No. 21-955

# In The
# Supreme Court of the United States

KHRISTY GOINS RISMILLER, TUTRIX FOR DANIEL EDWARD GOINS, et al.,

*Petitioners,*

v.

GEMINI INSURANCE COMPANY, et al.,

*Respondents.*

**On Petition For Writ Of Certiorari To The Supreme Court Of Louisiana**

## RESPONDENT GEMINI INSURANCE COMPANY'S BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED FOR REVIEW

Respondent disagrees with the Question Presented as characterized by Petitioners. Instead, the Questions Presented are more properly characterized as follows:

1. Does a purely statutory, state-law created right of action to recover in tort, which allows adopted children an equal, though not identical right of action as non-adopted children, run afoul of the Fourteenth Amendment?

2. Does a state have a right to define the right to assert a statutorily granted cause of action, when such enactments are not based upon race, sex, belief, legitimacy of birth, or any other suspect or semi-suspect class, but instead, are based upon a rational distinction as to adopted children?

3. Can Petitioners claim unequal treatment when they have a right to sue for the death of family member by adoption, which is equal to that provided to non-adopted children under La. Civ. Code arts. 2315.1 and 2315.2?

4. Where inheritance is not at issue; where no fundamental right is at stake; where the rights of "illegitimate" children are not concerned; and where the Louisiana legislature has a rational basis in limiting access to a purely state-law right of action in tort; should this Court intervene in a case twice argued before the Louisiana Supreme Court?

## PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States Supreme Court are:

**Petitioners:**

1) Khristy Goins Rismiller, Tutrix for Daniel Edward Goins;

2) David Watts;

**Respondents:**

1) Gemini Insurance Company;

2) Kenneth Chad Boone d/b/a Boone Trucking;

3) Keith Boone Trucking, LLC;

4) Gemini Insurance Company;

5) Mark Isiah Gordon;

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**CORPORATE DISCLOSURE STATEMENT**

Gemini Insurance Company is owned at 100% by the W.R. Berkley Corporation, which is traded publicly on the NYSE.

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## CITATION AND OPINIONS AND ORDERS ENTERED IN THE CASE

The Opinion of the Louisiana Supreme Court is reported at ___ So.3d ___, 2021 WL 2679552. (Appx. A to Petition).

## BASIS FOR JURISDICTION IN THIS COURT

The jurisdiction of this Court is alleged by the Petitioners to be proper under 28 U.S.C. 1254(1).

## CONSTITUTIONAL PROVISIONS, STATUTES, AND OTHER AUTHORITIES INVOLVED IN THIS CASE

United States Constitution, Amendment 14, Sec. 1:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## RECORD CITATIONS

Citations to the Petition for Writ of Certiorari filed by the Petitioners are demarcated as "Pet. ___." Citations to the Appendix contained in the Petition are demarcated as "Appx. ___."

## COUNTERSTATEMENT OF THE CASE

Gemini Insurance Company ("Gemini") takes issue with Petitioners' description of the "Opinions Below" and the "Statement of the Case." *See* Pet. 1-3, 3-8.

### A. Underlying Facts and the Multiple Claims at Issue.

Petitioners are children born of the marriage between Richard Stewart, Jr. and Lisa Watts. Appx. 99a. Stewart and Watts gave Petitioners up for adoption when they were minors, years before the accident. *Id.*[1] Goins was adopted by George and Joyce Goins, Richard Stewart's uncle and aunt. *Id.* Watts was adopted by his maternal grandparents, Mary and Jimmy Watts. *Id.*

The accident at issue unfortunately resulted in the death of Richard Stewart and two of his children, George Stewart and Vera Cheyenne Stewart. *Id.* George and Vera were children of Richard Stewart and Brandi Hardi, who were not married. *Id.* George and Vera were not under the custody of Richard Stewart.

[1] Goins was adopted in 1991, and Watts was adopted in 2003. *See* Record below, at 151-52.

Jimmy and Tammy Johnese had custody of George, and Raymond and Donna Kelly had custody of Vera. *Id.*

Multiple claims were asserted in three separate survival and wrongful death actions. Appx. 99a. In addition to Petitioners' lawsuits, claims were also filed by the Stewart Succession; Stewart's parents, Richard Stewart, Sr. and Vera Stewart; and Vera's custodians, Raymond and Donna Kelly. Appx. 100a. Defendants filed Exceptions of No Right of Action in the trial court proceedings to determine who, among these multiple claimants, had the right to sue for the death of Richard, George and Vera under the Louisiana survival and wrongful death statutes. *Id.* The trial court denied all exceptions, and defendants sought Supervisory Writs from the Louisiana Third Circuit Court of Appeal. Appx. E.

### B. Initial Ruling by the Louisiana Third Circuit Regarding Which Litigants Have a Right of Action.

In a complex decision applying the relevant Louisiana Code articles, and the well settled law of Louisiana, the Court of Appeal determined who had valid rights of action. Appx. E. In part of that decision, the Court held that Petitioners have no right of action to sue for the death of their natural father and natural siblings, because of their adoption by new parents. Appx. 106a-107a. The Court of Appeal applied well settled Louisiana law establishing that children given

up for adoption may not sue for the death of a natural parent or sibling. *Id.*, citing to *Domingue v. Carencro Nursing Home, Inc*., 520 So.2d 996 (La. App. 3rd Cir. 1987), *writ denied*, 522 So.2d 565 (La. 1988); *Nelson v. Burkeen Const. Co.*, 605 So.2d 681 (La. App. 2nd Cir. 1992); and *Hernandez v. State, DOTD*, 02-162 (La. App. 4 Cir. 10/16/02), 841 So.2d 808, *writ denied*, 03-261 (La. 4/25/03), 842 So.2d 399. *Id.*

In a subsequent interlocutory appeal to the Louisiana Supreme Court, Petitioners raised constitutional challenges for the first time. The Louisiana Supreme Court granted supervisory writs, and remanded the case for Petitioners to assert constitutional challenges. Appx. 21a.

### C. Further Proceedings and Appeal to the Louisiana Supreme Court.

The trial court ruled that La. Civ. Code arts. 199, 2315.1 and 2315.2 are unconstitutional as applied to children given in adoption, and denied defendants' re-asserted exceptions of no right of action. Appx. C. Upon Gemini's appeal, the Louisiana Supreme Court took in briefing, heard oral argument, and rendered an initial ruling. Appx. B.[2] *Rismiller v. Gemini Ins. Co.*, 2020-0313 (La. 12/11/20)*, reh'g granted*, 2020-00313 (La. 1/26/21), *and opinion vacated on reh'g*, 2020-00313 (La. 6/30/21)*, reh'g denied*, 2020-00313 (La. 9/30/21).

