No. _____

In The
Supreme Court of the United States

D. B.,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,
In the Interest of Minor Child: L. B.,
and Concerning B. B.,

Respondent.

On Petition for Writ of Certiorari to the
Colorado Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Colorado law permits courts to join certain non-parents as parties in child welfare cases as "special respondents," even without their consent, which requires their participation in such cases and compliance with court orders. The question presented is:

Can the Colorado appellate courts constitutionally deny such special respondents the right to appeal adverse judgments?

PARTIES

D.B. is a natural person and L.B.'s biological maternal grandmother.

L.B. is a minor child.

B.B. is a natural person and L.B.'s biological mother.

People of the State of Colorado is the government of the state of Colorado and refers to the Teller County Department of Human Services, who are represented by the county attorney's office of that county.

RELATED PROCEEDINGS

People in Interest of L.B., No. 2018JV08, District Court, Teller County, Colorado. Judgment entered January 12, 2021.

People in Interest of L.B., No. 2021CA163, Colorado Court of Appeals, Division II. Judgment Entered June 30, 2022.

D.B. v. People in Interest of L.B., No. 2022SC630, Colorado Supreme Court. Judgment Entered September 26, 2022.

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The order of the district court is not reported. The opinion of the Colorado Court of Appeals was not selected for publication and is thus not reported. The order of the Colorado Supreme Court denying a petition for a writ of certiorari is not reported.

STATEMENT OF JURISDICTION

The Supreme Court of Colorado denied a timely petition for writ of certiorari on September 22, 2022. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. XIV, § 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."

Colo. Rev. Stat. Ann. § 19-1-103(129) (West 2022): "'Special respondent', as used in article 3 of this title 19, means any person who is not a parent, guardian, or legal custodian and who is voluntarily or involuntarily joined in a dependency or neglect

proceeding for the limited purposes of protective orders or inclusion in a treatment plan and for the grounds outlined in sections 19-3-502(6) and 19-3-503(4)."

Colo. Rev. Stat. Ann. § 19-3-502(6) (West 2022): "A person may be named as a special respondent on the grounds that he resides with, has assumed a parenting role toward, has participated in whole or in part in the neglect or abuse of, or maintains a significant relationship with the child. Personal jurisdiction shall be obtained over a special respondent once he is given notice by a service of summons and a copy of the petition or motion describing the reasons for his joinder. A special respondent shall be afforded an opportunity for a hearing to contest his joinder and the appropriateness of any orders that affect him and shall have the right to be represented by counsel at such hearing. At any other stage of the proceedings, a special respondent may be represented by counsel at his own expense."

Colo. Rev. Stat. Ann. § 19-3-503(4) (West 2022): "The court on its own motion or on the motion of any party may join as a respondent or special respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. Any party to the action may request the issuance of compulsory process by the court requiring the attendance of witnesses on his own behalf or on behalf of the child."

STATEMENT OF THE CASE

Specification Where Federal Questions were Raised

Because this Petition asks this Court to review when a party has a right to appeal, D.B. (Grandmother) did not raise any federal issue in the trial court. Grandmother did not know at that time that she would appeal or would need to appeal, and she makes no argument that she was denied any right to participate in the trial court proceeding contrary to federal law.

Similarly, because Grandmother believed state law did or should have permitted her to appeal, she litigated the appeal in the Court of Appeals on state law grounds, and her appeal was dismissed summarily in only a few sentences. App. A4. Grandmother asked the Court of Appeals to reconsider its Opinion on state law grounds, but the Court declined to do so. *See* Petition for Rehearing, *People in Interest of L.B.*, 2021CA163 (Colo. App. July 5, 2022).

