No. 20-1482

# In The Supreme Court of the United States



CHERI LYNNE MELCHIONE

*Petitioner,*

v.

TIMOTHY TEMPLE,

*Respondent.*

**On Petition For Writ Of Certiorari**
**To The Florida Fifth District Court of Appeal**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

### QUESTION ONE:

Did the Florida Fifth District Court of Appeal's unchecked power to withhold or strip jurisdiction from the Florida Supreme Court to hear cases involving the Florida and U.S. Constitutional Law violate the Mother's constitutional rights; especially when it created a conflict of interest which allowed the Florida District Court to prevent their own ruling from being reviewed or overturned by the Florida Supreme Court?

If allowed in state courts, could the U.S. District Court of Appeals also be granted the *exclusive* power to control the jurisdiction of the U.S. Supreme Court which would give the U.S. District Court the ability to prevent their own cases from ever being reviewed or overturned by the U.S. Supreme Court?

### QUESTION TWO:

Is it a constitutional violation for Florida courts to divide people into unequal classes where some people are allowed access to the jurisdiction of the Florida Supreme Court while other people (with cases of similar merit) are denied access to the Florida Supreme Court based exclusively on which party arbitrarily receives a "written opinion" from the Florida District Courts; but where there is no standard, no transparency, no oversight and no predictable process by which someone is granted the

required written opinion? Is this practice especially a violation when it applies to family law cases where the courts have a legal monopoly over the families and require parents to go through the court system to resolve paternity matters, yet those parents are now being denied full access to the available court system (*Boddie v. Connecticut*)?

QUESTION THREE:

Did the Florida Family Court violate the Mother's constitutional rights by failing to render a timely ruling for over 16 months and additionally making an error in law which left the Mother pro se during critical hearings for the child's educational and medical needs? (Is time of the essence in child support cases?)

## PARTIES TO THE PROCEEDINGS

Petitioner, Cheri Lynne Melchione, was the petitioner-appellant.

Respondent, the Timothy Temple, was respondent.

Other:

Potential Party of Interest: Florida Attorney General, Ashley Moody. The Petitioner recognizes that the Florida Attorney General (or other substitute representative of the State of Florida) has a potential interest in the outcome of this case and may wish to submit a response or amicus curiae brief.

## TABLE OF CONTENTS

## TABLE OF APPENDIX CONTENTS

## TABLE OF AUTHORITIES

FLORIDA CASES:

## OTHER AUTHORITIES: **PCA ARTICLES AS AN AMICUS CURIAE BRIEF SUBSTITUTION**

In lieu of an Amicus Curiae Brief for the Petition Stage, the Mother submits the below list of articles and reports which are critical reading and directly on the topic of the Florida PCA Standard.

The below list of authorities has been written by District Court Justices, Attorneys, Academics and Others. The information contained in these articles and the District Court Committee's PCA Report is absolutely essential information that will inform and help the U.S. Supreme Court clerks and honorable justices better understand the issue along with showing the long tortured history and battle which has been raging as a legal battle over the PCA Standard for years.

PCA ARTICLE ONE:

Craig E. Leen, *Without Explanation: Judicial Restraint, Per Curiam Affirmances, and the Written Opinion*

Rule, 12 FIU L. Rev. 309 (2017).
DOI: https://dx.doi.org/10.25148/lawrev.12.2.7

LINK:
https://ecollections.law.fiu.edu/cgi/viewcontent.cgi?article=1319&context=lawreview

PCA ARTICLE TWO:

England, Arthur J. *PCAs In The DCAs: Asking For Written Opinion From A Court That Has Chosen Not To Write One.* Florida Bar Vol. 78, No. 3 March 2004 Pg 10.

LINK:
https://www.floridabar.org/the-florida-bar-journal/pcas-in-the-dcas-asking-for-written-opinion-from-a-court-that-has-chosen-not-to-write-one/

PCA ARTICLE THREE:

Steven Brannock & Sarah Weinzierl, *Confronting a PCA: Finding a Path Around a Brick Wall*, 32 Stetson L. Rev. 367 (2003)

LINK:
https://www.stetson.edu/law/lawreview/media/confronting-a-pca-finding-a-path-around-a-brick-wall.pdf

PCA ARTICLE FOUR:

Ezequiel Lugo, *The Conflict PCA: When A Affirmance Without Opinion Conflicts With A Written Opinion;* Florida Bar Vol. 85, No. 4 April 2011 Pg 46

LINK:
https://www.floridabar.org/the-florida-bar-journal/the-conflict-pca-when-an-affirmance-without-opinion-conflicts-with-a-written-opinion/

PCA ARTICLE FIVE:

Muniz, Michael H. *Oh No! Not A Per Curiam Affirmed Decision On My Appeal.* Florida Bar Vol. 93, No. 3 May/June 2019 Pg 26 Featured Article

LINK:
https://www.floridabar.org/the-florida-bar-journal/oh-no-not-a-per-curiam-affirmed-decision-on-my-appeal/#:~:text=An%20appellate%20court%20per%20curiam,courts%20of%20appeal%20(DCA)

PCA ARTICLE SIX:

Wolff, David E. *The Extraordinary Remedy Of Mandamus: A Creative Solution To Formidable Jurisdictional Hurdles*

Florida Bar Vol. 90, No. 2 February 2016 Pg 10 Featured Article

LINK:
https://www.floridabar.org/the-florida-bar-journal/the-extraordinary-remedy-of-mandamus-a-creative-solution-to-formidable-jurisdictional-hurdles/

**FINAL PCA REPORT BY**

Affirmed Decisions, Judicial Management Council, Final Report And Recommendations 25 (2000),

https://www.flcourts.org/core/fileparse.php/260/urlt/pca-report.pdf; office of the state

Courts Administrator, Florida District Courts Of Appeal: A Descriptive Review 33 (2006).

Agenda, Subcommittee On Per Curium Affirmances, Florida Appellate Court Rules Committee 357–82 (June 26, 2015),

**LINK:**

**https://www.flcourts.org/content/download/218213/file/pca-report.pdf**

http://www.floridabar.org/cmdocs/cm205.nsf/

Criticism of the PCA Report:
The PCA Report's Recommendations (or lack thereof)
https://www.lei-law.com/appeals/the-pca-reports-recommendations-or-lack-thereof/

**For the Statutory And Constitutional Authorities Please See Appendix**

## PETITION FOR WRIT OF CERTIORARI

Petitioner, hereafter called the Mother, respectfully prays that a writ of certiorari issue to review the judgment(s) below and in Appendix.

