
Recent Court Decisions and Legislation

United States Supreme Court

Adoptive Couple v. Baby Girl

133 S. Ct. 2552 (2013)

The Supreme Court decided *Adoptive Couple v. Baby Girl* on June 25, 2013.¹ The Court denied parental rights to Baby Girl's Biological Father because it held that the Indian Child Welfare Act ("ICWA") did not apply to the case.² ICWA was passed in 1978 in response to "abusive child welfare practices that [separated] Indian children from their families and tribes through adoption or foster care placement."³ In *Baby Girl*, the Court was divided by differing interpretations of the application of ICWA. The tension between the majority's decision and the opinions of the four dissenting justices reflects the significance of ICWA and the place of cultural preservation in adoption considerations.

Justice Alito, writing for the five member majority, distinguished this case from those that ICWA was intended to protect by highlighting that the Biological Father never had custody of Baby Girl.⁴ When the predominately Hispanic Birth Mother was pregnant with Baby Girl she asked the Biological Father if he would rather pay child support or relinquish his parental rights.⁵ The Biological Father responded via text message that he would give up his rights to the child.⁶ The Birth Mother then put unborn Baby Girl up for adoption.⁷ The Adoptive Couple supported Baby Girl's Birth Mother through her pregnancy⁸ and started the adoption process once Baby Girl was born.⁹ The Biological Father sought custody after he was notified that Baby Girl was being adopted.¹⁰

¹ *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (2013).

² *Id.* at 2562.

³ *Id.* at 2554 (quoting *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 32 (1989)).

⁴ *Id.* at 2562.

⁵ *Id.* at 2558.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 2558-59.

Deciding the case when Baby Girl was twenty-seven months old, the South Carolina Family Court held that provisions of ICWA required parental rights be given to Baby Girl's Biological Father and ordered Baby Girl to be handed over to him.¹¹ The South Carolina Supreme Court affirmed the decision.¹² The Adoptive Couple appealed to the United States Supreme Court. Reversing the South Carolina Supreme Court's decision, the majority held that since the Biological Father was never present in Baby Girl's life, he had no legal grounds upon which to invoke ICWA provisions.¹³

The Indian Child Welfare Act was Congress's response to the concerning rates at which Indian child were being removed from their family by nontribal agencies.¹⁴ Congress sought to remedy the problem by implementing three minimum federal standards for the removal of Indian children from their tribe.¹⁵ The majority narrowly constructs the three provisions to insist that the act was passed to stop the *removal* of Indian children.¹⁶ Justice Alito argues that the ICWA was not passed to protect the rights of a father who abandoned his child.¹⁷ Since the Biological Father never had custody of Baby Girl and the prohibited *termination* never occurred, the majority held that the Biological Father could not rely on ICWA to reinstate a parental claim over Baby Girl.¹⁸

Justice Sotomayor wrote a strong dissenting opinion, confronting the textual dependence of the majority's opinion.¹⁹ She warned that such a literal reading of ICWA ignores the intent of the act.²⁰ She argues that the act reflected Congress's recognition that children are vital to the continuation of the tribe and that state government was threatening the stability of Indian families.²¹ The purpose of ICWA, therefore, was to promote security.²² Sotomayor contends that by defining "parents" as those who are physically and financially present, the majority undermines

¹¹ *Adoptive Couple*, 133 S. Ct. at 2559.

¹² *Id.*

¹³ *Id.* at 2562.

¹⁴ *Id.* at 2561.

¹⁵ *Id.*

¹⁶ *Id.* at 2563 (emphasis original).

¹⁷ *Id.* at 2557.

¹⁸ *Id.* at 2563 (emphasis added).

¹⁹ *Id.* at 2572-86.

²⁰ *Id.* at 2572.

²¹ *Id.* at 2573 (quoting 25 U.S.C. §1901 (3)).

²² *Id.*

the act's power to preserve Indian families.²³ Instead, she emphasized the significance of biological bonds.²⁴ She referred to practices of the states to show that many jurisdictions favor a biological parent when possible.²⁵ Therefore, Sotomayor concludes that biological fathers have a valid interest in a relationship with their child and children have a reciprocal interest in knowing their biological parents; the source of these interests are intrinsic human rights.²⁶

Ultimately it is the presence, or in this case—the absence, of a father in a child's life that lead to the decision in *Adoptive Couple*. The majority held that biology alone is not enough and the fact that Baby Girl is 1.2% Cherokee does not provide for ICWA provisions to apply in this case.²⁷ Instead of biology, the majority indicates that an established connection to the tribal community or some contact with her father was required for ICWA to apply to the adoption of Baby Girl.²⁸

Ninth Circuit – Federal Court of Appeals

 *K.M. v. Tustin Unified Sch. Dist.*

725 F.3d 1088 (9th Cir. 2013)

K.M. v. Tustin Unified School District is an appeal from the United States District Court for the Central District of California, who affirmed the school district's (Tustin) denial of communication access real-time transcription services ("CART") to a deaf or hard-of-hearing child.²⁹ The District Court held that Tustin fulfilled its obligations to the student under the Individuals with Disabilities Education Act ("IDEA") and in doing so also met the requirements of the Americans with Disabilities Act

²³ *Id.*

²⁴ *Adoptive Couple*, 133 S. Ct. at 2574.

²⁵ *Id.* at 2582.

²⁶ *Id.*

²⁷ *Id.* at 2556.

²⁸ *Id.* at 2563.

²⁹ *K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088 (9th Cir. 2013).

