

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASHOE COUNTY HUMAN
SERVICES AGENCY,

Petitioner,

v.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, AND THE HONORABLE
PAIGE DOLLINGER,

Respondents, and

ROLANDO C.-S, PORSHA C.-S., and
L.S.C., minor child,
Real Parties In Interest.

Electronically Filed
Jan 19 2022 04:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 83422

REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

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REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

I. INTRODUCTION

Mandamus relief is appropriate as the juvenile district court's ruling that NRS 432B.393(3)(c) is unconstitutional has far reaching consequences and potentially impacts the lives of many foster children in the State of Nevada. WCHSA does not have an adequate remedy at law. This is an important issue of law and a matter of widespread importance that requires clarification and a conclusive decision as it is applied throughout all jurisdictions in Nevada. Public policy favors consideration of this writ petition as the juvenile court's ruling may adversely impact Nevada's eligibility for its administration of foster care services and creates an inconsistent application of NRS 432B.393(3)(c) throughout Nevada. Should the juvenile court's ruling go unaddressed in this action, it will continue to evade review as children's lives do not conform to the timelines necessary to address this legal issue.

Additionally, NRS 432B.393(3)(c), on its own and as applied in a NRS Chapter 432B juvenile dependency proceeding, is constitutional. The Nevada Legislature enacted NRS 432B.393(3)(c) to comply with the requirements of the Adoption and Safe Families Act of 1997, which substantially shifted the focus of the foster care system away from parents to the health and safety of children being the paramount concern and to timely permanency for children. NRS 432B.393(3)(c)

merely relieves a child welfare agency of its duty to provide “reasonable efforts,” or reunification services, which are not a constitutional guarantee.

II. LEGAL ARGUMENT

A. Mandamus Relief is Appropriate.

i. The Petition raises a legal issue of widespread importance capable of repetition.

Mandamus relief is appropriate as the Petition for Writ of Mandamus (“Petition”) involves “a matter of widespread importance capable of repetition, yet evading review.” *Degraw v. The Eighth Judicial Dist. Court of the State of Nevada in & for County of Clark*, 134 Nev. 330, 332, 419 P.3d 136, 139 (2018). Mandamus relief is also appropriate as an important issue of law needs clarification and public policy warrants review. *Hawkins v. Eighth Judicial Dist. Court in & for County of Clark*, 133 Nev. 900, 902, 407 P.3d 766, 769 (2017); *see also Walker v. Eighth Judicial Dist. Court ex rel. County of Clark*, 120 Nev. 815, 819, 101 P.3d 787, 790 (2004).

Real Parties in Interest Porsha C.-S. and L.S.C. argue that the Petition filed by Washoe County Human Services Agency (“WCHSA”) is moot as WCHSA has been relieved of providing reasonable efforts to reunify the family. *Real Party in Interest Porsha C.-S.’s Answer Against Issuance of Requested Writ* (herein, “Porsha C.-S. Answer”) at 8-10; *Real Party in Interest L.S.C.’s Answer Against Requested Writ* (herein, “L.S.C. Answer”) at 12-17. Although WCHSA has been relieved of

providing reasonable efforts to reunify this family in an alternative manner, the issue remains as to whether NRS 432B.393(3)(c) is unconstitutional as determined by the juvenile district court (“juvenile court”). **PA** 170. This is an important issue of law and a matter of widespread importance that necessitates mandamus relief.

Most notably, the juvenile court’s ruling may adversely impact Nevada’s foster care system, including Nevada’s eligibility to receive federal funding for its administration of foster care services.¹ This is not conjecture or used “to create urgency.” *Porsha C.-S. Answer* at 10-11, n. 4; *L.S.C. Answer* at 12.

