

SEP 26 2022

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22-5806  
No. \_\_\_\_\_

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In the United States Supreme Court

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JESSICA LYNNE GOULD,  
*Petitioner*

v.

ISAIAH BEN JOHNSON,  
*Respondent*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT

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PETITION FOR A WRIT OF CERTIORARI

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ORIGINAL

## **QUESTIONS PRESENTED**

The U.S. Department of State provides that: "a state court has the authority to order a parent possessing a child's passport to surrender the passport to the court or the court's designee. Such an order is enforceable by the court's authorities under its state's law. The court may hold the passport as long as it deems necessary to reduce the likelihood of the removal of a minor child from the United States."

**The questions presented  
are:**

- I. Does the 4<sup>th</sup> Amendment protect parents against the warrantless seizure of their child's passport by state courts as that seizure is currently authorized by the U.S. Department of State.
- II. Is there a constitutional right to international travel.

## **PARTIES TO THE PROCEEDING**

The Petitioner, who was the Petitioner in the Circuit Court and the Appellant in the Missouri Western District Court of Appeals, is Jessica Lynne Gould f/k/a Jessica Lynne Johnson. The Respondent, who was the Respondent in the Circuit Court and the Respondent in the Missouri Western District Court of Appeals is Isaiah Ben Johnson.

## **RELATED PROCEEDINGS**

*Johnson v. Johnson, No. 1716-FC10559-01* (16<sup>th</sup> Circuit Court, Jackson County, Missouri) (granting judgment on modification) (judgment entered May 3, 2021) (App. 1)

*Johnson v. Johnson, No. WD84573* (Missouri Western District Court of Appeals) (affirming judgment of circuit court) (memorandum filed April 5, 2022) (App. 30)

*Johnson v. Johnson, No. SC99597* (Missouri Supreme Court) (denying application for transfer) (denial filed June 28, 2022) (App. 45)

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 29.6, Petitioner is not a corporation.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Jessica L. Gould respectfully asks this court to grant a writ of certiorari to review the constitutionality of the Circuit Court's action of taking N.J.'s passport from her.

The order by a trial court judge relying on highly prejudicial testimony to surrender a legally purchased and held document in violation of an existing contract touches on the security interest every citizen has in their personal possessions, property, papers and effects, so crucial in any free society that, were it for no other reason than to exercise its supervisory role in guiding the lower courts, this court should grant certiorari.

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### **OPINIONS BELOW**

The Circuit Court's decision (App. 1-29) is reported at 1716-FC10559-01 (2021). The Appellate Court's memorandum opinion (App. 30-43) is reported at WD84573 (2022). The Supreme Court of Missouri's denial of Application for Transfer (App. 45) is reported at SC99597 (2022).

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### **JURISDICTIONAL STATEMENT**

The 16<sup>th</sup> Circuit Court in Jackson County, Missouri entered judgment on May 3, 2021. The Western District of the Missouri Appellate Court issued their Memorandum Opinion on April 5, 2022. The Missouri Supreme Court denied Appellant's timely filed Application for Transfer on June 28, 2022. The deadline to file this Petition is

September 26, 2022 and this Petition is timely filed. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

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## **CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED**

The Fourth Amendment to the United States Constitution provides that: "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

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## **STATEMENT OF THE CASE**

Domestic violence and coercive control do not end when a marriage is dissolved by a circuit court. Those who exerted control throughout the marriage often seek to maintain it after the marriage ends. For judges making custody decisions where these factors are at play, understanding a party's will to control and punish an ex-spouse and their willingness to do so through the legal system is critical to protecting the rights of the more vulnerable party. The issue here is a governmental policy that allows one private party to leverage the power of the judiciary against another private party in a civil action, seemingly without constitutional restraints or protections. The effect is a loss of the very essence of constitutional liberty.