When the Colorado Court of Appeals refused to hear Grandmother's motion on state law grounds, she asked the Colorado Supreme Court to grant a writ of certiorari. As part of that petition, Grandmother cited *Rinaldi v. Yeager*, 384 U.S. 305 (1966), for the proposition that the Colorado Court of Appeals' summary dismissal of Grandmother's appeal violated the Fourteenth Amendment of the Constitution of the United States. *See* Petition for Writ of Certiorari at 24–25, *D.B. v. People in Interest of L.B.*, 2022SC630 (Colo. Aug. 29, 2022). Grandmother stated:

> "This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966).
>
> Because the General Assembly has created a statutory right to appeal in dependency and neglect cases, such appeals must satisfy due process and equal protection. The appellate courts must not arbitrarily slam their doors on all grandparents. While some non-parents may not have standing to appeal for different reasons, simply categorizing Grandmother as a non-parent is insufficient. She has a legally protected interest in the outcome, here, and the trial court's errors injured her, specifically. Like any other party aggrieved by any court order, Grandmother should have her day in the appellate court.

Grandmother thus timely raised the federal question that she now poses to this Court.

Facts Material to Consideration of the Question Presented

This case is a dependency and neglect case out of Teller County, Colorado. Teller County's department of human services (Department) opened a case about

L.B. (Child) and B.B. (Mother). App. A3. The Child had a rare genetic disorder, and the Department did not believe that Mother could meet the child's needs. *Id.* Moreover, the Department had concerns that the home was "hazardous" and unsafe for the Child and her older sister. *Id.*

Grandmother was included as a "special respondent" in the initial documents, including the Petition in Dependency and Neglect and Summons. CF, pp. 21, 25–29.[1]

Grandmother actively participated in the Child's life and the case. She had been at the hospital trying to learn how to care for the child and to support Mother in her care for the child. CF, pp. 55–58. Grandmother sought and received certification as a Certified Nursing Assistant so she could care for the Child properly. TR (06/25/2020), p. 59:12–13. She even began caring for other patients who had similar medical needs to the Child's. TR (11/12/2020), pp. 103:4–6, 105:9–13. And she resolved the alleged hazards in the home. TR (06/25/2020), pp. 97:15–24, 179:24–180:1; TR (07/24/2020), p. 10:8–13. In other words, Grandmother – through her own treatment plan – resolved the safety concerns in the home and demonstrated that she had the ability to care for the Child's unique medical needs. TR (07/15/2020), p. 56:5–18. The government never removed the Child's older sister from Mother and Grandmother's care. CF, pp. 71–73, 155–58, 402. And when Grandmother asked the government what else she could do to bring the Child home, the caseworker deliberately ignored her. TR (11/12/2020), pp. 79:19–80:10.

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[1] This Petition refers to documents in the underlying court record using "CF" for the Court File and "TR (date)" for any transcript.

Thus, almost three years after the government filed the petition bringing the Child into the foster care system, it moved for and was granted a termination of Mother's rights, severing Grandmother's legal ties to the Child, too. App. A4.

Grandmother appealed. She argued that the trial court erred under state law when it: (1) did not place the Child with her; (2) did not require the Department to use reasonable efforts to reunify her family; (3) did not provide her an appropriate treatment plan; and (4) did not provide her with due process. Opening Brief at 24–47, *People in Interest of L.B.*, 2021CA163 (Colo. App. June 8, 2021).

Both the government and the Guardian ad Litem (GAL) argued that Grandmother lacked standing to appeal. Guardian ad Litem's Combined Answer Brief at 21–23, *People in Interest of L.B.*, 2021CA163 (Colo. App. Aug. 27, 2021); Answer Brief at 28–30, *People in Interest of L.B.*, 2021CA163 (Colo. App. Aug. 27, 2021).

Grandmother responded, arguing that she had standing to pursue her claims. Reply Brief at 8–16, *People in Interest of L.B.*, 2021CA163 (Colo. App. Sept. 10, 2021). She argued that she had separate legally protected interests from Mother because as a "special respondent" with her own treatment plan, she had a right to challenge the appropriateness of that treatment plan. *Id.* at 9–13. And Grandmother clarified that the issues she raised regarding the Department's lack of effort to reunite her family were specific interests of hers, as were her due process concerns. *Id.* at 13–17. In other words, Grandmother appealed based on the ways the trial court aggrieved her, not how it aggrieved Mother. *Id.* Grandmother's analysis specifically distinguished state law precedent and explained why this case was different.