## OPINIONS BELOW

The Fifth District Court of Appeals of Florida (DCA) order Oct. 9, 2020. DCA Rehearing Order on Oct 23, 2020. Ninth Circuit Court Decisions April 2020.

## STATEMENT OF JURISDICTION

The Ninth Circuit Court issued an opinion on April 21, 2020 related to temporary attorney fees (App. E) and a separate order on April 27, 2020 for the child's educational fees (App. D). Both orders were appealed in the Fifth District Court of Appeals. The Fifth District Court of Appeals of Florida entered a *per curiam affirmed* order (known in Florida as a "PCA *without* an opinion") on Oct. 9, 2020 (App. A). A rehearing was timely filed on Oct. 23, 2020 but denied on Nov. 6, 2020 (App. B). However, without a written opinion from the Fifth District Court, the Florida Supreme Court was barred from Jurisdiction over the case and the Fifth District Court became the "highest court" for jurisdictional purposes of this particular case (*Fla. Star*, 530 S.2d at 288.). The Fifth District Court then issued a denial on the Motion to Certify a Question on Dec. 4, 2020 (App. C). The Florida Supreme Court then issued a dismissal due to lack of Jurisdiction

over the case on Jan. 12 and Jan. 20, 2020 (App. F; App. G).

This Court may exercise jurisdiction under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions involved are listed below the full text are set forth in Appendix H.

U.S. CONSTITUTION:
U.S. Const. amend. I
U.S. Const. amend. XIV, § 1
U.S. Const. article VI

FLORIDA CONSTITUTION:
Art. I, § 2, Fla. Const.
Art. I, § 9, Fla. Const.
Art. I, § 21, Fla. Const.
Art. V, § 3, Fla. Const.
Art. V, § 4, Fla. Const.

FLORIDA STATUTORY PROVISIONS
Fla. R. App. P. 9.030
Fla. R. App. P. 9.330
§ 61.16 (1), Fla. Stat. (2017)
§ 742.045, Fla. Stat. (2017)

## STATEMENT OF THE CASE:

### LEGISLATIVE AND LEGAL HISTORY OF THE PCA STANDARD
*Per Curiam Affirmed (herein PCA)*

The controversy in this case revolves around "access to the Florida Supreme Court" and is rooted in the interpretation by the District Court and Florida Supreme Courts of Article V Section 3 of the Florida Constitutional which gives discretionary jurisdiction to the Florida Supreme Court to review Florida District Court of Appeals cases (herein DCA or District Court).

The Florida courts (through various cases) converted access to the Supreme Court's Discretionary Jurisdiction into a singular "PCA Standard" requiring a party to have a District Court's written opinion before their case is granted Supreme Court jurisdiction.

However, no language exists in the Florida Constitution which limits jurisdiction of the Supreme Court to only classes of people who have been given a District Court's written opinion; in fact, a "PCA" and a "District Court's written opinion" are not mentioned anywhere in the Constitution.

The Florida Constitution (Art. V, § 3, Fla. Const.) reads:

*(2) Discretionary Jurisdiction. The discretionary jurisdiction of the supreme court may be sought to review:*
*(A) decisions of district courts of appeal that:*

*(ii) expressly construe a provision of the state or federal constitution*
*(iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;*

The statewide controversy began when the Florida courts interpreted the word "expressly" from the above constitutional passage for the purpose of deciding which cases were allowed access to supreme court jurisdiction.

In a series of rulings over many years, the Florida court's began to narrowly define "expressly" to be the exclusive domain of a District Court's "written opinion" (*R.J. Reynolds Tobacco Co. v. Kenyon*, 882 So. 2d 986, 988–90 (Fla. 2004); *Jenkins,* 385 So. 2d at 1359); Additional rulings further restricted and reduced the term "expressly" by removing any ability of written dissents, concurring opinions or citations to meet the new "written opinion" standard for obtaining Supreme Court jurisdiction (*Jenkins v. State*, 385 S.2d at 1359.; *Reaves v. State*, 485 S.2d 829, 830 (Fla. 1986);*Wells v. State*, 132 So. 3d 1110, 1113–14 (Fla. 2014)).

With the new PCA Standard, access to the Supreme Court became highly exclusive and nearly impossible to obtain. It's estimated that "PCA's without an opinion" may account for over 70% of rulings in the District Court which meant that under the PCA Standard nearly **two-thirds of population are currently left without access to the Supreme Court of Florida** regardless of the merits of their cases (Leen, Craig. *Without Explanation* p.22).

Further, the Florida court's interpretation of "expressly" to exclusively be a "written" opinion was in conflict with decades of U.S. Supreme Court's jurisprudence which had interpreted the word "expression" for the U.S. Constitution (*United States v. O'Brien*, 391 U.S. 367 (1968); *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 505-06 (1969). The U.S. Supreme Courts did not believe the term "expression" should be so narrowly defined as to only include the "written word" which was often beyond reach in many cases but instead the U.S. Supreme Court found that the term "expression" should be broadly defined to include a person's acts, physical expressions or even the actual outcome (*Tinker v. Des Moines*). More importantly, the U.S. Supreme Court would determine how the term "expression" fit in the context of each individual case noting in *Spence v. Washington* (1974) that laws dealing with flag burning or misuse are "directly related to expression **in the context of activity**."

But where the U.S. Supreme Court allows for a 'case by case' determination of the term "expression";

**Florida's constitution hinges its *entire* Supreme Court Jurisdiction on a single interpretation of the word "expressly" and *never* considers the facts of an individual case.**

The Mother in her family court case believed that a law was rendered invalid, her constitutional rights violated, and the family and district court rulings were in conflict with other district court and supreme court cases (*Perlow v. Berg-Perlow*, 875 So. 2d 383 (Fla. 2004); *Rosen v. Rosen*, 696 So. 2d 697, 699 (Fla. 1997).

As a result, even if a PCA were given without an opinion, **the constructive and actual effect of the ruling in the Mother's case** was to declare the original trial judge's ruling valid and enforceable which ***"expressed"*** an opinion albeit unwritten in the Mother's case; the result of that ruling ***created*** a direct conflict in previous rulings and plainly violated the Mother's constitutional rights so the conflict law and constitutional violations became the real world results of the trial court and district court rulings which were the direct expression that resulted in the District Court's PCA ruling. It ultimately does not matter if the DCA provides a verbose explanation if the end result of the ruling is that conflict law is created and a constitutional violation is created by the ruling.

