No. 23-1319

IN THE SUPREME COURT OF THE UNITED STATES

In The Interest of T.B., A Child

BRITTANY BUDLOVE., PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

On Petition for a Writ of Certiorari to the Second District Court of Appeal

---

PETITION FOR A WRIT OF CERTIORARI

Brittany Budlove
Pro Se
18443 Maple St.
Lansing, IL 60438
Tel: (708)677-5606

QUESTION PRESENTED

1. Whether Florida courts are refusing to consider that their interpretation of Statute § 39.8155 is unconstitutional as- applied when it contradicts the Fourteenth Amendment Due Process Clause and is a violation of the Supremacy Clause?

PARTIES TO THE PROCEEDING

The Petitioner is Brittany Budlove, Pro Se.

Respondent is the State of Florida.

Because this petition challenges the constitutionality of a Florida Statute affecting the public interest, the terms of 28 U.S.C. § 2403(b) may apply and this petition therefore is being served on the Attorney General of Florida as required by Rule 29.4(c) of this Court.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

IN THE SUPREME COURT OF THE UNITED STATES

No.

BRITTANY BUDLOVE., PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SECOND DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

Brittany Budlove respectfully petitions for a writ of certiorari to review the judgment of the Second District Court of Appeal of Florida.

OPINION BELOW

B.B. v. Dept. of Children and Families et. al., Order Denying Motion for Certification, 2D22-4176, and is reprinted in the appendix. A9.

JURISDICTION

The Second District Court of Appeal affirmed the trial court's order denying Motion to Reinstate Parental Rights on April 12, 2023. The decision was "Per Curiam. Affirmed." This decision was final, as the Florida Supreme Court has no jurisdiction to review such decisions. *See Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980); *Hobbie v. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136, 139 n.4 (1987) (acknowledging that "[u]nder Florida law, a per curiam affirmance issued without opinion cannot be appealed to the State Supreme Court" and therefore petitioner "sought review directly in this Court."). This Court has jurisdiction under 28 U.S.C.§ 1257(a), having timely filed this petition for a writ of certiorari within ninety days of the Second District Court of Appeal judgment.

Because this petition challenges the constitutionality of a Florida statute affecting the public interest, the terms of 28 U.S.C. § 2403(b) may apply and this petition therefore is being served on the Attorney General of Florida as required by Rule 29.4(c) of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

I. The Fourteenth Amendment to the United States Constitution provides:

> 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.

II. 18 U.S. Code § 241

If two or more persons conspire to injure,

oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.

III. 28 U.S.C. § 2403(b) provides in relevant part:

In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

IV. 28 U.S.C.§ 1257(a) provides in relevant part:

(a)Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by

the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

V. 18 U.S.C. § 242 provides in relevant part:

Makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States

VI. Article VI, Clause 2, of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

STATEMENT OF THE CASE

The Petitioner's parental rights to her minor child were terminated at a hearing on December 21, 2020, and a written final judgment was entered by the lower court on January 15, 2021. The final judgment was amended on February 4, 2021. The Petitioner appealed this decision in case 2D21-0357, which was affirmed by the Second District Court of Appeal. The Petitioner moved to reinstate her parental rights on November 29, 2022, pursuant to section 39.8155, Florida Statutes. The lower court entered an order dismissing the motion without hearing on December 5, 2022, interpreting the statute as requiring every element to be met prior to moving for relief. The

Petitioner timely filed for reconsideration, alleging a misapplication of the statute, on December 11, 2022. The lower court denied the motion on December 15, 2022. The Petitioner appealed this decision in case 2D22-4176, which was affirmed by the Second District Court of Appeal on April 12, 2023. The Petitioner timely filed a motion for certification and written opinion, alleging the misapplication of a per curium affirmance on issues not well versed in state law on May 6, 2023. The motion was denied by the Second District Court of Appeal on May 15, 2023.