[2] The initial decree was written for the majority by retired Judge James Boddie, Jr., sitting *pro tempore* due to a vacancy on the Court. Appx. B.

However, that ruling never became final, or the "Opinion" or "holding" of the Court, because Gemini timely filed an Application for Rehearing, pointing out legal errors in the initial decree, which was granted by all seven elected and then-sitting Justices of the Louisiana Supreme Court. Appx. A ("Opinion") 2a; Appx. J.[3]

Gemini objects to Petitioners' suggestion that the Supreme Court issued any other "holding" prior to the decision on rehearing,[4] which is the final and only "ruling" of the Louisiana Supreme Court. Opinion. Justice John Weimer became Chief Justice after Justice Johnson's retirement, and newly elected Justices McCallum and Griffin, together with the other Justices, heard arguments and reconsidered the initial decree. Chief Justice Weimer authored the new majority Opinion of the Louisiana Supreme Court, incorporating his former dissenting Opinion. *Id.* The Court vacated its original decree. Opinion 11a, 12a.

Gemini also objects to any suggestion that the Louisiana Supreme Court issued any decisions or holdings with respect to constitutionality in its initial decree of December 11, 2020.[5] Appx. B. The initial decree did not pass on any issue of constitutionality. Appx. 17a-30a. The decision turns only on the issue of

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[3] Though the Appendix does not show it, the vote to grant a rehearing was unanimous. *Rismiller*, *supra*, at 2021 WL 248291 (Mem).

[4] *Cf.* Pet. ii, vi, 2, 7, 18.

[5] *Cf.* Pet. ii.

whether Petitioners have a right of action. *Id.*, Opinion 2a. Thus, Petitioners' arguments that the Supreme Court issued "diametrically contrary" rulings with respect to constitutional issues is unfounded.[6] The initial decree merely vacated that part of the trial court's judgment declaring the code articles unconstitutional, without discussion. Appx. 30a. Former Chief Justice Johnson did author a concurring Opinion discussing constitutional issues, Appx. 31a-34a, but that concurrence was not part of the "majority" decision, and never became a ruling or holding of the Court. Opinion 2a, Appx. 17a-30a.

Justice Weimer authored a substantial dissenting Opinion on December 11, 2020, fully discussing both issues at bar, including constitutional issues. Appx. 50a-57a. Justice Crichton also dissented in the initial decision, authoring a separate Opinion agreeing with Justice Weimer and assigning additional reasons. Appx. 58a-59a. The dissenting Opinion was adopted as the final Opinion of the Louisiana Supreme Court. Opinion 3a, 10a.

Respondent also takes issue with Petitioners' characterization that the final decree of the Louisiana Supreme Court concerned only the issue of right of action.[7] Rather, Chief Justice Weimer also discussed why the articles do not deprive Petitioners of constitutional rights, including equal protection, and adopting the prior dissenting Opinion as the holding of the Court.

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[6] *Cf.* Pet. ii.

[7] *Cf.* Pet. 2, 7.

Opinion 9a-11a. Chief Justice Weimer's discussion of the constitutional issues in the decision rendered on June 20, 2021 is the only holding of the Louisiana Supreme Court. Justice Griffin wrote one paragraph in dissent to voice concerns about constitutionality. Appx. A. Justice Genovese dissented for the reasons expressed in the original majority Opinion and those assigned by Justice Griffin. *Id.*

The Court denied Petitioners' petition for rehearing. Appx. K. Petitioners are incorrect in suggesting that the Louisiana Supreme Court issued inconsistent opinions on constitutional issues in this case.



## ARGUMENTS FOR DENYING THE PETITION

### A. The Louisiana Supreme Court's Decision Regarding a State Law Tort Claim is Correct and Does Not Conflict With the Constitution, Any Decision of This Court or Any Other Federal Court of Appeals, and There is No Split Among the Federal Circuits. Further Review is Not Warranted.

Louisiana law provides a right of action for children who are given in adoption, such as Petitioners, to sue for the death of their parents and siblings "by adoption." Opinion 10a; 56a; 58a; La. Civ. Code arts. 2315.1(A),(D); 2315.2(A),(D). Thus, both non-adopted and adopted children, including Petitioners, have an equal right of action to sue. *Id.* This belies any suggestion that an adopted child in Louisiana "has no

constitutional rights after birth." Pet. 28. Rather, the adopted child's former right of action to sue for the death of natural family members, prior to his adoption, has been legislatively redirected toward the child's new family, parents, and siblings, created by his adoption. Opinion 4a-7a, 10a. Appx. 37a-49a. This is entirely rational, because in an act of adoption, the former parent/child/sibling relationship, and filiation, is terminated "for all purposes." La. Civ. Code art. 199. The adopting parents become the child's parents as a matter of law. *Id.* And, the adopted child is relieved of all duties and divested of all legal rights with respect to his natural parents and blood relatives, except the right to inherit. Opinion 7a; La. Civ. Code art. 199; La. Ch. Code art. 1256.[8] Through adoption, a new family unit is created, and Petitioners have a right to sue under articles 2315.1 and 2315.2 for the death of these persons, equal to that of any other child in Louisiana.

This case is not, and has never been about, Petitioners' right to inherit from their natural parents or siblings. Petitioners acknowledge they retain inheritance rights. Pet. 20, 22. Plaintiffs never sued to inherit. They sued under state-law statutes which create a cause of action in tort, for survivors to sue for the wrongful death of their closest relatives. The right of action exists only in favor of a strictly defined list of beneficiaries. La. Civ. Code art. 2315.1(A), 2315.2(A). Petitioners' rights to inherit are untouched by any law

[8] Article 1256 is particularly relevant to Petitioners' intra-family adoption.

or statute, including the two code articles at issue, as well as La. Civ. Code art. 199 and Ch. Code art. 1256.[9] The only issue is whether Petitioners have a right to sue in tort, under a *sui generis* piece of state legislation, for the wrongful death, or as survivors of their natural parents and half-siblings, in light of their adoption years before the accident at issue. The Louisiana Supreme Court correctly applied state law, and consistent rulings over decades, to confirm that they do not. Opinion 2a-9a; Appx. 37a-49a.

Petitioners err to presume that the right to file a state-law tort lawsuit is a "fundamental right." *Cf.* Pet. 22-24. It is not. "The Constitution does not create a fundamental right to pursue specific tort actions." *Edelstein v. Wilentz*, 812 F.2d 128, 131 (3rd Cir. 1987);[10]

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[9] The wrongful death and survival actions are *sui generis*, and not part of the Louisiana law of successions. *See, e.g.*, *Haas v. Baton Rouge Gen. Hosp.*, 364 So.2d 944, 945 (La. 1978).

