No. 25-6140

IN THE

Supreme Court of the United States

D.B. & N.D,

Petitioners,

v.

VERMONT DEPARTMENT FOR CHILDREN AND FAMILIES,

Respondent.

On Petition for Writ of Certiorari to the Vermont Supreme Court

BRIEF IN OPPOSITION

CHARITY R. CLARK
Vermont Attorney General

JONATHAN T. ROSE
Solicitor General
Counsel of Record
ZACHARY D. MARTIN
Assistant Attorney General
OFFICE OF THE
ATTORNEY GENERAL
109 State Street
Montpelier, VT 05609-1001
(802) 828-3171
jonathan.rose@vermont.gov

Counsel for Respondent

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

QUESTIONS PRESENTED

Over many years, Petitioners' chronic neglect of their children required repeated interventions by Vermont's Department for Children and Families. In April 2024, after filing four sets of Child in Need of Care or Supervision (CHINS) cases over nearly ten years, the Department moved to terminate Petitioners' parental rights. The trial court terminated Petitioners' rights after twelve days of evidentiary hearings. The Vermont Supreme Court affirmed on direct appeal.

The Petition raises the following questions:

1. Do Plaintiffs lack standing to challenge Vermont's compliance with the federal spending conditions found at 42 U.S.C. § 671(a)(15)?

2. Do the "reasonable efforts" considerations in Vermont's child welfare case process fall within the broad discretion afforded the States in implementing 42 U.S.C. § 671(a)(15)?

3. Did Petitioners' long history of involvement with the Department provide them notice of the Department's concerns about their parenting sufficient to satisfy procedural due process requirements?

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STATEMENT OF THE CASE

I. Child Welfare Cases in Vermont

The Vermont Department for Children and Families screens and investigates reports of child abuse or neglect. *See* Vt. Stat. Ann. tit. 33, § 4915(a). Due to robust internal screening processes, reports are rarely accepted. Of the 19,410 reports the Department received in 2024, for example, only 3,617 were accepted. And of the accepted reports, only 493 were opened for ongoing services. Vt. Agency of Human Servs., Child Protection in Vermont Report for 2024 at 11-12 (June 30, 2025), https://perma.cc/4BFW-2B8A.

When a report is accepted, the Department may offer the family voluntary services to resolve the issues that led to the report, Vt. Stat. Ann. tit. 33, § 4915a(a)(3), or it might request that the county State's Attorney initiate a formal child protection proceeding, known as a Child in Need of Care or Supervision, or "CHINS" case, in state court. Vt. Stat. Ann. tit. 33, § 5309(a). After a CHINS case is filed, the court first holds an evidentiary hearing—called a temporary-care hearing—to determine where the child will be placed during the proceedings. *See* Vt. Stat. Ann. tit. 33, §§ 5307-08. As an alternative to placing a child in DCF custody, the court may place conditions on the parents' custody in a conditional custody order. Vt. Stat. Ann. tit. 33, § 5308(b)(1). If temporary custody of a child is transferred to the Department, the court will hold periodic "permanency hearings." Vt. Stat. Ann. tit. 33, § 5321(a). The purpose of those hearings is to determine the permanency goal (e.g., adoption, reunification, etc.) for the child and an estimated time for achieving that goal. *Id*.

The trial court also holds a CHINS merits hearing, at which the Department must establish that a child is CHINS by at least a preponderance of the evidence. Vt. Stat. Ann. tit. 33, § 5315(a).[1] If the Department prevails at the merits hearing, the next step is a disposition hearing. At the disposition hearing, the court examines a disposition case plan, prepared by the Department, that specifies the recommended permanency goal for the child—i.e., reunification with a custodial parent; adoption; permanent guardianship; or some other permanent placement. *Id*. § 5316(b)(1). If disposition is contested, all parties have a right to present evidence and examine witnesses. *Id.* § 5317(a)-(b).