After briefing and oral argument, the Colorado Court of Appeals dismissed Grandmother's appeal. Its entire analysis was:

> We conclude that maternal grandmother lacks standing to raise the issues on appeal pertaining to the termination of mother's parental rights. *See People in Interest of C.N.*, 2018 COA 165, ¶¶ 7–11; *see also Arapahoe Cnty. Dep't of Human Servs. v. People in Interest of D.Z.B.*, 2019 CO 4, ¶¶ 10–11 (even though the foster parents had a statutorily granted right to participate in the termination hearing as intervenors, they lacked standing to appeal the termination judgment); *C.W.B., Jr. v. A.S.*, 2018 CO 8, ¶¶ 19, 26. The maternal grandmother has not suffered an injury in fact to a legally protected interest because of the termination judgment. *See id.* at ¶¶ 18, 26. Therefore, we dismiss her portion of the appeal.

App. A4.

Grandmother petitioned for rehearing and was denied. Petition for Rehearing, *People in Interest of L.B.*, 2021CA163 (Colo. App. July 5, 2022); Order Denying Petition for Rehearing, *People in Interest of L.B.*, 2021CA163 (Colo. App. Aug. 18, 2022).

Grandmother then asked the Colorado Supreme Court to hear the case. *See* Petition for Writ of Certiorari, 2022SC630 (Colo. Aug. 29, 2022). She argued that the Colorado Court of Appeals erred when it summarily dismissed her appeal, both for state and federal law reasons. *Id.* at 17–27. The

Colorado Supreme Court denied Grandmother's Petition. App. A1.

This Petition followed.

ARGUMENT FOR GRANTING THE WRIT

This Court has not decided, in the context of child welfare cases, which parties must be provided equal appellate access. Supreme Ct. R. 10(c). Though this issue has not been squarely decided by this Court, Colorado's decision conflicts with the reasoning of this Court's related decisions. *Id.* The Colorado court's decision to deny Grandmother (and, by extension, all special respondents) access to the appellate courts violates the Fourteenth Amendment's guarantee of equal protection and due process.

A. Colorado's decision to deny appellate review to non-parents violates the Equal Protection Clause

Once a state establishes an appellate process, that process "must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." *Rinaldi*, 384 U.S. at 310–11. But an unreasoned distinction divides "special respondents" from "respondents" in child welfare cases by allowing the latter to appeal but not the former. The Colorado courts' decision to provide a right to an appeal to parents in child welfare cases – and even pay for their lawyers – while closing the courthouse doors to special respondents fails the *Rinaldi* test. There is no rational basis for such a distinction, at least as it relates to special respondents. This arbitrary division also raises substantial due process concerns. And it undermines

the state government's own stated purpose in the child welfare court system. Accordingly, the Colorado Court of Appeals denied Grandmother equal protection of the laws when it summarily dismissed her appeal.

1. There is no rational basis to treat special respondents differently from parents for the purpose of appellate standing

The Colorado Court of Appeals should not have treated Grandmother's standing to appeal differently from a parent's standing. There was no rational basis to do so. Grandmother, here, does not argue that she falls into a suspect class, so she agrees that this Court will review her claim under the "rational basis" test. This Court should thus determine whether the classification between parents and special respondents for the purpose of appeal "rationally advances a reasonable and identifiable governmental objective." *Schweiker v. Wilson*, 450 U.S. 221, 235 (1981). It does not.

The state court cited no cases that justify the distinction between parents and special respondents. Indeed, the cases on which the Colorado Court of Appeals relied do not fit these facts. *People in Interest of C.N.*, 431 P.3d 1219, 1222–23 (Colo. App. 2018) addresses a non-parent's standing to assert the rights of a parent and a child. And that party lacked standing to assert the rights of others. *Id.* The state court thus dismissed her appeal. *Id.* Not so, here.

Grandmother does not invoke Mother's rights on appeal. Grandmother challenged the reasonableness of her own treatment plan and the government's efforts to reunify the Child with her family. And ultimately, she challenged an order that severed her

legal relationship with her grandchild. Thus, accepting the rationality of the standing doctrine, the decision to close the doors to Grandmother, here, does not rationally advance that interest.

Grandmother was in the best position to remedy her own aggrievement. The government made Grandmother a party. She asserted nobody's rights but her own. The Colorado Court of Appeals should have permitted her to do so. The reasoning of *C.N.*, therefore, does not rationally explain why Grandmother could not appeal her case.

