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**TO:** Maryland House Judiciary Committee, Chair Luke H. Clippinger, Vice Chair Vanessa E. Atterbeary, & Distinguished Committee Members

**FROM:** Marci Hamilton, Esq. & Kathryn Robb, Esq.

**RE:** Testimony in Support of HB1036 re: Training for Judges & Child’s Counsel in Cases Involving Child Abuse or Domestic Violence

**DATE:** March 4, 2021

Dear Chairman Clippinger, Vice Chair Atterbeary, & members of the House Judiciary Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USA Advocacy, to submit testimony regarding HB1036, which will require the Maryland Judiciary to develop a training program for judges presiding over child custody cases involving child abuse or domestic violence and which will require judges and child’s counsel to satisfy a minimum of 60 hours of training on issues related to child abuse and domestic violence prior to working on cases involving the same. This legislation, if passed, would improve the ability of courts to recognize child abuse, trauma, and domestic violence patterns and prioritize the safety of those most vulnerable to such abuse.

By way of introduction, Marci Hamilton is the Founder, CEO, and Legal Director of CHILD USA, an interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where she is a Professor in the Fels Institute of Government. She authored *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), which makes the case for statute of limitations (SOL) reform in the child sex abuse arena and is the leading expert on the history and constitutionality of SOL reform.

CHILD USA is the leading nonprofit think tank dedicated to the prevention of child abuse and neglect. It is also the leader in the field of SOL reform, as well as other cutting-edge issues related to child protection, including child abuse and intrafamilial violence.

Kathryn Robb is the Executive Director of CHILD USA Advocacy, a 501(c)(4) advocacy organization dedicated to protecting children’s civil liberties and keeping children safe from abuse and neglect. CHILD USA Advocacy draws on the combined expertise of the nation’s leading experts and child advocates, specifically its sister organization, CHILD USA.

Intrafamilial abuse is an epidemic in this country, and our systems which were designed to protect children in these types of cases are failing to do so. An evidence-based training program lead by



professionals who possess the expertise about these complex issues is imperative to ensuring the protection children. It is well within the powers of the Maryland legislature to see that the judiciary develops and implements such a program.

In the majority of states, the legislative branch has the authority to pass laws that affect aspects of the judicial branch so long as the law does not conflict with a court rule or interfere with the administration of justice. Maryland is among the many states that follow the majority approach. The training mandate contained in HB1306 passes constitutional muster because it does not infringe upon the judiciary's power to make rules of procedure and practice.<sup>1</sup> The mandate does not implicate procedural law and to the extent that the mandate affects rules of practice, if at all, the Maryland legislature has the authority to assist the judiciary and, in fact, impose higher standards upon officers of the judicial branch with respect to their training requirements. Additionally, the Maryland legislature exercises significant discretion in determining what the public welfare requires and what measures are either necessary or appropriate for the protection and promotion of the health and welfare of its people.

Pennsylvania is the only state whose separation of powers doctrine prohibits the legislative branch from enacting *any* law that affects the judicial branch.<sup>2</sup> This has given the judiciary unparalleled power as compared to every other state in the nation.

Several states have already passed legislation that requires the judiciary to develop and implement judicial training programs. For example, California law requires the Judicial Council to establish judicial training programs for individuals who perform duties in domestic violence matters, including judges.<sup>3</sup> Under Connecticut law, the judiciary is mandated to create an ongoing training program for judges and other court personnel regarding the function of the family violence intervention units and the use of restraining and protective orders.<sup>4</sup> New Hampshire law requires that, "all staff [shall] be fully trained to handle domestic violence cases"; protocols are mandatory and are produced by the state's judicial branch to ensure best practices.<sup>5</sup> Similarly, Washington D.C. law requires the chief judge, in consultation with the presiding judge of the Family Court, to carry out an ongoing program to provide training in family law and related matters for judges and attorneys who practice in Family Court, which includes information and instruction regarding family dynamics, including domestic violence.<sup>6</sup>

We commend you for recognizing this and taking up this charge on behalf of Maryland's children and families.

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<sup>1</sup> See, *Consolidated Const. Services, Inc. v. Simpson*, 372 Md. 434, 451 (2002).

<sup>2</sup> PENN. CONST. art. V § 10.

<sup>3</sup> CAL. GOV. CODE § 68555

<sup>4</sup> CT STAT ANN. § 46b-38c

<sup>5</sup> N.H. CT. R. DOM. VIOLENCE PROTOCOL 5-1

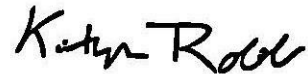
<sup>6</sup> D.C. § 11-1104; § 11-1732A

Please do not hesitate to contact us if we can be of assistance on this or any other child protection issues.

Sincerely,



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