**The National Association of Counsel for Children (NACC) hereby submits the following letter supporting Florida’s Proposal 40.**

**Who is the NACC?** Founded in 1977, the National Association of Counsel for Children (NACC) is a 501(c)(3) non-profit child advocacy and professional membership association dedicated to enhancing the well-being of America’s children. The NACC works to strengthen legal advocacy for children and families by promoting well resourced, high quality legal advocacy; implementing best practices; advancing systemic improvement in child serving agencies, institutions and court systems; and promoting a safe and nurturing childhood through legal and policy advocacy. As a national organization, NACC supports all states in efforts to improve local state practices through legislative and/or systemic reform to ensure the best possible outcomes for children in the dependency system.

Accordingly, **NACC supports Florida’s Constitutional Amendment Proposal 40 for the following reasons:**

1. **Providing a lawyer for children subject to dependency proceedings is Best Practice.**

The Quality Improvement Center Project (QIC), a federally funded 6-year project which concluded in 2016, was designed to develop and communicate knowledge on child representation and provide empirically based analyses of best practices for children’s legal representation. According to the QIC study, there is an “emerging consensus” in the field that children require legal representation in child welfare proceedings.[[1]](#footnote-1) And one of the overall recommendations of the QIC study was that federal leadership should ensure that children involved in child protection court proceedings should have legal representation.[[2]](#footnote-2)

In a 2017 memorandum, recognizing best practices, the U.S. Children’s Bureau specifically called on states to provide high quality legal representation to all parties, including children, in all stages of a dependency proceeding.

The Children’s Bureau (CB) strongly encourages all child welfare agencies and jurisdictions (including, state and county courts, administrative offices of the court, and Court Improvement Programs) to work together to ensure that high quality legal representation is provided to all parties in all stages of child welfare proceedings.[[3]](#footnote-3)

The memo further notes that our child welfare system is structured to require judges to make decisions which largely impact a child’s life. The nature of our child welfare system often requires court action. In order for a child to be removed from her home due to allegations of abuse or neglect, a judge must order it after hearing and considering evidence. This is because our constitution requires due process of law when fundamental liberty interests are at stake.[[4]](#footnote-4) Due process is the cornerstone of our justice system. For judges to make the best, most-informed decisions, they depend on competent and reliable evidence.[[5]](#footnote-5) Much of the information that judges receive and upon which decisions are made, comes through presentation of evidence and the filing of legal pleadings.[[6]](#footnote-6) It is hard to imagine even the most intelligent and mature child able to present legally competent evidence in a system that requires attorneys to successfully complete 3 years of higher education and pass a multi-day national bar examination in order to be able to do so.

The National Counsel of Juvenile and Family Court Judges (NCJFCJ) has also taken the position that providing attorneys for children is best practice, stating, “[b]ecause fundamental rights of the child – as well as the parents – are at stake in these proceedings, best practice calls for the appointment of an attorney who will advocate the child’s position from the very beginning of the case.”[[7]](#footnote-7)

In 1996, the American Bar Association adopted Standards for Lawyers who represent children in Abuse and Neglect Proceedings (1996 ABA Standards).[[8]](#footnote-8) The ABA Standards recommend

1. **A majority of states provide lawyers for children.**

Admittedly, the cost of providing high quality legal representation for children is an issue that should be addressed. However, in assessing the historical landscape of children’s representation throughout the country, states have been able to design a structure which allows for legal representation in a cost-effective manner. In fact, most states recognize a right to legal representation for children in dependency proceedings, and many have done so for decades, demonstrating that counsel is not only necessary but can be provided in a feasible and cost-effective manner.[[9]](#footnote-9) More specifically, at least thirty-one states and the District of Columbia provide an automatic right to legal counsel, either by statute, rule, or regulation, and that number is steadily growing.[[10]](#footnote-10) These thirty-one states differ in the model of representation the child’s lawyer must operate under, but all provide the child an independent right to *legal counsel*.

A 1998 survey by the National Counsel for Family and Juvenile Court Judges indicated that 40 states appoint counsel for children in abuse and neglect cases.[[11]](#footnote-11) Of those 40 states, 30 appoint an “attorney ad-litem” who serves in a dual role, representing both the child’s best interests and expressed wishes.[[12]](#footnote-12) In the remaining 10 states that appoint counsel for a child, a GAL is appointed in addition to an attorney.[[13]](#footnote-13) In the 10 states that do not appoint counsel for children, 9 of those states did provide a non-attorney GAL, as is the case in Florida.

