

CASE NO. 26-1663

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

STEVEN BOLCH, *ET AL.*,

Plaintiffs-Appellants,

v.

**JOSH STEIN IN HIS OFFICIAL CAPACITY AS GOVERNOR OF
NORTH CAROLINA, *ET AL.*,**

Defendants-Appellees.

**On Appeal From The United States District Court
For The Western District of North Carolina
Case No. 3:24-cv-00783-MEO-DCK**

**BRIEF OF THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN,
JUVENILE LAW CENTER, THE AMERICAN CIVIL LIBERTIES UNION OF NORTH
CAROLINA LEGAL FOUNDATION, AND YOUTH LAW CENTER AS AMICI CURIAE
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

J. Michael Showalter
James D. Cromley
ArentFox Schiff LLP
233 S. Wacker Drive, Suite 7100
Chicago, Illinois 60606
Telephone: (312) 258-5500

Brittany Sokoloff
Sonul Rao
ArentFox Schiff LLP
1301 Avenue of the Americas, 42nd
Floor, New York, NY 10019
Telephone: (212) 484-3900

*Counsel for Amici Curiae the National Association of Counsel for Children,
Juvenile Law Center, ACLU-NC, and Youth Law Center*

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 26-1663 Caption: BOLCH, et al v. STEIN, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

National Association of Counsel for Children (NACC)

(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
2. Does party/amicus have any parent corporations? ☐ YES ☒ NO
If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐ YES ☒ NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☒ NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.
7. Is this a criminal case in which there was an organizational victim? ☐ YES ☒ NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Sonul Rao

Date: July 13, 2026

Counsel for: NACC

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No. 26-1663 Caption: BOLCH, et al v. STEIN, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Juvenile Law Center

(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
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Date: July 13, 2026

Counsel for: Juvenile Law Center

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No. 26-1663Caption: BOLCH, et al v. STEIN, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

The American Civil Liberties Union of North Carolina Legal Foundation ("ACLU-NC")

(name of party/amicus)

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Signature: /s/ Sonul Rao

Date: July 13, 2026

Counsel for: ACLU-NC

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No. 26-1663Caption: BOLCH, et al v. STEIN, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Youth Law Center

(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
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Signature: /s/ Sonul Rao

Date: July 13, 2026

Counsel for: Youth Law Center

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**IDENTITIES AND INTEREST OF *AMICI CURIAE* AND INDICATION
THAT THIS BRIEF IS FILED WITH THE CONSENT OF THE PARTIES**

The National Association of Counsel for Children (“NACC”) is a 501(c)(3) non-profit child advocacy and professional membership association, founded in 1977, that advances children’s and parent’s rights by supporting a diverse, inclusive community of child welfare lawyers to provide zealous legal representation and by advocating for equitable, anti-racist solutions co-designed by people with lived experience. A multidisciplinary organization, its members primarily include child welfare attorneys and judges, as well as professionals from the fields of medicine, social work, mental health, and education. NACC’s work includes federal and state level policy advocacy, the national Child Welfare Law Specialist attorney certification program, a robust training and technical assistance arm, and an *amicus curiae* program. Through the *amicus curiae* program, NACC has filed numerous briefs promoting the legal interests of children in state and federal appellate courts, as well as the Supreme Court of the United States. More information about NACC can be found at www.naccchildlaw.org.

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center’s legal and

policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children’s unique developmental characteristics and human dignity.

The American Civil Liberties Union of North Carolina Legal Foundation (“ACLU-NC”) is a statewide, nonpartisan affiliate of the ACLU with approximately 21,000 members and thousands of other supporters dedicated to defending the constitutional rights of all North Carolinians through educational programs, public statements, and litigation. ACLU-NC has filed numerous *amicus* briefs in state and federal courts addressing civil rights issues and regularly litigates on behalf of next friends seeking to secure the constitutional rights of vulnerable North Carolinians, including adults whose severe mental health and cognitive disabilities make it difficult for them to advocate for their own interests. ACLU-NC has an interest in this case as it involves systemic constitutional rights violations of children in foster care in North Carolina who, absent next friends, are unable to advocate for themselves in courts of law due to their status as minors.

The Youth Law Center (“YLC”) is a national organization, founded in 1978, that advocates to transform the foster care and juvenile justice systems so

that children and youth can thrive. Through legal, legislative, and policy advocacy, YLC works to advance the rights of young people who come into contact with the juvenile justice and child welfare systems and to strengthen the supports available to them so they can transition successfully to adulthood and thrive. YLC believes that children and youth in foster care deserve access to the courts to enforce their rights to the same extent as their non-system impacted peers and opposes systemic barriers to access for these young people.

Amici are leading North Carolina and national organizations focused on addressing issues impacting children and others who face barriers to advocating for their own interests in legal proceedings.

Amici Curiae submit this brief with the consent of the parties to this matter. This brief was prepared wholly by undersigned counsel on a *pro bono* basis with assistance by in-house attorneys and/or staff for each of the *Amici Curiae* organizations, and no party's counsel authored this brief in whole or in part. No costs for the preparation of this brief have been specifically contributed by any party.

