ADVANCE SHEET HEADNOTE
June 2, 2025

2025 CO 34

No. 25SA78, *In the Interest of R.M.P.*—Dependency and Neglect—Dependency and Neglect Proceedings and Procedure—Standing—Parens Patriae—Non-State Parties in Dependency and Neglect Proceedings—Counsel for Youth—Guardian ad Litem—*People in Int. of R.E.*, 729 P.2d 1032 (Colo. App. 1986).

The supreme court reaffirms that the State, through its *parens patriae* authority, is the exclusive party that may prosecute dependency and neglect petitions. *C.W.B., Jr. v. A.S.*, 2018 CO 8, ¶ 22, 410 P.3d 438, 444 (citing *McCall v. Dist. Ct.*, 651 P.2d 392, 394 (Colo. 1982)). Thus, the supreme court holds that a child may not, either through a guardian ad litem or a counsel for youth, prosecute a dependency and neglect petition against the child's parent when the State has determined that the petition should be dismissed. In reaching this conclusion, the supreme court overrules *People in Interest of R.E.*, 729 P.2d 1032 (Colo. App. 1986). Because the juvenile court in this case denied the State's motion to dismiss and allowed a counsel for youth to prosecute the dependency and neglect petition, the supreme court makes the order to show cause absolute and remands the case with instructions to dismiss the petition.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 34

Supreme Court Case No. 25SA78
Original Proceeding Pursuant to C.A.R. 21
Denver District Juvenile Court Case No. 24JV30793
Honorable Laurie Clark, Judge

In Re
Petitioner:

The People of the State of Colorado,

In the Interest of Minor Child:

R.M.P.,

and Concerning

Respondent:

R.P.

Order Made Absolute
en banc
June 2, 2025

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CHIEF JUSTICE MÁRQUEZ delivered the Opinion of the Court, in which **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.
JUSTICE GABRIEL dissented.

CHIEF JUSTICE MÁRQUEZ delivered the Opinion of the Court.

¶1 In *McCall v. District Court*, 651 P.2d 392, 394 (Colo. 1982), we held that the State of Colorado ("State") is the "exclusive party" entitled to bring dependency and neglect proceedings. Four years later, a division of the court of appeals carved out a narrow exception to that rule, holding that once the State has filed a dependency and neglect petition, a child, through a guardian ad litem, may pursue a determination of the petition's merits—even if the State wishes to dismiss the case. *People in Int. of R.E.*, 729 P.2d 1032, 1034 (Colo. App. 1986).

¶2 Here, the State moved to dismiss its petition in dependency and neglect against R.P. ("father"), but father's child, R.M.P., opposed the motion and asked that this case proceed to an adjudication of the merits. In contrast with the child in *R.E.*, R.M.P. is represented by a "counsel for youth," a new form of representation under section 19-3-203, C.R.S. (2024), for children aged twelve years or older. Unlike a guardian ad litem, who represents the child's best interests, a counsel for youth represents the child in the same manner as an attorney directly representing a client. *See* § 19-3-203(5)–(6).

¶3 This case presents the issue of whether a child, through their counsel for youth, may prosecute[1] a dependency and neglect petition against their own parent when the State has determined that the petition should be dismissed. Underpinning this issue is whether our holding in *McCall* was properly circumscribed by the court of appeals' decision in *R.E.*, and whether *any* non-state party may prosecute a dependency and neglect petition when the State has determined that doing so would not be a valid exercise of its *parens patriae* authority.

¶4 Consistent with our holding in *McCall*, we conclude that the State, in its role as *parens patriae*, is the sole party that may prosecute dependency and neglect proceedings. Nothing in the Children's Code gives a guardian ad litem or a counsel for youth authority to prosecute a dependency and neglect petition. We therefore overrule *R.E.* to the extent it is inconsistent with this opinion.

¶5 Because only the State has standing to prosecute a dependency and neglect petition, R.M.P. may not prosecute the petition in dependency and neglect when the State has determined that the petition should be dismissed. We therefore make the order to show cause absolute.

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[1] A dependency and neglect proceeding is civil, not criminal, in nature. We nonetheless adhere to the parties' and amici's use of the generic term "prosecute" in their briefing to mean to "institute" or to "pursue" the legal proceeding.

I. Facts and Procedural History

¶6 In September 2024, Denver Human Services (the "Department") filed a verified petition in the Denver Juvenile Court alleging that thirteen-year-old R.M.P. and his nine-year-old sister were dependent or neglected. The petition alleged, among other things, that father physically assaulted R.M.P., had unsecured firearms and fentanyl pills in the house, and locked R.M.P. on a balcony and poured water on his head. The juvenile court issued a temporary placement order putting the children in foster care and setting a trial for adjudication. It also appointed a counsel for youth for R.M.P., and a guardian ad litem for his sister.

¶7 In February 2025, the Department moved to dismiss the petition against father.[2] After investigating, the Department had determined that R.M.P.'s allegations were false; father did not have unsecured firearms or fentanyl pills in the house. Further, the allegations of physical abuse stemmed from an incident in which father was trying to retrieve R.M.P., who was refusing to go with father by holding onto a telephone pole. The Department asserted that father's actions were "consistent with reasonable parental discipline under the circumstances." It further noted that father was "trying to bring [R.M.P.] home to a safe and loving

[2] In the meantime, R.M.P.'s sister had been successfully reunited with father in November 2024. The guardian ad litem for R.M.P.'s sister agreed it was in the child's best interest to be dismissed from the case and returned to father's custody.

environment with appropriate measures" to address R.M.P.'s supervision and mental health needs.

