ORIGINAL

NO: 24-5035

IN THE UNITED STATES SUPREME COURT

In re Lionel Bailey

ON PETITION FOR A WRIT OF MANDAMUS IN THE SUPERIOR COURT OF BROOKS COUNTY

BRIEF FOR LIONEL BAILEY IN SUPPORT OF PETITION PETITIONER PRO SE

Submitted by:

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QUESTION PRESENTED:

WHETHER THE SUPERIOR COURT OF BROOKS COUNTY LIMITED THE SCOPE OF THE PUTATIVE FATHER'S RIGHT TO NOTICE, HEARING, AND CONSENT IN THE ADOPTION OF HIS ILLEGITIMATE CHILD ?

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Lionel Bailey , filed a petition for legitimation, custody, and/or visitation and his petition asserted the following: Lionel Bailey is a resident of New Orleans, Louisiana. He is the father of A M who was born on August 18,2021; in Georgia. The SCBC has jurisdiction and venue in this matter due to the mother of A M Shonteese Miller residing in Valdosta/Lowndes County, Georgia. The DFCS has custody of A M in Brooks county, Georgia. Shonteese Miller could have been personally served at her last known resident at 1934(1434) Briarwood Rd., Valdosta, GA 31601. Lionel Bailey brought this action pursuant to O.C.G.A.§19-7-22 to legitimize his son and to change his name from A M to A BAILEY. DFCS who has no relation to A M has permanent custody of him. DFCS has had this custody since February 21, 2022. It is in the best interest of A M to be in the permanent custody of his father, LIONEL BAILEY. On October 15, 2022; Lionel Bailey applied for a court appointed attorney. See A M (No 014-22J-00024).

As relevant here, A legitimation petition shall set forth the name, age, and sex of the child, the name of the mother, and, if the biological father desires the name of the child to be changed, the new name. If the mother is alive, she shall be named as a party and shall be served and provided an opportunity to be heard as in other civil actions under Chapter 11 of Title 9, the "Georgia Civil Practice Act." If there is a legal father who is not the biological father, he shall be named as a party by the petitioner and shall be served and provided an opportunity to be heard as in other civil actions under Chapter 11 of Title 9, the "Georgia Civil Practice Act." He submits this brief as a pro se Petitioner to explain why, if this Court lacks jurisdiction to issue a statutory writ of certiorari under GA Code § 19-7-22 or Chapter 11 of Title 9, Georgia Civil Practice Act , no obstacles prevent this Court from granting a common-law writ of mandamus under 28 U.S.C. § 1651(a).

SUMMARY OF ARGUMENT

The petition in this case raises important Fourteenth Amendment questions that the courts below have improperly evaded. But the petition also presents significant issues regarding this Court's own jurisdiction to review cases from the Georgia Department of Human Services Division of Family and Children Services ("DFCS") and the Superior Court of Brooks County ("SCBC"). Pet. 4. Whether the Court's statutory certiorari jurisdiction covering this case is an open question—but fortunately, not one that the Court needs to decide to grant the petition and address the merits of the case. That is because, especially if statutory certiorari is not available here, this is a paradigmatic case for common-law mandamus.

The common-law writ of mandamus originated in the supervisory power of the court of King's Bench, which could review and correct the proceedings of any inferior court. The writ was a discretionary writ, never available as of right to litigants, but suitable to ensure the consistent administration of the King's justice by lower courts. At the American founding, the States' highest courts inherited the jurisdiction of King's Bench within their respective territories, as did this Court for the United States—subject only to the limitations of Article III.

This Court retains power to issue a common-law writ of mandamus under the All Writs Act. 28 U.S.C. § 1651(a); Sup. Ct. R. 20.6. Traditionally, this Court has used the extraordinary writs available under the Act "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." Roche v.

Evaporated Milk Ass'n, 319 U.S. 21, 26 (1943). Indeed, jurisdictional review is at the core of mandamus's common-law role. Harris v. Barber, 129 U.S. 366, 371–372 (1889) (citing People v. Betts, 55 N.Y. 600 (1874) and Gaither v. Watkins, 66 Md. 576 (1887)). And the All Writs Act retains this gap-filling role today.

The common-law writ of certiorari has seldom been used in recent years, but that is not because of abrogation or desuetude. The gaps common-law certiorari exists to fill have merely gotten smaller as this Court's interpretations of the various certiorari statutes have grown more and more expansive. See Hohn v. United States, 524 U.S. 236, 248 (1998). But where a gap exists, common-law mandamus is there as needed to fill it.

