22-7002

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

JOSHUA RAY TYNER

PETITIONER

V.

STATE OF MARYLAND

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

JOSHUA RAY TYNER #NH2996
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PRO SE PETITIONER

QUESTIONS PRESENTED

1. Does Maryland's adoption of "the best interest of the child" standard when adjudicating termination of parental rights cases conflict with the firmly established "clear and convincing evidence" standard that protects liberty interests through the Due Process Clause of the **Fourteenth Amendment** of the United States Constitution where an incarcerated parent serving a long-term sentence has not been found to have committed abandonment, neglect or abuse that directly harmed his or her child?

(PROPOSED ANSWER IN THE POSITIVE)

2. Does **Maryland Code Annotated, Family Law §5-323**'s inclusion of undefined "exceptional circumstances" give carte blanche deference to the Court to establish any circumstance it so desires to remove an individual's parental rights in violation of the Due Process Clause's mandate against vagueness, thereby declaring said statute void?

(PROPOSED ANSWER IN THE POSITIVE)

3. Has the arbitrary and capricious nature of **Maryland Code Annotated, Family Law §5-323**'s "exceptional circumstances" clause allowed the judiciary, through stare decisis, to create an irrebuttable presumption as well as a classification that burdens the fundamental right of a parent to raise his or her child and targets incarcerated individuals, a suspect class, in flagrant violation of the Due Process and Equal Protection Clauses of the **Fourteenth Amendment** of the United States Constitution?

(PROPOSED ANSWER IN THE POSITIVE)

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JURISDICTION

The Maryland Court of Special Appeals rendered its decision on June 14, 2022, and Joshua Ray Tyner filed a timely petition for discretionary review of that decision in the Maryland Court of Appeals. That court denied discretionary review of the decision below on November 22, 2022. This Court has jurisdiction under 28 U.S.C.A. § 1257(a).

PERTINENT STATUTORY PROVISIONS

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> 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.

Maryland Code Annotated, Family Law Article §5-323(b) provides that:

> "If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parents is in the child's best interest, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection."

STATEMENT OF THE CASE

This case arises from a Petition for Right to Consent to Adoption and/or Long-Term Gurardianship Short of Adoption filed by the Harford County Maryland Department of Social Services in the Circuit Court for Harford County

on June 13, 2018. Docket No. C-12-JV-18-000076. An Order to Show Cause was issued and Petitioner (natural father) filed a timely Notice of Objection.

TPR Trial began on December 6, 2018 and was subsequently continued to afford Petitioner the opportunity to review the transcripts and present a substantive response. Trial continuation was postponed due to a number of reasons.

The trial resumed on August 25, 2021 and lasted two days, during which Petitioner opted to proceed pro se and call witnesses to the stand. On August 26, 2021 Judge Kevin Mahoney found cause to terminate the parental rights of Petitioner as a direct result of Petitioner's indeterminate status of incarceration, and a Guardianship Order was issued on September 15, 2021. Petitioner filed a timely Motion to Reconsider and Request for Hearing which was denied without a hearing. A Notice of Appeal was filed by Petitioner in the Court of Special Appeals on October 19, 2021. Docket No. 1252-2021. A hearing on the briefs was held and the Court of Special Appeals, finding no error or abuse of discretion with the Circuit Court's ruling, ultimately upheld the decision of the lower court. Petitioner responsively filed a Motion for Extension of Time to File Petition For Writ of Certiorari with the Maryland Court of Appeals which was received as a Petition with an expectation for an addendum to follow. That addendum was filed before the September 12, 2022 deadline with federal questions raised. Petition

Docket No. 167-2022. Ultimately, the Maryland Court of Appeals denied Petition for Writ of Certiorari citing a lack of showing that review is desirable and in the public interest.

ARGUMENT I

I. Does Maryland's adoption of the best interest of the child standard when adjudicating termination of parental rights cases conflict with the firmly established "clear and convincing evidence standard that protects liberty interests through the Due Process Clause of the Fourteenth Amendment of the United States Constitution where an incarcerated parent serving a long-term sentence has not been found to have committed abandonment, neglect or abuse that directly harmed his or her child?