Arapahoe Cty. Dep't of Human Servs. v. People in Interest of D.Z.B., 433 P.3d 578, 580–81 (Colo. 2019) similarly does not justify the line that the state court drew. In *D.Z.B.*, the court answered a question about whether a child welfare agency could appeal a decision in a case in which it was not a party. *Id.* at 579–81.

Again, accepting that standing analysis is rational, the *D.Z.B.* facts do not support also ousting special respondents from the appellate courts. Grandmother was a party to the case from the day the government filed the pleadings. She was subject to court orders and could be compelled to comply with them. The non-party agency in *D.Z.B.* was neither. A non-party agency is not analogous to an involved grandparent. Thus, *D.Z.B.* does not rationally distinguish between parents and special respondents for the purpose of appellate standing.

Finally, the state court cited *C.W.B., Jr. v. A.S.*, 410 P.3d 438, 444–45 (Colo. 2018), which determined that foster parents lack a legally sufficient injury to entitle them to an appeal the trial court's denial of a motion to terminate a biological parent's rights. Foster parents, unlike biological parents, have only speculative potential rights in the outcome of a

termination of parental rights hearing.[2] *Id.* at 445–46. And they participate in the trial court mainly to provide the trial court with information it might not otherwise have. *Id.*

Grandmother differs from foster parents. Foster parents may but need not intervene in cases. Colo. Rev. Stat. Ann. § 19-3-507(5)(a) (West 2022). By contrast, special respondents may be dragged into cases involuntarily. Colo. Rev. Stat. Ann. § 19-3-503(4) (West 2022). And a special respondent's relationship with the child must be a preexisting relationship; a special respondent is someone who "resides with, has assumed a parenting role toward, has participated in whole or in part in the neglect or abuse of, or maintains a significant relationship with the child." Colo. Rev. Stat. Ann. § 19-3-502(6) (West 2022). Such parties participate, in part, to assist in the law's stated goal of family reunification. Colo. Rev. Stat. Ann. § 19-1-102(1) (West 2022).

Foster parents, by contrast, enter families' lives because of the government's involvement. And if a child ends up in non-kin foster care permanently, that means the goal of reunification has failed. A foster parent's more limited connection with a child thus justifies limitations on their procedural rights. That distinction is, thus, rational.

That same distinction does not exist between special respondents and respondents. So limiting special respondents' access to an appeal is irrational.

Before the government was involved in this family, Grandmother was. She helped Mother raise

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[2] Terminating a parent's rights does not necessarily confer upon a foster parent the right to adopt. Such an order merely ends the legal relationship with the biological parent and permits an adoption to proceed.

her older daughter, and Grandmother and Mother lived together. Grandmother helped Mother meet the Child's needs when Mother could not. In short, Grandmother acted as a parent, had a preexisting relationship with the Child, and thus had an individual interest in the preservation of her family. That distinguishes her from foster parents, who volunteer to participate in these cases and who may intervene in the trial court for only limited purposes.

It is true that special respondents also have a limited role in child welfare cases. Special respondents are joined "for the limited purposes of protective orders or inclusion in a treatment plan." Colo. Rev. Stat. Ann. § 19-1-103(129) (West 2022). This limitation, however, is, itself, distinguishable from the limitation on foster parents' participation. While foster parents' primary role in a courtroom is the provision of information, special respondents have a deeper role, including by participating in treatment and rehabilitative services.

In the Colorado Court of Appeals, Grandmother challenged the appropriateness of her treatment plan. Foster parents, by contrast, do not have a statutory provision for participation in treatment and thus do not have the same interests in the appropriateness of such plans. Excluding foster parents from appeal, therefore, has a rationality that excluding special respondents lacks.

Thus, contrary to this Court's precedent, the distinction between respondent parents (like Mother, who may appeal) and special respondents (like Grandmother, who may not) is unreasoned even under Colorado's own case law. The state court has created an arbitrary barrier between Grandmother and the appellate courts even when a parent facing similar rulings would have access to an appeal.

