No. _____

IN THE SUPREME COURT OF THE UNITED STATES

S.J, mother of A.C. and A.W., each a minor child,

Petitioner,

v.

DEPARTMENT OF CHILDREN AND FAMILIES,

Respondent.

On Petition for a Writ of Certiorari to
the Supreme Court of the State of Florida

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTION PRESENTED

Whether an indigent Mother whose parental rights are terminated is denied equal protection and due process of law when an appointed appellate counsel withdraws without filing a brief on the merits or an Ander's brief and before she can file the initial brief after retaining private counsel is dismissed the next business day foreclosing any "meaningful review" of the termination proceedings?

II. TABLE OF CONTENTS

INDEX OF APPENDICIES

III. TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

State Cases

Rules

Other

IV. PETITION FOR WRIT OF CERTIORARI

The Mother, Stephanie Jones, petitions the Court for a writ of certiorari to review the Order of the Florida Supreme Court dated February 18, 2021.

V. OPINION(S) BELOW

The February 18, 2021, order of the Supreme Court of Florida dismissing the petitioner's appeal is unreported and is reproduced in the appendix to the petition for writ of certiorari, p. 1. The order of the trial court terminating the parental rights of petitioner and Motion for Rehearing is unreported and is reproduced at Pet. App. 2. The order of the First District Court of Appeal, which dismissed the appeal on October 26, 202, and a Motion to Reinstate Appeal on November 5, 2020, which was denied after rehearing (December 10, 2020) on January 14, 2021, Dismissing an Appeal of the Court's Final Judgment Terminating the Mother's Parental Rights to Minor Children and Permanent Commitment and Disposition following hearing by the Honorable Mallory Cooper, Circuit Court Judge, and the Corrected Order Denying the Motion for Rehearing which are unreported and is reproduced at Pet. App. 3, 4, 5, 6.

VI. JURISDICTION

The judgment of the Supreme Court of Florida dismissing the petitioner's appeal was issued on February 18, 2021. *See* Supreme Court Rule 13.1. Pet. App. 1. The mandate of the Supreme Court of Florida, confirms the date of the dismissal and that no motions for rehearing will be considered. The petition for writ of certiorari was timely filed on July 18, 2021. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257.

VII. CONSITUTIONAL PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution, which reads in relevant part as follows:

. . . . No state shall . . . 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.

VIII. STATEMENT OF THE CASE

A. SUMMARY OF THE ARGUMENT

One of the most fundamental rights that can be adjudicated in a court of law is the right inherent in a parent's relationship with his or her child. The State of Florida utilizes a rule of procedure on appeal which permits -- after a court appointed attorney for a litigant who is indigent -- dismissal if the litigant relying on Counsel to file a brief on appeal elects not to challenge the decision by dismissing the case without any further notice. The Mother sought to obtain another attorney by appointment which was denied, and then attempted to file on her own and was unable to prepare a brief. She then secured Counsel who filed a Notice of Appearance on October 23, 2020. The next business day the appeal after Counsel appeared on her behalf the case was dismissed. The Mother's attorney had filed a Motion to Reinstate and Vacate the Dismissal, which was denied as well.

Florida fails to provide the litigants with a level of care that is appropriate given the stakes involved when a Mother's parental rights are terminated. The Mother has sought to comply with a letter which informed of her what to do and no clear guidance on how to comply or face dismissal of the action. The Florida

Supreme Court will not review such dismissals. The constitutional propriety of this sort of practice in this case -- involving the termination of the fundamental rights encompassed by a parent's relationship with her child -- is clearly unconstitutional. It precludes judicial review of the trial court's errors as if there was never an attorney appointed in the first instance.

A significant line of precedent from this Court has applied the Fourteenth Amendment to protect the rights of its citizens regardless of their financial status and ability to secure Counsel in order to pursue fundamental legal interests through existing avenues in state judicial systems.