In some cases, the Department may ask the court to terminate parental rights (TPR) at disposition, before a formal disposition case plan is entered. Vt. Stat. Ann. tit. 33, § 5317(d); Vt. Stat. Ann. tit. 33, § 5318(a)(5). This request is more likely where the parents have a long history with the Department or in situations involving severe allegations of abuse or neglect. Regardless of whether TPR is sought at initial disposition or after (usually upon the failure of the parents to comply with the expectations of a disposition plan aimed at reunification), the Court decides whether TPR is in the "best interests of the child," examining the evidence presented using a set of statutory factors. Vt. Stat. Ann. tit. 33, § 5114. The Department must prove its

[1] The court has discretion to make findings by clear and convincing evidence. Vt. Stat. Ann. tit. 33, § 5315.

case by clear and convincing evidence. *Id.* § 5317(c)-(d). If TPR is granted, the child becomes legally eligible for adoption.

Vermont provides a statutory right to counsel at all phases of the CHINS and TPR court process for children and parents. Vt. Stat. Ann. tit. 13, § 5232(c); *see also In re S.C.*, 88 A.3d 1220, 1223 (Vt. 2014) (noting that "in practice counsel are uniformly appointed to represent needy parents in termination proceedings").

II. Vermont's Implementation of Federal Spending Conditions

Vermont receives federal funding to support its foster care, adoption assistance, and child welfare programs under the Adoption Assistance and Child Welfare Act of 1980 (AACWA). 42 U.S.C. §§ 670-679c. To be eligible for that funding, Vermont must have a plan approved by the Secretary of the Department of Health and Human Services. 42 U.S.C. § 671(a)(15)(B). Among other things, the plan must provide for Vermont to make "reasonable efforts" to "preserve and reunify families," or if such efforts are "inconsistent with the permanency plan for the child," to "place the child in a timely manner in accordance with the permanency plan." 42 U.S.C. §§ 671(a)(15)(B)-(C).

The latter alternative was added by the Adoption and Safe Families Act of 1997, 111 Stat. 2115, which itself was "prompted by the 'growing belief that Federal statutes, the social work profession, and the courts sometimes err on the side of protecting the rights of parents.'" *New York v. U.S. Dep't of Health & Human Servs.*, 556 F.3d 90, 95 (2d Cir. 2009) (quoting H.R. Rep. 105-77, at 8 (1997), *reprinted in* 1997 U.S.C.C.A.N. 2739, 2740)). Foster care payments are also conditioned on the state basing "removal and foster care placement" on, *inter alia*, "a judicial determination"

that the "reasonable efforts" described in § 671(a)(15) have been made. 42 U.S.C. § 672(a)(2)(A)(ii).

Vermont law incorporates the federal "reasonable efforts" conditions. The term is defined by statute. *See* Vt. Stat. Ann. tit. 33, § 5102(25) (defining "reasonable efforts"). And Vermont courts make reasonable efforts determinations at specific points in CHINS cases. The first determination—aimed at preserving and unifying the family—is typically made as part of a temporary care order. At the temporary care hearing, the Department must describe what "[s]ervices, if any, [were] provided to the child and the family in an effort to prevent removal" and "[s]ervices which could facilitate the return of the child to the custodial parent, guardian, or custodian." Vt. Stat. Ann. tit. 33 §§ 5307(e)(2), (4). If it transfers custody of the child, the Court's order must include "a finding as to whether reasonable efforts were made to prevent unnecessary removal of the child from the home." Vt. Stat. Ann. tit. 33, § 5308(e)(1)(B).

The second "reasonable efforts" determination is often made later in the case, in combination with a permanency hearing. There, the court must determine whether the Department "has made reasonable efforts to finalize the permanency plan for the child that is in effect at the time of the hearing," Vt. Stat. Ann. tit. 33 § 5321(h), whether the permanency plan is for reunification or an alternate permanent living arrangement. *Id*. §§ 5321(h)(1)-(2).

The Department's efforts to provide reunification services are also considered throughout child welfare proceedings as evidence relevant to other required findings. At the TPR stage, for example, the Vermont Supreme Court has made clear that

"the level of assistance provided to parents is relevant in determining whether 'a parent is unlikely to be able to resume parental duties within a reasonable period' of time." *In re C.P.*, 71 A.3d 1142, 1155 (Vt. 2012) (quoting *In re J.M.*, 749 A.2d 17, 19 (Vt. 2000) (mem.)).

