

No. **18-8611**

**IN THE
SUPREME COURT OF THE UNITED STATES**

ORIGINAL

ELICIA BAILEY, PETITIONER

vs.

JEREMY GASAWAY, RESPONDENT



**On Petitioner for Writ of Certiorari
To the Texas Court of Appeals, Third District at Austin**

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QUESTION PRESENTED FOR REVIEW

1. Do family courts hold subject-matter jurisdiction to find guilt of a criminal act and subsequently impose harsh penalties without due process in a criminal court; and is a State statute giving such authorization constitutional?

LIST OF PARTIES

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TABLE OF CONTENTS

Question Presented for Review	I
List of Parties	II
Table of Contents	III
Table of Cited Authorities	VI
Citation of Opinion Below	1
Statement of Jurisdiction	1
Constitutional Provisions and Statutes Involved	2
Statement of Relevant Facts of the Case	4
Argument on Legal Question Raised	8
I. The Trial Court Lacked Subject Matter Jurisdiction	9
II. The Trial Court Imposed Cruel and Unusual Punishment Upon Petitioner and The Child	13
III. Texas Family Code §261.107(b) is Facially Unconstitutional	17
Conclusion and Prayer	19
Certificate of Compliance	21
Appendices	22
Appendix A	i
Texas Court of Appeals, Third District, At Austin; Opinion; August 22, 2017	
Appendix B	ii

Texas Court of Appeals, Third District, At Austin; Judgement; August 22, 2017

Appendix C _____ iii

Findings of Fact and Conclusions of Law; May 17, 2016

Appendix D _____ iv

Texas Court of Appeals, Third District, At Austin; Denying En Banc Reconsideration; November 16, 2017

Appendix E _____ v

Supreme Court of Texas; Denying Petitioner for Review; May 11, 2018

Appendix F _____ vi

Supreme Court of Texas; Denying Motion for Rehearing; August 3, 2018

Appendix G _____ vii

Williamson County Sheriff's Department; Synopsis; July 17, 2014

Appendix H _____ viii

Challenge to Constitutionality of a State Statute; Submitted to Attorney General of Texas; November 1, 2018

Appendix I _____ ix

Respondent's (Petitioner's Supporting Affidavit); August 13, 2014

Appendix J _____ x

Partial Reporter's Record; Review Hearing; May 14, 2014

Appendix K _____ xi

Partial Reporter's Record; Temporary Orders Hearing; October 22, 2014

Appendix L _____ xii

**“Agreed Temporary Orders in Suit to Modify Parent-Child Relationship”
September 5, 2014**

Appendix M_____xiii

**Motion for Withdrawal of Counsel, Motion for Continuance and Orders on
Motions; May 20, 2011**

Appendix N_____xiv

Constitutional and State Statutes and Other Provisions

Weems v. United States, 217 U.S. 349 (1910)_____16

White v. State, 50 S.W.3d 31, 47(Tex.App.-Waco 2001, pet. Refd____18

CITATION OF OPINION BELOW

The citation of the opinion from the court below is:

Bailey v. Gasaway, No. 03-16-00281-CV, 2016 Tex. App. (Tex. App.-Austin Aug. 22, 2016, (mem. op.)

The aforementioned opinion is reprinted in Appendix A.

STATEMENT OF JURISDICTION

A Final Order in Suit Affecting the Parent Child Relationship was rendered on April 7, 2016. An appeal was timely sought in the Third Court of Appeals, Austin, Texas on April 26, 2016. The judgment was affirmed and an opinion was issued. A judgment was also rendered on August 22, 2017 and is reprinted in Appendix B. A timely motion for En Banc Reconsideration was sought on November 6, 2017 and overruled on November 16, 2017 and is reprinted in Appendix D.

A Petition for Review was timely sought in the Supreme Court of Texas on March 5, 2018. The judgment denying the Petition for Review was entered on May 11, 2018 and is reprinted in Appendix E. A Motion for Rehearing was timely sought on June 28, 2018. The court below entered an order denying the Motion for Rehearing on August 3, 2018 and is reprinted in Appendix F.