¶8 The Department's motion to dismiss also mentioned that R.M.P.'s disruptive behavior had escalated while he was in foster care. Since the temporary placement order, R.M.P. had been moved between three different foster homes due to behavioral issues. He was refusing to attend school; causing problems with other foster children; using a THC pen and smoking; masturbating in common areas of the foster homes; and running away from foster placements, including one night when he slept in a tent with an adult, unhoused man. He had also been arrested for making violent threats at school, leading to pending charges in a separate juvenile delinquency action, 25JD124, in Adams County ("Adams County case"). The Department concluded that "it is clear that the Court and Department['s] involvement is detrimental to [R.M.P.] and his relationship to his father."

¶9 The Department therefore requested that the matter be dismissed and R.M.P. be returned to father's custody because it had no ongoing safety concerns and father had provided a "real plan" to manage R.M.P.'s behaviors. It reasoned that there was insufficient evidence to adjudicate R.M.P. as dependent or neglected; rather, "the evidence largely shows a father trying to manage his son's [behavior] reasonably well given the circumstances."

¶10 R.M.P., through his counsel for youth, objected to the dismissal. He asserted that he was dependent or neglected in father's care and would run away if he was returned to father's custody. Instead of dismissing the petition, R.M.P. asked the juvenile court to either (1) grant summary judgment in his favor, declaring him to be dependent or neglected; (2) proceed to a jury trial adjudicating the merits; or (3) hold a hearing to prove that the petition was supported by credible evidence.

¶11 The juvenile court chose the third option. Relying on *R.E.*, the court held a hearing to determine whether the petition should move forward despite the Department's motion to dismiss. Noting that *R.E.* gave no guidance on how such a hearing should be conducted, the court analogized the case to a criminal preliminary hearing to determine probable cause and heard offers of proof from the counsel for youth and father as to the allegations in the petition to determine "whether there [was] credible evidence to move forward." The court did not take testimony or allow cross-examination and did not allow the Department to present any offer of proof. At the conclusion of the hearing, the juvenile court found that there was sufficient evidence supporting the petition to move forward to trial on the adjudication of R.M.P. as dependent or neglected.

¶12 Father, supported by the Department, sought relief from this court under C.A.R. 21, asserting that R.M.P., through his counsel for youth, cannot prosecute

the petition in dependency and neglect over the State's motion to dismiss. We issued an order to show cause.

II. Original Jurisdiction

¶13 The decision to exercise our original jurisdiction pursuant to C.A.R. 21 is within our sole discretion. C.A.R. 21(a)(2). Relief under this rule "is extraordinary in nature" and "will be granted only when no other adequate remedy is available, including relief available by appeal." *Id.*

¶14 As father and the Department point out, R.M.P.'s situation is time-sensitive, and the longer he remains out of father's custody, the more likely his behavioral issues will continue to escalate. This concern is compounded by the fact that R.M.P. is currently in juvenile custody in the Adams County case. According to a recent motion filed by R.M.P. below, R.M.P. seeks to be placed temporarily with his psychological grandfather, Pop Pop, whose primary residence is in Virginia.[3] Father has "vehement objections" to this proposed placement and questions whether the Denver Juvenile Court has authority to make placement decisions for

[3] In response to R.M.P.'s motion, the juvenile court set a placement hearing for June 2, 2025. Father filed an emergency motion in this court, arguing that setting this hearing violated our order staying proceedings, which issued when we ordered the parties to show cause. Father's emergency motion asked us to vacate all upcoming hearings in the juvenile court and to stay all motion deadlines. We granted father's motion, indicating that we anticipated issuing this opinion by June 2.

R.M.P., given the pendency of the Adams County case. In any event, because this case concerns whether R.M.P. should be adjudicated dependent or neglected as to father, and because over twenty-five foster placements have declined to take R.M.P., he remains in custody without any immediate placement options. We therefore share father's concern that resolution of the legal issue before us is both urgent and consequential. Given the length of time it may take the juvenile court to conduct a trial and for father to appeal, the ordinary appellate process does not provide an adequate remedy under the circumstances here.

¶15 Moreover, because the counsel for youth position is a new form of representation with little guiding precedent in Colorado, whether a child, through their counsel for youth, may prosecute a dependency and neglect petition against their own parent when the State has determined that the petition should be dismissed is "an issue of first impression that is of significant public importance." *People v. Subjack*, 2021 CO 10, ¶ 13, 480 P.3d 114, 117. And, because this issue has arisen in the past, albeit in the guardian ad litem context, we conclude it is "likely to recur." *People v. Tafoya*, 2019 CO 13, ¶ 15, 434 P.3d 1193, 1195.

¶16 We therefore exercise our jurisdiction under C.A.R. 21.

III. Preservation and Standard of Review

¶17 R.M.P. and the juvenile court assert that neither father nor the Department preserved the issue of whether a non-state party may prosecute a dependency and

neglect petition over the State's objection, and thus the issue is waived. Father agrees that the issue is unpreserved, but he asks us to review the issue to avoid a miscarriage of justice. *See People in Int. of M.B.*, 2020 COA 13, ¶ 20, 459 P.3d 766, 770.