**It matters not if the declaration was done by word or deed because the result in the real world was the same.**

Further, if the Florida Supreme Court and District Court really believe that a PCA is not actually an opinion, then the District Courts have actually *waived* their rights over the case and jurisdiction should be immediately vest in the Supreme Court to review the case on its merits in cases where the DCA intentionally remains silent in explaining their own rulings.

The U.S. Supreme Court has found the real world impact of a ruling may actually be a better indicator of when a law or ruling conflicts or declares a law invalid; such is the difference between "symbolic speech" and "pure speech" (*Tinker v. Des Moines; Spence v. Washington; United States v. O'Brien*).

However, the Florida Supreme Court loses the power to consider what effect a ruling may "express" on the case or in the real world because of the restriction to the singular consideration of whether a case has a "written opinion.

**The PCA Standard also placed the District Courts in an unresolvable conflict of interest** for several reasons.

The District Court's historic use of a PCA without written opinion was for the purposes of

judicial economy. District Justices cited that PCAs without a written opinion were necessary to reduce their workload and to make timely decisions; writing an opinion in every case was deemed an impossible task and often unnecessary in cases with clear and established law (*Elliott v. Elliott*, 648 So. 2d 137, 138 (Fla. 4th DCA 1994; *In re Report of the Committee on Dist. Court of Appeal Workload & Jurisdiction-Rule of Judicial Admin 2.036*, 921 So. 2d 615, 617-18 (Fla. 2006).

However, the DCA's historic use of PCA was in immediate conflict with the newly required PCA Standard which would require the DCA to provide a written opinion to every party who wished to seek Supreme Court Review of their case; in an effort to ease the District Court's burden, the Supreme Court decided the DCA would not be "required" to provide a written opinion to anyone; not even when requested by the Supreme Court itself regardless of the merits of their case (*Foley v. Weaver,* 177 So. 2d at 226).

This decision put the District Court in the ***exclusive*** position of controlling the Supreme Court's discretionary jurisdiction. The Supreme Court lost its' own constitutionally granted discretionary power. It was now the domain of the District Court to control which of their DCA cases could be reviewed or overturned by the Florida Supreme Court; all the District Court had to do was grant or deny a party a written opinion, creating a unbounded conflict of interest.

There was no standard, no transparency, and no procedure which the District Court was required to follow in providing a written opinion. This began a long, tortured and controversial history on use of the PCA Standard between justices, scholars, attorneys and parties which has been hotly debated for 20 years (*See* PCA Articles and PCA Report in Table of Authorities).

Recognizing there were problems with the PCA Standard, Florida established a PCA Committee. The controversy ultimately led to an expansion of the laws to allow a party to at minimum *request* that a written opinion be provided by the District Court in order to obtain Supreme Court review over their case. (*Amendments to Florida Rules of Appellate Procedure,* 827 So. 2d 888 (Fla. 2002)).

However, the expansion ended up doing nothing to improve the PCA controversy because the same PCA committee also declined to establish any standard, checklist or procedure which would be required to ensure the District Court was without conflict and each person treated equally with the rendering of a written opinion when requested (PCA Articles and PCA Report).

So despite the legislative changes which allowed a party to now request a written opinion when one was not provided in the original PCA, the District Court itself was still not *required* to provide a written opinion nor was the District Court held to

any procedure; so there was no improvement at all in the percentage of cases that were granted a written opinion. To the contrary, written opinions from the District Court were becoming increasingly rare as the District Court continued trying to reduce their own heavy caseload by disposing of cases as quickly as possible by *increasing* their use of PCA's without an opinion.

In a vicious circle, the DCA was increasing the use of PCA's without an Opinion (*see* 4th District Court PCAs without Opinion Case Load Report) while the parties in need of written opinions to obtain jurisdiction of their cases in the Supreme Court were finding them more and more impossible to obtain.

Written opinions are now so rare, that the vast majority of the population has effectively been banned from access to the Florida Supreme Court (*Without Explanation*, p. 22; 4th DCA PCA Data Report).

The Florida Legislature began writing rules around the PCA Standard even though the PCA Standard was never actually written into law. The Legislature made an addition to the Florida Rules of Appellate Procedure which further stripped jurisdiction from the Supreme Court to hear matters related to any case issued without a District Court written opinion. The new rule states that the Supreme Court itself was barred from hearing any

case without a written opinion (rule 9.030(a)(d) and the Supreme Court was now legally mandated to dismiss any appeal from a party who was without a written opinion and further that that party cannot file a motion for reconsideration or clarification regardless of the merits of their case (rule 9.030(a)(d).)

In a twist of irony: the highest court of the land, the Florida Supreme Court, was now stripped of its own jurisdiction to hear conflict law and constitutional law questions which was the very purpose of its existence.

**The Supreme Court's "discretion" to review a case was now extinct** and in its place was the District Court's exclusive control of the Supreme Court's jurisdiction.

There was an original legislative intent to reduce the Florida Supreme Court's workload down to a *category* of cases dealing with conflict law and constitutional law, however, the new laws were never intended to completely *block* cases that had genuine issues of conflict law and constitutional law from being able to reach the Supreme Court which is what is happening currently in Florida.

The PCA Standard has been fully embraced by the court justices; the District Court has been declared the "final court" (*Taylor v. Knight*, 234 So. 2d 156, 157 (Fla. 1st DCA 1970); *In re Report of the Committee on Dist. Court of Appeal Workload &*

*Jurisdiction-Rule of Judicial Admin 2.036*, 921 So. 2d 615, 617 (Fla. 2006) and many District Court justices have admitted they feel compelled to uphold the legislative intent of the statute to help reduce the workload of the Supreme Court by withholding a written opinion while other DCA Justices feel that cases which warranted opinions and needed Supreme Court review were unfairly declined (PCA Report; and PCA Report *Id.* at 53 (Elligett, dissenting). There is a withholding of jurisdiction on cases when the District Court justices do not believe they have merit for Supreme Court review (PCA Report; *Elliott v. Elliott*, 648 So. 2d 137 (Fla. 4th DCA 1994); *Whipple v. State*, 431 So. 2d at 1015-16). But **it is improper for the DCA Justices to control which cases have merit in the Supreme Court because it would be impossible for the DCA to remain impartial to their own rulings.**

When DCA's "written opinions" became the sole access to Supreme Court jurisdiction in a case, it placed the DCA in the unenviable and impossible position of a *quasi*-legislative body and created unconscionable conflicts of interest where the District Courts have to choose between either reducing their own case load or being responsible for reducing the case load of the Supreme Court both of which ultimately left the parties constitutional rights to due process and access to the court as a *secondary* judicial concern.

