No. 22-602

In the
Supreme Court of the United States

ELLIZZETTE MCDONALD,
Petitioner,
v.

SHAWN MCDONALD, ADMINISTRATOR OF
THE ESTATE OF JOHN W. MCDONALD, III,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

BRIEF OF SHAWN McDONALD IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did Petitioner waive her right to have this court hear this case by failing to properly and timely present a federal constitutional claim in state court.

2. Should this Court interfere with the discretion of the elected Illinois legislators who enacted a statute imposing reasonable regulations to determine if it was in the best interests of John McDonald, III, a disabled adult, to enter into a marital relationship?

3. Should this Court grant the writ of certiorari of a case in which Petitioner is precisely the type of person the Illinois statute was designed to prevent from entering into a marriage with a disabled person without following the Illinois statutory procedure to determine if the marriage would be in John McDonald's best interests.

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STATEMENT OF FACTS

In pages 3-23 of the Illinois Supreme Court opinion attached to the Petition for Writ of Certiorari as Appendix A, the pertinent facts of this case relied upon by the Illinois Supreme Court are set forth. For convenience, citations to the Illinois Supreme Court Opinion are indicated as "A" with the corresponding page number. Four additional documents are attached to the Appendix of this brief and cited as Exhibits 1, 2, 3 and 4.

On May 30, 2017, Shawn McDonald ("Shawn"), was appointed plenary guardian over the person and estate of John McDonald, III ("John"). A3. The guardianship order (Ex. 1) was based upon a report from Attorney Fred J. Beer, who served as John's guardian *ad litem* (Ex. 2), and the physician's report from John's doctor, Ramon A. Gonzales. (Ex. 3).

The physician's report authored by Dr. Gonzales (Ex. 3) diagnosed John with bipolar disorder with manic and depressive episodes and severe alcohol use disorder, which impaired John's ability to make reasonable and safe decisions. A4-5. The May 30, 2017, order (Ex. 1) declared John a disabled person who is "totally without capacity" as specified in 755 ILCS 5/11a-3. Coupled with John's refusal to comply with prescribed treatment, Dr. Gonzalez concluded John was a high risk of being hurt by others due to his behavior, or to hurt himself, in addition to not being able to manage his financial affairs. A5.

John retained counsel to contest the guardianship action. On July 6, 2017, the court denied John's motion

to vacate the guardianship order and ordered John to appear at Alexian Brothers Hospital on July 10, 2017, for further evaluation. A6.

On July 11, 2017, without the prior knowledge or consent of his guardian or the Court, John participated in a wedding ceremony with a person who identified herself as Ellizzette Duvall Minnicelli. A3. A marriage certificate was issued on July 17, 2017, indicating John and Ellizzette Duvall Minnicelli were married on July 11, 2017, in Paris, Illinois. No witnesses were listed on the certificate. A7. Shawn first learned John had participated in the marriage ceremony of July 11, 2017, during the contested guardianship hearing on November 16, 2017. A4.

Attorney Anthony Scifo represented John in the contested guardianship proceedings. A12. Attorney Scifo testified he advised John and Ellizzette before July 11, 2017, that the marriage, if it took place, would probably be found invalid. A12. Ellizzette admitted Attorney Scifo had advised her and John before the wedding the marriage might not be valid. A12.

John died by suicide on December 11, 2017. (Ex. 4)

On December 15, 2017, Shawn filed a petition in the circuit court of Kane County, Illinois, seeking letters of administration and on December 19, 2017, the circuit court appointed Shawn as the administrator and declaring John's heirs to be his parents and siblings. A3.

On December 22, 2017, Shawn filed a petition to declare John's marriage invalid because John lacked capacity to consent to the marriage. A3-4. In response

to Shawn's petition, on January 4, 2018, counsel entered an appearance for Ellizzette and moved to vacate Shawn's appointment as administrator. A7-8.

On March 7, 2018, Shawn voluntarily withdrew his petition for declaration of invalidity of the marriage (A8) and filed a response to Ellizzette's motion to vacate his appointment as administrator, asserting John lacked the capacity to enter into a legally valid marriage because he was a disabled ward subject to plenary guardianship, citing sections 11a-17(a-10) and 11a-22(b) of the Illinois Probate Act. A8.

