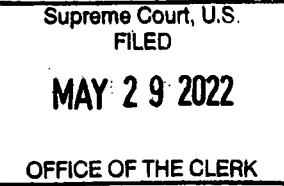


21-1530  
No. \_\_\_\_\_



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IN THE  
SUPREME COURT OF THE UNITED STATES

---

MARTINE BERNARD, Petitioner

v.

CHRISTOPHER HODYL, Respondent

---

On Petition For Writ Of Certiorari  
To The Colorado Court of Appeals

---

PETITION FOR WRIT OF CERTIORARI

---

Martine Bernard

*Pro se*

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## **QUESTIONS PRESENTED**

Whether the federally and state recognized psychotherapist-patient privilege in *Jaffee v. Redmond* and personal autonomy under the Fourteenth Amendment of the United States Constitution preclude a state district court from requiring that a mentally competent party seek therapy to change their belief, for the treating therapist to provide "progress reports", for the party to be restricted to the district court's own list of therapists after 150 therapists declined the case and one therapist informed the district court that the terms in the order violate the party's psychotherapist-patient privilege and the American Psychological Association (APA) Codes of Ethics 3.05; and whether Petitioner has article III standing to challenge such a court order?

## **PARTIES TO THE PROCEEDING**

All parties appear in the caption of the case on the cover page.

## **RELATED PROCEEDINGS**

Petitioner: CHRISTOPHER HODYL and  
Respondent: MARTINE BERNARD, No.  
2018DR30102, Douglas County District Court.  
Related judgments entered on September 1, 2020  
included individual therapy and monetary sanctions.  
App.108a-120a.

Petitioner: CHRISTOPHER HODYL and  
Respondent: MARTINE BERNARD, No.  
2018DR30102, Douglas County District Court.  
Related judgments entered on September 15, 2020  
included individual therapy. App. 121a-123a

Petitioner: CHRISTOPHER HODYL and  
Respondent: MARTINE BERNARD, No.  
2018DR30102, Douglas County District Court.  
Related judgments entered on October 21, 2020 for  
individual therapy treatment requiring "progress"  
reports from the treating individual therapist. App.  
31a-37a.

Petitioner: CHRISTOPHER HODYL and  
Respondent: MARTINE BERNARD, No.  
2018DR30102, Douglas County District Court.  
Related judgments entered on November 18, 2020  
vacating the weekly filing on therapists contacted,  
and the district court provided its own list of treating  
therapists for Petitioner to contact. App. 38a.-43a.

Petitioner: CHRISTOPHER HODYL and  
Respondent: MARTINE BERNARD, No.

2018DR30102, Douglas County District Court.

Related judgments entered on November 19, 2020 for family therapy treatment and vacated the November 18, 2020 Order for individual therapy treatment.

App. 44a-57a.

Petitioner: CHRISTOPHER HODYL and

Respondent: MARTINE BERNARD, No.

2018DR30102, Douglas County District Court.

Related judgments entered on January 29, 2021 for family therapy and restricted petitioner to the district court's own list of treating therapists; it required that a treatment summary be filed by the parties and for the parties to ensure that the family therapist appear in court to be examined. It also required a copy of complaints filed to professional Boards be filed with the district court within 24 hours of the original complaint. App. 58a-68a.

Petitioner: CHRISTOPHER HODYL and  
Respondent: MARTINE BERNARD, No.  
2018DR30102, Douglas County District Court.  
Related judgments entered on February 22, 2021; it  
required Ms. Bernard to file a copy of any Board  
Complaints filed against professionals in the Case  
within 72 hours. App. 69a-86a

Petitioner: CHRISTOPHER HODYL  
and Respondent: MARTINE BERNARD, No.  
2018DR30102, Douglas County District Court.  
Related judgments entered on March 25, 2021; it  
penalized Ms. Bernard with \$4,600.00 fees and  
required the posting of additional \$5,000.00 from  
which to continue penalizing \$100.00 for each day  
that Ms. Bernard fails to contact the treating family  
therapist. App. 87a-107a.

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 2019CA1553 & 2019CA1982, Colorado Court of Appeals. Mandate issued on June 9, 2021. Petition for a Writ of Certiorari was denied by the Colorado Supreme Court.

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 2019CA2380, Colorado Court of Appeals. Mandate issued on June 9, 2021.

In re the Marriage Petitioner : Martine Bernard, and Respondent: Christopher Hodyl, No. 2021SC143, Colorado Supreme Court. Judgment entered on June 7, 2021 denying Petition for a Writ of Certiorari to the Colorado Court of Appeals case no. 2019CA2380.

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 2020CA333 & 2020CA522 Colorado Court of Appeals. Mandate issued on June 24, 2021 upholding the district court order coercing Petitioner to sign a visiting supervisor's contract under duress and without a meeting of the minds between the visiting supervisor and Petitioner. The Mandate also upheld the district court's order sanctioning Petitioner \$3,032.50 in attorney fees to the opposing party for having to respond to a motion in which Petitioner asked for changes to be made to the visiting supervisor's contract prior to signing.

In re the Marriage Petitioner: Martine Bernard, and Respondent: Christopher Hodyl, No. 2021SC207, Colorado Supreme Court. Judgment

entered on June 21, 2021 denying Petition for a Writ of Certiorari to the Colorado Court of Appeals case no. 2020CA333 &2020CA522 .

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 2020CA1468, Colorado Court of Appeals. Mandate was issued on August 27, 2021.

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 2020CA1962, Colorado Court of Appeals. Unpublished Opinion was entered on September 30, 2021.; App. la-26a.

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 2020CA1962, Colorado Court of Appeals. Petition for

Rehearing was entered on October 28, 2021;  
App.124a-125a.

In re the Marriage of Petitioner: Martine Bernard, and Respondent : Christopher Hodyl. The Supreme Court of Colorado case no. 2021SC850. Petition for a Writ of Certiorari denied on February 28, 2022; it is unpublished and is reproduced in the Appendix on pages 29a-30a.

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 2020CA1962, Colorado Court of Appeals. Mandate issued on February 28, 2022. App. 27a-28a.

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No.