This petition is filed within 90 days of that date, so this Court has jurisdiction to review the judgment of the lower Courts on petition for certiorari by

virtue of 28 U. S. C. §1254(1). 28 U. S. C. §2403(b) may apply. Notification that the constitutionality of a State statute is being challenged has not been certified to the Texas Attorney General by the Court but Texas Attorney General has been notified by Petitioner that a State statute is being challenged on November 1, 2018 at const_claims@texasattorneygeneral.gov as required by Supreme Court Rule 29.4(c), and is reprinted in Appendix H.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Sixth Amendment of the United States Constitution provides:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”

The Eighth Amendment of the United States Constitution provides:

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

The Fourteenth Amendment of the United States Constitution provides:

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Universal Declaration of Human Rights Article 11, Clause 1 provides:

“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

Texas Family Code Section §261.107(b) provides:

“A finding by a court in a suit affecting the parent-child relationship that a report made under this chapter before or during the suit was false or lacking factual foundation may be grounds for the court to modify an order providing for possession of or access to the child who was the subject of the report by restricting further access to the child by the person who made the report.”

STATEMENT OF RELEVANT FACTS OF THE CASE

In June and July of 2014 Meoshi Bailey lived with Respondent for roughly two weeks.¹ During that time, on several occasions, Respondent asked Bailey to watch his, then, six year old daughter, Nariah Danielle Gasaway. On the morning of July 4, 2014 Respondent asked Bailey to watch N.D.G. while he left for a couple of hours to do an on call job. The child was asleep in Respondent's bed when Respondent left.

The same morning, July 4, 2014, Bailey asserts that the child made an outcry of sexual abuse against Respondent. When Bailey began to pick the child up to console her, she noticed that the child was not wearing any underwear. Upon asking the child where her panties were, Bailey asserts that the child accused Respondent of taking them off.² Afterwards Bailey searched for the child's underwear and found them in Respondent's bed. According to Bailey, the child's underwear dry and hard in the crotch area, and had a foul, sexual odor.³

Bailey kept the underwear and attempted to contact Petitioner several times the same day and the following day but was unsuccessful. On the night of

¹ Meoshi Bailey is the child's aunt and petitioner's eldest sister.

² Williamson County Sheriff's Department submission of child's underwear to Travis County DPS Crime Lab is reprinted in Appendix G.

³ On October 22, 2014 M. Bailey testified about what she observed the day the child made an outcry of sexual abuse to her. She was prohibited from repeating what the child said. A portion of Bailey's testimony is reprinted in Appendix K at p 88-89.

July 6, 2014, Bailey approached Petitioner, informed Petitioner regarding the child's outcry, and gave Petitioner the underwear she found on Respondent's bed.

Petitioner prayed for an answer and guidance from God, and phoned Respondent about keeping the child for the remainder of the summer. Respondent agreed to the arrangement, but wished to wait until the following Saturday before Petitioner picked the child up. On July 12, 2014 Petitioner picked the child up from Respondent's home.

On July 14, 2014, Petitioner had two dreams that indicated to her that Respondent had, in fact, sexually abused the child and immediately filed a report of sexual abuse with the Williamson County Sheriff's Department. Upon learning that Petitioner filed the report, Respondent began to demand that Petitioner return the child to him but Petitioner refused.

On August 6, 2014 the Child Protective Services (CPS) Case Worker, Bethany Brunson, returned the child to Respondent.⁴ On August 13, 2014, Respondent filed a supporting affidavit alleging that Petitioner filed false allegations of child sexual abuse and refused to return the child to him. Respondent further alleged that both investigators found no truth in the allegations and the case

⁴ Bethany Brunson testified that investigations of abuse typically take thirty days or more. She informed Respondent that she was closing the investigation on July 16, 2014, only two days after the report was filed with the Sheriff's Department. During that time the outcry witness was never interviewed. A portion of Bethany Brunson's testimony is reprinted in Appendix K at p 48-51.

was later closed.⁵ An emergency protective order was immediately rendered that restricted Petitioner's access to the child.