"Ms. Gould, this Court has authority and this Court will oblige you to do certain things right now. You will appear in my court at 8:00am, on March 30<sup>th</sup>, that's 415 East 12<sup>th</sup> Street, fifth floor, with [N.J.]'s passport. And that passport's going to be surrendered to this Court...If you're in Bemidji, Minnesota, I've given you until 8:00am on Tuesday, but you need to get down here and surrender that passport. If that passport is not into this Court's possession by that time or minutes thereafter, then there will most likely be a judgment and an order of contempt. You have to abide by this order. I expect that I will have an order issued this afternoon that will give you that direction, ma'am. And you have to follow this order or there will be a contempt order issued for doing that and that's very problematic." (Tr. 243)

This verbal order came at the end of trial on March 26, 2021, and is the primary issue of this petition. It is not my desire to disparage anyone or to share intimate details of my personal life, but I think that for true change and improvement to occur, the dynamics of domestic abuse in divorce and family law must be seen and understood. Divorce does not solve domestic abuse. Often the control dynamics that were present within a marriage find new expression through the litigation and custody disputes that follow a dissolution.

On June 21, 2014, I was married to Isaiah Johnson, the respondent in this case. After 3 years of marriage, he informed me that he was in an active affair and was unwilling to end it. I could no longer expect a monogamous marriage, as he attempted to persuade me to invite the other woman into our lives offering that "she would have been your servant if you had let her. Just for the chance to receive more scraps from my table." (Tr. 148) While he ultimately found them irrelevant, the trial judge allowed me to make a record of the respondent's email containing these statements for any reviewing courts. (Tr. 149)

Mr. Johnson and I had utterly contrasting ideas of what a Christian marriage looked like. He told me “You would have been better off by crying silently in another room saying nothing, yet still serving as a dutiful wife.” (Tr. 145). I had no voice.

In the midst of this escalating abuse, I gave birth to N.J. in August of 2017. In the months following her birth, Mr. Johnson became increasingly angry and violent toward me because I would not agree to live in a way that violated my conscience and the laws of the church of which we are members. When the threats became too grave, I fled for my safety with N.J., who was 3 months old at the time. My primary concern was to find safety for myself and my child and gain independence to rebuild our lives. I filed for divorce in November of 2017. After two years of litigation, I was left without the means to proceed to trial and I agreed to settle the dissolution on the scheduled day of trial: September 19, 2019. In the dissolution contract, I received sole legal and joint physical custody, with Mr. Johnson receiving parenting time when he was in town on leave from the military; as he was active duty in the Navy and stationed in Hawaii. (App. 64)

On October 19, 2019, N.J. disclosed what I understood to be very serious abuse by Mr. Johnson. (Tr. 160) I then took the actions I believed right under the circumstances. N.J. was barely 2 years old and when she began refusing to interact over video chat with Mr. Johnson.

There were two protections that I was specifically granted in the dissolution:

The first was the right to relocate to the Northwest Arkansas region, where most of my family lives.

The second protection was the ability to obtain a passport for my daughter, which was to remain in my general

possession. (App. 101) This provision also allowed me the freedom to travel internationally with N.J. I asked that these provisions be included because the respondent made it clear that he would not allow me to move with N.J. and he wanted to be aware of my travels and I feared being subject to his control in these areas unless I was given express permission by the court.

On March 14, 2020 I married Jared Gould. We live in Seymour, Missouri, a small farming town in the southwest corner of Missouri, just over an hour from the Arkansas border which I believed clearly met the qualifications of the general area specified in the dissolution decree.

When the judge gave the verbal order to surrender the passport, he said that I had to comply. This terrorized me, as this was just the sort of control and abuse I sought to escape, except now the control was coming from the judiciary who had powers to incarcerate me if I did not comply, instead of an enraged spouse. This exercise of control frightened me. I felt that something must have gone devastatingly wrong for this order to be issued. I thought I would present my evidence of abuse and the trial would end with the protection I so badly needed for myself and my daughter, but it seemed that I had been turned into a criminal by opposing counsel and the guardian ad litem. I couldn't figure out what had gone wrong.

This was especially mystifying as just a couple months prior the judge had denied the respondent's motion for an emergency temporary restraining order that was intended to prevent me from going to Northern Minnesota.

With no restrictions barring the travel, and believing we had an important work to do with our church local there we visited my husband's family and began work on a family property there for about 4 months in early 2021. I notified Mr. Johnson via a Vacation Notice that I would

be there during those dates. This notice included my temporary address and all relevant information.