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In re the Marriage of Appellee: Christopher  
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## **PETITION FOR A WRIT OF CERTIORARI**

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Petitioner, Martine Bernard, respectfully petitions for a writ of certiorari to review the judgment of the Colorado Court of Appeals in this case.

### **OPINIONS AND ORDERS BELOW**

The Colorado Court of Appeals' Opinion was entered on September 30, 2021; it is unpublished and is reproduced in the Appendix on pages 1a-26a.

The Colorado Court of Appeals' Order denying the Petition for Rehearing was entered on October 28, 2021; it is unpublished and is reproduced in the Appendix on pages 124a-125a.

The Supreme Court of Colorado's Order denying the Petition for a Writ of Certiorari was

issued on February 28, 2022; it is unpublished and is reproduced in the Appendix on pages 29a-30a.

The Colorado Court of Appeals' Mandate issued on February 28, 2022 is unpublished and is reproduced in the Appendix on pages 27a-28a.

The Douglas County District Court's Order for Ms. Bernard to engage in individual therapy, entered on October 21, 2020 is reproduced in the Appendix on pages 31a-37a.

The Douglas County District Court's Order for individual therapy entered on November 18, 2020 is reproduced in the Appendix on pages 38a-43a.

The Douglas County District Court's Order for family therapy entered on November 19, 2020 is reproduced in the Appendix on pages 44a-57a.

The Douglas County District Court's Order for family therapy and Board complaints entered on

January 29, 2021 is reproduced in the Appendix on pages 58a-68a.

The Douglas County District Court's Order for family therapy and Board complaints entered on February 22, 2021 is reproduced in the Appendix on pages 69a-86a.

The Douglas County District Court's Order for family therapy and monetary sanctions entered on March 25, 2021 is reproduced in the Appendix on pages 87a-107a.

The Douglas County District Court's Order for individual therapy and monetary sanctions entered on September 1, 2020 is reproduced in the Appendix on pages 108a-120a.

The Douglas County District Court's Order for individual therapy entered on September 15, 2020 is reproduced in the Appendix on pages 121a-123a.

## **STATEMENT OF JURISDICTION**

The Colorado Court of Appeals entered its opinion on September 30, 2021. App.1a-26a. Petition for rehearing was denied on October 28, 2021. App. 124a-125a.

On February 28, 2022 the Colorado Supreme Court issued an order denying the Petition for a Writ of Certiorari. App. 29a-30a. This Court has jurisdiction pursuant to 28 U.S.C. § 1257 (a).

## **CONSTITUTIONAL PROVISIONS, STATUTORY PROVISIONS, AND RULES INVOLVED**

I. U.S. Constitution, Amendment XIV, § 1 provides that:

*"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."*

II. The Supremacy Clause of the United States Constitution, Art. VI, cl. 2 provides:

*"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, 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."*

### III. Article III, Section 2 of the U.S.

Constitution provides that:

*"The judicial power shall extend to all  
cases, in law and equity, arising under  
this Constitution, the laws of the United  
States, and treaties made, or which  
shall be made, under their authority;--to  
all cases affecting ambassadors, other  
public ministers and consuls;--to all  
cases of admiralty and maritime  
jurisdiction;--to controversies to which  
the United States shall be a party;--to*

*controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."*

*"In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and*

*under such regulations as the Congress  
shall make."*

IV. Article III, Section 2 of the Colorado  
Constitution

*"The powers of the government of this  
state are divided into three distinct  
departments, — the legislative, executive  
and judicial; and no person or collection  
of persons charged with the exercise of  
powers properly belonging to one of these  
departments shall exercise any power  
properly belonging to either of the  
others, except as in this constitution  
expressly directed or permitted."*

V. Although not directly implicated, Rule 501 of the Federal Rules of Evidence is discussed in this Petition. This Rule provides that:

*"Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the Courts of the United States in the light of reason and experience. However, in civil actions and proceedings with respect to an element of a claim or defense as to which State law*

*supplies the rule of decision, the  
privilege of a witness, person,  
government, State, or political  
subdivision thereof shall be determined  
in accordance with State law."*

## VI. The Colorado Revised Statutes § 13-90-

107 (1)(g) provides that:

*"A licensed psychologist, professional  
counselor, marriage and family  
therapist, social worker, or addiction  
counselor, an unlicensed  
psychotherapist, a certified addiction  
counselor, a psychologist candidate  
registered pursuant to section 12-245-  
304(3), a marriage and family therapist  
candidate registered pursuant to section*

*12-245-504(4), a licensed professional  
counselor candidate registered pursuant  
to section 12-245-604(4), or a person  
described in section 12-245-217 shall not  
be examined without the consent of the  
licensee's, certificate holder's,  
registrant's, candidate's, or person's  
client as to any communication made by  
the client to the licensee, certificate  
holder, registrant, candidate, or person  
or the licensee's, certificate holder's,  
registrant's, candidate's, or person's  
advice given in the course of professional  
employment; nor shall any secretary,  
stenographer, or clerk employed by a  
licensed psychologist, professional  
counselor, marriage and family*

*therapist, social worker, or addiction  
counselor, an unlicensed  
psychotherapist, a certified addiction  
counselor, a psychologist candidate  
registered pursuant to section 12-245-  
304(3), a marriage and family therapist  
candidate registered pursuant to section  
12-245-504(4), a licensed professional  
counselor candidate registered pursuant  
to section 12-245-604(4), or a person  
described in section 12-245-217 be  
examined without the consent of the  
employer of the secretary, stenographer,  
or clerk concerning any fact, the  
knowledge of which the employee has  
acquired in such capacity; nor shall any  
person who has participated in any*

*psychotherapy, conducted under the supervision of a person authorized by law to conduct such therapy, including group therapy sessions, be examined concerning any knowledge gained during the course of such therapy without the consent of the person to whom the testimony sought relates."*

VII. Supreme Court of Colorado Chief Justice Directive 04-08 STANDARD 4 (comment) (b) provides that:

*"Psychotherapy. As with mediators, therapists have confidentiality obligations to their clients that are at odds with a child and family investigator's duties. The roles, purposes, goals, responsibilities,*

*approaches, and professional and ethical requirements of a treating therapist are in conflict with those of a child and family investigator."*

