No. 24-

IN THE

Supreme Court of the United States

JUSTIN G. DART,

Petitioner,

v.

KATRINA AHRENS, AS INDEPENDENT EXECUTOR OF THE ESTATE OF LORNE AHRENS, DECEASED,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TEXAS, TENTH DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Texas Uniform Parentage Act ("TUPA") allows a child with no presumed, acknowledged, or adjudicated father to sue for parentage adjudication after the alleged father's death. When Justin Dart turned eighteen years old, he initiated proceedings under TUPA to legally establish that Lorne Ahrens, a Dallas Police Officer slain in the line of duty two years earlier, was his biological father. Justin served the parentage petition on Katrina Ahrens, Officer Ahrens' surviving spouse, as the executor of his estate. The trial court concluded that it had personal jurisdiction over the deceased and, after a bench trial involving uncontroverted evidence of Officer Ahrens' parentage of Justin, entered a judgment of paternity. The Texas Court of Appeals reversed. Strictly construing a provision of TUPA requiring personal service of a parentage action on the putative father—to the exclusion of several other provisions of the statute that clearly effectuate its purpose and policy to permit posthumous parentage adjudications—it held that the trial court did not have personal jurisdiction over the deceased (and thus lacked subject matter jurisdiction) and that, accordingly, Justin could not maintain the parentage proceeding. The Texas Supreme Court denied Justin's petitions for review and for rehearing. This Court's intervention is necessary to resolve the following question:

Does the Fourteenth Amendment's Equal Protection Clause permit a court to deny a child the right to adjudicate his rights under the Texas Uniform Parentage Act—which allows a child with no presumed, acknowledged, or adjudicated father to sue for parentage adjudication after the alleged father's death—because the child could not execute personal service on the deceased father?

PARTIES TO THE PROCEEDING

The Petitioner Justin Gerald Dart, An Adult Child, the Petitioner below.

The Respondent is Katrina Ahrens, as Independent Executor of the Estate of Lorne Ahrens, the Respondent below.

STATEMENT OF RELATED CASES

In the Interest of Justin Gerald Dart, an Adult Child, No. DC-D202000943, 18th District Court Johnson County, Texas. Judgment entered May 26, 2021.

In the Interest of Justin G. Dart, an Adult Child, No. 10-21-00142-CV, Court of Appeals for the Tenth District of Texas. Judgment Entered June 22, 2022.

In the Interest of Justin G. Dart, an Adult Child, No. 22-0650, Supreme Court of Texas. Judgment Entered May 3, 2024.

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PETITION FOR WRIT OF CERTIORARI

TUPA, Texas Family Code Chapter 160, permits a child with no presumed, acknowledged, or adjudicated father to sue for parentage adjudication after the alleged father's death. Statutes are to be read as a whole and in context to give effect to every word of the statute, as well as sensible effect to the statute itself. When read accordingly, TUPA provides for posthumous parentage adjudications.

For example, TUPA grants standing to an individual authorized by law to act on behalf of a deceased individual. *See* App. 108a, Tex. Fam. Code § 160.602(a)(6). It authorizes proper venue for parentage proceedings in the county where administration of the alleged father's estate has been commenced. *See* App. 111a, *id.* It permits an adjudication proceeding by the putative child at "any time." *See* App. 112a, *id.* It allows for genetic testing of collateral relatives to establish parentage when a genetic-testing specimen is unavailable from the putative father, *e.g.*, when the alleged father is deceased. *See* App. 105a-106a, *id.* It also allows a posthumous parentage adjudication to be joined with a proceeding for probate or administration of an estate. *See* App. 113a, *id.* Additionally, TUPA permits the personal representative of the alleged father's estate to seek a posthumous parentage adjudication. *See* App. 108a, *id.* TUPA also provides for the substitution of parties for the express purpose of maintaining jurisdiction over a parentage proceeding. *See* App. 110a, *id.*

But the Texas Court of Appeals focused on a provision of TUPA stating that "[a]n individual may

not be adjudicated to be a parent unless the court has personal jurisdiction over the individual," App. 110a, *id.*, and concluded that because personal service cannot be effectuated on a deceased person, Justin—who executed personal service on the executor of his father's estate—could not maintain the parentage adjudication proceeding.