Therefore, Florida is clearly in the minority by not providing children in dependency proceedings their own lawyer.

1. **The U.S. Children’s Bureau, other national organizations, and at least one federal district court have recognized that due process requires children’s legal representation.**

According to a federal district court in Georgia, independent legal representation for the child—whose future safety and well-being is the very subject of the proceeding—is a necessary component of due process.[[14]](#footnote-14) When a child is placed in the State’s custody, she is subject to “placement in a wide array of different types of foster care placements, including institutional facilities where their physical liberty is greatly restricted.”[[15]](#footnote-15) Dependency proceedings directly and dramatically impact children’s physical liberty in many ways. For example, the court will often determine where a child will sleep, with whom the child can associate and for how long, and who will be present in her daily life to name a few. In addition to these fundamental liberty interests, the risks to children while in state custody are severe: national data confirms that children removed from the home are at serious risk of further maltreatment, unnecessary placement in restrictive institutions, the administration of psychotropic medications, and a variety of poor long-term outcomes.[[16]](#footnote-16)

Furthermore, the U.S. Children’s Bureau has recognized that, “[t]he U.S. legal system is based on the premise that parties have a due process right to be heard and that *competent legal representation* and fair treatment produce just results.”[[17]](#footnote-17) Accordingly, the Children’s Bureau has acknowledged that although CAPTA allows for the appointment of an attorney and/or a court-appointed special advocate (CASA), justice requires that children be afforded legal representation in dependency proceedings.[[18]](#footnote-18)

In August 2017, the Conference of State Court Administrators renewed its policy statement on Child Welfare which included a statement that safeguards should be in place to ensure that children have legal representation “in all child protection cases and at every stage of the case, and the preservation of the rights of interested parties.”[[19]](#footnote-19)

1. **Florida children are parties to the dependency case and should be entitled to legal counsel as are all other parties.**

Despite being the *subject* of the proceedings, in Florida the child is the *only* party to the dependency proceeding without a complete right to counsel, leaving the most vulnerable party without a voice or the ability to meaningfully engage in the proceedings. Furthermore, legal representation of all parties is a crucial element of a highly functioning system. According to the U.S. Children’s Bureau, “The absence of legal representation for any party at any stage of child welfare proceedings is a significant impediment to a well-functioning child welfare system.”[[20]](#footnote-20)

1. **Juvenile Court dependency proceedings are complex and trained legal counsel is necessary to navigate this complex system.**

Dependency proceedings are complex legal processes that often involve expert medical testimony, implicate numerous federal and state laws, and require an understanding of multiple service delivery systems.[[21]](#footnote-21) Furthermore, as parties, children have a significant interest in the court proceedings as they are subject to the court’s orders and face potential legal consequences for failure to abide by the court’s order. Additionally, as parties, children may be subject to cross-examination, required to provide sworn testimony, or need to call witnesses to testify on their behalf.

As noted above, due process is the cornerstone to providing a just system which considers all parties’ rights and interests. Accordingly, judges must rely on sound, reliable and competent evidence in making judicial determinations. According to the Children’s Bureau, “[i]ncomplete or inaccurate information renders judicial decision-making more difficult and may result in delays, increases in the length of time children and youth spend in care, additional costs to state or tribal government, and less beneficial decisions….Numerous studies and reports point to the importance of competent legal representation for parents, children, and youth in ensuring that salient information is conveyed to the court, parties’ legal rights are protected and that the wishes of parties are effectively voiced.”[[22]](#footnote-22) Children cannot navigate this system on their own and as a just society, we shouldn’t continue to support a system that requires them to. As such, it is imperative that children have trained legal counsel to assist them in advancing their rights and interests in dependency court proceedings and to ensure well-informed and reliable judicial decisions.

