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The Honorable Lisa Carlton
Chair, Constitution Revision Commission
Declaration of Rights Committee
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399

The Honorable John Stemberger
Vice Chair, Constitution Revision Commission
Declaration of Rights Committee
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399

Dear Commission Chair Carlton and Vice Chair Stemberger:

I write on behalf of the American Bar Association (ABA) to express our support for the Florida Constitutional Amendment Proposal 40, establishing a right to counsel for all children in foster care in the State of Florida.

The ABA is one of the world's largest voluntary professional organizations, with nearly 420,000 members (over 23,000 in Florida), including attorneys in private firms, corporations, nonprofit organizations, and government agencies, as well as judges, prosecutors, defense attorneys and public defenders, legislators, and law professors and law students. The ABA is committed to advancing the rule of law and improving the administration of justice, and for over a century the ABA has advocated for the ethical and effective representation of all clients, including children.

The ABA has long recognized that children need and deserve legal representation in dependency court proceedings. In 1996, the ABA approved the *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*.¹ These Standards state “[a]ll children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court jurisdiction continues.”²

The ABA reaffirmed these principles in 2011 by adopting the *ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* (ABA Model Act).³ The ABA Model Act explicitly supports the appointment of a lawyer for every child involved in

¹ AM. BAR ASS'N, STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996), available at http://www.americanbar.org/content/dam/aba/migrated/family/reports/standards_abuseneglect.authcheckdam.pdf.

² *Id.* at 1.

³ AM. BAR ASS'N, MODEL ACT GOVERNING THE REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS (2011) [hereinafter ABA Model Act], available at https://apps.americanbar.org/litigation/committees/childrights/docs/aba_model_act_2011.pdf.

an abuse and neglect proceeding and states that appointment should take place as soon “as practicable to ensure effective representation of the child.”⁴

Florida’s proposed Constitutional Amendment Proposal 40 aligns directly with the ABA Standards and Model Act by ensuring “every child who has been removed from the custody of his or her parents or a legal guardian by the state due to abuse or neglect, or is otherwise placed in the jurisdiction of the dependency court, has a right to counsel.”⁵

We commend you for considering this Proposal, which reflects the recommendations of children’s law experts in Florida and throughout the country. Proposal 40 would also be consistent with federal guidance, which recognizes that child welfare court proceedings are complex and “all parties, especially children, need an attorney to protect and advance their interests in court.”⁶ Adopting Proposal 40 would also be consistent with most other states where children are provided with counsel in their dependency proceedings.⁷

As the report accompanying the ABA Model Act explains: “An abuse and neglect case that results in removal of the child from the home may immediately or ultimately result in the child being thrust into an array of confusing and frightening situations wherein the State moves the child from placement to placement with total strangers, puts the child in a group home, commits the child to an institution, or even locks the child up in detention for running away or otherwise violating a court order.”⁸ Although Florida’s children in foster care currently receive support from lay guardian ad litem (GALs) such as Court Appointed Special Advocates, that support is not the same as representation by counsel in a complex legal system where children’s most fundamental interests are at issue.⁹

In addition to the important legal grounds for providing counsel for children in child welfare proceedings, there is also evidence that representation has a positive impact on case outcomes by decreasing the amount of time children spend in foster care. Indeed, a 2008 study conducted in

⁴ ABA Model Act, § 3(a). The Report accompanying the Model Act explains that “[o]ur notion of basic civil rights, and ABA Policy and Standards, demand that children and youth have a trained legal advocate to speak on their behalf and to protect their legal rights.” Report, *in* Model Act 18.

⁵ Proposed Constitutional Amendment 40, Keiserb-00058-17; 201740.

⁶ See U.S. Department of Health and Human Services Administration for Children, Youth and Families Information Memo, ACYF-CB-IM-17-02, January 17, 2017 at 11, which “strongly encourages all jurisdictions to provide legal representation to all children and youth at all stages of child welfare proceedings.”

⁷ *A Child’s Right to Counsel: A National Report Card on Legal Representation for Abused & Neglected Children* (3d ed. 2012), published by the Children’s Advocacy Institute, First Star and University of San Diego. This report identifies thirty-one states and the District of Columbia where children already have an automatic right to legal counsel in dependency proceedings. Florida and nine other states receive an “F” rating for supporting children’s access to legal representation in child welfare cases.

⁸ Report, *in* ABA Model Act 18.

⁹ See Richard Ducote, *Guardians ad Litem in Private Custody Litigation: The Case for Abolition*, 3 Loy. J. Pub. Int. L. 106 (2002) explaining that a GAL cannot possibly replace the role of counsel. See also U.S. Department of Health and Human Services Information Memo ACYF-CB-IM-17-02 at 4, noting that distinct from counsel who can navigate a complex legal system and represent a child’s rights, CASAs contribute to child welfare proceedings by getting to know the child’s needs and providing updates to the court.

Florida demonstrated that children represented by counsel in dependency hearings “had a significantly higher rate of exit to permanency” than children who lacked counsel.¹⁰ At a time when the number of children in foster care in Florida has been steadily rising (with an increase of 31% from 18,076 to 23,810 between 2013-2016 alone),¹¹ it is especially important to recognize and invest in methods such as legal services that work to minimize unnecessary time in care so that the state can continue to devote limited resources to the cases that require the greatest attention.

The American Bar Association urges the Florida Constitution Revision Commission’s Declaration of Rights Committee to support Proposal 40 to ensure that all Florida children in foster care have a right to counsel in their dependency proceedings. Should you have any questions or want additional information, please contact Prudence Beidler Carr, Director, ABA Center on Children and the Law (202-662-1740, prudence.beidlercarr@americanbar.org) or David Eppstein, Legislative Counsel, ABA Governmental Affairs Office (202-662-1766, David.Eppstein@americanbar.org). Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Thomas M. Susman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Thomas M. Susman

¹⁰ A.E. Zinn & J. Slowriver, *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*, Chapin Hall Ctr. For Child. At the U. of Chicago 1 (2008), available at and http://www.chapinhall.org/sites/default/files/old_reports/428.pdf.

¹¹ Children’s Defense Fund State Fact Sheets for 2017 and 2015 available at <http://www.childrensdefense.org/library/state-of-americas-children/fact-sheets/2017-florida-soac-factsheet.pdf> and <http://www.childrensdefense.org/library/data/state-data-repository/cits/2015/2015-florida-children-in-the-states.pdf>