Assuming that statutory certiorari jurisdiction is not available here, this is exactly such a case. The SCBC and DFCS are inferior Article III courts from which no appeal is expressly authorized, except in special circumstances not implicated here. It would be inconsistent with the basic structure of the federal judicial hierarchy for these inferior courts' jurisdictional rulings—which bar Petitioner here from any consideration of his constitutional claims by the SCBC and DFCS, and perhaps by any court—to be final but yet not subject to supervisory review by this Court. Fortunately, that is not the situation. The common-law writ is in aid of this Court's extraordinary jurisdiction, exceptional circumstances exist, and no other court can compel the SCBC or DFCS to grant the legitimation that the petition seeks.

ARGUMENT

28 U.S.C. § 1651 empowers this Court to issue writs of mandamus to the "courts of appeals." Although this Court has not previously decided whether the SCBC is a "court of appeals" under Section 1651, it need not decide that issue, nor whether certiorari is available under GA Code § 19-7-22. Even if this Court cannot issue a statutory writ of certiorari to review the SCBC 's decision here , it retains the power to issue the common-law writ of mandamus to review the decision below.

Petitioner takes no position on the statutory jurisdictional question raised by the petition for legitimation. Of course, if statutory certiorari is available, then "adequate relief [could] be obtained in [an]other form," and common-law mandamus would not be required. Pa. Bureau of Corr. v. U.S. Marshals Serv., 474 U.S. 34, 43 (1985); Roche, 319 U.S. at 27–28. But, assuming that neither GA Code § 19-7-22 or Chapter 11 of Title 9, Georgia Civil Practice Act ,allow this Court to review the DFCS 's or SCBC 's dispositions of serious Fourteenth Amendment and jurisdictional questions that Petitioner has raised, then this is a classic case for common-law mandamus review. Richard Wolfson, Extraordinary Writs in the Supreme Court Since Ex Parte Peru, 51 Colum. L. Rev. 977, 986 (1961).

The determinations that the SCBC and DFCS have made in this case about the limits of their own jurisdiction should be, and indeed are, reviewable by this Court even when the government is not the requesting party.

I. The common-law writ of mandamus is appropriate here assuming that statutory certiorari is not available.

The All Writs Act codifies this Court's power to "issue all writs necessary or appropriate in aid of [its] . . .jurisdiction[] and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). "The All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute," which "empowers federal courts to fashion extraordinary remedies when the need arises." Pa. Bureau, 474 U.S. at 43. "The traditional use of such writs both at common law and in the federal courts has been, in appropriate cases, to confine inferior courts to the exercise of their prescribed jurisdiction or to compel them to exercise their authority when it is their duty to do so." U.S. Alkali Exp. Ass'n v. United States, 325 U.S. 196, 202 (1945) (emphasis added). One of the extraordinary writs available to this Court under the All Writs Act is the "common-law writ of mandamus." Sup. Ct. R. 20.1. History shows that the common-law petition for an extraordinary writ is uniquely appropriate for situations like this case, in which a lower federal court has erroneously concluded that it lacks jurisdiction to consider a petition seeking to vindicate constitutional rights.

A. The common-law petition for an extraordinary writ pre-dates the Founding and can still be employed today

1. The writ of certiorari originated at the court of King's Bench alongside the other prerogative writs of mandamus, prohibition, and quo warranto. Frank J. Goodnow, The Writ of Certiorari, 6:3 Pol. Sci. Q. 493, 497 (1891). To administer this prerogative, the King's Bench held "supervisory authority over inferior tribunals" and exercised this authority via the "prerogative or discretionary writs." Hartranft v. Mullowny, 247 U.S. 295, 299 (1918); see also 4 William

Blackstone,Commentaries *314–317 (describing certiorari as a prerogative writ of the King's Bench).

Certiorari practice at King's Bench formalized three ways for the King's prerogative to be exercised.

First, certiorari could "bring up an indictment or presentment before trial in order to pass upon its validity, to take cognizance of special matters bearing upon it, or to assure an impartial trial." Hartranft, 247 U.S. at 299. Second, certiorari could serve as an "auxiliary writ in aid of a writ of error" to bring up any parts of a record omitted when a case was transferred for appeal. Id. at 300. Third, and most relevant here, certiorari served "as a quasi writ of error to review judgments of inferior courts of civil or of criminal jurisdiction, especially those proceeding otherwise than according to the course of the common law and therefore not subject to review by the ordinary writ of error." Id.(second emphasis added).

2. As this Court has recognized, the first Congress ratified the common-law writ of mandamus in the Judiciary Act of 1789: By section 14 of the Judiciary Act of September 24, 1789 (1 Stat. 81, c. 20), carried forward as section 716 of the Revised Statutes, this court and the Circuit and District Courts of the United States were empowered by Congress "to issue all writs, not specifically provided for by statute, which may be agreeable to the usages and principles of law"; and, under this provision, this Court can undoubtedly issue a petition for an extraordinary writ in all proper cases.