The government may argue that the difference between Mother and Grandmother for the purpose of appeal is meaningful because Mother has fundamental rights under the Constitution that Grandmother lacks. *See Troxel v. Granville*, 530 U.S. 57, 66–67 (2000). But for the purpose of standing to appeal, the difference between Mother's and Grandmother's substantive rights is immaterial.

Mother's and Grandmother's rights are not in conflict. So unlike cases in which a court must compare the fundamental right of a parent with the interest of a non-parent (such as *Troxel*), no such comparison must be made here at all. This Court need not weigh Mother's rights against Grandmother's interests to decide the issue.

The standing analysis also does not rely on the substantive difference between Mother's fundamental rights and Grandmother's interests. Standing asks, "who can bring which claims?" rather than, "whose rights ultimately prevail?" *See Hickenlooper v. Freedom from Religion Found., Inc.*, 338 P.3d 1002, 1008–09 (Colo. 2014). Indeed, the Colorado Supreme Court has drawn this line in the family law context. In *In Interest of B.B.O.*, 277 P.3d 818 (Colo. 2012), the Colorado Supreme Court considered whether *Troxel* required parental consent to a non-parent's caretaking before a non-parent could bring a domestic relations case. Such a requirement was not mandatory. *Id.* at 822–23. The Colorado Supreme Court determined that the *Troxel* presumption in favor of a fit parent would apply at the substantive stage of the hearing – when deciding how to allocate parental responsibilities – not at the standing stage. *Id.* So too here.

The Colorado Court of Appeals should have agreed. Grandmother need not be excluded from the

appellate court just to preserve Mother's fundamental rights. And since the trial court injured grandmother's own interests, the appellate courts harm her by excluding her without a corollary benefit to Mother. And that is precisely what the Equal Protection Clause prevents: unprincipled distinctions creating unnecessary harms for arbitrary reasons.

In other words, there is no rational basis for the distinction drawn by the state court between Grandmother and other parties who may appeal. Colorado thus violated Grandmother's constitutional rights to equal protection of the laws by arbitrarily excluding her from the appellate process.

2. Colorado's decision to deny appellate review only to non-parents raises due process concerns related to the Equal Protection Clause

This Court has tied equal protection to due process concerns in the context of cases like this one. *See M.L.B. v. S.L.J.*, 519 U.S. 102, 120–21 (1996). Due process analysis – which weighs the individual interests at stake against the government's interests – applies here. *Id.* This Court should thus also conduct a due process analysis. And the state court denied Grandmother due process.

Due process requires that courts provide meaningful access. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). When analyzing a due process challenge, this Court considers: (1) the private interest affected; (2) the risk of an erroneous deprivation of that interest through the procedures used and the probable value of additional or

substitute safeguards; and (3) the government's interest. *Id.* at 334–35.

Because the state court has granted parents the right to appeal, its exclusion of special respondents violates due process as well as equal protection principles.

a. Non-parent family members have a significant private interest in preventing family separation

Though non-parents lack fundamental rights, state law still recognizes non-parents' strong interest in preventing family separation.

Colorado law, by allowing non-parent participation in cases, implicitly recognizes the value of non-parents in achieving reunification. Indeed, Colorado law explicitly recognizes family and not only parents. Colo. Rev. Stat. Ann. § 19-3-100.5(1) (West 2022) requires that agencies use reasonable efforts "to prevent the placement of abused and neglected children out of the home and to reunify the family whenever appropriate." It does not say, "reunify the parent with the child" but says, "reunify the family." *Id.*

Kin have an interest in maintaining connections with their family members. Aunts, uncles, adult siblings, grandparents, and other family caretakers play a pivotal role in children's lives. And in many homes, such non-parents assume a parental role. This is good for children.[3] Family members have an

[3] *See, e.g.*, Iryna Hayduk, *The Effect of Kinship Placement Laws on Foster Children's Well-Being*, 17 B.E. J. of Econ. Analysis & Policy 20160196 (2017) (arguing that kinship foster placement more efficiently improves safety and permanency); Gretchen Perry et al., *Placement stability in kinship and non-kin foster*

interest in protecting kin, and their children have an interest in being protected. So the private interests are substantial, here, as they relate to families' ability to protect their own.