It was here, in Bemidji, Minnesota, that I frantically gathered my belongings, figured out how to travel with my dog who was due with puppies any day, loaded my newborn son and 3-year-old daughter and made the 1300-mile roundtrip to hand over my daughter's passport. Unsure if I would be arrested on my arrival for some false allegation, or if this was simply a test to see how I would respond to the judge's instruction, I hesitantly arrived at the courthouse and handed over the passport. (App. 61) This trip was inconvenient, but infinitely *more* convenient than an international trip would have been. With a newborn baby to care for and puppies due any day, I was in no position to leave the country. Aside from this, I was still receiving postpartum care after a challenging delivery of my son whom I was visibly holding through much of the trial. There was simply zero evidence of any intention to travel internationally.

The Judgment of Modification was filed May 3, 2021. (App. 1) I filed a Motion to Set Aside Judgment of Modification and Motion for New Trial or in the Alternative Motion for Reconsideration, Correction, Modification, Amendment, and/or Vacation of the May 3, 2021 Judgment of Modification with Suggestions in Support Thereof on May 19, 2021 (App. 46), as well as a Notice of Appeal.

The Judgment of Modification (App. 1) addressed the Respondent's filing of contempt as well as his motion to modify. The Court did not find me in contempt, necessitating the conclusion that they found my concerns to be reasonable or at least my actions based on those concerns to have been made in good faith.

The Circuit Court released N.J.'s passport to the respondent on July 13, 2021 and I have not had

possession of the passport since it was surrendered in March 2021. No mention of N.J.'s passport whatsoever was within the Judgment of Modification. (App. 1)

**FEDERAL QUESTION RAISED & APPELLATE COURT DECISION:**

I first raised the question of the constitutionality of a warrantless passport seizure on page 11 of Appellant's Reply Brief in the appellate court. The appellate court accepted review of the question, but made no determination as to its constitutionality. Rather than address the constitutionality, they addressed it in terms of the dissolution contract and considered the seizure a reasonable response to my actions with their statement:

"Although it is not properly presented, we briefly address Mother contention that the circuit court violated her rights under the dissolution decree by requiring her to surrender Child's passport to the Court, and ultimately giving that passport to Father. The circuit court modified the dissolution decree to give Father sole legal custody of Child; given his sole legal custody, it does not appear inappropriate to give Father possession of a document allowing control of Child's movements, and Mother has not cited any authority to the contrary." (App. 30)

Why the appellate court did not consider the 4<sup>th</sup> Amendment an authority to the contrary I am not aware. The appellate court mentioned that my point was not properly presented, however, because this is a substantive right, it may be reviewed though improperly presented.

This is found in Mo. R. Civ. P. 84.13 (c):

"Plain errors affecting substantial rights may be considered on appeal, in the discretion of the court, though not raised or preserved, when the court finds that

manifest injustice or miscarriage of justice has resulted therefrom."

This is seminal to my case because although respondent urged the appellate court not to entertain any constitutional argument or the passport seizure argument, I sought review through this Missouri rule, and the appellate court took discretionary review, however, it did not find any miscarriage of justice.

#### **DECISION OF STATE SUPREME COURT:**

On June 28, 2022, the Missouri Supreme Court denied my Application for Transfer that was timely filed on May 17, 2022.

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

##### **A. THIS CASE RAISES A SUBSTANTIAL QUESTION OF FEDERAL LAW ON AN ISSUE OF NATIONAL IMPORTANCE CONCERNING THE U.S. STATE DEPARTMENT'S POLICY AUTHORIZING WARRANTLESS PROPERTY SEIZURES**

In passing 8 U.S.C. § 1185 making it a federal crime for U.S. citizens to leave or return to the U.S. without bearing a valid passport (with some narrow exceptions), Congress created a liberty interest for every American in their passport. It follows that a parent with a minor child would also have a liberty interest in that child's passport. In *Smith v. Organization of Foster Families*, this Court stated: "The liberty interest in family privacy has its source, and its contours are ordinarily to be sought, not in state law, but in intrinsic human rights, as they have been understood in this Nation's history and tradition."

22 U.S. Code § 211a gives the legislative basis for authority to issue passports. It does not authorize their

seizure. Yet, as apparently interpreted in my case, it not only authorizes their seizure by state courts but fails to qualify that seizure in any objective way whatsoever.