Nevada’s ability to receive federal funding for its administration of foster care services is predicated on Nevada enacting legislation that complies with the requirements of the Adoption and Safe Families Act of 1997 (“ASFA”) (P.L. 105-89). *See* 42 U.S.C. 671(a); *see also* 45 C.F.R.1356.20(a); 45 C.F.R. 1356.21(a). An explicit requirement of ASFA is that each state implement legislation allowing a child welfare agency to be relieved of providing reunification services in certain enumerated circumstances. *See* 42 U.S.C. 671(a)(15)(D); 45 C.F.R. 1356.21(b)(3). One such circumstance is when a parent’s rights have been involuntarily terminated as to a sibling of the child at issue. 42 U.S.C. 671(a)(15)(D)(iii); *see also* 45 C.F.R. 1356.21(b)(3)(iii). Nevada enacted NRS 432B.393(3)(c) to comply with this

¹ This issue is separate and apart from that of a child welfare agency receiving federal funding for the duration of time each individual child remains in foster care. *See infra* Sec. II(B).

requirement. *See Minutes of the Meeting on AB 158 Before the Assembly Comm. on Ways & Means*, 1999 Leg., 70th Sess. at 9, 10 (Nev. April 19, 1999).

Nevada provided the federal government its plan to comply with ASFA, which includes NRS 432B.393(3)(c), and the federal government approved that plan. *See Agency Plan for Title IV-E of the Social Security Act Foster Care and Adoption Assistance State of Nevada* (June 2015), https://dcfs.nv.gov/uploadedFiles/dcfsnv.gov/content/Tips/Reports/Nevada_Title_IV_E_Plan_FINAL_2_27_2017.pdf at **49-51**.

If NRS 432B.393(3)(c) is determined to be unconstitutional, and thus obsolete, Nevada's already approved plan for compliance with ASFA is no longer valid. In other words, and contrary to Porsha C.-S.'s claim, Nevada will no longer be in compliance with federal standards. *Porsha C.-S. Answer* at 11, n. 4. This directly impacts Nevada's eligibility to receive federal funding for its administration of foster care services. *See* 42 U.S.C. 671(a) ("In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary.").

Additionally, if the juvenile court's ruling goes unaddressed, NRS 432B.393(3)(c) will continue to be inconsistently applied throughout Nevada. In jurisdictions other than Washoe County, child welfare agencies may seek to be relieved of providing reasonable efforts to reunify a family pursuant to NRS 432B.393(3)(c). Due to the juvenile court's ruling, WCHSA may continue to be

precluded from using NRS 432B.393(3)(c). This inconsistent application of NRS 432B.393(3)(c) throughout Nevada also does not comply with the aforementioned requirements of ASFA. *See* 45 C.F.R. 1356.50(a).

L.S.C. claims, without providing any support, that “[i]t is also uncommon for child welfare agencies to seek to be relieved of reasonable efforts towards reunification based on the predicate facts of NRS 432B.393(3)(c) alone.” *L.S.C. Answer* at 16. This argument is based entirely on speculation. A child welfare agency may be relieved of providing reasonable efforts towards reunification in another manner. *See* NRS 432B.393(2). That, however, does not lead to the conclusion that all child welfare agencies in Nevada seldom rely on NRS 432B.393(3)(c).

Further, this is a matter of widespread importance as it has the potential to impact the lives of many children in Nevada’s foster care system. ASFA substantially shifted the focus from the rights of parents to the health and safety of the child being the paramount concern, particularly when there is a risk of subjecting a child to long term foster care or returning them to an abusive family. *See* 143 Cong. Rec. S12526, S12668-75 (daily ed. November 13, 1997); H.R. Rep. No. 105-77, at 10-11 (1997); *see also Petition* at 9-10. The juvenile court’s ruling directly

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contradicts this purpose, shifting the focus away from children for the benefit of the parents.²

Finally, this matter of widespread importance is capable of repetition and may continue to evade review. Children cannot unnecessarily linger in foster care and their lives cannot be stalled for the sole purpose of conforming to the timelines required to address this legal issue. Children's lives move forward and WCHSA will continue to abide by its obligation to seek timely permanency for children in its care. *See* NRS 432B.393(2); *see also* 143 Cong. Rec. S12526, S12668-75 (daily ed. November 13, 1997); H.R. Rep. No. 105-77, at 10-11 (1997).

As illustrated by this case, a substantial amount of time has passed in L.S.C.'s life since this legal issue arose. WCHSA removed L.S.C. from parental custody on or about August 25, 2020. *See* **PA 018**. WCHSA filed its motion seeking a no reasonable efforts finding pursuant to NRS 432B.393 and the Adoption and Safe Families Act on September 24, 2020. **PA 024**. The juvenile dependency master ruled on the motion on March 8, 2021. **PA 084**.