III. Petitioners' History with Vermont's Child-Welfare System

The Department filed its first CHINS case involving Petitioners in April of 2014 when JB,[2] their oldest child, was born. *See* Mother's Printed Case (MPC) 498.[3] It was based on Mother's abuse of marijuana during her pregnancy and her admission that she had also used heroin and cocaine. *Id*. The case remained open for seven months, but full custody was returned to the parents in November 2014. MPC 334.

The Department filed a second CHINS case as to JB in June 2015, followed soon thereafter by a separate petition for JB's younger brother, DB, in August 2015. MPC 334, 498. Like the 2014 case, both those cases were also based on Petitioners' use of

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[2] The Department uses the same abbreviations for the children's names as the Vermont Supreme Court.

[3] Petitioners objected to Respondents submitting a supplemental appendix of record materials, arguing that doing so without the trial court's permission would violate state law. Respondent disagrees, but to avoid complicating these proceedings, cites directly to printed cases submitted by Mother and Father to the Vermont Supreme Court in the proceedings below. Both are comprised of materials from the trial court records.

illicit substances and neglect of their children. *Id*. Those cases remained open until 2017. MPC 335, 498. During the cases, the children spent time in foster care with their grandparents, followed by conditional custody and then placement with Petitioners when the case was closed. *Id*.

In June 2021, the Department filed a third set of CHINS cases as to JB and DB based on concerns about Petitioners' use of unprescribed opiates, heroin, and cocaine, about their home being "unsafe and unsanitary" and in a "horrible condition," and about the children missing school and lacking appropriate hygiene and health care. Father's Printed Case (FPC) 671. The trial court later dismissed those petitions but found that both petitioners struggled with substance abuse and addiction issues; both used heroin; that their home continued to be unsafe and unsanitary; and Mother's depression had recently worsened. FPC 672.

IV. Proceedings Below

1. In May 2022, the Department filed the CHINS cases underlying this Petition (the fourth set of CHINS cases involving Petitioners). Like the prior cases, the evidence supporting the new cases included chronic drug use, truancy, and child neglect. MPC 486-87. After a temporary care hearing, the children were again placed in Petitioners' custody under a conditional custody order. MPC 67-70.

In October 2022, based on Petitioners' continual failures to satisfy the terms of the order, and ongoing concerns about truancy and the children's condition, the court revoked the order and placed the children in the State's custody. MPC 749-51; *see also* MPC 743-45 (detailing problems, including severe truancy, evidence of "persistent

parental neglect with respect to basic hygiene," and multiple reports from a mandatory reporter about one child's "shocking" physical appearance and lack of hygiene). In connection with the revocation order, the Court found that the Department satisfied the "reasonable efforts" requirement in Title 33, Section 5308(e)(1)(B) of the Vermont Statutes Annotated, and that the Department had "exercised due diligence to use appropriate and available services to prevent the child's unnecessary removal from the home." MPC 750.

A third child, EB, was born in November 2022, and the Department filed a CHINS case as to that child as well. MPC 492. In April 2023, following five days of evidentiary hearings, the trial court found all three children to be CHINS. MPC 485-91.

Based on its long history with Petitioners and their lack of progress, the Department recommended termination of parental rights at the initial disposition hearing. MPC 331. In support, the Department submitted a proposed disposition case plan with a lengthy narrative describing the Petitioners' history with the Department, their numerous violations of the conditional custody order, the number of times JB and DB had been removed from the home, and the children's significant physical and behavioral regression each time they had been returned to petitioners' custody. MPC 331. The Department filed its TPR petition on June 16, 2023. FPC 6.

Following twelve days of evidentiary hearings, the trial court granted TPR as to all three children in an order dated January 23, 2025. FPC 17. The court found continued

drug use in front of the children, lack of educational progress and truancy, inability to maintain a sanitary home, and substantial problems with the children's nutrition and hygiene. FPC 4-17. The court also addressed the "reasonable efforts" in Title 33, Section 5321(h) of the Vermont Statutes Annotated, finding that the Department "made every reasonable effort to arrange and finalize an[] alternative permanent living arrangement for each of the children." FPC 16.