The Texas Supreme Court, in two pro forma one-sentence orders, rubber-stamped an interpretation of TUPA which permits an atextual, isolated reading of the personal-service provision to nullify the statute in violation of the Equal Protection Clause of the Fourteenth Amendment and to the disregard of decades-old Supreme Court precedent establishing that state statutes that discriminate against children based on "legitimacy" are unconstitutional. As early as 1968, this Court admonished state courts that issues related to establishing paternity could not "be made into an impenetrable barrier that works to shield invidious discrimination." *Gomez v. Perez*, 409 U.S. 535, 538 (1972) (citing *Stanley v. Illinois*, 405 U.S. 645, 656-657 (1972); *Carrington v. Rash*, 380 U.S. 89 (1965)). Accordingly, the Court held that when a state confers a right to children, there is no constitutionally tolerable basis for discriminating between "legitimate" and "illegitimate" children. *Gomez*, 409 U.S. at 538. Doing so, the Court said, would be "illogical and unjust." *Id.*

If the Texas Supreme Court's decision is allowed to stand, unlike "legitimate" children in Texas, children born out of wedlock, like Justin, will be prohibited from securing the benefits they would be entitled to when a father dies, based on a stigmatized characteristic over which they have no control—that they were born out of

wedlock to a father who died before a parentage petition could be served on him.

The subject of at least nine decisions by this Court, judicial interpretation of a state statute in a manner that violates the Equal Protection rights of children based on the marital status of their parents at the time of birth is a recurring issue of great national and constitutional significance. The Texas court decisions sharply deviate from court decisions within Texas as well as other States that have identical and substantially similar parentage adjudication statutes, including Washington, Utah, New Mexico, Alabama, Ohio, New Jersey, North Dakota, Hawaii, California, Nevada, and Minnesota. The ruling against Justin cannot be reconciled with this Court's precedents and warrants certiorari review on the question presented, or alternatively, summary reversal of the Texas Supreme Court's order.

OPINIONS BELOW

The Orders of the Texas Supreme Court denying Petitioner's petition for review and his motion for rehearing are reproduced at App. 15a-16a. The Judgment of the Court of Appeals, Tenth District of Texas, reversing the judgment of the trial court and dismissing the petition to adjudicate parentage is reproduced at App. 11a-12a. The Opinion of the Court of Appeals, Tenth District of Texas, reversing and dismissing the trial court's adjudication of patronage is reproduced at App. 1a-10a. The Judgment of the 18th Judicial District Court in and for Johnson County, Texas adjudicating parentage is reproduced at App. 13a-14a.

STATEMENT OF JURISDICTION

The Texas Supreme Court denied the petition for review on December 15, 2023, and it denied the petition for rehearing on May 3, 2024. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment provides, in pertinent part: "nor shall any State [. . .] deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1, cl. 2.

The relevant statutory provisions are set out in the appendix to this petition. App. 100a-115a.

STATEMENT OF THE CASE

I. Facts

In June of 1999, while residing in Lancaster, California, Melody Dart ("Ms. Dart") and Lorne Ahrens ("Officer Ahrens") began an intimate relationship that lasted three years. App. 17a-18a. Though they never married, they had a child together, Justin Dart ("Petitioner" or "Justin"), on September 19, 2000. App. 19a-22a. Although no father was listed on Justin's birth certificate (App. 23a-30a), Officer Ahrens maintained a relationship with Justin during his early childhood years and provided some financial support to Ms. Dart for Justin. App. 31a-45a.

In 2002, Ms. Dart and Officer Ahrens ended their relationship when Officer Ahrens moved from California to Arlington, Texas. App. 46a-47a. Officer Ahrens maintained his relationship with Justin after the move. App. 48a-57a.

