No. _____

In The

# Supreme Court of the United States

DANA GALLOP,

*Petitioner,*

v.

ADULT CORRECTIONAL INSTITUTE, et al.,

*Respondents.*

**On Petition For Writ Of Certiorari To The Rhode Island Supreme Court**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

I. Does Rhode Island's Civil Death Statute, G.L. 1956 § 13-6-1, violate the Supremacy Clause of the United States Constitution, where it is derived from laws that were used to socially exclude and politically disenfranchise African-Americans after the Civil War, and (1) is being applied to deny Petitioner, serving a life term of imprisonment, the right to file a civil claim in court, contrary to the intent of 42 U.S.C. 1983; and where (2) every United States court faced with this issue has found the civil death statute unconstitutional—and was this issue waived where it was properly raised at each level below?

## PARTIES TO THE PROCEEDINGS BELOW

The petitioner, plaintiff-appellant below, is Dana Gallop.

The respondents, defendants-appellees below, are the Adult Correctional Institute, Ian Rosado, Matthew Galligan, and the State of Rhode Island.

## RELATED CASES

*Dana Gallop v. Adult Correctional Institute*, et al, Civil No. PC-2010-6627 Providence Superior Court, second judgment entered July 23, 2018; judgment affirmed, *Dana Gallop v. Adult Correctional Institute*, et al, 218 A.3d 543 (R.I. 2019), R.I. Supreme Court Case No. SU-2018-0246 (November 14, 2019);

*Dana Gallop v. Adult Correctional Institute*, et al, Civil No. PC-2010-6627 Providence Superior Court (filed November 12, 2010); judgment entered July 27, 2016; judgment vacated and remanded May 8, 2018, *Dana Gallop v. Adult Correctional Institute*, et al, 182 A.3d 1137 (R.I. 2018), Rhode Island Supreme Court, Case No. SU-2016-0278 (May 8, 2018);

*State of Rhode Island v. Dana Gallop*, Criminal No. P1-2009-1896AG, Providence Superior Court (filed June 17, 2009), judgment entered May 12, 2010; judgment affirmed, *State of Rhode Island v. Dana Gallop*, 89 A.3d 795 (R.I. 2014), Rhode Island Supreme Court, Case No. SU-2011-0092 (May 2, 2014).

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## INTRODUCTION

Petitioner, Dana Gallop, respectfully petitions for a writ of certiorari to review the opinion of the Rhode Island Supreme Court, issued November 14, 2019, holding that his lawsuit for a 2010 injury had to be dismissed for lack of jurisdiction because his civil rights were extinguished by operation of Rhode Island civil death statute, Gen. Laws § 13-6-1, once his felony conviction became final on May 2, 2014, and that this law not violate the Supremacy Clause of the United States Constitution.



## OPINIONS BELOW

The 2019 opinion of the Rhode Island Supreme Court (App., infra, 1a-16a) is reported at 218 A.3d 543 (R.I. 2019).

The 2018 opinion of the Rhode Island Supreme Court (App., infra, 35a-50a) is reported at 182 A.3d 1137 (R.I. 2018).

The bench decision of the Providence County Superior Court, dated July 23, 2018 (App., infra, 17a-34a), dismissing petitioner's lawsuit, is unreported.

The bench decision of the Providence County Superior Court, dated July 28, 2016 (App., infra, 51a-63a), dismissing petitioner's lawsuit, is unreported.

## JURISDICTION

The judgment of the Rhode Island Supreme Court was entered on November 14, 2019. (App. 1a). This petition is timely filed pursuant to Supreme Court Rule 13.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Supremacy Clause of the United States Constitution, art. VI, cl. 2; Section 1 of the Civil Rights Act of 1871, *codified at* 42 U.S.C. § 1983.

The Supremacy Clause provides, in pertinent part:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. U.S. Const. art. VI, cl. 2.

