No. 24-812

IN THE
Supreme Court of the United States

LA DELL GRIZZELL, *et al.*,
Petitioners,

v.

SAN ELIJO ELEMENTARY SCHOOL, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JENNIFER S. CREIGHTON
Counsel of Record
ERIN N. TAYLOR
WINET PATRICK GAYER
CREIGHTON & HANES
1215 WEST VISTA WAY
VISTA, CA 92083
(760) 758-4261
jcreighton@wpgch.com

Counsel for Respondents

QUESTION PRESENTED

Whether 28 U.S.C. § 1654 requires that a non-lawyer parent be allowed to represent their minor child in federal court without retaining a licensed attorney to act as the minor's legal counsel.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iv

OPINIONS BELOW. 1

JURISDICTION. 1

STATEMENT OF THE CASE. 1

REASONS FOR DENYING THE PETITION. 5

I. The Ninth Circuit's Decision Was Correctly Decided and is Consistent With Well-Established Law 5

A. The "Counsel Mandate" Does Not Contravene Federal Statutes Governing a Minor's Right to Litigate in Federal Court 6

B. Parents Desiring to Proceed *Pro Se* are Unlikely to Comprehend their Potential Inadequacies and Appreciate the Dangers of *Pro Se* Representation 8

C. A Parent's *Pro Se* Representation of a Minor Child Places Courts in an Untenable Position 13

D. The Rationale for Requiring Licensed Legal Counsel is Sound. . . . 18

E. Petitioner's Constitutional Arguments do not Justify Allowing a Non-Attorney Parent to Act as Legal Counsel for Their Minor Child. 22

II. The Petition Does Not Set Forth a Circuit Split Which Warrants this Court's Intervention. 26

A. The Fifth Circuit's Holding in *Raskin on behalf of JD v. Dallas Independent School Dist.*, 69 F.4th 280 (5th Cir. 2023) does not Create a Conflict with the Ninth Circuit's Ruling Below. 27

B. The Narrow Exception Involving Supplemental Security Income Benefits in the Fifth, Second, and Tenth Circuits does not Warrant Review. 29

C. The "Flexible Approach" Has Not Been Carved Out by the Circuits. . . . 31

III. This Case Lacks Immediate Importance and is a Poor Vehicle for Considering the Question Presented. 32

CONCLUSION 34

TABLE OF AUTHORITIES

CASES **PAGES**

Adams ex rel. D.J.W. v. Astrue, 659 F.3d 1297 (10th Cir. 2011) 29, 30

Bryant v. Soc. Sec. Admin., 478 F. App'x 644 (11th Cir. 2012) 31

C.E. Pope Equity Tr. v. United States, 818 F.2d 696, 697 (9th Cir. 1987) 7

Carrero o/b/o K.S.C. v. Acting Comm'r of Soc. Sec. Admin., No. 22-2793, 2023 WL 2906171, at 1 (3d Cir. Apr. 12, 2023) 31

Carrigan v. California State Legislature, 263 F.2d 560, 564 (9th Cir. 1959) 13, 15

Cheung v. Youth Orchestra Found. of Buffalo, Inc., 906 F.2d 59 (2d Cir.1990) 18

Collins v. O'Brien, 208 F.2d 44, 45 (D.C. Cir. 1953) (per curiam), cert. denied, 347 U.S. 944 8

Cranberg v. Consumers Union of U.S., Inc., 756 F.2d 382, 392 (5th Cir. 1985) 15

Crozier for A.C. v. Westside Community School District, 973 F.3d 882 (8th Cir. 2020) 18

Dacanay v. Mendoza, 573 F.2d 1075, 1079 (9th Cir. 1978) 14

Dean v. Holiday Inns, Inc., 860 F.2d 670, 673 (6th Cir. 1988) 14

Elliott v. Versa CIC, L.P., 328 F.R.D. 554, 556 (S.D. Cal. 2018) 16

Elustra v. Mineo, 595 F.3d 699, 705 (7th Cir. 2010) 32

Faretta v. California, 422 U.S. 806, 835 (1975) . . . 9

Ficken v. Alvarez, 146 F.3d 978, 981 (D.C. Cir. 1998) 9

Garrick v. Weaver, 888 F.2d 687, 693 (10th Cir. 1989) 14

Ginsberg v. New York, 390 U.S. 629, reh. denied, 391 U.S. 971 (1968) 23

Guajardo v. Luna, 432 F.2d 1324, 1324 (5th Cir. 1970) 7, 25

Harris v. Apfel, 209 F.3d 413, 417 (5th Cir. 2000) 29, 30

Herrera-Venegas v. Sanchez-Rivera, 681 F.2d 41, 42 (1st Cir. 1982) 7

Hull By Hull v. United States, 53 F.3d 1125, 1127, n. 1 (10th Cir. 1995) 16

Iannaccone v. L., 142 F.3d 553, 558 (2d Cir. 1998) 7

In re Brooms, 447 B.R. 258, 267 (B.A.P. 9th Cir. 2011), aff'd, 520 F. App'x 569 (9th Cir. 2013) . . 25

In re Murchison, 349 U.S. 133, 136 (1955) 15

J.W. v. Superior Ct., 17 Cal. App. 4th 958, 968 (1993) 8

Jacobsen v. Filler, 790 F.2d 1362, 1365 (9th Cir. 1986) 15

JD1 by & through Raskin v. Dallas Indep. Sch. Dist., No. 3:21-CV-2429-L, 2024 WL 4361608, at 9 (N.D. Tex. Sept. 30, 2024) 28

Johns v. County of San Diego, 114 F.3d 874 (9th Cir. 1997) 2, 5, 18, 20

Johnson v. City of Philadelphia, 644 F. App'x 130, 131 (3d Cir. 2016) 25

Johnson v. Friesen, 79 F.4th 939, 944 (8th Cir. 2023) 11, 12

Jones v. Niagara Frontier Transp. Auth., 722 F.2d 20, 22 (2d Cir. 1983) 8, 12

Lee v. Comm'r of the Soc. Sec. Admin., 639 F. App'x 951, 952 (4th Cir. 2016). 31

Lepucki v. Van Wormer, 765 F.2d 86, 87 (7th Cir. 1985) (per curiam) 13

Lewis v. Lenc-Smith Mfg. Co., 784 F.2d 829, 830 (7th Cir. 1986) 12

Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 860–61 (1988). 15

Machadio v. Apfel, 276 F.3d 103, 105–06 (2d Cir. 2002) 29, 30

Marquette Prison Warden v. Meadows, 114 Mich. App. 121, 123 (1982) 12

Mattison ex rel. K.A. v. Astrue, 520 F. App'x 531, 532 (9th Cir. 2013). 31

Meeker v. Kercher, 782 F.2d 153 (10th Cir. 1986) 7, 18

Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195, 201 (2d Cir. 2002) 31, 32

Myers v. Loudoun County Public Schools (4th Cir. 2005) 418 F.3d 395 18

Navin v. Park Ridge Sch. Dist., 270 F.3d 1147 (7th Cir. 2001) 18

Osei–Afriyie v. Medical College, 937 F.2d 876 (3d Cir. 1991) 18

Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975) 9

Prince v. Massachusetts, 321 U.S. 158, reh. denied, 321 U.S. 804 (1944) 23

Quevedo v. Trans-Pac. Shipping, Inc., 143 F.3d 1255, 1258 (9th Cir. 1998) 11, 12

Raskin on behalf of JD v. Dallas Indep. Sch. Dist., 69 F.4th 280 (5th Cir. 2023) 3, 6, 27