[10] Speaking in terms of immunity statutes, and citing to *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 432–33, 102 S.Ct. 1148, 1155–56, 71 L.Ed.2d 265 (1982); *Martinez v. California*, 444 U.S. 277, 282 & n. 5, 100 S.Ct. 553, 557 & n. 5, 62 L.Ed.2d 481 (1980); and *Ferri v. Ackerman*, 444 U.S. 193, 198, 100 S.Ct. 402, 406, 62 L.Ed.2d 355 (1979). In *Martinez*, this Court wrote: "Arguably, the cause of action for wrongful death that the State has created is a species of 'property' protected by the Due Process Clause. On that hypothesis, the immunity statute could be viewed as depriving the plaintiffs of that property interest insofar as they seek to assert a claim against parole officials. But even if one characterizes the immunity defense as a statutory deprivation, it would remain true that the State's interest in fashioning its own rules of tort law is paramount to any discernible federal interest, except perhaps an interest in protecting the individual citizen from state action that is wholly arbitrary or irrational." *Martinez*, 444 U.S. at 281–82 (internal citations omitted).

*Christensen v. Ward*, 916 F.2d 1462, 1471 (10th Cir. 1990), *cert. denied*, 111 S.Ct. 559, 112 L.Ed.2d 565 ("The Constitution does not create a fundamental right to pursue specific tort actions."); *Silver v. Silver*, 280 U.S. 117, 122, 50 S.Ct. 57, 58, 74 L.Ed. 221 (1929) ("We need not, therefore, elaborate the rule that the Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object."). Louisiana law is also clear that the right to file a tort lawsuit is not a fundamental right.[11]

The "equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 312, 96 S.Ct. 2562, 2566, 49 L.Ed.2d 520 (1976). Thus, the first test for strict or intermediate scrutiny is missing. So is the second.

Consistent decisions of the Federal Courts of Appeals hold that adoption is not a suspect category in a constitutional analysis, and only a rational legislative basis for the distinction is required to withstand a constitutional challenge.[12] There is no split in Circuit law.

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[11] *See Crier v. Whitecloud*, 496 So.2d 305, 308 (La. 1986).

[12] *See*, *e.g.*, *Smart v. Ashcroft*, 401 F.3d 119, 122 (2nd Cir. 2005) ("There is no suggestion here that adopted children are a 'protected' class entitled to invoke heightened scrutiny."); *Martinez v. Attorney General*, 761 Fed.Appx. 133, 135 (3rd Cir. 2019) ("Adoption status is not a suspect classification under the Supreme Court's equal protection jurisprudence.").

In *Smart*,[13] the Second Circuit held that, if "different treatment between biological and adopted children is rationally related to a legitimate government interest," there is no equal protection violation. The Second Circuit's holdings[14] are consistent with cases decided in the Third,[15] Fifth,[16] and Ninth Circuits.[17] *See also Doe*

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[13] *Smart*, 401 F.3d at 122 (adopted children are not a "protected" class entitled to heightened scrutiny; no equal protection violation of a statute requiring foreign-born adoptive children, unlike foreign-born biological children, to reside with their parents at time of parents' naturalization in order for children to achieve derivative citizenship).

[14] *See also Colaianni v. Immigration and Naturalization Service*, 490 F.3d 185 (2nd Cir. 2007) (no equal protection violation in a statute extending citizenship at birth to a person born outside the United States of parents both of whom were citizens of the United States and one of whom had a residence in the United States, but which did not apply to alien who was adopted by two United States citizens after having been born in Canada).

[15] *See Cabrera v. Attorney General*, 921 F.3d 401 (3rd Cir. 2019) (no equal protection violation because of differential treatment to biological children and adoptive children in the derivative citizenship statute); and *Martinez v. A.G.*, *supra* (no equal protection violation in a statute distinguishing between natural and adopted children); *Brehm v. Harris*, 619 F.2d 1016 (3rd Cir. 1980).

[16] *See Puentes-Bejarano v. Keisler*, 250 Fed.Appx. 25 (5th Cir. 2007) (no equal protection violation in a statute treating differently "adopted alien children who had two parents and adopted alien children who had only one parent"); *Sonnier v. Chater*, 66 F.3d 320 (5th Cir. 1995) (unpub.) (no equal protection violation in a statute depriving "surviving-child benefits" under the Social Security laws to a biological child who has "been adopted by another individual and the natural parent, at the time of his death" and the decedent "was not living with or contributing to the support of the child.").

[17] *See Chavez-Cornejo v. Holder*, 327 Fed.Appx. 760 (9th Cir. 2009) (no constitutional violation in a statute authorizing United

*v. Sundquist*, 943 F.Supp. 886, 893-96 (M.D. Tenn. 08/23/96), *aff'd*, 106 F.3d 702 (6th Cir. 1997), *cert. denied*, 118 S.Ct. 51, 139 L.Ed.2d 16 (state law allowing disclosure of previously confidential adoption records did not violate the Equal Protection Clause because it did not touch upon any fundamental right, and women who surrender children for adoption are not a suspect class nor singled out to be deprived of rights, and involved a rational governmental purpose).

This being so, the proper test to apply is not the intermediate scrutiny urged in the Petition, but rather, the rational basis test. "[A] classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity" and "cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Heller v. Doe*, 509 U.S. 312, 319–20, 113 S.Ct. 2637, 2642–43, 125 L.Ed.2d 257 (1993).

There is a rational basis for distinctions among adopted and non-adopted children in the statutes. The Louisiana Supreme Court acknowledged this, Opinion 10a; Appx. 53a-55a, as have consistent, long-standing

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States citizen parents married to alien spouses to petition for naturalization on behalf of couple's biological, but not adopted, children); *Dent v. Sessions*, 900 F.3d 1075, 1082 (9th Cir. 2018), *cert. denied*, 139 S.Ct. 1472; 203 L.Ed.2d 692 (2019) (no equal protection violation when "biological parents could confer citizenship on their children automatically, whereas adoptive parents had to petition for their children to become citizens.").

decisions in Louisiana.[18] There is nothing irrational about the policy determination made by the legislature in 1960 to revise the survival and wrongful death statutes to conform harmoniously with the law of adoption, and to provide a single action for a child given in adoption to sue only in the event of the death of a parent or sibling, "by adoption." There is no duplicate right of action provided to sue for his former natural parents' death, with whom he has no legal relationship, no filiation, and who no longer owes him duties of care or support.[19] Once a child is given up for adoption, "the adopting parent becomes the parent of the child for all purposes and the filiation between the child and his legal parents is terminated, except as otherwise provided by law." La. Civ. Code art. 199.[20] Likewise, under

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[18] *See*, *e.g.*, *Walker v. Vicksburg, S. & P. Ry. Co.*, 34 So. 749, 750 (La. 1903); *Roche v. Big Moose Oil Field Truck Serv.*, 381 So.2d 396, 399 (La. 1980); *Miles v. Illinois Central Gulf Railroad Co.*, 389 So.2d 96, 98 (La. App. 4th Cir.), *writ denied*, 394 So.2d 612 (La. 1980); *Allen v. Burrow*, 505 So.2d 880, 887 (La. App. 2nd Cir.), *writ denied*, 507 So.2d 229 (La. 1987); *Estate of Burch v. Hancock Holding Co.*, 09-1839 (La. App. 1 Cir. 5/7/10), 39 So.3d 742, 748-49.