2. Petitioners appealed the TPR order and the underlying CHINS merits orders to the Vermont Supreme Court. The appeal focused largely on the sufficiency of the evidence, Petitioners' allegation of a conflict of interest involving the children's attorney, and a procedural objection to the trial court's combination of the CHINS merits and temporary care hearings. Pet. App. A 4-8.

Father also argued, however, that the Department had failed to make reasonable efforts to reunite the children with Petitioners before seeking TPR. The Vermont Supreme Court rejected that argument, citing in-state precedent holding that "the court is not required to find DCF made reasonable efforts as a prerequisite to termination," Pet. App. A 6 (quoting *In re C.P.*, 71 A.3d at 1155), and noting that Petitioner's argument that the law *should* require a reasonable efforts finding prior to TPR was a question "more appropriately addressed to the legislative process." Pet. App. A 6.

In a footnote, the Court also rejected Father's argument that the lack of a court-approved disposition case plan (because the Department petitioned for TPR at the initial disposition hearing) violated his due process rights. Pet. App. A 7 n.5. After

noting that "[a] court-approved plan of services in not a precondition to termination at initial disposition," the Court observed that Petitioners had ample notice of the Department's concerns and expectations—which were broadly consistent over the nearly ten years of its involvement with the family. *Id*.

The Court denied Father's Motion for Re-argument on August 12, 2025. *See* Pet. App. B.

REASONS FOR DENYING THE PETITION

I. The Petitioners do not have standing to challenge Vermont's compliance with the "reasonable efforts" funding conditions in 42 U.S.C. § 671(a)(15).

Petitioners' first question asks whether Vermont's child-welfare process—insofar as it does not require a judicial finding of "reasonable efforts" at the TPR stage—complies with 42 U.S.C. § 671(a)(15). But that question is not properly before the Court.

Over 30 years ago, this Court held that § 671(a)(15) does not confer enforceable rights on parents in child-welfare proceedings. *See Suter v. Artist M.*, 503 U.S. 347, 360 (1992). The Court reasoned that "[h]ow the State was to comply with" the reasonable efforts directive "was, within broad limits, left up to the State." *Id*. at 360; *see also id*. at 363 (reading "reasonable efforts" language "to impose only a rather generalized duty on the State, to be enforced not by private individuals, but by the Secretary [of Health and Human Services]" through the power to review state plans). And while Congress later amended the Social Security Act—which includes the AACWA—to override some of the Court's reasoning in *Suter*, it expressly approved of

the Court's holding that § 671(a)(15) "is not enforceable by a private right of action." 42 U.S.C. § 1320a-2.

Moreover, *Suter's* reasoning and holding are entirely consistent with the Court's holding last term in *Medina v. Planned Parenthood South Atlantic*, that funding conditions in spending power statutes do not confer enforceable rights unless they "clearly and ambiguously use[] rights-creating terms," and display "'an unmistakable focus' on individuals like" the person asserting the right. 606 U.S. 357, 368 (2025) (citation modified) (citing *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002)).

Like the "qualified provider" spending condition at issue in *Medina*, § 671(a)(15) does not confer an enforceable right. Parents in child welfare cases might benefit from the "reasonable efforts" conditions, but the "paramount" concern of § 671(a)(15) is not to protect parents, but rather "the child's health and safety." 42 U.S.C. § 671(a)(15)(A). Consistent with that concern, it is not surprising that § 671(a)(15) does not use the sort of express, "rights-creating language" the Court has required. *Cf. Health & Hospital Corp. of Marion County v. Talevski*, 599 U.S. 166 at 181-82 (2023) (holding that two provisions in the Federal Nursing Home Reform Act created enforceable rights where they expressly referenced a "right to be free from" certain restraints and "transfer and discharge rights"). Section 671(a)(15) may, at times, "serve [Petitioners'] interests," but it does not "clear[ly] and unambiguous[ly] give[] them individual rights." *Medina*, 606 U.S. at 376. Therefore, "Congress alone has the power to enforce" the condition. *Id*. at 372.

II. States' differing approaches to implementing § 671(a)(15)'s requirements reflect States' discretion under the statute, not a split of authority.