(“ADA”).³⁰ The Ninth Circuit Court of Appeals reversed and remanded the District Court’s decision.³¹

K.M. was a deaf, sixteen-year-old young woman who attended high school within the Tustin Unified School District in Orange County, California.³² She used cochlear implants and relied on lip-reading to understand her teachers and classmates.³³ Because of her difficulty hearing, K.M. was eligible for special education services under the IDEA.³⁴ In order to fulfill its duty to provide a free and appropriate public education (“FAPE”), the school district regularly met to discuss K.M.’s individualized education plan (“IEP”), which identified the student’s academic goals and the services needed to achieve those goals.³⁵

In the Spring of 2009, K.M. completed eighth grade.³⁶ In June 2009, Tustin reviewed K.M.’s IEP in preparation for her transition to high school.³⁷ K.M.’s mother and her auditory-visual therapist requested that Tustin provide K.M. with communication access real-time transcription services (“CART”) beginning in ninth grade.³⁸ CART is a word-for-word word transcription service, much like court reporting.³⁹ Tustin denied the request and instead offered a frequency modulation (“FM”) system equipped with a microphone for the speaker to hold and a receiver to deliver the voice signal to the cochlear implant or hearing aid.⁴⁰ K.M. preferred CART to the FM system.⁴¹ The FM system picked up static and private conversations between teachers and students, which she found distracting.⁴² Throughout K.M.’s ninth grade year, Tustin continued to deny her CART.⁴³

³⁰ *Id.* at 1094.

³¹ *Id.* at 1103.

³² *K.M. v. Tustin Unified Sch. Dist.*, No.SACV 10-1011 DOC, 2011 U.S. Dist. LEXIS 71850, at *2 (C.D. Cal. July 5, 2011).

³³ *Id.*

³⁴ *Tustin Unified Sch. Dist.*, 725 F.3d at 1092-93.

³⁵ *Id.* at 1093.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 1092.

⁴⁰ *K.M. v. Tustin Unified Sch. Dist.*, No.SACV 10-1011 DOC, 2011 U.S. Dist. LEXIS 71850, at *8 (C.D. Cal. July 5, 2011).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Tustin Unified Sch. Dist.*, 725 F.3d at 1093.

K.M. filed an administrative complaint challenging the June 2009 IEP.⁴⁴ The administrative law judge found that Tustin complied with the IDEA and provided K.M. with a FAPE.⁴⁵ Disappointed in the outcome, K.M. filed a complaint in the District Court.⁴⁶ She alleged disability discrimination claims under Section 504 of the Rehabilitation Act, and Title II of the ADA.⁴⁷ K.M. sought, “an order compelling defendants to provide CART.”⁴⁸

The Ninth Circuit Court of Appeals identified several problems with the District Court’s analysis of K.M.’s case.⁴⁹ The Court of Appeals found that Tustin did not meet the ADA’s Title II requirement of “effective communications regulation” for accommodating hard-of-hearing students simply by fulfilling its FAPE requirements in accordance with the IDEA.⁵⁰ If the ADA requirements are different and can be more stringent than the IDEA, compliance with the IDEA may not be sufficient to bar an ADA claim.⁵¹ The court found that the ADA’s obligations under Title II and the IDEA’s requirement to provide a FAPE were significantly different.⁵² A significant difference is that the ADA regulations require that the public entity “give primary consideration to the *requests* of the individual with disabilities.”⁵³

The Ninth Circuit Court of Appeals held that the District Court erred in its analysis of the relationship between Section 504 of the Rehabilitation Act and the ADA.⁵⁴ The District Court found that K.M.’s ADA claims were connected to her IDEA claims through Section 504 of the Rehabilitation Act.⁵⁵ Section 504 bars the exclusion of individuals

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Tustin Unified Sch. Dist.*, 725 F.3d at 1093.

⁴⁸ *Id.*

⁴⁹ *Id.* at 1103.

⁵⁰ *Id.* at 1100.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 1101 (emphasis added in the original).

⁵⁴ *Id.* at 1098.

⁵⁵ *Id.*

with disabilities from any program that receives federal funding.⁵⁶ Because K.M. failed to show that her FAPE was invalid under the IDEA, the District Court reasoned that her Section 504 and ADA claims also failed.⁵⁷ The Court of Appeals found the District Court's reasoning overstated the connections between the federal statutes.⁵⁸

The Court of Appeals reversed the District Court's judgment in favor of the defendant and remanded for further proceedings.⁵⁹ The court further suggested that the school district revise its legal positions to address the specifics of an ADA claim.⁶⁰

Alabama

 *State v. Henderson*

2013 WL 4873077(Ala. Sept. 13, 2013)

State v. Henderson involves two consolidated cases.⁶¹ In each case, a juvenile was indicted with a capital murder charge and filed a petition for a writ of mandamus to the Alabama Supreme Court to dismiss the indictment.⁶² Both cases argued that the State's capital sentencing laws were cruel and unusual as applied to each juvenile offender.⁶³ This argument was based on the fact that the mandatory sentence for capital charges is either the death penalty or life imprisonment without the possibility of parole.⁶⁴ Both defendants relied on the Supreme Court decisions in *Roper v. Simmons*⁶⁵ and *Miller v. Alabama*.⁶⁶ The *Henderson* court denied the petitions, holding that the trial court still retained the sentencing discretion necessary to comply with *Roper* and *Miller* when sentencing juvenile offenders for capital murder.⁶⁷ Therefore, a juvenile

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Tustin Unified Sch. Dist.*, 725 F.3d at 1103.

⁶⁰ *Id.*

⁶¹ *State v. Henderson*, No. 1120140, 2013 WL 4873077, at *1 (Ala. Sept. 13, 2013).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Roper v. Simmons*, 125 S. Ct. 1183 (2005).