This conflict of interest and the limitations to access to the Supreme Court created a firestorm of controversy and objections by attorneys, judges and parties to lawsuits who felt they were being barred from access to the Supreme Court even when their cases clearly involved conflict law or had legitimate constitutional questions which only the Supreme Court could legally answer under their mandate of the Florida Constitution.

Various articles were written (*please see Table of Authorities Articles Section)*: (1) Without Opinion (2) PCA, Around the Brick Wall (3) Conflict PCA (4) Oh no! Not a PCA! (5) Mandamus; A Creative Solution To Formidable Jurisdictional Hurdles (PCA) (6) etc.

And Scores of attorneys objected to the PCA Standard (PCA Report- App. I and various PCA Articles).

> *"Most of the judges and state attorneys who responded saw no significant problem with the present use of the PCA, while many public defenders and private bar members who responded want the district courts to either curtail or eliminate the practice...Among the arguments made in opposition to the use of the PCA are that it fosters unprofessionalism by the bench and bar, diminishes the appearance of fairness and meaningful access to the courts, limits possible review by the Supreme Court,*

*conceals inconsistent results, and allows the judiciary to avoid difficult decisions. A summary of the various responses is located in Appendices F, G, H, and I." (p.11 Committee Report).*

There were also articles written and concerns about violations of the Separation of Powers by using the PCA Standard with articles citing *Federalist Papers, Judicial Restraint and Separation of Powers.*

*The PCA only dictates an outcome without explanation...The judicial branch, in contrast, is not intended to exercise will, such as through policy choices ,but should instead limit its inquiry to law and judgment. Indeed, the basis for the judicial power, which is referenced in Article V, Section 1 of the Florida Constitution, is found in Federalist Number 78 (Leen, Craig. Without Explanation p. 11 )... One significant concern with a PCA is that it is the quintessential outcome determinative decision or, in other words, an exercise of will.(pg. 12)*

*...., the issuance of a PCA effectively eliminates the jurisdiction of the Florida Supreme Court to hear the case, even if the outcome of the case would differ among the DCAs. This is troubling, to say the least, as it allows the District Courts to control the jurisdiction of the Supreme Court.*

*For example, imagine a situation where there are binding precedents in conflict within the five*

> *DCAs. This would typically be a good situation for the Florida Supreme Court to take jurisdiction and resolve the conflict. The present PCA practice could frustrate Florida Supreme Court jurisdiction, however, as the District Courts might issue PCAs in each case based on the preexisting precedents in their Districts. ..After the matter is decided, all subsequent cases raising that issue may be decided by PCA, which will effectively eliminate any possibility for the matter to be brought to the Florida Supreme Court as there would be no further opportunity for conflict or another basis under which the Supreme Court could review the matter. This would effectively end development of the law in that particular area (p.14)*

Ironically, this instant case is trying to contest the PCA Standard as being unconstitutional as the Mother will never be in a position to go before the Florida Supreme Court for review; she is blocked by that self-same PCA Standard which places this instant case perpetually beyond the reach of the Florida Supreme Court.

In a vicious loop, individuals like the Mother who receive a "PCA without Opinion" are the very people who would challenge the PCA standard as unconstitutional, but because those very individuals now hold a "PCA *without* opinion" they are forever barred from Florida Supreme Court jurisdiction—

which is the only court in Florida that can overturn the PCA laws.

There is also a real impact of the PCA Standard on the workload of the U.S. Supreme Court who is now hearing cases which leapfrogged over the Florida Supreme Court. This is burdening the U.S. Supreme Court clerks and justices with thousands of additional hours for cases that could have been heard by the Florida Supreme Court, which was the rightful starting venue (*See Impact on U.S. Supreme Court below*).

FACTUAL BACKGROUND:

The Mother brought an enforcement action in the Florida family court against a high-income Father who hired an aggressive and experienced attorney. The Mother being the poorer parent sought temporary attorney fees so both parties could be on equal footing at the court hearings under Florida statute 742.045 and *Rosen v. Rosen*, 696 So. 2d 697, 699 (Fla. 1997). The Family court made an error in law which left the Mother without an attorney for critical hearings. In a concurring opinion, the Florida District Court acknowledged that the family court *had* erred in law when the family court concluded the Mother could not be awarded temporary attorney fees as a pro se litigant and the family court improperly required the Mother to first retain an attorney before she could be awarded temporary attorney fees (*Perlow v. Berg-*

*Perlow*, 875 So. 2d 383, Fla. 2004) The family court had also compounded the harm by failing to provide a written order for 16 months which left the Mother without representation at critical hearings on the child's medical and educational needs (App. D and E).

The Mother appealed several of the family court rulings including the temporary attorney fees order and educational fees in the Fifth District Court of Appeals in Florida (DCA). The Mother cited the trial court made an error in law, she was prejudiced by not having an attorney, the delays in rendering the rulings caused harm when time was of the essence, and the educational order violated her parental rights to choose her child's education among other arguments.

The Fifth District Court of Appeals (DCA) issued a *per curiam affirmed without an opinion* which is colloquially known in Florida as a "PCA without an opinion"(App. A). However, within the PCA ruling there was a concurring opinion which stated the Mother was correct that the Family Judge had erred in law but that the DCA did not find it caused harm since the Mother could now seek new attorney fees moving forward. The Mother filed a Motion for Rehearing and Request for Written Opinion which stating there was harm as she was prejudiced by not having an attorney in the previous hearings and past attorney fees were now due

because the court required the Mother to first retain an attorney.

Within the rehearing motion, the Mother also stated her wish to seek review of her case with the Supreme Court of Florida and she requested the DCA provide the Florida mandated "written opinion" so the Mother could file a petition for Florida Supreme Court review to address conflict law and constitutional concerns in her case. The DCA denied the Mother's request for the required written opinion (App. B).