VIII. Supreme Court of Colorado Chief Justice Directive 21-02 STANDARD 4 (comment) (b) provides that:

*"Psychotherapy. As with mediators, therapists have a duty of confidentiality to their clients that conflicts with a PRE's [Parental Responsibility evaluator] duties. The roles, purposes, goals, responsibilities, approaches, and professional and ethical requirements of a treating therapist conflict with those of a PRE."*

IX. The Colorado Revised Statutes §14-10-129.5 provides guidelines for disputes concerning parenting time. Its complete text is provided at App. 126a-132a. Section 14-10-129.5(2)(h) of that statute provides that the court can enter: *"Any other order that may promote the best interests of the child or children involved."*

**STATEMENT OF THE CASE:**

**I. I. Nature Of The Case**

This case is regarding whether or not Ms. Bernard has article III standing to challenge a series of district court orders that, if followed, present an imminent violation of her psychotherapist-patient privilege and personal autonomy under the Fourteenth Amendment in the setting of a post

decree divorce case, pursuant to Title 14-Domestic  
Matters-of the Colorado Revised Statutes.

This is not a dependency and neglect case  
wherein a court can order therapy treatment as a  
condition for an unfit parent to regain custody of  
their child. The Petitioner, Ms. Bernard, is a fit  
parent who never lost custody of her daughter and  
under the *Troxel* presumption is presumed to be  
acting in the best interests of her daughter. *Troxel v.*  
*Granville*, 530 U.S. 57 (2000). Furthermore, Ms.  
Bernard is a practicing physician (a neurologist), is  
mentally competent, does not have a mental health  
diagnosis, and is not a danger to herself or to others.

#### A. Divorce Proceeding and PRE

Evaluation:

This case started on February 8, 2018 when the Respondent, (Mr. Hodyl) filed for divorce. Mr. Hodyl claimed parental alienation and Ms. Bernard alleged that Mr. Hodyl sexually abused their daughter who was 9.5 years old at the time of the divorce action.

Some of the symptoms that the parties' daughter experienced from 1.5 years to 7.5 years old, when Ms. Bernard suspected sexual abuse and no longer allowed their daughter to be unsupervised with Mr. Hodyl were the followings: Itchy vagina, vaginal sensitivity to water, skin between thighs were red and itchy, headache, vertigo or dizziness, abdominal pain, sudden urge to defecate, difficulty falling asleep and staying asleep, unexplained bouts of anger, unexplained and inconsolable crying at bedtime; masturbation and looking at sexual

contents on You-Tube. All the symptoms stopped when Ms. Bernard no longer allowed their daughter to be unsupervised with Mr. Hodyl.

Douglas County Human Services (or Child Protective Services, CPS) was notified by a therapist and went to Daughter's school to speak to her. Afterwards, the CPS worker sent an email to the Douglas County Sheriff Office, informing him that Daughter disclosed sexual abuse by her father when she was three (3) years old. The sheriff did not investigate because the criminal activity did not occur in his county but occurred when the parties were living in a different state.

The parties agreed to a parental responsibility evaluation (PRE) to investigate the two allegations. The PRE evaluator did not find for parental alienation but could not say with certainty whether

Mr. Hodyl had molested their daughter. Page 7 of the PRE Report stated in part:

*"In many cases of allegations of sexual abuse, there is never a good resolution and perhaps we will never know the complete truth."* PRE report p. 7, filed with the court on 10/04/2018.

The PRE evaluator also stated that Ms. Bernard is correct in being concerned about the symptoms displayed by their daughter. On page 31 of the PRE report, the evaluator stated in part:

*"Martine [Ms. Bernard] is correct in observing [Daughter] as exhibiting some serious symptoms. There are alternative explanations for the symptoms, yet Martine will only entertain one explanation; Chris [Mr. Hodyl] molested [Daughter]."*

The PRE evaluator recommended a roll- out parenting plan for Mr. Hodyl, wherein he will start being supervised and later graduate to a 50/50 parenting plan. However, during cross examination, on March 26, 2019, the PRE evaluator admitted that she could be wrong in recommending that Daughter be left unsupervised with Mr. Hodyl as follows:

*"Q: Ms. Shindell, have you considered that you could be wrong regarding the Petitioner [Mr. Hodyl] being safe for [Daughter]to be around unsupervised?"*

*A: Well, that's a big question.*

*Q: Yes or no, please.*

*A: That I could be wrong?*

*Q: Yes.*

*A: Yes, I could be wrong."*

TR (March 26, 2019) p. 67:8-15.

## B. Permanent Orders:

Following Permanent Orders hearing, on June 11, 2019, the district court ordered the parties' daughter to continue individual therapy and for the individual therapist to help their daughter develop a "safety plan" when unsupervised with Mr. Hodyl. TR (June 11, 2019), p. 47. The district court also ordered family therapy for Daughter to repair the aspects of her relationship that she finds troublesome with her father with a goal of establishing "safe unsupervised" parenting time. The district court order stated in part:

*"[Daughter] shall immediately begin family therapy with Marilyn Sax-Raven. This family therapy shall focus on repairing the aspects of [Daughter]'s*

*relationship with her father that is  
troublesome for her with a goal of  
establishing safe, unsupervised  
parenting time.*

TR (June 11, 2019), p. 47:12-16.

The district court also kept Ms. Bernard as the full custodial parent, and Mr. Hodyl was to continue supervised visitation to graduate to 50/50 parenting time and was granted temporary sole mental health decision-making. The district court also required Ms. Bernard to inform their daughter of other reasons for her past symptoms when she was unsupervised with Mr. Hodyl. The district court stated as follows:

*"The Court shall have the review in  
three months. If it is shown that Mother*

*has been working with the family therapist to inform the child that other reasons for symptoms are possible as the PRE and other experts testified to, the Court will reconsider its decision, as I just indicated."*

*TR (June 11, 2019), p.51:13-17.*

After the permanent orders, the district court wrote many other orders for therapy, which are the orders that are the subject of this Petition.

#### C. Opinion To Be Reviewed:

This Petition stems from an Opinion from the Colorado Court of Appeals' ruling stating that Ms. Bernard does not have legal standing to challenge the district court orders for her to participate in individual and family therapy. App. 23a. This is

despite the fact that the district court's orders require the therapists to provide information regarding whether Ms. Bernard changed her belief that the Respondent (Mr. Hodyl) had molested their daughter.