⁶⁶ *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

⁶⁷ *Henderson*, 2013 WL 4873077, at *21.

convicted of capital murder can still be sentenced to life in prison without parole.⁶⁸

In *Roper v. Simmons*, the Supreme Court held that the Eighth Amendment bars capital punishment for juveniles.⁶⁹ The Court was persuaded by the fact that the majority of states had already prohibited juvenile capital punishment.⁷⁰ The Court stated that imposing the death penalty for juveniles was not justified due to significant differences in the maturity level of juveniles as compared to adults.⁷¹ In *Miller v. Alabama*, the Supreme Court held that the Eighth Amendment forbids a sentencing scheme that mandates life imprisonment without the possibility of parole for juveniles.⁷² The Court found this mandatory punishment system was flawed because it necessarily failed to take into account important characteristics of the individual offender such as age, immaturity, impulsivity, and a failure to consider risks and consequences.⁷³

In the first *State v. Henderson* case, Larry Henderson was indicted with a capital murder charge because the murder was committed during the course of a robbery in the first degree.⁷⁴ He was sixteen years old at the time.⁷⁵ Henderson filed a motion to dismiss the capital murder charge arguing that the mandatory punishment of life imprisonment without the possibility of parole is unconstitutional.⁷⁶ After his petition was denied he filed a petition for a writ of mandamus in the Court of Criminal Appeals.⁷⁷ The court denied his appeal stating: “the United States Supreme Court in *Miller* did not vacate Miller’s conviction, but only his mandatory sentence, and that opinion affects only Henderson’s sentence and not his

⁶⁸ *Id.* at *18.

⁶⁹ *Roper v. Simmons*, 125 S. Ct. 1183, 1198 (2005).

⁷⁰ *Henderson*, 2013 WL 4873077, at *9.

⁷¹ *Henderson*, 2013 WL 4873077, at *10.

⁷² *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012).

⁷³ *Henderson*, 2013 WL 4873077, at *15.

⁷⁴ ALA CODE § 13A-5-40(a)(2) (West 2013).

⁷⁵ *Henderson*, 2013 WL 4873077, at *1.

⁷⁶ *Id.* at *2.

⁷⁷ *Id.*

conviction.”⁷⁸ Thus, the court held that Henderson failed to show a clear legal right to have the capital murder indictment dismissed.⁷⁹

In the second case, Rashad Stoves was also indicted with capital murder charges after he killed five people during the course of a robbery in the first degree.⁸⁰ Stoves was seventeen years old at the time.⁸¹ He filed a motion to dismiss the charges, arguing the State cannot prosecute a juvenile for a capital offense when the only two possible punishments are death or life imprisonment without the possibility of parole.⁸² The trial court denied the motion to dismiss.⁸³ Stoves then filed a petition for a writ of mandamus in the Court of Criminal Appeals, which was likewise denied because the *Miller* decision did not invalidate capital offenses.⁸⁴ Rather, *Miller* only altered the mandatory punishment scheme.⁸⁵

In *State v. Henderson*, the Alabama Supreme Court found the instant cases could be distinguished from *Roper* and *Miller*.⁸⁶ The Court stated that although the death penalty had been categorically banned, a sentence of life imprisonment without the possibility of parole is still possible for the juvenile offender.⁸⁷ The Court found that the defendants could not rely on *Miller* because it only outlawed the mandatory imposition of life without parole, but it did not preclude it from ever being given.⁸⁸ Noting that the *Miller* Court did not delineate specifically which factors to consider when sentencing a juvenile convicted of a capital offense, the Alabama Supreme Court opted to provide future trial courts with guidance.⁸⁹ The Court looked to the Pennsylvania case *Commonwealth v. Knox* to outline fourteen points to consider for sentencing, including “the juvenile’s chronological age at the time of the offense and the hallmark features of youth such as immaturity, impetuosity, and failure to appreciate risks of consequences.”⁹⁰ The state

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ ALA CODE § 13A-5-40(a)(2) (West 2013); ALA CODE § 13A-5-40(a)(10) (West 2013); *Henderson*, 2013 WL 4873077, at *2.

⁸¹ *Henderson*, 2013 WL 4873077, at *2.

⁸² *Id.*

⁸³ *Henderson*, 2013 WL 4873077, at *2.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at *18.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at *21.

⁹⁰ *Id.*

of Alabama will use these considerations when sentencing a juvenile charged with a capital crime; however, the offender may still be sentenced to life without parole.⁹¹

California

Court of Appeal, Fourth District

 *People v. Ramirez*

219 Cal.App.4th 655 (2013)

In *People v. Ramirez*, the California Fourth District Court of Appeal made an important ruling regarding juvenile sentencing following the United States Supreme Court's decision in *Miller v. Alabama*.⁹² In *Miller*, the Supreme Court held that mandatory life without the possibility of parole ("LWOP") sentences for juvenile homicide offenders are unconstitutional because they violate the Eighth Amendment's prohibition of cruel and unusual punishment.⁹³ In *Ramirez*, the Court of Appeal found that a juvenile sentence of 90 years to life is the functional equivalent of a life sentence and is therefore unconstitutional under the holding in *Miller*.⁹⁴

The two appellants in this case, Luis Alberto Ramirez and Jose Roberto Armendariz, were tried together and convicted in the Orange County Superior Court of first and second degree murder for a gang shooting in which two people were killed.⁹⁵ Both appellants were sixteen years old when the crimes were committed.⁹⁶ They were also convicted of active participation in a criminal street gang, committing crimes for the benefit of a street gang, and vicariously discharging a firearm causing death.⁹⁷ Ramirez was prosecuted as the shooter in the two murders and

⁹¹ *Id.*

⁹² *Miller v. Alabama*, 132 S. Ct. 2455 (2012); *People v. Ramirez*, 219 Cal. App. 4th 655 (2013).

⁹³ *Miller*, 132 S. Ct. at 2460.

⁹⁴ *Ramirez*, 219 Cal. App. 4th at 685.

⁹⁵ *Id.* at 660.