¶18 We conclude that whether a non-state party can prosecute a dependency and neglect petition ultimately presents an issue of standing, which implicates the juvenile court's jurisdiction to proceed and thus may be raised at any time. *See C.W.B., Jr. v. A.S.*, 2018 CO 8, ¶ 16, 410 P.3d 438, 442 ("Standing is a jurisdictional prerequisite that may be raised at any stage of the proceeding."). We therefore review this issue de novo. *Id.*

IV. Only the State May Prosecute Dependency and Neglect Proceedings

¶19 For over forty years, this court has consistently held that "[t]he State is the exclusive party entitled to bring an action in dependency and neglect." *Id.* at ¶ 22, 410 P.3d at 444 (citing *McCall*, 651 P.2d at 394); *see also L.G. v. People*, 890 P.2d 647, 654 (Colo. 1995) (same); *A.M. v. A.C.*, 2013 CO 16, ¶ 12, 296 P.3d 1026, 1030 (same); *People in Int. of L.M.*, 2018 CO 34, ¶ 21, 416 P.3d 875, 880 ("Notably, only the State may file . . . a [dependency and neglect] petition."). This is because "[t]he [S]tate's interest in juvenile proceedings stems from its role as *parens patriae*." *McCall*, 651 P.2d at 394.

¶20 "*Parens patriae* means literally 'parent of the country.'" *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 600 (1982). It has been defined as the "doctrine by which a government has standing to prosecute a lawsuit on behalf of a citizen, [especially] on behalf of someone who is under a legal disability to prosecute the suit." *Parens Patriae*, Black's Law Dictionary (12th ed. 2024). Under this longstanding doctrine, it is the State's "unquestioned right and imperative duty . . . to protect and provide for the comfort and well-being of such of its citizens [who], by reason of infancy . . . are unable to take care of themselves." *In re House*, 46 P. 117, 118 (Colo. 1896) (quoting *McLean Cnty. v. Humphreys*, 104 Ill. 378, 383 (1882)). Accordingly, "[t]he provisions of [a]rticle 3 of the Children's Code are structured to allow the State, under its *parens patriae* authority, to intervene into the familial relationship where necessary to protect the welfare of children." *C.W.B., Jr.*, ¶ 22, 410 P.3d at 443; *see also L.G.*, 890 P.2d at 654 ("Under the Children's Code, the State of Colorado acts as *parens patriae*—sovereign guardian—to safeguard the interests of vulnerable children within the state.").

¶21 The Children's Code establishes the procedures for dependency and neglect proceedings. If a child is reported as abused or neglected to a county department of human services or local law enforcement agency, that body must notify the juvenile court of the report. *C.W.B., Jr.*, ¶ 22, 410 P.3d at 444; § 19-3-312(1), C.R.S. (2024). The juvenile court may then, after investigation, authorize the filing of a

dependency and neglect petition. *C.W.B., Jr.*, ¶ 22, 410 P.3d at 444; § 19-3-312(1). "[T]he People of the State of Colorado, through the relevant county department of human services, may file a petition in dependency and neglect" under section 19-3-502, C.R.S. (2024). *C.W.B., Jr.*, ¶ 22, 410 P.3d at 444. At an adjudicatory hearing, "the State must prove the allegations in the petition by a preponderance of the evidence, and if the State has done so, the court will sustain the petition and adjudicate the children as dependent or neglected." *Id.*; *see also* § 19-3-505(7), C.R.S. (2024).

¶22 The Children's Code does not authorize non-state parties to file dependency and neglect petitions. *C.W.B., Jr.*, ¶ 22, 410 P.3d at 444 (citing *McCall*, 651 P.2d at 394). Nothing in the Children's Code confers on a child, either through a guardian ad litem or a counsel for youth, a right to initiate or prosecute a dependency and neglect petition against the child's parents. *See* §§ 19-3-203, -312(1), -501, -502, -505.

¶23 Although dependency and neglect proceedings are initiated with the child's best interest in mind, it is the State, as *parens patriae*, that has the legal interest in determining whether a child should be adjudicated dependent or neglected. *See C.W.B., Jr.*, ¶ 22, 410 P.3d at 444 (citing *McCall*, 651 P.2d at 394). Ordinarily, the State has no basis to intervene in the parent-child relationship:

> So long as a parent adequately cares for his or her children, (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that

> parent to make the best decisions concerning the rearing of that parent's children.

Troxel v. Granville, 530 U.S. 57, 68–69 (2000). However, where a parent is unwilling or unable to adequately care for a child, the government has the power to intrude on the family relationship, including the parents' constitutionally grounded right to raise their children as they deem appropriate. Ultimately, dependency and neglect proceedings ask whether the State should exercise its authority to intervene in that relationship and take custody of a child:

> [I]n a dependency proceeding . . . the question to be resolved is . . . whether or not the existing custody and surroundings of the child are such that it is the duty of the state, as *parens patriae*, to take over [the child's] custody and make [the child] a ward of the state.

Everett v. Barry, 252 P.2d 826, 829 (Colo. 1953).

¶24 In sum, the Children's Code and the *parens patriae* doctrine make clear that the State is the exclusive party to prosecute dependency and neglect proceedings. While C.R.C.P. 17(a) allows for an action to "be brought in the name of the [P]eople of the [S]tate of Colorado" by a non-state party, this is only "when a statute so provides." But nothing in the Children's Code allows a child to prosecute a dependency and neglect petition in the name of the People. Nor does anything in the Colorado Rules of Juvenile Procedure allow a non-state party to prosecute or substitute for the State in a dependency and neglect action. *See* C.R.J.P. 1 (specifying that the Colorado Rules of Civil Procedure apply when the rules of

juvenile procedure do not govern). Indeed, to allow a child (or another non-state party, such as a family member or foster parent) to prosecute dependency and neglect actions risks transforming the government's *parens patriae* authority to protect children into a weaponized family court system.