1. It is well settled within American jurisprudence that a parent retains "[a] fundamental liberty interest [ ] in the care, custody, and management of their child [which] does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."[1] This fundamental liberty interest is secured within the Due Process Clause of the **Fourteenth Amendment**[2] of the United States Constitution. This fundamental guarantee applies "even when blood relationships are strained."[3] Specifically, parents retain a vital interest in preventing the irretrievable destruction of their family."[4] When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures."[5]

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[1] **Santosky v. Kramer, 455 U.S. 745, 753 (1982)** (emphasis added).

[2] The **Fourteenth Amendment (U.S. Const.)** states in part that: "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 any person within its jurisdiction the equal protection of the laws.

[3] **Santosky, 455 U.S. at 753.**

[4] **Id at 753.**

[5] **Id at 754.**

5. Section 5-323(b) of the Family Law Article provides that:

> "If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parents is in the child's best interest, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection."[10]

6. The language of this section suggests that "the best interest of the child" is the primary focus in termination of parental rights (TPR) cases in the State of Maryland which effectively makes it the governing burden-of-proof standard in such matters. This position is further supported by other TPR cases previously adjudicated by Maryland Courts. "[T]he controlling factor, or guiding principle, in adoption and custody cases is not the natural parent's interest in raising the child but rather, what best serves the interest of the child."[11] Also, "...in all cases where the interests of the child are in jeopardy, the paramount consideration is what will best promote the child's welfare, a consideration of 'transcendant importance.'"[12] "[T]he 'golden rule' has always been the best interest of the child."[13]

7. Although §5-323(b) includes the "clear and convincing evidence" phrase, the statutory mandate that the evidence finds that it is in the best interest of the child to terminate the rights of the natural parent undermines the very purpose and

[10] Maryland Code Annotated, Family Law Article §5-323(b).
[11] In re Adoption/Guardianship No. A97-71A, 334 Md. 538, 561; 640 A.2d 1085 (1994).
[12] Id.
[13] In re Adoption/Guardianship No. 3598, 3476 Md. 295, 323; 701 A.2d 110 (1997).

intent of the higher standard of proof established by the United States Supreme Court.

8. The United States Supreme Court established the clear and convincing evidence standard after hearing **Santosky v. Kramer**.[14] In this case, the Court found that a statute which used a lower standard of proof than the "clear and convincing evidence" standard in deciding whether to terminate the rights of the respective parents did not sufficiently protect the Due Process Rights as required by the **Fourteenth Amendment**, and therefore was unconstitutional.

9. "The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of fact-finding, is to 'instruct the fact-finder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'"[15] In deciding what minimum standard of proof satisfies the Due Process Clause in parental rights termination proceedings, the **Santosky** Court weighed three (3) factors derived from another case commonly known as the **Eldridge** factors.[16] These factors are: (1) the private interests affected by the proceedings; (2) the risk of error created by the state's chosen procedure; and (3) the countervailing

[14] **Santosky v. Kramer, 102 S.Ct. 1388.**
[15] **Addington v. Texas, 441 U.S. 423; 60 L.Ed. 2d 323; 99 S.Ct. 1804(1979)** (citing **In re. Winship, 397 U.S.. 358, 370; 25 L.Ed. 2d 368; 90 S.Ct. 1068(1970).**
[16] **Matthews v. Eldridge, 424 U.S. 319, 335; 47 L.Ed. 2d 18; 96 S.Ct. 893 (1976).**

governmental interest supporting use of the challenged procedure.

10. In evaluating these three (3) factors in the light of TPR proceedings, the Court found that ... "the private interest affected is commanding; the risk of error from using a preponderance standard is substantial, and the countervailing governmental interest favoring that standard is comparatively slight."[17] This finding inevitably led the Court to conclude "that use of a [lower] standard in such proceedings is inconsistent with Due Process."[18]

11. The private interest analyzed by the Court included those of the natural parent, the child at subject, as well as the foster parents. Taken in aggregate the private interest "weighs heavily against use of the lower standard at a state-initiated [termination of parental rights] proceeding. We do not deny that the child and his foster parents are deeply interested in the outcome of that contest. But at the fact-finding stage... the focus emphatically is not on them. The fact-finding does not purport -and is not intended- to balance the child's interest in a normal family home against the parent's interest in raising the child. Nor does it purport to determine whether the natural parents or the foster parents would provide the better home. Rather, the fact-finding hearing pits the state directly against the parents. The state alleges that the natural parents are at fault."[19]