INTRODUCTION AND SUMMARY OF ARGUMENT

The district court's rule below creates a constitutional catch-22. Children may challenge a foster care system only through adults with whom they have significant relationships, yet the constitutional violations alleged in this case

systematically prevent those children from forming and maintaining such relationships. If the court below is correct, the children most harmed by a persistently dysfunctional foster care system will be the least likely able to use federal courts to remedy it.

This Court’s recent decisions in *Jonathan R.* rely on a core principle of our Constitutional order: “A right without a remedy is no right at all.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). That foundational principle carries particular force where, as here, the individuals whose constitutional rights are at stake are children in state custody: children whom the State has removed from their families, placed into a system marked by instability and disruption, and effectively rendered unable to vindicate their own rights without assistance.

And the court below used a procedural formalism to chain shut the doors to the courthouse. While the district court expressed “great sympathy” to plaintiffs’ allegations, it dismissed their claims by imposing “next friend” requirements that are nearly impossible for children in the foster system to meet. The district court determined that “when a next friend lacks the requisite significant relationship with the real party in interest, courts should dismiss the case for lack of subject-matter jurisdiction.”¹ The rigid interpretation of “next friend” standing applied here functionally extinguishes the ability of children in the foster system to access

¹ JA7.

federal courts at all. By demanding that next friends show they have the kinds of stable, enduring relationships that the foster system itself systematically severs and erodes, the decision below ensures that children in desperate need of judicial protection by the federal courts will never be positioned to obtain it.

This is not the law, as the *Jonathan R.* decisions made clear: children in state custody must be permitted to invoke the jurisdiction of federal courts to challenge systemic constitutional violations and to seek structural relief designed to mitigate the very traumas the foster system inflicts. *Jonathan R. ex rel. Dixon v. Morrissey*, 178 F.4th 139, 157 (4th Cir. 2026); *Jonathan R. by Dixon v. Justice*, 41 F.4th 316, 321 (4th Cir. 2022). In those decisions, this Court twice emphasized both the authority and the duty of federal courts to remedy constitutional violations in state-run institutions, and rejected efforts to foreclose such claims through formalistic procedural barriers.

Foster care begins with the rupture of a child’s most important relationship: with their parent. Placement instability is an unfortunate hallmark of the foster care experience, arising from a confluence of structural failures. Foremost among these is a chronic shortage of foster homes, which results in children being cycled through “homes, institutions, group placements, and other temporary and emergency placements with disturbing frequency.”² Kinship care—placement of

² JA94 (¶ 243).

children in family like settings—is underutilized in favor of institutionalizing far too many children in congregate settings.

Compounding this placement deficit is a workforce crisis marked by high caseworker turnover—one study found that foster children with a single caseworker in a given year had an approximately 75% chance of achieving permanency, compared to only 18% for those with two caseworkers and just 2% for those with more than three.³

Children with the highest needs bear the brunt of this instability. Nearly half of all children placed in group homes or institutions nationally have a diagnosed disability.⁴ Children with disabilities, and those who enter the foster system after age 12, achieve permanency at markedly lower rates.⁵ In North Carolina specifically, among children whose complex needs make them the hardest to place, “a quarter of these children have been moved *fifty times or more*,” and children ages 13 to 17 experience the highest rates of four-or-more placement changes of any age group.⁶ These children, who are cycling through homes, emergency rooms,

³ JA102 (¶ 265).

⁴ Child.’s Bureau, U.S. Dep’t of Health & Hum. Servs., *Child Welfare Outcomes 2021: Report to Congress* 59 (2021), <https://acf.gov/sites/default/files/documents/cb/cwo-report-to-congress-2021.pdf>.

⁵ *Id.* at 33; Elspeth Slayter, *Youth with Disabilities in the United States Child Welfare System*, 64 CHILD. & YOUTH SERVS. REV. 155, 155 (2016).

⁶ JA45, JA123-124 (¶¶ 4, 354).

and congregate care facilities, and, who as a direct result of North Carolina's failing foster system have been cut off from forming any meaningful relationships, are the very children seeking institutional reform in this litigation.

Rigid "next friend" requirements foreclose the ability to use institutional reform litigation to address real impacts on the lives of children and others who are not themselves considered legally competent. The transient and flawed nature of the foster system deprives many children of the ability to form a sufficiently permanent relationship with an adult that would satisfy the lower court's stringent requirements. The aim of this litigation is to improve the foster system so that children within it can form close, family-like relationships. In dismissing Plaintiffs' complaint, the district court forecloses the possibility of redress for these youth and perpetuates the foster care system's flaws, impeding children in the foster system from ever meeting the lower court's strict interpretation of next friend requirements.

Amici urge this Court to adopt a nuanced approach to the next friend analysis that accounts for the realities of the foster system experience, ensures youth in the foster system maintain access to justice in federal courts, and aligns with other Circuits. *Amici* request that this Court clarify that for children in the foster system, the appropriate inquiry for next friend standing is whether the proposed next friend

(i) is willing and able to advance the child’s interests, (ii) regularly consults with the named plaintiffs, and (iii) does not present a conflict of interest.

