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December 11, 2019

Honorable Chief Justice Tani Cantil-Sakauye, and  
Associate Justices of the California Supreme Court  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797

**Re: In re T. S.  
Supreme Court Case No. S259083 (related Case No. S259081)  
Court of Appeal, Sixth Appellate District (H045947/H046664))  
Amicus Curiae Letter in Support of Petition for Review**

Dear Chief Justice Cantil-Sakauye and Associate Justices of the Supreme Court:

The Youth Law Center urges the Court to grant the Petition for Review filed by the minor T. S. in the above-referenced case. Review of this case is merited because it raises important questions of law central to the equitable treatment of young people in the juvenile court system.

This letter is submitted under the authority of the California Rules of Court, rule 8.500, subdivision (g). Counsel for the minor is aware of our interest in this case.

## **I. Amicus Curiae Youth Law Center's Interest in Review**

The Youth Law Center is a San Francisco-based national non-profit, public interest law firm that works to protect the rights of children at risk of or involved in the juvenile justice and child welfare systems. Since 1978, Youth Law Center attorneys have represented the interests of young people in California and more than two dozen other states across the country. Our staff has long been involved in public discussions, legislation, and court challenges involving the treatment of minors in the juvenile court system. Our advocacy is informed by social science research, including such diverse fields as psychology, child and adolescent development, neuroscience, sociology, cultural anthropology, and behavioral economics. Our mission is to transform the child welfare and juvenile justice systems so that all youth impacted by those systems have the opportunity to thrive.

The Youth Law Center is interested in this case because it raises fundamental issues of procedural fairness, equity, and the purpose of

juvenile court intervention. The resolution of the issues presented in the Petition for Review will have important implications not only for the minor, but for other youth in the juvenile court system.

## **II. Support for Review**

For purposes of this letter, we adopt the statements of the case and facts in the Petition for Review.

The questions presented in the Petition for Review require the court's attention to settle important questions of law. The ruling of the Court of Appeal upheld the juvenile court's decision to adjudicate the minor on a robbery charge without sufficient evidence, affirmed the juvenile court judge's decision to consider the minor's rap lyrics at disposition, and rejected the minor's claim of ineffective assistance of counsel. The appellate court denied the minor procedural safeguards required by law and failed to hold the juvenile court accountable for providing procedural fairness and equitable administration of justice consistent with the purposes of the juvenile court.

The transformation of a seemingly minor case of typical adolescent misbehavior, the taking of a PlayStation 4 from another youth's home to settle a disputed debt, into a full-blown prosecution, adjudication, and disposition on serious and violent charges will be complete if the errors of the juvenile and appellate courts are allowed to stand. Although the minor did not injure anyone or permanently deprive the victim of his property, the juvenile court petition alleged a series of violent and serious offenses: robbery, home invasion robbery, burglary, assault with a deadly weapon, assault by means likely to produce great bodily injury, and dissuading a witness. The juvenile court at adjudication found only two counts true, burglary and robbery, and nonetheless imposed a disposition of incarceration of more than one year in a county juvenile facility for the minor who had no previous delinquency court contact or prior history of violence. After the juvenile court ruled the minor's rap lyrics inadmissible at jurisdiction, minor's counsel did not object to admission at disposition and did not call the expert witness on the lyrics he planned to use at jurisdiction. The juvenile court relied on the rap lyrics to find that the minor had an "extremely dark side" and a passion for violence, resulting in a disposition that was neither in the best interest of the minor nor consistent with public safety.

Procedural safeguards afforded minors in juvenile court are designed to ensure a fair justice process. State and federal law provides minors in juvenile court access to counsel, formal trials, evidentiary standards, effective assistance of counsel, and other procedural protections. These safeguards are particularly important in a juvenile justice system where the purpose of intervention is to provide minors care, treatment, and guidance, consistent with rehabilitative objectives, appropriate for their circumstances and

in conformity with public safety. Welfare & Institutions Code §202(b). When juvenile court decision making is unguided and unchecked, young people, like the minor in this case, end up criminalized for typical adolescent misbehavior and subjected to system interventions that are contrary to the purposes of juvenile court intervention.