Grandmother has particularly strong interests. Grandmother had a prior caretaker relationship with both Mother and the Child. Grandmother facilitated Mother's ability to keep the Child's older sibling out of the foster care system. Grandmother was, functionally, a second parent to the Child.[4] Because of the work she invested in her family, she earned a relationship deeper and closer than just any average non-parent.

Grandmother had procedural interests, too. The department named her in the petition for dependency and neglect. The court ordered her to comply with a treatment plan. She was subject to court orders and had to participate. She had a personal interest in the trial court treating her properly under the law.

In other words, Grandmother was (at least at first) involuntarily brought to court. She thus had a personal interest in the procedures used against her to break up her family permanently.

Grandmother was thus aggrieved not only by the trial court but by the appellate court when it refused to hear her claim at all. She had a strong interest not

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care: A Canadian study, 34 Children & Youth Servs. Rev. 460–65 (2012) (arguing that kin placements were more stable than non-kin foster placements in one Ontario child protection agency).

[4] Grandmother says "second" and not "third" because the Child's father was not involved. It is a cruel irony, indeed, that were the father to be located, he would have enjoyed more procedural rights than Grandmother.

only in the trial court's decision but in testing on appeal how the trial court made that decision.

Grandmother thus has substantial legal, substantive, and procedural interests in the appeal of her case.

b. Colorado's decision to deny appellate review to non-parents risks the erroneous deprivation of these parties' interests

Without appellate review, Grandmother faced a high risk of the deprivation of her interests. In cases involving only parents, state law allows parents to challenge the appropriateness of their treatment plan. Colo. Rev. Stat. Ann. § 19-1-103(12) (West 2022); *People in Interest of K.B.*, 369 P.3d 822, 826 (Colo. App. 2016); *People in Interest of B.C.*, 122 P.3d 1067, 1071–72 (Colo. App. 2005).

Grandmother had no such ability, even though she had the same interest in an appropriate treatment plan. And here, even the trial court suggested that Grandmother's treatment plan may have been inappropriate. Yet Grandmother had no way to challenge the consequences of that inappropriate treatment plan.

This should not be. Under this scheme, the government could have imposed impossible and unreasonable conditions on Grandmother, and Grandmother would have no ability to challenge those conditions. For example, the department could propose, and the court could adopt, a treatment plan requiring Grandmother to learn French, become a physician, or learn to drive a race car. And if she could not do those things, the department could have used her failure to do so as a reason to permanently separate her family. Colo. Rev. Stat. Ann. § 19-3-

604(c) (West 2022). And Grandmother would have nowhere to turn to challenge that decision.

The court also orders compliance with the treatment plan. Parties may enforce it. *See* Colo. R. Civ. P. 107. And Grandmother would have no right to challenge whether the treatment plan order was, itself, appropriate. In other words, she could not challenge whether she should have had to comply with the treatment plan.

Thus, under the law as interpreted by the Colorado Court of Appeals, the following procedure would be acceptable:

1) A court adds a non-parent to a case against their will after separating the child from their family.
2) The court adopts an admittedly impossible and inappropriate treatment plan.
3) The non-parent fails to meet the impossible orders.
4) The government then brings a civil enforcement action against the non-parent, winning fines and a jail sentence.
5) The trial court uses the non-parent's noncompliance with the treatment plan as a reason the child cannot be returned to the family and terminates the parents' rights, permanently severing the familial relationship.
6) The appellate court summarily dismisses a challenge, even one that could have been successful on the merits.

And all of this could happen despite minimal actual risk to a child's health and safety.

Without meaningful appellate review, therefore, the risk of erroneous deprivation of non-parents' interests is high. The trial court judge had absolute

power over the special respondent. The appellate process provides oversight, accountability, and compliance with the law – even and especially in factually heart-wrenching cases. Excluding non-parents from the appellate courts guarantees that erroneous deprivation of family rights cannot be checked by anyone. This should not happen.

c. The government's interests in denying the right to appeal are minimal compared to the non-parents' interests

The government's interests, here, are minimal. The line of cases that define the appellate rights of civil litigants focus mostly on what the government must pay for (e.g., transcript costs, attorney's fees, etc.) to provide meaningful access to an appeal. *See, e.g.*, *M.L.B.*, 519 U.S. at 128; *Ross v. Moffitt*, 417 U.S. 600, 612 (1974); *Lee v. Habib*, 424 F.2d 891, 904 (D.C. Cir. 1970). Also, under this line of cases, state courts have considered whether expedited or limited appellate procedures provide parents with sufficient process. *See, e.g.*, *In re S.K.A.*, 236 S.W.3d 875, 890 (Tex. Ct. App. 2007).