1. **Statutory Background.** The legislature enacted section 39.8155, Florida Statutes, in October 2021. The enactment of this statute

caused a new Rule of Juvenile Procedure to be created to conform to it: Rule 8.540, Motion to Reinstate Parental Rights. *In re Amends. to Fla. Rules of Juv. Proc.- 2021 Fast-Track Rep.*, 345 So. 3d 729, 730 (Fla. 2022). There is currently no case law interpreting this statute. The lower court chose to interpret this statute beyond the plain language and determined that it requires a petitioner to meet all the criteria. This interpretation is repugnant to the purpose of the statute—to reunite biological parents and their children through reinstatement after termination—and would result in an unreasonable disposition. This interpretation is likewise repugnant to the rest of Chapter 39, in which the Florida legislature has made clear, *inter*

alia:

> (1) The purpose of Chapter 39 is permanency "as soon as possible." § 39.001(1)(h), Fla. Stat. (2022); § 39.4021(1), Fla. Stat. (2022).
>
> (2) The nonoffending parent should be considered first for placement. § 39.4021(2)(a)(1), Fla. Stat. (2022).
>
> (3) Time is of the essence for establishing permanency and it should be achieved within a year or as soon as possible thereafter, with the court checking in at least once every 12 months. § 39.0136, Fla. Stat. (2022); § 39.621, Fla. Stat. (2022).
>
> (4) Reunification with the biological parent is the first preference of the legislature. § 39.621(3)(a), Fla. Stat. (2022).

Because the plain language of the statute does not require all conditions to be met, and because interpreting it in that manner would result in an unreasonable conclusion that cannot be read in harmony with the rest of

Chapter 39.

2. **Factual Background and Trial Court Proceedings.** T.B. was born March 17, 2019. The Department of Children and Families (DCF) filed a shelter petition on December 7, 2019, regarding T.B., the biological child of Petitioner. The lower court granted the State's petition to shelter T.B. DCF filed an expedited petition for termination of parental rights against Petitioner as to T.B on December 23, 2019, due to allegations of abuse against a foster child by a person other than the Petitioner. A hearing was held on the Petitioner's, Motion to Change Placement to two relatives, T.B.'s maternal grandmother and paternal uncle, on July 1, 2020. The court denied the motion. The Petitioner filed an

amended motion to change placement to another relative, maternal first cousin, Simone Wilson. The hearing on the motion took place on September 21 and 22, 2020. It was also denied. A termination of parental rights trial was held. The Department of Children and Families falsely characterized the foster child in the complaint as Petitioner's biological child and terminated her parental rights on December 21, 2020, relying on not having to prove nexus. There were no hearings for the foster child to refute the allegations against the Petitioner, instead they used T.B'.'s trial in an attempt to prove the unfounded allegations. The Petitioner was never charged, convicted, or alleged to have committed any wrongdoing. Her rights

were terminated to T.B. because she "should have known" an act of violence would occur, though the act has never been proven in a court of law. The State was allowed to terminate parental rights of a child that had never been abused, abandoned, or neglected while offering no resources for remediation or proving unfitness. Petitioner's rights to T.B., who was only nine months old when removed, were terminated while being a non-offending parent. Petitioner appealed the termination on January 27, 2021. The termination of parental rights order was amended February 4, 2021. It was affirmed by the Second District Court of Appeal on August 11, 2021. Mandate affirming (21.249) was issued August 28, 2021. Petitioner filed a motion to

disqualify the judge December 31, 2021. The lower court failed to make a ruling on it. An emergency petition for a writ of habeas corpus was filed in the Florida Supreme Court on September 20, 2022 (SC22-1219). The petition was sent to the Second District Court of Appeal and was denied on September 21, 2022. Petitioner filed a motion to Reinstate Parental Rights on November 29, 2022. The lower court denied the motion December 6, 2022. A motion for reconsideration was file December 11, 2022. The motion for reconsideration was denied December 15, 2022.

3. **Court of Appeals Proceedings.** A timely appeal was filed on February 16, 2023. The Second District Court of Appeal affirmed on

April 12, 2023. The decision was made in less than two weeks after the reply brief was filed providing no written opinion to explain the information to support the decision of a new statute. A motion for certification and written opinion was submitted on May 6, 2023. The Second District Court of Appeal denied the motion for certification on May 15, 2023.

