

MAJOR COURT VICTORY FOR FOSTER CHILDREN

North Carolina Court Rules State Must Act in Best Interest of Child in Handling Foster Children's Social Security Benefits

(November 5, 2007) The North Carolina Court of Appeals today ruled that the state does not have the legal authority to divert the Social Security benefits of foster children to reimburse itself for the cost of their foster care when it is not in the best interest of the children.

“This case has national implications and is a major victory for foster children across the country,” said Amy Harfeld, Executive Director of First Star, a national organization dedicated to fighting for the rights of America's abused and neglected children, and who filed an *amicus curae* brief in collaboration with Sullivan & Worcester LLP on the case. “It is unconscionable for the state to dip into the pockets of these most vulnerable children in order to balance their budgets. This ruling is a step in the direction of banning the practice of intercepting foster children's benefits to reimburse states for the costs of foster care- costs that they are mandated to cover in any event.”

The issue is the focus of growing legislative and legal battles in the Congress and in the courts. States across the country have been maximizing their own revenues by diverting the social security benefits of foster children – in some cases even after these children have aged-out of the system and are left with little or no financial or social support. The states claim they have a right to the money to help offset the cost of foster care. Child advocates claim this money should be used to meet the needs of the children. According to the Child Welfare League of America, 25% of foster youth reported experiencing homelessness within four years of exiting foster care.

Some estimates have placed the amount of money diverted from these children at more than \$100 million. States are aggressively targeting this money hiring outside companies to help them identify foster children who are, or who should be, receiving Social Security benefits. The consultants track down these eligible children, help them secure Social Security benefits and then help the states divert the benefits – keeping a piece for themselves.

The North Carolina case revolved around a teen-aged boy – identified only as John G. – who was abandoned by his crack-addicted mother at the age of 3 and orphaned as a result of his adoptive father's death when he was 4. He lived in a succession of foster homes where he was routinely beaten and forced to sell drugs.

He was receiving Social Security survivor benefits, which were being used to pay the mortgage on his adoptive father's home, which he was bequeathed. However, Guilford County's Department of Social Services (DSS) intercepted those benefits, selecting itself as John G's representative payee. DSS directed John G's benefit payments into its own accounts instead of using them to make monthly mortgage payments. When the state began to divert the benefits, the boy went into default on the mortgage. In spite of that, North Carolina officials refused to release the boy's money.

In December 2005, the district court ordered DSS to use John's benefits to make the monthly mortgage payments to save his house. DSS, however, continued to resist using John's money to help him keep his house, and appealed arguing that a state court judge did not have

jurisdiction.

The Court of Appeals rejected the state's arguments and said that "nothing in the concept of our federal system prevents state courts from enforcing rights created by federal law." The Court's decision also stated that DSS's "interpretation of [the federal statute] takes the statute out of context and is an improper attempt to fashion a shield into a sword to be used against the intended beneficiary of the law...."

John G. was represented by Legal Aid of North Carolina (LANC) attorney Lewis Pitts and the Guilford County Guardian ad Litem program. First Star filed a "friend of the court" brief on John G's behalf.

"This case underscores the importance of having legal representation for foster children while they are in the system to protect their interests, rights and property," Harfeld said. "Children who are represented by well-trained, client directed attorneys in dependency hearings receive the best care and have a much stronger chance for success in the short and long term."

In April, First Star released a national report showing that nearly half of U.S. states fail to provide adequate traditional legal representation for abused and neglected foster children, leaving them without a voice during judicial proceedings that profoundly impact their futures.

The first-of-its-kind study found "glaring anomalies" in how states protect the legal rights of foster children, leading to substandard levels of service and unacceptable outcomes in most states. Fifteen states received failing grades and six more received D's in the "National Report Card on Legal Representation of Children." Only five states received A's.