Because Florida courts specifically require a "ticket" to entry into the Florida Supreme Court Jurisdiction in the form of a "written opinion" from the DCA; without the written opinion, no party (including the Mother) can seek a Florida Supreme Court review of their case. Because Florida courts do not recognize concurring or dissenting opinions as qualifying as a "written opinion" for purposes of seeking review by the Florida Supreme Court (*Jenkins*, 385 S.2d at 1359.; *Reaves v. State*, 485 S.2d 829, 830 (Fla. 1986), even though the Mother had a concurring opinion supporting her position and showing it was a conflict law case with constitutional questions; the Mother was still without Supreme Court Jurisdiction over her case.

When the Mother was denied a "written opinion" by the DCA her case was automatically and simultaneously prevented from having Florida

Supreme Court's jurisdiction and also from the Supreme Court's discretion to review her case on its merits and the Florida Supreme Court was mandated to dismiss her case without review for lack of jurisdiction. (App. F and G).

The Mother's position was that the withholding, stripping, or denial of Supreme Court jurisdiction over her case based solely on her not having a written opinion by the DCA was in absolute opposition to the Florida Constitution which mandates that the Florida Supreme Court is the only court authority with the discretionary power to review and overturn District Court decisions. So the Mother asserted that the refusal of the DCA to provide the required written opinion had allowed the DCA to prevent their own ruling from being reviewed or overturned by the Florida Supreme Court and was a conflict of interest and unconstitutional. In an attempt to address the unconstitutional use of a PCA to block access to the Supreme Court, the Mother filed another Motion with the DCA requesting that the DCA certify a question addressing the unconstitutionality of using a PCA with opinion standard as the only means to access jurisdiction of the Florida Supreme Court . The DCA denied the Mother's request to certify a question (App. C).

In a final attempt to have her case heard in the Florida Supreme Court, The Mother attempted to file two appeals within the Florida Supreme Court itself. The first appeal was asking for review of the

potential constitutional violations of Florida using a "PCA with written opinion" standard as the only means to obtain jurisdiction of a case in the Florida Supreme Court and the Mother's Second appeal related to the conflict law and constitutional violations within her family law case. Both the Mother's cases were promptly dismissed by the Florida Supreme Court for lack of jurisdiction specifically citing that the Florida Supreme Court did not have jurisdiction because the DCA had failed to provide the required written opinion (App. F&G; Fl Rule 9.330(a)(d)). The Florida Supreme Court further stated that there would be no reconsideration and any future filing in the Supreme Court were barred due to lack of jurisdiction.

The Mother's case was completely blocked from access to the Florida Supreme Court, leaving the Mother with the only resolution of filing a case with the U.S. Supreme Court.

## REASONS FOR GRANTING THE WRIT

SUMMARY OF THE ARGUMENT:

**It is not for the District Courts to singularly decide and control which cases have merit in the Supreme Courts, that is the exclusive domain of the Supreme Court itself.**

Florida's use of a "PCA without Opinion" to intentionally block a Supreme Court's jurisdiction over any case has far reaching consequences for every state in the U.S. and impacts the Federal Courts and the U.S. Supreme Court. If left to stand, Florida's law will open the flood-gates for other states to follow Florida's example and Congress would be able to enact laws which would give power to U.S. District Courts of Appeals to strip the U.S. Supreme Court of jurisdiction over cases when the U.S. District Court of Appeals simply does not want their own rulings overturned or reviewed.

Further, Florida's singular dependence on the narrowly defined constitutional term 'expressly' to be the exclusive domain of a DCA's written opinion for Supreme Court Jurisdiction has been catastrophic to constitutional rights of litigants in Florida.

The PCA Standard which barred access to the Supreme Court for the Mother; violates Article VI which allows the Mother the right to petition the court; the Mother's fourteenth amendment rights of due process and equal treatment; Article 1's Supremacy Clause; Separation of Powers and the Mother's right to be heard and to access to the court. It further violated the Mother's rights under Florida's constitution for due process, equal treatment and access to the court. Violations of U.S. and Florida CONSTITUTION: U.S. Const. amend. I; U.S. Const. amend. XIV, § 1U.S; . Const. article VI; Art. I, § 2, Fla. Const.; Art. I, § 9, Fla. Const.;Art. I, §

21, Fla. Const.; Art. V, § 3, Fla. Const.;Art. V, § 4, Fla. Const.

**FLORIDA'S PCA STANDARD:**

Florida's required "PCA with written opinion" standard to obtaining Florida Supreme Court jurisdiction is unconstitutional for at minimum three reasons:

1) It is a conflict of interest for the Florida District Court of Appeals (DCA) to control jurisdiction over if the DCA's own cases can be reviewed or overturned by the Supreme Court while it abolishes the "discretion" of the Supreme Court itself to choose which cases merit review.

2) It is a violation of the Fourteenth Amendment's due process, equal protection and access to the courts for individuals to be randomly divided into unequal and arbitrary classes where one class is allowed Supreme Court Jurisdiction and the other class is denied access to the Supreme Court without regard to the merits of the case. It is also a violation of the Article VI Supremacy Clause and right the to petition the court.

3) The "PCA without opinion" standard is a violation of due process, access to the courts and equal protection in family law cases like this instant case because the State and Federal governments already have a monopoly over paternity cases which force parents into the courts system and impinged on

parental rights under the premise of the court having the superior ability to determine the "best interest of the child" and have removed rights such as a jury trial. So laws that would further restrict or reduce a parent's legal access to the courts or limit a parent's ability to seek full relief at every level including the Supreme Court violates the parent's due process and equal protection rights and is not in the best interest of the child over which the federal and state courts and government have asserted exclusive legal control (*Boddie v. Connecticuit*).

THE FAMILY COURT CASE:

In the Mother's Family Court Case, her Florida and U.S. Constitutional rights were violated in several ways:

1) It was a violation of the Mother's constitutional rights, when the Mother was not given due process or an opportunity to be heard in a meaningful way when she was denied a proper hearing for temporary attorney fees due to a court's own error in law; where the ruling was delayed 16 months; and thereafter when she was denied a new hearing after being left pro se at critical hearings for the child's medical and educational needs.

2) Time is of the Essence in Paternity Cases: The Mother had a right to timely rulings and was prejudiced with her due process and other rights violated when the family court had caused repeated and substantial delays in rendering rulings; when

the rulings were made without benefit of a transcript 16 months after the hearing; and where the ruling was not in best interest of the child.