In its October 21, 2020 order, the district court categorized Ms. Bernard's unwavering belief about her daughter having been molested by Mr. Hodyl as a lack of "progress" and wants the therapists to provide information about whether "*she /Ms. Bernard] is making progress or not making progress.*"

App. 35a.

Also, in its November 19, 2020 order, the district court's reason for ordering therapy is due to the fact that Ms. Bernard has not changed her belief that Mr. Hodyl molested their daughter. App. 49a. In the same order, the district court also limited Ms.

Bernard to a small pool of treating therapists willing to follow the district court's orders which can only be carried out by violating the psychotherapist-patient privilege provided under section 13-90-107(1)(g) of the Colorado Revised Statutes and the American Psychological Association (APA) Codes of Ethics 3.05. App. 54a-55a. APA 3.05 forbids therapists from entering multiple relationships that can harm their clients.

## **II. Locations Where The Federal Issues Were Raised:**

Violation of the psychotherapist-patient privilege was raised with the district court on November 4, 2020 in a Motion to Reconsider its October 21, 2020 order. It was also raised on October 9, 2020 when Ms. Bernard attached a document from the Denver Family Institute, which

indicated that conversation between psychotherapist and client is confidential and cannot be revealed to a third party. App. 136a-148a. It was also raised on November 13, 2020, when Ms. Bernard filed a letter from Dr. Jason Seidel, Psy.D., (Director of Colorado Center Of Clinical Excellence), in which he informed the district court that psychotherapist-patient privilege prevents ethical treating therapists from giving any information to the district court.

Violation of the psychotherapist-patient privilege was also raised in the Opening Brief. It was raised in the October 14, 2021 Petition for Rehearing filed with the Colorado Court of Appeals. Finally it was raised in the Petition for a writ of Certiorari with the Supreme Court of Colorado on November 25, 2021.

Legal standing to challenge the district court orders was raised in the Colorado Court of Appeals' Opinion entered on September 30, 2021. It was also raised in Ms. Bernard's October 14, 2021 Petition for Rehearing filed with the Colorado Court of Appeals, and in her November 25, 2021 Petition for a writ of Certiorari filed with the Supreme Court of Colorado.

Violation of equal protection rights and personal autonomy provided by the Due Process clause of the Fourteenth Amendment was raised in the Opening brief filed on February 24, 2021, in the Petition for Rehearing filed on October 14, 2021, and in the November 25, 2021 Petition for a writ of Certiorari filed with the Supreme Court of Colorado.

### **III. Relevant Procedural History**

On September 1, 2020, following a bench trial, pursuant to section 14-10-129.5 of the Colorado Revised Statutes, the district court issued an order that included a requirement for Ms. Bernard to attend individual therapy. App. 117a-120a.

On September 9, 2020, Ms. Bernard objected to the part of the September 1, 2020 order requiring her to communicate alternate explanations to her daughter regarding the symptoms that she had in the past when she was unsupervised with her father. Ms. Bernard refused to communicate alternate explanations to daughter on the grounds that such a requirement violates her First, Fifth, and Fourteenth Amendment Rights of the United States Constitution.

On September 15, 2020, the district court vacated the requirement for Ms. Bernard to give

alternate explanations to Daughter about her past symptoms. App.123 a.

On September 28, 2020, during a status conference, the district court gave an oral ruling for Ms. Bernard to file three (3) letters, weekly, on the therapists' letterheads, explaining why they are not agreeing to provide her with individual therapy. TR (September 28, 2020), p.14-16.

Ms. Bernard complied with the district court's order for weekly filings from the therapists, over 150 of them refused to take the case. Ms. Bernard also continued asking the district court for relief from having to continue contacting therapists and filing weekly updates.

The district court did not accept Ms. Bernard's explanations that therapists don't want to be

involved in custody disputes because it damages the psychotherapist-patient relationship and issued an order to that effect on October 21, 2020. In its October 21, 2020 order, the district court provided additional instructions for Ms. Bernard to follow in her search for an individual therapist.

In the order, the district court limited what Ms. Bernard could say in her search for an individual therapist and required that Ms. Bernard provide the following three court orders to prospective therapists: the September 1, 2020, September 15, 2020 and the October 21, 2020 orders. The district court also ordered Ms. Bernard to continue filing the Friday updates until she retains a therapist. App. 36a-37a.

On November 13, 2020, Ms. Bernard filed a letter from Dr. Jason Seidel, Psy.D., in which he

responded to the district court's request to explain why therapists were declining to take the case. He also informed the district court on the proper role of psychotherapy, which did not include changing a person's belief in a desired direction and supported Ms. Bernard's assertion that therapists do not like to get involved in divorce custody cases.

On November 18, 2020, the district court ordered Ms. Bernard to stop filing weekly updates but provided its own list of therapists for Ms. Bernard to contact, within 14 days, for individual therapy under the same terms as before. App. 41a.

Also, on November 18, 2020, Ms. Bernard filed a notice of appeal regarding the October 21, 2020 order.

On November 19, 2020, the district court vacated the November 18, 2020 individual therapy order and replaced it with an order for family therapy without changing the terms for therapy. App. 52a-53a. The district court also provided a list of therapists that the parties must contact within 21 days and in the chronology that they are listed in the order. App. 54a-55 a.

Furthermore, the November 19, 2020 district court's order required that both parties and the child engage in family therapy even though the prior family therapist stopped therapy between the child and Mr. Hodyl because it did not help. App. 52a-54a.

On July 10, 2020, the family therapist testified that she stopped therapy because it was not helpful and was not needed. In response to the district court

inquiring about whether she stopped therapy and why, the family therapist responded:

*"THE WITNESS: Yes. Yes, it was not beneficial and there wasn't a need. So I stopped."*

TR (July 10, 2020), p. 61:4-10.

The November 19, 2020 order also required that the family therapist appointed shall receive a copy of the PRE report, the June 11, 2019 permanent orders and all orders of the Court since the September 1, 2020 order on the motion to enforce parenting time. App. 56a.

On December 9, 2020, Ms. Bernard filed a notice of appeal regarding the November 19, 2020 order.