Roberts v. Ohio Casualty Insurance Co., 256 F.2d 35, 39 (5th Cir. 1958) 14

Salmeron v. United States, 724 F.2d 1357, 1363 (9th Cir. 1983) 14

Shepherd v. Wellman, 313 F.3d 963 (6th Cir. 2002) 18

Troxel v. Granville, 530 U.S. 57, 65-66 24

United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat Cnty., State of Wash., 795 F.2d 796, 805 (9th Cir. 1986) 14

United States v. Jordan, 49 F.3d 152, 155–56 (5th Cir. 1995) 16

United States v. Pinkey, 548 F.2d 305, 311 (10th Cir. 1977) 15

United States v. Reilly, 385 F.2d 225, 228 (10th Cir. 1967) 14

Warner v. Sch. Bd. of Hillsborough Cnty., Fla., No. 23-12408, 2024 WL 2053698 (11th Cir. May 8, 2024) 18

Winkelman ex rel. Winkelman v. Parma City Sch. Dist., 550 U.S. 516 (2007) 7

Yoder v. Dist. Att'y Montgomery Cnty., 790 F. App'x 478, 481 (3d Cir. 2019) 7

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment. 1

STATUTES

28 U.S.C. § 1254 1

28 U.S.C. § 1915 4

28 U.S.C. § 1915(d). 19

28 U.S.C. § 1654 . . . . . 2, 5–8, 11, 22, 26, 27

42 U.S.C. § 11431(1). 2

42 U.S.C. § 11434a 2

Cal. Bus. & Prof. Code § 6126(a) 26

Cal. Fam. Code § 6601 . . . . . 8, 11, 12, 28

Tex. Fam. Code § 151.001(a)(7) 28

Title IV of the Civil Rights Act of 1964 2

Title VI of the Civil Rights Act of 1964 2

OTHER AUTHORITIES

CA ST RPC Rule 1.4.2 12

Fed. R. Civ. Pro. 17 . . . . . 6, 11, 14, 17, 21, 22, 26, 29

Fed. R. Civ. Pro 17(b) 8

Fed. R. Civ. Pro 17(c) 6, 7, 19

Fed. R. Civ. Pro 26(a)(2)(B) 11

Mo. Sup. Ct. R. 52.02 12

S.D. Cal. Civ. R. 83.3(c)(1)(a) 25

S.D. Cal. Civ. R. 83.3(c)(2) 25

S.D. Cal. Civ. R. 83.3(h) 25

S.D. Cal. Civ. R. 83.11(a) 25

OPINIONS BELOW

The opinion of the Ninth Circuit (Pet. App. 1-8) is reported at 110 F.4th 1177. The opinion of the district court (Pet. App. 11-13) is not published in the Federal Supplement but is available at 2021 WL 3940848.

JURISDICTION

The judgment of the Ninth Circuit was entered on August 7, 2024. A petition for rehearing en banc was denied on October 1, 2024. Pet. App. 9-10. The petition for writ of certiorari was filed on January 29, 2025. On February 18, 2025, the Court Clerk granted respondent's application to extend the time to file an opposition to the petition for a writ of certiorari from March 3, 2025 to April 2, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

1. La Dell Grizzell, acting on behalf of her minor children, sued San Elijo Elementary School and the San Marcos Unified School District, for alleged violations of her children's federal and state civil rights. Grizzell enrolled her children in San Elijo Elementary School, a part of the San Marcos Unified School District, under the McKinney-Vento Homeless Assistance Act, a federal law designed to ensure that homeless children have equal access to public education. 42 U.S.C. § 11431(1). Pet. App. 19-25. The McKinney-Vento Homeless Assistance Act provides a broad definition of homelessness, and does not require proof of indigence or financial hardship. 42 U.S.C. § 11434a.

Grizzell's *pro se* complaint lists forty claims, including claims under the Equal Protection and Due Process Clauses of the Fourteenth Amendment, Title

IV and Title VI of the Civil Rights Act of 1964, and several other federal and state education laws. Grizzell alleges that her children faced racial discrimination and other civil rights violations while enrolled at San Elijo. Pet. App. 2-3. Grizzell further claims that her children were ultimately unlawfully disenrolled from San Marcos Unified School District. Pet. 4-5.

2. a. The district court dismissed Grizzell's case on the basis that Grizzell lacked the capacity to sue on behalf of her minor children *pro se* because she was not a licensed attorney. Pet. App. 11-13. At the dismissal hearing, the district court advised Grizzell that if the minor plaintiffs wished to proceed with their claims, they may do so only through an attorney licensed to practice in this court. Pet. App. 15. The district court provided Grizzell with sixty days to file an amended pleading, through licensed counsel. Pet. App. 12. Grizzell did not file an amended complaint, and instead, with the benefit of court-appointed pro bono counsel, appealed the district court's dismissal of her children's claims. Pet. App. 3.

b. The Ninth Circuit affirmed the district court's dismissal. Pet. App. 1-8. In doing so it followed the binding precedent set forth by *Johns v. County of San Diego*, 114 F.3d 874 (9th Cir. 1997) and the long-standing rule referred to as the "counsel mandate" which precludes a nonlawyer parent from representing their children *pro se* in pursing their claims. Pet. App. 3-4. *Johns* is consistent with the vast majority of other circuits who have ruled on the issue.

Grizzell argued that the "counsel mandate" recognized by *Johns* is inconsistent with the right to proceed personally under 28 U.S.C. § 1654 and the

fundamental rights of access to the court and equal protection under the law. Grizzell also argued that the "counsel mandate" conflicts with parental rights regarding the care, custody, and control of their children. Pet. App. 4-5. Grizzell's arguments relied heavily on a dissent from the Fifth Circuit in *Raskin on behalf of JD v. Dallas Indep. Sch. Dist.*, 69 F.4th 280, 290-299 (5th Cir. 2023) (Oldham, J. dissenting in part and concurring in judgment). Pet. App. 4, fn. 1.

In affirming the district court's dismissal, the Ninth Circuit acknowledged that the "counsel mandate" has been relaxed in the context of appeals from the denial of social security benefits in other circuits, and beyond the social security context, that a few sister circuits had acknowledged concerns that application of the "counsel mandate" may potentially have a harmful effect on children's access to justice. Pet. App. 5-6.

c. The Ninth Circuit denied rehearing en banc. Pet. App. 9-10.

3. There are multiple misstatements in the Petition. First, Grizzell asserts that the District sent her a letter advising that her children would be disenrolled from school ten days after filing her Complaint (wrongfully suggesting that it was retaliatory in nature). Pet. 4, 19-20. This misrepresents what occurred. The letter, which was sent to Grizzell after she had moved outside the District's boundaries to Colorado, is dated May 14, 2020 (Pet. App. 19), and was sent nearly a year before Grizzell filed her Complaint on May 4, 2021. SER 519.