[19] *See* Opinion 5a-7a, 10a-11a; Appx. 43a-44a, 49a, 54a-55a, 58a-59a.

[20] Express legislative enactments provide the "exceptions" to the total termination of rights and filiation between the adopting child and parent "as provided by law." They include the retention of the right of inheritance, under article 199 and La. Ch. Code art. 1256; retention of parental status when the legal parent is married to an adopting parent, under La. Ch. Code art. 1256 and La. R.S. 9:461; and the right of visitation with grandparents, under La. Ch. Code art. 1264. But, this "exception" language in article 199 does not create a right of action under articles 2315.1 and 2315.2. The right of a child "given in adoption" to sue under

Ch. Code art. 1256, the natural parent is divested of their former duties to the child, and the child is divested of rights and duties with respect to his natural parents and blood relations.

Upon adoption, such children gain survival and wrongful death actions on behalf of their parent and siblings "by adoption." La. Civ. Code art. 2315.1(A),(D), 2315.2(A),(D). Children who have never been given in adoption have a right to sue for natural parents and siblings. *Id.* Thus, each has an equal right to sue. Because wrongful death and survival actions are not heritable rights, and because adoption terminates filiation between the child and the child's biological parent, there is nothing irrational or improper about the legislature excluding children given in adoption from bringing a duplicate wrongful death or survival action on behalf of a biological parent, who deliberately, knowingly, and voluntarily, severed all filiation rights, and, by law, "terminated" the child-parent relationship.[21] As

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former article 2315 for the death of a natural parent or sibling (created in 1948, and rescinded in 1960) is clearly no longer "provided by law." Opinion, 5a-6a, Appx. 46a-47a. Further, the survival and wrongful death actions, are *sui generis* and strictly construed laws. *Id.*; *Levy v. State Through Charity Hosp.*, 216 So.2d 818, 819 (La. 1968). They are the only statutes which can create a right of action. *Id.* If an individual is not included in the list of beneficiaries as provided in the legislation, he is excluded. *Gibbs v. Illinois Cent.*, 125 So. 445, 446 (La. 1929).

[21] Petitioners cite to La. Ch. Code art. 1101, *et seq.*, relevant to Surrender of Parental Rights, wherein a parent voluntarily relinquishes his parental rights to a child for the ultimate purpose of adoption. Pet. 20. Once the adoption is finalized, both the parent, and child, are relieved of all their legal duties and divested of

noted by Chief Justice Weimer, adoption has "weighty consequences," and causes a significant change in legal status which is not entered into lightly, and not without legal effects. Appx. 43a, citing to Article 199. Such decisions carry with them manifold obligations, benefits, and duties, Opinion 5a-6a, Appx. 56a, which Petitioners ask this Court to sweep aside. On this issue, Chief Justice Weimer wrote:

> . . . as it concerns the legislature's justification for limiting the category of claimants in La. C.C. arts. 2315.1 and 2315.2, ample grounds have been recognized in the jurisprudence. As here, in the context of a constitutional challenge, the following observations were made to the stated limitations:
>
> > It has been recognized that, of necessity, the legislature was burdened with a need to place some reasonable limitation on the number of potential beneficiaries and that this limitation has obvious benefit to judicial efficiency and economy. . . .
> >
> > *[T]he chosen classes reasonably embrace those individuals that are likely to be most affected by the death of the deceased and yet reflect a reasonably appropriate limitation on the right of action.*

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all legal rights with respect to each other, and other blood relatives. Ch. Code art. 1256. The natural parental and blood relationships are terminated, and a new family unit is created. La. Civ. Code art. 199.

> *Estate of Burch* [*supra*] (citing *Allen* [*supra*]). Relatedly, the court in *Allen* explained: "It has been recognized that, of necessity, the legislature was burdened with a need to place some reasonable limitation on the number of potential beneficiaries" for survival actions. *Id.*, 505 So.2d at 887. Children who depend on a parent for support would be required to share a tort recovery with children born of the marriage who, because they were given in adoption, would be potential strangers to the family of the deceased parent.

Appx. 54a-55a (emphasis in original). Louisiana Courts have consistently upheld the constitutionality of the legislative classification of beneficiaries in the statute, which allow a right to some, and disallow a right to others, as a rational exercise of legislative power.[22]

Both adopted and non-adopted children enjoy an equal right to assert an action. "The Fourteenth Amendment 'does not require absolute equality or precisely equal advantages'." *Ross v. Moffitt*, 417 U.S. 600, 612, 94 S.Ct. 2437, 2444, 41 L.Ed.2d 341 (1974) (quoting *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 24, 93 S.Ct. 1278, 1291, 36 L.Ed.2d 16 (1973)); *United States v. MacCollom*, 426 U.S. 317, 324, 96 S.Ct. 2086, 2091, 48 L.Ed.2d 666 (1976). It "guarantees equal laws, not equal results." *Pers. Adm'r of Massachusetts v. Feeney*, 442 U.S. 256, 273, 99 S.Ct. 2282,

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[22] *See Estate of Burch*; *Allen*; *Miles*; *Langlois v. Noble*, 465 So.2d 108 (La. App. 4th Cir.), *writ denied*, 468 So.2d 1209 (La. 1985). *See also Lewis v. Allis-Chalmers Corp.*, 615 F.2d 1129 (5th Cir. 1980); *King v. Schweiker*, 647 F.2d 541 (5th Cir. 1981).

2293, 60 L.Ed.2d 870 (1979). Nor does it forbid classifications. *Nordlinger v. Hahn*, 505 U.S. 1, 10, 112 S.Ct. 2326, 2331, 120 L.Ed.2d 1 (1992). A state "does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality' . . . The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific. . . . A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S.Ct. 1153, 1161, 25 L.Ed.2d 491 (1970) (internal quotations and citations omitted).

That children given in adoption in Louisiana have no right to sue for the death of their natural parents or siblings has been well settled law since the statutory revision in 1960, Opinion 4a-7a, and in over forty years of consistent jurisprudence. *See Simmons v. Brooks*;[23] *Domingue*; *Nelson*; *Hernandez*, *supra*; *Stewart v. Gordon*.[24] Petitioners are mistaken to suggest that no one ever questioned that adopted children had causes of action for the wrongful death of their biological parents and siblings from 2009 to 2019. Pet. 16, 20. To the contrary, no one ever expected since 1960 that a child

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[23] 342 So.2d 236, 237 (La. App. 4th Cir. 1977).