¶25 Here, the juvenile court, by allowing R.M.P. to prosecute the dependency and neglect petition when the Department had determined that doing so would not be a valid exercise of its *parens patriae* authority, ran afoul of this court's longstanding case law. *See McCall*, 651 P.2d at 394; *L.G.*, 890 P.2d at 654; *A.M.*, ¶ 12, 296 P.3d at 1030; *L.M.*, ¶ 21, 416 P.3d at 880.

¶26 To be fair, the juvenile court relied on the court of appeals' 1986 decision in *R.E.*, which allowed a guardian ad litem to prosecute a dependency and neglect petition dismissed by the State. However, this court is not bound by *R.E.*, and we are unpersuaded by its reasoning.

¶27 In *R.E.*, the mother of a minor child filed a dissolution of marriage petition in district court. 729 P.2d at 1033. The county attorney then filed a dependency and neglect petition concerning the child, and the case went to a juvenile commissioner. *Id.* Ultimately, the county attorney moved to dismiss the petition in dependency and neglect because "all matters concerning the child could be handled in the pending dissolution action." *Id.* The guardian ad litem objected and argued that she could assume the role of the county attorney and prosecute

the dependency and neglect petition. *Id.* The juvenile commission disagreed and dismissed the case. *Id.* On appeal, a division of the court of appeals reversed. *Id.*

¶28 The division acknowledged that, under *McCall*, the State is the exclusive party that may file a dependency and neglect petition. *Id.* at 1033–34. It nevertheless concluded—without citation to authority—that "[b]ecause the [S]tate has made such allegations about the child's status, the child, through the guardian ad litem, is entitled to a determination of the merits, and the petition may not be dismissed over the objection of the guardian ad litem."[4] *Id.* at 1034.

¶29 We disagree with this reasoning. Although the State must generally allege credible evidence to file a dependency and neglect petition, *see C.W.B., Jr.*, ¶ 22, 410 P.3d at 444 (citing §§ 19-3-312(1), -501, -502), the State's decision to initiate a petition does not confer standing on non-state parties, *see id.* at ¶ 18, 410 P.3d at 443. The *parens patriae* doctrine that underlies the State's limited authority to

[4] Notably, the division also reasoned that it was unclear from the record what the State meant when it requested dismissal on the grounds that "all matters concerning the child could be handled in the domestic action." *R.E.*, 729 P.2d at 1034. The division observed that a district court in a dissolution of marriage action lacks jurisdiction to declare a child dependent or neglected, meaning that the dependency and neglect petition could not be resolved in the dissolution proceedings. *Id.* Alternatively, the division noted, if the real issue was a dispute between the parents over custody, such a dispute could be resolved in the dissolution proceedings. *Id.* The division thus remanded and directed the district court to "clarify what matters need[ed] to be resolved" and whether jurisdiction was proper in the juvenile court or district court. *Id.*

intervene in familial relationships only when necessary to protect the welfare of children means that the State alone has authority to prosecute a dependency and neglect petition. We therefore conclude that the exception carved out by the court of appeals in *R.E.* is inconsistent with the reasoning in *McCall* and its progeny. Accordingly, we overrule *R.E.* to the extent it is inconsistent with this opinion.

¶30 We also reject R.M.P.'s argument that a child, through his counsel for youth or guardian ad litem, is "best postured to proceed with [the] prosecution of the petition" when the State has moved to dismiss the petition. Allowing a child (or any non-state party) to override the State's determination that a petition should be dismissed would be analogous to allowing the victim of a crime to prevent the district attorney from dismissing a criminal case. Colorado law does not confer such a right. *See* § 24-4.1-302.5(1), C.R.S. (2024).

¶31 Indeed, this case presents an issue analogous to one that has arisen in the criminal context; namely, whether a trial court errs by refusing to grant the State's motion to dismiss charges against a defendant. *See, e.g.*, *People v. Storlie*, 2014 CO 47, ¶ 1, 327 P.3d 243, 244. This court has noted that "[a]t common law, prosecutors had the unilateral authority to dismiss criminal charges." *Id.* at ¶ 9, 327 P.3d at 246. Although "[t]his unrestricted authority was limited by the enactment of Crim. P. 48, which requires prosecutors to obtain 'the court's consent and approval' prior to dismissal of the charges," we have "narrowly defined the

circumstances under which the trial court's discretion to deny a dismissal motion may be exercised." *Id.* at ¶¶ 9–10, 327 P.3d at 246; *see also* § 16-5-209, C.R.S. (2024) (granting the court the authority to compel prosecution if the dismissal of charges was "arbitrary or capricious and without reasonable excuse").

¶32 No provisions analogous to Crim. P. 48 or section 16-5-209 exist in the dependency and neglect context. Even if there were such provisions, the Department's motion to dismiss here could not be construed as arbitrary or capricious and without reasonable excuse. *Cf.* § 16-5-209. The Department's motion asserted that (1) the petition was founded, in part, on false statements from R.M.P.; (2) the Department had no ongoing safety concerns; (3) father had been working with the Department to develop plans to address R.M.P.'s behavior, which had escalated dramatically while he was in foster care; and (4) R.M.P.'s sister, who was represented by a guardian ad litem, had been successfully reunited with father. We therefore conclude that the juvenile court should have granted the Department's motion to dismiss the petition in dependency and neglect.