⁹⁶ *Id.*

⁹⁷ *Id.*

was sentenced “to state prison for life without the possibility of parole (LWOP), plus 65 years to life.”⁹⁸ For his role in aiding and abetting, Armendariz was sentenced to state prison for 90 years to life.⁹⁹

Both Rameriz and Armendariz appealed their convictions on several grounds, including sentencing error.¹⁰⁰ Relying on *Miller*, the appellants argued that the sentences imposed on them constituted cruel and unusual punishment due to their youth at the time of the crimes.¹⁰¹ Even though it was technically only Ramirez that received the LWOP sentence, both defendants argued that a juvenile sentence that precludes any opportunity of release during their lifetime amounts to cruel and unusual punishment in violation of both the United States and California Constitutions.¹⁰²

The *Miller* decision built on two previous Supreme Court decisions concerning proportionate punishment of juveniles.¹⁰³ *Roper v. Simmons* held that the Eighth Amendment prohibits capital punishment for children.¹⁰⁴ *Graham v. Florida* held that the Eighth Amendment prohibits a sentence of life without the possibility of parole for juveniles convicted of non-homicide offenses.¹⁰⁵ These decisions established that juveniles are “less morally culpable than adults who commit the same offenses.”¹⁰⁶ Accordingly, the Court determined that the Eighth Amendment requires juvenile offenders in non-homicide cases be given a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”¹⁰⁷

In *Miller*, the Court extended this rationale, banning mandatory LWOP sentences for juveniles, even in homicide cases.¹⁰⁸ The Court mandated that sentencing judges consider each juvenile’s “youth and attendant characteristics . . . before imposing a particular penalty.”¹⁰⁹ Importantly though, the Court did not categorically ban LWOP sentences

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 660-61.

¹⁰¹ *Id.* at 680.

¹⁰² *Ramirez*, 219 Cal. App. 4th at 680.

¹⁰³ *Miller v. Alabama*, 132 S. Ct. 2455, 2461 (2012).

¹⁰⁴ *Roper v. Simmons*, 543 U.S. 551, 568 (2005).

¹⁰⁵ *Graham v. Florida*, 130 S. Ct. 2011, 2034 (2011).

¹⁰⁶ *Id.* at 2038.

¹⁰⁷ *Id.* at 2029-30.

¹⁰⁸ *Miller*, 132 S. Ct. at 2464.

¹⁰⁹ *Id.* at 2471.

for juvenile officers convicted of homicide for the “rare juvenile offender whose crime reflect irreparable corruption.”¹¹⁰

In *Ramirez*, the Court of Appeal reviewed the appellants’ sentencing in light of the mandate from *Miller*.¹¹¹ The court determined that although Ramirez’s LWOP sentence may not have actually been mandatory under the applicable sentencing statute, the record was clear that the trial court viewed it as mandatory and therefore it violated *Miller*.¹¹² In reversing the sentence, the court noted a problem with remanding the case to the trial court for resentencing was that the other sentencing option the trial court had was a 90 years to life sentence.¹¹³ Under California law, the sentence of 90 years to life precludes the appellant any opportunity for parole until the entire 90 years is served.¹¹⁴ However, in *People v. Caballero*, the California Supreme Court held that such sentences were the “functional equivalent” of LWOP and should be treated as such when assessing a claim of cruel and unusual punishment.¹¹⁵ Therefore, the *Ramirez* court ruled that a sentence of 90 years to life is the functional equivalent of a LWOP sentence, and in order for such a sentence to comport with *Miller*, the juvenile’s “youth—with its attendant immaturity and inability to appreciate risk, as well as its greater capacity for redemption” must be considered.¹¹⁶ The court found that the record did not demonstrate such an exercise of discretion and therefore reversed both appellants’ sentences entirely.¹¹⁷

Finally, the *Ramirez* court analyzed whether, given the circumstances of this particular case, any sentence amounting to LWOP or its functional equivalent would qualify as cruel and unusual punishment.¹¹⁸ The court examined the effects of California’s indeterminate sentencing law that allows a sentence of both parole and an

¹¹⁰ *Id.* at 2469.

¹¹¹ *People v. Ramirez*, 219 Cal. App. 4th 655, 682-89 (2013).

¹¹² *Id.* at 682-83.

¹¹³ *Id.* at 683.

¹¹⁴ *Ramirez*, 219 Cal. App. 4th at 683.

¹¹⁵ *Id.* at 683, 85.

¹¹⁶ *Id.* at 685.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 686.

indeterminate life term, such as 15 years to life.¹¹⁹ The court pointed out that this sentencing scheme “allows for the ultimate decision to keep a juvenile offender in prison for life [to] be made at a later point, after the juvenile has had a chance to gain maturity and demonstrate rehabilitation (or not) and both he and the system have had a chance to gain valuable perspective.”¹²⁰ Given this, the court concluded that any sentence that forecloses a juvenile’s later options is “inconsistent with both the spirit and rationale of *Graham* and *Miller*.”¹²¹ Accordingly, the court of appeal remanded the case to the trial court with a directive to exercise discretion in sentencing to ensure the juvenile defendants would have a “meaningful opportunity to demonstrate rehabilitation and potentially obtain their release within a reasonable period of time based on demonstrated maturity and rehabilitation.”¹²²

 *In re A.J.*

214 Cal.App.4th 525 (2013)

In re A.J., a 2013 California Court of Appeals case, established that the juvenile court has the inherent authority to terminate dependency jurisdiction after the out-of-state placement of a juvenile. On October 26, 2011, the San Diego Health and Human Services Agency (“Agency”) filed a petition pursuant to Welfare & Institutions Code § 300(b), contending that A.J., a seven-year-old girl, had been physically abused by her stepfather.¹²³ The Agency further asserted that A.J.’s mother, Jaime, had been aware of the abuse and failed to protect her.¹²⁴ The juvenile court ordered A.J. to be placed at Polinsky Children’s Center or in a licensed foster home.¹²⁵ At the initial detention hearing, A.J.’s natural father’s whereabouts were unknown.¹²⁶ Although A.J.’s father had been paying child support, the Agency’s attempts to locate him were unsuccessful.¹²⁷ The juvenile court found that the Agency had made reasonable efforts to find A.J.’s father, but ordered the Agency to continue searching.¹²⁸ The

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 688.