On July 7, 2016, Officer Ahrens was killed in the line of duty by a sniper in downtown Dallas—a tragic event entitling his surviving family members to certain benefits. App. 2a; App. 48a-50a; App. 98a-99a. At the time of his death, Officer Ahrens was survived by his wife, Katrina Ahrens ("Ms. Ahrens"), who also became the executor of his estate, and their two children. App. 87a-97a.

When Justin turned eighteen years old on September 19, 2018, he filed a parentage adjudication petition under the Texas Family Code Chapter 160 ("TUPA") to establish his paternal relationship to Officer Ahrens and to make himself eligible to receive benefits as a family member of the slain Officer. App. 2a; App. 58a-59a; App. 98a-99a. Justin served the petition on Ms. Ahrens, as the executor of the deceased's estate. App. 13a-14a.

There was no available preserved DNA sample from Officer Ahrens, so Ms. Dart (Justin's mother) and William Ahrens (Justin's paternal grandfather) submitted to genetic testing, which is self-authenticating and admissible in TUPA proceedings. App. 13a-14a; App. 62a-77a. The results of the testing confirmed that Justin is the biological grandchild of William Ahrens, Officer Ahrens's father, with more than 99.99% certainty. App. 75a-77a; App. 104a-105a, Tex. Fam. Code §160.504(b), 508. These and other uncontroverted facts, including William Ahrens' signed, written declaration acknowledging Justin as his

biological grandson, were entered into the record during the parentage adjudication proceeding. App. 78a-84a.

II. Procedural History

A. Trial Court

A bench trial was held on May 20, 2021, in the 18th Judicial District Court of Johnson County, Texas. App. 13a-14a. The trial record, as noted above, reflects uncontroverted evidence and testimony establishing Officer Ahrens's paternity of Justin. App. 62a-84a. Ms. Ahrens, as executor of the deceased's estate, did not deny that Officer Ahrens is Justin's father and provided no controverting evidence on paternity. App. 85a-86a. Instead, she contested the petition on the grounds that Officer Ahrens was a necessary party for purposes of service under TUPA and that Justin could not maintain the parentage action because Officer Ahrens was deceased and could not be personally served, leaving the court without jurisdiction. The trial court disagreed and determined that it had jurisdiction over all necessary parties. Based on the uncontroverted evidence, it entered a judgment adjudicating Justin the biological child of Officer Ahrens. App. 13a-14a.

B. Texas Court of Appeals

Ms. Ahrens appealed the trial court's ruling to the Tenth District Court of Appeals in Waco, Texas. App. 1a-2a. The appeals court focused on a provision of TUPA requiring personal service on the alleged father, without any reference to the rest of the statute's provisions which

authorize posthumous parentage adjudications. App. 8a-10a.

The appeals court concluded that TUPA, Section 603, App. 109a, which identifies the necessary parties to a parentage proceeding as the mother of the child and the alleged father of the child, is a non-jurisdictional joinder provision. App. 3a-5a. The appeals court then concluded that TUPA, Section 604(a), App. 110a, which states that "[a]n individual may not be adjudicated to be a parent unless the court has personal jurisdiction over the individual," is jurisdictional. App. 4a-5a. The apeals court reasonsed that because Section 604(a) is jurisdictional and a deceased person cannot be served, the trial court lacked personal jurisdiction over Officer Ahrens and abused its discretion by entering the judgment of paternity. App. 3a-5a; 8a-10a.

Although the court, as it had to, recognized the "general trend in modern law to accord children born out of wedlock the same legal status as other children[,]" it noted that statutes must be applied as written and that the wisdom and public policy goals of a statute may not override the mandated outcome of a jurisdictional statutory provision. App. 8a-10a. According to the court, its function is not to rewrite a statute because of the absurdity of the outcome of its enforcement. App. 4a-5a.