On August 14, 2014, Respondent filed a motion to modify parent child relationship, a motion to enforce child support and a motion to enforce possession and access. A hearing was set to hear Respondent's applications for temporary orders for September 2, 2014 in which Petitioner announced not ready for lack of counsel. No arguments were heard and the case was reset for October 22, 2014. Three days later, on September 5, 2014 the court made temporary orders titled "Agreed Temporary Orders in Suit to Modify Parent Child Relationship" that restricted Petitioner's access to N.D.G. to supervised visitations.⁶ The temporary order made by the trial court before hearing the evidence shows the trial court had already made its decision regarding the disposition of this case. On October 22, 2014 both parties, Bailey, the outcry witness, and Brunson, the CPS caseworker all testified. The trial court kept the temporary order the same except it named Respondent as temporary sole managing conservator and Petitioner as temporary possessory conservator.

On May 14, 2015, a review hearing was held. Detective Maugham, of the Williamson County Sheriff's Department testified of an open investigation of sexual abuse against Respondent and DNA evidence he was still awaiting the

⁵ Respondent's supporting affidavit is reprinted in Appendix I.

⁶September 5, 2014 temporary order is reprinted in Appendix L.

results of.⁷ On December 17, 2015, the trial court held a final hearing in which it made all temporary orders permanent. The modification order restricted all of Petitioner's access to the child other than supervised visitations. It further restricted all of Petitioner's parental rights other than the right to contact Respondent to inquire about the child's well-being and schooling and the duty to continue to pay child support. The final order was signed on April 7, 2016.

On April 15, 2016 Petitioner filed a request for Findings of Fact and Conclusions of Law. The trial court filed its Findings of Fact and Conclusions of Law on May 17, 2016.⁸ Petitioner filed a notice of appeal with the Texas Appellate Court, Third District at Austin on April 26, 2016. The Third Court of Appeals affirmed the lower court's ruling and issued an opinion on August 22, 2017. A ruling was also issued by the appellate court on August 2, 2017. Petitioner filed a Motion for En Banc Reconsideration on November 6, 2017 which was overruled on November 16, 2017.

Petitioner filed a Petition for Review with the Supreme Court of Texas on March 5, 2018. The petition was denied on May 11, 2018. Petitioner filed a Motion for Rehearing on June 28, 2018 which was denied on August 3, 2018. This Writ of Certiorari follows. Petitioner is challenging the subject-matter jurisdiction of the

⁷ Respondent alleged the case was later closed in his supporting affidavit on August 13, 2014 although the case was still pending in May 2015. A portion of Detective Maugham's May 14, 2015 testimony is reprinted in Appendix J at p 14-17.

⁸ Findings of Fact and Conclusions of Law reprinted in Appendix C.

trial court and Texas Family Code §261.107(b) for the first time on appeal in the Supreme Court of the United States.

ARGUMENT ON LEGAL QUESTION RAISED

Texas Family Code §261.107(b) is a statute that violates the Sixth, Eight and Fourteenth Amendments of the United States Constitution. It intertwines criminal law and family law and gives family courts power beyond their jurisdiction and expertise.

The lower court should have recognized the facially unconstitutional statute but instead supported it by referencing it in page ten of its opinion in this case. See *Bailey v. Gasaway*, No. 03-16-00281-CV, 2016 Tex. App. (Tex. App.-Austin Aug. 22, 2016, (mem. op.)). The lower court also should have recognized the lack of subject matter jurisdiction of the trial court to determine guilt of a penal offense. Because it did not, it is implying that family courts have jurisdiction to determine guilt of penal offenses and it is constitutional for guilt to be found by preponderance of evidence and not beyond a reasonable doubt as set forth in Article 11, Clause 1 of The Universal Declaration of Human Rights. It is a violation of due process.