There are times when the government may legally seize an individual's passport and their rights to freedom of movement. These cases usually involve individuals found to be in possession of illegal drugs upon entering the United States, individuals shown to be a serious threat to the national security and foreign policy of the United States, felons convicted of sexual crimes against minors, those shown to be involved in foreign terrorist organizations, and according to the US department of state "any parent, possessing a minor child's passport".

A broad reading of this permission slip gives state courts more authority over the freedom of movement of any child than that child's natural parents. It is not dependent on any showing of a state's vital interest in the action nor any deficit in the natural parent's ability to make the decisions for their child's travel.

## **B. THIS CASE HIGHLIGHTS WARRANTLESS SEIZURES AGAINST INNOCENT PARENTS**

Where is the presumption of innocence? Without any evidence whatsoever under current practice, an innocent parent may have their child's passport seized and their ability to travel internationally abrogated indefinitely. No warrant is required and no reasonableness standard must be applied. This Court's observation in *Gouled v. United States* was definite and seems especially relevant here:

"It would not be possible to add to the emphasis with which the framers of our Constitution and this court in *Boyd v. United States*, *Weeks v. United States*, and in *Silverthorne Lumber Co. v. United States* have declared the importance to political liberty and to the welfare of our country of the due

observance of the rights guaranteed under the Constitution by these two amendments. The effect of the decisions cited is: That such rights are declared to be indispensable to the 'full enjoyment of personal security, personal liberty and private property'; that they are to be regarded as of the very essence of constitutional liberty; and that the guaranty of them is as important and as imperative as are the guaranties of the other fundamental rights of the individual citizen—the right to trial by jury, to the writ of habeas corpus, and to due process of law. It has been repeatedly decided that these amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts or by well-intentioned, but mistakenly overzealous, executive officers." (speaking of the 4<sup>th</sup> & 5<sup>th</sup> amendments)

The U.S. State Department is an executive agent and, however well-intentioned its broad, vague, and unqualified grant of authority to state courts may have been, it has led to just such a depreciation of rights by the imperceptible practices of certain courts. Criminal law and its related practices to discourage unlawful searches and seizures are well established, but where are the rights of innocent citizens in civil litigation? A citizen's right to be free from unreasonable searches and seizures when in a civil proceeding (and not being prosecuted or even accused of any crime) should be as great as any party under criminal prosecution.

The 4<sup>th</sup> Amendment's wording does *not* exclude the rights of those in civil proceedings, rather its clear wording and historical basis include every American. If we suppose that only those facing a criminal prosecution, wherein the case of a conviction, they may be deprived of liberty for as little as 13 months, should enjoy the amendment's

strongest protections while those in a civil case where monetary damages could erase 20 years of sweat and tears, or, a domestic case that could directly impact the next 17 years of a child's life, the familial liberty interests that this court has consistently declared call for better. They call for "Equal Justice Under Law."

*Troxel v. Granville* states clearly that the observed liberty interest of parents: "in the care, custody, and control of their children— is perhaps the oldest of the fundamental liberty interests recognized by this [Supreme] Court...It is cardinal with us that the custody, care and nurture of the child reside first in the parents..."

The Court should grant certiorari to examine the scope and application of 4<sup>th</sup> Amendment protections in civil proceedings as well as the relationship between the security the 4<sup>th</sup> Amendment guarantees in contrast with the facially vague and broad authority currently allowing the seizure from a parent of their child's passport, and with it all the related privileges and liberties it secures, by the U.S. State Department.

### **C. THERE IS NO LIBERTY IN AN UNSANCTIONED BLENDING OF POWERS**

"There is no liberty, if the power of judging be not separated from the legislative and executive powers. And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments"

Federalist 78

The legislative branch's limited grant of powers bestowed on the executive branch, whose subsequent grant of unqualified authority to state judges, represents just such a blending of powers of which, as Alexander Hamilton stated, we have "everything to fear".

The U.S. Department of State's fact sheet for judges and lawyers provides in part:

"A state court has the authority to order a parent, possessing a child's passport, to surrender the passport to the court or the court's designee.

Such an order is enforceable by the court's authorities under its state's law.

The court may hold the passport as long as it deems necessary to reduce the likelihood of the removal of a minor child from the United States. In such cases, the action to withhold the passport should be reported to the Office of Children's Issues to prevent unauthorized attempts to replace it.