3) The Mother's parental, contractual and constitutional rights to choose her child's educational were violated when the family court overreached into the case to make certain decisions about the child's education.

## SUPPORTING ARGUMENT SECTIONS:
## THE PCA STANDARD

### SECTION ONE:

### FLORIDA'S UNEQUAL DIVISION OF PARTIES INTO CLASSES FOR ACCESS TO SUPREME COURT JURISDICTION

One class of citizens in Florida is being given a "PCA with an Opinion" which is the golden ticket to granting that party access to *seek* an appeal in the Supreme Court while a second class of citizens is given a "PCA without an Opinion" and that second class of citizens is denied equal access to seek an appeal to the Supreme Court. This separation of citizens into unequal classes which restricts one class's access to the Florida Supreme Court's Jurisdiction is in violation of U.S. Constitution's Fourteenth Amendment's Equal Protection Clause and also Due Process Provisions. The practice is also in violation of Article 1 of Florida Constitution to petition and access courts.

Florida has created a mechanism by which the Florida Supreme Court ***is*** available, but the path to review is impeded by a "per curiam affirmed with written opinion" standard that is either non-existent or impossibly vague and/or unfairly applied; thus leaving it to the Florida District Courts of Appeal to decide arbitrarily, through the exercise of unfettered discretion, which cases get reviewed and which cases don't while the application of the standard is wholly unreviewable. While the vast majority of PCA's are likely entered based on wholly legitimate grounds, the inability to ascertain whether some standard was met creates due process, equal protection and access to the courts violations and is unconstitutional.

The Mother asserts that the systematic use of a "PCA without an Opinion" to specifically withhold jurisdiction of her case from reaching the Florida Supreme Court for potential review based exclusively on a lack of written opinion is a violation of the Mother's Florida Constitution and the U.S. Constitutional rights regarding due process, equal protection and access to the courts, especially in her paternity and child support case where the courts have obtained absolute power over paternity cases and are the courts are the only means of resolution (*Boddie v. Connecticut*, 401 U.S. 371 (1971).

> *(Wording altered from another ruling): Florida allowed the Petitioner access to the first phase of the appellant procedure in the District Court but has effectively foreclosed access to the second*

> *phase of that procedure solely based on a failure and refusal of the District Court to provide a written opinion.*
>
> *There is no rational basis for assuming that the motions for appeal to the Supreme Court will be less meritorious for those who have received a "PCA with an Opinion" than those who did not receive an opinion. Therefore, both classes should have the same opportunities to invoke the discretion of the Supreme Court of Florida.*

The Mother has been left with unequal access to the Florida Supreme Court when the Florida Supreme Court would have otherwise had discretion and jurisdiction to review the matters of conflict law and Florida Constitutional law involved in the Mother's case; the withholding or barring of the Mother from Supreme Court Jurisdiction was a violation of the Mother's Fourteenth Amendment right to due process, equal protection, and access to the courts.

## SECTION TWO:

## DCA's CONFLICT OF INTEREST IN CONTROLING SUPREME COURT JURISDICTION

When the Florida Supreme Court was established it was well recognized that the District Court can and will make mistakes, even when populated by an educated, ethical and capable panel of District Court justices. Those District Court Justices no matter how worthy, cannot and should

never be given the exclusive power to prevent their own inaccurate rulings from reaching the Supreme Court for review. To give the District Court such unchecked power over their own rulings creates a fundamental conflict of interest where no District Court Justice could ever be seen as remaining impartial.

Further, conflict law cases are *birthed* from the District Court's rulings and can only be resolved in the Supreme Court; so it is counter intuitive that the District Court's itself holds the power to block those conflict law cases from ever reaching the Supreme Court for resolution (*DCA Assessment*, n.2, at 19-20, 32; *Fla. Code Jud. Conduct Canon 3E(1); DCAs, PCAs, and Government in the Darkness*, 1)

Additionally, DCA Justices have no guidelines, no formal checklists and no procedures for providing written opinions which can be equally applied to all citizens. The process is wholly arbitrary and inconsistent across all five Florida Districts Courts. There is currently no way to hold the District Court accountable and no recourse when the District Court's granting or denial of a written opinion is unjust, incorrect, or unequally applied. There is absolutely no standard and no transparency.

A trial court would not be allowed to render a ruling without explanation and still expect it to stand because the District Court of Appeals would

have the power to overturn it. So too is a District Court decision reviewable and accountable in the Florida Supreme Court; and thereafter the Florida Supreme Court is at times accountable to the U.S. Supreme Court. However, the PCA standard in Florida improperly breaks that chain of accountability and violates a party's right to transparency, due process and access to the courts.

> *If the judiciary has the privilege to be able to have appellate panels meet together and discuss cases in private, it is consistent with principles of the sunshine laws to ensure that at least any final decisions are made public in full. Otherwise, the concern exists that both the deliberations and the reasoning in support of the outcome remain outside of public review....See: Craig E. Leen, Without Explanation: Judicial Restraint, Per Curiam Affirmances, and the Written Opinion Rule, 12 FIU L. REV. 309 (2017).)*

Alternatively, if Florida is allowed to continue to prohibit cases from reaching the Supreme Court by using a "PCA without an opinion" standard then the Florida District Court should be mandated to either provide the required written opinion when specifically requested by a party for the purpose of Florida Supreme Court review of their case (such as in the Mother's case) or the District Court should recuse themselves from the case completely and jurisdiction should automatically vest in the

Supreme Court to avoid a conflict of interest from the District Courts.

The District Court Justices were never endowed with the authority to decide the merits of a Supreme Court case, yet that is the power they have been given under the PCA Standard.

> ***Arthur J. England, Chief Justice of the Supreme Court:*** *"The Florida Constitution expressly places in the hands of the Supreme Court justices, not district court judges, the discretion to decide whether the high court will review a district court decision. Unless the district court finds no validity in appellate counsel's certification, in which case the court could say just that in an order denying the motion, an opinion should be written that legitimately poses a basis for Supreme Court review. District court judges lack the institutional experience to make judgments on the range of reasons which go into the exercise of discretion by the justices to review, or not review, any particular district court decision at any particular point in time. Only the justices can evaluate a review-worthy decision of a district court to determine if the time is propitious to exercise the court's policy-making responsibility" (PCAs In The DCAs: Asking For Written Opinion From A Court That Has Chosen Not To Write One.).*

It is a violation of the U.S. Constitution's Fourteenth Amendment; Supremacy Clause and Separation of Powers for the District Court to have the unchecked power to control jurisdiction of the Florida Supreme Court.