42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the

deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

## STATEMENT OF THE CASE

On April 26, 2010, petitioner was a pretrial detainee incarcerated in the Intake Service Center in Cranston, Rhode Island, awaiting trial based on criminal charges related to a fatal shooting. On this date, he was violently assaulted by another inmate, Ian Rosado, at the prison facility and severely injured. Rosado allegedly told Matthew Galligan, a correctional officer, that he intended to carry out the attack. Petitioner alleged that Officer Galligan acted under color of law when he abandoned his post for eighteen minutes, during which time Rosado violently attacked petitioner. (App. 2a-3a) Petitioner filed suit in Providence Superior Court on November 10, 2010. An amended complaint was allowed on April 12, 2013. (App. 4a)

### Providence Superior Court's Opinion, July 2016

On the eve of trial, on June 22, 2016, the trial court justice, *sua sponte*, raised the issue that the trial court lacked jurisdiction based on R.I. Gen. Laws 1956, § 13-6-1, the civil death statute, because petitioner's conviction and life sentence became final on July 2, 2014. (App. 4a) This statute provides:

> **§ 13-6-1. Life prisoners deemed civilly dead**
>
> Every person imprisoned in the adult correctional institutions for life shall, with respect to all rights of property, to the bond of matrimony and to *all civil rights* and relations of any nature whatsoever, be deemed to be dead in all respects, as if his or her natural death had taken place at the time of conviction. . . .

On this same date, June 22, 2016, the State of Rhode Island filed a motion to dismiss due to lack of jurisdiction based on R.I. Gen. Laws 1956, § 13-6-1. On July 12, 2016, Petitioner objected on several grounds, including the following two grounds which have been raised and briefed at every level below since the civil death statute issue was raised:

> 1) The Trial Court erred as the Civil Death Statute in R.I. is Invalid under the Supremacy Clause to the Extent it Impairs a Plaintiff's Capacity to Sue under 42 U.S.C. § 1983 *and other Civil Statutes, and*
>
> 2) 42 U.S.C. § 1983 invalidates any state law that precludes access to state remedies available to file suit to litigate claims directly associated with violations of any federal rights under color of law.

(App. 95a, 100a-105a)

On July 28, 2016, the trial justice failed to address these issues and granted the State's motion to dismiss

based on R.I. Gen. Laws 1956, § 13-6-1, stating that "I will not weigh in at this point on whether or not this statute is unconstitutional or anything like that. . . . I have no jurisdiction. The motion to dismiss is granted." (App. 51a, 60a)

**Rhode Island Supreme Court's Opinion 2018**

On August 2, 2016, Petitioner filed a Notice of Appeal. Petitioner raised and briefed both these specific issues on appeal. (App. 78a, 80a-81a) On May 8, 2018, the R.I. Supreme Court, like the Superior Court below, stated that the civil death statute, on its face, warranted dismissal of petitioner's claims on the grounds that the court lacked "subject matter jurisdiction." *Gallop v. Adult Corr. Institutions*, 182 A.3d 1137, 1143 (R.I. 2018). However, the Court recognized that Petitioner raised the Supremacy Clause/42 U.S.C. 1983 challenges to the validity of the civil death statute. The court stated that Petitioner had taken the position that "§ 1983 invalidates any state law which stands in the way of any person filing suit to vindicate violation of federal protected rights under color of law. The plaintiff has failed to produce any authority that holds that a state court is bound to hear a § 1983 action where this Court has deemed the party to be civilly dead." *Id.* at 1144. The Court stated "jurisdictional support . . . will be necessary on remand." *Id.* (App. 47a-48a)

The R.I. Supreme Court also agreed that the trial court erred in not addressing Petitioner's motion for leave to file the second amended complaint. *Id.* at 1144.

> Nevertheless, we conclude that the trial justice should have addressed the plaintiff's second amended complaint ***before*** *granting the defendants' motion to dismiss*. . . . We are of the opinion that the plaintiff is entitled, *at the very least*, to a reasoned decision on his motion for leave to file an amended complaint. Accordingly, we *vacate the judgment of the Superior Court* and remand this case to the Superior Court . . .