The Petition also does not raise any relevant conflict arising out of the way the States have implemented § 671(a)(15)'s requirements. The "divide" identified by Petitioners—that some states require courts to make separate "reasonable efforts" findings as part TPR proceedings while others do not, *see* Pet. 11—does not reflect a conflict as to the interpretation of federal law. It is a natural result of the policy discretion afforded to the States under the statute.

Again, § 671(a)(15) leaves it up to the States to decide how to implement the "reasonable efforts" requirements, subject only to the requirement that the Secretary approve the States' plans. *See Suter*, 503 U.S. at 360 ("How the State was to comply with this directive . . . was, within broad limits, left up to the State."). Nothing in the language of the statute requires States to incorporate a judicial reasonable efforts finding into the TPR process. And Plaintiffs have not cited any authority reading into § 671(a)(15) such a requirement.

It is therefore unsurprising that different States incorporate the § 671(a)(15) considerations in different ways. Some States—like Vermont—prioritize the child's interest in timely permanency and do not require a separate judicial finding of reasonable efforts at the TPR stage. *See*, *e.g.*, *In re C.P.*, 71 A.3d at 1155; *In re Child of James R.*, 182 A.3d 1252, 1259 (Me. 2018); *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015); *In re Adoption of Ilona*, 944 N.E.2d 115, 123 (Mass. 2011); *In re Parental Rts. as to T.A.G.*, 281 P.3d 1186, 2009 WL 3425651, at *3 (Nev. 2009) (unpublished

disposition). That model is based on the conviction that "the remedy for an agency's failure to provide services is not to punish an innocent child[] by delaying her permanency through denying termination." *In re D.C.D.*, 105 A.3d 662, 675 (Pa. 2014); *see also In re Kaliyah*, 455 S.W.3d 533, 542-43 (Tenn. 2015) (noting that in states requiring separate reasonable efforts finding at TPR, scholars observed that "children suffer by being denied a permanent home and by having instead to continue participating in plan to reunify the biological family even when there was no hope that the parents would be able to provide a minimally adequate home" (citation modified)). It is also consistent with the AACWA's command that "the child's health and safety must be the State's paramount concern" in determining reasonable efforts. 45 C.F.R. § 1356.21(b); *see* 42 U.S.C. § 671(a)(15)(A).

That is not to say Vermont disregards the issue. On the contrary, Vermont law requires judicial "reasonable efforts" findings at two separate stages in a child welfare case. *See supra* at 3-5. Moreover, while a standalone finding is not a prerequisite to TPR in Vermont, the Vermont Supreme Court has made clear that the Department's reunification efforts are relevant in TPR proceedings, and bear on whether "a parent is unlikely to be able to resume parental duties within a reasonable period." *In re J.M.*, 749 A.2d at 19 (mem.); *see In re C.P.*, 71 A.3d at 1155; *see also In re Child of James*, 182 A.3d at 1259 (holding that agency efforts to provide "adequate reunification services" is a "factor the court may consider in deciding whether a parent's unfitness is merely temporary"). And finally, the record in this case reveals the Department's extensive efforts over the course of nearly 10 years to prevent the

need for TPR. *See supra* at 5-8.[4] Vermont adequately accounts for the concerns animating § 671(a)(15) in child welfare proceedings.

That other States have chosen a different path and require a separate judicial finding of reasonable efforts in TPR proceedings, *see* Pet. at 13-14 n.3 (collecting cases), does not mean the AACWA *requires* that finding (or any other specific method of implementing the condition). Indeed, even states Petitioners have identified as having adopted their preferred method of compliance have recognized that the Act leaves the issue to the States' discretion. *See*, *e.g.*, *In re L.S.*, 524 P.3d 847, 853 n.2 (Colo. 2023) (rejecting argument about state's compliance with reasonable efforts requirement, noting that "states are given broad discretion to determine how best to comply with the Act's provisions"); *In re James G.*, 943 A.3d 53, 73-74 (Md. Ct. Spec. App. 2008) (outlining AACWA's legislative history, noting that "the meaning and implementation of the reasonable efforts requirement is the province of the states").