SECTION THREE:

RIGHT TO REVIEW vs. EQUAL ACCESS TO THE SUPREME COURT

This case is about "Equal access to the Florida Supreme Court", it is not about a "Right to Review".

The Florida Supreme Court and District Courts misapprehend arguments from previous parties who have objected to a *PCA without opinion as an unconstitutional standard to Supreme Court jurisdiction* when those courts found the PCA arguments would always fail simply because no individual is entitled to a "right" to review from the Supreme Court (*Jollie v. State; R.J. Reynolds Tobacco Co. v. Kenyon; Stallworth v. Moore; Whipple v. State).*

*Whipple v. State, 431 So.2d 1011, 1013-14 (Fla. 2d DCA 1983) (rejecting an argument that district court's unelaborated per curiam affirmance of the trial court's decision thwarted right of access to the courts because the constitution's guarantee of a right to review does not extend to supreme court review);*

This case is not about a "right to review" it is about ***"equal access to the Florida Supreme Court"***. Every individual who has a case of similar merit should also have the *equal opportunity* to ***seek*** a review of their case in the Supreme Court; the Supreme Court should also have *equal jurisdiction* over similar cases as it is axiomatic that the Supreme Court should have *equal discretion* to review similar cases if a party seeks Supreme Court review.

The "right to review" is not at issue. It matters not if the Florida Supreme Court ultimately (and at their own discretion) decides to accept or deny review of the Mother's case. The Supreme Court's own choice to take up a case is ultimately irrelevant to the current issue.

This is about the District Court having the unfettered ability to prevent, withhold, or strip the Florida Supreme Court from having any discretion or jurisdiction over a case.

The important issue in this case is that Mother (and thousands of other parties in Florida) are randomly being denied jurisdiction of their cases within the Supreme Court while *other* cases of similar or lesser merit are granted jurisdiction in the Supreme Court.

In the current system, the Florida Supreme Court itself does not have the power to reach down and pick up a case that the Supreme Court itself

deems worthy of merit and **District Courts have intentionally withheld written opinions for the specific purpose of preventing the Florida Supreme Court from having any power to review or overturn their cases.**

The Supreme Court itself has been denied a written opinion from the District Court when the Supreme Court wanted Jurisdiction in a case it believed had merit (*Foley v. Weaver Drugs, 177 So. 2d at 226*).

*R.J. Reynolds Tobacco Co. v. Kenyon, 882 So.2d 986, 989 (Fla. 2004) (recognizing that the district court has "inherent discretion" to decide whether to write an opinion, and this Court does not have authority to order a district court to write an opinion).*

In the Mother's case, she has no *access* to the Florida Supreme Court at all; even though a Florida Supreme Court exists and that Florida Supreme Court is mandated with the only authority and power to review and overturn the district court cases; conflict law cases; and questions of constitutional law such as those in the Mother's case.

SECTION FOUR:

LEGISTLATIVE PURPOSE v. STATE'S MONOPOLY IN CHILD SUPPORT CASES: PARENT'S RIGHT TO ACCESS TO ALL COURTS

The District Court justices are ethical, hardworking and highly intelligent so this case is absolutely no reflection on the esteemed justices of any District Court. However, the application of a PCA into a legal standard was wholly improper as it anointed the District Court into the "final court" whose decisions could not be questioned or reviewed by the Florida Supreme Court, yet the District Court was never endowed by the constitution to be the final court, nor were District Court Justices deemed to have the experience or constitutional powers to decide matters related to the constitution or conflict law; and despite the integrity and intellect of the honorable District Court justices they can never impartially review their own decisions.

While the state's interest in reducing the Supreme Court's case load is valid and reasonable; there are other alternative means to accomplish the goal which do not involve randomly restricting one class of citizen's rights to seek appeal to the Supreme Court and does not eviscerate the very purpose of the Florida Supreme Court which is to review District Court cases, conflict law and answer questions of constitutional law.

District Court Justices have had to adopt a quasi-legislative view that the District Court's job was to use the "PCA without opinion" rulings to help reduce the workload of the Florida Supreme Court. However, that is *not* a mandate given to the District Court by law or the Florida Constitution; and to do

so places the District Courts in a position where they are overreaching and using their rulings to balance the state's budget by intentionally denying access to the Supreme Court to a randomly selected group of parties. The District Court's job is not to reduce the workload of the Supreme Court, in fact to take on such a mandate is a violation of the Separations of Powers where the District Court becomes a quasi-legislative body making rulings on cases purely based on the financial or workload impact those cases "might" have on the court docket which violates a parties right to fair rulings.

It is without question, that all the Justices in the District Court should be esteemed and respected and may one day move on to the Supreme Court but they are not yet in a position where they have been publically appointed to that role; yet all the District Court justices now act as a ***quasi*-Supreme Court** by having the sole authority to determine which of their own cases are worthy of review in Supreme Court which violates an individuals' constitutional rights to due process, equal treatment and access to the court.

The current power given to the District Court to control which cases make it to the Supreme Court is counter-intuitive to allowing the Supreme Court themselves choose which cases have merit.

STATE'S MONPOLY IN CHILD SUPPORT CASES:

The legislative goals of reducing the Supreme Court's workload are also inferior to the parent's right to access to the Supreme Court. Federal law requires each state inclusive of Florida create and maintain procedures to collect and enforce child support and create oversight in child custody decisions (Child Support Recovery Act (CSRA) 1992; The Family Support Act (FSA) of 1988; Child Support Enforcement Amendments of 1984 (CSEA) ;18 U.S.C. § 228; *Boddie v. Connecticut*). Florida has a monopoly on paternity cases, forcing the parents into the Florida court systems and limiting the parent's ability to independently contract or resolve issues outside of court. This is done under the premise of the best interest of the child. As in Boddie, this means that Florida courts have a greater responsibility to ensure that their rulings are right in both law and equity (*Boddie v. Connecticut*, 401 U.S. 371 (1971). In this case, the Mother was stripped from the ability to access the highest court which was the Florida Supreme Court and where the Supreme Court was specifically and constitutionally mandated with the power to address her conflict law and constitutional questions; the Mother was improperly denied access to the court. The District Court did not have the authority to address the Mother's questions related to conflict law and constitutional law so without access to the Supreme Court, the Mother's constitutional rights of due process, equal protection and access to the courts

along with her fundamental rights to fairness were violated.