ARGUMENT

Youth in the foster system face an uphill battle to forge and maintain significant relationships in their lives because the child protection system impedes these connections at multiple junctures: from initial removal to placement during the case to final permanency. Applying the lower court’s next friend standard to require a “requisite significant relationship with the real party in interest”⁷ directly conflicts with this Court’s two recent *Jonathan R.* decisions ignores the realities of the foster system and thus denies access to justice to children far too often traumatized by a system that fails to protect their constitutional rights.

A. A Rigid Interpretation of Next Friend Status Unfairly Disadvantages Children in the Foster System.

A rigid interpretation of next friend standing with a significant relationship prerequisite unfairly bars children from access to the judicial system. In dismissing the Complaint, the district court denied access to justice to children forced into a system that, by its very design, prevents them from forming and maintaining the types of significant relationships that the district court improperly deemed necessary under *Hamdi v. Rumsfeld*, 294 F.3d 598, 604 (4th Cir. 2002). That next

⁷ JA7.

friend standard, as inflexibly applied by the district court, is incompatible with the pragmatic and structural realities of the foster system because children entering the foster system are inevitably separated from the very relationships that would typically be their next friends—their parents. Once removed from home, the foster system intensifies the problem by underutilizing kinship care and overusing congregate care, both of which cause placement instability.

1. *Entry into the foster system disrupts children’s most significant relationships by separating children from their families.*

The right to family integrity is “perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

Entry into the foster system disrupts that primary connection and continues to erode it with each passing month. Once in the state’s custody, children no longer have daily access to their own parent(s), losing the frequency of daily interactions around the hallmarks of childhood—morning and bedtime routines, hygiene, homework, shared meals, play, and worship. Children in the foster system are cut off from the very adults who have known them the longest, known them the most closely, and who may have been best situated to serve as next friends before entry into the foster system.

Extensive research shows that these removals cause long-lasting trauma.⁸

Family separation can irreparably disrupt children’s brain development, cause toxic stress, and produce negative lifelong outcomes—including lower earnings and greater likelihood of arrest even as compared to children who face maltreatment at home.⁹

While child protection agencies have a duty to investigate and intervene around safety concerns, removal is a drastic and overused intervention. Children in

⁸ See, e.g., Child.’s Rts. Litig. Comm., Am. Bar Ass’n, *Trauma Caused by Separation of Children from Parents: A Tool to Help Lawyers* (2020), https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/child-separation-memo/parent-child-separation-trauma-memo.pdf; see also Mical Raz & Vivek Sankaran, *Opposing Family Separation Policies for the Welfare of Children*, 109 AM. J. PUB. HEALTH 1529 (2019) (“[A]part from extreme cases of imminent physical harm to children, the family unit is the preferable place for children to grow and thrive.”).

⁹ Carolien Konijn et al., *Foster Care Placement Instability: A Meta-Analytic Review*, 96 CHILD. & YOUTH SERVS. REV. 483 (2019), <https://outcomes.org.au/wp-content/uploads/2024/06/Konijn-et-al.-2019-Foster-care-placement-instability-A-meta-analytic.pdf>; Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583 (2007); see also Vivek Sankaran, Christopher Church & Monique Mitchell, *A Cure Worse than the Disease? The Impact of Removal on Children and Their Families*, 102 MARQ. L. REV. 1161 (2019); Laura Santhanam, *How the Toxic Stress of Family Separation Can Harm a Child*, PBS NEWSHOUR (June 18, 2018, 5:46 PM), <https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>; Colleen Kraft, AM. ACAD. OF PEDIATRICS, *AAP Statement Opposing Separation of Children and Parents at the Border* (May 8, 2018), <https://docs.house.gov/meetings/IF/IF14/20180627/108510/HMKP-115-IF14-20180627-SD011.pdf>; Hillary A. Franke, *Toxic Stress: Effects, Prevention and Treatment*, 1 CHILD. 390 (2014).

the North Carolina foster system are more likely than similarly situated children in other states to be separated from their families of origin and, as detailed in Section 2 *infra*, are less likely to be placed with supportive, responsive kin.¹⁰ Both of these trends limit their proximity to potential next friends. These concerns are heightened for Black children, who represent approximately 29–31% of the North Carolina foster system population despite comprising only about 21–22% of the general child population.¹¹

Alice B’s experience demonstrates how a child may lose every adult relationship the district court considered necessary for next-friend standing. Alice, 16, has been a legal orphan for over six years and has been moved eighteen times through foster homes, group homes, institutions, and out-of-state facilities—

¹⁰ See Annie E. Casey Foundation’s Kids Count Data Center, *Children in Foster Care by Placement Type (Group Home or Institution Only) in North Carolina*, <https://datacenter.aecf.org/data/tables/11844-children-in-foster-care-by-placement-type-group-home-or-institution-only?loc=35&loct=2#detailed/2/35/false/1096,2545,1095,2048,574,1729,37,871,870,573/2623/23205,23206> (last visited July 12, 2026); Annie E. Casey Foundation’s Kids Count Data Center, *Children in foster care by placement type (Group home or institution only) in United States*, <https://datacenter.aecf.org/data/tables/11844-children-in-foster-care-by-placement-type-group-home-or-institution-only#detailed/1/any/false/1096,2545,1095,2048,574,1729,37,871,870,573/2623/23205,23206> (last visited July 12, 2026).