REASONS FOR GRANTING THE PETITION

I. This Court should grant certiorari because this case raises an important issue of Federal Constitutional Law determining whether Florida courts are violating the Due Process Clause of the Fourteenth Amendment which protects the fundamental right of parents to direct the care, upbringing, and education of their children, as declared in 18 U.S.C. § 241, 18 U.S.C. § 242, as well in direct conflict with the Supremacy Clause

This case presents an important question of Federal constitutional law concerning the State's handling of parental-rights termination cases. Nearly a century ago, this Court held that the Due Process Clause protects the right of parents to "establish a home and bring up children." *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923). Since then, this Court consistently has recognized the primacy of the parent-child

relationship—and cast a skeptical eye on government attempts to burden it. See, e.g., *Stanley v. Illinois,* 405 U.S. 645, 651 (1972); *Wisconsin v. Yoder,* 406 U.S. 205, 232 (1972); *Quilloin v. Walcott,* 434 U.S. 246, 255 (1978); *Parham v. J. R.,* 442 U.S. 584, 602 (1979). Even in cases yielding divided opinions, this Court's justices find common ground in their agreement that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment." *Santosky v. Kramer,* 455 U.S. 745, 774 (1982) (Rehnquist, J., dissenting). And justices who do not view parental rights as constitutionally protected nevertheless

concede their place among the "unalienable Rights" the Declaration of Independence posits are bestowed on all Americans by "their Creator." See *Troxel v. Granville,* 530 U.S. 57, 91 (2000) (Scalia, J., dissenting).

The question this case presents is whether the State's cumulative denial of multiple procedural safeguards in parental-rights termination and reinstatement action elevates the risk of erroneous deprivation too high for the Due Process Clause to bear. This raises the subsidiary issue of what role preservation-of-error rules may play—consistent with the Due Process Clause—in denying appellate review both sufficiency of the evidence underlying a termination judgment and the constitutionality of

procedures leading up to it regarding the reinstatement of parental rights.

A. The Lower Court's Interpretation of Section 39.8155, Florida Statutes, to require all conditions to be satisfied would result in unreasonable and absurd conclusions that are inconsistent and cannot be harmonized with the rest of Chapter 39.

1. Standard of Review

This issue involves statutory interpretation that raises concern of great national importance. The law should be given its plain meaning wherever possible. Statutes must be interpreted so as to be entirely harmonious with all laws as a whole. An issue that involves statutory interpretation is subject to de novo review. *Levy v. Levy,* 326 So. 3d 678, 681 (Fla. 2021).

2. It is impossible for any petitioner to meet all six criteria listed in section 39.8155, Florida Statutes

The Petitioner should be eligible to have her parental rights reinstated, but under the lower court's interpretation, it would be impossible for any petitioner to meet the criteria for reinstatement. Section 39.8155(1)(a)-(f), Florida Statutes, states:

> (1) After parental rights have been terminated in accordance with this part, the department, the parent whose rights were terminated, or the child may file a motion to reinstate the parent's parental rights. The court may consider a motion to reinstate parental rights if:
>
> (a) The grounds for termination of parental rights were based on s. 39.806(1)(a) or (e)1.-3.
>
> (b) The parent is not the verified

perpetrator of sexual or physical abuse of the child.

(c) The parent has not been a perpetrator involved in any verified reports of abuse, neglect, or abandonment since his or her parental rights for the child were terminated.

(d) The parent has not had his or her parental rights terminated for any other child, under any grounds, in this state or any other jurisdiction, since his or her parental rights for the child were terminated.

(e) The child is at least 13 years of age.

(f) The child has not achieved permanency and is not in a preadoptive placement, and at least 36 months have passed since the termination of parental rights.

§ 39.8155(1), Fla. Stat. (2022).