1. **Early evidence suggests that providing lawyers for children in dependency proceedings expedites permanency.**

A rigorous study in Palm Beach County, Florida (Palm Beach Study) based on empirical evidence and conducted by researchers at Chapin Hall, University of Chicago, found that children who had legal aid lawyers achieved permanency at faster and statistically significant rates than children who did not have lawyers.[[23]](#footnote-23)

1. Memorandum on High Quality Legal Representation for All Parties in Child Welfare Proceedings issued by the Administration for Children and Families on January 17, 2017. Pg. 3. (Herein “High Quality Representation Memo.”) noting, The QIC-ChildRep review of the academic literature, national standards, conference recommendations and stakeholder opinion documents the evolution of lawyer representation of children and reveals an emerging consensus on nearly all aspects of the role and duties of the child’s legal representative. The QIC-ChildRep recommends that states adopt the 2011 ABA Model Act as the statutory structure for legal representation of the child. [↑](#footnote-ref-1)
2. See Duquette et. al., (2016) Children’s Justice: How to Improve Legal Representation of Children in the Child Welfare System, ABA Publications [↑](#footnote-ref-2)
3. High Quality Representation Memo. [↑](#footnote-ref-3)
4. Santosky v. Kramer, 455 U.S. 745 (1982). [↑](#footnote-ref-4)
5. NCJFCJ Enhanced Resource Guidelines (Herein NCJFCJ Guidelines), Pg. 43 [↑](#footnote-ref-5)
6. Id. [↑](#footnote-ref-6)
7. Id at 43. [↑](#footnote-ref-7)
8. A.B.A., Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1996) (Herein 1996 ABA Standards). [↑](#footnote-ref-8)
9. Brief of Children’s Rights, Inc. *et. al*., as *Amici Curiae* supporting Appellant, S-KP, In re: S-KP, (No. 48299-1-II); *See also*, *e.g.*, Children’s Advocacy Institute & First Star, A Child’s Right to Counsel: A National Report Card on Legal; Representation for Abused and Neglected Children 10 (3d ed. 2012); Douglas J. Besharov, *The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect*, 23 VILL. L. REV. 445, 514 (1978) (stating that two dozen states provided for mandatory appointment of lawyers for children as long ago as 1978). [↑](#footnote-ref-9)
10. These include Alabama; Arkansas; Colorado; Connecticut; Georgia; Iowa; Kansas; Kentucky; Louisiana; Maryland; Massachusetts; Michigan; Mississippi; Missouri; Nebraska; New Jersey; New Mexico; New York; North Carolina; Ohio; Oklahoma; Pennsylvania; Rhode Island; South Dakota; Tennessee; Texas; Utah; Vermont; Virginia; West Virginia; and Wyoming. The District of Columbia also requires representation for children in dependency proceedings. [↑](#footnote-ref-10)
11. *See* Duquette et. al., (2016) Children’s Justice: How to Improve Legal Representation of Children in the Child Welfare System, ABA Publications [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. *See K**enny A.*, 356 F. Supp. 2d 1353 at 1361 (N.D. Ga. 2005) (concluding that, given the liberty interests at stake, “only the appointment of counsel can effectively mitigate the risk of significant errors in deprivation and [termination] proceedings”). [↑](#footnote-ref-14)
15. *Id at 1360-61.* [↑](#footnote-ref-15)
16. Brief of Children’s Rights, Inc. *et. al*., as *Amici Curiae* supporting Appellant, S-KP, In re: S-KP, (No. 48299-1-II). [↑](#footnote-ref-16)
17. High Quality Representation Memo, Pg. 2. [↑](#footnote-ref-17)
18. High Quality Representation Memo Pg. 3. [↑](#footnote-ref-18)
19. Conference of State Court Administrators, Child Welfare Policy Statement, renewed Aug. 2, 2017, available at: http://cosca.ncsc.org/~/media/Microsites/Files/COSCA/Policy%20Statements/Child-Welfare-Final-Aug2-17.ashx [↑](#footnote-ref-19)
20. High Quality Representation Memo Pg. 2. [↑](#footnote-ref-20)
21. *See* Donald N. Duquette & Ann M. Haralambie, *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases*, 166-67 (2nd ed. 2010). [↑](#footnote-ref-21)
22. High Quality Representation Memo Pg. 2. [↑](#footnote-ref-22)
23. Zinn, A. E. & Slowriver, J. (2008) Expediting Permanency: Legal Representation for Foster Children in Palm Beach County. Chicago: Chapin Hall Center for Children at the University of Chicago (stating, FCP children exited to permanency at rates 1.38 and 1.59 times higher than comparison children). [↑](#footnote-ref-23)