Following the objection to the master's findings and recommendations, the juvenile court did not enter its ruling until July 2, 2021, nearly ten months after

² Interestingly, counsel for L.S.C. argues that "it is not clear that the District Court's ruling concerns such public, widespread importance." *L.S.C. Answer* at 17. Similar to the juvenile court, counsel for L.S.C. focuses her analysis almost entirely on the rights of parents. *See id.*, *generally*.

WCHSA filed its motion and almost a year after L.S.C.’s removal from parental custody. **PA** 141. Shortly after, and as mandated by NRS 432B.590, the juvenile court determined that the permanency plan of adoption with WCHSA initiating a termination of parental rights action is in L.S.C.’s best interests. **PA** 169. The juvenile court, therefore, relieved WCHSA of its obligation to provide reunification services. **PA** 170.

It is not in any child’s best interests to deny them timely permanency or to promote a reunification permanency plan for the sole purpose of addressing the issue presently before this Court – whether NRS 432B.393(3)(c) is unconstitutional. Therefore, this matter of widespread importance may continue to evade review, necessitating this Court’s consideration of the Petition.

ii. WCHSA does not have an adequate remedy at law.

This Court’s invocation of original jurisdiction is also necessary as WCHSA does not have an adequate remedy at law and this important issue of law needs clarification. *Falconi v. Secretary of State*, 2013, 299 P.3d 378, 129 Nev. 260 (2013). L.S.C. argues that WCHSA can appeal “the 432B case,” but fails to cite to a statute or court rule that would allow WCHSA to appeal “the 432B proceeding” or challenge the juvenile court’s ruling at issue. *L.S.C. Answer* at 10.

The juvenile court found NRS 432B.393(3)(c) unconstitutional in an NRS Chapter 432B proceeding. **PA** 165-166. No statute or court rule authorizes an appeal

from an interlocutory order addressing the constitutionality of a statute in a Chapter 432B proceeding. *See* NRAP 3A(b); *Brown v. MHC Stagecoach*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013)(“we may only consider appeals authorized by statute or court rule.”).

There are few “final judgments” in an NRS Chapter 432B proceeding that may be appealable pursuant to NRAP 3A(b)(1). *See, e.g., Matter of K.C.*, 476 P.3d 1200, Docket No. 80388 (December 16, 2020)(unpublished disposition)(considering an appeal of an order terminating parental rights arising out of a Chapter 432B proceeding); *Matter of S.B.*, 475 P.3d 776, Docket No. 79394 (November 20, 2020)(considering an appeal of an order denying continued jurisdiction over a minor under NRS 432B.594).

The permanency plan for L.S.C. is currently adoption with WCHSA initiating a termination of parental rights action. **PA 170.** WCHSA initiated a separate NRS Chapter 128 proceeding to terminate Porsha C.-S. and Rolando C.-S.’s parental rights. *Petitioner’s Reply Appendix* (“PRA”) at 001-008. As discussed below, WCHSA cannot appeal an adverse ruling in the NRS Chapter 128 proceeding to obtain relief from the current ruling WCHSA is challenging – the juvenile court’s ruling in the NRS Chapter 432B proceeding that NRS 432B.393(3)(c) is unconstitutional.

Moreover, WCHSA will not be considered an “aggrieved party” to have standing to appeal the order terminating its jurisdiction in the NRS Chapter 432B proceeding. *See* NRAP 3A(a). Due to the trajectory of the juvenile dependency proceeding, WCHSA’s custody of L.S.C. will terminate upon her successful adoption. *See* **PA 169**. WCHSA, therefore, does not have an adequate remedy at law through an appeal of the “final judgement” in the Chapter 432B proceeding.

L.S.C. and Porsha C.-S. further argue that WCHSA can seek relief from the juvenile court’s ruling by appealing an adverse order in a completely separate Chapter 128 termination of parental rights proceeding. *L.S.C. Answer* at 10; *Porsha C.-S. Answer* at 12. This argument is inapposite.