In re Chetwood, 165 U.S. 443, 461–462 (1897); see also James E. Pfander, Jurisdiction-Stripping and the Supreme Court's Power to Supervise Inferior Tribunals, 78 Tex. L. Rev. 1433, 1456 (2000) (explaining that the Framers believed the Supreme Court could use discretionary writs to supervise lower courts). This Court has acknowledged that "[t]he purposes

for which the writ is issued [in America and by the King's Bench] are alike." Ex parte Vallandigham, 68 U.S. (1 Wall.) 243, 249–250 (1864). Although we lack a "King as fountain of justice" (Goodnow, 6:3 Pol. Sci. Q. at 495), this Court has a Supreme Court and a Vesting Clause.

As under the English common law, common-law certiorari was, by "general and well-established doctrine," the means by which "the review and correction of the proceedings" "and determinations of inferior boards or tribunals of special jurisdiction" "must be obtained." Ewing v. City of St. Louis, 72 U.S. (5 Wall.) 413, 418–419 (1867). Those tribunals were not subject to review by the ordinary writ of error (Hartranft, 247 U.S. at 300) and certiorari review of them was " in the nature of a writ of error " (Harris, 129 U.S. at 369). For ordinary tribunals whose merits decisions were reviewable by writ of error, certiorari was available only to review jurisdictional determinations. Id. at 371–372 ("Certiorari goes only to the jurisdiction.")

3. This common-law version of the writ still exists today. The Court's Rules expressly provide for it: "Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. §1651(a) is not a matter of right, but of discretion sparingly exercised ." Sup. Ct. R. 20.1.

Though the Court's power to issue the writ persists, it has done so infrequently as the scope of statutory certiorari has expanded. For instance, in Stanley v. Illinois, 405 U.S. 645 (1972), the United States Supreme Court first established that a man who has " sired and raised" his children and participated in their " companion, care, custody, and management" had a constitutional protected private liberty interest in his children. Levy v. Louisiana, 391 U.S. 68 (1968). Since 1972, the Supreme Court has refined the parameters of the constitutional rights afforded unwed fathers. See Lehr v. Robertson, 463 U.S. 248 (1983); Caban v. Mohammed, 441 U.S. 380 (1979); Quilloin v. Walcott, 434 U.S. 246 (1978). The scope and interpretation of these

rights have been limited dramatically by the Court since Stanley, rendering uncertain both the nature of an unwed father's constitutional rights and the manner in which he may obtain such rights. See, e.g., Note, Lehr v. Robertson: Putting the Genie Back in the Bottle: The Supreme Court Limits the Scope of the Putative Father's Right to Notice, Hearing, and Consent in the Adoption of His Illegitimate Child, 15 U. TOL. L. REV. 1501 (1984). In re Baby Boy Doe, 1986 B.Y.U. L. REV. 1081 (1986). The Court appears to have delegated to individual state courts the task of developing and focusing a putative father's rights. BLACK'S LAW DICTIONARY 648 (5th ed. 1983).

In Georgia, an elaborate system of notice and hearing opportunities for the putative father has been mandated since the 1977 revision of the Adoption Code. O.C.G.A. S 19-8·7 (1982). Prior to this revision, notice was not a requirement. See 1977 Ga. Laws 201. In the ensuing years,Georgia courts have struggled to define an unwed father's rights, holding that the putative father is a recognized parent with "some parental rights" Nelson v. Taylor, 244 Ga. 657, 658,261 S.E.2d 579, 580 (1979), See, e.g., In re Ashmore, 163 Ga. App. 194, 196, 293 S.E.2d 457, 459 (1982) though only the mother of an illegitimate child has a right to custody under Georgia's legitimation statutes.

Nevertheless, the courts have held that a father who has not legitimated his child has no right or standing to sue for custody unless the child has been deprived or the mother's rights terminated. Williams v. Davenport, 159 Ga. App. 531, 532, 284 S.E.2d 45, 46 (1981).

In Eason. the Georgia Supreme Court took a definite stance in recognizing the father's rights and interests in his illegitimate child. The remand of this case for a determination of whether or not this father exercised his opportunity interest suggests there will be a case-by-case

evaluation of the conduct of a putative father both before and after his child's birth. The Georgia Supreme Court should direct its attention toward either adopting the legislative standards found in the putative father notice statute O.C.G.A. S 19-8-7 (1982) or establishing its own set of guidelines conclusively listing specific ways in which a putative father may effectively exercise his opportunity interest.

There is also a need to create a time frame in which an unwed father must demonstrate his desire to move from a potential, biologically based relationship with his child to a developed, constitutionally protected one. This time limitation may be based on the type of action the court is asked to take in the particular case before it, although recognition of the child's need for immediate stability should always be emphasized.

Finally, the bench, bar, and legislature need to consider carefully the competing interests of child, father, mother, adoptive parents, and state. The courts should then determine these issues in light of the new standard applied to unwed fathers, which shifts the evaluation from the best interests of the child to the parental fitness of the putative father. A balancing test that weighs these interests should be articulated in order to secure the putative father's constitutional rights.