[17] **Santosky, 455 U.S. at 758.**
[18] **Id.**
[19] **Id. at 759.**

12. The Court rightly arrived at the conclusion that the "clear and convincing evidence" standard was sufficient in cases involving termination of parental rights given its appropriate use in other cases involving the potential loss of liberty interests. "This court has mandated an intermediate standard of proof- "clear and convincing evidence" when the individual interests at stake in a state proceeding are both "particularly important" and more substantial than mere loss of money."[20] The extent to which Due Process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss."[21]

13. When analyzed under the scrutiny of the **Eldridge** factors, " the best interest of the child" standard, with respect to TPR proceedings, also falls inadequate. This standard is defined in Black's Law Dictionary as follows:

> "A standard by which a court determines what arrangements would be to a child's greatest benefit, often used in deciding child-custody and visitation matters and in deciding whether to approve an adoption or a guardianship. A court may use many factors, including the emotional tie between the child and the parent or guardian, the ability of a parent or guardian to give the child love and guidance, the ability of a parent or guardian to provide necessaries, the established living arrangement between a parent or guardian and the child, the child's preference if the child is old enough that the court will consider that preference in making a custody award, and a parent's ability to foster a healthy relationship between the child and the other parent."[22]

[20] **Santosky, 455 U.S. at 756.**

[21] **Goldberg v. Kelly, 347 U.S. 254, 262-263; 25 L.Ed. 2d 287; 90 S.Ct. 1011 (1970)**(quoting **Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168; 95 L.Ed. 817; 71 S.Ct. 624 (1951))**

[22] **Black's Law Dictionary, Deluxe Eighth Edition, Bryan A. Garner, Editor in Chief, at 170.**

14. With respect to the first **Eldridge** factor, the **Santosky** Court has ruled that during the fact-finding phase of a TPR hearing the only private interest to be considered is that of the natural parent. Accordingly, "the best interest of the child" standard irrebuttably neglects to even consider the substantial interest of the natural parent in raising his or her child, rendering it unsatisfactory.

15. The Court did well in **Santosky** to consider the second **Eldridge** factor, the risk of error created by the standard. Due to the adversarial nature of TPR proceedings, the actual issue becomes "whether a [best interest of the child] standard fairly allocates the risk of an erroneous fact-finding between the two parties."[23] The combination of numerous factors increases the risk of erroneous fact-finding. These factors exacerbated by the unilateral nature of "the best interest of the child" standard which "by its very terms [neglects to consider the interests of a litigant] may misdirect the fact-finder in the marginal case."[24] The social impact of even sporadic error is significant given the weight of the private interests at stake, therefore, "an elevated standard of proof in a parental rights termination proceeding would alleviate 'the possible risk that a fact-finder might decide to [deprive] an individual based solely on a few isolated instances of unusual conduct [or]... idiosyncratic behavior."[25]

[23] **Santosky, 455 U.S. at 761.**
[24] **Id. at 764 (referencing Winship, at 371).**
[25] **Id. at 764 (quoting Addington, at 427).**

16. With regard to how "the best interest of the child" standard allocates risk among the private parties involved, the interests to consider are those of the natural parent and the subject child. The risk of erroneously terminating a natural parent's rights has a grave and permanent consequence of destroying the family. The risk of erroneously electing to not terminate a parent's rights would result in an uncomfortable circumstance which can be reassessed at a later time. The risk of error disproportionately affects the interest of the parent more than the interest of the child. This fact strongly inclines against the use of "the best interest of the child" standard which disregards entirely the natural parent's interest and, by default, the associated risk of error.

17. Regarding the countervailing governmental interest, the **Santosky** Court recognized two (2) state interests surrounding parental rights termination proceedings - "a *parens patriae* interest in preserving and promoting the welfare of the child and a fiscal and administrative interest in reducing the case and burden of such proceedings."[26] According to the Court a state's *parens patriae* interest highly favors a burden of proof standard that reasonably reduces the risk of error to achieve an accurate and just decision at the fact-finding phase of the proceeding. Given the significant focus of a state court's assessment of factors in determining the best interest of a child using a lower burden of proof, any fiscal or

[26] **Santosky, 455 U.S. at 756.**

administrative burden created by the redirection of already deployed resources to properly appreciate the interest of the natural parent will be inconsequential thus, an elevated burden of proof will have little bearing on the second interest of the state.