All of the criteria listed above cannot be met by a single petitioner. For example, criteria (a) allow for reinstatement if a parent's rights were terminated under section 39.806(1)(e)1.-3. That statute

concerns continual abuse of a child by the parent. § 39.806(1)(e), Fla. Stat. (2022). This is in conflict with the very next line item of section 39.8155(1), criteria (b), which states the parent cannot be the verified perpetrator of the child abuse. If read in the way the lower court suggested, by assuming all criteria should be met in order to petition for reinstatement, then the non-offending parent is barred from ever having their rights reinstated. In this case, neither the child nor the Petitioner were involved in any abuse; instead, the alleged abuse concerned the father and a relative's child who was a foster child placed in the home, which the lower court determined fell under the "sibling" criteria found in section

39.806(1)(f). That inaccuracy alone violates 18 U.S.C.§ 241 and 18 U.S.C.§ 242, as Chapter 39 only applies to adults who have legal rights to children or minors. Since the minor relative child was a foster youth, the State had legal custody and the child could not be considered a legal sibling to anyone in the placement. T.B. was therefore removed under false pretenses leading to the unlawful removal. In reading the statute the way the lower court interpreted it, the father, but not the Petitioner, could one day petition for his rights to be reinstated. This is an absurd result.

Likewise, criteria (a) and criteria (d) of section 39.8155(1) cannot co-exist without severely limiting reunification. Section

39.806(1)(a), referred to in section 39.8155(1)(a), is a ground for termination when a parent voluntarily surrenders a child. § 39.806(1)(a), Fla. Stat. (2022). In that instance, it would be reasonable to believe the legislature intended that a parent who is later in a better position to care for their child could hope to be reunited. However, if that parent voluntarily surrendered one or more children and it did not happen contemporaneously, then under the lower court's interpretation of the statute, that parent would be barred from ever hoping to reinstate their rights because criteria (d) of section 39.8155(1) could not be met.

It is apodictic that "a literal

interpretation of the language of a statute need not be given when to do so would lead to an unreasonable or ridiculous conclusion." *Holly v. Auld,* 450 So. 2d 217, 219 (Fla. 1984) *(citing Johnson v. Presbyterian Homes of Synod of Fla., Inc.,* 239 So. 2d 256 (Fla. 1970*)).* This is known as the "absurdity doctrine." *Kirk v. State,* 303 So. 3d 604, 606 (Fla. 5th DCA 2020). This doctrine provides that a "provision may be either disregarded or judicially corrected as an error (when the correction is textually simple) if failing to do so would result in a disposition that no reasonable person could approve." *Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts, 235–39 (2012).*

As the Fifth District Court of Appeal pointed out in *Kirk*, this doctrine should be exceptional and is not intended to allow courts to substitute their own judgment for that of the legislature. 303 So. 3d at 606. Here, if the lower court believed the legislature meant for all the criteria to be required, certainly at that point it could have, and should have, explained why it went beyond the language contained in the statute. But it did not. This was an error. It is clear the legislature did not intend for all conditions to be met—it would be impossible for that to happen. As in *Kirk*, if this Court believes the statute is ambiguous, it should commend the issue to

the state legislature with the suggestion that it consider amending the statute. *Id.* However, because it can only be read in one reasonable way.

3. Inferring a requirement that all six criteria must be met would result in an interpretation that is inconsistent with the rest of Chapter 39 and expressed legislative intent.

The second rule of statutory construction, in addition to the absurdity doctrine discussed *supra*, is the doctrine of *in pari materia*, which provides that courts should view statutes in a manner that would harmonize the applicable law. *Deen v. Wilson,* 1 So. 3d 1179, 1182 (Fla. 5th DCA 2009). The Florida Supreme Court

explained the doctrine as follows:

> If a part of a statute appears to have a clear meaning if considered alone but when given that meaning is inconsistent with other parts of the same statute or others *in pari materia*, the Court will examine the entire act and those *in pari materia* in order to ascertain the overall legislative intent.

E.A.R. v. State, 4 So. 3d 614, 629 (Fla. 2009). The Florida Supreme Court has also explained, "The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." *Fla. Dep't of State v. Martin,* 916 So. 2d 763, 768 (Fla. 2005). An *in pari materia* inquiry requires a court

to address the legislation "as a whole, including the evil to be corrected, the language, title, and history of its enactment, and the state of law already in existence." *Bautista v. State,* 863 So. 2d 1180, 1185 (Fla. 2003).