The implications of Eason for adoption cases could be significant. Although the Eason standard is a major recognition of an unwed father's parental rights, it can also be a double-edged sword. Eason cuts through years of discrimination against fathers of illegitimate children by enabling them to have a constitutionally protected relationship with their children. On the other hand, however, it can sever the ties that have bound a child to the adoptive parents who may have been that child's primary caretakers since birth. Even if that extreme is not realized, the Eason decision may conceivably allow a putative father with no desire to obtain

custody of his child to block the adoption by other people; if the father is recognized as a fit parent, he has the right to veto as well as to consent to his child's adoption. Quilloin v. Walcott, 238 Ga. 230, 233, 232 S.E.2d 246, 248 (1977). But see Eason, 257 Ga. at 296, 358 S.E.2d at 463: Perhaps the most logical method to avoid any future difficulties would be for the legislature to recognize and address these uncertainties by revising the unwed father notice statute. This statute should include the opportunity interest test with guidelines and time limits that would provide clear rules for interested parties.

Ultimately, Eason could be a case of considerable precedential value. A putative father who wants to be involved in his child's life can no longer be relegated to the status of parent-in-name-only. He has the opportunity to become a recognized parent with a constitutionally protected right to have an influence on how and with whom his child is raised. It is up to the father to activate this potential relationship. The court in Eason opened the door for a fit biological father to have an interest in the disposition of his child fully comparable to that of the child's mother.

This new concept will affect adoption proceedings, hearings for legitimation petitions, and custody determinations throughout the state of Georgia. The courts now should seek to serve the interests of all parties, including those of the unwed father, and not just the best interests of the child.

II. The petition here meets the three-part test set forth in Rule 20.1.

As discussed, the Court's power to issue the common-law writ of certiorari comes from the All Writs Act, 28 U.S.C. § 1651(a). The Court has distilled its discretion to issue extraordinary writs under the All Writs Act to a three-part test in its Rule 20.1:

To justify the granting of any such writ, the petition must show that :

[1] the writ will be in aid of the Court's appellate jurisdiction,

[2] that exceptional circumstances warrant the exercise of the Court's discretionary powers, and

[3] that adequate relief cannot be obtained in any other form or from any other court.

This case meets all three prongs. See Schacht v. United States, 398 U.S. 58, 6 (1970).

A. The writ is in aid of the Court's appellate jurisdiction because Petitioner seeks review of federal questions decided by an inferior state court.

1. The Court has "appellate Jurisdiction, both as to Law and Fact," in all cases "arising under the Constitution" or "the Laws of the United States." U.S. Const. Art. III, § 2, Cl. 1.

This Court has extraordinary jurisdiction to review this case because it is an Unpublished Order from an Article III court's ruling on questions arising under the Constitution and federal law.

The SCBC and DFCS review only questions of federal law. Stanley v. Illinois, 405 U.S. at 651. In Stanley, the Court explained that this interest is based on the historical and essential

protection granted the familial relationship, noting that this protection has been extended even to family relationships not legitimized by a marriage ceremony. The SCBC's and DFCS 's decisions therefore fall within Article III's "arising under" head of federal jurisdiction. See U.S. Const. Art. III, § 2, Cl. 1 ("The judicial power shall extend to all cases, in law and equity, arising under this Constitution [and] the laws of the United States . . ..").

The SCBC and DFCS are Article III courts. See,e.g., In re Lionel Bailey , No. 18416657,((Clerk 2024) ("The Petition for Legitimation, Custody, and/or Visitation ."); see also the service of process for Shonteese Miller at 5, In re Lionel Bailey ., No 18416657(July 5, 2023); Lionel Bailey v. Brooks County Division of Family and Children Services et al. No. S2400938 (May 14,2024).

("[T]he SCBC is an inferior court established by Congress under Article III."). But even if they were not Article III courts, this Court would still have extraordinary jurisdiction to review their decisions. This Court frequently reviews decisions of state courts and "special tribunals," showing that "the Court has constitutional extraordinary jurisdiction to review an exercise of judicial power other than that conferred by Article III." Oaks, 1962 Sup. Ct. Rev. at 162; Ortiz v. United States, 138 S. Ct. 2165, 2176 (2018) ("[T]his Court's appellate jurisdiction, as Justice Story made clear ages ago, covers more than the decisions of Article III courts.").