18. A judicious conclusion of this analysis yields "the best interest of the child" standard used by the State of Maryland in (TPR) proceedings as a direct violation of the Due Process Clause of the Fourteenth Amendment, and, as a consequence, unconstitutional. No standard requiring a lesser burden of proof than the clear and convincing evidence standard can adequately protect the process due a natural parent facing permanent loss of a child.

19. The State of Maryland is rather unique in that Section 5-323(b) attempts to merge two (2) disparate burden of proof standards, "the best interest of the child" standard and the "clear and convincing evidence" standard, to create extrajudiciously one (1) comprehensive standard. This attempt not only dismisses widely-accepted jurisprudence, but to simultaneously consider two (2) unequal burden-of-proof standards during one (1) fact-finding proceeding is a judicial impossibility. The very nature of the two (2) standards in question requires attribution of governing importance to separate private interests. With "the best interest of the child" standard the fact-finder is compelled to weigh the interest of

the child more heavily than the rest, while utilization of the "clear and convincing evidence" standard demands the fact-finder holds the interests of the parent in the highest regard. The primary focus of state court cannot be bifurcated to equally accomodate separate interests. Any attempt to do so will be an abject failure resulting in a miscarriage of justice. For this reason the process by which minimum burden of proof standards are instituted has been federalized. The "minimum requirements [of procedural due process] being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action."[27]

20. This issue having been previously adjudicated in **Stanley v. Illinois** requires by a showing of clear and convincing evidence that a finding of a parent to be unfit must precede a termination of the parental rights of said parent. **Santosky** nullified ubiquitous "[ ] best interest of the the child" standard as it pertains to TPR proceedings through prudent burden of proof analysis while clarifying the stipulations of **Stanley v. Illinois** to comprehensively subsume all circumstances governing adoption and it remains the overarching precedent to this day.

21. The best interest of the child standard, although sufficient for placement

[27] **Vitek v. Jones, 445 U.S. 480 , 491; 63 L.Ed. 2d 552; 100 S.Ct. 1254 (1980).**

of a child purposes, is starkly underwhelming when deciding TPR cases. "If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs."[28] Other jurisdictions have expressed concerns with the use of this minimal standard. "This Court more than once has adverted to the fact that the "best interest of the child" standard offers little guidance to judges, and may effectively encourage them to rely on their personal values. Several Courts, perceiving similar risks, have gone so far as to invalidate parental termination statutes on vagueness grounds."[29]

ARGUMENT II

> II. Does **Maryland Code Annotated, Family Law §5-323**'s inclusion of undefined "exceptional circumstances" give carte blanche deference to the Court to establish any circumstance it so desires to remove an individual's parental rights in violation of the Due Process Clause's mandate against vagueness, thereby declaring said statute void.

1. It is well settled that a statute violates due process and "is void for vagueness if its prohibitions are not clearly defined."[30]

[28] **Santosky v. Kramer, 455 U.S. 753.**
[29] **Lassiter v. Department of Social Services, 452 U.S. 45 N.13 (1981).**
[30] **Grayned v. City of Rockford, 408 U.S. 104, 108 (1972).**

2. "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."[31]

3. All are agreed that a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process."[32]

4. "[I]t is reasonable that a fair warning should be given to the world in language that the common world will understand of what the law intends to do if a certain line is passed."[33]

5. The Supreme Court has told us repeatedly that the relevant question in void-for-vagueness challenges is merely whether the defendant before us "had fair notice from the language of the law 'that the particular conduct which he engaged in was punishable.'"[34]

6. Petitioner asserts that the "exceptional circumstances" clause of Maryland Family Law Article §5-323(b) is impermissibly vague. It provides opportunity

[31] Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939).
[32] Connaly v. General Construction Co., U.S. 385, 391 (1926).
[33] McBoyle v. United States, 283 U.S. 385, 391 (1931).
[34] United States v. Baldwin, 745 F.3d 1027, 1031-32 (10th Cir. 2014) quoting Parker v. Levy, 417 U.S. 733, 735 (1974).

for arbitrary and discriminatory enforcement by judges of juvenile courts in the State of Maryland resulting in more unpredictability than the Due Process Clause of the Fourteenth Amendment tolerates.