This Court has recognized and sought to address the litigant's access to Counsel by ensuring financial ability was not a bar to review beginning with *Griffin v. Illinois*, 351 U.S. 12 (1956), which held that a citizen could not be precluded from an appeal available to others simply because he could not afford to pay for a transcript of the trial. The rationale of that line of precedent also has been applied by this Court in a civil case, *Boddie v. Connecticut*, 401 U.S. 371 (1971), where fundamental rights were at issue, and has played a part in this Court's resolution of a civil appeal involving the interests of indigent appellants. *Lindsey v. Normet,* 405 U.S. 56 (1972). In a separate line of precedent, this Court has held that fundamental rights are implicated when a parent's relationship with his or her

children is threatened through a state court parental termination proceeding. *Lassiter v. Department of Social Services*, 452 U.S. 18, 24 (1981); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

In the State of Florida, the litigant is provided with court appointed Counsel; however, that appointed counsel may waive any challenge by notifying the Court of Appeals that counsel does not believe there are any issues for review. The Court of Appeals notifies the pro se litigant upon his withdrawal that she must act on her own now -- placing her back in the very position she was in *prior* to the appointment of counsel. As she acts to secure counsel or file on her own behalf, she secures counsel who files a Notice of Appearance. Yet the Court of Appeals dismissed the case the following business day.

There are many irregularities which have fundamentally affected this Mother's attempt to secure review of the trial court's decision. If the petitioner could have afforded private Counsel to file a brief on appeal (prior to the dismissal), the appeal certainly would have been a meaningful appeal. The case being dismissed without opinion resulted in the State of Florida denying any discretionary review to review the termination proceedings.

Given the fundamental nature of parental rights and Florida's use of a procedural rule that deprives the Mother of an attorney that she sought initially or sufficient time to obtain counsel, this practice violates both the Due Process and the Equal Protection Clauses of the Fourteenth Amendment and deprives her of meaningful access to the courts. If she had the ability to afford Counsel for the appeal, she would not have been deprived the access to the courts that she earnestly sought to address the State's deprivation of a fundamental liberty interest.

There are few interests in civil litigation more important than those which arise in parental termination cases, and a reversal of the Florida Supreme Court in this case will not necessarily require states to permit unlimited litigation when an in forma pauperis appeal is pursued. It only requires providing the litigant a meaningful opportunity to secure counsel. If the initial attorney appointed is not going to pursue the appeal, additional safeguards must be in place to ensure the litigant can proceed to a meaningful review. Simply sending a letter that the litigant has to act without any assistance or access to an attorney in the interim to advise how to precede is tantamount to no counsel at all.

The Florida Supreme Court's decision to dismiss the case is not supported by an interest sufficient to justify the refusal to review an in forma pauperis appeal of a parental termination case such as this one.

B. ARGUMENT

The Petitioner, Stephanie Jones, is a single-parent mother whose husband became abusive (due to PTSD) and resulted in divorce and separation. Jones was effectively raising the minor children alone. The State of Florida removed the children from the home and sought reunification, which was appropriate. Ms. Jones did everything she was required to do and completed her plan. Yet, the State of Florida sought to terminate her parental rights. At trial, she presented evidence regarding the problems she had with obtaining referrals, and obtaining timely information regarding her progress. At the time of the TPR advisory, there was no justification for the reunification plan continuing.

After a trial, the trial court terminated her parental rights – and took 180 days to issue and order (which contained inconsistent findings and inaccuracies). On appeal to the First District Court of Appeals, Ms. Jones required court appointed counsel, who later withdrew. After the withdrawal, Ms. Jones began looking for private counsel and acted with due diligence to comply with the

court's request. Being pro se, she could not alone file the brief on appeal. When she obtained Counsel, he filed a notice of appearance on October 23, 2020, and the Court of Appeals dismissed the case the following Monday, October 26, 2020.

Counsel filed a Motion to Reinstate the Appeal and Vacate the Dismissal on November 5, 2020, which was denied on November 25, 2020. Counsel filed a motion for rehearing on December 10, 2020, which was denied on January 14, 2021. A timely motion for rehearing was filed and a corrected Order entered on January 20, 2021. On February 15, 2021, Counsel appealed to the Florida Supreme Court, and the appeal was dismissed on February 18, 2021.

After the withdrawal of Brian Cabrey, Esquire on September 16, 2020, the Petitioner did not receive any assistance from the Court or the appointed Counsel to file anything. The Petitioner sought the appointment of counsel on September 21, 2020 which was denied on September 23, 2020. The withdrawal of counsel did not require the filing of an Anders brief or any document to toll the time for her to act pro se. Twenty days is not enough time to provide a pro se brief or to obtain counsel. The Petitioner was left without any assistance to pursue the appeal within that time.