On September 30, 2021, the Colorado Court of Appeals entered its opinion affirming the district court's orders, including the individual therapy order that the district court already vacated.

Ms. Bernard filed a Petition for rehearing which was denied. Ms. Bernard also filed a Petition for a writ of Certiorari to the Supreme Court of Colorado, which was denied on February 28, 2022. The Court of Appeals also issued its mandate on February 28, 2022.

Finally, Ms. Bernard is filing this Petition for a Writ of Certiorari to this Court.

#### **REASONS FOR GRANTING THE PETITION**

##### **I. I. The Colorado Court of Appeals' Ruling Conflicts With Both Colorado and**

## Federal Laws On Basic Principles Of Article III Standing.

In *Spokeo, Inc v. Robins*, this Court stated that the:

*“... irreducible constitutional minimum’ of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.”* (citing *Lujan, 504 U.S., at 560–561*. other internal citations omitted).

The Court also clarified that the injury must be actual or imminent and said injury consists of an invasion of a legally protected interest. Also, the injury must have affected the plaintiff in a personal and individual way. See *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). See also, *Thole v. U. S. Bank*, 140 S. Ct. 1615, 1618 (2020).

According to the Supreme Court of Colorado, to establish standing under Colorado law, a plaintiff must show both "(1) that [she] 'suffered an injury in fact,' and (2) that the injury was to a 'legally protected interest.' See *Reeves-Toney v. School District No. 1 in City and County of Denver*, 442 P.3d 81, 86 (Colo. 2019) (Citing *Barber*, 196 P.3d at 245 quoting *Wimberly v. Ettenberg*, 194 Colo. 163, 570 P.2d 535, 538 (1977) ). The standing doctrine is rooted in the separation of the judicial, legislative,

and executive powers mandated by article III of the Colorado Constitution. *Id.* at 86. In *Ainscough v. Owens*, the Supreme Court of Colorado also stated that, under Colorado law, “*legally protected rights encompass all rights arising from constitution, statutes and case law.*” *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004). Also See *C.W.B. v. A.S.*, 2018 CO 8 (Colo. 2018).

The Colorado Court of Appeals’ ruling on article III standing failed to follow the basic principles laid out by this Court and by the Colorado Supreme Court. The ruling totally ignored the fact that Ms. Bernard will suffer injury to her psychotherapist-patient privilege if the district court’s orders are followed, and that Ms. Bernard has already suffered economic injuries as a result of

refusing to forfeit her psychotherapist-patient privilege.

Instead, the Colorado Court of Appeals reasoned that Ms. Bernard does not have legal standing to challenge the district court's orders because she is not the one being asked to violate professional and ethical obligations. The Opinion states as follows:

*"¶ 26 Second, because the district court's order does not require mother to violate any professional and ethical obligations, she lacks standing to assert an alleged violation of the APA code of conduct on behalf of all family therapists. See Meyer v. Haskett, 251 P.3d 1287, 1292 (Colo. App. 2010) ("Courts routinely deny defendants the standing to assert a*

*third party's right . . .") (quoting People v. Palomo, 31 P.3d 879, 885 (Colo. 2001))." App.23a.*

A. This Case fulfills Article III Standing

Requirements Because of the injuries to legally protected interests that are direct results of the district court orders:

Contrary to the Colorado Court of Appeals' ruling, this instant case meets the requirements necessary to establish Article III standing under both Federal and Colorado Laws. Ms. Bernard has suffered concrete economic injury for refusing to follow the district court's orders, and is liable to suffer injury to her constitutional and statutory rights if the district court's orders are followed.

1. Imminent Injury to Ms. Bernard's  
Psychotherapist-Patient Privilege.

The imminent injury that Ms. Bernard stands to suffer is to her right to psychotherapist-patient privilege if the challenged district court's orders are followed.

For example, the October 21, 2020 order requires the treating therapist to provide information to the district court about whether Ms. Bernard "*...is making progress or not making progresss.*" App. 35a.

Under section 13-90-107(1)(g) of the Colorado Revised Statutes, information about whether Ms. Bernard is making progress or not making progress can only be provided if Ms. Bernard consents to waive her psychotherapist-patient privilege. It is

undisputed that section 13-90-107(1)(g) of the Colorado Revised Statutes provides that privileged information cannot be disclosed without the consent of the privilege holder. Therefore, if a treating therapist were to provide information about "progress" to the district court, without Ms. Bernard's consent, that would constitute an injury to her statutory rights to psychotherapist-patient privilege.

Also, the November 19, 2020 order limited Ms. Bernard to the district court's own list of therapists willing to carry out the terms of the orders, making it certain that her psychotherapist-patient privilege will be violated. This order was written after 150 therapists in the community declined the case. In addition, in response to the district court's October 21, 2020 order, Dr. Jason Seidel, Psy.D., (Director of

the Colorado Center Of Clinical Excellence in Denver, Colorado), wrote back to the district court explaining that the case was being declined by therapists because of the unethical terms in the order. Some excerpts from his letter to the district court are listed below:

*“... the terms of the Court Order [October 21, 2020 order] would be considered by many licensed therapists (including us) to be completely inappropriate and unethical to adhere to”. App. 155a.*

Dr. Seidel also warned about the imminent danger in the district court’s order requiring for progress reports as this will create an environment for abuse. Dr. Seidel stated in his letter as follows:

*"Moreover, the ethical standards regarding non-exploitative multiple relationships warn that a psychologist (for example) must avoid multiple relationships that could impair their objectivity, judgment, or effectiveness. A client being poorly treated by a therapist, or even harmed by a therapist, but who is reliant on that therapist's positive report to the Court about their progress or cooperation (even in vague terms) lacks autonomy due to the power differential in the multiple, simultaneous roles held by that therapist."* App. 159a.

However, the Colorado Court of Appeals dismissed Dr. Seidel's warning of the imminent harm

that the district court's orders may cause to Ms. Bernard. The Opinion also ignored the fact that this information was requested by the district court in its September 28, 2020 oral ruling and in its October 21, 2020 order.