¹¹ Child.’s Bureau, U.S. DEP’T OF HEALTH & HUM. SERVS., *North Carolina - Child Welfare Outcomes*, <https://cwoutcomes.acf.hhs.gov/cwodatasite/byState/north-carolina/> (last visited July 12, 2026).

including five moves in a single two-month period.¹² After reporting sexual abuse in a pre-adoptive home, the agency removed Alice and placed her in an institution.¹³ She is currently in a Psychiatric Residential Treatment Facility in South Carolina, blocked from communicating with anyone outside the facility.¹⁴ Alice's case illustrates how the foster system uses an initial removal to break a child's most significant relationship—with their biological family—and then to permanently sever that tie through the termination of parental rights process, even when there is no adoptive resource available.

These problems are not isolated. Substantial numbers of children pass through the foster system each year. Between FY 2020 and FY 2024, approximately 10,500–11,200 children were in the foster system in North Carolina, with about 5,000 children entering the system annually. Their median length of stay in the system was roughly 15–16 months.¹⁵ During this same period, North

¹² JA80 (¶ 187), JA81 (¶ 190).

¹³ JA81 (¶ 191).

¹⁴ JA82 (¶ 196).

¹⁵ See Child.'s Bureau, U.S. DEP'T OF HEALTH & HUM. SERVS., *North Carolina - Child Welfare Outcomes*, <https://cwoutcomes.acf.hhs.gov/cwodatasite/byState/north-carolina/>; Child.'s Bureau, U.S. DEP'T OF HEALTH & HUM. SERVS., *Child Welfare Outcomes 2021: Report to Congress* (2021), <https://acf.gov/sites/default/files/documents/cb/cwo-report-to-congress-2021.pdf>; Child.'s Bureau, U.S. DEP'T OF HEALTH & HUM. SERVS., *AFCARS Dashboard*, https://tableau-public.acf.gov/views/afcars_dashboard_main_page/mainpage?%3Aembed=y&%3AisGuestRedirectFromVizportal=y (last visited July 11, 2026); N.C. Dep't of

Carolina children in the system also experienced rising placement instability (children in care less than 12 months with two or fewer placements dropped from about 80% in 2020 to 75% in 2024), increasing reentry rates (from approximately 3% to 8%), and lengthening time to adoption (with the share of adoptions taking 48 or more months growing from 14% to 24%).¹⁶ Placement instability remains a persistent problem with the foster system in North Carolina.

2. *The foster system struggles to achieve—and in some cases actively impedes—kinship care, preventing children from forming significant relationships.*

Kinship care, or placement with relatives or individuals with whom a child has a significant prior relationship, has been shown to be a more positive alternative for children who cannot remain safely in their homes.¹⁷ Children placed

Health & Hum. Servs., *Child Welfare Statistics*, <https://www.ncdhhs.gov/divisions/social-services/reports-and-statistics/child-welfare-statistics> (last visited July 11, 2026).

¹⁶ See Child.'s Bureau, *supra* note 11.

¹⁷ Am. Bar Ass'n, Litig. Section, *Benefits of Kinship Placement* (2022), https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/kinship-placement/memo-re-benefits-of-kinship-placement-adoption.pdf; see also Sarah Fathallah, Alba Villamil & Steven Olender, *Kin, First and Foremost: Challenges, Opportunities, and the Path Forward for Kinship Care*, Think of Us (Oct. 2024), <https://www.thinkofus.org/case-studies/kin-first-and-foremost-challenges-opportunities-and-the-path-forward-for-kinship-care>; Monica Faulkner et al., Nat'l Quality Improvement Ctr. for Adoption & Guardianship Support & Preservation, *Risk & Protective Factors for Discontinuity in Public Adoption & Guardianship: A Review of the Literature* 5, 13, 15, 26 (Jan. 2017), <https://txicfw.socialwork.utexas.edu/wp-content/uploads/2017/02/Risk-Protective-Factors-for-Discontinuity-in-Public-Adoption-and-Guardianship.pdf> (placement

in kinship care experience less trauma at the point of removal, fewer mental health symptoms, and improved social functioning.¹⁸ They are also more likely to remain in school and succeed academically, to maintain their cultural and racial identity, to maintain a relationship with their parents and siblings, and to express satisfaction with their placement.¹⁹ Despite the benefits that have been shown to accompany kinship care, North Carolina struggles to achieve—and, in some Plaintiffs’ cases, actively interferes with—kinship care.

In FY2024, less than half of foster children in North Carolina lived with relatives or kin.²⁰ Worse yet, DSS has kept children in congregate care despite the immediate availability of kinship placements. Plaintiffs Sara, Leah, and Harry were taken into state custody in 2022 and placed in a group home without any reasonable efforts to contact the siblings’ relatives.²¹ Their maternal grandparents

with grandparents and placements with caretakers who have a close biological connection to the child are both factors that prevent against instability even after an adoption or guardianship has been finalized).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Alex Adams et al., Admin. for Child. & Fams., U.S. DEP’T OF HEALTH & HUM. SERVS., *States Increasingly Promote Kinship Care, Though Significant Opportunity Remains for Improving Licensing, Definitions, and Reach: Nearly Two-Thirds of Jurisdictions Have Not Yet Amended Title IV-E Plans to Adopt Separate Licensing Standards* Figure 3, at 5 (Mar. 2026), <https://aspe.hhs.gov/sites/default/files/documents/9d9d8dc846e4e26acbab86c8d7e80ac8/Kinship%20Care%20Brief.pdf> (30–44%).