Next, Petitioner asserts that the district court provided her with only a brief window to find counsel

and file a second amended complaint. Pet. 5-6. This is also incorrect. The district court provided Grizzell with sixty days to find counsel. Pet. App. 12. Further, Petitioner claims (without support) that she attempted but was unable to find legal counsel before the deadline to file an amended complaint. Pet. 6. Additionally, Petitioner and her children are repeatedly characterized as indigent and unable to secure an attorney because of financial barriers. However, aside from being allowed to proceed *in forma pauperis* after the filing of her appeal in the Ninth Circuit (SER 521), these claims are unsupported by the appellate record.

Grizzell's original opposition to the lack of capacity motion brought by the District focused on a parent's constitutional right to bring a child's case without an attorney, and made no mention of inability to secure counsel, the cost of an attorney or financial barriers to retaining counsel. SER 101-111. During the hearing held by the district court, Grizzell did not claim an inability to retain counsel or that financial barriers were preventing her from securing counsel. Pet. App. 11-18. There is nothing in the appellate record which demonstrates that Grizzell attempted to locate counsel and was unsuccessful.

In fact, Grizzell filed her notice of appeal (without counsel) just twenty days after the district court's order. SER 514. Grizzell did not attempt to secure additional time to locate counsel for her minor children or otherwise express to the court that she was unable to secure counsel within the time provided. She did not request that counsel be appointed pursuant to 28 U.S.C. § 1915. Despite the arguments raised in the petition and amicus briefs that Grizzell was denied

review of the merits of her case, the record makes it clear that she instead *chose* not to make an attempt to comply with the district court's order and knowingly and intentionally foreclosed her children's claims.

REASONS FOR DENYING THE PETITION

Petitioner contends that *Johns v. County of San Diego*, 114 F.3d 874 (9th Cir. 1997) should be invalidated because 28 U.S.C. § 1654 requires that Grizzell, a non-attorney parent, be allowed to act as her minor children's attorney and represent them in federal court without retaining licensed legal counsel. Pet. 8-13. Petitioner also claims that requiring minors to be represented by licensed counsel (the "counsel mandate") is contrary to the constitutional rights of parents and children. Pet. 13-15. On these grounds, Petitioner challenges the Ninth Circuit's decision affirming the district court's dismissal of the lawsuit filed by Grizzell *pro se* on behalf of her minor children.

The Ninth Circuit correctly rejected those challenges and its decision does not create a conflict with a decision of this Court or another court of appeals which warrants review. The petition for a writ of certiorari should be denied.

I. The Ninth Circuit's Decision Was Correctly Decided and is Consistent With Well-Established Law

The Ninth Circuit correctly declined Petitioner's request that it overturn *Johns* and eliminate the "counsel mandate."

A. The "Counsel Mandate" Does Not Contravene Federal Statutes Governing a Minor's Right to Litigate in Federal Court

Petitioner contends that the "counsel mandate" violates 28 U.S.C. § 1654. Pet. 9. Section 1654 provides in its entirety that "[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654.

Contrary to Petitioner's assertion (Pet. 9), 28 U.S.C. § 1654 does not create an exception to the general rule prohibiting laymen from representing others. Nor does the language of 28 U.S.C. § 1654 authorize a non-attorney parent to act as legal counsel for their minor child. *See Raskin*, 69 F.4th at 284 (noting that "[n]othing in § 1654 abrogates th[e] common-law rule [that non-attorneys could not litigate the interests of others] or its corollary that non-attorney parents cannot act as attorneys for their children"). While Petitioner points out that the Fifth Circuit held that the right to proceed *pro se* belongs to adults and minors alike (Pet. 10), it is important to note that in the very next sentence the Fifth Circuit confirmed that state law and Federal Rule of Civil Procedure 17 make it clear that minors cannot exercise that right because they lack capacity to sue. *Id*. at 285, n.5.

Federal Rule of Civil Procedure 17(c) provides that certain representatives (including parents) have the authority "to sue and defend" on behalf of minors and incompetent individuals in federal court. However, the

authority to "sue or defend" on behalf of a minor does not give the representative a right to serve as legal counsel. *See Meeker v. Kercher*, 782 F.2d 153 (10th Cir. 1986); *Devine v. Indian River Cnty. Sch. Bd.*, 121 F.3d 576 (11th Cir. 1997), overruled in part on other grounds by *Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007). Importantly, Federal Rule of Civil Procedure 17(c) is not limited to representation of minors by parents. It also encompasses representation of incompetent persons and provides that minors and incompetents may be represented by a general guardian, a committee, a conservator or a like fiduciary. Federal Rule of Civil Procedure 17(c)(1). If no such person exists, then the minor or incompetent person may sue by a next friend or by a guardian ad litem. Federal Rule of Civil Procedure 17(c)(2).

Petitioner's conclusion that 28 U.S.C. § 1654 and Federal Rule of Civil Procedure 17(c) authorize Grizzell to litigate *pro se* on her minor children's behalf (Pet. 11-12) necessarily means that any of the other authorized representatives would also be authorized to litigate pro se on behalf of a minor or incompetent. This interpretation runs contrary to the well established rule that the right to appear *pro se* belongs to the individual, and one cannot appear *pro se* on behalf of others. *See e.g., Herrera-Venegas v. Sanchez-Rivera*, 681 F.2d 41, 42 (1st Cir. 1982); *Iannaccone v. L.*, 142 F.3d 553, 558 (2d Cir. 1998); *Yoder v. Dist. Att'y Montgomery Cnty.*, 790 F. App'x 478, 481 (3d Cir. 2019); *Guajardo v. Luna*, 432 F.2d 1324, 1324 (5th Cir. 1970); *C.E. Pope Equity Tr. v. United States*, 818 F.2d 696, 697 (9th Cir. 1987);

Collins v. O'Brien, 208 F.2d 44, 45 (D.C. Cir. 1953) (per curiam), cert. denied, 347 U.S. 944.

Further, review of California state law regarding capacity of minors, as required by Federal Rule of Civil Procedure 17(b) lends further support for the prohibition of pro se representation on behalf of a minor. *See J.W. v. Superior Ct.*, 17 Cal. App. 4th 958, 968 (1993) (holding that California Family Code § 6601, which allows a guardian to conduct a minor's legal action, does not allow a non-lawyer guardian to litigate *pro se* on behalf of their minor child).

The interpretation of 28 U.S.C. § 1654, Federal Rule of Civil Procedure 17, and California Family Code § 6601 advanced by Petitioner opens the door to untrained and subpar representation of vulnerable individuals who lack the capacity to sue on their own behalf. Such circumstances conflict with the courts' inherent duty to protect these individuals.

B. Parents Desiring to Proceed *Pro Se* are Unlikely to Comprehend their Potential Inadequacies and Appreciate the Dangers of *Pro Se* Representation

Petitioner argues that a right to *pro se* representation is embedded in the history of American law (Pet. 8-10), however, so too are the dangers, difficulties, and disadvantages of self-representation. *See e.g., Faretta v. California*, 422 U.S. 806, 835 (1975) (explaining that criminal defendants are to be made aware of the dangers and disadvantages of self-representation and a record made that the criminal defendant "knows what he is doing and his choice is made with eyes open"); *Jones v. Niagara*

Frontier Transp. Auth., 722 F.2d 20, 22 (2d Cir. 1983) ("The lay litigant frequently brings pleadings that are awkwardly drafted, motions that are inarticulately presented, proceedings that are needlessly multiplicative"); *Ficken v. Alvarez*, 146 F.3d 978, 981 (D.C. Cir. 1998) ("Even pro se plaintiffs with sufficient skills to survive summary judgment are unlikely to be able to try a case"); *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975) ("[W]e consider the competence of a layman representing himself to be clearly too limited to allow him to risk the rights of others.")