Here, Chapter 39 is replete with legislative intent and statutory schemes that focus on (1) a primary goal of reunification with biological parents, and (2) permanency for children as quickly as possible. The statutory scheme is clear, and section 39.8155 must be interpreted in harmony with the rest of the chapter.

There are numerous examples in Chapter 39 that indicate the lower court's

interpretation requiring all criteria to be met cannot be correct. First, section 39.001(1)(h) states the "purposes of chapter" are "[t]o ensure that permanent placement with the biological or adoptive family is achieved as soon as possible for every child in foster care and that no child remains in foster care longer than 1 year." § 39.001(1)(h), Fla. Stat. (2022); *see also Guardian Ad Litem Program v. Dep't of Child. & Fams.*, 207 So. 3d 1000, 1005 (Fla. 5th DCA 2016) (noting that the statutory goal of achieving permanency as soon as possible was one reason for terminating the parent's rights in that case). Indeed, a very important consideration must be given to the child's interest in reaching permanency, and there is a harm that

results when it is unduly delayed. *J.B. v. Fla. Dep't of Child. & Fams.,* 170 So. 3d 780, 792 (Fla. 2015).

Since this is true, a mandatory waiting period of 36 months, as outlined in section 39.8155(f), would seem to contradict the legislative intent of achieving permanency as soon as possible. It would be more reasonable, and would align with legislative intent, to view that criteria as one of the options to move for reunification. In other words, although that could be one of the criteria, it should not be interpreted as a requirement. Consider also section 39.4021(1)- (2)(a)1., which explicitly states that the legislative intent for placement requires that the child be placed in the most

family-like setting, that permanency must be achieved in a timely manner, and that the non-offending parent should be considered first. § 39.4021(1)-(2)(a)1., Fla. Stat. (2022). This leads to another issue: if the Department has complied with Chapter 39 and made efforts to secure preadoptive placement within the year—which can even happen directly after a termination hearing—and a parent is able to move for reinstatement except for the fact that the child's placement is labeled as such, the parent would be precluded from reuniting with their child under section 39.8155(f) if the lower court's interpretation of requiring all criteria was correct. This also contradicts section 39.641(3)(a), which states the

legislature's preference for permanency is first reunification, then adoption. § 39.641(3)(a), Fla. Stat. (2022). If following the lower court's interpretation, the preference would be reversed, causing a preadoptive permanency option to supersede a reunification permanency option—an outcome at odds with the legislature's stated intent.

If the lower court's interpretation is correct that all the criteria must be met, including a 36-month wait period and that the child must be 13 years old, then the statute would also contradict sections 39.0146 and 39.621. These statutes state that time is of the essence for establishing

permanency, require permanency to be achieved within a year "or as soon as possible thereafter," and require the court to check in every 12 months to ensure this goal is being pursued. § 39.0146, Fla. Stat. (2022); § 39.621, Fla. Stat. (2022). Perhaps most importantly, section 39.621(3)(a) states, "The permanency goals available under this chapter, listed in order of preference, are: (a) Reunification...." § 39.621(3)(a), Fla. Stat. (2022). This tenet of Chapter 39 cannot co-exist with the lower court's interpretation that a strict "all criteria" reading should control.

Of course, the idea that a child must wait to either turn 13 or to be in care for a minimum of three years in order to be

reunited with a parent—especially a non-offending parent or one who surrenders their child for whatever reason voluntarily—is contrary to the legislative goals in Chapter 39. The idea that a child could be removed at infancy, yet the parent would have to wait until the child is 13 to have their rights reinstated is illogical. Likewise, it is absurd to interpret the statute in a way that the only parents who could move for reunification either (1) gave up their child voluntarily under section 39.806(1)(a), or (2) continued to abuse, neglect, or abandon a child and did not comply with a case plan under section 39.806(1)(e)1.-3.. Limiting the reading of the statute to require that all criteria must be met, as the lower court did

here, necessarily means that the only parents who can hope for reunification are those whose rights were terminated under those two grounds. This would mean that the following parents would be barred from moving for reunification, and their children could never move for the court to reinstate their parent-child relationship:

> (1) A parent whose identity or location could not be found within 60 days. § 39.806(1)(b), Fla. Stat. (2022).
>
> (2) A parent who is expected to be incarcerated for a significant portion of the childhood. § 39.806(1)(d)1., Fla. Stat. (2022).
>
> (3) A parent who failed to prevent another person's egregious conduct toward a sibling. § 39.806(f), Fla. Stat. (2022).
>
> (4) A parent's rights to a sibling of the child were involuntarily terminated. § 39.806(i), Fla. Stat. (2022).
>
> Surely the legislature did not intend

for someone who the Department of Children and Families was unable to find in two months should lose all hope for rights to ever be reinstated, or an incarcerated person who expected to be gone for a significant period of time but ends up not serving that sentence to be unable to reunify with their child. It's hard to comprehend that legislature would intend for a mother who had a child removed from her at birth simply because she had child previously involuntarily taken regardless of the time passed to never regain custody of her child. Likewise, the legislature could not have intended to exclude a mother who, like this Petitioner, was not present nor has knowledge of any alleged egregious behavior toward another

child, but nonetheless expeditiously lost her parental rights to her nursing baby with no option for a case plan or reunification. Such a result is incompatible with the legislative intent of the statute.

4. **Florida Rule of Juvenile Procedure 8.540 which was created to conform with the enactment of section 39.8155 Florida Statutes, does not support the lower court's statutory interpretation.**

When the legislature enacted section 39.8155, Florida Statutes, the Florida Supreme Court adopted the new Florida Rule of Juvenile Procedure 8.540, Motion to Reinstate Parental Rights, to conform to the statute. *In re Amends. to Fla. Rules of Juv. Proc.-2021 Fast-Track Rep.*, 345 So. 3d 729,

730 (Fla. 2022). This procedural rule begins in subsection (a) with the language that proceedings can be initiated "[f]ollowing a termination of parental rights," with no mention as to a 36-month mandatory wait time or a minimum age of 13 years old for the minor child. Fla. R. Juv. P. 8.540(a). The rule states in subsection (b)(2) that the movant has the burden of presenting relevant evidence. Fla. R. Juv. P. 8.540(b)(2). As far as the lower court's role, it states it must consider all relevant evidence, "including the criteria provided in Chapter 39, Florida Statutes." Fla. R. Juv. P. 8.540(b)(3). It does not specify that all criteria in section 39.8155 must be met, but instead requires the trial court to consider

all relevant evidence as to the whole of Chapter 39. Fla. R. Juv. P. 8.540(b)(3).

As Rule 8.540 was created specifically in response to section 39.8155, the Florida Supreme Court could have required the lower courts to limit inquiry to just the criteria in that statute for purposes of the evidentiary hearing, and it could have further required the lower courts to find all the criteria in that statute to be met, but it did not. *In re Amends.*, 345 So. 3d at 730. It could not, because doing so would run afoul of legislative intent and would frustrate the very purpose of reinstatement of parental rights. The only criteria definitively listed is in Rule 8.540(d), the final evidentiary hearing, wherein it requires the court to find

that it is in the best interest of the child for reinstatement, after visitations and trial home visits with the natural parent for at least three months have occurred. Fla. R. Juv. P. 8.540(d). Thus, the lower court's interpretation cannot be read in harmony with Rule 8.540, which was created to provide the Court with the procedural mechanism for motions filed under section 39.8155.

The lower court's interpretation of section 39.8155, Florida Statutes, falls under both the absurdity doctrine and the doctrine of *in pari materia*, and cannot be read in harmony with Chapter 39 or the express legislative purpose therein. Once parental rights are terminated, the biological parent

has no standing to obtain any information about their child. Therefore, it is unrealistic for the lower court to assume the parent would have access to information not privileged to them. The lower court's interpretation also creates a new set of requirements that have nothing to do with the reason parental rights were terminated. This Court should allow the matter to proceed on its merits consistent with legislative intent and the procedural requirements of Florida Rule of Juvenile Procedure 8.540.