Among the most important of human relationships is that between a parent and a child. The birth of a child is a meaningful and life-altering event, and the process of parents having children is perhaps the defining feature of the ongoing existence of our living culture.

As part of the protection of children from egregiously harmful situations, however, the State has the power to terminate, through the operation of the law, the relationship between a parent and a child. This termination of parental rights is something that goes far beyond the legal determination of the proper physical custody of a child, which can occur if there is the breakdown of a family or the dissolution of a marriage. For even when custody exists in one parent or the other after a divorce, the remaining parent can still play a role in the child's life, can still see the child, and can still be with the child for significant periods of time, even if they are not living together on a constant basis. But when a State, operating through its court system and its judges, terminates parental rights, it completely dissolves the relationship between a parent and a child.

This is true not only as a legal matter, but also as a practical matter. A termination of parental rights deprives a parent of any right to see his or her child or to play any role in the child's life. It can mean that a father is no longer a father, or as in this case, a mother is no longer a mother of two children. She is no longer

a mother in the eyes of the law, and is no longer a mother in the day-to-day passage of life.

This ability to terminate a relationship between a parent and a child encompasses an awesome power and entails an awesome responsibility. There are legitimate reasons, of course, for this power, but only if it is exercised carefully. As part of the exercise of this power, the State of Florida has chosen to have the issue of the termination of parental rights presented in the first instance in any given case to a single trial court judge -- a trial court judge -- who is elected by the voters and who sits without a jury. But with a level of care appropriate to the magnitude of the decision, the process in Florida does not end with this single judge's decision. Like other states, Florida provides an appeal of right for those parents who wish to pursue it, so that appellate judges can review the trial judge's initial determination and reverse the decision if they conclude it is appropriate to do so.

Unfortunately, in this case, a parent has been excluded from a key component of this system because she did not have enough money at the time of the appeal to obtain private counsel. Her parental rights have been taken away by a single retired judge whose decision, she believes, is grievously wrong as a matter of fact and law, but because she cannot afford the price that is being charged, she

is not allowed to present her case to the appellate judges who otherwise would hear it and who could restore her rights as a parent to her children.

C. IN CASES INVOLVING FUNDAMENTAL RIGHTS INVOLVING A SUBSTANTIAL LIBERTY INTEREST, THIS COURT'S PRECEDENTS PROHIBIT A STATE FROM DENYING ITS CITIZENS ACCESS TO A COURT SYSTEM, DUE PROCESS, AND EQUAL PROTECTION SIMPLY BECAUSE THEY ARE POOR, AND ACT WITH DUE DILLIGENCE TO OBTAIN APPELLATE COUNSEL

This case, much like *M.L.B. infra*, involve choices about "marriage, family life, and the upbringing of children are among associational rights this Court has ranked as 'of basic importance in our society,' *Boddie, 401* U. S., at 376, rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect. See, for example, *Turner* v. *Safley,* 482 U. S. 78 *(1987), Zablocki* v. *Redhail,* 434 U. S. 374 (1978), and *Loving* v. *Virginia,* 388 U. S. 1 (1967)(marriage); *Skinner* v. *Oklahoma ex rel. Williamson,* 316 U. S. 535 (1942)(procreation); *Pierce* v. *Society of Sisters,* 262 U. S. 390 and *Meyer* v. *Nebraska,* (1923) (raising children)." *See* Pastore, Caire, *Life After Lassiter: An Overview of State-Court Right-to-Counsel Decisions,* Journal of Poverty Law and Policy, July 2006.

As the Supreme Court recognized in *M. L. B.'s* case, involving the State's authority to sever permanently a parent-child bond, the Court examined a long line

of decisions that has protected the right of citizens, no matter their financial station, to pursue fundamental legal interests through existing avenues in state judicial systems. To be sure, in *Griffin v. Illinois*, 351 U.S. 12 (1956), the Supreme Court noted that a state is not required by the Constitution to provide an appeal in a criminal case. But where a state does so, the Court held, it *also must* provide indigent persons a transcript, or its equivalent, at state expense so they can take advantage of the appeal option irrespective of their financial poverty. This result, said the plurality opinion in *Griffin,* is compelled by the Due Process and Equal Protection Clauses of the Fourteenth Amendment. *Id.* at 18-20.