7. Black's Law Dictionary properly defines unconstitutionally vague as:

> "1. (Of a penal legislative provision) so unclear and indefinite as not to give a person of ordinary intelligence the opportunity to know what is prohibited.
>
> 2. (Of a statute) impermissibly delegating basic policy matters to administrators and judges to such a degree as to lead to arbitrary and discriminatory application."[35]

The same also defines void for vagueness as:

> "[Of a...statute] establishing a requirement or punishment without specifying what is required or what conduct is punishable, and therefore void because violative of due process."[36]

8. Although the void-for-vagueness doctrine mainly has its application in criminal law, the Supreme Court has made clear that said doctrine "was not such as to be applicable only to criminal prosecutions. It was not the criminal penalty that was held invalid, but the exaction of obedience to a rule or standard which was so vague and indefinite as really to be no rule or standard at all."[37]

9. Due to the constitutionally-protected liberty interest implicated by § 5-323(b), use of a higher "fair warning" standard than what is generally used in

[35] **Black's Law Dictionary, Deluxe Eighth Edition, Bryan A. Garner, Editor in Chief, at 1585.**

[36] **Black's Law Dictionary, Deluxe Eighth Edition, Bryan A. Garner, Editor in Chief, at 1604.**

[37] **A.B. Small Co. v. American Sugar Ref. Co., 267 U.S. at 239 (1925).**

civil vagueness challenges. This is "because the consequences of imprecision are qualitatively less severe"[38] for regulatory statutes governing business activities than they are for TPR proceedings. It is evident that **First Amendment** freedoms receive most solicitous protection from today's court."[39]

11. When analyzing §5-323(b) under the lens of a stricter standard of definiteness it is apparent that no statutory definition of "exceptional" is given. Neither does the statute enumerate circumstances that would qualify as "exceptional." The Supreme Court addressed this issue in **Lanzetta v. New Jersey**. It concluded that "[t]he descriptions and illustrations used by the court to indicate the meaning of [the word or phrase] are not sufficient to constitute definition, inclusive or exclusive. The court's opinion was framed to apply the statute to the offenders and accusations in the case then under consideration; it does not purport to give any interpretation generally applicable."[40] §5-323(b) is not dissimilar to the statute spoken of in **Lanzetta v. New Jersey** in that the state legislature relegated the duty of defining the meaning of "exceptional circumstance" to the court as it hears each individual case. The virtually exclusive target of void-for-vagueness nullification has been language which no decision

[38] **Village of Hoffman Estates v. Flipside, Hoffman Estates Inc. 455 U.S. at 499.**
[39] **The Void-For-Vagueness Doctrine In the Supreme Court, 109 U of Penn Law Review 67 at 94.**
[40] **Lanzetta v. New Jersey, 306 U.S. 451, 457 (1939).**

can definitively clarify. After hearing innumerable TPR cases, Maryland courts have yet to define this phrase plainly though its rulings.

12. After extensive research legal studies have concluded that "it is in this realm, where the equilibrium between the individual's claims of freedoms and society's demands upon him is left to be struck ad hoc on the basis of a subjective evaluation that there exists the risk of continuing irregularity with which the vagueness cases have been concerned. It is only where a state court has several times applied such a term of external reference without at any juncture attempting to fix its object... that the Court has voided the statute."[41] The phrase "exceptional circumstance" needs a pointing definition that attaches it to one idea to which it refers.

13. To compound the vagueness of §5-323(b), the Maryland state legislature also neglected to provide the judiciary with a standard of analysis to qualify the various circumstances as "exceptional". The lack of a cognizable standard is a blaring siren sounding unconstitutionality in Supreme Court vagueness challenges. In **United States v. Cohen Grocery Co.** the High Court found that "...because [the law] fixes no immutable standard of [the word] but leaves such standard to the variant views of the different courts and juries which may be called to enforce it...