[24] Appx. E.

given in adoption had a right to sue for the wrongful death of a natural parent or sibling. Opinion 4a-9a; Appx. 41a-49a. There was *no judicial decision* which parted from these uniform holdings prior to the instant initial decree, which was properly vacated on rehearing. As noted by the Chief Justice, contrary to Petitioners' arguments, this is a very stable area of Louisiana law. Appx. 47a.

### B. There is No Reason to Extend Cases Involving Deprivation of Rights to "Illegitimate" Children to Statutes Dealing With Adopted Children, Who Are Given Rights.

Petitioners base their case upon *Levy v. State through Charity Hospital*,[25] *Glona v. American Guarantee*,[26] *Weber v. Aetna*,[27] *Gomez v. Perez*,[28] and following cases. Pet. 8-14. While those admirable decisions are well reasoned and correct, they concern the total deprivation of rights to "illegitimate" children, and are not applicable to adopted children, who: (1) enjoy rights equal to other children and citizens of Louisiana; (2) have rights equal to other non-adopted children under the statutes at issue; and (3) are provided with a single cause of action under a rational legislative purpose of directing an adopted child's tort action solely toward his new family in adoption. Petitioners

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[25] 391 U.S. 68, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968).

[26] 391 U.S. 73, 88 S.Ct. 1515, 20 L.Ed.2d 441 (1968).

[27] 406 U.S. 164, 92 S.Ct. 1400, 31 L.Ed.2d 768 (1972).

[28] 409 U.S. 535, 93 S.Ct. 872, 35 L.Ed.2d 56 (1973).

are not denied all rights due to their "birth," or because they were born out of wedlock, which they were not.[29] Legitimacy or illegitimacy of a child's birth is not the basis of the legislative distinction at issue. Rather the fact that a child is adopted is the only distinction. Any case discussing denial of rights based upon "birth" or "illegitimacy" is not relevant to the facts of this case.

*Levy* and *Glona* were decided in 1968, when judicial and legislative discrimination of illegitimate children was commonplace. Louisiana barred access to the survival and wrongful death actions to "illegitimately" conceived children, along with a total deprivation of a multitude of other basic rights. This is no longer the law in Louisiana, and the distinction at issue here is not based on Petitioners' "legitimacy" or "illegitimacy" of birth. *Cf.* La. Civ. Code arts. 2315.1, 2315.2. As stated in *Levy*, Louisiana previously denied rights to illegitimates to promote "morals and general welfare because it discourages bringing children into the world out of wedlock." *Levy*, at 70. This Court noted that illegitimates were, in effect, treated as "non persons" by the state and denied all rights. *Id.* Yet the laws imposed duties upon them (such as taxes and conscription), while denying "correlative rights which other citizens enjoy." *Id.* at 71-72. The Court applied intermediate scrutiny, based upon the distinction there, which was

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[29] Petitioners admit that they were legitimately born, but given up for adoption. Pet. 4. *See also* Appx. 19a; Appx. 99a; 110a, 115a, 125a. The words legitimate or illegitimate are not in the statutes, nor was "legitimacy" the basis for any distinction in any of the rulings, below.

"birth," *i.e.* "illegitimacy," and easily found that the stated legislative purpose behind the denial of all rights to illegitimate children was "invidious," unreasonable and irrational, and thus, unconstitutional. *Id.* at 72.

Children given in adoption, and here, legitimate children, are not deprived of correlative rights with other children or citizens in any respect, much less by the terms of the statutes under review, which expressly provide them with a right to sue. *See* La. Civ. Code art. 2315.1, 2315.2; Opinion 10a. As noted, the right to file a tort suit is not a fundamental right, and adoptees, such as Petitioners, are not part of a suspect class.[30] The Louisiana legislature did not refine rights as to adopted children on the basis of their legitimacy, or any "moral" grounds such as discouraging births out of wedlock. The redirection of rights for adopted children to sue, away from the former parents and toward their new parents and family by adoption, is rational, orderly, and harmonious with the law of adoption, which terminates the old family unit, and creates a new one. *See* Opinion 5a, 10a, Appx. 43a-44a, 47a, 49a, 54a, 56a-57a.

In *Glona*, a mother sued for the death of her son, but was denied that right because her child was born out of wedlock. The stated legislative purpose behind

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[30] *Cf. Pickett v. Brown*, 462 U.S. 1, 8, 103 S.Ct. 2199, 2204, 76 L.Ed.2d 372 (1983) ("In view of the history of treating illegitimate children less favorably than legitimate ones, we have subjected statutory classifications based on illegitimacy to a heightened level of scrutiny.").

the denial of rights was to "deal with sin." *Id.* at 75. This Court found such a legislative basis to be irrational:

> Yet we see no possible rational basis . . . for assuming that if the natural mother is allowed recovery for the wrongful death of her illegitimate child, the cause of illegitimacy will be served. It would, indeed, be farfetched to assume that women have illegitimate children so that they can be compensated in damages for their death. . . .

*Glona*, 391 U.S. at 75-76. Such reasoning does not apply to a classification based on the effects of an adoption, and the termination of the old, and the creation of a new family unit. No case cited in the Petition deals with children given in adoption, who have a new family as the result of their adoption, and who do, in fact, have a right of action under the statutes to sue a tortfeasor. Petitioners are not treated as "non persons" or denied rights other citizens enjoy. *Cf. Glona*, at 75; *Levy*, at 70. They have a right of action under the statutes, and full protection under the laws of adoption as well as all other laws allowing rights to every other child in Louisiana.

Petitioners' reliance on cases dealing with illegitimacy has also been rejected in decisions like *Sonnier*, which involved the denial of social security benefits for a surviving child if the child had been previously adopted, and was not living with, or supported by the wage earner. The Fifth Circuit rejected counsel's analogy to cases involving illegitimate children: "We reject

Appellant's equal protection argument out of hand,"[31] finding the statute applied "equally regarding one who is a natural child, whether that natural child is legitimate or illegitimate."[32] Other federal decisions are consistent with the instant ruling, holding that there is no constitutional prohibition on distinguishing between children who have been adopted and those who have not when a rational basis exists.[33]

*Weber* was a workers' compensation case arising from a holding that "unacknowledged" illegitimate children are not "children" under compensation law. *Weber*, 406 U.S. at 168. Legitimate children had 100% of the recovery, whereas "unacknowledged" illegitimates received nothing. *Id.* at 166-67. The Court applied *Levy* and *Glona*, noting a pattern in Louisiana law to disallow rights to illegitimates, and that all children in that case were equally dependent upon the decedent for support. *Id.* at 172. The Court, again, found no "rational relationship" of the restriction with the legislature's stated purpose: "to protect legitimate family relationships." *Id.* at 173. That goal would not "shun illicit relationships," *id.*, simply because an offspring might not collect compensation benefits. *Id.* Here, any duty of support akin to that in *Weber* is incumbent upon Petitioners' new parents by adoption, not by their

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[31] 66 F.3d at 320.