V. Conclusion

¶33 We reiterate today that "[t]he State is the exclusive party entitled to bring an action in dependency and neglect." *C.W.B., Jr.*, ¶ 22, 410 P.3d at 444 (citing *McCall*, 651 P.2d at 394). Under the *parens patriae* doctrine and the Children's Code, the State is the sole party with standing to prosecute dependency and neglect

proceedings. Accordingly, R.M.P. may not prosecute the dependency and neglect petition over the State's motion to dismiss.

¶34 We therefore make the order to show cause absolute and remand the case to the juvenile court with instructions to dismiss the petition.

JUSTICE GABRIEL dissented.

JUSTICE GABRIEL, dissenting.

¶35 The majority perceives the issue presented in this case to be whether a counsel for youth ("CFY") may "prosecute" a dependency and neglect petition over the State's objection. Maj. op. ¶ 3. With respect, I see the issue completely differently. This case arose because the juvenile court declined to grant the Department of Human Services's motion to dismiss its dependency and neglect petition and ordered, instead, that the matter proceed to a full adjudicatory hearing. Accordingly, in my view, the question presented is whether the Department may unilaterally dismiss a dependency and neglect petition for any or no reason and without any oversight by the juvenile court or anyone else.

¶36 In ruling as it does today, the majority effectively concludes that when the Department wishes to dismiss a dependency and neglect petition that it filed, the juvenile court has no discretion to reject the Department's motion to dismiss, and the Department's unilateral determination as to the merits of its petition is final and unassailable by the court or any other party. This is because, in the majority's view, if the Department decides that its evidence is insufficient, then the Department may choose to dismiss the petition; no other party is entitled to introduce contrary evidence because that would be "prosecuting" that petition; and the juvenile court has no authority to conclude, contrary to the Department's position, that sufficient evidence, in fact, exists. The majority reaches this

conclusion by relying predominantly on *McCall v. District Court*, 651 P.2d 392, 394 (Colo. 1982), in which we observed that the State is the exclusive party to file a dependency and neglect proceeding, and by overruling the division's opinion in *People in Interest of R.E.*, 729 P.2d 1032 (Colo. App. 1986), which has been on the books and has operated effectively to protect the rights of children for almost four decades, Maj. op. ¶¶ 1, 4, 19–29.

¶37 Because I believe that (1) the majority's conclusion is inconsistent with the text and purposes of the Colorado Children's Code and is contrary to the legislature's intent in establishing the CFY role; (2) the majority overrules without legitimate reason longstanding precedent that has well served the interests of children in this state for almost four decades; and (3) the procedure employed by the juvenile court here was consistent with the text and purposes of the Code, I would discharge our order to show cause. Accordingly, I respectfully dissent.

I. Facts and Procedural History

¶38 The facts that are relevant to my analysis are undisputed.

¶39 Respondent father R.P. ("Father") has two children, R.M.P. and C.P., who were thirteen and nine years old, respectively, at the time the present C.A.R. 21 petition was filed (C.P. is no longer involved in this case). The Department removed the children from Father based on concerns regarding alleged physical abuse, lack of supervision, and an injurious environment. Additionally, there

were allegations of weapons and substance use in the home, as well as fears of retaliation by Father against R.M.P. And it had been reported that Father had poured water on R.M.P. and forced him to stay on the porch of the family home for a period of time.

¶40 Based on these allegations, the Department filed a dependency and neglect petition, and the juvenile court placed the children in foster care and appointed a CFY for R.M.P. Thereafter, R.M.P.'s behavior appears to have deteriorated dramatically, and the evidence reveals concerns that R.M.P. is at risk of human trafficking, gang affiliation, and drug distribution.

¶41 One business day before the adjudicatory hearing was to take place, the Department moved to dismiss the petition, contending that there was insufficient evidence to support an adjudication. R.M.P. objected to the dismissal, citing fear of Father, concerns of retaliation, an intent to run away, and a desire to be placed with a different family member.

¶42 In accordance with *R.E.*, 729 P.2d at 1034, the juvenile court convened a hearing on the Department's motion. Notably, at the outset of this hearing, the Department agreed that R.M.P. was entitled to a hearing on the sufficiency of the evidence, separate from the adjudicatory hearing, and it conceded that R.M.P. could prosecute the petition in the event sufficient evidence existed, although in its briefing before us, it has now taken the opposite positions. Father joined the

Department's motion to dismiss but indicated that he was prepared to continue to a jury trial or hearing under *R.E.* if necessary. Father did not take a position on whether R.M.P. could prosecute the petition if the Department chose not to do so.

¶43 The court then heard offers of proof from the CFY and from Father regarding the petition's allegations. The purpose of this procedure was to determine whether, notwithstanding the Department's position, sufficient evidence existed to support the petition and, therefore, to move to a full adjudicatory hearing.

¶44 The court ultimately ruled that several allegations of the petition supported a possible adjudication, and the court thus reset the adjudicatory hearing.

¶45 Father then filed a C.A.R. 21 petition asking us to enter an order to show cause, and we did so.

