

To: U.S. Civil Rights Commission for North Carolina  
From: Elizabeth Simpson, Emancipate NC, Attorney to Toia Potts  
Date: October 30, 2024  
Re: Response to Gregory Wallace comments regarding Matter of MT & KT

On October 29, 2024, Gregory Wallace suggested he had read the 95-page opinion upholding the termination of Toia Potts' parental rights and that it was legally justified. *See Matter of M.T. & K.T.*, No. 21-755 (2022). It is true that the courts of North Carolina have sanctioned the termination of Toia's parental rights, but this does not mean that it was just or fair. The law in North Carolina for parents accused of abuse is one of vicarious liability.

Vicarious liability means that even if a mother has never hurt her child, would never hurt her child, has tried her best to protect her child, and does not witness any harm to her child, she can still have her parental rights terminated. Even if she separates from an abusive father after abuse occurs, she can still have her parental rights terminated. This means that in North Carolina, mothers are held accountable for the violence of men. It means that North Carolina's children lose loving mothers because of the violence of men. It means that victims of domestic violence are blamed for their partner's abuse in North Carolina. Because this rule is so unfair, Toia's appellate case drew four *amicus* briefs: from the North Carolina Coalition Against Domestic Violence, the NAACP of North Carolina, the ACLU of North Carolina, and the North Carolina Justice Center.

Nevertheless, despite our best efforts to overturn this rule, vicarious liability remains the law for parents in North Carolina. Toia Potts never hurt her child and never would. You heard her compelling testimony and you have read the in-depth article about [her case](#). You know that it is heartbreaking and unfair.

In the 95-page decision on appeal, the Court of Appeals explained very clearly that "the trial court was not inferring Mother participated in or condoned abuse and it need not have." It goes on:

The trial court also did not need to draw such an inference because the definition of neglect includes "liv[ing] in an environment injurious to the juvenile's welfare," and neglect can include failing to prevent injuries like the ones here. N.C. Gen. Stat. § 7B-101(15) (eff. 1 Dec. 2019 to 30 Sept. 2021); *see In re Y.Y.E.T.*, 205 N.C. App. at 127–29, 695 S.E.2d at 522–23 (explaining, in a case where the trial court could not determine who caused a child's non-accidental injuries and terminated parental rights on the grounds of abuse and neglect, the trial court permissibly found both parents responsible because they either "directly caused the injury by inflicting the abuse or indirectly caused the injury

by failing to prevent it” (emphasis added)). This reflects the broader recognition “[t]ermination of parental rights proceedings are not meant to be punitive against the parent,”— which might lead to an increased focus[sic] on individual culpability—“but to ensure the safety and wellbeing of the child.” *In re D.W.P.*, 373 N.C. at 340, 838 S.E.2d at 406 (citing *In re Montgomery*, 311 N.C. at 109, 316 S.E.2d at 252). As a result, we reject the Coalition’s challenge to Finding 82.

The Court of Appeals may believe that termination of parental rights is not “punitive” against a parent, but it absolutely feels punitive for a loving mother who did her best to protect her child, but could not humanly stop an incident she did not witness and was not present for. It absolutely feels punitive to her children who were snatched away from their mother and never saw her again. This is one of several unjust legal principles in North Carolina’s child welfare system, and it should be changed.