[41] **The Void-For-Vagueness Doctrine In the Supreme Court, 109 U of Penn Law Review 67 at 92, 93.**

I think it is constitutionally invalid."[42] Again in **Kunz v. New York** the Court remained consonant with the idea that "local acts are struck down, not because in practical application they have actually invaded anyone's freedoms, but because they do not set up standards which would make such an invasion impossible."[43] One leading void-for-vagueness decision distinguished cases in which statutes had been upheld because "for reasons found to result either from the text of the statutes involved or the subjects with which they dealt, a standard of some sort was afforded."[44] §5-323(b) is grossly insufficient with regard to definiteness because "[n]o reasonably ascertainable standard [for qualifying circumstances as exceptional] is prescribed. So vague and indeterminate are the boundaries thus set... that the law necessarily violates the guarantees of liberty embodied in the **Fourteenth Amendment**."[45]

14. The absence of a definition as well as a categorical approach to be applied by Maryland courts engenders a separation-of-powers concern. Without the legislature clearly defining the boundaries of a statute, a citizen's fundamental right to parent their child is subject to the whim and inherent bias of judges. "Vagueness doctrine represents a procedural, not a substantive, demand. It does not forbid the legislature from acting toward any end it wishes, but only requires

[42] **United States v. Cohen Grocery Co., 65 L.Ed. 516, 255 U.S. 81 (1921).**
[43] **Kunz v. New York, 340 U.S. 290, 308 (1951).**
[44] **Connally v. General Construction Co., 269 U.S. 385, 391 (1926).**
[45] **Herndon v. Lowry, 301 U.S. 242, at 261-264 (1937).**

it to act with enough clarity that reasonable people can know what is required of them and judges can apply the law consistent with their limited office."[46] The Supreme Court has found such situations to be precarious in that "it would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large."[47] In this regard, attempts of the legislature to pass to the courts the task of making case-by-case additions to what circumstances are characterized as "exceptional" understandably meet substantial judicial opposition.

15. Given the vast possibilities of circumstances in which a parent can find themselves, one cannot know whether such a circumstance warrants the involuntary termination of their parental rights until adjudication is complete. This disconcerting fact deprives parents of the State of Maryland fair notice that they could potentially lose their child(ren). In the case of the petitioner, no reasonable person of average intelligence would be able to know that incarceration alone could potentially cause them to lose their child. Many states have family law statutes that explicitly stipulate incarceration by itself as insufficient to overcome the burden of proof necessary to terminate parental rights. §5-323(b) should also state unambiguously the State of Maryland's position with respect to incarceration.

[46] **U.S. Sessions v. Dimaya, 138 S.Ct. at 1233 (2018).**
[47] **United States v. Reese, 92 U.S. 214, 221 (1875).**

16. Petitioner challenges the justices of this Honorable Court to individually enumerate all the circumstances each believes qualify as exceptional. If after contrasting enumerations the Court finds discrepancies (which it more than likely will) the "exceptional circumstances" clause of §5-323(b) warrants abrogation. Through more definite regulation, achieving the end sought by this statute is not only possible but equally practicable. With defined boundaries the liberty interests of parents in the State of Maryland would no longer be subject to arbitrary or discriminatory resolutions of judges with distinct cultural and social values.

ARGUMENT III

> III. Has the arbitrary and capricious nature of **Maryland Code Annotated, Family Law §5-323**'s "exceptional circumstances" clause allowed the judiciary, through stare decisis, to create an irrebuttable presumption as well as a classification that burdens the fundamental right of a parent to raise his or her child, and targets incarcerated individuals, a suspect class, in flagrant violation of the Due Process and Equal Protection Clauses of the **Fourteenth Amendment** of the United States Constitution?

1. The Fourteenth Amendment provides that "[n]o state shall...deny to any person within its jurisdiction the equal protection of the laws."[48]

2. "Neither Congress nor a State can validate a law that denies the rights guaranteed by the Fourteenth Amendment."[49]

3. "Where an act of the legislature comes into conflict with the command of

[48] **United States Constitution Amendment XIV, §1**
[49] **Mississippi University for Women v. Hogan, 458 U.S. 718, 732-33 (1982).**

the United States Constitution or the constitution of the state of its enactment, there is no question as to the outcome; the statute fails and the constitution prevails."[50]

4. "[A] statute apparently governing a dispute cannot be applied by judges, consistently with their obligation under the Supremacy Clause, when such an application of the statute would conflict with the Constitution."[51]

5. For this argument Petitioner raises before this Honorable Court an issue of first impression. He asserts that through stare decisis as it applies to the "exceptional circumstances" clause of §5-323(b), the court has effectively targeted a protected class to the infringement of a recognized fundamental right, and created an irrebuttable presumption in direct conflict with the Equal Protection and Due Process Clauses of the **Fourteenth Amendment**. A prudent analysis yields a conclusion of unconstitutionality.