Petitioner suggests that allowing parents to prosecute their minor's claims without trained and licensed legal counsel will allow "under-resourced minors" to access the court system. Pet. 17. However, underlying this argument is the assumption that lay persons are more often than not able to adequately navigate the legal system and achieve favorable results without the assistance of counsel. If this was the case, there would be no need for trained and licensed attorneys.

This case is a prime example of a *pro se* parent unable to adequately navigate the legal system. Grizzell's amended complaint was 114 pages long (not including the more than 200 pages of exhibits), contained 40 causes of action, and sought $100,000,000 in damages. SER-320-432. Grizzell filed a request for entry of default claiming the District had failed to respond (despite clear evidence to the contrary). SER-157-164. She filed a motion to quash the District's motions to dismiss claiming the District did not file a notice of appearance, citing inapplicable rules of court

and maritime law regulations. SER-137-146. Grizzell filed second motion for entry of default and a motion to be appointed as a guardian ad litem. SER-88-99; 122-136. These motions were improper and unnecessary, and demonstrated Grizzell's inability to understand basic procedure, identify applicable law, or otherwise effectively navigate the legal system.

Similarly, when Grizzell filed her appeal *pro se* she demonstrated a clear misunderstanding of the scope of appellate review and sought to relitigate each of her motions. The notice of appeal accused the court and attorneys of allowing child abuse and stealing Grizzell's filing fee. SER 514. After receiving Grizzell's *pro se* opening brief and the District's response, the Ninth Circuit appointed pro bono counsel to assist Grizzell finding that "pro bono counsel would benefit the court's review in this appeal." S.D. Cal., Dk. 22. The Ninth Circuit encouraged Grizzell to file a replacement brief through appointed pro bono counsel (S.D. Cal., Dk. 23) demonstrating that Grizzell's *pro se* attempts were ineffective and that she was not competently able to represent her children *pro se*. This irony cannot be overstated.

Further, the Petitioner assumes that a child missing their opportunity to litigate their claim is the worst possible outcome. While certainly lost opportunities to pursue legal claims is an undesirable outcome and courts should strive to improve access to justice, allowing parents to proceed *pro se* on behalf of children is not the solution and ignores the dangers of *pro se* representation and the fact that the minor, not the parent, bears the burden of an unfavorable outcome. It takes little imagination to envision a

circumstance where the complexities of the legal system and procedural nuances of the practice of law place a minor, represented by an unlicenced parent, in a worse position than had their claim not been brought at all.

For example, a *pro se* parent who rejects an offer pursuant to Federal Rule of Civil Procedure 68 and subsequently fails to properly designate an expert may be precluded from introducing key testimony regarding their minor child's damages, resulting in a costly verdict being entered against the minor child. *See* Fed. R. Civ. P. 68(d) ("If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made); *see also e.g., Johnson v. Friesen*, 79 F.4th 939, 944 (8th Cir. 2023) (affirming exclusion of critical expert testimony for failure to comply with the disclosure requirements of Federal Rule of Civil Procedure 26(a)(2)(B)); *Quevedo v. Trans-Pac. Shipping, Inc.*, 143 F.3d 1255, 1258 (9th Cir. 1998) (upholding district court decision to refuse to consider expert report because it was filed late). This outcome would place the minor child in the untenable position of not only failing to secure vindication of their rights, but also with the burden of a cost judgment entered against the minor.

Notably, for purposes of this case, neither 28 U.S.C. § 1654, Federal Rule of Civil Procedure 17, or California Family Code § 6601 makes Grizzell liable for the costs of prosecuting her child's case. While some states seek to address this potential issue by requiring the minor's representative to be liable for the costs of prosecuting a minor's claim, nothing in the federal

statutory framework provides a similar protection to minors. *See, e.g., Marquette Prison Warden v. Meadows*, 114 Mich. App. 121, 123 (1982) (A "next friend" should be competent, suitable and solvent. He may be held liable for all costs of litigation); Mo. Sup. Ct. R. 52.02 (stating that the guardian or next friend of any minor who commences or prosecutes a civil action shall be responsible for the costs thereof). There is no comparable provision in California's Family Code § 6601 which would protect the Grizzell children from such a scenario.

While attorneys are not infallible and a similar mistake could occur even with retained counsel (*see Johnson*, 79 F.4th at 944; *Quevedo*, 143 F.3d at 1258) the likelihood of such a mistake is substantially reduced when trained legal counsel is employed. Further, in the event that a licensed attorney does make a similar mistake, an attorney's malpractice insurance provides an avenue for recourse for the impacted minor. *See* CA ST RPC Rule 1.4.2 (providing that if the lawyer does not have professional liability insurance, they shall inform a client in writing). No similar protections are available for a minor represented by a *pro se* parent.

When a parent makes litigation decisions on behalf of their child, who is represented by an attorney, they have the benefit of the attorney's training, experience, advice, and ethical obligations owed to the minor client. *See e.g., Lewis v. Lenc-Smith Mfg. Co.*, 784 F.2d 829, 830 (7th Cir. 1986) (citing *Jones*, 722 F.2d at 22) ("In addition to lacking the professional skills of a lawyer, the lay litigant lacks many of the attorney's ethical responsibilities, e.g., to avoid litigating

unfounded or vexatious claims."); *Lepucki v. Van Wormer*, 765 F.2d 86, 87 (7th Cir.1985) (per curiam) ("lawyers ..., as officers of the court, have both an ethical and a legal duty to screen the claims of their clients for factual veracity and legal sufficiency").

In contrast, a parent electing to proceed *pro se* because they cannot, or do not want to, secure counsel does not make that decision with the advice of an attorney hired to protect their child's interests. In fact, the parents who undertake *pro se* representation of their minor child are unlikely to fully comprehend or impartially evaluate the risks to their minor child of proceeding without licensed legal counsel, such that they can truly act in the best interest of the child. *See Carrigan v. California State Legislature*, 263 F.2d 560, 564 (9th Cir. 1959). Rather it seems likely that parents who are steadfast to bring their child's claim to court are those most likely to posses a naive confidence in their own abilities and be blind to the pitfalls of *pro se* representation.

While parents may be able to assume such risks on their own behalf, allowing a parent to assume these risks on behalf of children will lead to unfavorable outcomes and contravenes the courts' duty to protect the interest of minors and incompetents.

C. A Parent's *Pro Se* Representation of a Minor Child Places Courts in an Untenable Position

Allowing parents to represent their minor child *pro se* also threatens the impartiality of the court, which has a duty to protect the interests of minors and incompetent persons before it.