Texas Family Code §261.107(b) is only capable of affecting parents who are parties to family law suits, and although other individuals could be placed in the same situation of having to act; so long as those individuals are not one of the two

parties involved in a family law suit, they cannot be affected by this statute. If parents who are parties to family law suits are the only individuals that can be affected by a lower standard of guilt of a criminal offense, along with being in violation of the due process clauses of the Sixth and Fourteenth Amendments and the right to equal protection of the laws, it is discriminatory.⁹

The statute, not only contradicts other mandatory State statutes, it undermines fundamental rights guaranteed to all citizens of the United States under the United States Constitution. It eliminates every protection that is guaranteed victims of abuse and the reporter's thereof and encourages cruel and unusual punishment. The Supreme Court of the United States should grant this Writ of Certiorari for aforementioned reasons and Petitioner will show as follows:

I.

THE TRIAL COURT LACKED SUBJECT-MATTER JURISDICTION

The foundation of this matter can be found in Respondent's supporting affidavit to his pleading filed on August 13, 2014. In it, Respondent alleges that Petitioner filed false allegations of sexual abuse and refused to return their child to him. Respondent's affidavit makes no mention of Bailey informing Petitioner about the child's outcry or the child's underwear.

⁹ Executive Order 11478 and Executive Order 13152 of May 2, 2000 of The United States Department of Labor prohibits "discrimination based on an individual's status as a parent."

Absent the report of child sexual abuse, however, no cause would exist. That is, there would be no case; every element that has been added to this case would not exist without Respondent's claim that Petitioner filed false allegations of sexual abuse against him. Thus, the case originated from an alleged penal offense and is a criminal matter, in which the family court lacks jurisdiction.

See *Taylor v. Dam* 244 F. Supp. 2d 747, 753 (S.D. Tex. 2003) explaining that the Court "will generally resolve any factual disputes from the pleadings and the affidavits submitted by the parties" to determine if jurisdiction exists. After reviewing Respondent's supporting affidavit, the trial court should have forwarded the case to the county prosecuting attorney to allow Petitioner due process of law in a criminal court before considering modifying the parent child relationship; as evidence of a guilty verdict would support and be justification for a modification but the contrary would not. In *Heckman v. Williamson County*, 369 SW 3d 137 (2012) the Court explains that, to determine jurisdiction, it will look "to the essence of the case to determine whether the issues it entails are more substantively criminal or civil." The essence of this case entails allegations of a penal offense in which Texas Penal Code classifies as a Class B Misdemeanor.¹⁰

¹⁰ Texas Penal Code §37.08 identifies the filing of a false report as a criminal offense and classifies the criminal offense as a Class B misdemeanor. "will generally resolve any factual disputes from the pleadings and the affidavits submitted by the parties" to determine if jurisdiction exists Texas Penal Code §37.08 is Reprinted in Appendix N at o.

Although Petitioner's actions of not returning the child could be classified as civil, they were absolutely necessary to protect the child from further abuse. The lower court consistently makes references to Petitioner's refusal to return the child to Respondent as violations of the possession and access order. It implies that Petitioner should have returned the child to her abuser and it is senseless to declare that it is unjustifiable for a parent to violate a court order and refuse to return their child to sexual abuse, when sexual abuse of a child is a lawful reason to violate a court order of possession and access.

The lower court recognizes Petitioner's actions as violating court orders. What it does not recognize, however, is the attack on Petitioner that came in the form of new arising elements that did not exist before, and would not exist if Respondent had not accused Petitioner of committing a penal offense. That is, if the outcry witness would have reported the abuse, herself, this case would not exist. Respondent used the allegation that Petitioner filed a false report of abuse in order to create a civil case against Petitioner.

Williamson County, Texas, the county in which the trial court is located, is comprised of four county courts. The trial court, County Court at Law Four, is the only county court in Williamson County that does not hear criminal matters. Williamson County Local Rule V(B)(1) provides that "[a]ll criminal cases shall be filed on a random basis as follows: 20% to County Court One; 50% to County

Court Two; 30% to County Court Three.”¹¹ Additionally, Texas Government Code §25.2482(a) lays out the law provisions of Williamson County Court jurisdiction providing, in part that “a county court at law in Williamson County has concurrent jurisdiction with the district court in family law cases and proceedings” and (b) provides, in part that “[a] county court at law has concurrent jurisdiction with the justice court in all criminal matters prescribed by law for justice courts.”¹²

If at all County Court at Law Four has jurisdiction to hear criminal matters, they would be those that are classified as Class C Misdemeanors and punishable by fine alone.¹³ In *Harrell v. State*, 286 S.W.3d 315, 317 (Tex. 2009) the court explains that “the chief features of a criminal proceeding “concern guilt, innocence, or punishment.” Family courts lack subject-matter jurisdiction to find guilt of penal offenses and impose penalties. If a family court makes a finding that a report was false or lacking factual foundation it is determining guilt of a criminal offense.