²¹ JA64-65 (¶¶ 98-100).

wanted to adopt the siblings.²² Rather than effectuate this kinship care placement, DSS cycled the children through various unsuccessful placements before returning them to a group home. DSS even restricted the siblings' ability to communicate with their grandparents to a monthly 15-minute phone call, stating they "didn't want the children to become more attached."²³ The district court noted these children appeared through a stranger as next friend despite having "grandparents who are involved in their lives."²⁴ But it was precisely because DSS had restricted the children's contact with those grandparents that the stranger next friend was needed. DSS prevented Sara, Leah, and Harry from being able to form the significant relationship the district court has demanded.

3. *The foster system lacks placement stability and overuses congregate care, preventing children from forming significant relationships.*

The foster system should strive for placement stability, where a child has "two or fewer placement settings in a single care episode."²⁵ Placement stability independently portends improved outcomes; children who experience early stability (*i.e.*, permanency or stable placement within 45 days of removal) are more

²² JA64-65 (¶ 100).

²³ JA68 (¶ 116).

²⁴ JA8.

²⁵ Child.'s Bureau, *supra* note 11, at 58.

likely to have baseline behavioral well-being and avoid behavioral challenges later on.²⁶

By contrast, children who experience placement instability, suffer continued toxic stress, over and above the trauma caused by the initial separation, with severe consequences to their mental health and development.²⁷ Separation from family while in the foster system also exacerbates attachment issues that may perpetuate placement instability.²⁸ The coupling of these problems can result in a negative spiral: as children suffer trauma from removal and placement disruption, their trust

²⁶ E.g., David M. Rubin, et al., *The Impact of Placement Stability on Behavioral Well-Being for Children in Foster Care*, 119 PEDIATRICS 336 (2007) (using data from the National Survey of Child & Adolescent Well-being to assess the effect of baseline child problems from placement instability); ChildFocus, *Children in Kinship Care Experience Improved Placement Stability, Higher Levels of Permanency, and Decreased Behavioral Problems: Findings from the Literature*, <https://www.grandfamilies.org/Portals/0/Documents/General%20Kinship%20Publications/4-%20Kinship%20Outcomes%20Review%20Handout.pdf> (last visited July 13, 2026) (children placed into kinship care had fewer behavioral problems three years after placement than children placed into traditional foster care); Jennifer Osborne, et al., *Placement Stability Among Children in Kinship and Non-Kinship Foster Placements Across Multiple Placements*, 126 CHILD. & YOUTH SERVS. REV. 106000 (2021), <https://doi.org/10.1016/j.chilyouth.2021.106000> (youth in kinship care remain in familiar environments, maintain important relationships, and experience a higher likelihood of continuity of care).

²⁷ Konijn, *supra* note 9, at 484; Yvonne A. Unrau et al., *Former Foster Youth Remember Multiple Placement Moves: A Journey of Loss and Hope*, 30 CHILD. & YOUTH SERVS. REV. 1256, 1263-64 (2008), <https://doi.org/10.1016/j.chilyouth.2008.03.010>.

²⁸ Konijn, *supra* note 9, at 484; Marc A. Winokur et al., *Systematic Review of Kinship Care Effects on Safety, Permanency, and Well-Being Outcomes*, 28 RSCH. ON SOC. WORK PRAC. 19 (2015).

and confidence in building new secure attachments erodes, increasing risk for instability in the next placement.²⁹ Children who endure placement instability face a higher risk of low self-esteem, poor school performance, distrust in guardians and adults, and suicidal thoughts.³⁰

According to North Carolina's Department of Health and Human Services, in 2021, the State averaged more than four placement moves for every child in the foster system for more than 1,000 days.³¹ And even that number was down significantly from 2019, where it averaged 5.9 moves per child per 1,000 days.³² Nearly one in four foster children in North Carolina have changed placements four or more times; for children in care for more than 24 months, 67.7% had three or more placements.³³ Such instability compromises a child's ability to form social attachments and ability to develop or maintain meaningful relationships.

²⁹ Konijn, *supra* note 9, at 484.

³⁰ Konijn, *supra* note 9, at 484; Daniel J. Pilowsky & Li-Tzy Wu, *Psychiatric Symptoms and Substance Use Disorders in a Nationally Representative Sample of American Adolescents Involved with Foster Care*, 38 J. ADOLESCENT HEALTH 351 (2006).

³¹ Div. of Soc. Servs., N.C. Dep't of Health & Hum. Servs., *2021 Annual Progress and Services Report for the North Carolina Child and Family Services Plan 2020-2024* 54–55 (2021), <https://www.ncdhhs.gov/documents/files/dss/statistics/final-nc-2021-apsr/download>.

³² *Id.*

³³ Child.'s Bureau, *supra* note 11, at Number of Placements by Time in Care.