On September 28, 2020, the district court gave an oral ruling for Ms. Bernard to file three (3) letters on therapists' letterheads, explaining why they declined to provide her with individual therapy. On page 14-16 of the transcript, the district court stated in part:

*"THE COURT: Oh, I understand, ma'am, but you work in the medical field. So from now on every week by Friday I need three letters from three therapists that you have talked to and it*

*—"*

*"-- needs to be on their letterhead, telling me that you tried to seek therapy with them and why they cannot provide that therapy. You need to file those every Friday."*

*"You need -- it can't be an email and needs -- no, you may not. It can't be an email. It needs to be something on letterhead. We need to move this case forward."*

TR (September 28, 2020), p. 14-16.

Later, on October 21, 2020, the district court wrote an order addressing both Ms. Bernard and prospective therapists. In the order, the district court reiterated relevant portions in the September 1, 2020 and September 15, 2020 orders. The district

court also delineated its goals and expectations to the prospective therapists by stating:

*"The only information the Court anticipates receiving from the therapist is confirmation from the therapist that Mother is actively participating and engaged in therapy and general comments about her progress (e.g. she is making progress or not making progress). The Court has ordered this in many other cases and many therapists have provided court ordered individual therapy and given such limited updates to the Court." App. 35a-36a.*

The district court also explained that it felt that Ms. Bernard was delaying implementation of therapy. The order stated in part:

*"Mother has repeatedly, in filings and at a status conference, stated she has been unable to find a therapist who is willing to provide individual therapy. As the Court had never seen a therapist decline treatment simply because it was court ordered and because of concerns Mother was delaying implementation of the Court's orders, the Court ordered Mother at a September 28, 2020 status conference to begin submitting, every Friday, 3 letters from therapist she had contacted detailing why they declined to treat Mother." App. 33a-34a.*

The order continued by saying:

*"The Court orders that in Mother's future requests seeking individual*

*therapy, she refrain from using the general language in the exhibits to her October 2, 9, and 16 responses that she is seeking "court ordered individual therapy relating to a custody case." The Court fears this overly general language is prohibiting her ability to obtain a therapist. Instead, Mother should notify the therapist of the specific issues for which the Court ordered her to seek individual therapy and attach copies of the Court's Orders from September 1, 2020; September 15, 2020 and this order. Upon retaining a therapist, Mother shall provide her therapist with a copy of the PRE's report and the June*

*11, 2019 transcript no later than the  
first appointment.” App. 36a-37a.*

Therefore, Dr. Seidel provided the letter at the request of the district court. The Opinion minimized the warnings in Dr. Seidel’s letter by characterizing it as being “*...the alleged ethical dilemmas of one specific individual therapy practitioner and does not concern the field of family therapy generally*”. App. 22a.

2. Imminent Injury to Ms. Bernard’s Personal Autonomy under the Due Process Clause of the Fourteenth Amendment.

In addition, the Colorado Court of Appeals’ Opinion ignored the violation to Ms. Bernard’s equal rights to personal autonomy under the Due Process Clause of the Fourteenth Amendment to make her

own decisions regarding whether she wants therapy, choose her own therapist, and decide on what she wants to address in therapy. This is due to the fact that Ms. Bernhard is being forced to attend therapy from a specific chosen list of therapists and with the district court's own goals to be addressed in therapy.

In his letter, Dr. Seidel also addressed this issue:

*"Regardless, therapy should not be considered a tool of the Court, but rather a tool designed to be used by patients or clients for their own ends, keeping in mind the factors that may be impinging on their happiness, effectiveness in the world, or ability to overcome interpersonal obstacles or traumas. The Court may have behavioral outcomes it requires (e.g., sobriety, nonviolence,*

*school attendance), and may have good reason to think certain activities may lead to or enhance these outcomes (e.g., psychotherapy), but therapists along with their clients must make their own determination of the methods, aims, and goals of therapy, once the client walks through the door.” App. 164a.*

3. Economic Injury That Ms. Bernard has already suffered.

The Colorado Court of Appeals’ ruling alluded to having knowledge of the fact that Ms. Bernard was monetarily sanctioned in relation to the district court’s orders for therapy. App. 7a. Yet, the Opinion did not factor in that knowledge in its decision that Ms. Bernard did not have legal standing to challenge the district court’s orders. The monetary sanctions

that the Opinion alluded to, constitute economic injury to Ms. Bernard. In paragraphs 5 and 6 of the Opinion, the Colorado Court of Appeals noted as follows:

*“... and the court’s March 25, 2021, order imposing a \$4,600 sanction against mother for failing to complete the required paperwork in order for father to exercise his parenting time, see *In re Marriage of Hodyl*, (Colo. App. No. 21CA0177).” App. 7a.*

Although the Opinion makes the claim that the March 25, 2021 sanctions were due to Ms. Bernard failing to complete required paperwork for Mr. Hodyl to exercise his parenting time, the records clearly show that the sanctions were due to the fact that Ms. Bernard did not contact the therapists.

More specifically, on March 25, 2021, the district court retroactively sanctioned Ms. Bernard \$4,600.00 and required her to post another \$5,000.00 from which to continue charging her \$100.00 for each day that she refuses to contact the therapists on the district court's provided list of therapists, sign their paperwork, pay their retainers, and start therapy.

The district court's order stated as follows:

*"The Court finds Mother's failure to contact Dr. Spiegle is a violation of the September 1, 2020 Court order, specifically Mother refusing to complete intake or other required paperwork. Per the January 29, 2021 order..." App. 91-92a.*

*"The Court ordered Mother to contact Dr. Spiegle by February 5, 2021, but*

*Mother did not do so. The Court finds every day that followed that Mother failed to contact Dr. Spiegle was a separate instance of Mother delaying progress in the case contrary to the September 1, 2021 Court order. Forty-six (46) days elapsed from February 6, 2021 to March 23, 2021. Thus the Court authorizes the release of \$4,600 to Father from the \$5,000 bond Mother posted." App. 93a.*

*"As Mother's violation has consumed almost all of the original bond, the Court orders Mother to post another \$5,000 bond within 7 days of March 24, 2021 with the same conditions as in*

*paragraph 13 of the September 1, 2020  
Court order.” App. 94a.*

Even though the sanctions in the September 1, 2020 orders were supposed to be levied against Ms. Bernard only if her actions caused Mr. Hodyl to miss parenting time; the district court still imposed monetary sanctions for not contacting the therapists even though her actions did not cause Mr. Hodyl to miss any parenting time. In fact, in its June 2, 2021 order, the district court itself admitted that Mr. Hodyl never alleged any missed parenting time. The June 2, 2021 order stated as follows:

*“While true that Father has not alleged  
any missed parenting time since the  
Court intervened and issued its  
September 1, 2020 order, the Court must*

*enter orders in the best interests of the child.”*

Therefore, the March 25, 2021 monetary sanctions were directly due to Ms. Bernard not contacting the therapists and not due to missed parenting time.