Shawn asserted that marriage is a contract, the marriage contract entered into between John and Ellizzette on July 11, 2017, was void and the marriage invalid. A9. Ellizzette replied asserting Section 11a-22(b) of the Illinois Probate Act was inapplicable to a marriage contract. A9. Thereafter discovery commenced.

Shawn sought discovery and documentation from Ellizzette regarding her identity. A10.

Ellizzette was deposed and shown copies of a marriage license application, marriage license and marriage certificate, each listing Ellizzette Duvall Minnicelli as the bride. A10. Each of the documents indicated Ellizzette Duvall Minnicelli was born in France on March 21, 1964, and she was a "physician scientist". A10-11. Throughout discovery Ellizzette failed to produce any documents to verify any information, nor did she establish her identity as Ellizzette Duvall Minnicelli. A11. She refused to acknowledge a birth certificate suggesting Ellizzette

was born Lisa Ann Blaydes on March 21, 1963, in Cook County, Illinois. A11. She admitted she had been known by other names, i.e., Lisa Blaydes-Zollner, Ellizzette Blaydes Duvall, Ellizzette Anne Maureen Minnicelli, Ellizzette A.M. Duvall and Ellizzette Anne Maureen McDonald. A11-12. She did not provide any evidence of marriages, divorces or applications for name changes. A12. At no time did Petitioner establish her true identity.

After Ellizzette's deposition, Shawn petitioned the court for an order requiring Ellizzette to submit to fingerprinting so her identity could be established. A12. The court ruled Ellizzette would be required to submit to fingerprinting if she continued to pursue her petition to be named administrator of the estate. A13.

On November 20, 2018, the court took judicial notice of the marriage documents. A14. The court also ordered Ellizzette to present herself at the Sheriff's office within 60 days for fingerprinting. A14. After three attempts to obtain fingerprints, no usable prints were ever acquired. A14.

On February 13, 2019, Shawn filed a request that the court take judicial notice of a Doximity file on an account for Ellizzette Duvall. A15. Doximity is an on-line networking service for medical professionals. According to Doximity's findings, Ellizzette's professional file could not be substantiated, therefore her account was deemed a fake. A15.

On February 15, 2019, Ellizzette's counsel withdrew. A14-15.

On March 18, 2019, Ellizzette filed her pro se appearance. A16. On April 10, 2019, Ellizzette's previous counsel filed a new appearance on her behalf but withdrew for a second time on September 18, 2019. A16.

In August 2019, Shawn moved the court to take judicial notice of court records indicating on November 26, 2001, felony charges were brought against Ellizzette Duvall a/k/a Lisa Blaydes in New York for falsifying business records, unauthorized use of a professional title and forgery based upon Petitioner misrepresenting herself as a doctor. A16. She pled guilty to misdemeanor forgery. A16. On October 23, 2019, the court granted the motion taking judicial notice of the New York state court documents. A16.

The trial proceeded on November 18, 2019. A17.

At the trial, the only issue was Petitioner's claim she was John's surviving spouse and sole heir. A18.

The trial court granted a directed finding for Shawn and against Petitioner, stating the issue was "the validity of the marriage, the ceremony, the contract, and whether such a marriage – if it was conducted according to Illinois law, or could have been conducted under the Probate Act when it happened – if it happened." A22. The court then stated that the minimum relevant evidence necessary to establish a *prima facie* case of a valid marriage was "a valid application for a marriage license, a ceremony performed in Edgar County and witnessed by two witnesses." A22. The court then concluded that, as a matter of law, Petitioner did not present a *prima facie*

case of a valid marriage. Specifically, the court held the marriage was not properly witnessed nor licensed and that no best-interest determination was made by the Probate Court. A23. The Illinois Appellate Court reversed the trial court (2021 ILApp(2d) 19113). The Illinois Supreme Court reversed the Appellate Court (2022 IL 126956), and concluded Petitioner was never the spouse of John McDonald, III.

REASONS FOR DENYING PETITION

I. Petitioner Waived Her Right to Have this Court Hear This Case by Failing to Properly Present a Federal Constitutional Claim with Fair Precision and in Due Time in State Court.

In her Petition for Writ of Certiorari, Petitioner identifies the question presented as whether a state statute impermissibly interferes with the fundamental rights of a ward to marry under the Equal Protection and Due Process clauses of the Fourteenth Amendment. No state court ever addressed the federal claim Petitioner is asking this Court to decide.