[32] *Id.*

[33] *See* note 12-17, and *Smart*; *Colaianni*; *Cabrera*; *Puentes-Bejarano*, *supra*.

natural parents or natural half-siblings. La. Civ. Code art. 199; La. Ch. Code art. 1256.

Petitioners argue that these cases should be expanded to children given in adoption because they had no say in their adoption. Pet. 13. But, the Louisiana law does not require a child's consent to adoption. Appx. 54a.[34] Petitioners' parents knowingly decided to put their children up for adoption, a decision in the best interests of the child, and which had "weighty consequences," as noted by Chief Justice Weimer. Adoptions are beneficial for the child, ensuring the love, protection and financial support of new parents. The law, as applied, does not "discourage" adoption. While the loss of their natural parents may be difficult, the same difficult decision was made as to the custodians of Vera, who had filed a suit in this case, as well as Stewart's parents. Appx. E. As difficult as those decisions may have been, state law simply provided no remedy. Appx. 136a.

In *Gomez*, the Court struck Texas laws which disallowed the parent of illegitimate children to file a petition for support. The Court again applied *Levy* and *Glona*, noting that the restrictive legislation did not serve the stated legislative purpose. The Court found that there was no "constitutionally sufficient justification" for denying essential rights to a child "simply because its natural father has not married its mother."

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[34] Also noting that a parent's act of surrender is final and irrevocable.

For a state to do so is "illogical and unjust." *Gomez*, 409 U.S. at 538. Again, the statutes at issue do not base their limitation on the grounds of legitimate or illegitimate birth, Petitioners are not illegitimate, and they enjoy substantially identical rights as non-adopted children to sue under the statutes. There is no cause to extend *Levy*, *Glona*, *Weber*, *Gomez*, or similar authority cited by Petitioners.

### C. Intermediate Scrutiny Does Not Apply; Rational Basis is the Proper Test.

> . . . *San Antonio School District v. Rodriguez*, 411 U.S. 1, 16, 93 S.Ct. 1278, 1287, 36 L.Ed.2d 16 (1973), reaffirmed that equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class. . . .

*Murgia*, 427 U.S. at 312 (footnotes omitted). Intermediate scrutiny has generally been applied to discriminatory classifications based on sex or illegitimacy. *Clark v. Jeter*, 486 U.S. 456, 461, 108 S.Ct. 1910, 1914, 100 L.Ed.2d 465 (1988). Laws which do not proceed along suspect or semi-suspect lines, and do not infringe on fundamental rights or affect a protected class need only be "rationally related to a legitimate governmental interest." *Lyng v. Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am.*, 485 U.S. 360, 370, 108 S.Ct. 1184, 1192, 99 L.Ed.2d 380 (1988);

*Murgia*, *supra*.[35] The "rational basis" standard "employs a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary classifications is neither possible nor necessary." *Murgia*, 427 U.S. at 314 (citing *Dandridge*, *supra*, 397 U.S. at 485). Such action by a legislature is presumed to be valid. *Id.*[36]

Classification "by adoption" is not a suspect or semi-suspect classification requiring strict or intermediate scrutiny, and federal courts have applied this standard to claims that classifications based on adoptive status were unconstitutional. Appx. 51a-52a (citing to *Cabrera*, *Brehm*, *Dent*, *supra*). *See also*, *King*, 647 F.2d at 546 ("The claimant admits that equitably adopted children do not constitute a suspect class. Furthermore, no fundamental right is adversely affected by this statute."); *Martinez*, *supra*.

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[35] Petitioners likewise have no loss of a property interest, because the state law does not provide a remedy in tort. *See Crier*, 496 So.2d at 308-09; *Miles*, 389 So.2d at 98-99.

[36] "On rational-basis review, a classification in a statute . . . comes to us bearing a strong presumption of validity, *see Lyng* [*supra*], and those attacking the rationality of the legislative classification have the burden 'to negative every conceivable basis which might support it,' *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364, 93 S.Ct. 1001, 1006, 35 L.Ed.2d 351 (1973) (internal quotation marks omitted)." *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315, 113 S.Ct. 2096, 2102, 124 L.Ed.2d 211 (1993).

In urging the use of intermediate scrutiny due to their alleged discrimination by "birth," Petitioners equate the concept of "birth" to "legitimacy" or "illegitimacy." Pet. 26.[37] The statutes at issue do not discriminate in terms of legitimate or illegitimate children, or even legitimate or illegitimate adopted children. *See* La. Civ. Code art. 2315.1, 2315.2. Petitioners are not "illegitimate." Appx. 99a. Petitioners admit that adopted children both born in, and out of wedlock, have no right of action for the death of a natural family member. Pet. 23. And, both previously "illegitimate" children and "legitimate" adopted children have a right to sue for a death in their new family, by adoption, under the statutes. Thus, Petitioners' argument, that the statutes discriminate against them by "birth," is not supported by the laws or the facts.

Petitioners also assert disparate treatment among "the same class of beneficiaries." Pet. 27. This is not correct. First, children given in adoption are simply not among the beneficiaries who may assert a claim for the death of a natural parent. This is seen by a straightforward reading of the statutes. *See* Opinion 2a-9a. Second, children given in adoption do have a right of

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[37] "It has more recently been stated that heightened scrutiny would apply to any different treatment 'turning on legitimacy,' i.e. birth. . . . The case at bar turns on the child's birth status." Pet. 26, citing to *United States v. Mayea-Pulido*, 946 F.3d 1055 (9th Cir. 2020), *cert. denied*, 141 S.Ct. 101, 207 L.Ed.2d 179 (2020). *Mayea-Pulido* turned on an immigration statute's classification of children based on their parent's marital status at the time of birth, as well as issues of custody. Even in that case the court refused to apply a heightened level of scrutiny.

action to assert a claim for their parents and siblings "by adoption," which is equal to the right of non-adopted children to assert a claim for their parent or siblings. Thus, there is no disparate treatment among any "class" of child under the statute, because non-adopted and adopted children each have a right to file a lawsuit. The rights at issue do not have to be identical, only equal in nature. *Ross, Feeney*, *supra.* To the contrary, no class of beneficiaries under the statute has two sets of rights to sue, which is the unbalanced outcome Petitioners seek. *See, e.g.*, Appx. 48a, 58a-59a.