The court also disregarded Justin's arguments: (1) that prohibiting "illegitimate" children from adjudicating their parentage under TUPA after the death of the putative father would render the statute violative of the Equal Protection Clause of the Fourteenth Amendment and at odds with this Court's precedents, beginning in the late

1960s and established in the 1970s, repeatedly striking-down state laws that discriminated against "illegitimate" children as unconstitutional; (2) that other sections of TUPA, when read in conjunction with Sections 603 and 604, App. 109a-110a, expressly provide for posthumous parentage adjudications; and (3) that a determination that a child may not maintain a parentage action under TUPA after the death of the putative father would create an impermissible rift within Texas and between Texas and other states with identical or near-identical statutes that permit parentage actions after the putative father's death.

C. Texas Supreme Court

In two one sentence orders, the Texas Supreme Court denied Justin's petition for review and motion for rehearing, without any written analysis of the Texas Court of Appeals' reasoning and the critical constitutional issue. App. 15a-16a.

REASONS FOR GRANTING THE PETITION

This Court should grant a writ of certiorari. The Texas Supreme Court's decision disregards a clear line of this Court's Equal Protection jurisprudence dating back to the 1960s, and conflicts with decisions within and outside the State of Texas. Alternatively, this Court should grant certiorari and summarily reverse the Texas Court of Appeals to correct its error, remedy the grave harms its decision inflicts on children like Justin who were born out of wedlock, and prevent the type of *invidious* discrimination this Court rejected in *Gomez* from being visited upon thousands of Texas children and potentially elsewhere.

I. The Texas Court of Appeals' Decision Violates The Fourteenth Amendment, Ignores Supreme Court Precedent, And Contributes To A Significant State Court Conflict On A Critical Equal Protection Issue.

The Texas Court of Appeals' decisions conflict with a clear line of this Court's Fourteenth Amendment precedent establishing that the Equal Protection Clause requires that all children be treated the same under the law regardless of their biological parents' marital status or the states in which the children reside. The Texas Supreme Court, by declining to review and reverse the errant decision of the Texas Court of Appeals, ignored that well-settled precedent. It also created a conflict with other decisions from courts within the State of Texas, as well as with decisions in other states with identical or near-identical statutes that permit posthumous parentage adjudications by the children of deceased fathers.

A. The Equal Protection Clause Requires That All Children Be Treated The Same Under The Law Regardless Of Their Biological Parents, Marital Status, Or The States In Which The Children Reside.

Discrimination against children based on "legitimacy" is unconstitutional. *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 165 (1972). In *Weber*, the illegitimate children of a deceased parent were denied worker's compensation benefits provided to the deceased's legitimate children on the ground that the Louisiana statute did not extend benefits to the unacknowledged children of a deceased parent. *Ibid.* at 165. The statute defined "children" as

"only legitimate children, stepchildren, posthumous children, adopted children, and illegitimate children acknowledged." *Id.* at 167 (citing La. Civ. Code arts. 203, 204, 205). It permitted unacknowledged, *i.e.*, illegitimate, children to recover only if "there [were] not enough surviving [qualifying] dependents in the proceeding to exhaust the maximum allowable benefits." *Weber*, 406 U.S. at 168. This Court, reversing the lower court, held that the denial of benefits to unacknowledged children—serving only to establish an inferior classification of "illegitimates" and bearing "no reasonable relation" to the "*purpose*" of workmen's compensation statutes which was to compensate children after the death of a parent—violated the Equal Protection Clause. *Id.* (emphasis added).

There is an unbroken *and successive* line of Supreme Court jurisprudence that is steadfast and clear that statutes and interpretations of statutes that deny equal protection to children because of their status as "unacknowledged" or "illegitimate" are unconstitutional and cannot stand. The year following *Weber*, the Court resolved a related issue in *Gomez v. Perez*, 409 U.S. 535 (1973), where this Court first recognized that illegitimate children have a constitutionally protected right to legally establish paternity, and to benefit equally from that parentage as would a child born to married parents. *id.* at 538 (citing *Stanley v. Illinois*, 405 U.S. 645, 656-57 (1972); *Carrington v. Rash*, 380 U.S. 89 (1965)). There, the Court found that a Texas law granting legitimate children a judicially enforceable right to support from their natural fathers, while denying illegitimate children the right to legally establish parentage and obtain support through a paternity suit, violated the Equal Protection Clause. *Gomez*, 409 U.S. at 538.