As stated by the plurality opinion in *Griffin*:

> There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance.

Id. at 18. The four-justice plurality in Griffin was joined in the result by Justice Frankfurter, who said in his concurrence:

> [W]hen a State deems it wise and just that convictions be susceptible to review by an appellate court, it cannot by force of its exactions draw a line which precludes convicted indigent persons . . . from securing such a review . . . . . If [a State] has a general policy of allowing criminal appeals, it cannot make lack of means an effective bar to the exercise of this opportunity.

Id. at 23-24 (Frankfurter, J., concurring).

While the several States are *not* required to provide an appeal, if the State does it must also provide an indigent petitioner with a full opportunity to defend themselves. Here, the Mother sought only to have a meaningful review after the Court terminated her parental rights. Her appellate attorney Mr. Cabrey failed to file an appeal and moved to withdraw, which motion was granted on September 16, 2020. After that withdrawal, the Mother sought to comply with the Order directing her to obtain new Counsel or file a brief on appeal *pro se*. The Order stated that the "Appellant may, within 20 days of service of counsel's notice of compliance, file with the Clerk of this Court an initial brief." Mr. Cabrey certified on September 23, 2020 that he provided her with a complete copy of the record. She could not comply and review a record within 20 days and file the brief on or before October 13, 2020. Instead, she sought to obtain monies from friends to hire an attorney, and after she did Counsel appeared and filed on October 23, 2020. After doing so, the Court of Appeals dismissed the appeal without opinion the following Monday on October 26, 2020.

The Court of Appeals failed to provide her with a meaningful opportunity to secure new counsel, review the entire record and transcript, and to file an initial brief. Despite Counsel's efforts to reinstate the appeal and vacate the dismissal, the Court denied the motion to vacate the dismissal and reinstate the appeal on

November 25, 2020.[1] In that Motion, Counsel also requested upon reinstatement additional time to complete the filing of the initial brief.

Although Anders review should be required upon withdrawal as the attorney for the parent may make a mistake, it is not a procedural safeguard provided. Mistakes do happen. Alternatively, the attorney may not be diligent or may be insufficiently skilled. An unenthusiastic attorney is likely to rubber-stamp the appeal and file a motion to withdraw. Court-appointed juvenile attorneys are typically under-compensated, thus increasing the need to take on an increasing number of cases to make ends meet. It is therefore possible that an appeal could slip through the cracks of a busy juvenile practice.

In this case, the Petitioner *did obtain* new counsel while the case was pending and upon filing the Notice of Appearance, the Court of Appeals dismissed the appeal the next business day -- foreclosing any opportunity to obtain review or request an extension of time.

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[1] In fact, the majority of states apply Anders to termination of parental rights or juvenile dependency proceedings. See In the Interest of K.S.M., 61 S.W.3d 632 (Tex.App. 2001); In re Christopher B., No. L099-1065, 2000 WL 281739 (Ohio Ct. App. Mar. 17, 2000); In the Interest of D.C., 963 P.2d 761 (Utah App. 1998); J.K. v. Lee County Dep't of Human Res., 668 So.2d 813 (Ala.Civ.App. 1995) (juvenile dependency); In re V.E.., 417 Pa.Super. 68, 83-84, 611 A.2d 1267 (1992); In re Jamie C., 1990 Conn.Super. LEXIS 1869 (Conn.Ct.App.1990) (not designated for publication); Morris v. Lucas County Children Srvs., Bd., 49 Ohio App.3d 86, 550 N.E.2d 980 (Ohio App. 1989); In the Interest of J.R.W., 149 Wis.2d 399, 439 N.W.2d 644 (1989); In re Keller, 138 2 V.V. held that a parent's invocation of Fifth Amendment rights cannot be taken as an admission of guilt or support an inference of guilt in a proceeding of dependency or termination of parental rights, even though such proceedings are classified as civil rather than criminal, where such proceedings bear many of the indicia of criminal trials. 7 Ill.App.3d 746, 486 N.E.2d 291 (1985).