**QUESTION TWO: ARGUMENT:**

The Mother recognizes that the above argument related to the PCA Standard is of far more public importance than her personal family law case. However, the Mother would still like this court to consider that her family law case also holds matters of great public importance and constitutional questions that should also be considered and reviewed by the Court and requests she be able to more accurately argue her case in her brief if her writ for certiorari is granted.

> *"Cases like this do not present a bipolar struggle between the parents and the State over who has final authority to determine what is in a child's best interests. There is at a minimum a third individual, whose interests are implicated in every case to which the statute applies — **the child**." Troxel v. Granville, 530 U.S. 57 (2000).*

FAMILY COURT CASE ARGUMENTS:

1. A Custodial Parents Right To Equal Representation
2. Time Is Of The Essence In Child Support Cases
3. Entitlement To Timely Rulings
4. Public Trust In Child Support Cases
5. Parents Right To Choose Education

The Fourteenth Amendment's Due Process Clause has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests," *Washington v. Glucksberg*, 521 U.S. 702, 720, including parents' fundamental right to make decisions concerning the care, custody, and control of their children, see, e.g., *Stanley v. Illinois*, 405 U.S. 645, 651. Pp. 5-8.

**IMPACT ON THE U.S. SUPREME COURT**

THE U.S. SUPREME COURT HAS UNFINISHED BUSINESS IN THIS CASE:

In addition to the constitutional impacts on the individuals; **the U.S. Supreme Court itself has a dog in this fight.**

When the PCA Standard was implemented, **cases began to leapfrog over the Florida Supreme Court and land in the U.S. Supreme Court.**

So while Florida was succeeding in reducing their own judicial costs by limiting access to the Florida Supreme Court it caused the workload of the *U.S.* Supreme Court to increase with Florida cases. To date, the U.S. Supreme Court has already taken on half a dozen cases (if not more). It is without question that for every one case that is accepted by the U.S. Supreme Court; there are hundreds or thousands that are denied. That means for all those

"denied" petitions that originated from Florida, the U.S. Supreme Court and it's clerks and justices have already had to spend thousands of hours reviewing, preparing pool cert. memos and participating in conferences at the petition stage.

So the U.S. Supreme Court is wasting precious juridical recourses on cases which *the Florida Supreme Court is perfectly capable of hearing* if it had not been for the stripping or withholding of the Florida Supreme Court from hearing its own state's cases.

Florida is but ***one*** state; if all 50 states were to adopt the Florida PCA practice--- **the U.S. Supreme Court would become the *defacto*-state supreme court for all 50 states and cases from every single state can begin leapfrogging constitutional questions into the U.S. Supreme Court**; all because 70% of their own State populations have been left without access their own state supreme courts to answer conflict law and constitutional questions under a PCA Standard.

Even though the Florida Supreme Court lacks jurisdiction, SCOTUS has *already* taken cases from Florida's DCAs (who issued PCAs). *And SCOTUS has reversed* those PCA rulings which clearly shows the District Courts *can and do* make mistakes which should be reversed.

It is not uncommon for the U.S. Supreme Court to pick up a case with a PCA in either the District

Courts or State Supreme Courts so why is the Florida Supreme Court prevented from picking up their own District Court's cases? One of the most famous SCOTUS/Florida cases in history, *Gideon v. Wainwright*, went to SCOTUS from a PCA issued by the Florida Supreme Court. So if a PCA by the highest court in Florida can be overturned by U.S. Supreme Court how is that a Florida District Court's case is immune from review by its own Florida Supreme Court?

The U.S. Supreme Court has already had to rule on multiple Florida District Court matters because the Florida Supreme Court was denied jurisdiction over their own state's cases due to PCA Standard; just a couple examples: 1) *Hobbie v. Unemployment Appeals Commission of Florida* 2) *Palmore v. Sidoti* 3) *Brooks v. State*.

This case has implications not only for Florida litigants but also for every state supreme court in the nation. If left to stand, Florida's Supreme Court jurisdiction stripping laws will set the precedent for every other state in the nation to begin the process of jurisdiction stripping of their own Supreme Courts which ultimately threatens the U.S. Supreme Court's own jurisdiction over U.S. District Court's cases because if it is allowable for the States to engage in jurisdictions stripping of their own state supreme courts why can't Congress also make similar laws which give the U.S. District Court of Appeals the power to strip or withhold jurisdiction of their own

cases from the U.S. Supreme Court? This would mean that the U.S. District Court of Appeals would have unilateral power to prevent the U.S. Supreme Court from ever hearing questions on U.S. Constitutional law and conflict law if and when the U.S. District Court of Appeals does not wish to authorize it. The current Florida PCA Standard is setting a precedent for other State and Federal Courts.

## CONCLUSION

In the Mother's case, she had both conflict law and constitutional concerns about the Family Court and District Court's rulings which could only be resolved by review from the Florida Supreme Court. Florida's *"PCA with written opinion as the Standard to Supreme Court Jurisdiction"* and The District Court's failure to provide that mandated written opinion barred the Mother from access to the Florida Supreme Court and violated her constitutional rights to due process, equal protection and access to the courts.

In the current Florida System; the Mother cannot reach up for help from the Florida Supreme Court and the Florida Supreme Court is denied the power to reach down and take up the Mother's case *even if the Supreme Court believes the Mother's case is worthy of review* and the only obstacle is the DCA refusing to provide the Mother with the required "written opinion".

Florida's use of a "PCA's without an opinion" to bar the Mother and others from Florida Supreme Court jurisdiction over their cases is unconstitutional (or unconstitutional as applied) and the Mother should be allowed to seek review from the Florida Supreme Court of her case or in the alternative, the Fifth District Court should be required to provide the mandated "written opinion" for the purpose of granting the Florida Supreme Court jurisdiction to review her case.

It is the Mother's position that the PCA Standard should be overturned as unconstitutional and Florida should be required to the replace it with a standard that will allow equal access to the Florida Supreme Court to Florida litigants.

The Mother respectfully requests the U.S. Supreme Court grant the writ for certiorari.

Respectfully Submitted,

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