¹²³ *In re A.J.*, 214 Cal. App. 4th 525, 527 (2013).

¹²⁴ *Id.*

¹²⁵ *Id.* at 528.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

Agency successfully tracked down the natural father, Joshua, in May 2012, and he requested that A.J. be placed in his custody.¹²⁹ The court ordered supervised visits between the two and set a contested hearing date for July 27, 2012.¹³⁰

As A.J. began establishing a relationship with Joshua, the court ordered an extended visit for A.J. with her father in Hawaii, where he resided.¹³¹ The visit was successful and Joshua sought status as A.J.'s presumed father under Family Code § 7611.¹³² At the hearing, the trial court held that Joshua did not yet qualify as A.J.'s presumed father, but stated that he could elevate his status by continuing to devote himself to caring for A.J.¹³³ Joshua also filed a Welfare & Institutions Code § 388 petition alleging that he failed to receive proper notice of the dependency proceedings, that the Agency did not make a reasonable effort to search for him, and that the court should therefore grant him a new disposition order.¹³⁴ Joshua also requested that the court find him to be a noncustodial, non-offending parent, and to give him custody of A.J. under Welfare & Institutions Code § 361.2.¹³⁵

Jamie argued that a return to the disposition stage required that the court also review the initial removal of A.J. from her care.¹³⁶ The court rejected Jamie's claim and granted Joshua's Welfare & Institutions Code § 388 petition, but held that Welfare & Institutions Code § 361.2 did not apply to him because he was not yet a presumed father.¹³⁷

On September 20, 2012, the juvenile court found Joshua to be the presumed father of A.J. under Family Code § 7611.¹³⁸ The court then ordered that the parents would share joint legal custody of A.J., (with physical custody divided ninety percent-ten percent between Joshua and

¹²⁹ *Id.* at 529.

¹³⁰ *Id.*

¹³¹ *Id.* at 530.

¹³² *Id.*

¹³³ *Id.* at 531.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 535.

Jamie, respectively) and confirmed the decision to terminate jurisdiction.¹³⁹

In the case of *In re A.J.*, the Court of Appeal acknowledged that the juvenile court exercised proper discretion in terminating jurisdiction and placing A.J. with Joshua.¹⁴⁰ The court found Joshua to be earnest and committed to fulfilling A.J.'s needs upon learning of her dependency.¹⁴¹ The court also observed that A.J.'s behavior had improved after being reunited with Joshua and that she was adjusting well to her life in Hawaii.¹⁴² A.J.'s smooth transition to life with her father's family reaffirmed the court's verdict that termination of jurisdiction was appropriate.¹⁴³

In placing A.J. with Joshua, the court established that juvenile courts have the authority to terminate dependency jurisdiction after an out-of-state placement of a child with his or her biological parent. The Court of Appeal also reaffirmed that juvenile courts can exercise broad discretion in regard to serving the best interests of dependent children.

Legislation

A.B. 545

2013-2014 Leg., Reg. Sess.

On February 20, 2013, Representative Holly Mitchell introduced Assembly Bill No. 545 ("AB 545").¹⁴⁴ AB 545 amends Section 326.7 of California's Welfare and Institutions Code.¹⁴⁵ The bill passed the Senate on August 15, 2013, and the Assembly on August 19, 2013.¹⁴⁶ Governor Jerry Brown signed the bill on September 9, 2013.¹⁴⁷ Secretary of State Debra Bowen filed the bill on same day.¹⁴⁸

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 534.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ A.B. 545, 2013-2014 Leg., Reg. Sess. (Cal. 2013).

¹⁴⁵ *Id.*

¹⁴⁶ OPEN STATES, <http://openstates.org/ca/bills/20132014/AB545/> (last visited Oct. 29, 2013).

¹⁴⁷ A.B. 545, 2013-2014 Leg., Reg. Sess.(Cal. 2013).

¹⁴⁸ *Id.*

AB 545 expands the placement options for dependent children who have been removed from their homes because of abuse or neglect.¹⁴⁹ Previously, the law defined a “nonrelative extended family member” as an adult with whom the child had a preexisting familial or mentoring relationship.¹⁵⁰ The revision expands the definition of a nonrelative extended family member to include caregivers who have existing familial relationships with the dependent’s relative.¹⁵¹ The bill allows more children to be placed in supportive, family-like situations, as opposed to placement with an unfamiliar foster family or within a group home.¹⁵²

According to the Children’s Law Center of California, the legislative sponsor, the previous definition of a nonrelative extended family member limited the statutory intent for child dependents of the court.¹⁵³ Statutory intent was limited by not allowing adults who may have a relationship with a family member, but not the child, to be considered a nonrelative extended family member.¹⁵⁴ For example, someone who had a relationship with a dependent’s sibling, but not the dependent because he or she was a baby, would not be considered as a caretaker under the previous version of Section 326.7 of California’s Welfare and Institutions Code.¹⁵⁵ The Children’s Law Center of California also stated that this bill is a good public policy decision.¹⁵⁶ Specifically, “[b]y clearing a path for more children to be placed with extended family, this clarification will also help address the current shortages of licensed foster homes throughout the state.”¹⁵⁷

Section 326.7 of the Welfare and Institutions Code maintains that the home of a nonrelative family member will be assessed and approved in

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Assembly Committee on Human Services, Bill Analysis, A.B. 545, 2013 Leg. (Cal. 2013).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Assembly Committee on Human Services, Bill Analysis, A.B. 545, 2013 Leg. (Cal. 2013).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

accordance with the same standards that all foster homes must meet.¹⁵⁸ Furthermore, the county welfare department will verify the nonrelative family member's relationship with the child or the child's family member through interviews with "the child, teachers, medical professionals, clergy, neighbors, and family friends."¹⁵⁹

 A.B. 1266

2013-2014 Leg., Reg. Sess.