II. Analysis

¶46 I begin by addressing the pertinent provisions of the Children's Code, noting the significant role that the legislature has reserved to the courts in overseeing dependency and neglect proceedings and explaining why I believe the majority's opinion erroneously undermines the juvenile court's authority in such matters. Next, I discuss why I believe the majority erred in overruling *R.E.* Lastly, I explain why the majority's opinion is contrary to the legislature's intent in establishing the CFY position.

A. The Children's Code

¶47 The purposes of the Children's Code include, among other things, (1) securing for every child subject to the Code "such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society"; and (2) removing a child from the custody of the child's parents "only when his welfare and safety or the protection of the public would otherwise be endangered and, in either instance, for the courts to proceed with all possible speed to a legal determination that will serve the best interests of the child." § 19-1-102(1)(a), (c), C.R.S. (2024).

¶48 To these ends, the Code mandates substantial judicial oversight in dependency and neglect matters.

¶49 For example, when a law enforcement officer or another person believes that a child is within the court's jurisdiction, the officer or other person may refer the matter to the court, and *the court*, through the probation department, county department of human or social services, or any other agency designated by the court, must make a preliminary investigation to determine whether the child's or the community's interests require that further action be taken. § 19-3-501(1), C.R.S. (2024). Based on this investigation, *the court* may decide that no further action is required, or it may authorize a petition to be filed. § 19-3-501(1)(a)–(b).

¶50 Similarly, upon receipt of a report from a law enforcement agency or a person with statutory obligations to make such reports indicating that a child has suffered abuse and that the child's best interests require that the child be protected from the risk of further abuse, *the court* may order the filing of a petition. § 19-3-501(2)(a). And upon receipt of such a report from any other person, *the court*, after conducting a reasonable investigation, may order the filing of a petition. § 19-3-501(2)(b).

¶51 These provisions make clear that the court has substantial oversight regarding the filing of a dependency and neglect petition.

¶52 But the court's authority does not end there. Section 19-3-505, C.R.S. (2024), of the Code provides for substantial judicial oversight in the context of the adjudicatory hearing itself. Thus, at that hearing, the court must consider whether the petition's allegations are supported by a preponderance of the evidence. § 19-3-505(1). In addition, the court is statutorily required to hold the adjudicatory hearing "at the earliest possible time," with relatively limited grounds to delay the hearing. § 19-3-505(3). And the court is statutorily authorized to order that a petition be amended to conform to the evidence if the evidence presented at the hearing discloses facts not alleged in the petition. § 19-3-505(4)(a)–(b).

¶53 In short, the Children's Code vests the juvenile court with substantial discretion to direct dependency and neglect proceedings before it, *People in Int. of*

G.S., 820 P.2d 1178, 1181 (Colo. App. 1991), and I perceive nothing in the Code, and the majority cites nothing, that authorizes the Department to exercise unilateral control over a dependency and neglect petition once that petition is filed (or to preclude a court from disagreeing with the Department's determination as to whether sufficient evidence exists to support an adjudication).

¶54 To the contrary, allowing the Department to exercise such unfettered control undermines the authority that the Code gives the juvenile court to direct the filing of dependency and neglect petitions and to control such proceedings. By way of example, although subsections 19-3-501(1)(b) and (2) authorize the court to order the filing of a petition, under the majority's view, the Department can render the court's authority toothless because the Department can simply dismiss a petition after complying with the court's order to file it.

¶55 The majority's view is also contrary to section 19-3-502(4.5), C.R.S. (2024), which provides, "A child named in the petition shall be a party to the proceedings and have the right to attend and fully participate in all hearings related to the child's case." As parties to the proceedings, a child and a youth (i.e., a child over the age of twelve) have the right to be heard. The majority today, however, substantially undermines children's and youth's voices by giving unfettered authority to the Department to dismiss a case, over the child's or youth's objection,

for any or no reason. Again, I perceive such a ruling to be directly contrary to the terms and purposes of the Children's Code.

¶56 In light of the foregoing, unlike the majority, I believe that the juvenile court in this case addressed the Department's motion to dismiss in a manner fully consistent with the Code. The court properly did not allow the Department to dismiss the case unilaterally. Rather, the court recognized its substantial obligation to provide oversight and convened a hearing to determine whether dismissal was appropriate, allowing R.M.P., as a party to this case, to be fully heard. Then, after determining that the evidence, in fact, supported a potential adjudication, the court reset the matter for a full hearing. In my view, this procedure was true to the text and purposes of the Code, and although we have not yet opined on this issue, other jurisdictions that have done so have agreed with my analysis. *See, e.g.*, *In re J.J.Z.*, 630 A.2d 186, 196 (D.C. 1993) (concluding that, when the State moves to dismiss a child neglect proceeding, the court must conduct a sufficient inquiry to determine whether dismissal is in the child's best interests, and noting that the court is not precluded from hearing evidence on this issue to allow the court to discharge its responsibility); *In re J.J.*, 566 N.E.2d 1345, 1349–50 (Ill. 1991) (holding that when the State moves to dismiss a petition alleging abuse of a minor, the court must consider the merits of the motion and determine, on the record, whether dismissal is in the best interests of the minor, the minor's

family, and the community, rejecting the State's argument that it had an absolute right to a voluntary dismissal); *In re Ro.B*, No. 23A-JC-2149, 2024 WL 358228, at *3–*4 (Ind. Ct. App. Jan. 31, 2024) (unpublished table decision) (rejecting the State's contention that the trial court had no discretion to deny the State's motion to dismiss a children-in-need-of-services case, and concluding that the court has discretion to deny such a motion if dismissal is not in the child's best interests); *In re Najasha B.*, 972 A.2d 845, 856 (Md. 2009) (concluding that the department of social services does not have the unilateral right to withdraw a child-in-need-of-assistance petition when the child objects and that, in such circumstances, the child is entitled to an adjudication to ensure that the child is receiving proper care and attention).