All of the cases cited by Petitioners in which intermediate scrutiny was employed undeniably concern unequal treatment to illegitimate vs. legitimate children (or their parents), as a suspect or semi-suspect class. *See Levy, Glona, Weber, Gomez*, *supra.* Petitioners' other cited authority is similarly inapposite. *Clark* concerned the six year statute of limitations for paternity actions for illegitimate children under Pennsylvania law. The Court noted that intermediate scrutiny is typically applied to cases involving discriminatory classifications based on sex or illegitimacy. *Id.* at 461. And, the legislative goal of preventing "stale" or "fraudulent" claims was suspect, because a child had longer than six years, in certain situations, to litigate paternity, and in some cases, no limits at all. *Id.* at 464. Thus, the law was struck down. The classification at issue here is not based upon illegitimacy, but rather, adoption.

*Sessions v. Morales-Santana,*[38] concerned gender discrimination, and a law which treated mothers and fathers differently for the purposes of transmitting citizenship. *Id*. at 1686, 1688-89. Gender classifications are clearly suspect, and fall under strict scrutiny. *Id.* at 1689.[39] Petitioners here are not denied rights due to gender. Petitioners cite to dicta in *Sessions* regarding differential treatment "of marital children in comparison to nonmarital children." *Id.* at 1700; Pet. 26. But, the statutes at issue do not discriminate among marital or nonmarital children, adopted or not, and Petitioners are not "nonmarital" children.

*Trimble v. Gordon*,[40] involved an Illinois law which allowed illegitimate children to inherit by intestate succession only from their mothers, *id*. at 763, and the "total statutory disinheritance of illegitimate children whose families die intestate." *Id.* at 772. The laws at issue here do not limit, in any way, an adopted person's right to inherit, as Petitioners admit. *See* pp. 8-9; Pet. at 22.

*Mathews v. Lucas*,[41] questioned the constitutionality of conditions placed on entitlement to Social Security benefits for illegitimate children. Legitimate

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[38] 137 S.Ct. 1678, 198 L.Ed.2d 150 (2017).

[39] "Laws granting or denying benefits 'on the basis of the sex of the qualifying parent,' our post-1970 decisions affirm, differentiate on the basis of gender, and therefore attract heightened review under the Constitution's equal protection guarantee." *Id*. at 1689.

[40] 430 U.S. 762, 97 S.Ct. 1459, 52 L.Ed.2d 31 (1977).

[41] 427 U.S. 495, 96 S.Ct. 2755, 49 L.Ed.2d 651 (1976).

children were presumed to be dependent on the deceased, whereas illegitimate children were not, and it was conceded that the law treated illegitimate children differently from legitimate children. *Id.* at 503. The lower courts struck the statute, but this Court reversed those decisions, finding the distinctions in the law reasonably related to the likelihood of dependency upon the decedent. *Id*. at 509, 511, 516. The Court easily distinguished the type of discrimination in *Gomez* and *Weber*, as total deprivation of rights, *id.* at 511, but an illegitimate child under the scheme at issue in *Mathews* could prove dependency, and thus receive benefits. *Id.* at 513.

*Warren v. Richard,*[42] concerned a wrongful death action by an illegitimate daughter for the death of her natural father. As a child of the decedent, her claims preempted claims filed by the decedent's mother and brother, whose claims were dismissed. The mother and brother appealed, arguing that the child's claim should be dismissed because she was born to the decedent out of wedlock. The Louisiana Supreme Court properly rejected that argument, building on *Levy* and *Glona*, again in a case involving historical discriminatory treatment based on illegitimacy.

Petitioners misunderstand the holding of that case in suggesting that courts have substituted "a biological classification for the legal classification Louisiana has long since observed." Pet. 14-15, citing to *Warren*, at 816. That may be true for the legal classification of children

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[42] 296 So.2d 813 (La. 1974).

as "illegitimates," which was used to deny all rights, but has never been applied in any case to children who are adopted, and who enjoy rights. Indeed, the "legal classification" to which the *Weber* Court was speaking is aptly demonstrated in the paragraph preceding the passage cited by Petitioners. In that paragraph, the *Weber* Court described the code articles classifying children as "either legitimate, illegitimate or legitimated." *Id.* at 816. Further to this, Louisiana further sub-classified illegitimate children according to those whose parents had an impending marriage, as opposed to a distasteful classification of "adulterous bastards," otherwise. *Id.* None of these discriminatory classifications apply to legitimate, and later formally adopted children such as Petitioners, who now have a new set of parents, a right to sue, and who enjoy rights equal to non-adopted children and other citizens.

*Jenkins v. Mangano,*[43] considered whether an informally acknowledged illegitimate child had a wrongful death or survival claim which outranked that of the parents of the tort victim. *Id.* at 103-05. The effect of an adoption was never at issue. In speaking of the "biological relationship" in that case, *Jenkins* relied upon *Warren*, *Levy*, and *Chatelain*[44] (which also relied on

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[43] 2000-0790 (La. 11/28/00), 774 So.2d 101.

[44] *Chatelain v. State, Dep't of Transp. & Dev.*, 586 So.2d 1373 (La. 1991), also turned on denial of rights based upon illegitimacy, and the legislative classification of a child as legitimate, legitimated or illegitimate. *Id*. at 1373. That case was legislatively overruled. *See* La. Civ. Code art. 195 com. (a). The issues considered were the time limits and requirements for the child to prove legitimation. *Id*. at 1373-79.

*Warren* and *Levy*), which all concern unequal treatment in the classification of illegitimate children, where the "biological relationship" was the only important factor, given the classification of "legitimacy" or "illegitimacy," the reason for discrimination. The rest of Petitioners' cases urging intermediate scrutiny are also irrelevant. *Cf. Chatelain; Granger*.[45]

None of this jurisprudence applies to a child, who is later adopted, and who does, in fact, enjoy equal rights. None of these cases discuss the new parental relationship created through adoption, which makes the "biological" factor meaningless, as carefully discussed in the decision on review. *See* La. Civ. Code arts. 179, 199, and La. Ch. Code art. 1256. Here, Petitioners are now *only* the "children of," and filiated to, their adopting parents. *Id.* And, they have the right to sue for their deaths. There is simply no unconstitutional inequality.

Petitioners argue that they were not responsible for their adoption, or the harm of being excluded from asserting a claim, citing to *Levy, Glona, Warren* and similar cases. Pet. 19-20, 23, 25, 28. But, the "harm" that Petitioners refer to in these cases was condemnation for what the government believed was "irresponsible liaisons beyond the bonds of marriage." *Warren*,

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[45] *State v. Granger*, 982 So.2d 779 (La. 2008) involved the constitutionality of an expungement law as to DWI offenders who participate in pretrial diversion programs, *vis-a-vis* those applicable to other offenses, and has nothing to say about adoption. The law there was declared constitutional because the legislative purpose was reasonable.

at 816-817; *Weber*, at 175. Petitioners are subject to no such condemnation. Adopted children enjoy rights equal to non-adopted children. Their natural parents, for the good of the child, willingly entered into an intra-family adoption. The adopted child has new parents and siblings, and has a right of action to sue for their deaths. There is no invidious discrimination visited on them as illegitimates. There is no denial of equal rights warranting intermediate level scrutiny.