On one hand, "[i]t is an ancient precept of Anglo-American jurisprudence that infant and other incompetent parties are wards of any court called upon to measure and weigh their interests." *Dacanay v. Mendoza*, 573 F.2d 1075, 1079 (9th Cir. 1978). "While the infant sues or is defended by a guardian ad litem or next friend, every step in the proceeding occurs under the aegis of the court." *Id*. As a result, district courts have a special duty, derived from Federal Rule of Civil Procedure 17 to safeguard the interests of litigants who are minors. *See United States v. Reilly*, 385 F.2d 225, 228 (10th Cir. 1967) ("[w]ith the interests of minors at stake, the trial judge had a special obligation to see that they were properly represented, not only by their own representatives but also by the court itself); *see also Garrick v. Weaver*, 888 F.2d 687, 693 (10th Cir. 1989); *Dean v. Holiday Inns*, Inc., 860 F.2d 670, 673 (6th Cir. 1988); *Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir. 1983).

This requires a court to take whatever measures it deems proper to protect a minor or incompetent person during litigation. *See United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat Cnty., State of Wash.*, 795 F.2d 796, 805 (9th Cir. 1986). Similarly, a court is under a legal obligation to consider whether the minor or incompetent person is adequately protected. *See Roberts v. Ohio Casualty Insurance Co.*, 256 F.2d 35, 39 (5th Cir. 1958). "When a pro se litigant, . . . , goes to trial against a party represented by a member of the bar, the responsibility of the trial judge may warrant participation which differs markedly from what would be appropriate to a trial between adversaries represented by counsel."

Cranberg v. Consumers Union of U.S., Inc., 756 F.2d 382, 392 (5th Cir. 1985).

Yet, it is not the function of the courts to supervise laymen in the practice of the law. *Carrigan*, 263 F.2d at 564. *Pro se* litigants in the ordinary civil case are not treated more favorably than parties with attorneys of record, and trial courts generally do not intervene to save litigants from their choice of counsel, including a litigant who chooses to be self-represented. *See Jacobsen v. Filler*, 790 F.2d 1362, 1365 (9th Cir. 1986); *see also United States v. Pinkey*, 548 F.2d 305, 311 (10th Cir. 1977) ("The hazards which beset a layman when he seeks to represent himself are obvious. He who proceeds pro se with full knowledge and understanding of the risks does so with no greater rights than a litigant represented by a lawyer, and the trial court is under no obligation to become an 'advocate' for or to assist and guide the pro se layman through the trial thicket.").

On the other hand, "[a] fair trial in a fair tribunal is a basic requirement of due process. *In re Murchison*, 349 U.S. 133, 136 (1955). To this end, 28 U.S.C. § 455(a) provides that a judge shall recuse herself from any proceeding in which her impartiality might reasonably be questioned. In *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860–61 (1988), this Court described the standard as whether a reasonable and objective person, knowing all of the facts, would harbor doubts concerning the judge's impartiality. "Put simply, avoiding the appearance of impropriety is as important in developing public confidence in our judicial system as avoiding

impropriety itself." *United States v. Jordan*, 49 F.3d 152, 155–56 (5th Cir. 1995).

But, allowing a non-lawyer parent to serve as both a minor's guardian and their attorney *pro se* puts courts in the untenable position of walking a legal tightrope between the duty of impartiality and the duty to protect a minor or incompetent person's interests. There is no clear framework for determining how much of a non-lawyer parent's legal ineptitude is acceptable or when such lack of skill requires the court to interfere to protect the interests of the minor. Placing courts in this position necessarily implicates the court's impartiality and risks that a court will be forced to become an advocate for the minor. For example, should a court intervene if a parent fails to oppose a motion for summary judgment since failure to do so could result in dismissal of a meritorious claim?

In contrast, when a licensed attorney represents a minor, appearing through a guardian, the court may address and resolve issues of the minor's interests without becoming entangled in the appearance of bias and without concern that if a guardian needs to be removed, the minor will be left entirely unrepresented. "[I]n its discretion, the [c]ourt may remove a guardian ad litem if she acts contrary to the best interests of the minor or incompetent plaintiff, has a conflict of interest with the minor or incompetent plaintiff, or demonstrates an inability or refusal to act." *Elliott v. Versa CIC, L.P.*, 328 F.R.D. 554, 556 (S.D. Cal. 2018) (citing *Hull By Hull v. United States*, 53 F.3d 1125, 1127, n. 1 (10th Cir. 1995)).

This begs the question, if a *pro se* guardian is deemed unable to adequately protect the interests of

the minor, and is thereby removed by the court, must the court then recruit and appoint another individual to pursue the *pro se* representation of the minor? Or at that point, are the courts authorized to require licensed counsel to adequately protect the minor's interest? And what becomes of a minor's purported "right" to litigate *pro se* when no competent person is willing to serve as a minor's unlicensed counsel? Contrary to the assertions of amicus curiae, there are numerous situations where a parent may act contrary to the interests of their child. For example, what happens when one parent brings an action on behalf of the "rights" of the child against the other parent during a heated custody battle?

There seems to be little benefit to the minor in allowing non-lawyer parents to test their legal abilities, and if unsuccessful, find themselves removed. Similarly, it seems likely that a parent may quickly find themselves advocating against the unlicensed *pro se* representation of their child if the court, acting well within its discretion of Federal Rule of Civil Procedure 17, was to appoint someone other than the guardian to pursue the minor's claims.

Taking the duties of the court to protect minors in combination with the potential risks and dangers of *pro se* representation, the court below was correct to deny Grizzell's attempts to litigate on her children's behalf without licensed legal counsel and this Court should deny the petition.

D. The Rationale for Requiring Licensed Legal Counsel is Sound

The court below relied on its holding in *Johns v. County of San Diego*, 114 F.3d 874 (1997 9th Cir.) to reach its conclusion that Grizzell cannot appear *pro se* on her minor children's behalf. The *Johns* holding is consistent with the vast majority of other circuits which have considered this issue. *See e.g., Cheung v. Youth Orchestra Found. of Buffalo, Inc*., 906 F.2d 59 (2d Cir. 1990); *Osei–Afriyie v. Medical College*, 937 F.2d 876 (3d Cir. 1991); *Myers v. Loudoun County Public Schools* (4th Cir. 2005) 418 F.3d 395; *Shepherd v. Wellman*, 313 F.3d 963 (6th Cir. 2002); *Navin v. Park Ridge Sch. Dist*., 270 F.3d 1147 (7th Cir. 2001); *Crozier for A.C. v. Westside Community School District*, 973 F.3d 882 (8th Cir. 2020); *Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir. 1986); *Warner v. Sch. Bd. of Hillsborough Cnty., Fla*., No. 23-12408, 2024 WL 2053698 (11th Cir. May 8, 2024).

Despite this, Petitioner attacks the reasoning set forth in *Johns*, claiming that the proffered rationales for the "counsel mandate" do not withstand scrutiny and claiming that *John*s is "clearly wrong." Pet. 15.

Petitioner's first argument is that the law does not provide a right to minors to have licensed legal counsel appointed in civil cases, thus making the premise in *Johns* that minors are "entitled" to trained legal assistance flawed. Pet. 15. This language in *Johns* originates from the Second Circuit opinion in *Cheung*, which was subsequently echoed by the Third Circuit in *Osei-Afriyie*. *See Cheung*, 906 F.2d at 59; *Osei–Afriyi*e, 937 F.2d at 876. The wording of these rulings do not suggest that a minor has a statutory right to legal

counsel in civil cases, and as pointed out by the Petition, numerous holdings confirm no such statutory right exists. Pet. 15-16.