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[4] Petitioners incorrectly suggest that Vermont "categorically refus[es] to consider reasonable efforts when termination is sought at initial disposition." Pet. 15. Indeed, consistent with the cases cited above, the Vermont Supreme Court expressly considered the Department's efforts in determining that Petitioners would not be able to resume parenting in a reasonable time. *See* Pet. App. A at 7 (noting that Petitioners "were on notice of" the Department's concerns, and did not engage with services provided by the Department).

The only "split" identified by Petitioners is a split in the way states have chosen to exercise the policy discretion afforded them by the AACWA. The Petition does not raise any conflict of federal law requiring resolution by this Court.

III. Vermont's implementation of the "reasonable efforts" requirement does not raise constitutional concerns.

Petitioners' first Question Presented—the question that raises the "reasonable efforts" issue—asks only about the Vermont's compliance with § 671(a)(15). The Petition therefore does not seem to expressly raise a constitutional claim based on "reasonable efforts." Nonetheless, Petitioners also seem to suggest in the body of the Petition that there is a constitutional dimension to the "reasonable efforts" inquiry. *See generally* Pet. 16-22. They say that consideration of reunification efforts is necessary to protect parents' due process rights by preventing the state from "tip[ping] the balance of the best interest factors in favor of termination," by preliminarily removing the child from the home and "simply failing to work toward reunification and allowing time to pass." Pet. 18.

To the extent Petitioners invite the Court to review the constitutionality of Vermont's implementation of § 671(a)(15), the Court should decline. To begin, the only constitutional obligation this Court has identified in context of TPR proceedings is to prove allegations of unfitness by clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745, 769-70 (1982). It is beyond serious dispute that Vermont's process satisfies that requirement. *See* Vt. Stat. Ann. tit. 33, §§ 5315(a), 5317(c). Petitioners

have not identified—and the State has been unable to locate—any other federal decision holding that the Constitution requires reasonable reunification efforts. And this Court had observed that beyond the standard of proof, "the precise burden" imposed on the State in TPR proceedings is primarily "a matter of state law properly left to state legislatures and state courts." *Santosky*, 455 U.S. at 669-70.

True, state courts have, on occasion, framed the reasonable efforts inquiry in constitutional terms. *See*, *e.g.*, *Jessie D. v. Department of Child Safety*, 495 P.3d 914, 921 (Ariz. 2021) (suggesting that "requiring [a state] to provide reunification services to an incarcerated parent . . . is a constitutional requirement"); *Waters v. Division of Family Servs.*, 903 A.2d 720, 726 (Del. 2006) (constitutional concerns raised where agency did not allow father whose parentage had recently been established to have any contact with child and "made *no* effort" to unite father with child before seeking TPR). But others have recognized that "[p]roof of reasonable reunification efforts is not a constitutionally mandated prerequisite to granting a petition for the termination of parental rights." *In re Eden F.*, 741 A.2d 873, 886 (Conn. 1999); *see also In re A.C.*, 597 A.2d 920, 923 (D.C. 1991) (parents' "due process rights do not include as a condition precedent to termination of parental rights that the state agency . . . make affirmative efforts to reunite the family").

And even if the Court were inclined to consider creating a new, constitutional standard, Vermont's process would satisfy any constitutional "reasonable efforts" test. While Vermont does not follow the states that make reasonable efforts a standalone prerequisite for termination, its child welfare process takes reunification efforts into

account in other ways. Again, the Department must demonstrate that it has made efforts to reunify the family before a child can be placed in state custody. *See* Vt. Stat. Ann. tit. 33, § 5308(e)(1)(B). And the Department's reunification efforts are also considered again later in connection with the best-interests analysis at the TPR proceeding, *see In re C.P.*, 71 A.3d at 1200 ("[W]e recognize that the level of assistance provided to parents is relevant in determining whether a parent is unlikely to be able to resume parental duties within a reasonable period of time." (internal quotation marks and citation omitted)); *see also In re C.H.*, No. 2019-081, 2019 WL 3761633 (Vt. Aug. 7, 2019) (unpub. three-justice mem.) (affirming trial court's consideration of reasonable efforts in the context of the TPR analysis).