This Court has applied the same precedent in cases involving probate. In *Trimble v. Gordon*, this Court determined that an Illinois statute, which allowed illegitimate children to inherit by intestate succession only from their mothers while legitimate children were permitted to inherit from both parents, violated the Equal Protection Clause because it excluded "categories of illegitimate children unnecessarily." 430 U.S. 762, 771 (1977).

That the Court has established a legacy of cases entrenching this Fourteenth Amendment Equal Protection precedent is beyond dispute. *See Levy v. Louisiana*, 391 U.S. 68, 72 (1968) (denying children the right to maintain a wrongful death action for the murder of their mother because their illegitimacy has no rational relation to conduct against their mother and was invidious discrimination because no conduct of the child was possibly relevant to the harm done to their mother); *Griffin v. Richardson*, 346 F. Supp. 1226 (D. Md. 1972), *summarily aff'd*, 409 U.S. 1069 (1972) (a Social Security Act provision violated the Equal Protection Clause because it discriminated against illegitimate children who would otherwise qualify for benefits); *Glona v. Am. Guarantee & Liab. Ins. Co.*, 391 U.S. 73 (1967) (invalidating a Louisiana statute precluding a mother from maintaining a wrongful death action arising from the death of an illegitimate child); *N.J. Welfare Rts. Org. v. Cahill*, 411 U.S. 619 (1973) (invalidating a New Jersey law limiting benefits to families with a child who was legitimate or legally adopted); *Jimenez v. Weinberger*, 417 U.S. 628, 630 (1974) (invalidating a Social Security Act provision that extended benefits to illegitimate children only if the child had lived with or been supported by the disabled

wage-earning parent while placing no such limitation on benefits to legitimate children); *Weinberger v. Beaty*, 418 U.S. 901 (1974) (affirming Fifth Circuit decision holding that Social Security Act provision violated the Equal Protection Clause because it excluded claims by a class of illegitimate children).

Like the line of Fourteenth Amendment Equal Protection Clause Legitimacy and Parentage cases, this case is ripe for reversal because this Court has repeatedly told the lower courts what the law is, and the Texas Court of Appeals here committed an obvious error that is squarely foreclosed by this Court's precedent. There is no excuse for a Texas court to engage in the nullification of this Court's jurisprudence, and there is every reason for this Court to correct that manifest error.

B. Given Supreme Court Precedent, The Lower Court Error In This Case Is Manifest.

The Texas Supreme Court's wholesale adoption of the Texas Court of Appeals' decision without analysis was a dereliction of duty on a critical issue: whether a petition to adjudicate parentage can be maintained after the death of the putative father, whom due to circumstances beyond the control of the putative child, cannot be personally served at the time the petition is filed. The appeals court held that Justin could not maintain the parentage proceeding, and thus the trial court had no jurisdiction, because of a provision of TUPA that, when read as that court did, precludes service of process on a *deceased*, putative father. The appeals court also did so to the disregard of another TUPA provision raised by Justin—*a subsection of the same provision relied on by the same court*—that

permits the substitution of parties so that the jurisdiction of a TUPA action may be maintained, App. 110a, Tex. Fam. Code § 160.604(c)—as well as the very distinct purpose of the statute.[1] TUPA, promulgated in 1973, codifies the equality of rights for children regardless of their parents' marital status: "A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other." App. 108a, Tex. Fam. Code § 160.202. TUPA's purpose is to ensure that children (and their parents) have equal rights under the law. Thus, a right created for one group must be extended to all absent a strong basis for a distinction. And this Court has made plain that paternity status is not a basis that can survive Fourteenth Amendment Equal Protection scrutiny. To date, Texas and twenty-three other states have adopted identical or near-identical versions of the Uniform Parentage Act.[2]