Rather, the language of these holdings emphasizes that protection of a minor's claims and the best interests of the child is served by proceeding through trained legal counsel. Petitioner acknowledges the court's role in protecting minors and concedes that the court is entitled to remove a guardian or appoint counsel. Pet. 18-19. Thus, in carrying out the special obligations owed to minors by these courts, the *Johns* court, and the circuits which join it, have determined that when a claim is brought on behalf of a minor, the minor must do so with the assistance of an attorney. In this sense a minor is "entitled" to trained legal counsel.

Further, while there may not be a statutory right to appointed counsel, the district court may avail itself of the statutory provisions allowing appointment of counsel. Pet. 18-19; *see* Fed.R.Civ.P. 17(c); 28 U.S.C. § 1915(d). The *Johns* holding does not indicate that counsel was requested by Johns, or that Johns was unable to secure legal counsel. Instead, the opinion provides that Johns sued *pro se* and subsequently failed to comply with a court order requiring him to retain legal counsel. Similarly, Grizzell did not request that the district court appoint counsel for her minor children. Nor did she indicate to the district court that she was unable to secure counsel for her minor children, thus the issue of whether or not such an appointment would have been appropriate at the district court in this case was never reached.

It is worth highlighting that Grizzell was appointed pro bono counsel by the Ninth Circuit. Thus,

while there may not be a statutory right to counsel in civil actions, this case aptly demonstrates that the courts are provided with an avenue for appointment of such counsel and willing to make such appointments in civil cases when the court deems it appropriate.

Petitioner also points to *Johns* to claim that a minor can pursue his cause of action when he reaches eighteen. Pet. 19. However, the age of majority is mentioned in the context of whether the dismissal of a *pro se* parent's complaint on behalf of a minor should be dismissed with or without prejudice. *Johns*, 114 F.3d at 877-878. It was not cited as a basis for requiring a minor to be represented by counsel, or prohibiting *pro se* parent representation. The *Johns* holding provides that dismissal without prejudice is appropriate to best preserve a minor's opportunity to further pursue their claims. In doing so, the Ninth Circuit indicated that by dismissing the case without prejudice, it would leave open the possibility that Johns could retain an attorney and pursue his son's claims, or alternatively, that his son would be free to pursue his claims upon turning eighteen. *Johns* expressly recognized that renewal of the claims would be subject to the statute of limitations, and that not all causes of action may be tolled. *Id*. at 877, n. 2. Additionally, Petitioner criticizes *Johns* for failing to address circumstances involving a claim for injunctive relief, pointing to Grizzell's claim for injunctive relief on behalf of her minor children. However, Grizzell has

not requested injunctive relief in this case, and even if she did, it would be moot.[1]

Petitioner takes issue with the *Johns* contention that minors lack the capacity to determine their own legal actions, leaving no true choice for minors to appear *pro se*. Pet. 20. Petitioner contends that this is true of every litigation decision, and that parents are tasked with making those decisions on their child's behalf even when they are represented by counsel. Pet. 20. But there is a fundamental difference between a parent making litigation decisions with the assistance and advice of trained legal counsel, and a parent accepting the risks of proceeding *pro se* on behalf of their minor child. Unlike other litigation decisions left to a minor's parent, such as whether to file suit or accept a settlement, the decision to prosecute their minor's case *pro se* necessarily requires a parent to conduct an objective and critical assessment of their own skills and abilities. But, a *pro se* litigant may not know what they do not know.

Lastly, Petitioner criticizes *Johns* attempt to equate minors to corporations, trusts, and other entities that may only sue and be sued through counsel. Pet. 21. Petitioner asserts that the right to proceed *pro se* belongs to natural persons and argues that the "counsel mandate" creates a special class of litigants who are required to retain counsel. Pet. 21. However, the "counsel mandate" does not create a class of litigants, rather, it responds to its duty to

---

[1] Grizzell received the McKinney-Vento letter on May 14, 2020 nearly a year before filing the lawsuit. Grizzell was residing in Colorado (SER-519); and thus her children were no longer properly placed in the District.

protect the class of litigants created by Federal Rule of Civil Procedure 17 and state statutes which find that certain natural persons cannot make their own legal decisions and instead must act through a representative. In this regard, they are similar to legal entities such as corporations and trusts which cannot act on their own, but must act through a representative.

Further, *Johns* and the "counsel mandate" do not impose any monetary requirements on litigants. Petitioner does not challenge the validity of Federal Rule of Civil Procedure 17, or the state's ability to determine who has the capacity to sue or be sued. Nor does Petitioner contend that the courts are without authority to protect the best interest of minors and determine those who may practice law before it. As such, the rationale of the Ninth Circuit in *Johns*, and the many sister circuits which reached the same conclusion, is sound and should not be disturbed by this Court.

E. Petitioner's Constitutional Arguments do not Justify Allowing a Non-Attorney Parent to Act as Legal Counsel for Their Minor Child.

Petitioner claims that the counsel mandate "abridges indigent minors' constitutionally protected right to assert legal claims." Pet. 14. While the plea to assist indigent minors in accessing the courts may be a facially appealing policy argument, the question presented by the Petition has far broader implications. The question presented is untethered to financial status or indigence. 28 U.S.C. § 1654 does not provide

that *pro se* representation is limited to those who cannot afford to retain an attorney. The capacity of a minor is not governed by the ability to afford retaining licensed legal counsel. Similarly, the *Johns* holding makes no mention of the financial status of a minor. *Johns* requires that all minors be represented by a licensed attorney. There are no requirements that a minor retain an attorney under any specific payment structure.

Petitioner and the amicus curiae briefs emphasize the lack of available pro bono counsel and the rates in which indigent litigants face difficulty accessing the courts. *See e.g.*, Pet. 16. But this is not a problem created by *Johns* or solved by invalidating its holding. The cost of an attorney is only one of the expenses associated with litigation. Further, persons with meritorious cases can usually find counsel willing to represent them and even defray up front costs through contingency fee structures or by providing pro bono counsel. There are also numerous programs such as Legal Aid Organizations, Lawyer Referral Services, Volunteer Lawyer Programs, and other low or no cost legal assistance programs which vary by jurisdiction.

Moreover, not all constitutional rights have been made equally applicable to minors as to adults, and it is well established that the activities of children may be more highly regulated than those of adults. *Ginsberg v. New York*, 390 U.S. 629, reh. denied, 391 U.S. 971 (1968) ("The well-being of its children is of course a subject within the State's constitutional power to regulate"); *Prince v. Massachusetts*, 321 U.S. 158, reh. denied, 321 U.S. 804 (1944) ("the state has a

wide range of power for limiting parental freedom and authority in things affecting the child's welfare").

To the extent there is a policy argument that access to justice for indigent minors would be improved by allowing non-lawyer parents to act as their child's legal counsel, that is a matter for the legislature, which is in a far better position to revise the statutory schemes surrounding a minor's capacity to bring claims in federal court and unlicensed individual's practice of law to account for the practical implications and define reasonable limitations on such an exception.