The words "Equal Protection, Due Process Clause and Fourteenth Amendment" do not appear a single time in the Illinois Supreme Court Decision (2022 IL 126956); the Second District Appellate Court Decision (2021 ILApp(2d) 19113); or in the trial court. The first time Petitioner advanced the argument the state statute impermissibly interfered with John's right to marry was in her cross reply brief filed in the Illinois

Supreme Court on September 22, 2021.[1] The constitutional issue raised in the Petition for Writ of Certiorari was never raised in the trial court, nor at any time in the Appellate Court. There are no references to the constitutional issue raised in the petition for Writ of Certiorari in the Appellate Court brief she filed on June 3, 2020, or her reply brief filed on August 26, 2022. Likewise, the constitutional issue raised in the Petition for Writ of Certiorari was not mentioned in her initial brief filed with the Illinois Supreme Court on August 4, 2021. The fact is, Petitioner failed to properly present a constitutional claim with fair precision and in due time in state court, which is why the state courts never addressed any constitutional claim. The federal issue petitioner asks this court to decide was not pressed and passed on by the state court, so the petition should be denied. *Bankers Life Casualty v. Crenshaw*, 486 U.S. 71 (1988). By not affording the state court the opportunity to decide the constitutional claim until the case had been decided impugns the Illinois Supreme Court's undeniable interest in construing an Illinois statute.

Certiorari jurisdiction over decisions from State courts emanates From 28 USC par. 1257. And, as this court stated in interpreting that statute, " . . . But it is also the settled practice of this court, in its exercise of appellate jurisdiction that it is only in exceptional cases, and then only in cases coming from federal courts, that it considers Questions urged by a petitioner or appellant not pressed or passed Upon in

[1] Copies of the Illinois Appellate Court and Illinois Supreme Court briefs are available on Westlaw.

the court's below . . . In cases coming from state courts in which a state statute is assailed as unconstitutional there are reasons of peculiar force which lead us to refrain from deciding questions not presented or decided in the highest court of the state whose judicial action we are asked to review. Apart from the reluctance which every court should have to set aside legislation as unconstitutional on grounds not properly presented, due regard for the appropriate relationship of this court to state courts requires us to decline to consider and decide questions affecting the validity of state statutes not urged or considered there. It is for these reasons that this Court, where the constitutionality of a statute has been upheld in the state court, consistently refuses to consider any grounds of attack not raised in that court . . ." *McGoldrick v. Compagnie Generate Transatlantique*, 309 U.S. 430, 434-435 (1940).

The admonition in that opinion applies here. The Illinois Supreme Court upheld the best interest requirement of a state statute applicable to guardianship proceedings. It was not asked to construe any federal constitutional claim. Petitioner never challenged the court's ruling on the grounds she advances after the ruling was made.

Finally, 28 USC ¶1257 serves the important interest of comity. This Court has observed that it would be untoward in our dual system of government to alter the finality of state judgments on a federal ground that the state court did not have the occasion to consider. *Webb v. Webb,* 451 U.S. 493, 500 (1981). The rule afford state courts with the opportunity to consider

the constitutionality of state officials' actions and equally important proposed changes that could obviate any challenges to state action. *Adams v. Robertson,* 520 U.S. 83, 90 (1997).

This Court should adhere to the rule in reviewing state court judgments under 28 USC §1257, and deny the Petition for Writ of Certiorari because Petitioner's federal claim was not addressed or properly presented to the state court that rendered the decision this Court was asked to review. *Adams v. Robertson*, 520 US 83, 86-88 (1997).

II. This Court Should Not Interfere with the Decision of the Elected Illinois Legislature Who Enacted a Statute Imposing Reasonable Regulations Before a Ward Can Marry.

Historically, this Court has a constitutional policy that leaves domestic relation laws largely to the discretion of the elected state legislatures. The reason the federal government has deferred to the state law policy is that states, at the time of the Constitution's adoption, possessed full power over the subject of marriage and divorce . . . and the Constitution delegated no authority to the government of the United States on the subject of marriage and divorce. The Constitution says nothing about marriage. *Haddock v. Haddock*, 201 U.S. 562, 575 (1906). The significance of state responsibilities for the definition and regulation of marriage dates to our Nation's beginnings. When the Constitution was adopted, the common under-standing was that the domestic relations of husband and wife and parent and child were matters reserved to the

states. *State of Ohio, ex.rel. Popovici v. Agler*, 280 U.S. 379, 383-384 (1930).