The juvenile court found **NRS 432B.393(3)(c)** unconstitutional in an NRS Chapter 432B juvenile dependency proceeding, *not* a Chapter 128 termination of parental rights proceeding. **PA 141-167**. The Real Parties in Interest take issue with how a ruling pursuant to NRS 432B.393(3)(c) *can* be used in an NRS Chapter 128 action. *See, e.g., L.S.C. Answer* at 17-24; *Porsha C.-S. Answer* at 15-20; *Real Party in Interest Rolando C.-S.’s Answer* (herein, *Rolando C.-S. Answer*) at 10-12.³ However, that is *not* the issue presently before this Court. The issue presently before

³ At the time of the juvenile court’s decision, a termination of parental rights action regarding these parties did not exist. *See* PRA 001. WCHSA did not initiate a termination of parental rights action until December 8, 2021. *Id.*

this Court is whether **NRS 432B.393(3)(c)**, on its own and applied in a Chapter 432B *juvenile dependency proceeding*, is unconstitutional.

Although related, the Chapter 432B juvenile dependency proceeding and the Chapter 128 termination of parental rights proceeding are entirely separate actions. An NRS Chapter 128 termination of parental rights action can be heard by any district court judge. NRS 128.020.⁴

Porsha C.-S. and L.S.C.’s argument is based on the following scenario. In a separate termination of parental rights proceeding, which could be heard by a different district court judge, WCHSA presents the juvenile dependency court’s order finding NRS 432B.393(3)(c) unconstitutional. If WCHSA does not prevail in the termination of parental rights action, WCHSA then appeals the adverse ruling, arguing that, in an entirely separate action, the juvenile court erred in finding NRS 432B.393(3)(c) unconstitutional.

Contrary to Porsha C.-S. and L.S.C.’s suggestion, this would not be a proper means of obtaining relief from the juvenile court’s ruling in the Chapter 432B proceeding that NRS 432B.393(3)(c) is unconstitutional. Therefore, WCHSA does not have an adequate remedy at law and this important issue of law – whether NRS 432B.393(3)(c) is unconstitutional – needs clarification.

⁴ In Washoe County, a termination of parental rights action brought by a child welfare agency is assigned to the same district judge who presides over the juvenile dependency cases as a matter of Second Judicial District Court policy, not statute.

B. NRS 432B.393(3)(c) Does Not Infringe on a Constitutional Right.

WCHSA respectfully requests this Court issue a writ of mandamus as the juvenile court incorrectly concluded that NRS 432B.393(3)(c) is unconstitutional. NRS 432B.393 does not create a constitutional right to “reasonable efforts;” rather, “reasonable efforts” or reunification services are a benefit. *Petition* at 12-13. As NRS 432B.393(3)(c) does no more than relieve a child welfare agency of providing “reasonable efforts,” NRS 432B.393(3)(c) does *not* infringe on a constitutional right.

Porsha C.-S. argues that “NRS 432B.393(1) creates a statutory right” to reasonable efforts. *Porsha C.-S. Answer* at 17. This argument is inapposite. NRS 432B.393(1) provides that “an agency which provides child welfare services shall make reasonable efforts.” The plain language of NRS 432B.393(1) demonstrates that the statute creates a duty on the child welfare agency to provide “reasonable efforts” rather than a statutory right to the parents to receive “reasonable efforts.” *See also Suter v. Artist M.*, 503 U.S. 347, 363 (1992), *superseded by statute on other grounds*, 42 U.S.C. 1320a–2 (“[T]he ‘reasonable efforts’ language does not unambiguously confer an enforceable right upon the Act’s beneficiaries. The term ‘reasonable efforts’ in this context is at least as plausibly read to impose only a rather generalized duty on the State.”). Subsequent portions of the statute provide the parameters of the child welfare agency’s duty to provide “reasonable efforts,” including relieving the

agency of that duty if it is not consistent with the permanency plan or if there are certain aggravating factors. *See* NRS 432B.393(2), (3).

Further examination of the federal counterparts to NRS 432B.393 supports this argument. “Reasonable efforts” is a standard used by the federal government to provide federal funding to the states for each individual child that comes into the care and custody of a child welfare agency. *See* 45 C.F.R. 1356.21(a), (b)(1)-(2). When a child is removed from parental custody and placed into the custody of a child welfare agency, that agency must obtain specific “reasonable efforts” findings throughout the duration of the juvenile dependency proceeding. *See* NRS 432B.393(1), (2); *see also* 45 C.F.R. 1356.21(b)(1)-(2).

