NO. 21-_____

In the Supreme Court of the United States

SHERRIE RYE,

Petitioner,

v.

LUCAS COUNTY OHIO JOB & FAMILY SERVICES (JFS),

Respondent.

On Petition for a Writ of Certiorari to the Ohio Court of Appeals, Sixth Appellate District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In an attempt to expedite the process of finding permanent homes for children suffering abuse or neglect, Congress passed the American Safe Families Act (ASFA) in 1997, which incentivized states to implement statutes to shorten the amount of time kids spend in foster care. The Act shortened the amount of time kids could spend in temporary custodial situations and encouraged skipping reasonable efforts to reunite families in certain circumstances. It set up exceptions to making reasonable efforts to keep the child(ren) with the parent(s) including "presumptions" that a parent for a past termination is unfit as well as shifting the burden of proof to the parent to prove fitness.

Every state, the District of Columbia, Puerto Rico, and the Virgin Islands enacted laws that allowed them to bypass or limit the provision of reasonable efforts where parents had prior termination of parental rights (TPR). Over 30 states have passed such laws including Ohio. Most states use a "clear and convincing" standard of proof while others use a "beyond reasonable doubt" standard. In addition to the standard of review, many of these states, including Ohio, utilize a subjective "best interests of the child" catch-all to override any parental rights. The Question Presented is:

1. In light of the Adoption and Safe Families Act (ASFA) enacted by Congress in 1997, should this Court expand the minimum burden of proof to terminate parental rights as established in *Santosky v. Kramer*, 455 U.S. 745 (1982) to a standard of proof beyond reasonable doubt as well as prohibit burden-shifting to a parent in such proceedings?

LIST OF PROCEEDINGS

Supreme Court of Ohio
No. 2021-0916
In re: C.R. (Sherrie Rye as Petitioner)
Date of Final Judgment: September 14, 2021

Ohio Court of Appeals, Sixth District,
Lucas County, Ohio
No. L-20-1195
In re: C.R. (Sherrie Rye as Appellant)
Date of Final Judgment: June 10, 2021

Lucas County Ohio Common Pleas Court,
Juvenile Division
Case No. JC 19276873
In The Matter of: C.R.,
dob: xx/xx/2019, SACWIS #1437749
Date of Final Judgment: November 10, 2020

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectively prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The order of the Supreme Court of Ohio, declining jurisidction is included at App.1a.

The opinion of the highest state court to review the merits, the Court of Appeals of Ohio, Sixth Appellate District, Lucas County appears at App.2a to the petition and is reported at *In re C.R.*, 2021-Ohio-1969.

The opinion of the Lucas County Ohio Common Pleas Court, Juvenile Division appears at App.27a and is unpublished. Per Sup. Ct. R. 34.6 and Fed. R. App. P. 5.2, this opinion need not be redacted as it is the official record of a state proceeding.

JURISDICTION

The order of the Supreme Court of Ohio, declining jurisdiction was entered September 14, 2021. App.1a.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. V

> [n]o person shall . . . be deprived of life, liberty, or property, without due process of law . . .

U.S. Const., amend. XIV

> [n]o 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 . . .

Adoption and Safe Families Act
(ASFA, Public Law 105-89)

> Places emphasis towards children's health and safety concerns and away from a policy of reuniting children with their birth parents without regard to prior abusiveness

Ohio R.C. 2151.414
Hearing on motion requesting permanent custody

> (E)(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent

placement and adequate care for the health, welfare, and safety of the child.

STATEMENT OF THE CASE

Sherrie Rye did not abuse her newborn baby. She was not neglectful in taking care of C.R. Based on an anonymous call to the Children's Protective Services (JFS) that she failed to make a medical appointment which was later proven false and a contentious visit from JFS, Sherrie Rye was accused of making "Terroristic Threats" and her baby was eventually snatched from her.

Owing to a prior termination of parental rights which occurred years ago and for which no evidence of any abuse or neglect occurred—just the bare fact of termination was entered—Sherrie Rye never had a legitimate chance to keep her newborn.

JFS sought shelter care, which was granted based upon dependency but specifically not neglect. A rigorous case plan was put into place, ostensibly designed to determine if a variety of unspecified mental health "concerns" about the mother made it impossible for her to provide care. This was upon the mother to disprove. And, as discussed below, she did. A single licensed mental health provider testified at the termination hearing, the mother's psychologist Dr. Closs.

Dr. Closs testified that, not only was the mother capable of providing proper care, but that, despite very real issues, he would trust her with his own children. The trial court bluntly discounted Dr. Closs's testimony, refused to allow more time for the mother to attempt

to comply with the case plan despite it occurring during the Covid-19 pandemic, and terminated the mother's parental rights based upon her not adhering to the plan.

Since the basis for the "plan" was anticipated neglect based upon mental health "concerns" which the mother addressed with uncontroverted testimony from a licensed psychologist, it does not appear that there was ever any real chance of any other outcome. The mother did, in fact, present clear and convincing evidence that she could provide an acceptable home for C.R.. It is unclear what else she might have done to satisfy the court in such a circumstance. There was nothing to remediate here. In such a case, there are grave constitutional due process concerns when the government terminates rights based upon a finding contrary to the only qualified evidence presented, and even greater due process concerns when the burden shifts to the citizen based upon a previous decision, long in the past. Moreover, the maintenance of healthy families, and a thorough and fair process to determine the appropriateness of government intervention, is always a matter of great public concern. The mother here never really had a chance.