Placement in congregate care exacerbates placement instability. Youth in institutions experience low caregiver investment, high child-to-caregiver ratios, and punitive and non-individualized care.³⁴ A single institutional placement increases the chances of arrest by 250%.³⁵ Although congregate care facilities are generally required to facilitate communication between a child and their family/guardians, research shows that facilities often fail to provide for this required communication.³⁶ Reports also reflect that children in residential treatment facilities suffer from physical, sexual, and emotional abuse at the hands of staff and peers; are overly subjected to punishments like restraint and seclusion; and are not adequately treated and supervised.³⁷ These realities make it highly unlikely that children in the foster system who are placed in group settings can form relationships sufficient to achieve the rigid next friend requirements demanded by the lower court.

³⁴ Mary Dozier et al., *Institutional Care for Young Children: Review of Literature and Policy Implications*, 6 SOC. ISSUES POL'Y REV. 1, 3 (2012).

³⁵ Joseph P. Ryan et al., *Juvenile Delinquency in Child Welfare: Investigation Group Home Effects*, 30 CHILD. & YOUTH SERV. REV. 1088 (2008).

³⁶ Staff of S. Comm. on Fin. & S. Comm. on Health, Educ., Lab & Pensions, 118th Cong., *Warehouses of Neglect: How Taxpayers Are Funding Systemic Abuse in Youth Residential Treatment Facilities* 86, https://www.finance.senate.gov/imo/media/doc/rtf_report_warehouses_of_neglect.pdf (last visited on July 13, 2026).

³⁷ *Id.* at 3.

Group homes are intended to be a temporary option of last resort,³⁸ utilized only if clinically recommended when and if a child is deemed a danger to themselves and/or others and cannot receive adequate care in outpatient, community-based settings.³⁹ In 2023, however, North Carolina had 1,174 children living in congregate care, up from 1,087 the year before.⁴⁰

Sylvia T.'s experience demonstrates that even when a relationship that satisfies the district court's next friend standard is formed, the State may then itself sever it. The state placed Sylvia, age 13, with Anne Richey, a registered nurse and licensed foster parent, in September 2023.⁴¹ Sylvia developed a strong bond with Ms. Richey, who became Sylvia's most trusted advocate and visited Sylvia daily during her hospitalization for self-harm.⁴² DSS then severed the relationship, first reducing phone calls, then terminating all communication, barring visits, and refusing to return Sylvia to Ms. Richey's home even after Ms. Richey had obtained a therapeutic foster care license.⁴³

³⁸ Ryan, *supra* note 35; *Warehouses of Neglect*, *supra* note 36, at 21.

³⁹ *Warehouses of Neglect*, *supra* note 36, at 21.

⁴⁰ WHO CARES: *A National Count of Foster Homes and Families*, at Foster Youth Living in Congregate Care (North Carolina), <https://www.fostercarecapacity.com/states/north-carolina>, (last visited July 13, 2026).

⁴¹ JA69 (¶ 121).

⁴² JA70 (¶ 130).

⁴³ JA71 (¶ 133).

B. The Court Must Adopt a Standard for “Next Friend” Status That Provides Access to the Courts for Youth in Foster Care.

Federal Rule of Civil Procedure 17(c)(2) imposes a mandatory, independent duty on the court to ensure that all potential litigants, regardless of age or disability, have access to the courts. It is designed to prevent dismissal of claims brought by minors who lack representation, not to facilitate dismissal. In this way, courts “retain the power to protect ‘the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action.’” *Jonathan R. ex rel. Dixon v. Morrissey*, 178 F.4th 139, 157 (4th Cir. 2026) (quoting *Raines v. Byrd*, 521 U.S. 811, 829 (1997)). Indeed, in *Jonathan R.*, this Court reversed a district court in similar foster system litigation arising out of West Virginia, holding that “federal courts not only have the authority, but also a duty, to remedy systemic constitutional rights violations.” *Id.* at 149. If the district court doubted the adequacy of particular next friends, Rule 17(c) supplies tools short of dismissal.

1. Failure to remedy the lower court’s mistake has real human consequences.

The lower court’s order leaves litigants powerless to challenge systemic problems in the foster care system—even though litigation like this has repeatedly produced substantial reforms to states nationwide. Tennessee and New Jersey

illustrate what is lost when courthouse doors are closed at the outset; reforms that could improve outcomes for children would never have a chance to proceed.

Tennessee. The *Brian A. v. Sundquist* class action lawsuit resulted in a significant decline in congregate care utilization in the years following its filing.⁴⁴

Brian A. ex rel. Brooks v. Sundquist, 149 F. Supp. 2d 941 (M.D. Tenn. 2000).

Direct entry into congregate settings declined from 28% to 12% from 2000 to 2008. The proportion of foster youth in congregate settings at a given point in time declined from 22% to 9% from 2001 to 2009.⁴⁵ One notable reform involved creating a “continuum” system providing financial incentives to place children in the appropriate, least restrictive settings, favoring foster family settings over congregate care. In 2009, the state had placed 95% of “moderately disturbed” and 75% of “severely disturbed” children in family settings.⁴⁶

New Jersey. *Charlie and Nadine H. v. Corzine* was the catalyst for a measurable decrease in use of inappropriate placements for children in New

⁴⁴ Child Welfare League of America, *Child Welfare Consent Decrees: Analysis of Thirty-Five Court Actions from 1995 to 2005* 20 (2005).