Grandmother does not even ask for the government to take on that burden. Grandmother asks the state to pay for nothing on appeal. And she has not even argued that the expedited appellate process deprived her of her rights. All she sought was equal access to the appellate courts as any other aggrieved party. The government's interests in preventing Grandmother from appealing are, thus, minimal.

In other words, if the Constitution requires state governments to pay for transcripts and provide lawyers to indigent parties even in some civil cases,

it must at least require the appellate courts to keep their doors open on an equal basis to litigants. Thus, the cost to the government is lower here than in other cases in which this Court has required states to provide meaningful access to the appellate courts.

And here, there would have been minimal additional cost to hearing Grandmother's claims on the merits. Mother filed an appeal, which the Colorado Court of Appeals resolved on the merits. App. A4–A14**.** The additional cost for the Colorado Court of Appeals to give Grandmother access to that same process would have been minimal.

Even if Grandmother were the only appellant, the burden on the government to provide that process would have been minimal. The "special respondent" category is a narrow one that allows into court only those who have a preexisting relationship with a child. Any fear that a ruling in Grandmother's favor would throw open the floodgates of litigation is, thus, misplaced. There is no reason to think that such expansion of litigation would happen, here, since the law already appropriately limits who can intervene in a case like this and who can be added as a special respondent. So this Court should not worry about overburdening the state court with litigation, since the law has already erected the appropriate barriers.

Thus, the government's interests are minimal in preventing Grandmother from having access to the appellate courts.

> d. Due process thus required Grandmother to have access to an appeal in parity with Mother's access

The state court did not provide Grandmother due process when it unequally denied her access to an

appeal. When the state government created an appellate process for parents in child welfare cases, the court could not arbitrarily close that process to parties like Grandmother.

Grandmother's strong interest in her family, which the trial court erroneously abridged without appellate recourse, outweighed the government's minimal administrative burden from resolving the merits of her appeal. The Colorado Court of Appeals thus constitutionally erred when it dismissed her appeal, and Grandmother appeals to this Court to right this wrong.

3. Treating special respondents differently from parents promotes family separation and undermines the child welfare system's stated purpose

Colorado law lists several goals of its child welfare system, to wit:

> (a) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society;
>
> (b) To preserve and strengthen family ties whenever possible, including improvement of home environment;
>
> (c) To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered and, in either instance, for the courts to proceed with all possible speed to a legal determination that will serve the best interests of the child; and

> (d) To secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him in becoming a responsible and productive member of society.

Colo. Rev. Stat. Ann. § 19-1-102(1) (West 2022). And as noted above, extended family is a part of that picture.

The Colorado Court of Appeals' decision conflicts with those stated purposes. Kin promote stability and reunification, keeping children in their own homes. Indeed, here, Grandmother's influence prevented the government from removing the Child's older sibling.

The current rule discourages parties like Grandmother from participating. If parties know that the court can issue improper orders with no recourse, then they are less likely to participate. And fewer parties like Grandmother participating means fewer families reunified.

The law recognizes, as it should, the value of family ties – not just parent-child relationships. Slamming the appellate courts' doors undermines those values. The state court's exclusion of all non-parents encourages family separation. But the law encourages the opposite.

Rather than do everything possible to keep families together – as the law and the Constitution require – the state court has decided to treat some family members differently without reason. And that undermines the purpose of the child welfare system. The law encourages, as it must, family reunification. But if certain family members – even those specifically aggrieved by court orders – cannot access the courts, it is easier for the government to separate families. This cannot be.

By excluding Grandmother from the appellate process, the courts undermine the law. And by doing so, they highlight the irrationality of interpreting the law in a way that denies kin equal protection and due process.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: December 15, 2022

Respectfully submitted,

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