It is for precisely this reason—the need to address abuses of jurisdiction in either direction in cases that do not qualify for statutory certiorari (or earlier, writs of error)—that these supervisory writs exist:

Under the [All Writs Act], the jurisdiction of this Court to issue common-law writs in aid of its extraordinary jurisdiction has been consistently sustained. . . . The writs thus afford an

expeditious and effective means of confining the inferior court to a lawful exercise of its prescribed jurisdiction, or of compelling it to exercise its authority when it is its duty to do so. Ex parte Republic of Peru, 318 U.S. 578, 582–583 (1943); see also Ex parte United States, 287 U.S. 241, 245–246 (1932); McClellan v. Carland, 217 U.S. 268, 279–280 (1910); Ex parte Crane, 30 U.S. (5 Pet.) 190, 193–194 (1831). See, e.g., U.S. Const. Art. III, § 2, Cl. 1; 28 U.S.C. § 1331.

B. This case involves exceptional circumstances that warrant application of the common-law writ

1. "[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988). There are at least two such "serious constitutional problems" here. First, by the government's lights, the SCBC and DFCS lack original jurisdiction to hear Petitioner's petition, possibly making Petitioner's petition unreviewable.

That would raise a constitutional question of the highest order. See Webster v. Doe, 486 U.S. 592, 603 (1988) ("We require this heightened showing in part to avoid the 'serious constitutional question' that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim." (citation omitted)). If the SCBC and DFCS were unreviewable and got the jurisdictional question wrong—limiting individuals' access to the SCBC—no judicial forum could assess the merits of Petitioner's Fourteenth Amendment claim.

A rule that SCBC and DFCS decisions are unreviewable would also allow the DFCS to hide its wide-reaching Fourteenth Amendment jurisprudence, preventing Americans from being able to protect their rights. See, e.g., Amicus Br. for Stephen I. Vladeck at 24–26, Wikimedia Found. v. NSA, No. 20-1191 (4th Cir. July 8, 2020)

For instance, a legitimation petition may also include claims for visitation, parenting time, or custody. If such claims are raised in the legitimation action, the court may order, in addition to legitimation, visitation, parenting time, or custody based on the best interests of the child standard. It was further ordered that the petition be and thereby was transferred to the BCSC under the authority of 28 U.S.C. § 1631 for that court to determine whether Petitioner was authorized under Code Section 15-11-11 to file the instant legitimation petition in SCBC." Upon the determination of paternity or if a voluntary acknowledgment of paternity has been made and has not been rescinded pursuant to Code Section 19-7-46.1, the court or trier of fact as a matter of law and pursuant to the provisions of Code Section 19-7-51 may enter an order or decree legitimating a child born out of wedlock, provided that such is in the best interests of the child. Subsequently, other Article III courts concluded that because a father failed to give written notice to the juvenile court that a legitimation petition was filed, as required by O.C.G.A. § 15-11-96(h), within 30 days of receiving notification of a termination proceeding, the juvenile court properly entered an order terminating the father's parental rights, and the father was thus denied the right to object. In the Interest of S.M.R., 286 Ga. App. 139, 648 S.E.2d 697 (2007). Because Lionel Bailey has given notice to the SCBC within the thirty days of receiving the notification of a termination proceeding, the SCBC should have entered an order granting Lionel Bailey his parental rights, and his right to object.

That advice should not have been necessary to ensure that the SCBC ruled within the boundaries of the Constitution and of DFCS. To ensure public confidence, this Court should

show that it can and will oversee the body of secret constitutional law created by the DFCS and SCBC.

Second, the government may contend that this Court lacks either appellate jurisdiction or statutory power to review Petitioner's serious constitutional claim. But it is doubtful whether Congress could deprive the Supreme Court of appellate jurisdiction over constitutional cases. The Court—and not the Congress or the "inferior" courts—"has remained the ultimate expositor of the constitutional text." United States v. Morrison, 529 U.S. 598, 616 n.7 (2000); see also Webster, 486 U.S. at 611–612 (Scalia, J., dissenting) ("[I]f there is any truth to the proposition that judicial cognizance of constitutional claims cannot be eliminated, it is, at most, that they cannot be eliminated . . . from this Court's appellate jurisdiction over cases . . . from federal courts, should there be any[] involving such claims."); cf. Felker v. Turpin, 518 U.S. 651, 667 (1996) (Souter, J., concurring) (if statute limited Supreme Court review, "the question whether the statute exceeded Congress's Exceptions Clause power would be open").

The Court has never addressed whether EASON three categories of putative fathers and the degree of their rights in their children.. And it is an area of immense public interest. When the petition was filed on July 5, 2023, the petition became the authority of 28 U.S.C. § 1631 for that court to determine whether Petitioner should be allowed to legitimize his son under O.C.G.A. § 19-7-22.

The possibility that DFCS order authorized conduct that violates Americans' rights has become significantly more substantial because the numerous post-Romas orders denied by the SCBC increased DFCS 's domain:

The EASON Court concluded that " there exists a continuum of unwed father-child relationships with assigned degree of protection afforded rights to custody. Id at 294, 358 S.E.2d

at 460-61. The Constitution's text and structure clearly indicate that timing appears to be an essential element of the opportunity interest. Two such interests are best for the child or the unwed mother . EASON, 257 Ga. at 292,358 S.E.2d at 460.