Petitioner’s Sixth and Fourteenth Amendment rights to due process and equal protection of the laws were utterly denied. Petitioner should have been afforded the right to be presumed innocent until proven guilty beyond a reasonable doubt in a criminal court and not by a preponderance of evidence in a family court.

¹¹ Williamson County Local Rule V is Reprinted in Appendix N at q.

¹² Texas Government Code §25.2482 is Reprinted in Appendix N at k.

¹³ Texas Government Code § Sec. 27.031 sets out the jurisdiction of justice court and is reprinted in appendix N at k-m.

See *Santosky v. Kramer*, 455 U.S. 745 (1982) with Justice Blackmun stating "before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence." In this case, however, clear and convincing evidence cannot be established in a family court, without guilt beyond a reasonable doubt first being established in a criminal court.

Most injurious is the trial court deprived Petitioner of her fundamental right to raise her daughter when it denied her due process and equal protection of the laws. See *In re G.M.*, 596 S.W.2d 846, 847 (Tex.1980) (noting that "[t]he Supreme Court of the United States and this Court have recognized that involuntary termination of parental rights involves fundamental constitutional rights). See also *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972) in which the Supreme Court stated:

The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed "essential," "basic civil rights of man," and "[r]ights far more precious . . . than property rights." [Citations omitted.]

II.

THE TRIAL COURT IMPOSED CRUEL AND UNUSUAL PUNISHMENT UPON PETITIONER AND THE CHILD

First, it is imperative to raise the fact, with emphasis, that the trial court made error when it found that Petitioner filed a report that was false or lacked factual foundation. When at least five facts exist, how is it possible for a report to be false or lacking factual foundation?¹⁴ This is a crucial fact because any punishment that is imposed upon an erroneous finding is that much more cruel and unusual than if it were not erroneous.

The cruel and unusual punishment imposed by the trial court was not merely imposed upon Petitioner; it has also been imposed upon the child. The trial court made a predetermined finding of Petitioner's guilt on September 5, 2014¹⁵ and chose to disregard the safety and welfare of the child by placing her in the sole custody of her suspected abuser. See *In re Byrnes*, 2002-NMCA-102, 39, 132 N.M. 718, 54 P.3d 996. By making the definite findings before hearing any testimony, the trial court indicated that it was not neutral, but instead had a predisposition toward ruling against Petitioner.

The constitutional right to due process of law entitles a person to a neutral judge see *Marshall v. Jerico, Inc.*, 446 U.S. 238, 242, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980) and ; *Schweiker v. McClure*, 456 U.S. 188, 195 (1982) holding:

¹⁴ At least four facts existed that makes the trial courts finding erroneous. 1. Bailey, the outcry witness, was living with Respondent at the time the child made an outcry 2. The child slept in bed with Respondent the night before her outcry 3. Respondent asked Bailey to watch the child on the morning of July 4, 2014. 4. The child was not wearing underwear when she was sleeping in the bed with Respondent; both Bailey and Respondent agreed to these four facts. 5. The child's underwear were being tested for DNA at the Travis County DPS Crime Lab.

¹⁵ The trial court had not heard any evidence in the case when it made the temporary order on September 5, 2014. The trial court first heard evidence on October 2, 2014. The September 5, 2014 temporary order is necessary to show a predisposition of the trial court.

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases ... The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. . . . At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.