To obtain federal funding for each individual child in foster care, the child welfare agency must provide the federal government the appropriate judicial determinations for each child. *See* 45 C.F.R. 1356.21(b)(1)-(2). Failure of the child welfare agency to obtain that judicial determination in each proceeding results in the loss of federal funding for that specific child. *See* 45 C.F.R. 1356.21(b)(1)(ii), (b)(2)(ii). It does not lead to a constitutional violation of a parent’s rights. *See Suter*, 503 U.S. at 363.

The Real Parties in Interest consistently argue that NRS 432B.393(3)(c) infringes on a parent’s constitutional right to the care, custody and control of their child. *See Answers, generally*. The Real Parties in Interest focus the vast majority of

their argument on how a finding pursuant to NRS 432B.393(3)(c) *can* be used in an entirely separate NRS 128 Chapter proceeding. *L.S.C. Answer* at 17-24; *Porsha C.-S. Answer* at 15-17; *Rolando C.-S. Answer* at 10-12. That is not the issue presently before this Court. Again, the issue presently before this Court is whether NRS 432B.393(3)(c) is unconstitutional, on its own and as applied in an NRS Chapter 432B proceeding.

The Real Parties in Interest argue that “NRS 432B.393(3)(c) cannot be considered in a vacuum” and that “[t]he application of NRS 432B.393(3)(c) in a termination of parental rights proceeding pursuant to NRS Chapter 128 cannot be overlooked.” *L.S.C. Answer* at 17; *Porsha C.-S. Answer* at 15; *Rolando C.-S. Answer* at 10. The Real Parties in Interest aver that NRS 432B.393(3)(c) is unconstitutional because the resulting order *may* be used to establish parental fault in an entirely separate NRS Chapter 128 termination of parental rights proceeding. *Id.* The Real Parties in Interest do not provide legal authority supporting their argument that a statute is unconstitutional because of its theoretical application in a separate proceeding. *Id.*; *but see Magee v. Whitacre*, 60 Nev. 202, 212, 106 P.2d 751, 752 (1940)(holding that it is improper to determine the constitutionality of a statute on a supposed or hypothetical case that may arise).

While the Real Parties in Interest find NRS 128.105(1)(b) problematic, that is not the issue presently before this Court. WCHSA is challenging the juvenile court’s

finding that **NRS 432B.393(3)(c)** is unconstitutional, which the court made in a NRS Chapter 432B juvenile dependency proceeding, not a Chapter 128 termination of parental rights action. **PA** 141-167. Unlike NRS 128.105, NRS 432B.393(3)(c) does *not* permit the juvenile court to sever the parent-child relationship. As Porsha C.-S. and L.S.C. point out, a ruling pursuant to NRS 432B.393(3)(c) does not alter or address child custody. *Porsha C.-S. Answer* at 12, n. 5; *L.S.C. Answer* at 10.⁵ It merely relieves the child welfare agency of its obligation to provide reasonable efforts, or services, to reunify the family. NRS 432B.393(3)(c), therefore, does not infringe on a fundamental right.

Rolando C.-S. argues that a ruling pursuant to NRS 432B.393(3)(c) “fast-tracks a case toward a termination of parental rights.” *Rolando C.-S. Answer* at 10. This argument is also speculative. The juvenile court must hold a permanency hearing within 30 days of making a finding pursuant to NRS 432.393(3)(c). *See* NRS 432B.590(1)(b). At the permanency hearing, the juvenile court has discretion to

⁵ The Real Parties in Interest’s reliance on *Stanley v. Illinois*, 405 U.S. 645 (1972), is misplaced. *L.S.C. Answer* at 22; *Porsha C.-S. Answer* at 14, n 7; *Rolando C.-S. Answer* at 16-17. In *Stanley*, the State deprived the father of his right to the care, custody and control of his children without a finding of parental unfitness. 405 U.S. at 646-47. Conversely, WCHSA merely requested to be relieved of providing reasonable efforts to reunify the family. **PA** 027. In its motion, WCHSA did not seek to sever or intervene in the parent-child relationship, and NRS 432B.393(3)(c) does not permit such an action. **PA** 027. The separate issue regarding WCHSA’s intervention in the parent-child relationship has been properly addressed in the normal course of the juvenile dependency proceeding. **PA** 013-016, 042-052, 066-067, 068-078; *see also* NRS 432B.470; NRS 432B.480; NRS 432B.530.

determine the permanency plan that is in the child's best interests. NRS 432B.590(4)(b)(1).