Consistent with this allocation of authority, this Court, throughout history, has deferred to state law policy decisions with respect to domestic relations. *Moore v. Sims*, 442 U.S. 415 (1979). As Justice Rehnquist observed in *Moore*, "State courts are the principal expositors of state law". The state of Illinois' policy – to protect disabled adults - has evolved from *Karbin v. Karbin, ex.rel., Hibler*, 2012 IL 112815, a judicial rule, which the Illinois General Assembly adopted in the current best interest law. The policy is clear and provides for a judicial hearing on whether it is in the best interests of a disabled adult to marry.

The recognition of civil marriage is central to state domestic relations laws applicable to its residents and citizens and their elected representatives. *Williams v. North Carolina*, 317 U.S. 287, 298 (1942). Each state, as a sovereign, has a rightful and legitimate concern in the marital status of persons domiciled within its borders. The definition of marriage of the foundation of the state's broader authority to regulate the subject of domestic relations with respect to the protection of offspring, property interests, and the enforcement of marital responsibilities. *Ibid.*

Several times throughout history, this Court has gotten involved in cases to determine whether the state laws or regulations defining and regulating marriage impermissibly interfered with the constitutional rights of persons to marry. Those instances are not similar to the present case. The cases in which this Court has elected to issue opinions involved a statute prohibiting

persons from getting married because they were an interracial couple (*Loving v. Virginia*, 388 U.S. 1 (1967)); a statute prohibited a groom from being married if he was not current in paying child support (*Zablocki v. Redhail*, 434 U.S. 374 (1978)); a prison regulation preventing inmates from getting married (*Turner v.* Safely*,* 482 U.S. 78 (1987))*;* and statutes refusing to acknowledge the validity of same-sex marriages (*Obergefell v. Hodges*, 576 U.S. 644 (2015)).

Marriage has always been subject to the control of state legislatures . . . rights under it are determined by the will of the sovereign as evidenced by law. *Maynard v. Hill*, 125 U.S. 190, 205, 211 (1888). This Court has ruled that the government may impose reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship. *Zablocki v. Redhail*, 434 U.S. 374, 386 (1978).

In the present case, when John McDonald was declared incompetent by the court because of his mental condition, John became entitled to heightened protection.

The essence of a guardianship under Illinois law is to protect the most vulnerable members of our society from neglect, exploitation, and abuse. 755 ILCS 5/11a–3 (b). John McDonald was one such individual. The law harbors vigilance for those who need it most. Only when a best interest determination as to a ward's decision to marry is required, can this promise of prudent protection be kept while simultaneously preserving the integrity of marriage and safeguarding family relationships.

In Illinois, the promise of vigilant protection originates from the fact disabled individuals are recognized and viewed as a "favored person in the eyes of the law". *Karbin v. Karbin, ex rel. Hibler*, 2012 IL 112815, ¶45 (quoting *In re Mark W.*, 228 Ill.2d 365, 374-375 (2008)). At issue in *Karbin* was whether a guardian had standing under the Illinois Probate Act to institute marital dissolution proceedings on behalf of the ward. *Id*. Similar to Shawn's appointment as plenary guardian of his brother John, the guardian in *Karbin* also served in a dual capacity over her mother's person and estate. *Id*. at ¶22. The analysis in *Karbin* commenced with an overview of the Illinois Probate Act's adult guardianship provisions noting a guardian is required to act in the ward's best interests in all instances with the guardianship to be utilized only as necessary to promote the well-being of the disabled person, to protect him from neglect, exploitation, or abuse. *Id*. at ¶12.

The outcome in *Karbin* was justified by noting the difficulty accepting the view that the decision to divorce is qualitatively different than the other deeply personal decisions a plenary guardian has the decision-making capability of, such as the decision to refuse life-sustaining treatment or the decision to undergo involuntary sterilization, both of which can rarely be undone. *Id*. at ¶42. Whereas with respect to the decision to divorce, a disabled adult could regain competency making remarriage to the former spouse possible. *Id*. Such is the case here, where John could have regained competency dispensing with the need for a best interest hearing prior to entering into marriage with Ellizzette.