5. **The lower court's interpretation violates the Supremacy Clause as it gives preference to state laws over the federal constitution and federal law.**

State courts generally have a duty under the Supremacy Clause to hear federal claims. *See Haywood v. Drown*, 556 U.S. 729, 732-35 (2009); *Howlett v. Rose*, 496 U.S. 356, 367-68 (1990); *Testa v. Katt*, 330 U.S. 386, 391-94 (1947). In fact, the deferential standard of review in parental rights cases is premised on the belief that states will make "good-faith attempts to honor constitutional rights." *Washington v. Glucksberg, 521 U.S. 702 (1997)*.

The lower court's belief that the text "clearly conveys" something does not make it so. The statute does not convey whether all six of the criteria must be met or not, and because interpreting it as such would be absurd, the other interpretation—that all six of the criteria cannot be met—must be the logical interpretation followed. The supremacy-of-text

principle asserts that a statute should be interpreted according to its plain meaning, therefor by completely ignoring that fact there is no clear language in their interpretation of the statute that would render this doctrine appropriate.

A strict interpretation leaving natural parents without any remedy upon which to ever see their children again should be the lens through which this statute is read. It would run afoul of its statutory goals of reunification and promoting the bonds between the children and their natural parents. The supremacy-of-text principle, the fundamental basis for statutory interpretation followed by Florida's courts, requires an interpretation based on the context of the words in the statute and what they convey. *Dep't of Children & Families v. Manners*, 328 So. 3d 1044, 1047 (Fla.

5th DCA 2021).

When this Court interprets the statute, it can look to (1) the supremacy-of-text principle, which necessarily includes the in pari materia requirement of being read in harmony with the rest of Chapter 39, and (2) the absurdity doctrine, which shows that the statute cannot require all six or else no one would be able to petition under it. Thus, here, when the legislature is silent on whether all six criteria should be met, and interpreting the statute to require all six criteria would result in an absurd outcome of no one being able to bring a petition under the statute, it cannot be added.

This Court can look at Florida Rule of Juvenile Procedure 8.540, Motion to Reinstate Parental Rights, which was created in response to this statute, for insight as to what the legal minds

in the Florida dependency realm believe the statute to require. It does not state that a court must find all the criteria be met, but instead it must include all relevant evidence throughout the whole of Chapter 39, not just the reinstatement statute. The Florida Supreme Court did not limit the lower courts' inquiries to just the criteria in the statute for purposes of the evidentiary hearing, nor did it require that all of the criteria must be met. *In re Amends. to Fla. Rules of Juv. Proc.-2021 Fast-Track Rep.,* 345 So. 3d 729, 730 (Fla. 2022). In fact, the only criteria definitively listed is regarding the final evidentiary hearing, wherein the Rule requires the court to find that it is in the best interest of the child for reinstatement, after visitations and trial home visits for at least three months have occurred. Fla. R. Juv. P. 8.540(d). The fact remains that no

conjunction exists at all, not even at the end of the list, to show whether it should be read conjunctively or disjunctively. Thus, because it cannot be read conjunctively and exist in harmony with Chapter 39, it must necessarily be read disjunctively. Applying these basic tenets of statutory interpretation and grammar, the statute requires a reading consistent with the plain language identified above while upholding the Supremacy Clause.

The absurdity of interpreting a statute in a way that would render its satisfaction an impossibility extends to the absurd assertion that this Court should essentially ignore that impossibility. The lower court's interpretation takes a stance that it should be difficult to reunite natural parents with their children. Aside from

being a concerning position for a government entity that is statutorily tasked with preserving natural families and promoting reunification, it is also an absurd position to take legally. The outcome of requiring all six criteria would be a gatekeeping statute that would prevent any natural parent from ever hoping to reunify with their children, would prolong children in the foster system just to meet an arbitrary three-year criterion, and other similarly absurd outcomes. It would expend judicial economy because, during this suddenly required three-year waiting period— or even longer, if the child is not yet 13—the court retains jurisdiction and must hold certain hearings, the Guardian ad Litem is still assigned to the case and must expend resources on managing the case, and the child waits in flux and uncertainty. This cannot possibly be what the

legislature intended when it crafted this statute, aptly named in conjunction with the legislative intent: Reinstatement of Parental Rights. § 39.8155, Fla. Stat. (2022). The lower court's interpretation is not merely an unintended result, but an absurd one, which literally contradicts the name of the statute.