There is nothing precluding parents from presenting evidence as to the permanency plan that they believe is in the child's best interests. *See* NRS 432B.590. There is also no requirement that the juvenile court adopt a permanency plan of termination of parental rights solely because the court relieved the agency of providing reasonable efforts pursuant to NRS 432B.393(3)(c). *See id.*

Most notably, parental rights are not automatically terminated simply because the juvenile court makes a finding pursuant to NRS 432B.393(3)(c) or adopts a permanency plan of termination of parental rights. *See also* NRS 432B.590. To terminate a parent's rights, the child welfare agency must still comply with the requirements of NRS Chapter 128. *Petition* at 17-18; *see also* NRS 432B.590(1).

Rolando C.-S. further avers that "NRS 432B.590(1)(b) affords very little time for parents to access services and demonstrate any necessary behavioral modification prior to an expedited termination proceeding." *Rolando C.-S. Answer* at 10. NRS 432B.590(1)(b) is not an "expedited termination proceeding," and there is nothing in NRS Chapter 432B that allows for any such proceeding. To the extent that Rolando C.-S. refers to an "expedited permanency hearing," this argument falls short.

As discussed at length, a child welfare agency is obligated to provide “reasonable efforts” unless otherwise relieved of doing so by court order. *See* NRS 432B.393. Rolando C.-S. seemingly assumes that a request to be relieved of providing reasonable efforts pursuant to NRS 432B.393(3)(c) must be made at the onset of the dependency proceeding. There is nothing in NRS Chapter 432B that requires a request to be made pursuant to NRS 432B.393(3) at the beginning of a juvenile dependency proceeding. The decision to seek to be relieved of providing reasonable efforts to reunify a family and when to do so is at the discretion of the child welfare agency.

Second, even if there is a pending motion pursuant to NRS 432B.393(3)(c), the child welfare agency is still obligated to provide “reasonable efforts” or offer services to a parent until the court determines otherwise.⁶ Therefore, if the court makes a finding pursuant to NRS 432B.393(3)(c), triggering the “expedited permanency hearing,” a parent has already been given the opportunity to participate in services paid for by the government. *See* NRS 432B.393(1). Again, there is nothing precluding a parent from presenting evidence at the expedited permanency

⁶ This case is illustrative. WCHSA filed its motion to be relieved of providing “reasonable efforts” or reunification services on September 24, 2020, and the motion was not resolved until July 2, 2021. **PA** 024, 141. While the motion was pending, WCHSA remained obligated to provide “reasonable efforts” or reunification services to Rolando C.-S. and Porsha C.-S. *See* NRS 432B.393(1).

hearing regarding their participation in any services or reasons why reunification is still in the best interest of the child. *See* NRS 432B.590.

“Reasonable efforts” or reunification services are not a constitutional right. NRS 432B.393(3)(c) merely relieves the child welfare agency of their duty to provide reunification services. NRS 432B.393(3)(c) should be upheld.⁷

C. ASFA Did Not Intend for NRS 432B.393(3)(c) to be Discretionary.

Rolando C.-S. further argues that “ASFA did not intend to preclude reasonable efforts in all cases where there was a prior involuntary termination,” offering statements made by a representative of the Voices for Adoption group in a subcommittee hearing. *Rolando C.-S. Answer* at 21-22. However, the plain and unambiguous language of the federal statute and the code of federal regulation demonstrate otherwise. *See, e.g., D.R. Horton, Inc. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007)(explaining that a statute that is clear and unambiguous must be given its plain meaning).

⁷ Porsha C.-S. argues that NRS 432B.393(3)(c) should be severed from NRS 432B.393. *Porsha C.-S. Answer* at 22-24. As discussed at length, NRS 432B.393(3)(c) **is** constitutional, and therefore, it is not necessary to sever it from NRS 432B.393. Additionally, severance will result in Nevada no longer being in compliance with ASFA. *See supra* Sec. II(A)(i). Rolando C.-S. also argues that NRS 432B.393(3)(c) “runs counter to the statute read as a whole.” *Rolanda C.-S. Answer* at 25-26. Assuming *arguendo* that this assertion is true, Rolando C.-S. does not offer legal authority to support his argument that this invariably leads to the conclusion that NRS 432B.393(3)(c) is unconstitutional. *See id.*

The comments or opinions raised by the Voices for Adoption group seemingly did not alter ASFA to allow discretion in relieving a child welfare agency of providing “reasonable efforts” when a parent’s rights were previously involuntarily terminated. This is demonstrated by the plain language of 42 U.S.C. 671(a)(15)(D)(iii):

(D) reasonable efforts of the type described in subparagraph (B) **shall not be required** to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

...