¶57 In reaching this conclusion, I disagree with the majority's assertion that allowing a child, youth, or other non-state party to object to the Department's unilateral decision to dismiss a dependency and neglect petition would be analogous to allowing a crime victim to prevent a prosecutor from dismissing a criminal case. Maj. op. ¶¶ 30–31. Notwithstanding the majority's assumption to the contrary, the Department in a dependency and neglect case is not like a prosecutor in a criminal case. It is well settled that under our constitution's separation of powers principle, prosecutors have substantial discretion over the cases that they prosecute and the charges that they file. *See People v. Stewart*,

55 P.3d 107, 118 (Colo. 2002); *People v. Dist. Ct.*, 632 P.2d 1022, 1024 (Colo. 1981); *People v. Valles*, 2013 COA 84, ¶ 14, 412 P.3d 537, 543. Accordingly, as the majority points out, courts have limited authority to interfere with a prosecutor's decision to dismiss a case. Maj. op. ¶ 31. The same cannot be said of the Department. Indeed, as noted above, and in contrast to a criminal prosecutor's substantial discretion, the *court* controls when the Department can file a dependency and neglect petition. Yet, ironically, the majority gives the Department *more* authority than is afforded prosecutors because, although a prosecutor's decision to dismiss a case is subject to at least some judicial oversight, *see id.*, under the majority's view, the Department's decision is subject to no oversight at all.

¶58 Nor is the majority's comparison of R.M.P. to a crime victim apt. Crime victims are not parties in a criminal case. As noted above, however, by law, children and youths like R.M.P. *are* parties in dependency and neglect proceedings. This is a distinction with a material difference, and in not recognizing that distinction, the majority eliminates substantial rights of these parties.

¶59 For these reasons, I would affirm the manner in which the juvenile court proceeded in this case and discharge our order to show cause.

B. R.E.

¶60 The majority compounds its erroneous view of what the Children's Code demands by misreading and then overruling the division's opinion in *R.E.*, which has operated well to protect the rights of children for almost four decades and which, I believe, is faithful to the above-described requirements of the Code.

¶61 In *R.E.*, 729 P.2d at 1033, the county attorney filed a dependency and neglect petition but subsequently moved to dismiss that petition on the ground that matters concerning the child could be addressed in a then-pending dissolution action. After the matter was dismissed, the child's guardian ad litem ("GAL") appealed, contending that when the State refuses to proceed with the case, the GAL, as a party to the proceeding, could assume the role of petitioner and continue the litigation. *Id.* The division did not adopt the GAL's position but rather concluded that although the State was the exclusive party to file a dependency and neglect petition, the district court was not required to dismiss the petition merely because the State later chose not to pursue it. *Id.* at 1033–34. The division observed that when the State files a dependency and neglect petition, it must set forth "credible facts supporting its belief that the child is dependent and neglected and that, for the child's own protection and well-being, he or she should be taken from existing custody and become a ward of the state." *Id.* at 1034. The division opined that once the State has made such allegations, the child at issue is entitled to a

determination on the merits, and the petition may not be dismissed over the GAL's objection. *Id.* Rather, if such an objection is made, then the district court is required to conduct a hearing to determine whether the petition was supported by competent evidence and whether the child was, in fact, dependent and neglected. *Id.*

¶62 In my view, the conclusion reached by the *R.E.* division is fully consistent with the Children's Code's recognition that the juvenile court, not the Department, oversees dependency and neglect proceedings. The *R.E.* division's opinion is also consistent with the Code's recognition that the child is to have a voice in dependency and neglect proceedings. Accordingly, when the Department seeks to dismiss a dependency and neglect petition over the objection of a GAL or a CFY, then the proper procedure is, as occurred below, for the juvenile court to conduct a hearing to determine whether the evidence supports an adjudication. Indeed, here, the juvenile court afforded the Department *additional* process: it held an initial hearing in which R.M.P., who, through his CFY, objected to the dismissal, was required to establish sufficient grounds to proceed to a full adjudicatory hearing. I believe that this procedure was an appropriate and efficient way to proceed in this case, and I would not second-guess the court's case management.

¶63 In reaching this conclusion, I am not persuaded by the majority's expansive reading of *McCall*, 651 P.2d at 394, and the cases that have cited it. To be sure, in

McCall, we observed that the State is the exclusive party to "bring" (i.e., file) a dependency and neglect proceeding. *Id.* We did not, however, alter the statutory framework providing that when the State files such a petition, it does so at the court's behest. Nor did we, in any way, grant the Department the authority to dismiss a petition that it has brought whenever it wishes to do so, without the court's approval, and contrary to the court's determination that sufficient evidence exists to support an adjudication. And we in no way discussed who is entitled to "prosecute" a dependency and neglect proceeding after it is filed. The majority simply assumes that case law determining who can *initiate* a dependency and neglect proceeding governs how a case proceeds thereafter. In my view, the law does not support that logical leap.