For the lower court to blithely dismiss entire categories of natural parents by treating such result as consequentialism contradicts the Supremacy Clause. The concept of "consequentialism" is inappropriate here, as it applies when there are unintended results from a legislative act. Here, the result is not merely unintended, but an absurd one. In fact, multiple absurd results would exist under the lower court's statutory interpretation. The lower court's interpretation argue the concept of limiting the reinstatement of parental rights to certain

categories of former parents is not absurd, but they overlook the primary issue, that the parents specifically mentioned as ones that should be able to bring a claim under the statute could not, if all six criteria must be met. For example, if a parent had to voluntarily relinquish their child, and the child was a baby or toddler, they would have to wait a decade or so to ever hope to be reunited again, regardless of the reasoning, or how long it took them to get back on their feet and in a position to care for the child. It is, quite simply, illogical to assume that would be the intent of the Florida legislature.

The lower court's position implies that if natural parents were reunited with their children, then they would be at risk despite nothing to support the concept of pre-crime. The lower court's interpretation of a statute could potentially harm

whole classifications of natural parents. Trying to gatekeep because some natural parents who possibly should not have their rights reinstated could potentially petition under the statute is not a good reason to eliminate scores of natural parents who should have their rights reinstated. That is, quite simply, absurd and again violates the federal laws protecting the preservation of families.

Chapter 39 should not be compartmentalized, and the lower court should not be allowed to pick and choose which portions of the chapter should be read in harmony. Further, attempting to use the definition of "parent" as not including anyone whose rights have been terminated would then render the statute at issue inherently faulty. Section 39.8155, Florida Statutes, states: "After parental rights have been terminated...a **parent** whose rights were

terminated...may file a motion to reinstate the **parent's** parental rights." § 39.8155, Fla. Stat. (2022) (emphasis added). The statute continues with three of the six criteria all beginning with "The **parent**." Then, the suggested "significant change in circumstance. The lower court interprets the statute in a way that would adversely affect hundreds of thousands of Florida parents, especially those that have not been perpetrators. The incorrect legal construction of the statute cannot be used as it creates barrier to prevent countless other natural parents to pursue reinstatement with their children.

The Florida foster care system, part of which is funded by Florida taxpayers, while the federal government funds the balance. The numbers as current as 2018 (the most recent available) show the

federal government providing funds equaling some 61% [$776,840,104 of the $1,295,069,665 total], with state and local funding for the balance. Under state and federal law, the purpose of the foster care system is to provide for the care, safety, and wellbeing of minor children in Florida, with their families to be engaged in constructive, supportive, and non-adversarial relationships, with as little intrusion into the life of the family as possible. See,

e.g. Fla Stat. §39.001 (2018, unless otherwise specified). It is disheartening that the lower court prefer to interpret the law in such a way that prevents reunification with the natural parents when possible. The Petitioner's case is extremely unique and would benefit from further review because termination of parental rights is termed the "civil death penalty." *In re Smith* 77 Ohio App.3d 1,

(1977) (Permanent termination of parental rights has been described as "the family law equivalent of the death penalty in a criminal case.)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
BRITTANY BUDLOVE
Pro Se
18443 Maple St.
Lansing, IL 60438

AUGUST 12, 2023

A1

APPENDIX A

FILED
CIRCUIT COURT
SIXTH JUDICIAL CICUIT
DEC. 7, 2019
NIKKI ALVAREZ-SOWLES, CLERK AND COMPTROLLER PASCO COUNTY FLORIDA

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CICUIT

CASE NO. 2019DP000262DPAXWS

In the Interest of T.B, A Child
Order for Placement in Shelter

THIS CAUSE came on to be heard under chapter 39, Florida Statutes, on the sworn AFFIDAVIT AND PETITION FOR PLACEMENT IN SHELTER CARE filed by Beth Mason, CPI, on 12/7/19.

DONE AND ORDERED in Pasco County, Florida, this 7th day of December 2019.

s/Debra Roberts

Circuit Judge