The dangers of juvenile court processing unconstrained by procedural safeguards and appellate review are significant and well documented. *In re Gault*, 87 S.Ct. 1428 (1967), the landmark decision overturning a 15-year old's disposition of 6 years of incarceration in the state training school for prank phone calls, extended due process protections to minors in juvenile delinquency proceedings. The Court noted that the traditional ideas of juvenile court procedure contemplated that time and care would be used to establish "precisely what the juvenile did and why he did it—was it a prank of adolescence or a brutal act threatening serious consequences to himself or society unless corrected". *Id.* at 1444. Juvenile courts have evolved since *Gault*, but the need for constraints on juvenile court decision making are always present in a system characterized by individualized treatment and best interest. One commentator describes the dangers of unguided and unchecked court decision making that are inherent in the juvenile court's dual quest to ensure due process and the purposes of juvenile court intervention:

The idea of treatment necessarily entails individual differentiation, indeterminacy, a rejection of proportionality, and a disregard of normative valuations of the seriousness of behavior. But, if judges possess neither practical scientific bases by which to classify youths for treatment nor demonstrably effective programs to prescribe for them, then the exercise of "sound discretion" simply constitutes a euphemism for idiosyncratic judicial subjectivity. Racial, gender, geographic, and socio-economic disparities constitute almost inevitable corollaries of a treatment ideology that lacks a scientific foundation. At the least, judges will sentence youths differently based on extraneous personal characteristics for which they bear no responsibility. At the worst, judges will impose haphazard, unequal, and discriminatory punishment on similarly situated offenders without effective procedural or appellate checks.<sup>1</sup>

Procedural safeguards are also imperative in juvenile court where minors do not have the right to a jury that can inject community values into the law, protect against bias, and provide accountability for a system insulated in confidentiality and closed door proceedings. The appellate process is one of the few avenues youth in the system have to ensure procedural justice and equitable treatment in the juvenile court system.

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<sup>1</sup> Feld, B., *Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy* (1991), *Journal of Criminal Law and Criminology*, 88 JCRLC 68: pgs. 95-96

Each of the questions presented for review raises issues of important procedural safeguards that were denied to the minor in this case and have significant implications for procedural fairness and equity for youth in California's juvenile justice system. The Court of Appeal upheld the juvenile court's decision to stretch the incident into a robbery without sufficient evidence where the burglary adjudication already covered the conduct; affirmed the use at disposition of the minor's rap lyrics (created for school writing credit in juvenile hall while awaiting adjudication); and rejected the minor's claim of ineffective assistance of counsel, although it found that counsel's failure to object to the admission of the rap lyrics at disposition forfeited the appellate claim regarding use of the lyrics. These errors enabled the transformation of this case from an opportunity for proportionate interventions to an unjust process without the required safeguards that resulted in a retributive punishment of incarceration in an unsafe juvenile facility. The Youth Law Center supports the Petition for Review that lays out these questions, the implications for the minor and the system, as well as the necessity for review.

We also urge the court to review the issues of whether rap lyrics are a form of artistic expression and not admissible as evidence of the author's truth or character as these issues raise important questions of law that impact the equitable administration of justice. Current juvenile case law provides little guidance and if this issue is not addressed, juvenile courts will continue to use rap lyrics as confessions of facts or evidence of a minor's character. The Petition for Review sets forth the litany of reasons why rap lyrics should be afforded the same First Amendment protections as other forms of artistic expression, and should not have been admissible at disposition in this case. Review will provide the opportunity to consider evidence on rap as an art form, the research on adolescent development that contextualizes young people's behavior, including the writing of rap lyrics, and the disparate impact the consideration of rap lyrics in justice proceedings has on youth of color.

If review is granted, the Youth Law Center will seek leave to file an *amicus* brief that fully discusses the questions for review.

For the above reasons, we urge you to grant review. Thank you for your consideration.

Sincerely,



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