Cruel and unusual punishment upon a child exists when a court makes an order that places a child in the sole custody of his/her abuser and prohibits that child from being protected from further abuse before first ruling abuse out, indefinitely. The trial court never expressed any interest or intent to obtain the DNA results that were still being tested at the Travis County DPS Crime Lab. *In Re Herring*, 221 S.W.3d 729 (Tex. App. 2007) the court opined that a trial court fails to show due regard for a child's safety and welfare when it issues a temporary order arising out of a child's outcry during the pendency of a criminal investigation.

In addition to denying the child protection from her suspected abuser, the trial court imposed an indefinite penalty of supervised visitations. The penalty imposed by the trial court is indefinite whereas, the transparency of its bias ensures that is only capable of reaching one ruling that is always not in favor of Petitioner in any event; that is, in spite of the law. This alone, however, does not seem to be sufficient for the trial court. It imposes penalties that are oppressive and designed

to impede Petitioner. Although verbally expressing its intentions to do the contrary,¹⁶ the trial court ordered Petitioner's visitations to be through a provider whose fees were more difficult for Petitioner to afford.¹⁷ Oppressions and impediments of this nature are cruel and unusual.

An individual who is found guilty for filing a false report in a Texas criminal court would receive a lighter punishment than what has been imposed upon Petitioner and the child by the trial court. If the civil penalty for a person found guilty in a criminal court is \$1000, how then, is it lawful for the trial court to impose a much harsher penalty upon Petitioner and the child without a conviction in a criminal court, but upon its own finding of criminal guilt?¹⁸ See *Weems v. United States*, 217 U.S. 349 (1910) where the Court explained, in part "[i]n determining whether a punishment is cruel and unusual ... this court will consider the punishment of the same or similar crimes in other parts of the United States, as exhibiting the difference between power unrestrained and that exercised under the spirit of constitutional limitations formed to establish justice."

The harsh penalty of separating a parent and a child indefinitely is far worse than any punishment that can be imposed upon a person who is found guilty of a

¹⁶ The trial court expressed its desires to find the least expensive provider so Petitioner could afford visitations is reprinted in Appendix K at p 119-120.

¹⁷ The parties were using a supervised visitation provider (Lone Star Social Services) that charged \$30 per hour. Upon Respondent's demand, the court ordered that the visitations be done by a provider chosen by Respondent at Petitioner's expense. The provider (LifeSteps) chosen by Respondent charged \$50 per hour but eventually went out of business. The court changed the provider to Rhonda Hohmann, who also charges \$50 per hour.

¹⁸ Texas Family Code §261.107(e) imposes a civil penalty of \$1000 on a person who is found guilty if filing a false report in a criminal court. Texas Family Code §261.107 is reprinted in Appendix N at h-i.

Class B Misdemeanor. In fact, the penalty is equivalent to the punishment of life with the possibility of parole; once the child turns 18, that is. This is the reason why the Sixth Amendment should apply to this case. As children are their parent's lives and the trial court's interference is a violation of the Sixth, Eighth, and Fourteenth Amendments.

III.

TEXAS FAMILY CODE §261.107(b) IS FACIALLY UNCONSTITUTIONAL

The punishment that has been imposed upon Petitioner and the child is consistent with the punishment imposed in §261.107(b) of the Texas Family Code. Texas Family Code §261.107(b) is a target for and only capable of affecting parents or guardians who are parties to a family law suit. It is discriminatory and denies equal protection of the laws. It is, in some fashion, similar to *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) in the instance that the unconstitutional statutes target a very specific class of people.

The statute contradicts the mandatory requirement to report abuse.¹⁹ It facilitates the creation of a case that is misleading and deceptive; as Texas Family Code §261.001(1)(F) defines abuse as the “failure to make a reasonable effort to prevent sexual conduct harmful to a child.” However, a family court can use the

¹⁹ Tex. Fam. Code § 261.101 is reprinted in Appendix N at e-g.

criminal matter authority given it by Texas Family Code §261.107(b) as a mechanism to create a civil case against a party by distorting their acts of attempting to protect their child from further abuse and turning them into violations of court orders. Thus, if a person is found not guilty of the offense in a criminal court, a family court would not have justification to uphold a modification. Additionally, the statute is inconsistent with §156.104(a)²⁰ and §156.1045(a)²¹ of the Texas Family Code, which justify modification upon convictions of crimes.