*Gallop v. Adult Corr. Institutions*, 182 A.3d 1137, 1144-45 (R.I. 2018). (App. 49a-50a)

Due to the fact that the lower court never addressed these issues, the Rhode Island Supreme Court had to vacate the judgment dismissing the complaint for lack of jurisdiction under R.I. Gen. Laws 1956, § 13-6-1, in order to provide the lower court with the authority to address these three issues; because without the prior judgment being vacated, the lower court lacked jurisdiction under R.I. Gen. Laws 1956, § 13-6-1 to address these issues.

**Providence Superior Court's Opinion, July 2018**

This case was remanded to Providence Superior Court. On June 5, 2018, petitioner briefed these issues. (App. 78a, 80a-94a) In regards to the Supremacy Clause/ 1983 issues, petitioner cited *Haywood v. Drown*, 556 U.S. 729 (2009) (New York was not at liberty under Supremacy Clause to shut doors of their courts to civil rights actions to recover damages from its corrections officers for acts within scope of their employment).

(App. 87a) Petitioner then outlined the pre-emption violations and the unanimous case law revealing that every court in the United States which encountered a civil death statute, which barred a prisoner serving a life sentence from accessing the courts, had declared it unconstitutional. (App. 83a-90a) Petitioner also explained that the Superior Court had to rule on the validity of R.I. Gen. Laws 1956, § 13-6-1 prior to reaching the merits of the motion for leave to file the second amended complaint. (App. 91a-94a)

On July 23, 2018, the Superior Court failed to address any of these issues, and only addressed the motion for leave to file the second amended complaint. The court denied the motion for leave to file the second amended complaint. (App. 17a-34a)

**Rhode Island Supreme Court's Opinion 2019**

On August 7, 2018, Petitioner filed a notice of appeal. On September 17, 2018, after receiving an order from the R.I. Supreme Court, Petitioner filed a Petition under R.I. Rule 12A of Art. 1, of the Rhode Island Supreme Court Rules of Appellate Procedure. (App. 64a-77a)

On November 14, 2019, the Court affirmed the judgment below. *Gallop v. Adult Corr. Institutions*, 218 A.3d 543 (R.I. 2019). (App. 1a-16a) The Court stated that petitioner argued "that the trial court erred in (1) failing to address the plaintiff's argument that G.L. 1956, § 13-6-1 violates the Supremacy Clause of the United States Constitution, and in failing to allow the

plaintiff's longstanding state law tort claims to proceed; and (2) denying the plaintiff's motion to file a second amended complaint." *Id.* at 545. (App. 1a-2a)

From the moment the civil death statute issue was raised on June 22, 2016, Petitioner objected that its application to his claims under "42 U.S.C. 1983 and *other civil statutes*" violated the Supremacy Clause, and that laws which flew in the face of 42 U.S.C. 1983, such as R.I. Gen. Laws 1956, § 13-6-1, violated the Supremacy Clause. (App. 95a, 100a-105a) Petitioner raised these issues again on direct appeal in 2016, and raised these issues again on remand in 2018, and raised these issues again on direct appeal in 2018. (App. 1a-2a; 78a, 80a-81a) Neither the Providence Superior Court nor the Rhode Island Supreme Court has addressed these issues on their merits. In astonishing fashion, on the fourth time it was presented, the R.I. Supreme Court stated that:

> Significantly, there was no timely constitutional challenge to the civil death statute, for negligence claims, raised in the Superior Court or this Court. . . .

*Gallop v. Adult Corr. Institutions*, 218 A.3d at 546. This statement is patently incorrect. In fact, this statement is directly contradicted in the same opinion by the Court itself four pages later. This where the Court finally acknowledged for the first time that Petitioner's objection to the use of the civil death statute to bar him from court was never confined to just 42 U.S.C. 1983,

but also all "other civil statutes," which of course was directed at and included the R.I. tort statutes involved in this lawsuit:

> Before this Court in *Gallop II*, plaintiff argued that the civil death statute is invalid under the Supremacy Clause "to the extent it impairs a plaintiff's capacity to sue under 42 [U.S.C. §] 1983 ***and*** ***other civil statutes***"—statutes that he failed to name.