¶64 For these reasons, unlike the majority, *see* Maj. op. ¶ 29, I perceive nothing in *R.E.* that is inconsistent with our ruling in *McCall*. As noted above, the *R.E.* division acknowledged that the State is the exclusive party to file a dependency and neglect petition. *R.E.*, 729 P.2d at 1033–34. The *R.E.* division did not confer standing on the GAL to file a dependency and neglect petition, as the majority asserts. Maj. op. ¶ 29. Nor did the division say anything about who "prosecutes" the matter after it is filed. It merely concluded that once the petition is filed, the State may not unilaterally dismiss it over the GAL's (i.e., another party's) objection, and the juvenile court must decide the petition on its merits. *R.E.*,

729 P.2d at 1034. As noted above, I believe that this ruling is fully consistent with the text and purposes of the Children's Code.

¶65 I likewise am unpersuaded that a CFY should be treated differently from a GAL in circumstances like those present here. The division's opinion in *R.E.* did not turn on the fact that a GAL is required to act in a child's best interest (in contrast to a CFY, who has a more traditional client-directed role). The *R.E.* division did not even mention the unique role of a GAL. Instead, as noted above, it relied on the fact that once the Department chooses to inject itself into a family's life, then it may not unilaterally dismiss its petition over a child's objection. *Id.*

¶66 For these reasons, I perceive no basis for overturning a precedent that has been on the books for almost four decades and that has served children well and without controversy throughout that lengthy period. Moreover, I see no reason to decline to extend *R.E.*'s reasoning to allow a CFY (also a party to the proceeding) to object to the Department's motion to dismiss a dependency and neglect petition, just as a GAL may do, and to require the court then to determine whether sufficient evidence exists to proceed to an adjudication. For the reasons discussed above, such a result is fully consistent with the terms and purposes of the Children's Code.

C. The CFY's Role

¶67 Finally, I am unpersuaded by the concerns expressed by Father and the Department, which the majority adopts, *see* Maj. op. ¶ 24, that if a CFY can object to the Department's dismissal of a dependency and neglect petition, then this would result in the absurd scenario in which twelve-year-old children can effectively "divorce" their own parents (or, as the majority puts it, create a "weaponized family court system"). Such a view finds no support in the text and legislative purposes of the Children's Code, it is inconsistent with the reasons underlying the advent of the position of a CFY, and it is unfounded in fact.

¶68 As noted above, the Code makes clear that the child is a party to a dependency and neglect proceeding and, thus, has the right to participate fully in that proceeding. § 19-3-502(4.5). The position taken by Father and the Department and the majority's ruling in this case eliminate this right in circumstances in which the Department unilaterally moves to dismiss a petition that it filed.

¶69 Moreover, the concept of a CFY was added to the Code in 2022, and in doing so, the legislature found and declared:

> (a) Every child or youth has a liberty interest in the child's or youth's own health, safety, well-being, and family relationships, which may be directly impacted by dependency and neglect proceedings;
>
> (b) A child or youth deserves to have a voice when important and life-altering decisions are made about the child's or youth's life;

> (c) A child or youth has the right to high-quality legal representation, to attend court proceedings, and to participate in dependency and neglect proceedings;
>
> (d) Every child or youth deserves an attorney throughout the pendency of the court proceedings. Every child or youth twelve years of age or older deserves an attorney who will consider the child's or youth's position and reasons for the position, provide independent counsel and independent investigation to inform those positions, and represent the child's or youth's position diligently both inside and outside of court; and
>
> (e) When a child or youth believes the child's or youth's position has been effectively advocated, procedural fairness and justice enhance the child's or youth's acceptance of the proceedings and the decisions made.

Ch. 92, sec. 1(1), 2022 Colo. Sess. Laws 430, 430–31.

¶70 These statements of legislative purpose show that the 2022 amendments establishing the position of a CFY were intended to *increase* the rights and voices of children, and especially children over twelve, who were given the right to attorneys who were required to consider their views before taking positions in court. *Id.* The position taken by Father and the Department and the majority's ruling, however, dramatically *limit* children's voices in dependency and neglect proceedings. I perceive no basis in the statutory text or in the statement of legislative purpose to justify such a conclusion. To the contrary, in limiting the rights of a youth, the majority appears to be adopting its own policy preference over that of the legislature.

¶71 Lastly, notwithstanding the concerns expressed by Father and the Department that if a CFY can object to a motion to dismiss filed by the Department, then children would effectively be able to "divorce" their own parents (a concern that the majority essentially adopts, *see* Maj. op. ¶ 24), for several reasons, I perceive no cause for concern. First, my understanding of the law retains the substantial oversight that the Children's Code affords the juvenile court. Accordingly, that court would stand as a bulwark against a twelve-year-old child and a CFY who might seek to take unreasonable positions, and the court would remain the ultimate arbiter of what is in the child's best interests, even if the court's determination is contrary to what the child might desire. Second, although a CFY performs a more traditional client-directed role as counsel for a youth, the CFY still has ethical obligations to the court, and I have every confidence that counsel who serve in this role will honor their obligations and refrain from taking, for example, frivolous positions, merely because a youth has asked them to do so.

III. Conclusion

¶72 Because I believe that (1) the majority's conclusion is inconsistent with the text and purposes of the Children's Code and is contrary to the legislature's intent in establishing the CFY role; (2) the majority overrules without legitimate reason longstanding precedent that has well served the interests of children in this state for almost four decades; and (3) the procedure employed by the juvenile court here

was consistent with the text and purposes of the Code, I would discharge our order to show cause.

¶73 Accordingly, I respectfully dissent.