On August 12, 2013, California Governor Jerry Brown signed Assembly Bill 1266 ("AB 1266") into law, which advances the rights of transgender students in public K-12 schools.¹⁶⁰ The bill, authored and introduced by Assemblymember Tom Ammiano, will go into effect January 1, 2014.¹⁶¹ AB 1266 amends Section 221.5 of the Education Code giving students in public K-12 schools the right to participate in sex-segregated activities and access facilities based on their self-identified gender, regardless of the birth sex annotated on their records.¹⁶² Ammiano intended this bill to expand transgender rights, noting that lack of equal access for transgender students has led them to suffer from stigma and isolation, thereby hindering their academic performance.¹⁶³

Prior to the passage of AB 1266, Section 221.5 of the Education Code only prevented schools from discriminating based on sex in enrollment in academic and nonacademic courses at primary and secondary schools.¹⁶⁴ Although Section 210.7 of the Education Code defines gender as sex, including self-identified sex, the Education Code did not require gender to be recognized in sex-segregated activities and facilities.¹⁶⁵ As a result, only some school districts adopted policies allowing transgender students to participate in activities and access facilities based on their self-identified gender.¹⁶⁶ The lack of a universal

¹⁵⁸ Cal. Welf. & Inst. Code § 362.7.

¹⁵⁹ A.B. 545, 2013-2014 Leg., Reg. Sess. (Cal. 2013).

¹⁶⁰ A.B. 1266, 2013-2014 Leg., Reg. Sess. (Cal. 2013).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Assembly Committee on Education, Bill Analysis, A.B. 1266, 2013-2014 Leg. (Cal. 2013).

¹⁶⁴ *See* Cal. A.B. 1266.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

policy prevented an equal playing field for transgender students across the state.¹⁶⁷

AB 1266 solves this discrepancy by enabling all transgender students to participate in sex-based physical education and organized sports consistent with their self-identified gender.¹⁶⁸ The existent policy of the California Interscholastic Federation (“CIF”), the body that governs interscholastic athletics policy, states that all students have the opportunity to participate in CIF activities that are consistent with their gender identity, irrespective of the gender listed on their records.¹⁶⁹ Thus, AB 1266 makes every public school’s policy adhere to CIF’s policy, expanding the playing field to all transgender students. Equalizing accessibility to such opportunities across the state allows more transgender students to partake in the important lessons about self-discipline, teamwork, and success that competitive sports provide.¹⁷⁰

AB 1266 also expands access for transgender students to bathroom facilities and locker rooms that correspond with their self-identified gender.¹⁷¹ However, this does not inhibit schools from offering neutral facilities specifically for transgender students.¹⁷² Therefore, schools are allowed to offer separate restroom and locker facilities for transgender student in addition to allowing them access to the facilities used for the rest of the student body.¹⁷³

AB 1266 was sponsored by Equality California, Gay-Straight Alliance Network, and the Transgender Law Center, and received overwhelming registered support from thirty-two organizations including the American Civil Liberties Union of California, California Teachers Association and Public Counsel.¹⁷⁴ In comparison, the registered opposition was compromised of only three groups, California Catholic Conference, Capitol Resource Institute and the Traditional Values

¹⁶⁷ *Id.*

¹⁶⁸ Assembly Committee on Education, *supra* note 164.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Cal. A.B. 1266.

¹⁷² Assembly Committee on Education, *supra* note 164.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

Coalition.¹⁷⁵ The opposition claimed the bill had a “one size fits all” politically correct agenda” that is not good public policy.¹⁷⁶ They proposed transgender students be dealt with on a case-by-case basis to protect their and their families’ privacy instead of establishing a universal policy.¹⁷⁷

AB 1266 aims to eliminate discrimination against transgender students in sex-segregated school programs, activities and facilities.¹⁷⁸ By allowing transgender students equal access to all the educational opportunities their peers have, they can avoid stigma and have the opportunity to flourish at school.¹⁷⁹

Pending Legislation

S.B. 115

2013-2014 Leg., Reg. Sess.

California Senate Bill 115 (“SB 115”) seeks to redefine the rights of sperm donors.¹⁸⁰ SB 115 was introduced by Senator Jerry Hill, and is currently held in a California State Assembly committee.¹⁸¹ The bill provides a new way for donors to file for child custody.¹⁸² This bill is controversial for its implications on parental autonomy, particularly for individuals who conceive through a donor.¹⁸³

¹⁷⁵ Id.

¹⁷⁶ Id.

¹⁷⁷ Id.

¹⁷⁸ See Assembly Committee on Education, *supra* note 164.

¹⁷⁹ Id.

¹⁸⁰ S.B. 115, 2013-2014 Leg., Reg. Sess. (Cal. 2013).

¹⁸¹ California Senate Bill 115, 2013-2014 Regular Session, LEGISCAN, <http://legiscan.com/CA/bill/SB115/2013> (last visited Oct. 27, 2013) (stating the bill is currently held “adjourned sine die”); *Glossary of Legislative Terms*, CALIFORNIA STATE LEGISLATURE, <http://www.legislature.ca.gov/quicklinks/glossary.html> (last visited Oct. 27, 2013) (defining “adjourned sine die” as: the legislature has ended its legislature session).

¹⁸² See generally *infra* notes 196-199 and accompanying text (discussing how SB 115 would allow sperm donors to file for custody as a natural father without being married to the mother or without a written agreement).

¹⁸³ See generally *infra* notes 200-01 and accompanying text (discussing concerns over how SB 115’s expansion of sperm donors’ custody rights could impinge on the expectation and rights of birth mothers and couples conceiving with donated material).