Read as a whole, the statutory provisions of TUPA make clear that a critical part of its mandate is to provide a path for posthumous adjudication of parentage. Section 160.605 establishes that venue for a parentage suit is proper in the county where the deceased father's estate

1. The Texas Court of Appeals' decision is also conspicuously devoid of any reference to other provisions of the Texas Family Code, of which TUPA is a part, that, *e.g.*, expressly permit parentage adjudications after the alleged father's death by conferring standing on "a relative of the child within the third degree of consanguinity . . . if the child's parents are deceased at the time of the filing of the petition." *See e.g.*, App. 100a, Tex. Fam. Code § 102.003(13).

2. *See* Uniform Law Commission, Parentage Act, available at https://www.uniformlaws.org/committees/community-home?communitykey=c4f37d2d-4d20-4be0-8256-22dd73af068f (listing states adopting UPA) (last accessed Aug. 1, 2024).

is being administered or probated. App. 111a, Tex. Fam. Code § 160.605(3). Section 160.610 authorizes a parentage suit to be joined with a probate proceeding. App. 113a, Tex. Fam. Code § 160.610(a). Section 160.602 grants standing to the legal representative of a deceased individual to bring an adjudication proceeding before the child reaches the age of majority. App. 108a, Tex. Fam. Code § 160.602(6). Section 160.606 recognizes that a parentage suit may be commenced "at any time" by the putative child (*e.g.*, some time after the putative father's death). App. 112a, Tex. Fam. Code § 160.606. Section 160.509 allows for genetic testing of a deceased person. App. 106a, Tex. Fam. Code § 160.509. Section 160.508 permits genetic testing of a putative father's relatives if a sample cannot be obtained from the father, *e.g.*, if he is deceased. App. 105a, Tex. Fam. Code § 160.508(a). The Texas Court of Appeals erred by failing to consider any of these provisions when construing TUPA. *See 20801, Inc. v. Parker*, 249 S.W.3d 392, 396 (Tex. 2008) (Texas courts must interpret statutes as a whole, not merely isolated portions of them).

To the exclusion of at least seven other provisions of TUPA that provide clear paths for posthumous parentage determinations, the Texas Court of Appeals' decision turned on a quarantined subsection of one provision of TUPA which serves only to establish an inferior class of the legally unacknowledged and bears "no reasonable relation" to the "*purpose*" of the statute in the precise manner rejected by this Court in *Weber*. 406 U.S. at 168 (emphasis added). And as in the many precedential cases involving the types of survivor and other benefits actions involved here, this Court has firmly and clearly invalidated statutes whose provisions directly or indirectly discriminated against illegitimate children while posing

no obstacle to the receipt of benefits by "legitimate" children. *See supra* at Sec. (I)(A).

The Texas Court of Appeals also disregarded Justin's argument that TUPA contains a provision that permits the substitution of parties for the express purpose of maintaining jurisdiction in a TUPA action. That provision states that: "Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction." App. 110a, Tex. Fam. Code § 160.604(c)(1). Even though Justin served (his mother and) Ms. Ahrens, as the executor of Officer Ahrens' estate, the court dismissed this provision based on a hyper-technical and incorrect reading, again ignoring the purpose of the statute. App. 8a-10a; App. 13a-14a.

Compounding its error, the Texas Court of Appeals' decision would also have the unintended consequence of nullifying other provisions of TUPA. For instance, if the court is correct and TUPA prohibits a parentage action from being brought after the putative father's death because it is impossible to personally serve a deceased person, then TUPA Sections 160.605(3), App. 111a, and 160.610(a), App. 113a, have no effect because a parentage action could never be brought in the county where the father's estate was being probated or administered, nor joined with the probate. Not only would this outcome be nonsensical under the statute, it is contrary to the Texas state rules of statutory construction. *See Barr v. Bernhard*, 562 S.W.2d 844, 849 (Tex. 1978) ("it is well established that every word in a statute is presumed to have been used for a purpose, . . . and that the Legislature did not intend to do a useless thing by putting a meaningless provision in

a statute.") (citations omitted).