In making that determination, the court held that "because Georgia law affords an unwed mother a fitness test or veto power under the circumstances it must also afford [the father] a fitness test or veto power, provided he has not abandoned his opportunity interest."142 The court's decision was based on a fit biological father's right to prevail over strangers who desire to adopt his child if he has pursued his opportunity interest. When such a father seeks custody of his child "[h]e is in pursuit of a recognized interest which, if obtained, places him in circumstances of a custodial unwed father,"143 and therefore his rights prevail over those of adoptive parents. Judicial recourse is appropriate because the child has been placed with the adoptive parents pursuant to state adoption law, signifying state action. Id. at 297, 358 S.E.2d at 463. To deny a father the right to develop a relationship with his child by terminating his rights prematurely without an inquiry into his degree of involvement with the child would be state action resulting in impermissible interference with his constitutional due process rights. Buchanan, The Constitution Rights of Unwed Fathers Before and After Lehr v Robertson, 45 OHIO ST. L.J. 313, 351-53 (1984).

While some prominent scholars have argued that "Article III requires . . . that the Supreme Court must have the final judicial word in all cases . .. that raise federal issues," Steven G. Calabresi & Gary Lawson, Essay: The Unitary Executive, Jurisdiction Stripping, and the Hamdan Opinions: A Textualist Response to Justice Scalia, 107 Colum. L. Rev. 1002, 1005 (2007), this Court need not resolve that issue here. Instead, this Court should do what it has so often done when confronted with this same question: use constitutional avoidance to read the relevant statutes to allow this Court to exercise its jurisdiction. Hamdan v. Rumsfeld, 548 U.S.

557, 575 (2006) (declining to adopt a statutory position that "raises grave questions about Congress' authority to impinge upon this Court's appellate jurisdiction"); see also Tara Leigh Grove, The Structural Safeguards of Federal Jurisdiction, 124 Harv. L. Rev. 869, 925 (2011) ("As in McCardle and Yerger, the Supreme Court read this restriction narrowly."); Stephen I. Vladeck, The Increasingly "Unflagging Obligation": Federal Jurisdiction After Saudi Basic and Anna Nicole, 42 Tulsa L. Rev. 553, 557–558 (2007) (similar).

The constitutional concerns that would arise if this Court truly lacked a means to review the DFCS and SCBC 's rulings are even more serious because the underlying Fourteenth Amendment claim raised in this case is more than "colorable."

If the state denies the father his opportunity to develop his interest by permanently terminating his rights, it may be considered an interference with his constitutional rights. Buchanan, The Constitution Rights of Unwed Fathers Before and After Lehr v. Robertson, 44 OHIO ST. L.J. 313, 351-53 (1984).

This Court has never addressed whether the public's qualified Fourteenth Amendment right to develop his interest applies in BCSC cases, an issue of serious dispute. See Pet. 18 (making merits argument); Pet., Lionel Bailey, No. 18416657. And it is an area of immense public interest. In April 1987, the Georgia Supreme Court decided In re Baby Girl EASON and adopted the opportunity interest test as a means of determining whether or not an unwed father has constitutionally protected rights in his child. In re Baby Girl EASON, 257 Ga. 296, 358 S.E.2d 459 (1987) (No. 44707).

An unwed father who has custody and performs

all duties of a parent has full constitutional rights in his child and must be treated equally with other parents; an unwed father who has never had custody or sought to establish any relationship

with his child has no constitutional rights in his child; and an unwed father who has not had custody but has nonetheless developed a substantial bond with his child also has a protected interest. Id. at 294, 358 S.E.2d at 460-61.

The possibility that SCBC order authorize conduct that violates Americans' rights has become significantly more substantial because the numerous post-Eason decision increased SCBC's domain:

The SCBC's role has expanded greatly since its creation in 1859. As DFCS has evolved and Congress has loosened its individual suspicion requirements, the DFCS has been tasked with delineating the limits of the Government's constitutional power, issuing secret orders without the benefit of the adversarial process. ACLU v. Clapper, 959 F. Supp. 2d 724, 756 (S.D.N.Y. 2013), aff'd in part and rev'd in part, 785 F.3d 787 (2d Cir. 2015); see also Stephen I. Vladeck, The FISA Court and Article III, 72 Wash. & Lee. L. Rev. 1161, 1168–1176 (2015) (describing radical changes in the type of cases heard by the FISC). Petitioner's case is a mine-run qualified due process-right-of-access case where a petition seeks Legitimation ; it is an especially challenging case because the secret orders could implicate the public's constitutional rights.