6. The Maryland Special Court of Appeals ruled in a prior case that a parent's long-term incarceration justified the trial court's decision to terminate his parental rights. "Under such circumstances, the best interests of the child may warrant the termination of parental rights."[52] This decision has been the overarching precedent governing cases involving incarcerated parents. From this

[50] **Younger v. Harris, 401 U.S. 37, 52 (1971).**
[51] **Marbury v. Madison, 5 U.S. 137, 1 Cranch 137, 2 L.Ed. 60 (1803).**
[52] **Md. 737 A.2d 604, 610.**

ruling circuit courts have found long-term incarceration (any sentence over the twenty-two month stipulation of the Adoption and Safe Families Act) to be an "exceptional circumstance".

7. When statutes are challenged under the Equal Protection Clause, federal courts have established a two-tier analysis standard, "in which strictness of review depend[s] upon the classification created and the individual interest affected."[53] Since the institution of the Maryland court precedent, federal courts have officially recognized incarcerated persons as a protected class. "The Court also vacates the provisional certification of the class and certifies a litigation class for all purposes."[54] Also, "[t]his Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment."[55] With respect to §5-323(b), both a fundamental right as well as a protected suspect class are implicated warranting a "strict scrutiny" of the statute in question.

8. Under "strict scutiny", the statute must directly advance compelling governmental interests and be the least restrictive effective means of doing so. In this case the burden of proof shifts to the government to prove that the governmental action is constitutional.

[53] **Washington University Law review Volume 1977 Issue 1.**
[54] **Scholl v. Mnuchin 494 F. Supp 3d 661 (N.D. Cal 2020).**
[55] **Clevland Board of Education v. LaFleur, 414 U.S. 632, at 639, 640 (1974).**

9. To identify the state's interest's, petitioner references the Family Law Article which states one of its purposes is to "protect children from unnecessary separation from their natural parent's."[56] It also stipulates that "it is the policy of this State to promote family stability, to preserve family unity, and to help families achieve and maintain self-reliance..."[57]

10. In light of the State's objective, the creation of a class encompassing long-term incarcerated parents is wholly arbitrary and irrational, which serves no legitimate state interest. In actuality the statute "may serve to hinder attainment of the very [familial integrity] objectives that [it is] purportedly designed to promote."[58] Petitioner recognizes the existence of ancillary administrative state interests in cases pertaining to children. "The executive branch, acting through unelected bureaucrats who, while undoubtedly concerned about the best interest of their wards, often are motivated by other concerns such as coping with inadequate resources and an unmeasurable number of unplaced children."[59] He argues that the State of Maryland has means to achieve its objective effectively without targeting incarcerated parents, a recognized protected class that deserves the same equal protection under §5-323(b) afforded to other parents who are not incarcerated.

[56] Md. Code Ann., Fam Law§5-303(b)(1)(i).
[57] Md. Code Ann., Fam Law§4-401 (1991).
[58] Cleveland Board of Education 414 U.S.632, at 643 (1974).
[59] Lofton v. Secretary of the Department of Children & Family Services, 358 F.3d 804 (11th Cir. 2004).

CONCLUSION

The State of Maryland currently utilizes an unconstitutional burden of proof standard to hear Termination of Parental Rights cases governed by a statute with an unconstitutionally vague clause that has resulted in an irrebuttable presumption used to terminate the parental rights of the Petitioner.

WHEREFORE, for the foregoing reasons, Mr. Joshua Ray Tyner respectfully prays that this Honorable Court **GRANT** his Petition for Writ of Certiorari to the United States Supreme Court in the interest of common justice.

Respectfully submitted,

1/25/2023
Date Signed

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