C. The Texas State Court's Decision Creates A Tension With Other Texas State Court Decisions And Decisions In Other Uniform Parentage Act-Adopting States.

TUPA, codifying a clear legislative commitment to providing equality to all children regardless of parentage, does not stand alone. Twenty-three other states have adopted identical or near-identical statutes that recognize the social significance of, and constitutional mandate to, ensure the equal protection rights of all children regardless of social or legal classification. In 1973, the National Conference of Commissioners of Uniform State Laws promulgated the Uniform Parentage Act (UPA), a uniform state solution intended to address the well-recognized and inherent equal protection violations reflected in pre-UPA state statutes and court decisions. *See* Unif. Parentage Act (1973) Prefatory Note, ¶ 5. ("When work on this Act began, the notion of substantive legal equality of children regardless of the marital status of their parents seemed revolutionary if one considered existing state law on this subject. . . . the law of many states continued to differentiate very significantly in the legal treatment of legitimate and illegitimate children.") (citation omitted). *See also id.* at ¶ 4. ("This Act is promulgated at a time when the states need new legislation on this subject because the bulk of current law on the subject of children born out of wedlock is either unconstitutional or subject to grave constitutional doubt.").

The UPA was drafted with the intent that adopting

states codify the unbroken line of precedent the Court developed between 1968 and 1973: "Since 1968, a series of decisions rendered by the United States Supreme Court under the Equal Protection Clause of the 14th Amendment of the U.S. Constitution has mandated equal legal treatment of legitimate and illegitimate children in a broad range of substantive areas. . . ." *Id.* at ¶ 5 (citing and quoting *Weber v. Aetna Casualty & Surety Company*, 92 S.Ct. 1400, 1406-07 (1972) and *Gomez v. Perez*, 93 S.Ct. 872, 874-75 (1973)). *See id.* at ¶ 8 (observing that "[a] ccordingly . . . the equal treatment provided by the Act is not the Conference's "wishful thinking." It is the law of the land."). Texas heeded the call when it adopted TUPA.

Consistent with the intent of the UPA, TUPA must "be applied and construed to promote the uniformity of the law among the states that enact the Uniform Parentage Act." App. 107a, Tex. Fam. Code §160.001. Yet the the Texas Court of Appeals reintroduced that odious constitutional violation by cherry-picking among Texas cases interpreting pre-TUPA statutes holding that parentage suits may survive the death of the putative father, *see, e.g., In re A.S.L.*, 923 S.W.2d 814, 817-18 (Tex. App. (1996)) and *Manuel v. Spector*, 712 S.W.2d 219, 222 (Tex. App. (1986)), and the only Texas decision holding that a parentage suit may not survive the death of the putative father. *See In re George*, 794 S.W.2d 875 (Tex. App. (1990)). The adherence of Texas state courts to the purpose of TUPA and the Supreme Court precedent with which it aligns is not a revelation. This right has been recognized by Texas courts for more than forty years. *See Tex. Dep't of Hum. Res. v. Delley*, 581 S.W.2d 519, 521 (Tex. Civ. App. 1979) ("The constitutional right to bring a paternity suit in Texas was first recognized in 1973

when the United States Supreme Court decided *Gomez v. Perez*."); *Wynn v. Wynn*, 587 S.W.2d 790, 793 (Tex. Civ. App. 1979) ("Implicit in the *Gomez* decision . . . is the notion that an illegitimate child has a common law right to institute a proceeding for the purpose of showing that the alleged father is his biological father as a necessary requisite to establish a 'judicially enforceable right' otherwise accorded to legitimate children generally.").