⁴⁵ Lily T. Alpert & William Meezan, *Moving Away from Congregate Care: One State’s Path to Reform and Lessons for the Field*, 34 Child. & Youth Servs. Rev. 1519 (2012).

⁴⁶ *Id.*

Jersey.⁴⁷ See Case No. 2:99-cv-03678 (D.N.J.). Over a two-year period starting in 2007, the state reduced the population of foster youth in congregate care from 15% to 13%.⁴⁸ Children placed in out-of-state congregate care settings declined from 235 to 98 over the same period—a 52% reduction. New Jersey reduced the proportion of youth in congregate care from 12% to 7% from 2009 to 2016.⁴⁹ Other successes in this reform effort included increased supply of licensed foster families, more manageable caseloads for social workers, and increased adoptions.

Decreasing the reliance on congregate care—a victory achieved through child Plaintiffs represented by next friends in federal courts in both Tennessee and New Jersey—is beneficial because congregate care leads to substantial short- and long-term negative health outcomes for children.⁵⁰ The potential negative consequences, highlighted in Section A.3, are too numerous to fully detail here, but they can be prevented if children are simply allowed their day in court.

⁴⁷ Child Welfare League of America, *Child Welfare Consent Decrees: Analysis of Thirty-Five Court Actions from 1995 to 2005* 14, 18, 20–21 (2005).

⁴⁸ Ctr. for the Study of Soc. Pol’y, *Progress of the New Jersey Department of Children and Families – Period V Monitoring Report for Charlie and Nadine H. v. Corzine, July 1 – December 31, 2008* 80 (Apr. 27, 2009), <https://dspace.njstatelib.org/server/api/core/bitstreams/7a68b74c-ffd6-483c-8dd0-209418e7d220/content>.

⁴⁹ Casey Fam. Programs, *How Did New Jersey Safely Reduce the Number of Children in Congregate Care?* 6 (Aug. 2018), https://www.casey.org/media/SF_New-Jersey-reduction-congregate-care.pdf

⁵⁰ See *supra* notes 27–40 and accompanying text.

2. Existing law provides a path to justice.

To ensure that children in the foster system do not face significant barriers to access federal court, *Amici* submit that the appropriate inquiry is whether the proposed next friend (i) is willing and able to advance the child’s interests, (ii) regularly consults with the named plaintiffs, and (iii) does not present a conflict of interest.

In *Hamdi*, this Court recognized the need for a flexible application of the next friend rule when the party in interest “has no significant relationships.” 294 F.3d at 606. *Hamdi* did not establish a categorical significant-relationship requirement. To the contrary, *Hamdi* recognized circumstances in which a litigant may have no significant relationships and emphasized the practical function of the next-friend doctrine. *Hamdi* relied on *Whitmore v. Arkansas*, which holds only that a next friend must: (1) “provide an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action” and (2) “must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate.” *Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1990). *Whitmore* merely notes that some “suggest,” but do not require, that a next friend has a significant relationship with the real party in interest. *Id.* (citation omitted).

Other circuits have declined to apply the significant relationship test in the foster care context, acknowledging that it is difficult for foster children to acquire and maintain “significant” relationships. In *Sam M. ex rel. Elliott v. Carcieri*, 608 F.3d 77, 91 (1st Cir. 2010), the First Circuit held that “because [] foster care children lack significant ties with their parents and have been placed under the state’s legal custody and guardianship, a significant relationship need not be required as a prerequisite to Next Friend status.” The court reasoned that “due to maltreatment, multiple placements, and social and psychological issues, foster care children are often unable to forge significant relationships with the adults that are entrusted to protect the children’s interests.” *Id.* at 89. Balanced with judicial discretion, the court underscored that a key factor used to determine next friend status is “[t]he minor’s best interests.” *Id.* at 85. Guided by “important social interests” and a weariness of blocking minors’ “access to a judicial forum to vindicate their constitutional rights,” the court determined that a former foster parent of a minor child, a school psychologist for a minor child, and a sociology professor with a focus on child maltreatment were all suitable next friends to represent the minor children. *Id.* at 91–92.

As in *Hamdi* and *Whitmore*, other circuits have applied a flexible definition to what constitutes a “significant” relationship in the context of individual circumstances. In *Coalition of Clergy, Lawyers, & Professors v. Bush*, 310 F.3d

1153, 1162 (9th Cir. 2002), the Ninth Circuit folded a significant relationship requirement into the “dedicated to best interests” prong of *Whitmore*, which must be evaluated on a case-by-case basis. The court explained:

[T]he contours of the requisite “significant relationship” do not remain static, but must necessarily adapt to the circumstances facing each individual detainee. “Significance” is a relative concept, dependent on the individual prisoner’s plight. Not all detainees may have a relative, friend, or even a diplomatic delegation able or willing to act on their behalf. In such an extreme case it is plausible that a person with “some” relationship conveying some modicum of authority or consent, “significant” in comparison to the detainee’s other relationships, could serve as the next friend.