Petitioner argues that requiring minors to be represented by licensed legal counsel violates parents' constitutional interest in the care, custody, and control of their children. Pet. 13. While the District acknowledges that this Court has repeatedly interpreted the Constitution to provide parents a liberty interest in the care, custody, and control of children which is protected by the Due Process Clause, (*see Troxel v. Granville*, 530 U.S. 57, 65-66 (collecting cases from this Court which recognize a parent's fundamental right to make decisions regarding the care, custody, and control of their children)) it does not extend to the right to litigate on a minor's behalf *pro se*. The liberty interest of parents, does not give them authority to act in the place of licensed professionals. Just as a parent may elect to have their child undergo a surgery, but may not perform the surgery themselves; so too may a parent elect to file a lawsuit on behalf of a child, but may not litigate the case in place of an attorney.

The Third and Fifth Circuits have concluded that there is no constitutional right to represent others. *See Johnson v. City of Philadelphia*, 644 F. App'x 130, 131 (3d Cir. 2016) ("The Constitution guarantees no right to represent others."); *Guajardo v. Luna*, 432 F.2d 1324, 1324 (5th Cir. 1970) ("The requirement that only licensed lawyers may represent others in court is a reasonable rule that does not offend any constitutional guarantee").

Additionally, "[c]ourts enjoy broad discretion to determine who shall practice before them and to monitor the conduct of those who do." *In re Brooms*, 447 B.R. 258, 267 (B.A.P. 9th Cir. 2011), aff'd, 520 F. App'x 569 (9th Cir. 2013).

In the Southern District of California, S.D. Cal. Civ. R. 83.3(c)(2) provides that "only members of the bar of this court will practice in this court." Further, pursuant to S.D. Cal. Civ. R. 83.3(c)(1)(a) admission to the bar of the Southern District "is limited to attorneys of good moral character who are active members in good standing of the State Bar of California." S.D. Cal. Civ. R. 83.3(h) provides that any person who engages in the unauthorized practice of law in violation of Civil Local Rule 83.3 may be required to pay an appropriate penalty.

S.D. Cal. Civ. R. 83.11(a) provides in relevant part that "[a]ny person who is appearing propria persona, (without an attorney) (i.e. pro se) must appear personally for such purpose and may not delegate that duty to any other person" and "[a]ny person appearing propria persona is bound by [the] rules of [the district] court." The State of California also makes it a

misdemeanor for one to engage in the unauthorized practice of law. Cal. Bus. & Prof. Code § 6126(a).

While Petitioner and the amicus curiae briefs contend that the parent-child relationship should be viewed as transcending the well-established rule that unlicenced persons may not represent others as legal counsel, this claim cannot be squared with Petitioner's interpretation of 28 U.S.C. § 1654 and Federal Rule of Civil Procedure 17, which would allow not only parents to represent their minor children *pro se*, but also allow all others listed in Federal Rule of Civil Procedure 17 to litigate a minor or incompetent persons claims *pro se*. If Congress had intended 28 U.S.C. § 1654 and Federal Rule of Civil Procedure 17 to allow the parent-child relationship to create an exception to the unauthorized practice of law, it would have expressly provided for such a significant departure from the common-law prohibition on such conduct.

The Ninth Circuit correctly declined Petitioner's request that it overturn *Johns* and this Court should deny the petition.

II. The Petition Does Not Set Forth a Circuit Split Which Warrants this Court's Intervention

Contrary to Petitioner's assertion (Pet. 21-26), the decision below does not create a conflict which currently warrants this Court's intervention. Petitioner claims that the "federal circuits are firmly split on whether and to what extent parents may litigate *pro se* on their children's behalf." Pet. 21. However, this drastically overstates the current state of the law.

A. The Fifth Circuit's Holding in *Raskin on behalf of JD v. Dallas Independent School Dist.*, 69 F.4th 280 (5th Cir. 2023) does not Create a Conflict with the Ninth Circuit's Ruling Below.

The most noteworthy and relatively recent decision regarding parents' *pro se* representation of their minor children is *Raskin on behalf of JD v. Dallas Independent School Dist.*, 69 F. 4th 280 (5th Cir. 2023). However, the *Raskin* majority holding does little to differ from its sister circuits on the issue of *pro se* parent representation of minor.

In *Raskin*, Allyson Raskin filed a *pro se* action in federal district court alleging, as relevant here, that the Dallas Independent School District violated her children's rights under the Genetic Information Nondiscrimination Act (GINA), 42 U.S.C. § 2000ff, et seq. *Id*. The Fifth Circuit concluded that an absolute bar on *pro se* parent representation is inconsistent with 28 U.S.C. § 1654 insofar as federal or state law designates a minor child's claims as belonging to a parent, thus making a minor's case the parents "own" and allowing for the parent to choose to proceed personally or by counsel under § 1654. *Id*. at 282.

However, the *Raskin* majority did not opine as to whether any of the children's GINA claims were designated as belonging to Raskin by either a state or federal law. Rather, the case was remanded to the district court to make this determination, noting that it remained Raskin's burden to establish that federal or state law authorizes her to proceed pro se on behalf of her children. *Id*. at 287. Notably, on remand Raskin failed to meet this burden, and the case was dismissed.

JD1 by & through Raskin v. Dallas Indep. Sch. Dist., No. 3:21-CV-2429-L, 2024 WL 4361608, at 9 (N.D. Tex. Sept. 30, 2024).

Importantly, the *Raskin* majority described its opinion as a "minor course correction" and did not endorse the position advocated by Petitioner. *Raskin* at 282. Further, it did not abandon the general rule against *pro se* parent representation of minors. *Id*. at 283-285, 287. Nor did it endorse Judge Oldham's view that the Texas statute authorizing a parent to represent the child in the legal action equates to allowing the parent to proceed *pro se*. The majority noted that the Texas statute did not expressly endorse *pro se* representation, but left it to the district court to address the Texas law in the first instance. *Id*. at 285, n. 5. Similarly, California Family Code § 6601 cited to by Petitioner (Pet. 10) does not expressly allow *pro se* parent representation of minors. The *Raskin* majority suggested that determining if a state or federal law designated a minor's claims as the parents "own" would require looking to the claims themselves. Petitioner does not argue that any of the statutory basis for the minor's alleged claims designates her children's claims as her own.

Judge Oldham's dissent in *Raskin* is heavily relied on by the Petition and the amicus curiae briefs. His interpretation expands far beyond the majority holding and concludes that a non-lawyer parent should be able to proceed *pro se* based on the language of Texas Family Code § 151.001(a)(7). *Raskin*, at 299. However, no circuit has adopted this view and it remains a non-binding dissent without any precedential value and does not create a circuit split.

The petition seeks to go even further than Judge Oldham's interpretation, which would limit a parents' right to *pro se* representation only if state law was interpreted to give parents such a right. Petitioner does not advocate for a state-by-state analysis conducted by the lower courts, and instead advocates for a complete dismantling of the "counsel mandate" and a sweeping endorsement of parents' rights to represent their minor children *pro se* in every case. This is contrary to the clear intent of Federal Rule of Civil Procedure 17 and takes authority away from the states to decide how the minors of their state may be represented in court.

As such, neither the *Raskin* majority opinion or Judge Oldham's dissent create a circuit split which warrants review by this Court.