The Texas Court of Appeals was also dismissive of the evident conflict its decision would create with the decisions of other courts in UPA-adopting states, as brought to its attention below. For example, in *Rabb v. Est. of McDermott*, the Washington Court of Appeals held that, under the Washington UPA, a parentage suit may be brought after the putative father's death. 803 P.2d 819, 822 (Wash. App. 1991). The Washington appeals court reasoned that the parentage statute permitted an interested party to bring a parentage action "at any time." *Id.* Although that court noted the phrase "at any time" was not defined by the statute, when that phrase is read in context with other provisions of the statute that provide venue for a parentage action in any county where proceedings for probate of the father's estate have commenced (like TUPA), the statute is properly read as permitting a parentage action to be brought posthumously. *Id.*

In *In re Estate of DeLara*, the New Mexico Supreme Court held that, under New Mexico's UPA, a parentage suit may be brought after the putative father's death. 38 P.3d 198, 201 (N.M. 2001). That court reasoned the statute, which provides an action "may be brought in the county in which any party resides or is found or, if the father is

deceased, proceedings for probate of his estate have been or could be commenced[,]" means that New Mexico's UPA "clearly envisions a suit under the UPA after the death of the father." *Id.* at 200.

The Texas Court of Appeals disregarded the conflict it generated with these jurisdictions interpreting substantially similar or identical statutory provisions. If permitted to stand, its decision will sow seeds of confusion and potentially court more error. This Court should take up the opportunity to head off the invidious discrimination that outcome could spread.

II. The Texas Court of Appeals Error, Alternatively, Warrants Summary Reversal.

The lower court's decision embeds a constitutionally intolerable departure from this Court's Equal Protection jurisprudence into Texas law. And with the Texas Supreme Courts refusal to grant review, which is a matter of discretion not right, the Texas Court of Appeals' decision becomes binding precedent within the jurisdiction and creates law to which other courts may look for interpretive guidance. That its grievous error runs afoul of this Court's long line of precedent protecting the rights of children born outside of wedlock is not an esoteric state-bound concern that can be left to sit for another day because *today* it deprives a category of children distinguished only by their parentage of a constitutional right that this Court has told lower courts cannot be abridged on that basis. This alone is grounds for this Court's review.

The error is also untenable because of the odious and unjustifiable harms it has inflicted on Justin and will inflict on involuntarily illegitimate children in Texas and potentially elsewhere.

There are real-world, adverse consequences that will harm the State's children (as well as all children from all other states must file for parentage adjuducation in Texas) if the lower court's decision survives. "Few judgments have more substantial future ramifications than those affecting parentage." *In re of D.S.*, 602 S.W.3d 504, 512 (Tex. 2020) (quoting *In re E.R.*, 385 S.W.3d 552, 568 (Tex. 2012). For example, illegitimate children who are permitted to adjudicate their parentage gain access to inheritance, worker's compensation benefits, veteran educational benefits, medical benefits, and rights to bring certain causes of action. *See Johnson v. Hunter*, 447 N.W.2d 871, 875 (Minn. 1989).

"A child's interests may also include the establishment of familial bonds, indoctrination into cultural heritage, and knowledge of family medical history." *Clark v. Kenley*, 646 N.E.2d 76, 79 (Ind. Ct. App. 1995). Additionally, a determination of paternity may result in intangible psychological and emotional benefits for the child. *See, e.g.*, *Hall v. Lalli*, 952 P.2d 748, 751-52 (Ariz. Ct. App. 1997).

All these harms could befall any child in the same category as Justin under the lower court's decision.

In Justin's case, aside from the emotional and psychological harm of being denied his right to have Officer Ahrens legally declared his father, he will at minimum also be denied benefits intended for children of

police officers killed in the line of duty, to which children born in wedlock, such as Officer Ahrens' other children, Justin's half-siblings, are entitled, a denial of which is a direct harm to Justin resulting from the Texas Court of Appeals' ruling.

Summary reversal is most often reserved for cases where the lower court's "decision was obviously wrong and squarely foreclosed by our precedent[.]" *Shoop v. Cassano*, 142 S. Ct. 2051, 2057 (2022). That standard is met here.

CONCLUSION

The Court should grant the Petition or, alternatively, summarily reverse the Texas Supreme Court.

Respectfully submitted,

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