Establishment of a parent-child relationship accords legal rights and duties between an adult and a child.¹⁸⁴ A legal parent, for example, is empowered to make decisions relating to the child's residence and education.¹⁸⁵ Legal parents are also obliged to care and provide for the child.¹⁸⁶

Under current California law, a "natural father" is the prerequisite status for a parent-child relationship between a man and a child.¹⁸⁷ Generally, a man is presumed to be a child's natural father if he signs a voluntary declaration of paternity,¹⁸⁸ is married to the child's mother at the time of the child's birth,¹⁸⁹ attempts to marry the child's mother,¹⁹⁰ or brings the child into his home and acknowledges the child as his own.¹⁹¹

Current California law restricts the ability of a sperm donor to become a "natural father."¹⁹² Unless the donor is married to the mother of his biological child,¹⁹³ or unless parties enter an agreement to the contrary preconception, the donor is not viewed as the child's "natural father."¹⁹⁴ This implies that a donor cannot seek parentage of a child even if he brings the child into his home and acknowledges the child as his own.¹⁹⁵

¹⁸⁴ Cal. Fam. Code § 151.001.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ CAL. FAM. CODE § 7610.

¹⁸⁸ CAL. FAM. CODE § 7570.

¹⁸⁹ CAL. FAM. CODE § 7540.

¹⁹⁰ CAL. FAM. CODE § 7611.

¹⁹¹ *Id.* Natural father status can be achieved when a man "receives the child into his home and openly holds out the child as his natural child." *Id.*

¹⁹² Fred Silberberg, *Senate Bill 115 is Necessary to Protect Children and Fathers*, HUFFINGTON POST, Apr. 12, 2013, available at http://www.huffingtonpost.com/fred-silberberg/senate-bill-115-is-necess_b_3065191.html ("Without the passage of SB 115, a conflicting statute, Family Code Section 7613(b) . . . [prevents sperm donors] from being declared the legal father. . . . The current state of the law makes an absurdity a reality: if a man donates sperm, and after the fact establishes a relationship with the child with the consent of the child's mother, that man is precluded from establishing legal parentage of his own child.").

¹⁹³ CAL. FAM. CODE § 7613(a).

¹⁹⁴ CAL. FAM. CODE § 7613(b).

¹⁹⁵ Silberberg, *supra* note 192.

SB 115 would amend the California Family Code to allow “any interested party” to bring an action at “any time” for determination of parental rights of a “man presumed to be the father” because he “receives the child into his home and openly holds out the child as his natural child.”¹⁹⁶ The revision of “any interested party” broadens the scope under which donors may seek custody.¹⁹⁷ The bill does not eliminate the sperm donor statutes already in place.¹⁹⁸ Instead, it fixes an inconsistency where a sperm donor who “receives the child into his home and openly holds out the child as his natural child”—a condition that generally supports a natural father status—is nonetheless currently barred from seeking custody.¹⁹⁹

Opponents of SB 115 believe that allowing “any interested party” to file for custody is too broad.²⁰⁰ Critics argue that the new language would encroach on the parental rights of individuals who conceive through donors, as there is concern their rights will be contested.²⁰¹ Assemblyman Tom Ammiano also argues that this bill should be put on hold to allow the courts to “weigh in” on a custody case addressing the same issue.²⁰² Supporters of the bill argue that the revision will better promote the best interest of the child.²⁰³ They assert that AB 115 would protect the rights of

¹⁹⁶ S.B. 115, 2013-2014 Reg. Sess. (Ca. 2013).

¹⁹⁷ *Id.*

¹⁹⁸ *See id.*

¹⁹⁹ Silberberg, *supra* note 192.

²⁰⁰ Janice Wright, *California Debates Enhancing Parental Rights For Sperm Donors*, CBS SF BAY AREA, Aug. 13, 2013, available at <http://sanfrancisco.cbslocal.com/2013/08/13/california-debates-enhancing-sperm-donor-parental-rights/>.

²⁰¹ *See* Silberberg, *supra* note 192 (discussing how the original reason for sperm donor statutes was to allow women “to have children without fear that the sperm donor would eventually claim some right to the child”); *About SB 115*, NO ON SB 115, <http://noonsb115.com/about.html> (last visited Oct. 27, 2013).

²⁰² Seth Hemmelgarn, *Sperm Donor Bill on Hold*, BAY AREA REPORTER, Aug. 15, 2013, available at <http://www.ebar.com/news/article.php?sec=news&article=69006>. SB 115 is often heard in conjuncture with actor Jason Patric's custody battle over a child conceived through his donated sperm by a former girlfriend. While the actor claims that he helped raised his son, current California law bars sperm donors from gaining custody as the natural father. Patric is appealing the court decision rejecting his motion for custody. Patrick McGreevy, *Jason Patric Custody Case Inspires Sperm-Donor-Rights Legislation*, L.A. TIMES, July 6, 2013, available at <http://articles.latimes.com/2013/jul/06/local/la-me-sperm-donor-20130707>.

²⁰³ Carol Chodroff, *Why Women Should Support California Senate Bill 115*, HUFFINGTON POST, July 20, 2013, available at http://www.huffingtonpost.com/carol-chodroff/why-women-should-support-_b_3668782.html.

sperm donors who have fostered a loving relationship with a child.²⁰⁴ Furthermore, proponents argue that permitting “any interested party” to seek parentage is not unreasonably broad, as the provision would only apply to a narrow class of sperm donors who have established relationships with their biological children.²⁰⁵

Initiatives

Proposition 35

Californians Against Sexual Exploitation Act

In 2012, California voters passed Proposition 35, enacting the Californians Against Sexual Exploitation Act (“CASE Act”).²⁰⁶ With over 81% approval, the Act is the most popular initiative in California history.²⁰⁷ The CASE Act expands the definition of human trafficking, increases criminal penalties and fines for human trafficking, and requires sex offender registration for those convicted of human trafficking.²⁰⁸ It also raises funds for anti-trafficking programs and provides additional protections for victims during court proceedings.²⁰⁹

Under the CASE Act, “any person who causes, induces, or persuades, or attempts to cause, induce, or persuade . . . a minor . . . to engage in a commercial sex act,” for purposes including prostitution, living or deriving support from the proceeds of prostitution, procuring prostitutes, transporting minor prostitutes for immoral purposes, or taking a minor away from guardians for purposes of prostitution, is guilty of human trafficking.²¹⁰ Anyone who imports, publishes, or possesses real or

²⁰⁴ *Id.*

²⁰⁵ *Id.* Proponents of SB 115 focus on the causation language of the text, which would only allow a sperm donor to sue for custody rights if he fulfills certain requirements demonstrating his interest in parenting a child.