B. The Narrow Exception Involving Supplemental Security Income Benefits in the Fifth, Second, and Tenth Circuits does not Warrant Review

Petitioner is also wrong to suggest (Pet. 23-24) that the analysis conducted by the circuit courts in cases involving judicial review of the administrative denial of Supplemental Security Income (SSI) benefits creates a conflict with the decision below. Three circuits have held that a parent may proceed without licensed legal counsel on behalf of their minor child in appeals from administrative SSI decisions. *See Harris v. Apfel*, 209 F.3d 413, 417 (5th Cir. 2000), *Machadio v. Apfel*, 276 F.3d 103, 105–06 (2d Cir. 2002), and *Adams ex rel. D.J.W. v. Astrue*, 659 F.3d 1297 (10th Cir. 2011).

In *Harris v. Apfel*, 209 F.3d 413, 417 (5th Cir. 2000) the Fifth Circuit concluded that non-attorney parents may appear *pro se* on behalf of their minor children in SSI cases. *Id*. The court was persuaded that the general rule prohibiting non-attorney parents from representing their children in litigation is inapplicable in the context of appeals from administrative denials of SSI benefits because the parents held a substantial financial interest in the outcome of the case and such cases do not involve the subjective criteria and range of fact-finding that are characteristic of traditional litigation. *Id*.

In *Machadio v. Apfel*, 276 F.3d 103, 107 (2d Cir. 2002), the Second Circuit reached the same conclusion, stating that "[w]here a district court, after appropriate inquiry into the particular circumstances of the matter at hand, determines that a non-attorney parent who brings an SSI appeal on behalf of his or her children has a sufficient interest in the case and meets basic standards of competence, we hold that in such cases a non-attorney parent may bring an action on behalf of his or her child without representation by an attorney." *Id*.

Lastly, in *Adams ex rel. D.J.W. v. Astrue*, 659 F.3d 1297 (10th Cir. 2011), the Tenth Circuit agreed with the reasoning set forth in *Harris* and *Machadio* and endorsed an exception to the general prohibition on *pro se* parent representation of minors in SSI cases.

While these decisions provide a narrow exception to the general prohibition on parents' *pro se* representation, they do not create a circuit split warranting this Court's review for two reasons. First, neither *Johns* nor the decision below implicate SSI

benefits or consider the exception set forth by the Fifth, Second, and Tenth Circuit. Grizzell does not seek to appeal a denial of SSI benefits for her children. The rationales for allowing *pro se* representation of minors by parents in SSI benefit cases are wholly inapplicable to Grizzell's claims.

Second, there is no indication that any circuits have rejected the exception adopted by these three circuits, so as to create a split regarding pro se parent representation in SSI cases. *See Mattison ex rel. K.A. v. Astrue*, 520 F. App'x 531, 532 (9th Cir. 2013); *Carrero o/b/o K.S.C. v. Acting Comm'r of Soc. Sec. Admin.*, No. 22-2793, 2023 WL 2906171, at 1 (3d Cir. Apr. 12, 2023); *Bryant v. Soc. Sec. Admin.*, 478 F. App'x 644, 644 (11th Cir. 2012); *Lee v. Comm'r of the Soc. Sec. Admin.*, 639 F. App'x 951, 952 (4th Cir. 2016).

SSI cases are not implicated by Grizzell's petition, which seeks to invalidate the "counsel mandate" in its entirety. Rather, Grizzell's case centers around claims of discrimination which implicates subjective criteria and a range of fact-finding which requires skilled counsel.

C. The "Flexible Approach" Has Not Been Carved Out by the Circuits

The purported "flexible approach" discussed by a few of the circuits does not amount to a circuit split which requires this Court's intervention. The Petition cites to *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 201 (2d Cir. 2002) as an example of this purported flexibility. However, the *Murphy* court reaffirmed the prohibition on *pro se* representation of a minor by a parent and found that

it was error to allow the parent to represent their child *pro se*. *Murphy* at 201. Similarly, in *Elustra v. Mineo*, 595 F.3d 699, 705 (7th Cir. 2010) the Seventh Circuit considered whether it could entertain a single motion filed *pro se* during a brief period while the minor was unrepresented. Under the specific facts of that case, the Seventh Circuit determined it was not required to disregard the motion. These two cases both reaffirm the general rule, but the underlying facts warranted a minor atypical deviation. This does not amount to a circuit split warranting review by this Court, nor has Petitioner demonstrated that such situations are occurring with any rampant frequency.

III. This Case Lacks Immediate Importance and is a Poor Vehicle for Considering the Question Presented

Petitioner suggests that this case presents an important issue because parents need an avenue to rectify the wrongs committed by school districts. (Pet. 27-28). Similarly, the amicus briefs frame the issue as critically important to allowing parents to address transgender issues in schools. But the question presented is not specific to claims against school districts and has no bearing on transgender issues or whether a parent has the right to control their children's upbringing. The counsel mandate rule does not suggest that a parent cannot make decisions for their child; it instead poses a broad question regarding who may appear *pro se* in federal court. But this Court cannot resolve the question presented without reconciling it with the rules regarding the unauthorized practice of law which permeate through the nation. Invalidating the holding of *Johns* and the

other circuits which adopt a similar "counsel mandate" to allow parents to proceed *pro se* on a minor's behalf will require the legislature and the courts to overhaul numerous statutes and local rules regulating who may appear before them. Further it will call into question nearly every case and statute which finds that there is no right to appear as legal counsel on behalf of others *pro se*.

Further, the underlying facts of this case demonstrate it is a poor vehicle for reviewing the question presented. Grizzell is not a *pro se* sophisticated litigant and has not demonstrated that she can competently represent her minor children's interests. She filed numerous unnecessary and improper motions in the district court before the case was dismissed. On appeal, Grizzell's *pro se* briefing was so inadequate that the Ninth Circuit appointed pro bono counsel and urged Grizzell's appointed counsel to file replacement briefing. Even if Grizzell were to be allowed to proceed *pro se* on her minor children's behalf, their claims, as presented by Grizzell in the amended complaint are likely to be dismissed for failure to state a claim.

Additionally, abandoning the counsel mandate will open the door to an untold number of procedural issues which are best left to the legislature. For example, what occurs when a minor reaches the age of majority during the pending litigation? Can a parent continue to represent a child *pro se* when the child turns eighteen during the course of litigation? Is the eighteen year old expected to assume his own *pro se* representation? Is a parent representing the child required to maintain liability insurance in the event of

mistakes made during the litigation? Is the parent responsible for payment any judgments or sanctions entered against the child as a result of the parent's representation? Are children expected to bear the financial consequences of the parent's legal representation? What happens when the eighteen year old has no interest in continuing the case or disagreed with the parent in bringing the case in the first place? Should that young adult be saddled with debts created by the parent's overzealousness, lack of objectivity or incompetence? The counsel mandate protects the country's most vulnerable from the significant perils of unlicensed representation and stripping minors and incompetents of this protection would have devastating implications.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JENNIFER S. CREIGHTON
Counsel of Record
ERIN N. TAYLOR
WINET PATRICK GAYER
CREIGHTON & HANES
1215 WEST VISTA WAY
VISTA, CA 92083
(760) 758-4261
jcreighton@wpgch.com

Counsel for Respondents