4. Ms. Bernard’s Injuries Can Be Redressed By A Favorable Judicial Decision.

In *Spokeo* and in *Thole v. U. S. Bank*, as part of establishing article III standing, this Court also required that the injury being complained of would likely be redressed by the requested judicial relief.

*See Thole v. U. S. Bank* , 140 S. Ct. 1615 (2020).

(Internal citations omitted); and *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

In this instant case, had the Colorado Court of Appeals provided relief, it would have cured the constitutional and statutory injuries that Ms. Bernard is bound to suffer as a direct result of the district court's orders. In addition, relief from the district court's orders would have also cured the economic injuries that Ms. Bernard has already suffered for not complying with the unlawful orders for therapy.

In summary, Ms. Bernard has established article III standing to challenge the district court's orders because of the economic injuries that she suffered as a direct result of the district court's orders; and due to the imminent injuries to her psychotherapist-patient privilege and personal autonomy under the Fourteenth Amendment that she will suffer if the district court's orders are not

reversed. Ms. Bernard has legal standing also because the injuries can be redressed by a favorable judicial decision.

**II. II. The Colorado Court of Appeals'  
Ruling On The Issue of Psychotherapist-  
Patient Privilege Conflicts With  
Decisions By This Court and Circuit  
Courts.**

In Jaffee, this Court took the position that communications between a psychotherapist and patient during the course of therapy are privileged and protected from compelled disclosure under Rule 501 of the Federal Rules of Evidence. *Jaffee v. Redmond*, 518 U.S. 1, 15 (1996) (footnote omitted).

This Court has also taken the position that an atmosphere of confidence and trust is necessary for

effective psychotherapy. Therefore, there cannot exist the possibility that therapists will violate confidentiality without impairing successful treatment. *Jaffee v. Redmond* 518 U.S. 1, 2 (1996).

Pursuant to Federal Rule of Evidence 501, in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision. See Fed. R. Evid. 501.

In Colorado, communications between a client and licensed psychotherapist implicate the psychotherapist-client privilege statute, section 13-90-107(1)(g) of the Colorado Revised Statutes. Under this statute,

*"[a] licensed psychologist . . . family therapist... shall not be examined without the consent of the licensee's . . .*

*client as to any communication made by  
the client to the licensee . . . or the  
licensee's . . . advice given in the course  
of professional employment."*

Contrary to this Court's prior decisions and Colorado statute, the Colorado Court of Appeal's Opinion disregards Ms. Bernard's psychotherapist patient privilege claiming that Ms. Bernard failed to make a connection between APA 3.05 and the letter from Dr. Seidel. However, Ms. Bernard's contentions and the contentions in Dr. Seidel's letter regarding psychotherapist-patient privilege are well supported by Federal and Colorado laws. The Opinion stated in paragraphs 24 and 25:

*"¶ 24 Mother also contends that the  
district court's goals for family therapy  
are contrary to the inherent role of a*

*treating family therapist. In other words, she asserts that a family therapist cannot serve the role of evaluator in a parental responsibilities dispute and, at the same time, the professional role of treating psychologist. She cites to the code of conduct (the APA code of conduct) of the American Psychological Association, which provides that psychologists must refrain from entering into "multiple relationships" that could reasonably be expected to impair their "objectivity, competence or effectiveness in performing their functions" or "otherwise risk[] exploitation or harm to the person with whom the professional*

relationship exists." We disagree with mother's contention for two reasons.

App. 21a-22a.

¶ 25 First, mother relies on a letter from an individual therapist who declined to offer her treatment. But she makes no attempt to explain how the statement of the individual therapist relates to the APA code of conduct provisions applicable to family therapists, and we will not do so on her behalf. Moreover, the letter articulates the alleged ethical dilemmas of one specific individual therapy practitioner and does not concern the field of family therapy generally. App. 22a.

As mentioned before, the Opinion ignores the fact that the district court itself requested the information that Dr. Seidel provided. Furthermore, the fact that the roles of forensic evaluator and treating therapist conflict is also reflected in the Supreme Court of Colorado's Chief Justice Directives 04-08 and 21-02. For example, the Supreme Court of Colorado Chief Justice Directive (CJD) 04-08 STANDARD 4 (comment) (b) provides that:

*"Psychotherapy. As with mediators, therapists have confidentiality obligations to their clients that are at odds with a child and family investigator's duties. The roles, purposes, goals, responsibilities, approaches, and professional and ethical requirements of a treating*

*therapist are in conflict with those of a child and family investigator.”*

Similarly, the Supreme Court of Colorado Chief Justice Directive (CJD) STANDARD 4 (comment) (b) 21-02 also provides that:

*“Psychotherapy. As with mediators, therapists have a duty of confidentiality to their clients that conflicts with a PRE’s [Parental Responsibility Evaluator] duties. The roles, purposes, goals, responsibilities, approaches, and professional and ethical requirements of a treating therapist conflict with those of a PRE.”*

Therefore, the Supreme Court of Colorado has made it clear in two of its Chief Justice Directives

that the roles of an evaluator and that of a treating therapist conflict. The district court and the Colorado Court of Appeals are subject to the Chief Justice Directives issued by the Supreme Court of Colorado. Hence, the Colorado Court of Appeals' refusal to recognize the problem in the district court requiring the treating therapist to play dual role is unacceptable because it is part of their Chief Justice Directives under which they practice.