²⁰⁶ *About, PROP 35 IS LAW. USE IT*, <http://www.caseact.org/about/> (last visited October 7, 2013).

²⁰⁷ *Id.*

²⁰⁸ CAL. PENAL CODE §§ 236.1, 290 (West 2012).

²⁰⁹ CAL. PENAL CODE §§ 236.1, 236.4 (West 2012).

²¹⁰ CAL. PENAL CODE § 236.1(c) (West 2012).

simulated child pornography is also guilty of human trafficking.²¹¹ For purposes of the Act, a “commercial sex act” is “sexual conduct on account of which anything of value is given or received by any person.”²¹² Opponents of the law say this definition is overbroad and could possibly be applied in cases of statutory rape, while proponents contend that prosecutorial discretion will limit those concerns.²¹³

The Act lengthens prison sentences for those convicted of human trafficking.²¹⁴ The sentence is increased to fifteen years to life for trafficking a minor for purposes of a commercial sex act using force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury.²¹⁵ Where force or fear is not used, the sentence is lengthened to five, eight or twelve years.²¹⁶ Sentence enhancements now add five, seven, or ten years in prison where the violation includes infliction of great bodily injury, and five years in prison for each prior trafficking conviction.²¹⁷ The Act increases penalties for forced labor or services trafficking to five, eight, or twelve years.²¹⁸

Those convicted face fines of up to \$1.5 million, which are deposited into the Victim-Witness Assistance Fund.²¹⁹ Public agencies and nonprofit corporations providing shelter, counseling, or other direct services for trafficked victims receive seventy percent of collected fines, with the remaining thirty percent going to prosecution agencies and law enforcement.²²⁰ Critics of the law argue that a portion of fines paid into the Fund should be set aside for direct victim restitution or civil relief.²²¹ They claim that the fines often make it logistically impossible for the

²¹¹ *Id.*

²¹² CAL. PENAL CODE § 236.1(h)(2) (West 2012).

²¹³ AGAINST THE CASE ACT, <http://againstthecaseact.com> (last visited October 8, 2013); *California voted ‘yes’ on Prop 35; experts, police and sex workers disagree on impact*, OAKLAND NORTH, <http://oaklandnorth.net/2012/11/19/california-voted-yes-on-prop-35-experts-police-and-sex-workers-disagree-on-impact/> (last visited October 8, 2013).

²¹⁴ CAL. PENAL CODE § 236.1 (West 2012).

²¹⁵ CAL. PENAL CODE § 236.1(c)(2) (West 2012); *Current Laws Against Human Trafficking*, PROP 35 IS LAW. USE IT, <http://www.caseact.org/learn/law/> (last visited October 7, 2013).

²¹⁶ CAL. PENAL CODE § 236.1(c)(1) (West 2012).

²¹⁷ CAL. PENAL CODE §§ 236.4(b), (c) (West 2012).

²¹⁸ CAL. PENAL CODE § 236.1(a) (West 2012).

²¹⁹ CAL. PENAL CODE §§ 236.1, 236.4(a) (West 2012).

²²⁰ CAL. PENAL CODE §§ 236.4(d), 13519.14(e) (West 2012).

²²¹ Kathleen Kim, *Analysis of the CASE Act*, NO ON PROPOSITION 35 – THE CASE ACT, <http://noonprop35.wordpress.com/2012/09/26/analysis-of-the-case-act-by-kathleen-kim/> (last visited October 14, 2013).

direct victims of the abuse to collect civil court judgments from the traffickers.²²²

In addition to increased criminal sentences and fines, the law requires that those convicted of human trafficking register for the California sex offender database, and that all registered sex offenders surrender their e-mail addresses, user names, and other “Internet identifiers” to law enforcement.²²³ Although designed to combat the online exploitation of children, the Electronic Frontier Foundation and American Civil Liberties Union sued to block the provision’s enforcement.²²⁴ The Northern District Court of California granted a preliminary injunction, agreeing with the plaintiffs that there is a substantial likelihood that the requirement would chill free speech, the court also found that the requirement applied to more speakers and more speech than necessary to combat human trafficking.²²⁵ The law’s proponents appealed and the Ninth Circuit Court of Appeals heard oral arguments on September 10, 2013.²²⁶

Finally, in order to encourage victims to take legal action against traffickers, the law protects victims in court proceedings by making evidence of a victim’s sexual history inadmissible for purposes of impeachment, attacking witness credibility, or showing the victim’s potential criminal liability for any conduct related to commercial sexual activity inadmissible.²²⁷

²²² *Id.*

²²³ CAL. PENAL CODE §§ 290(c), 290.015(a) (West 2012).

²²⁴ *Doe v. Harris*, Electronic Frontier Foundation: Defending Your Rights In The Digital World, <https://www.eff.org/cases/doe-v-harris> (last visited October 7, 2013); *Prop 35*, California General Election: Official Voter Information Guide, <http://voterguide.sos.ca.gov/propositions/35/arguments-rebuttals.htm> (last visited October 7, 2013).

²²⁵ *Doe v. Harris*, C12-5713 TEH, 2013 WL 144048 (N.D. Cal. Jan. 11, 2013).

²²⁶ *Doe v. Harris*, *supra* note 19.

²²⁷ CAL. EVID. CODE § 1161 (West 2012).