IX. REASONS FOR GRANTING THE WRIT

The indigent single-parent Mother whose parental rights were terminated sought meaningful review and followed the in forma pauperis procedures of the State of Florida. Though she did, she was denied meaningful review after her court appointed counsel advised of his withdrawal as appellate counsel. Due process and Equal protection require that a litigant, particularly when a substantial fundamental liberty interest is implicated, be afforded meaningful access to the courts. To do otherwise will undermine the long-established decisions of this Court to ensure that wealth does not provide two sets of justice to its citizens. The Constitution of the United States has at its core the right of the citizens to obtain equal justice under the law, to obtain redress for grievances, access to the courts, and when substantial liberty interests at stake, the litigant has a *meaningful opportunity* to challenge the actions of the state.

Justice Anthony Kennedy in his concurring opinion eloquently explained these important interests in *M.L.B. v. C.L. J.* 519 U.S. 102 (1996) as follows:

> The Court gives a most careful and comprehensive recitation of the precedents from *Griffin* v. *Illinois,* 351 U. S. 12 (1956), through *Mayer* v. *Chicago,* 404 U. S. 189 (1971), and beyond, a line of decisions which invokes both equal protection and due process principles. The duality, as the Court notes, stems from *Griffin* itself,

which produced no opinion for the Court and invoked strands of both constitutional doctrines.

In my view the cases most on point, and the ones which persuade me we must reverse the judgment now reviewed, are the decisions addressing procedures involving the rights and privileges inherent in family and personal relations.

These are *Boddie* v. *Connecticut,* 401 U. S. 371 (1971); *Lassiter* v. *Department of Social Servs. of Durham Cty.,* 452 U. S. 18 (1981); and *Santosky* v. *Kramer,* 455 U. S. 745 (1982), all cases resting exclusively upon the Due Process Clause. Here, due process is quite a sufficient basis for our holding.

I acknowledge the authorities do not hold that an appeal is required, even in a criminal case; but given the existing appellate structure in Mississippi, the realities of the litigation process, and the fundamental interests at stake in this particular proceeding, the State may not erect a bar in the form of transcript and filing costs beyond this petitioner's means. The Court well describes the fundamental interests the petitioner has in ensuring that the order which terminated all her parental ties was based upon a fair assessment of the facts and the law. See *Mathews* v. *Eldridge,* 424 U. S. 319, 335 (1976). With these observations, I concur in the judgment.

In this case, the State of Florida has utilized a process that terminated the Mother's parental rights, and then effectively barred her from ensuring that the order which terminated all her parental ties was based upon a fair assessment of the facts and the law – just as Justice Kennedy had instructed. The Mother filed a motion with the Court seeking the appointment of new counsel after Mr. Cabrey had withdrawn, which was denied. Then, after she obtains Counsel and files a Notice of Appearance, the Court again acts but to

dismiss the case. The Court relied upon for the dismissal the Florida Supreme Court's decision in *N.S.H. v. Dept't of Children & Family Services*, 843 So. 2d 898 (Fla. 2003).

This decision by the Florida Supreme Court must be overruled as it denies due process and equal protection of the law and conflicts with the well-established law by the United States Supreme Court and continue to permit those who cannot afford counsel from obtaining meaningful review.

X. CONCLUSION

The State of Florida has set forth procedural rules which act as a complete bar to appellate review, which deprive a pro se litigant of a fundamental liberty interest without due process of law -- by restricting access to any meaningful review if you are unable to afford an attorney. The Mother and single parent in this case like so many litigants who are financially unable to afford counsel have no control over the appointment of that counsel. But when the court appointed counsel has not submitted any brief on appeal -- and indicates that there is not going to be any issued raised by counsel and subsequently withdraws -- the Mother's attempt to secure new counsel to challenge the *nisi prius* court's ruling should not be *prematurely terminated* when she is attempting in "good faith" to secure new counsel, file the initial brief, and comply with the Court's Order. To

do otherwise is effectively an procedural a bar to challenge or review the underlying decision which destroys the family unit and which restricts access for the poor without any meaningful review.

DATED: this 18th day of July, 2021.