

No. 22-1156

**In The
Supreme Court of the United States**

DONNITTA SINCLAIR, Mother of
Horace Lorenzo Anderson, Jr., Deceased,

Petitioner,

v.

CITY OF SEATTLE, WASHINGTON,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does Petitioner have a Fourteenth Amendment substantive due process right to the companionship of her adult child?

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STATEMENT

A. Background

After the murder of George Floyd, residents of Seattle and cities nationwide gathered to protest for racial justice. City officials had to make difficult decisions to ensure the continued provision of services in areas of heavy protests, while balancing the exercise of First Amendment rights. As confrontations escalated between protestors and police officers, the City of Seattle took action to address rapidly unfolding events, including the withdrawal of police officers from the Seattle Police Department's (SPD) East Precinct building.

Protestors declared public streets and a neighborhood park in an area adjacent to the East Precinct building to be autonomous from City governance, calling it the Capitol Hill Organized Protest (CHOP). Tragically, Petitioner Donnitta Sinclair's nineteen-year-old son, Lorenzo Anderson, was shot and killed while in the area. A man who had a pre-existing conflict with Mr. Anderson has since been convicted of his murder. The City cleared out the protestors and others in the area when it determined that opportunistic criminal activity was preventing the safe exercise of First Amendment rights.

Ms. Sinclair's complaint alleged the following facts. As confrontations escalated between protestors and police officers, the City decided to "abandon" the SPD's East Precinct building. As a result of the reduced police presence in that neighborhood, protestors

established an alleged “no-cop” zone that became known as the CHOP. Protestors repurposed police barricades to block the streets from traffic. Crimes such as “violence, vandalism, and open drug use” “proliferated.”

According to Ms. Sinclair, the City had no effective plan for providing police protection, fire protection, or emergency services. But the City did not stop providing these services. Instead, the City modified SPD and Seattle Fire Department (SFD) protocols to ensure continued service to respond to life-threatening crimes in the area. SFD stationed an ambulance in the area.

Ms. Sinclair claims the City “enabled” the CHOP by providing support such as portable toilets and lighting. City officials made public statements supporting expressive activities while also acknowledging difficulties in responding to 911 calls. The mayor described the CHOP as a “block party” and a “summer of love.” At the same time, the police chief warned the public that 911 response times had increased to three times longer than average.

Ms. Sinclair’s son visited the CHOP. While he was there, another young man with whom he shared a “history of antagonism” fatally shot Mr. Anderson. Members of the public carried Mr. Anderson to an informal “medical tent.” SFD had an ambulance waiting about a block and a half away, and people “begged” the SFD medics to come help Mr. Anderson. Ms. Sinclair alleged a miscommunication between SPD and SFD about the location of SFD and the ambulance caused a

twenty-minute delay before the City sent SPD officers into the CHOP to help Mr. Anderson. She claimed that, by the time SPD arrived, CHOP participants had already taken Mr. Anderson to a local hospital, where he was pronounced dead.

Before Mr. Anderson's death, no shootings had occurred in the CHOP for the past six months. Within two weeks after his death, protests had declined in the CHOP, and the City was able to resume regular operations.

B. Procedural History

Ms. Sinclair filed this action in the United States District Court for the Western District of Washington. She asserted a claim under 42 U.S.C. § 1983, alleging the City violated her substantive due process right to the companionship of her son under the state-created danger theory of liability. Pet. App. 7. The City moved to dismiss the amended complaint for failure to state a claim. *Id.* at 8. A United States Magistrate Judge issued a report and recommendation of dismissal, to which Ms. Sinclair objected. *Id.* The district court adopted the report and recommendation and dismissed the case with prejudice. *Id.*

The Ninth Circuit affirmed. *Id.* at 4-5. It agreed with the City that its prior, binding precedent had implicitly decided that substantive due process protections extend to a parent's relationship with an adult child. *Id.* at 4, 9-11. But it upheld the district court's dismissal on other grounds, concluding that Ms.