The statute further undermines Texas Family Code §261.109 that identifies the failure to report abuse as a penal crime classified as a Class A Misdemeanor.²² See *State v. Harrod*, 81 S.W.3d 904, 908-09 (Tex.App.-Dallas 2002, pet. refd) reversing a trial courts dismissal of charges brought against a mother who "was given information that made her believe ... her two daughters" were being molested and failed to report the abuse. Thus, if Petitioner had failed to report the abuse after being made aware of it, she would have been subjected to criminal prosecution for failure to report the abuse. See *White v. State*, 50 S.W.3d 31, 47(Tex.App.-Waco 2001, pet. refd); See also *Rodriguez v. State*, 47 S.W.3d 86, 89 (Tex. App.- Houston [14 Dist.] 2001, pet. refd). In both cases the defendants were convicted for failure to report sexual abuse of a child. Thus, the implication is this:

²⁰ Tex. Fam. Code §156.104 is reprinted in Appendix N at d.

²¹ Tex. Fam. Code §156.1045 is reprinted in Appendix N at e.

²² Tex. Fam. Code §261.109 is Reprinted in Appendix N at j.

It is a crime for a parent to file a report of abuse, but it is also a crime not to.

Texas Family Code §261.106(a) provides immunities to a person who files a report in good faith. But if family courts are authorized to find guilt on a lesser standard than a criminal court, how could any parent be afforded immunity? Impartiality is not extinct. When a family court makes a finding that a report was false or lacked factual foundation, a conviction in a criminal court should be the foundation of that finding.

The Fourteenth Amendment of the United States Constitution provides in part that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States” but Texas Family Code §261.107(b) does just that.

CONCLUSION AND PRAYER

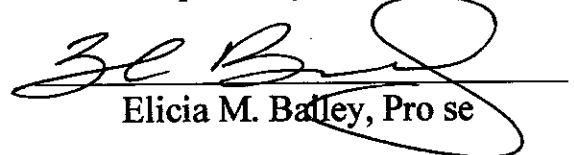
Even absent authority of State law, the trial court is impelled to infringe upon the Constitutional rights of parties that go before it. Petitioner’s Constitutional rights violations began at her first appearance in the trial court.²³ The trial court does not seem to possess the deftness to repress its rancor. Such instability causes an imbalance within the justice system and affects the uniformity

²³ An Original Petition for Divorce was filed on in County Court at Law 4 on November 8, 2010 and a final hearing on the case was set for May 20, 2011. Petitioner’s attorney filed a motion to withdraw from the case and a motion for continuance the same day of trial. The trial court granted the motion to withdraw and denied the motion for continuance. The motions and orders are reprinted in Appendix M. The trial court gave Petitioner no other option but to represent herself without the assistance of counsel.

thereof. Perhaps the judicial officer of the trial court is incompetent to carry out judicial obligations in a manner that is consistent with the Constitution of the United States. No individual within or without the jurisdiction of the United States should suffer such affliction; especially at the hands of a sworn judicial officer whose expected purpose is to obtain the best possible results for families.

When the righteous are in authority, the people rejoice: but when the wicked beareth rule, the people mourn. No remedy could ever make up for the time that has been stripped from Petitioner and the child. Petitioner prays that the court grant this Writ of Certiorari, hold Texas Family Code §261.107(b) facially unconstitutional and void, and most importantly, restore all time that has been lost between Petitioner and the child.

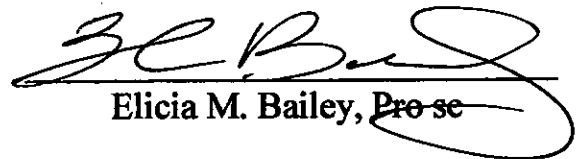
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Elicia M. Bailey', is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

Elicia M. Bailey, Pro se

CERTIFICATE OF COMPLIANCE:

As required by Supreme Court Rule 33.1(h), I certify that this Writ of Certiorari for contains 5,779 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).


Elicia M. Bailey, Pro se