Questions about the possible value of passport revocation should be sent to the Office of Adjudication.

At the request of either parent or his/her attorney, the Department of State will give effect to the intent of state civil court orders regarding a child's custody and/or travel by denying a minor child's passport when appropriate. A request for passport denial should be sent to the Office of Children's Issues."

To summarize, a plain reading of the above authorizes three things that warrant consideration on the merits of their constitutionality:

1. A warrantless seizure of any child's passport from any parent.
2. Authority to hold that passport as long as deemed necessary.
3. Authority over a child's travel through the denial of a passport.

The historical basis for our 4<sup>th</sup> Amendment was in response to just such broad authority to search and seize.

Ironically, this court's analysis 136 years ago focused on the claimed power of the secretary of state as well, albeit in England. This court observed "After describing the power claimed by the Secretary of State for issuing general search warrants, and the manner in which they were executed, Lord Camden says: 'Such is the power, and, therefore, one would naturally expect that the law to warrant it should be clear in proportion as the power is exorbitant. If it is law, it will be found in our books; if it is not to be found there, it is not law'." (*Boyd v. United States*) quoting from Wilkes and the libelous North Briton cases.

Under the heading "Passports and Children in Custody Disputes", the United States Department of State goes on to query: "Are you involved in a custody dispute over your child? Are you **concerned** that your child **may** be taken abroad by the other parent without your knowledge?" (emphasis added)

In my case, at the trial on March 26, 2021, as though reading from a script, respondent's attorney asked:

"-Do you have any concerns at all about mother fleeing to her international property?

-And as a result of those concerns, are you asking this Court to have mom surrender N.J.'s passport If she is—if she has one?

-If your child were to be taken to an international location, that would pose some difficulties for you, would it not?"

Respondent replied "yes" to all these questions (Tr. 51).

Is this the strength of the 4<sup>th</sup> Amendment? That it can protect against unreasonable seizures unless someone is

"concerned" that you "may" do something? Parents involved in custody disputes deserve the same protections as any other American.

The Court's decision requiring review appears in line with the broad authorization by the U.S. State Department, but it is not in line with this court's declaration in *Kent v. Dulles*: "The right to travel is a part of the 'liberty' of which a citizen cannot be deprived without due process of law under the Fifth Amendment."

#### **D. THE REASONABLNESS STANDARD**

When is a seizure reasonable? In *Boyd v. United States*, this court relied heavily on the writings of Lord Camden, and to answer the reasonableness question, those writings are as valuable today. There are three vital points arising from that case:

- 1. THE ABROGATION OF A LIBERTY WITHOUT AN OFFENSE IS AN OFFENSE**  
"It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence,"
- 2. A SEIZURE OF A PASSPORT MAY BE A SEIZURE OF BOTH PERSON AND PROPERTY**  
"Constitutional provisions for the security of person and property should be liberally construed."
- 3. EXTORTION VIA SEIZURE CRIPPLES A PARTY'S PREROGATIVE**  
"Any forcible and compulsory extortion of a

man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation of that judgment."

In this regard, the Fourth and Fifth Amendments almost run into each other. We cannot doubt that when the Fourth and Fifth Amendments to the Constitution of the United States were penned and adopted, the language of Lord Camden was relied on as expressing the true doctrine on the subject of searches and seizures, and as furnishing the true criteria of the reasonable and "unreasonable" character of such seizures."

In my case, had I refused to surrender the passport, it likely would have led to the assumption that I was indeed planning to internationally abscond with my daughter. In order to avoid this testimony against myself, as well as potential criminal accusations, compliance via forfeiture was necessary.

#### **E. THE RIGHT TO TRAVEL**

In *William Worthy, Jr., Appellant, v. United States of America*, the court held that "The right to travel outside the United States is a right which is within the protection of the Constitution."

In *Kent v. Dulles* the court stated: "Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values. Freedom to travel is, indeed, an important aspect

of the citizen's 'liberty.'"

Many similar cases could be quoted from the 1950's on when communism and the cold war gave the United States State Department reason to revoke or refuse passports, making international travel illegal for reporters who visited China or Cuba against state sanction, or citizens with unapproved political views. These cases were decided at a time in history when the state had a great interest in restricting international travel, yet this court bravely stood as a guardian of the individual citizens' liberties.