In direct response to this Court's decision in *Karbin*, the Illinois Legislature enacted §11a-17(a-10) in the Illinois Probate Code. 2014 Ill. Legis. Serv. P.A. 98-1107 (S.B. 2954) (WEST). The section is directed toward the scenario of a ward who seeks to marry another while under a guardianship and provides as follows:

> Upon petition by the guardian of the ward's person or estate, the court may authorize and direct a guardian of the ward's person or estate to consent, on behalf of the ward, to the ward's marriage pursuant to Part II of the Illinois Marriage and Dissolution of Marriage Act if the court finds by clear and convincing evidence that the marriage is in the ward's best interests. In making its determination, the court shall consider the standards set forth in subsection (e) of this Section. Upon presentation of a court order authorizing and directing a guardian of the ward's person and estate to consent to the ward's marriage, the county clerk shall accept the guardian's application, appearance, and signature on behalf of the ward for purposes of issuing a license to marry under Section 203 of the Illinois Marriage and Dissolution of Marriage Act. 755 ILCS 5/11a-17(a-10).

The Illinois General Assembly's heightened concern for the security of a ward is illustrated through the requirement of clear and convincing evidence as the quantum of proof as to determining whether a marriage would be in the ward's best-interest. The burden of proof is the equivalent of showing such

evidence that leaves no reasonable doubt in the mind of the trier of fact. *Matter of Larimore's Estate*, 64 Ill.App.3d 470 (1978).

Although the facts of *Karbin* involved the decision of a disabled ward to divorce, John's decision to marry is indistinguishable. Like the decision to divorce, the decision to marry is among the most significant undertakings a person makes in their life. The decision carries with it a wide range of repercussions and consequences involving rights, duties and responsibilities. The prospect of financial exploitation, physical or emotional abuse, and neglect can be the unfortunate end-product of such decisions hastily made without careful, prior examination. This risk is magnified when one of the parties seeking to get married is subject of a plenary guardianship and the plenary guardian and court are not involved in the decision making. Longstanding family relationships such as the ones John's parents and siblings shared with him can be upended and usurped by another claiming to be the spouse and rightful heir to the disabled ward's estate. Scenarios such as these are precisely what a plenary guardianship seeks to avert. 755 ILCS 5/11a-18; 755 ILCS 5/11a-22. By enacting 755 ILCS 5/11a-17(a-10), the Illinois General Assembly created a procedural tool for courts in Illinois to prevent such devastating outcomes and ensure the consequential decision to marry would first involve carefully examining whether embarking on such a course is in the ward's best-interest. 755 ILCS 5/11a-17(e).

The Illinois requirement of a best-interest hearing not only endorses this declaration of safeguarding a ward into practice, it strengthens and preserves the integrity of marriage and safeguards family relationships which is also the stated purpose of the Illinois Marriage Act. 750 ILCS 5/102(2).

Illinois, for good reasons, created the requirement of a best interest hearing before wards can marry. The Illinois procedure is a reasonable process designed to protect wards which does not significantly interfere with ward's decisions to enter into the marital relationship. As acknowledged by this Court many times before, one of the principal areas in which this Court has customarily declined to intervene is the realm of domestic relations. *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 12 (2004). This Court should defer to the discretion of the Illinois elected legislature and deny the Petition for Writ of Certiorari.

III. Petitioner Is Precisely the Type of Person the Illinois Statute Was Designed to Prevent from Entering into a Marriage with a Disabled Person Without Participating in the Statutory Best Interest Hearing.

As set forth in Section II of this brief, Illinois has a paramount interest in reasonably doing what it can to protect its wards from neglect, exploitation, and abuse. 755 ILCS 5/11-a-3. One of the things done by the Illinois legislature to protect its wards was to pass a statute calling for a best interest hearing before a disabled person can marry. 755 ILCS 11a-17(a-10).

Discovery obtained during the lawsuit resulted in Petitioner failing to prove her identity. The falsehoods contained in the marriage documents submitted by Petitioner, of which the trial judge took judicial notice, were notable. Petitioner's name, birth year and place of birth listed on the marriage documents were all inconsistent with the information listed on her birth record obtained from the Cook County Clerk. She was born with the last name "Blaydes", not Duvall; She was born in 1963, not 1964; she was born at Holy Family Hospital in DesPlaines, Illinois, not Lyon, France. Her listed occupation as a physician scientist was a lie for which she was prosecuted in New York for falsely representing herself as a doctor. Even the location of the purported ceremony occurring in Paris, Edgar County, Illinois, was invented. The wedding officiant testified he had no knowledge of a person by the name of Ellizzette Duvall Minnicelli, which was the name appearing on the marriage license application he purportedly signed.