2. In addition, the effects of DFCS orders on Americans' primary conduct and the Fourteenth Amendment rights to due process constitute exceptional circumstances warranting the exercise of the Court's discretionary powers.

First, the Court historically favored granting certiorari when the case raised a question that affected the general public.

The Court's standard was to issue the writ of certiorari "only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision." Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916);8 see also Forsyth v. Hammond, 166 U.S. 506, 514 (1897) (certiorari granted in The Three Friends, 166 U.S. 1 (1897), because the case would "disclose to each citizen the limits beyond which he might not go"). This is such a case. As the Petition explains, DFCS's orders can have "far-reaching implications for U.S. citizens and residents who are not the ostensible targets of the government's denial of petitioner's Fourteenth Amendment right to due process." Pet. 6. Only through disclosure of the DFCS's orders (or through Legitimation) can Americans gain a rough sense as to what communication might or might not be challenged through Petition for Legitimation .

Second, this Court often granted discretionary writs when the cases touched upon foreign affairs. For instance, "the construction of acts of Congress in the light of treaties with a foreign government" was sufficiently weighty to justify common-law certiorari. In re Woods, 143 U.S. 202, 206 (1892) (describing In re Lau Ow Bew, 141 U.S. 583 (1891)); Forsyth, 166 U.S. at 514 (certiorari granted in The Three Friends, 166 U.S. 1 (1897), because "the question involved was one affecting the relations of this country to foreign nations"); Fields v. United States, 205 U.S. 292, 296 (1907) (denying certiorari because, among other things, the case did not "affect[] the

relations of this nation to foreign nations"); Balintulo v. Daimler AG, 727 F.3d 174, 187–188 (2d Cir. 2013) (collecting cases).

Here, based on the biological link alone, an unwed father has an opportunity interest to develop a relationship with his child. If he exercises that opportunity interest, he establishes constitutional rights protected by due process of law. Id. at 296, 358 S.E.2d at 462. However, these rights are not absolute and can be abandoned if not "timely pursued," (Timing appears to be an essential element of the opportunity interest. In Lehr. the father was denied his rights partly because two years had elapsed in which he had not developed a relationship with his child. In Quilloin, the father was likewise denied his rights because eleven years had elapsed. In Doe v. Chambers. 188 Ga. App. 879. 374 S.E.2d 758 (1988). decided after Eason, the Georgia Court of Appeals affirmed the trial court's grant of legitimation and custody for an unwed father against the potential adoptive parents. The father did not learn of his daughter's birth until two months after the fact when he then "vigorously pursued his opportunity interest." Id. at 880. 374 S.E.2d at 760. (In holding that the trial court "conducted the proceedings with impeccable regard for the standards established in In re Baby Girl Eason," the appellate court apparently reasoned that two months time was insufficient for the unwed father to lose his opportunity interest. Id.) but the state cannot deny the father a "reasonable" opportunity to exercise his interest. Eason, 257 Ga. at 296, 358 S.E.2d at 460.(If the state denies the father his opportunity to develop his interest by prematurely terminating his rights. it may be considered an interference with his constitutional rights. Buchanan. supra note 125. at 361-62.)

Indeed, the SCBC itself can verify that, petitioner had made a opportunity interest in developing a bond with his son.

Finally, exceptional circumstances also exist here because "unless it can be reviewed under [the All Writs Act, the order below] can never be corrected if beyond the power of the court below." De Beers Consol. Mines, Ltd. v. United States, 325 U.S. 212, 217 (1945) (describing U.S. Alkali Exp. Ass'n, 325 U.S. 196). "If [the Court] lacked authority to" review decisions like this, then "orders [by SCBC or DFCS] to dismiss for want of jurisdiction would be insulated entirely from review by this Court." Nixon v. Fitzgerald, 457 U.S. 731, 743 n.23 (1982), See Davis, No.08-4175, R. Docs. 39, 40 & 41.

C. Because of the DFCS's unique power over its records, adequate relief cannot be obtained in any other form or from any other court.

The final factor is that "adequate relief cannot be obtained in any other form or from any other court."

This usually refers to a failure of a litigant to seek relief in an intermediate court. In re Blodgett, 502 U.S. 236, 240 (1992) ("The State should have lodged its objection with the Court of Appeals, citing the cases it now cites to us."); Hohn, 524 U.S. at 264 (Scalia, J., dissenting) ("Because petitioner may obtain the relief he seeks from a circuit justice, relief under the All Writs Act is not 'necessary.'"); cf. Wolfson, 51 Colum. L. Rev. at 977 ("[T]he Supreme Court has frequently said, in cases reviewable by the courts of appeals, that application for such writs should be made in the first instance to the intermediate courts.").Here, however, petitioner has sought relief in the Supreme Court of Georgia, the intermediate court that reviews SCBC orders . See Supreme Court of Georgia order petition at 33, Lionel Bailey v. Brooks County Division of Family and Children Services et al, No. S2400938 (May 14,2024). Petitioner has also sought relief in the SCBC, the intermediate court that reviews DFCS orders. See Legitimation order for