The trial court's decision relied heavily on the past termination and the rebuttable presumption under the law that shifted the burden of proof to Ms. Rye. The challenge presented here goes to the core of the burden shifting provision in Ohio R.C. 2151.414(E)(11). Not only does the burden shifting rely upon previous adjudications without any reference to the passage of time, but also creates the situation here, where the notion that the burden can actually be met is illusory. Without the burden shifting provision, there would have been no case here.

Per Sup. Ct. R. 14.1(g)(i), Petitioner raised the United States Constitutional claims in the appellate courts below. Specifically, the Due Process concerns resulting from the standard of proof imposed and the shifting of the burden to the citizen parent discussed below were raised in the Appellant's Brief on direct appeal in Assignment of Error IV, and cited to in the Ohio Court of Appeals Opinion at App.13a. The constitutional Due Process claims were also re-raised in the Ohio Supreme Court in the Memorandum in Support or Jurisdiction filed July 26, 2021 at p. 1, 6, 8.

REASONS FOR GRANTING THE PETITION

I. THE PETITION SHOULD BE GRANTED BECAUSE THE TERMINATION OF PARENTAL RIGHTS HAS REPEATEDLY BEEN COMPARED BY THIS COURT AKIN TO A CRIMINAL PROCEEDING. AS SUCH, THE HIGHEST STANDARD OF PROOF SHOULD BE REQUIRED.

In *Santosky v. Kramer*, 455 U.S. 745 (1982), this Court framed the analysis of the standard of proof by comparing it to the standard in a criminal prosecution. It pointed out that the ability of the State with its resources has an ability to create a case against a parent that is much stronger than the parent's ability to mount a defense. The Court, in reviewing on whether requiring a higher burden of proof would make it too difficult on the State to prove its case, decided that it would not. The State carries an elevated burden in many other areas of law.

Different levels of proof may be appropriate depending on whether a child was abused, neglected or simply deemed dependent. Allowing the State to terminate parental rights based upon a dependency finding opens the door for abuse of the system. In such a case, the burden for the State clearly should be a "beyond reasonable doubt" standard before terminating parental rights. This would ensure due process of law and equal protection of law by making a uniform standard throughout the country.

II. THE STATE SHOULD NOT BE ABLE TO TERMINATE A PARENT'S PARENTAL RIGHTS BASED UPON A PAST TERMINATION OF PARENTAL RIGHTS AND/OR ON THE BASIS OF PAST WRONGS WITHOUT ANY CURRENT EVIDENCE SHOWING ABUSE OR NEGLECT TO THE CHILD IN QUESTION.

The *Santosky* Court reasoned that the right of parents to the "care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."

In *Stanley v. Illinois*, 405 U.S. 645 (1972), this Court barred courts from relying on irrebuttable presumptions to find a parent to be currently unfit based solely on past conduct. But independent of the legal analysis, the logic is nonsensical. To suggest that a parent whose rights were terminated years ago, especially when abuse or neglect is not alleged, will therefore remain unfit forever—regardless of the choices she has made in the interim—ignores the reality that people are capable of changing.

III. THE STATE SHOULD NOT BE ABLE TO BURDEN-SHIFT TO MAKE THE ACCUSED PARENT "PROVE" THEIR FITNESS ON ANY CONTESTED ISSUE RATHER THAN THE STATE BEING REQUIRED TO PROVE UNFITNESS.

The *Santosky* Court was not asked and did not explicitly decide if shifting the burden to the defendant in a parental rights termination proceeding is constitutional. It did address the question indirectly by noting the State did shoulder the (too light) burden in the lower court proceedings. It is clear in dicta that the Court pointed out that the ability of the State, with vast resources, to prosecute a case with against a parent is much stronger than the parent's ability to mount a defense. The State has the burden to prove "unfitness" rather than the parent having to prove "fitness".

CONCLUSION

Three United States Supreme Court cases, *Stanley v. Illinois*, 405 U.S. 645 (1972), *Santosky v. Kramer*, 455 U.S. 745, 653 (1982), and *Quilloin v. Walcott*, 434 U.S. 246 (1978) set forth, respectively, three basic constitutional requirements before a State can permanently terminate the rights of a parent: 1) that the State must prove that a parent is actually unfit; 2) that unfitness must be proven by clear and convincing evidence; and 3) that such a decision cannot be based solely on a finding that termination would be in the child's best interest.

These cases predate the passage of the Adoption and Safe Families Act (ASFA, Public Law 105-89) in 1997. All 50 states have adopted most, if not all of those

provisions. The result has been circumvention many of the dictates of the above cases and a fundamental violation of due process and equal protection of law.

A parent, particularly one who has not abused or neglected her child, should not be forced to prove her fitness. Rather that is the duty of the state to prove current unfitness and the only appropriate standard of proof is "beyond reasonable doubt". It is up to this Court to protect parents and their children from the state overreach that is occurring throughout the country.

For the foregoing reasons, Petitioner respectfully requests her petition be granted.

Respectfully submitted,

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