Falsifying factual information on a marriage license related to a person's name, date of birth, place of birth, occupation and location of the purported marriage does not strengthen and preserve the integrity of the marriage and safeguard family relationships which is the stated purpose of the Illinois Marriage Act. 750 ILCS 5/102(2).

The vigilant protection wards are entitled to during their life naturally extends to their estates. *In Re Estate of Wellman,* 174 Ill.2d 335, 348 (1996). It cannot be disputed that John, given his mental limitations, needed his guardian to protect him.

The April, 2017 Guardian *ad litem* report of Attorney Fred Beer(Ex. 2) is telling, thorough, and disregarded by Petitioner. Not only does it memorialize the saga of John's substance abuse and mental health challenges, but clearly states that John agreed he needed a guardian. Also, the timeline (2014-2017) created by the then Guardian, now Administrator, of John's conduct manifests his brother's severely troubled history of addiction, extravagant spending, and the fact he had not been employed in many years (Ex. 2). Together, these two records, in conjunction with the physician's report of Dr. Gonzalez (Ex. 3), make it evident that a guardianship was a necessity and in John's best interest.

Petitioner, apparently, asks this Court to invalidate an Illinois statutory scheme that safeguards a disabled adult's decision to enter into a marriage contract. Such a request is illusory. Petitioner had the ability to comply with the statute's best interest hearing requirement before she entered into any purported marriage ceremony with John. John's attorney, Anthony Scifo told her and John that any marriage they entered into after the guardianship order was entered was probably invalid. She ignored that advice. Petitioner's calculated conduct and multiple personages in her interaction with a disabled adult, a person the Illinois statute and guardianship sought to protect, could never give rise to a federal constitutional claim.

Shawn, as Administrator argued in the Illinois Supreme Court the efficacy of this Court's opinion in *Zablocki v. Redhail* (1978) 434 U.S. 374. Justice Marshall succinctly opined that every state regulation

(like the Illinois best interest statute) which relates to the incidents and prerequisites to a valid marriage must not be subjected to rigorous scrutiny. He stated, ". . . Reasonable regulations that do not significantly interfere with decisions to enter the marital relationship may be legitimately imposed. . ." *Zablocki*, at 374, 386.

The Illinois statue requiring a "best interests" standard is a reasonable rule since it not only addresses the needs of a disabled adult with limited, if any, decision making ability, but also permits a marriage to occur if a judicial officer, after an evidentiary hearing, finds that a marriage is in the disabled adult's best interest. This policy was previously created, and therein endorsed, by the Illinois Supreme Court in *Karbin*. The Illinois statue adopted the *Karbin* protocol. The focus of the statute is that a knowing, voluntary act is undertaken which benefits the disabled adult.

Given the remarkable scheme of Petitioner to hide and conceal her background, it is not surprising Petitioner ignored the advice of Attorney Scifo and proceeded to participate in the marriage ceremony, knowing the marriage would likely be deemed invalid. If Petitioner's background had been introduced into evidence at a best interest hearing, 755 ILCS 5/11a-17(a-10), could Petitioner reasonably have expected any judge would approve of the marriage as being in John's best interest? Of course not.

Petitioner's argument that wards are prohibited from getting married because the statute requires the guardian to request the best interest hearing is not

entirely accurate. If John wanted to marry Petitioner and his guardian refused to ask for a best interest hearing, John or Ellizzette could have filed a motion to modify the guardianship pursuant to 755 ILCS 5/11a-19 or communicated with the court or judge by any means, including but not limited to informal letter, telephone call or a visit to investigate whether the termination of guardianship was appropriate. 755 ILCS5/11a-20.

It is hard to imagine a factual situation which cries out louder for the need of a best interest hearing prior to a marriage.

Based upon the facts of this case, this Court should deny the Petition for Writ of Certiorari.

CONCLUSION

This Court should deny the Petition for Writ of Certiorari because:

1. Petitioner waived her federal claims by failing to properly present the federal claims in state court;

2. Marriage has always been subject to the control of the state legislatures and the Illinois Probate statute does not unreasonably interfere with the decision of a ward to enter into a marital relationship.

3. John McDonald was disabled and in need of a plenary guardian and from a factual standpoint, John was in the classic situation of a ward who needed a best interest hearing before being allowed to marry Petitioner.

WHEREFORE, the Respondent, Shawn McDonald, respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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