*Gallop v. Adult Corr. Institutions*, 218 A.3d at 550. It is absurd to think that Petitioner would have to list the tort statute(s) at issue in this case, or dozens of civil statutes in Rhode Island by name and number, as the civil death statute applies to *every* civil statute. Based on Petitioner's failure to specifically "name" statutes, the R.I. Supreme Court held that it would not reach the merits of the "civil death statute" being "unconstitutional," because of Petitioner's alleged failure to raise it below. *Gallop v. Adult Corr. Institutions*, 218 A.3d at 550.

The court also failed to acknowledge that in the earlier *Gallop* opinion, it *vacated the prior dismissal*, and remanded for further briefing on the jurisdictional issues related to the civil death statute issue, which was required so the lower court could address the second amended complaint—which contained the *state and federal claims*. *Gallop*, 182 A.3d at 1144-45. This clearly opened the door for additional briefing on the Supremacy Clause issue.

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## REASONS FOR GRANTING THE WRIT

### I. THE QUESTION PRESENTED IS OF SUBSTANTIAL AND RECURRING IMPORTANCE, AS THE CIVIL DEATH STATUTE VIOLATES THE SUPREMACY CLAUSE AND 42 U.S.C. 1983, AS THESE LAWS WERE USED TO SOCIALLY EXCLUDE AND POLITICALLY DISENFRANCHISE AFRICAN-AMERICANS AFTER THE CIVIL WAR; AND R.I. GEN LAWS § 13-6-1 IS BEING APPLIED TO DENY PETITIONER, SERVING A LIFE TERM OF IMPRISONMENT, THE RIGHT TO FILE A CIVIL CLAIM IN COURT; AND RHODE ISLAND IS THE ONLY STATE FACED WITH THIS ISSUE THAT HAS FAILED TO FIND IT UNCONSTITUTIONAL

#### a. Plaintiff's claims were clearly raised below and not waived

The courts below failed to address the Supremacy Clause issues, despite these issues being raised and briefed at each of the four stages. Even more remarkably, in its 2019 opinion, the R.I. Supreme Court erected two separate procedural barriers to further review. Upon careful inspection, each is without merit, but Petitioner must dispose of these procedural issues first.

First, in 2019, the Rhode Island Supreme Court explained:

> On appeal, plaintiff contends that his state law claims must be allowed to proceed because § 13-6-1 is unconstitutional under federal law and United States Supreme Court

> precedent. The plaintiff also argues that the trial justice erred in addressing his motion for leave to file a second amended complaint before she addressed the issue of the constitutionality of § 13-6-1. He argues that the civil death statute should have been invalidated first, then his motion to amend should have been granted as to some or all of his state law claims in counts two through six. The plaintiff is mistaken and overlooks the fact that there was *no complaint pending* before the Superior Court, and, unless the motion to file a second amended complaint was granted, there was nothing for the trial justice to pass upon.

*Gallop v. Adult Corr. Institutions*, 218 A.3d at 548 (R.I. 2019). The R.I. Supreme Court is in error stating that there was "no complaint pending before the Superior Court." During the prior appeal in 2018, the R.I. Supreme Court "*vacated the judgment* of the Superior Court" which had dismissed the complaint:

> Nevertheless, we conclude that the trial justice should have addressed the plaintiff's second amended complaint before granting the defendants' motion to dismiss. . . . Accordingly, we *vacate the judgment of the Superior Court* and remand this case to the Superior Court . . .