the SUPERIOR COURT OF BROOKS COUNTY petition at 32, In re Lionel Bailey ., No. 18416657 (Jul.5, 2023) (petitioner desire to legitimate his child and change his surname because DFCS has had custody of petitioner's son since February 21, 2022 and petitioner's future custody arrangements for his son is in custody permanently) See petition at p.6 .The government may argue here that a putative father is being denied certain rights due to either not legitimating the child See generally Quilloin v. Walcott, 238 Ga. at 230, 233 , 232 S.E.2d 246, 248 (1974) , not marrying the mother See Best v. Acker, 133 Ga. App. 250, 251, 211 S.E.2d 188, 189 (1974) or not providing support. See generally Mabry v Tadlock, 157 Ga. App. 257, 259, 277 S.E.2d 688, 689 (1981)

The Superior Court of Brooks County under the authority of 28 U.S.C. § 1631 had to determine whether Petitioner was legitimate under O.C.G.A. §19-7-22 to custody and or visitation . Transfer in Order for the SUPERIOR COURT OF BROOKS COUNTY p. at 32-35, In re Lionel Bailey , No. 18416657 (Jul.5, 2023).

The government may argue here that Petitioner's petition for legitimation could be brought in the county where the biological mother lives. O.C.G.A.§ 19-7-22. In re Lionel Bailey, No. 18416657 (July 5, 2023) ("[T]he mother must be formally notified, and she has the right to attend the court hearing"). But this is not an appropriate substitute. Petitioner's case concerns legitimation of a particular Article III court—the SCBC. Asking a separate Article III court to order the DFCS to legitimize the filing of the petition would be awkward, at best.

Unlike this Court, district courts have no clear supervisory power over the DFCS , under Article III or the Clerk of Superior Court. See Belinda Wheeler, Clerk, year elected dated . 2021(

" Files, civil reporting forms, deed, lien and plat files, e-filing, family violence forms, fine and fees forms, notary forms, notary public application, PT-61 e-filing and UCC forms).

Indeed, the DFCS often transfers petition for legitimation to the district court to determine the " best interest of the child". See Eason, 257 Ga. at 292, 358 S.E.2d at 460). The court's decision was based on a fit biological father's right to prevail over strangers who desire to adopt his child if he has pursued his opportunity interest. When such a father seeks custody of his child "[h]e is in pursuit of a recognized interest which, if obtained, places him in circumstances of a custodial unwed father," Id. at 296, 358 S.E.2d at 463 and therefore his rights prevail over those of adoptive parents. Judicial recourse is appropriate because the child has been placed with the adoptive parents pursuant to state adoption law, signifying state action.Id. at 297, 358 S.E.2d at 463 To deny a father the right to develop a relationship with his child by terminating his rights prematurely without an inquiry into his degree of involvement with the child would be state action resulting in impermissible interference with his constitutional due process rights. Buchanan, Supra note 125, at 361-62.

And even if a coordinated Article III court could and would rule on whether the SCBC order at issue should have been granted, that would answer only Petitioner's second question. The first question is "[w]hether the SCBC , like other Article III courts, has jurisdiction to consider a petition asserting that the Fourteenth Amendment provides a qualified due process right of access to the court's significant transfer order, and whether the DFCS has jurisdiction to consider a petition from the district court." Pet. at i. That question is very significant, given the increasing role that the DFCS and SCBC have assumed in light of the recent changes to SCBC discussed above and the failure to file in the county where the biological mother lives. O.C.G.A.§ 19-7-22.

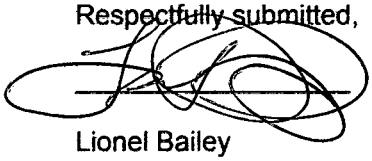
And even if a coordinated Article III court could and would rule on whether the DFCS order at issue should have been granted, that would answer only Petitioner's second question. The first question is "[w]hether the SCBC , like other Article III courts, has jurisdiction to consider a petition asserting that the Fourteenth Amendment provides a qualified due process right of access to the court's significant transfer order, and whether the SCBC has jurisdiction to consider an petition from the order of such a petition." Pet. at i. That question is very significant, given the increasing role that the DFCS and SCBC have assumed in light of the recent changes to SCBC discussed above and the greater due process debate around petition for legitimation. No court other than this Court can address that jurisdictional issue and decide, once and for all, whether the DFCS and SCBC lack any authority to entertain the Fourteenth Amendment claims that Petitioner has raised.

In short, this Court's supervisory power is the only judicial power that can check SCBC's supervisory power over its own order and petition. Coupled with the other circumstances discussed above, that warrants the use of common-law mandamus.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,



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