IV. This case would serve as a poor vehicle for developing a constitutional "reasonable efforts" requirement.

The facts of this case would also make it a particularly poor vehicle for exploring the limits of any new reasonable efforts test. The Department engaged with Petitioners for years over their problems—i.e., their persistent drug use, failure to ensure their children were attending school, and inability to provide safe and sanitary living conditions—and moved to terminate their parental rights only after Petitioners' repeated failure to make any reasonable progress toward resolving those issues. In its TPR order, for example, the trial court observed that "government funded supports[] were in place prior to the children coming into DCF custody more than two years ago," and described in detail Petitioners' failure to meaningfully engage with them. FPC 10. Likewise, the Vermont Supreme Court observed that Petitioners "were

on notice regarding" the Department's concerns but "did not work to demonstrate progress," they "failed to engage with Family Time counseling," "did not demonstrate an ability to maintain a clean, health home," and "did not address their mental health" issues despite the Department's repeated efforts to help them. Pet. App. A at 7. In other words, even if it were a constitutional requirement, Petitioners could not show that they were denied reasonable reunification services.

V. Petitioners' history of Department involvement, through four CHINS cases, provided all the process to which Petitioners were due.

Petitioners also propose that the Court review whether the Department's decision to pursue TPR at initial disposition—i.e., before trial court approval of a disposition case plan—violated their procedural due process rights. But a court-approved case plan is not a constitutional prerequisite to termination, and especially not under the circumstances of this case. The Department had been working with Petitioners for nearly a decade before moving for TPR, such that Petitioners should have been on clear notice of the Department's concerns by the time of the termination hearing. Their request for a per se constitutional ruling elevates form over substance. To be sure, the Vermont Supreme Court has recognized that proceedings in which TPR is sought at initial disposition "should be rare." *In re B.M.*, 165 Vt. 194, 199, 679 A.2d 891, 895 (1996). But this is one of those "rare" cases.

Again, it is worth emphasizing that the concerns giving rise to the Department's decision could not have been a surprise to Petitioners. By the time of the TPR proceedings, the children had been removed from Petitioners' care for ongoing neglect

four times, MPC 123, Petitioners had been subject to three Conditional Custody Orders outlining in detail DCF's concerns and expectations, MPC 67-70, 495, 498, and Petitioners had gone through a five-day CHINS merits hearing at which the Department presented extensive evidence regarding its concerns about their neglect of the children, MPC 485-90. The Department's concerns over the years were consistent: it repeatedly cautioned Petitioners about their chronic drug use, "historical inability to provide safe care" and "patterns of chronic neglect and lack of supervision." MPC 495; *see also* MPC 497-98 (noting that Petitioners "demonstrated a pattern of behaviors that includes significant substance abuse . . . and have struggled with relapse and demonstrated poor judgment for the past 9 years"); MPC 490 (trial court describing evidence of ongoing truancy, that "parents were chronically and persistently inattentive to their children's hygiene," and "unwilling[] to work with DCF to allay concerns as to their ability to provide a safe and healthy environment for a newborn").

This case therefore bears no resemblance to the cases Petitioners cite for the proposition that a disposition case plan is a "vital" component of due process. Pet. 25. In *Waters v. Division of Family Services*, for example, the Delaware Supreme Court held that a disposition case plan was required by due process where the state had sought TPR before it knew the father's identity and had not made any effort to determine whether father could serve as an appropriate parent. 903 A.2d at 727. And in *In re Walters*, --- N.W.3d ---, 2025 WL 20947 (Mich. Ct. App. Jan. 2, 2025), the court held that Michigan improperly terminated a new mother's rights for failing to comply

with an ambiguous "oral safety plan" that child protective services purportedly established at the time of the child's birth.[5] Those cases do not stand for the proposition that due process always requires a court-approved case plan. They reflect the uncontroversial proposition that parents are entitled to notice of concerns about their parenting before their rights are terminated.