*Gallop v. Adult Corr. Institutions*, 182 A.3d 1137, 1144-45 (R.I. 2018). Due to the fact that the prior judgment was vacated, the original amended complaint filed in 2013 remained active. In addition, Counts 2-6 of the

proposed second amended complaint contained more detailed versions of the original state law claims.

Second, as set forth in the Statement of the Case, Petitioner raised the issue that the civil death statute violates the Supremacy Clause "to the extent it impairs a plaintiff's capacity to sue under 42 [U.S.C. §] 1983 *and other civil statutes*." However, the R.I. Supreme Court stated:

> Significantly, there was no timely constitutional challenge to the civil death statute, for negligence claims, raised in the Superior Court or this Court . . .

*Gallop v. Adult Corr. Institutions*, 218 A.3d at 546. In fact, in the 2018 opinion, the R.I. Supreme Court omitted the entire phrase "and other civil statutes" from their opinion. After insinuating that there was no timely challenge to the civil death statute for negligence claims, the court contradicted itself later in the opinion—acknowledging for the first time that petitioner did present the "other civil statutes" including the negligence statute issue:

> Before this Court in *Gallop II*, plaintiff argued that the civil death statute is invalid under the Supremacy Clause "to the extent it impairs a plaintiff's capacity to sue under 42 [U.S.C. §] 1983 ***and other civil statutes***"—statutes that he failed to name.

*Gallop v. Adult Corr. Institutions*, 218 A.3d at 550. However, the court held that petitioner failed to "name" the statutes the lawsuit was filed under and

was barred by the court's raise or waive rule. This is error, as the "other civil statutes" meant and included the statutes the lawsuit was filed under.

Further, due to vacating the lower court's dismissal and remanding this case, *Gallop*, 182 A.3d at 1144-45, with instructions to Petitioner to provide briefing on the jurisdictional issues raised by the application of the civil death statute, and instructions to address the second amended complaint issue—which contained state and federal claims, the lower court was at square one on the Supremacy Clause issue. Petitioner complied with the Court's directions on remand. (App. 78a-94a) There was no waiver of this issue below.

**b. Civil Death Statutes were used for the social exclusion and political disenfranchisement of African-Americans**

As one authority explained:

> The concept of civil death persisted into the twentieth century as an "integral part of criminal punishment." Some commentators express that the continuation of civil death, "[e]ven watered down and euphemistically denominated 'civil disabilities,' . . . functioned after the Civil War to perpetuate the social exclusion and political disenfranchisement of African-Americans."

*United States v. Nesbeth*, 188 F. Supp. 3d 179, 181 (E.D.N.Y. 2016) (referencing commentators).

**c. R.I. Gen Laws § 13-6-1 violates the Supremacy Clause, and conflicts with multiple decisions from this Court**

It is clear that the federal preemption of state law is a matter of federal constitutional law. "Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by the Constitution and laws of the United States whenever those rights are involved in any suit or proceedings before them." *United States v. Bank of New York & Tr. Co.*, 296 U.S. 463, 479 (1936). Twenty-two years later, this Court explained:

> Article VI of the Constitution makes the Constitution the "supreme Law of the Land." In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of *Marbury* v. *Madison*, 1 Cranch 137, 177, that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any

> State to the Contrary notwithstanding." Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3, "to support this Constitution."

*Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

There is no question that Rhode Island's application of its civil death statute to foreclose petitioner's right of access to the courts violates the Supremacy Clause. This Court has explicitly established that prisoners have a fundamental right to access the courts in a series of important cases, including *Ex parte Hull*, 312 U.S. 546 (1941), *Johnson v. Avery*, 383 U.S. 483 (1969), and *Bounds v. Smith*, 430 U.S. 817 (1977). This right allows prisoners to file civil claims. The right is so fundamental that it requires a prison to fund a way for prisoners to have meaningful access to the courts. *Bounds v. Smith*, 430 U.S. at 825, 828. In *Wolff v. McDonnell*, 418 U.S. 539, 94 S. Ct. 2963 (1974), this Court explained that:

> The right of access to the courts, upon which Avery was premised, is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. It is futile to contend that the Civil Rights Act of 1871 has less importance in our constitutional scheme than does the Great Writ. The recognition by this Court that prisoners have certain constitutional rights which can be protected by civil rights actions would be diluted

> if inmates, often "totally or functionally illiterate," were unable to articulate their complaints to the courts.