Coal. of Clergy, 310 F.3d. at 1162. The D.C. Circuit has adopted a similar test. See *Muthana v. Pompeo*, 985 F.3d 893, 902 (D.C. Cir. 2021) (determining that the significant relationship requirement “may not rigidly apply when a minor has no significant relationships”).

Similarly, the Second Circuit has held that Rule 17(c) “does not demand any sort of ‘relationship,’ let alone a significant one,” but rather, states that “[a] minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem.” *Doe v. Hochul*, 139 F.4th 165, 178 (2d Cir. 2025) (alteration in original) (citation omitted). While “a significant relationship with the real party in interest is *relevant* to the appointment of a next friend, it is neither required nor dispositive.” *Id.*; see also *Ad Hoc Comm. of Concerned Tchrs. v. Greenburgh No. 11 Union Free Sch. Dist.*, 873 F.2d 25, 30–

31 (2d Cir. 1989) (teachers were proper next friends as “the only . . . adults likely to seek vindication of the Children’s constitutional rights”). The Seventh Circuit, the Southern District of New York, and the Eastern District of Michigan all have adopted similar approaches. *See, e.g., T.W. ex rel. Enk v. Brophy*, 124 F.3d 893, 897 (7th Cir. 1997) (even under a significant relationship standard, “a professional who has worked with the child, or . . . a stranger whom the court finds to be especially suitable” may serve); *Child v. Beame*, 412 F. Supp. 593, 599 (S.D.N.Y. 1976) (access to courts “should not be curtailed . . . particularly . . . in the instance of children who . . . attribute such grievances to their very custodians”); *Dwayne B. v. Granholm*, No. 06-13548, 2007 WL 1140920, at *3 (E.D. Mich. Apr. 17, 2007) (foster children “have few, if any, significant relationships with adults who are suitable and willing to act as ‘next friends’”).

The “significant relationship” test that the district court applied in the present case would functionally cut off most children in the foster system from having any access to federal courts. Instead, courts should focus on ensuring that a proposed next friend will be able to advocate for the child’s best interests throughout the court process.

In this case, Steven Bolch (who fostered Jameson for 18 months), Anne Richey (who fostered Sylvia for six months), and Jackson Albert (who grew close to Rene while she was in his parents’ home) clearly meet the next friend standard

set by *Whitmore*. As for the “stranger” next friends—Daria Barazandeh, Veronika Monteleone, and Kari Danforth—as the district court categorized them, their demonstrated interest in the welfare of the children they seek to represent and extensive experience and knowledge of the foster care system (see JA51, JA54, JA55-56, JA59, JA64, JA73 (¶¶ 28, 42, 50, 70, 97, 144)), together with the absence of any noted conflicts of interest, meet the basic requirements set by *Whitmore* for next friend standing. Should the Court have any doubt on the eligibility for Plaintiffs’ next friends to serve in that capacity, consistent with the *Jonathan R.* decisions, it should uphold its duty to remedy systemic constitutional rights violations and remand for further analysis of this factual inquiry including analysis of whether the proposed next friend (i) is willing and able to advance the child’s interests, (ii) regularly consults with the named plaintiffs, and (iii) does not present a conflict of interest.

CONCLUSION

For the foregoing reasons, this Court should reverse the lower court and ensure that North Carolina’s foster children have a fair opportunity to assert their rights in court. The significant relationship standard applied by the district court leaves children in the foster system especially vulnerable, since they are systemically deprived of opportunities to form these connections by the very state

agency whose conduct they challenge. This Court should not impose this requirement on children in the foster system.

At a minimum, this Court should remand with instructions to appoint suitable next friends under Rule 17(c), if the named next friends are insufficient, rather than dismissing outright.

Date: July 13, 2026

Respectfully submitted,

/s/ Sonul Rao

J. Michael Showalter
James D. Cromley
ArentFox Schiff LLP
233 S. Wacker Drive, Suite 7100
Chicago, IL 60606
(312) 258-5500
j.michael.showalter@afslaw.com
james.cromley@afslaw.com

Brittany Sokoloff
Sonul Rao
ArentFox Schiff LLP
1301 Avenue of the Americas,
42nd Floor
New York, NY 10019
(212) 484-3900
brittany.sokoloff@afslaw.com
sonul.rao@afslaw.com

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I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on July 13, 2026 which will serve all participants who are registered to receive service.

/s/ Sonul Rao

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Dated: July 13, 2026

Respectfully submitted,

/s/ Sonul Rao

Sonul Rao
ArentFox Schiff LLP
1301 Avenue of the Americas,
42nd Floor
New York, NY 10019
(212) 484-3900

Attorneys for Amici Curiae

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Center; The American Civil Liberties Foundation of North Carolina (ACLU-NC) as the
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Sonul Rao

Name (printed or typed)

212.745.9543

Voice Phone

ArentFox Schiff LLP

Firm Name (if applicable)

312.258.5600

Fax Number

1301 Avenue of the Americas, 42nd Floor

New York, NY 10019

Address

sonul.rao@afslaw.com

E-mail address (print or type)

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