As the distinction between governmental powers disappear, so too, the most sacred of freedoms vanish by equal proportion. In 1215, the magna carta contained 42 articles but by 1297, it ended at 37. What was lost? Article 42 provided "Anyone can move in and out of England except convicted criminals and people from countries with which England is at war." The evils following the unity of governing powers and its long and bloody history in Europe is well known and in the powers separation this country diverged from the fallacy that caused so great suffering there. Though imperfect and fluctuating, the right to international travel free of onerous governmental restriction was clearly established by 1215 A.D.

**F. HIGHER COURTS ARE UNLIKELY TO SEE THE SCOPE OF THIS ISSUE BECAUSE DOMESTIC VIOLENCE VICTIMS & INDIGENT LITIGANTS ARE COMMONLY AFFECTED, YET OFTEN ARE UNABLE TO SEEK REDRESS BEYOND TRIAL COURTS**

An aggravating factor, and one that may not be readily seen simply for economic reasons, is that many (I would suggest a large majority of those involved in family court, especially women who have entered the family court system seeking protection through a divorce) do not have

the education or resources to appeal or seek any relief beyond the trial court level. Beyond that, many are scared and too ready to submit to authority, however oppressive, racist, patriarchal, or bigoted it may be.

According to the National Coalition Against Domestic Violence, 1 in 3 women have been physically abused by an intimate partner. For 1 in 5, the abuse is severe. 1 in 5 women and 1 in 71 men in the United States have been raped in their lifetime. 1 in 7 women and 1 in 25 men have been injured by an intimate partner. 65% of all murder-suicides involve an intimate partner; 96% of the victims of these crimes are female. And astonishingly on a typical day, local domestic violence hotlines receive approximately 13 calls every minute. In some states, as many as 53% of women experiencing homelessness in 2018 had stayed in a relationship because they did not have any alternative housing available.

While these numbers seem staggering and the statistics clearly evidence a national problem, the statistics that are missing are the correlations between domestic, financial and legal abuse. If an abusive spouse controls the finances in a marriage, they will often use them, as well as the legal assistance they can procure, to assert control through and after a divorce. When trial courts fail to uphold constitutional liberties and the values that created strong families in this nation, we all suffer. Due to the nature of coercive control, as well as domestic and financial abuse and their relationship to family law proceedings, this court may, by nature of the issues, rarely see any indication of the scope of the problem.

## **G. REASONS THIS COURT SHOULD ACT NOW**

1. While this governmental overreach in seizures might be corrected by congress, such a remedy would likely be very slow coming and disparately applied throughout the states making a clear national standard declared by this court preferable.

2. Because the 4<sup>th</sup> Amendment is a federal law, it is this courts place to interpret it and protect those rights secured thereby
3. Because the standard of reasonableness cannot be left so low as to rely on the word of a party with every motive for adverse testimony against another party in establishing an exigent circumstance to justify a warrantless seizure. And if current practice accepts such a standard the acceptance must be contrary to the manifest tenor of the constitution. Then as the Federalist 78: provides

“The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority; such for instance as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice: whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.”

Should the U.S. State Department’s claimed authorities be wielded by the actions of the trial court, the 4<sup>th</sup> Amendment’s protections are nothing more than nice words.

As governmental seizures surge and their usage is necessarily thrust into the limelight, questions about what constitutes reasonableness in their usage are at the forefront of many Americans’ minds. Can a political opponent or his agents with clear motive swear out a

testimony to obtain a warrant? Can an angered ex-spouse do the same? What is the difference? Can the testimony of a party with clear animus be relied on to seize a fundamental right from his adversary?

The right to be secure in one's property and the privileges derived from that security are at the core of any free society. If that right is arbitrarily or unlawfully infringed, it will surely lead to a lack of faith in any government tasked with protecting the same, and the steady degradation of any society follows. If the government may at will, and without reasonable pretext, search or seize property simply because of its inherently greater strength, it has become nothing more than a bully. The province of this court in its role as guardian of the constitution is particularly well suited to address this issue that affects all Americans by delineating a clear standard of fundamental federal law. In closing, the words of the Missouri Constitution Article I - Section 2 summarize a government's duty in this area with excellence by stating "that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design."

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,  
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