*Wolff v. McDonnell*, 418 U.S. at 579.

### d. Every court in the United States to face the issue presented has declared the civil death statute unconstitutional

Court after court squarely faced with a civil death statute precluding an inmate from accessing the courts has struck it down as violative of the First Amendment, Due Process Clause, and/or Equal Protection Clause of the U.S. Constitution. See e.g., *Holman v. Hilton*, 712 F.2d 854 (3rd Cir. 1983) (finding New Jersey's civil death statute unconstitutional as due process violation when it barred inmate serving life sentence from accessing the courts); *Thompson v. Bond*, 421 F. Supp. 878, 885-886 (W.D.Mo. 1976) ("Mo. Rev. Stat. § 222.010 (1969), insofar as it purports to suspend the civil rights or declare the civil death of adults sentenced to imprisonment in an institution within the Missouri Department of Corrections for a term of years or for a term of life, is unconstitutional, null and void, in violation of the First and Fourteenth Amendments to the Constitution of the United States, and enforcement thereof shall be, and is hereby, enjoined"); *Delorme v. Pierce Freightlines Co.*, 353 F. Supp. 258 (D.Or. 1973) ("We decide this [civil death statute] case on the basis of the Equal Protection Clause alone, although we believe there is much merit in Delorme's other arguments. There is no dispute that

the goals of preventing pointless litigation and rehabilitating prisoners are constitutionally permissible. But if ORS 137.240 is to withstand the test of the Equal Protection Clause, defendants must also show that these goals are rationally related to the action taken by the State, which suspends the right of an imprisoned felon to litigate his legal claims . . . Defendants have not made such a showing. We find that the means used here to accomplish the State's purposes are impermissibly broad"); *McCuiston v. Wanicka*, 483 So. 2d 489, 491 (Fla. 2nd DCA 1986) (Florida civil death statute unconstitutional in that it violated both the state and federal constitutions as it foreclosed assaulted prisoner from pursuing civil action in court); *Chesapeake Utilities Corp. v. Hopkins*, 340 A.2d 154 (Del. 1975) (Delaware Constitution overcomes the common law doctrine of "civil death"); *Davis v. Pullium*, 484 P.2d 1306 (Okla. 1971) ("civil death" statute no defense to a personal injury action, due to Oklahoma Constitution holding that state's courts open to "every person").

In *Gallop*, the Court opined that New York and Rhode Island are the only two states in the United States that have civil death statutes. *Gallop*, 182 A.3d at 1141. However, New York's civil death statute was struck down in part as unconstitutional 45 years ago on federal grounds because it precluded a prisoner serving a life sentence from accessing the courts. *Bilello v. A.J. Eckert Co.*, 42 A.D.2d 243, 346 N.Y.S.2d 2 (1973). The New York legislature subsequently amended its "civil death" statute 58 days after the *Bilello* court issued its opinion on July 12, 1973, and permanently removed its provisions.

### e. The Supremacy Clause is also violated by § 13-6-1 based on 42 U.S.C. 1983

The federal Supremacy Clause overrides all state constitutional and statutory provisions contrary to federal constitutional and statutory law. This Court has already held that an identical New York law violated the Supremacy Clause. See e.g., *Haywood v. Drown*, 556 U.S. 729, 737 (2009) (New York law that stripped state courts of jurisdiction over § 1983 actions against correctional officers violated the Supremacy Clause, because the state law was "contrary to Congress' judgment that all persons who violate federal rights while acting under color of state law shall be held liable for damages.") R.I. Gen Laws § 13-6-1 runs directly afoul of 42 U.S.C. 1983.

## CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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