### D. There is No Cause for This Court to Review the Louisiana Supreme Court's Analysis of State Legislation, and Its Rejection of Petitioners' Faulted Methodology.

The Petition is peppered with argument that the Louisiana Supreme Court misinterpreted code articles with respect to their right of action. That decision involved an analysis of Louisiana state law, involved no federal questions, no federal statutes, and no decisions of This Court. Opinion 2a-9a. The decision causes no constitutional impediment of equal rights. *Id.* at 9a-12a. The decision was reached after four rounds of briefing, during which multiple briefs were filed by the parties and amici.[46] Two *en banc* arguments occurred. Petitioners' application for rehearing, after all of this, was denied. Appx. K. There is no cause for This Court to intervene to review Louisiana's highest

[46] Petitioners' Counsel of Record initially appeared only as counsel for an amicus (the *Zigler* plaintiff mentioned in note 2 in the Petition. Pet. 21). Four amici filed briefs in the lower proceedings, as well as the Louisiana Attorney General.

court's interpretation of Louisiana statutes. *See* Opinion at 2a-11a; *Martinez*, 444 U.S. at 282 ("that the State's interest in fashioning its own rules of tort law is paramount to any discernible federal interest, except perhaps an interest in protecting the individual citizen from state action that is wholly arbitrary or irrational").

The Opinion itself demonstrates the error in Petitioners' analysis of state statutes. Opinion 2a-9a; Appx. 37a-49a. The survival and wrongful death actions are creatures of legislation,[47] and *sui generis* causes of action.[48] The list of beneficiaries are to be strictly construed. Opinion 4a.[49] Adoption is also a creature of the Louisiana legislature. *Id.* The original versions of the actions did not create a right in favor of adopted children. Opinion 4a-5a. Only in 1932 were "adopted children" granted a right of action. *Id.* In 1948, another amendment created a new cause of action for a child "given in adoption," and the right of "blood brothers and sisters" to sue. *Id.* That right was extinguished through very specific legislative amendments in 1960, which deleted the words "given in adoption," and "blood brothers and sisters," and replaced them with the words "by adoption," in a definitional paragraph

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[47] The survival and wrongful death actions were first created by the Louisiana legislature in 1855 and 1884 respectively. Prior to these enactments, no such cause of action existed in Louisiana. *See Levy*, 216 So.2d at 819, and *Hubgh v. New Orleans and Carrollton Railroad Company*, 6 La.Ann. 495 (La. 1851).

[48] *See Levy*, 216 So.2d at 819.

[49] *See also Roche*, 381 So.2d at 399.

added to article 2315. *Id.* at 5a-7a. Thus, between the years of 1948 and 1960, adopted children such as Petitioners had a right to sue for the death of natural relatives, but that right was extinguished in 1960. Such children were instead granted a right to sue for a parent or sibling "by adoption." *Id.* This has been the "stable" law of Louisiana for over six decades. Opinion 5a-6a, Appx. 47a.

Misinterpretation of the statutes is what prompted the rehearing. Opinion 2a. The Court subsequently vacated its initial decree, correcting the errors, and finding that Petitioners had no right of action. Opinion 11a. The Court then explained why the classification is constitutional. Opinion 9a-11a, Appx. 50a-57a.

Petitioners incorrectly argue that La. Civ. Code art. 199 "repealed" former article 214 and allows for their recovery. Pet., 16, 22. At the time article 199 was enacted, in 2009, children given in adoption had long since been deleted from the list of beneficiaries (in 1960), and no longer had a right to sue for the death of a natural parent. Appx. 47a. Article 199 could not independently create a right of action the legislature expressly deleted in the very statutes governing the right. Appx. 45a-47a. Appellate court cases since the 1960 revision, and before and after the incorporation of article 199, are consistent that children given in adoption do not have a right to sue for the death of natural parents or siblings. *Id.* at 47a, and 49a-50a, n. 9.

Under article 199, the biological parent and adopted child become "legal strangers,"[50] and the "parent/child relationship" is severed. La. Civ. Code art. 199 com. (a).[51] While former article 214 was deleted, La. Ch. Code art. 1256(A) was enacted. Under that article, the natural parent is divested of rights and duties toward the child given in adoption, and the adopted child is divested of rights and duties with respect to his natural parents and blood relatives.

While Petitioners suggest that the Court "revived" former La. Civ. Code art. 214, Pet. 24, it did not. It was Petitioners who asked the Court to "revive" the law as it existed prior to 1960, and to disregard specific amendments to the legislation, as well as articles 199 and 1256. The Louisiana Supreme Court flatly refused to do so. Opinion 6a-7a, 35a.

Petitioners also cite La. Civ. Code art. 3506(8). That article never included "children given in adoption" under the general definition of "child" in the Civil Code. *Cf.* Opinion at 7a-9a, Appx. 29a-30a, 47a-48a. The original predecessor article (3556(8)) made no mention of children who had been adopted, or children given in adoption. Opinion 8a. Had children given in adoption already possessed the right of action under the general definitional term, there would have been no need for the legislature to add those

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[50] *Walton v. Hutton*, 457 So.2d 1230, 1231 (La. App. 1 Cir. 1984).

[51] *In re Puckett*, 49,046 (La. App. 2 Cir. 4/17/14), 137 So.3d 1264, 1274.

individuals to the list of eligible claimants in 1932. *Id.* at 4a-5a, 8a. The term "those adopted" was only first added to article 3556 in 1981 (long after the 1960 revision), but no mention was made of those "given in adoption." *Id.* In 2004 the article was amended to define a child as including a child "adopted by [his parents]" but not those "given in adoption." Thus, article 3506(8) never did include children "given in adoption." Opinion 9a.

## CONCLUSION

Petitioners have failed to present any reason for granting a Writ of Certiorari. The decision of the Louisiana Supreme Court, rendered after multiple hearings, is correct. Petitioners' cited authority is not applicable to the laws dealing with the effects of adoption. The Louisiana Supreme Court did not decide the case in any way that conflicts with decisions of this Honorable Court, or any other Circuit Court of Appeals. There is no split in Circuit Court decisions. There is no fundamental right at issue, adoption is not a suspect category under constitutional inquiries, and Petitioners' inheritance rights remain untouched.

The Louisiana legislature has a rational basis in defining, and limiting, the beneficiaries to a statutorily created, state law tort claim. Children given in adoption have a right to sue equal to non-adopted children

and other listed beneficiaries. The Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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