The Court should decline Petitioners' request to consider a new, *per se* rule that a court-approved disposition case plan is always required by the Due Process Clause. This Court's bedrock due process precedent makes clear that procedural due process is not a "technical conception with a fixed content unrelated to time, place, and circumstances," but rather "a flexible concept that calls for such procedural

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[5] The other two cases Petitioners cite, *see* Pet. 25, are similarly unhelpful. The court in *In re Involuntary Termination of Parental Rights* stands for the unremarkable proposition that a case plan serves a notice function. 806 N.E.2d 874, 879 (Ind. 2004). The court did not hold that a case plan is constitutionally required. Indeed, it does not appear that the parent in that case even argued that a case plan is constitutionally required. *Id*. And in *In re Interest of Mainor T.*, the court found a parent's due process rights implicated where, among other things, the case plan contained inconsistencies (an objective of reunification but without providing any means by which the parent could achieve that objective) and the trial court apparently failed to conduct an evidentiary hearing supporting its adoption of the plan. 674 N.W.2d 442, 461-62 (Neb. 2004).

protections as the particular situation demands." *Matthews v. Eldridge*, 424 U.S. 319, 334 (1976). Petitioners were provided ample notice of the concerns that led to the termination of their parental rights from their years of interactions with the Department. Their "situation" did not "demand" more. The Vermont Supreme Court correctly held that Petitioners had all the notice to which they were entitled.

VI. Petitioners' statistical claims about Vermont's child-welfare system lack context and are misleading.

Finally, Petitioners' attempt (at Pet. 1-2) to bolster their arguments by making Vermont's child-welfare system seem unusually one-sided fall flat. First, Petitioners cite studies suggesting that Vermont terminates parental rights at higher rates than most—but not all—other states. *See* Pet. 2 (citing Christopher Wildeman et al., *The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000-2016*, 25 Child Maltreatment 32 (2020), https://perma.cc/2LLB-TTWJ; Laura Radel & Emily Madden, U.S. Dep't of Health & Human Servs., Freeing Children for Adoption with the Adoption & Safe Families Act Timeline: Part 1 – The Numbers (Feb. 2021), https://perma.cc/L447-THEZ ("Freeing Children")).

But Petitioners offer no evidence that Vermont's rates raise concerns or relate in any way to its consideration of reasonable efforts. Indeed, according to Petitioners' own analysis, four of the five states with higher TPR rates than Vermont's are states that *do* require reasonable efforts findings in TPR proceedings. *Compare* Freeing Children at 4 (identifying the five states with higher TPR rates as Texas, Arizona, Oklahoma, Alaska, and Maine) *with* Pet. 13 (noting that four of those five states

"require child welfare agencies to make reasonable efforts toward reunification before terminating parental rights"). The report itself also explains that "[m]yriad factors may be involved in the variations among states." Freeing Children at 5.[6] And it makes clear that "[n]o research has tested any of [the] possible explanations of differing TPR rates among states." *Id*.

Second, Petitioners suggest that TPR petitions are granted in Vermont at high rates, and that trial court TPR decisions are affirmed at even higher rates. But they do not provide any evidence as to how these rates compare nationally. The available data seem to suggest Vermont may not be an outlier. *See*, *e.g.*, Karen A. Wyle, *Fundamental Versus Deferential: Appellate Review of Terminations of Parental Rights*, 86 Ind. L. J. 29 (2011) (informal study showing that almost 95 percent of all TPR orders are affirmed in Indiana, including nearly 98 percent of unpublished decisions). And even if higher TPR rates were cause for concern—rather than, say, an indication that a state is more selective in deciding when to pursue TPR—Petitioners have not offered any evidence supporting their bald assertion that Vermont's TPR rates relate to its policy choices around reasonable efforts or pursuit of termination at initial disposition. The Court should disregard Petitioners' statistical "evidence."

[6] For example, "States that bring into care only the most seriously endangered children may be less able to reunify families and conduct more TPRs." *Id*.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted,

CHARITY R. CLARK
Vermont Attorney General

JONATHAN T. ROSE
Solicitor General
Counsel of Record
ZACHARY D. MARTIN
Assistant Attorney General
OFFICE OF THE
ATTORNEY GENERAL
109 State Street
Montpelier, VT 05609-1001
(802) 828-3171
jonathan.rose@vermont.gov

Counsel for Respondent

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