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**“SHAME ON U.S.” FAULTS ALL THREE BRANCHES OF FEDERAL  
GOVERNMENT FOR BEING DERELICT IN THEIR DUTIES  
TO PROTECT ABUSED AND NEGLECTED CHILDREN**

*National Report Finds That Such Dereliction Allows All 50 States  
to Fall Short in Meeting Minimum Child Welfare Standards*

**WASHINGTON, D.C.** – A new report released today is highly critical of all three branches of the federal government for being derelict in their duties to protect America’s most vulnerable children. The report – “Shame on U.S.” – reviewed the federal government’s own internal documents and found that *not one state* is in full “substantial conformity” with minimum standards set in federal law designed to protect abused and neglected children.

The report faults the U.S. Department of Health and Human Services (HHS) for infrequently and inadequately exercising its oversight powers to ensure state compliance with federal mandates – essentially becoming the states’ complicit partner in the substandard care of our nation’s most vulnerable children. In many areas, HHS takes on an overly passive role, allowing states to self-certify compliance and set lower standards and performance expectations for themselves — all of which allow glaring non-compliance with federal law to go unabated, at times going so far as to blatantly flout direct Congressional orders.

The other two branches of the federal government also fail to adequately protect and promote the interests of abused and neglected children. Congress has shown little appetite to address these issues, and federal courts have been reluctant to find that federal laws provide aggrieved children and families a private right to sue – completing a “trifecta” of inertia and neglect.

“It is no secret that child welfare law is disjointed and underfunded,” said Elisa Weichel, Administrative Director and Staff Attorney at the Children’s Advocacy Institute at the University of San Diego School of Law (CAI). “What’s not common knowledge is that states are consistently failing to protect abused and neglected children with little to no consequence from the executive branch. It is even less understood that many federal courts have denied private citizens the right to file suit for violations of federal child welfare law. This report connects these dots for the first time, holding all three branches accountable, pointing out their inter-related failures and the critical need to cure these deficiencies.”

The research was conducted over a three-year period by CAI, an academic, research, and advocacy organization working to improve the lives of children and youth, in partnership with First Star, a non-profit advocacy group based in Washington, D.C. The report was released today on Capitol Hill.

The full report and executive summary, along with information about each state, can be found at [www.caichildlaw.org/Shame\\_on\\_US.htm](http://www.caichildlaw.org/Shame_on_US.htm).

“The title of this study is ‘*Shame on U.S.*’ for good reason,” Robert Fellmeth, CAI’s Executive Director, said. “It is an exposé of a wholly broken federal system and its impact on America’s most vulnerable children and families. These politically powerless children – hundreds of thousands of them each year – suffer life-long consequences including PTSD, unemployment, homelessness, sex trafficking victimization and imprisonment, at rates far above any other grouping. It’s a national disgrace.”

The report makes a series of recommendations to better protect and serve abused and neglected children, and CAI and First Star call on Congress to conduct oversight hearings to investigate the inadequacies highlighted in the report.

The study’s findings include:

- After two full rounds of HHS’ Child and Family Services Reviews (CFSR) spanning a decade, not one state was found to be in full “substantial conformity” with federal laws designed to ensure the safety and well-being of abused and neglected children. In the most recent CFSR, every single state failed to be in substantial conformity with minimum standards on six of seven measurable outcomes related to safety, permanency and family/child well-being, and only ten states were found to be in substantial conformity with the seventh outcome.
- The federal government is slowly weaning itself off its responsibility to financially support foster children through the widely reviled “look back” provision, which ties eligibility to 1996 AFDC eligibility levels with no indexing for inflation. As a result, each year the percentage of foster children eligible for financial assistance drops – from 55% in 1998 to 44% in 2010.
- Some federal courts have walked away from their role as a check on state compliance; recent appellate court decisions effectively bar litigants from coming forward, precluding any appeal that might reach the U.S. Supreme Court for the large-scale judicial remedy needed.

The report includes dozens of recommendations to redress these failures within each branch of government. Among them:

**HHS must:**

- Toughen its oversight and enforcement activities to ensure that each state operates its child welfare programs consistent with federal law, and HHS must impose serious and expedient consequences when states fall short;
- Revise its evaluation program to end the process that allows failing states to meet a compromised set of lowered expectations;
- Utilize its rulemaking authority in a more robust manner with regard to the interpretation and implementation of child welfare laws. Regulations are enforceable. Anything less is not.

**Congress needs to:**

- Provide clear private remedies for children within *all* federal child welfare statutes, to enable private litigants to seek judicial recourse when states fail to keep their end of the bargain;
- Revise current law to ensure that states comply with all aspects of all child welfare laws or suffer real consequences, and that HHS plays an active and vigilant role in ensuring that compliance via rigorous monitoring and enforcement activities;
- Eliminate the “look back” provision that makes a child’s eligibility for federal foster care funds dependent on whether the child’s family would have qualified for AFDC in 1996. It is arcane, primitive, and hurts children and families;

- Impose consequences on HHS for failing to follow through with its oversight and enforcement responsibilities;
- Restore and reinforce funding for child welfare programs at levels that ensure an effective child welfare system, and enact comprehensive child welfare finance reform to address swaths of uncoordinated funding from disparate sources with inconsistent mandates, gross underfunding of most statutes, and a dearth of accountability for the money spent by states.

**The federal judiciary should:**

- Acknowledge its role as a check and balance to lax executive branch enforcement of child welfare laws, and resolve any ambiguity in federal law as to whether children and families have a private right of action in their favor;
- Ensure that states entering into consent decrees bring their child welfare systems into compliance with federal law in a more timely manner than is currently the case.

Child abuse and neglect is one of few remaining truly non-partisan issues that voters and legislators across the political spectrum care deeply about. Support for these changes should gain traction across party lines.

“When these children are taken by the state, they become *our* children,” said Amy Harfeld, CAI’s National Policy Director & Senior Staff Attorney. “Particularly because they have so little political capital, we are all legally and ethically obligated to stand up for their safety and security.”

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*The Children’s Advocacy Institute of the nonprofit University of San Diego School of Law works to improve the health, safety, and well-being of children. In addition to its academic component, CAI engages in regulatory and legislative advocacy, impact litigation, and public education in order to ensure that children’s interests are represented effectively whenever and wherever government makes policy and budget decisions that will impact them. Visit [www.caichildlaw.org](http://www.caichildlaw.org).*

*First Star is a national 501(c)(3) non-profit that improves the lives of America’s abused and neglected children by strengthening their rights, illuminating systemic failures, and igniting reform to correct them. We pursue our mission through research, public engagement, policy advocacy, direct services, and litigation. Visit [www.firststar.org](http://www.firststar.org).*