands of litigants in child abuse and neglect cases, both as parents'

counsel and guardian *ad litem*. The rights at issue in this case strike at the core of Legal Aid's mission and, therefore, Legal Aid and its client population have a personal, vested and organizational interest in the outcome of this case.

The Hawai'i Appleseed Center for Law and Economic Justice ("Hawai'i Appleseed") is a nonprofit, public interest law firm created to advocate on behalf of low-income individuals and families in Hawai'i on civil legal issues of statewide importance. This issues in the case go to the heart of Hawai'i Appleseed's mission because parents accused of abuse and neglect are predominately low-income, and have insufficient resources to secure counsel to protect their precious rights to their children.

The American Civil Liberties Union is a nationwide, nonprofit, nonpartisan organization with nearly 500,000 members dedicated to the principles of liberty and equality embodied in the Bill of Rights and the nation's civil rights laws. The American Civil Liberties Union of Hawai'i Foundation, the state affiliate of the American Civil Liberties Union, has over 2,000 members in the State of Hawai'i and is similarly dedicated to defending and protecting civil rights and civil liberties. Due process rights, including the procedural guarantees of notice and an opportunity to be heard, are among the core rights guaranteed by the Constitution and protected by the ACLU. The right to counsel goes to the core of the due process clause's protection of the opportunity to be heard.

Collectively, the organizations filing this motion have an interest in this case because the right to parent is fundamental in law and is, to parents themselves, as precious as life itself. While the organizations filing this motion agree with Mother/Petitioner-Appellant that the right to counsel was violated for the minor parent at issue in this case, the *amici curiae* brief would address an issue referenced only in passing in the Application for Writ of *Certiorari*: whether all

parents in abuse/neglect proceedings (both minors and adults) have a constitutional right to appointed counsel under the Hawai'i Constitution. As the Intermediate Court of Appeals ("ICA") has previously stated, "Hawai'i [] remains one of only a handful of states that does not, by statute or case law, guarantee indigent parents a right to appointed counsel, at least at the stage of a child-protective proceeding at which parents are threatened with the prolonged and/or indefinite deprivation of custody of their children." *In re "A" Children*, 119 Hawai'i 28, 46, 193 P.3d 1228, 1246 (App. 2008).

The proposed *amici curiae* brief would first describe how the vast majority of states provide a right to counsel in abuse/neglect proceedings. It would explain how a case-by-case approach can lead to the use of appointment criteria that are either difficult to apply correctly or vary from court to court, leading to an untenable situation where a parent's access to justice depends on where in the state the parent lives. It would also address how unrepresented parents cannot effectively present their case's merits and complexities to a judge so as to demonstrate the need for appointment of counsel. The *amici curiae* brief would also explain how the case-by-case approach creates serious problems for meaningful appellate review when counsel is denied. Finally, the brief would describe why the analysis should not change if the parent is a minor.

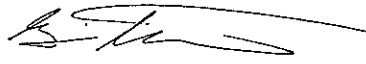
Because the larger question of the right to counsel generally in abuse/neglect proceedings is one of great significance, the aforementioned organizations respectfully ask that this Court grant leave to file an *amici curiae* brief to discuss that issue.

DATED: Honolulu, Hawai'i, October 8, 2013.

Respectfully submitted,



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T.M.

FC-S No. 10-002K

**CERTIFICATE OF SERVICE RE:
MOTION FOR LEAVE TO
APPEAR AS *AMICI CURIAE***

APPEAL FROM THE FINDINGS OF
FACT, CONCLUSIONS OF LAW,
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PARENTAL RIGHTS ISSUED ON
MAY 3, 2012

Family Court of the Third Circuit

Hon. Aley K. Auna, Jr.

CERTIFICATE OF SERVICE

I hereby certify that two copies each of the Amended Motion for Leave to File Brief of *Amici Curiae* Legal Aid Society of Hawai'i, Hawai'i Appleseed Center for Law & Economic Justice, and ACLU of Hawai'i Foundation in Support of Mother/Petitioner-Appellant's Application for Writ of *Certiorari*, Memorandum in Support of Motion, and Certificate of Service will be served upon the following persons by depositing in the U.S. Mail, postage pre-paid, on this date:

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DATED: Honolulu, Hawai'i, October 8, 2013.



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