(iii) the parental rights of the parent to a sibling have been terminated involuntarily....

emphasis added. The plain language of 45 C.F.R. 1356.21(b)(3)(iii) is also not discretionary:

Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the [child welfare] agency obtains a judicial determination that such efforts are not required because...[t]he parental rights of the parent with respect to a sibling have been terminated involuntarily.

45 C.F.R. 1356.21(b)(3)(iii). Like the federal statute and the federal code, the nearly identical language of NRS 432B.393(3)(c) is not discretionary.

Rolando C.-S. next argues that “ASFA is not intended to govern the court, but rather to govern the agencies, their activities, and what judicial orders they need to obtain in order for a child to be eligible for [federal funding].” *Rolando C.-S. Answer* at 23-24. As discussed above, ASFA sets forth the requirements for states to receive

federal funding for its administration of foster care services. *See supra* Sec. II(A)(i). States are given discretion to implement the requirements of ASFA. *See* 42 U.S.C. 671(a). The Nevada Legislature chose to enact NRS 432B.393(3)(c) with language nearly identical to that of 42 U.S.C. 671(a)(15)(D)(iii) and 45 C.F.R. 1356.21(b)(3)(iii), all of which provide no discretion. *See supra* Sec. II(A)(i). This lack of discretion, however, does not lead to the conclusion that NRS 432B.393(3)(c) is unconstitutional. *See Petition* at 19-22.

D. NRS 432B.393(3)(c) Does Not Violate Substantive or Procedural Due Process.

Finally, the Real Parties in Interest argue that NRS 432B.393(3)(c) violates substantive and procedural due process because of its application in an NRS Chapter 128 action. *See Answers, generally*. As discussed at length, NRS 432B.393(3)(c), on its own and applied in a Chapter 432B proceeding, does *not* infringe on a fundamental right. *See supra* Sec. II(B).

First, under a substantive due process analysis, a statute that does not infringe on a fundamental right is upheld if it is rationally related to a legitimate government purpose. *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 129 Nev. 492, 501, 306 P.3d 369, 375-76 (2013). NRS 432B.393(3)(c) is rationally related to the legitimate government purpose of providing timely permanency for children and curtailing the circumstances in which a child welfare agency is required to expend its limited

resources. *See supra* Sec. II(A)(i). Thus, NRS 432B.393(3)(c) does not violate substantive due process and must be upheld.

Second, a procedural due process analysis of NRS 432B.393(3)(c) is improper. L.S.C. and Rolando C.-S. argue that NRS 432B.393(3)(c) violates procedural due process because of its application in NRS 128.105(1)(b), but that is not the issue presently before this Court. *L.S.C. Answer* at 21-24; *Rolando C.-S. Answer* at 12-18. The juvenile court found NRS 432B.393(3)(c) unconstitutional in a Chapter 432B proceeding, not as applied in a Chapter 128 proceeding. **PA** 141-167.

Procedural due process is only required before finally depriving an individual of a property or liberty interest. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). NRS 432B.393(3)(c) does not permit the court, or the child welfare agency, to finally deprive a parent of the care, custody and control of their child. NRS 432B.393(3)(c), on its own, also does not create a property or liberty interest. *See supra* Sec. II(B). As a result, NRS 432B.393(3)(c) cannot violate procedural due process and the juvenile court improperly conclude otherwise.

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III. CONCLUSION

For the foregoing reasons, as well as set forth in the Petition, WCHSA respectfully requests this Court grant a writ of mandamus and direct the district court to vacate the order affirming master's recommendations.

Dated this 19th day of January, 2022.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this reply in support of the petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this petition has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

2. I further certify that this reply complies with the page- or type-volume limitations of NRAP 21(d) because, excluding the parts of the petition exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 4,683 words.

3. Finally, I hereby certify that I have read this reply and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this reply complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

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accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: January 19, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on January 19, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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