Sinclair had failed to sufficiently allege two of the three required elements for a substantive due process claim under the state-created danger doctrine. First, it held that Ms. Sinclair does not adequately allege that the City's affirmative actions created or enhanced an actual, particularized danger to Mr. Anderson, as opposed to the generalized danger posed by crime. *Id.* at 14-15. Second, it held that Ms. Sinclair did not adequately allege that the City was deliberately indifferent in its response to Mr. Anderson after he was injured. *Id.* at 18.

In a concurring opinion, Judge Ryan D. Nelson urged his colleagues to reconsider its rule that people have a substantive due process right to the companionship of an adult child. *Id.* at 25. But he agreed that affirmance was required here because Ms. Sinclair's claim foundered on other grounds. *Id.* at 22.



REASONS FOR DENYING THE WRIT

The Petition does not present an issue that merits this Court's consideration because the issue was resolved below to Petitioner's benefit and had no influence on the outcome of her appeal.

A. The Ninth Circuit Held That Substantive Due Process Protects the Relationship Between Parent and Adult Child.

The Ninth Circuit explained in its decision below that it “recognize[d] [Ms. Sinclair’s] substantive due process right to the companionship of her adult son.” Pet. App. at 10. Noting that it was bound by precedent, the Ninth Circuit affirmed dismissal of Ms. Sinclair’s case on the grounds that she failed to sufficiently allege two of the requirement elements under the state-created danger doctrine. *Id.* at 11, 15, 18.

B. This Case is a Poor Vehicle to Examine the Question Presented Because a Different Decision on the Issue Will Not Alter the Outcome.

The Ninth Circuit correctly held that Ms. Sinclair’s lawsuit could not move forward because she did not adequately allege that the City (1) created or enhanced a danger particularized to Mr. Anderson, or (2) demonstrated deliberate indifference toward him. Pet. App. at 15, 18. In this Court, Ms. Sinclair does not challenge either of these holdings. Rather, the sole issue that Ms. Sinclair now raises is an issue on which she prevailed below—the threshold question of whether she had a cognizable substantive due process right in the companionship of her adult son. The Ninth Circuit ruled in her favor on this issue, holding that she has such a right.

Accordingly, the outcome of the lawsuit will not change if this Court upholds the Ninth Circuit's ruling and recognizes Ms. Sinclair's substantive due process right. In that event, her claims still would lack merit for the reasons stated by the Ninth Circuit, and her lawsuit still could not proceed. The only possible difference this Court's involvement could make is that the City might prevail for a different reason. That is not enough to warrant, or even permit, a grant of certiorari.

This Court has recognized that, in limited circumstances, "an appeal brought by a prevailing party may satisfy Article III's case-or-controversy requirement." *Camreta v. Greene*, 563 U.S. 692, 702 (2011). But unlike the petitioners in *Camreta*, who asked this Court to review a legal holding with which they disagreed, Ms. Sinclair prevailed on the very issue she asks this Court to review. Nor is Ms. Sinclair a "repeat player" who will be subject to the Ninth Circuit's rule going forward. In short, Ms. Sinclair does not have "the necessary personal stake" to pursue this petition. *Id.* at 702.

C. A Grant of Certiorari is Unnecessary Because Ms. Sinclair Has Already Received an Alternative Remedy.

Judge Nelson observed that Washington State tort law already provides an adequate remedy. Pet. App. 25. Ms. Sinclair is one of only two beneficiaries of her son's estate. Although she has received no remedy in this

lawsuit, involving her claim on behalf of herself, she did receive a remedy through her status as beneficiary of the estate. The estate filed a lawsuit in King County Superior Court against the City raising its state and federal claims arising out of this incident. The estate and the City settled the estate's claims, the Probate Court approved that settlement, and the estate's lawsuit was dismissed with prejudice.

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CONCLUSION

The Court's resources should not be taken up adjudicating a case in which its decision cannot affect the outcome. The Court should deny the petition for certiorari.

Respectfully submitted,

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