Furthermore, prior decisions from another division of the Colorado Court of Appeals supports the fact that the roles of evaluator and treating therapist conflict. *In AWAI v. KOTIN*, the Colorado Court of Appeals held that it may not be in the best interests of the patient to allow a treating therapist to come to testify in court, nor is it required for

judicial decision making. The holding stated as follows:

*"However, treatment, unlike reports or evaluations and recommendations, is not intimately related and essential to the judicial decision-making process.*

*Rather, it is a separate remedial function in which full disclosure may be contrary to the best interests of the patient and improper. See Ethical Principles of Psychologists, American Psychologist 390, 392 (March 1990).*

*("Principle 5: Confidentiality. Psychologists have a primary obligation to respect the confidentiality of information obtained from persons in the course of their work as psychologists.*

*They reveal such information to others  
only with the consent of the person."*

*AWAI v. KOTIN, 872 P.2d 1332, 1336*

*(Colo. App. 1993).*

In the October 21, 2020 order, the district court directing the content of therapy and requiring reports from the therapists does not engender an atmosphere of trust in which therapy can take place. This is made worse by the district court restricting Ms. Bernard to its own list of therapists willing to comply with the order, when 150 other therapists refused to do so.

Moreover, Ms. Bernard was being made to forfeit her psychotherapist-patient privilege, without her knowledge, by complying with the district court's order requiring her to provide a series of orders to prospective therapists. This is due to the fact that

these orders contain a request for the therapists to provide reports on "progress" to the district court.

On January 29, 2021 the district court made its intention even more clear when it asked the parties themselves to file a treatment summary and to ensure that the treating therapist is available to come to court to be examined. The January 29, 2021 order stated in part:

*"The Court set a status conference via Webex on March 24, 2021 from 3:30 to 4:30 pm. The Court will address the parents' progress in family therapy.*

*Parties shall file a treatment summary from the family therapist at least 72 hours in advance of the hearing and ensure the therapist is available to appear in court."* App. 67a.

Ms. Bernard refused to comply with the January 29, 2021 order and made the district court aware that she did not contact the therapist due to not wanting to waive her psychotherapist-patient privilege. In response to her refusal, the district court retroactively monetarily sanctioned Ms. Bernard \$4,600.00 and required the posting of an additional \$5,000.00 from which to continue charging her \$100.00 for each day that she fails to comply with the order.

In *U.S. v. Auster*, the Fifth Circuit held that a party “*...cannot claim the protections of the psychotherapist-patient privilege if he had actual knowledge, when making the statements, that they would not be kept confidential.*”

*U.S. v. Auster* 517 F.3d 312, 320 (5th Cir. 2008).

Similarly, the district court requiring the therapist to give progress report, in its orders, is tantamount to Ms. Bernard having been informed that communication with the therapist is not privileged; therefore, any interaction with the therapist can be reported back to the district court as privilege would have already been lost by Ms. Bernard's compliance with the order.

In summary, the Colorado Court of Appeals' ruling on psychotherapist-patient privilege is not in line with this Court's prior decisions, Colorado statute, and the Chief Justice Directives of the Supreme Court of Colorado.

### **III. The Colorado Court of Appeals' Rulings**

#### **Present A Danger To The Public.**

The Colorado Court of Appeals' rulings present a danger not only to Ms. Bernard but also to the public. This is because the Colorado Court of Appeals is allowing the district court to cause Ms. Bernard and others to forfeit their psychotherapist-patient privilege without being aware of it. In its October 21, 2020 order, the district court itself admitted to having ordered such therapy in the past and requesting a progress report from therapists in the past. App. 35a-36a.

In addition, the Opinion is allowing the district court to require the therapists to play the dual role of evaluator and treating therapist placing Ms. Bernard and others at risk of being abused by

the therapists as Dr. Seidel warned in his letter.

App. 159a.

The district court is also levying monetary sanctions for not complying with the unlawful orders, as well as for filing Board complaints against the therapists. For example, on September 1, 2020, the district court wrote an order in which it forbade Ms. Bernard from reporting the professionals in the case to their professional Board. The district court stated:

*"Mother shall post a \$5,000 cash bond*

*with the Court to ensure her future*

*compliance per C.R.S. 14-10-129.5(2)(c).*

*For every instance of Father's missed*

*parenting time due in part or whole to*

*the actions of Mother, including but not*

*limited to Mother's court filings that*

*delay implementation of the above*

*parenting time phases; ... Mother refusing to sign contracts, complete intake or other required paperwork; ... Mother issuing a formal complaint against any professional involved in the instant case; 119a-120a.*

On January 29, 2021, the district court did enforce that order by levying \$100.00 sanction against Ms. Bernard for filing a Board complaint against Daughter's individual therapist who was playing dual role in the case and also requested for a copy of the board complaint within 24 hours. The district court order stated:

*"Regarding the formal complaint Mother filed against Dr. Bresnick, if Mother files a formal complaint against any professional acting in this case, Mother*

*shall file a full copy of her complaint with the Court within 24 hours of her original complaint filing date." App. 65a.*

On February 22, 2021, this order was modified to requiring Ms. Bernard to provide a copy of all board complaints within 72 hours.

The February 22, 2021 order stated in part:

*"...the Court will slightly modify its order to state that Mother shall file a copy of any complaints she makes once the Board meets for its initial consideration and the record becomes public. App. 85a-86a.*

Penalizing a litigant for the exercise of constitutional rights is also contrary to this Court's precedent legal opinions. This court held that it is a

recognized basic principle that an individual may be penalized for violating the law, but may not be punished for exercising a protected statutory or constitutional right. See *United States v. Goodwin*, 457 U.S. 368, 372 (1982). In *Michigan v. Defillipo*, this Court held that it is unfair to penalize actions undertaken in good faith whether it is due to a correct or a mistaken interpretation of the Constitution. See *Michigan v. Defillipo* 443 U.S. 31, 43 (1979).

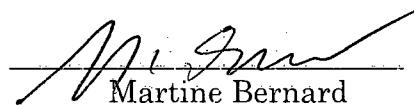
Here, Ms. Bernard's actions were due to a correct interpretation of her right to psychotherapist-patient privilege and should not be penalized. "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." *Bordenkircher v. Hayes* 434 U.S. 357, 362 (1978).

In summary, this practice by the district court places the general public at risk of being abused by unethical therapists.

### **CONCLUSION**

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted, on May 28, 2022.



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