NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SETH HEALEY,

Petitioner,

v.

VERMONT DEPARTMENT FOR CHILDREN AND FAMILIES ("DCF"); ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Vermont Supreme Court

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Vermont Superior Court, Washington Unit, Civil Division ("Trial Court") has a responsibility to determine the constitutionality of the substantiation procedure under *Axon* and based on the separation of powers?

2. Whether the State's child abuse substantiation process complies with the Due Process Clause of the United States Constitution if the State engages in *ex parte* communications or relies on undisclosed extra-record evidence?

3. Whether the State's child abuse substantiation process complies with the Due Process Clause of the United States Constitution if a parent accused of child abuse is not given adequate information about the accusations, not allowed to compel witness testimony, not allowed to cross-examine witnesses at a pre-deprivation hearing, and not given a jury trial?

4. Whether the State's child abuse substantiation process complies with the Due Process Clause of the United States Constitution if a parent accused of child abuse does not have an opportunity to raise constitutional issues until after the parent is placed on the State's Child Protection Registry?

5. Whether the State's child abuse substantiation process complies with the Due Process Clause of the United States Constitution if a parent accused of child abuse does not have a right to a jury trial, where the substantiation process is "akin to a criminal proceeding?

PARTIES TO THE PROCEEDING

Petitioner is Seth Healey (pseudonym), who was a Plaintiff-Appellant in the court below.[1] Respondents, the Vermont Department for Children and Families ("DCF"); Kenneth Schatz, former Commissioner, DCF; Karen Shea, Deputy Commissioner for the Family Services Division ("FSD"), DCF; Christine Johnson, Deputy Commissioner for the FSD, DCF; Emily Carrier, District Director, DCF; Catherine Clark, Director, Commissioner's Registry Review Unit, DCF; Kathleen Smith, Family Services Supervisor, DCF; Christine Gadwah, Family Services Worker, DCF; Kathleen Greenmun, Substantiation Hearing Officer, DCF; and John and Jane Does 1-10, were the Defendants-Appellees in the court below. No party is a corporation.

[1] Miriam Lowell (pseudonym) was also a Plaintiff-Appellant below, but the claims as to her have been mooted and this Writ of Certiorari is brought on behalf of Seth Healey only.

RELATED PROCEEDINGS

This case arises from the following proceedings in the Vermont Superior Court, Washington Unit, Civil Division, and the Vermont Supreme Court:

Miriam Lowell and Seth Healey v. Department for Children & Families, et al., Case: 23-CV-00852 (Vt. 2023)

Miriam Lowell and Seth Healey v. Department for Children & Families, et al., Case No. 23-AP-323 (Vt. 2023)

No other proceedings in state or federal trial or appellate courts, or in this Court, are directly related to this case.[2]

[2] Ms. Lowell and Mr. Healey previously brought an action against Respondents under 42 U.S.C. § 1983 in the United States District Court for the District of Vermont (the "District Court"). *Lowell, et al. v. Kenneth Schatz, Commissioner, Vermont, et al.*, Case No. 5:19-cv-00150-GWC (D. Vt. 2019) (the "District Court Action"). Ms. Lowell and Mr. Healey appealed the District Court's decision denying them a temporary restraining order. On December 1, 2020, the United States Second Circuit Court of Appeals affirmed the District Court's decision. *See Lowell v. Vermont Dep't for Children and Families*, Case No. 19-3987-cv, Dk. No. 101-1. On April 30, 2021, Ms. Lowell and Mr. Healey filed a Petition for Writ of Certiorari in connection with the Second Circuit's decision, which was denied.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Seth Healey respectfully petitions for a writ of certiorari to review the judgment of the Vermont Supreme Court.

OPINIONS BELOW

The memorandum opinion of the Vermont Supreme Court is included herein as Appendix A. The opinion is reported at 2024 VT 46. The decision of the Trial Court granting Respondents' Motion to Dismiss is included herein as Appendix B and is available at 2023 WL 7280662. The decision of the Trial Court denying Petitioners' Motion for Reconsideration is included herein as Appendix C and is unpublished.

JURISDICTIONAL STATEMENT

The judgment of the Vermont Supreme Court was entered on August 2, 2024. Thus, this petition is timely filed on October 31, 2024 (90 days after August 2, 2024). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment VII: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law." U.S. Const. amend. VII.

United States Constitution, Amendment XIV: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

Vermont State Constitution, Article 10: "That in all prosecutions for criminal offenses, a person hath the right to be heard by oneself and by counsel; to demand the cause and nature of the accusation; to be confronted with the witnesses; to call for evidence in the person's favor, and a speedy public trial by an impartial jury of the country; without the unanimous consent of which jury, the person cannot be found guilty;. . . nor can any person be justly deprived of liberty, except by the laws of the land, or the judgment of the person's peers." Vermont Const. Ch. I, Art. 10.

Vermont statutes 33 V.S.A. §§ 4912, 4915, 4915b, 4916, 4916a, 4916b, 4916c, 4916d, 4919. The full text of these Vermont statutes is available at Appendices D-L.

STATEMENT OF THE CASE

INTRODUCTION

"The charge of 'child abuse' is one of the most potent and destructive that our society can level against a parent. Once made, its effects cannot be undone. Even if disproved, a deep scar remains." *Wilkinson ex rel. Wilkinson v. Russell*, 182 F.3d 89, 113 (2d Cir. 1999) (Calebresi, J., concurring). Parents in Vermont and other states are often branded as "child abusers" through statutory regimes *before* they have notice of the claims or evidence against them or

a meaningful opportunity to present exculpatory evidence. This occurs even in the absence of any emergency or risk of harm to the child.

Courts have already held that such a change in legal status resulting from placement on a Registry meets the "stigma plus" criterion and causes sufficient harm to reputation to establish a deprivation of a liberty interest. *Valmonte v. Bane*, 18 F.3d 992, 1000 (2d Cir. 1994). A party facing a deprivation of a cognizable liberty interest is generally entitled to notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation omitted). For a hearing to be meaningful, this Court has "traditionally insisted" that it occur "*before* the deprivation at issue takes effect." *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (emphasis added). The Due Process Clause tolerates exceptions to this general rule "only in extraordinary situations where some valid governmental interest . . . justifies postponing the hearing until after the event." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993) (internal quotation omitted). Even then, the government must hold a "prompt" post-deprivation hearing that concludes "without appreciable delay." *Barry v. Barchi*, 443 U.S. 55, 66 (1979).

This case concerns whether a Vermont court has a basis to enjoin the application of the State of Vermont's (the "State") statutory regime that authorizes the placement of a parent on the Vermont Child Protection Registry (the "Registry"), which

affects a parent's eligibility for employment and community activities, without providing notice of the allegations or incriminating evidence, an opportunity to cross-examine witnesses and subpoena third parties, or an opportunity to raise constitutional issues until at least 60 days after the parent has already been placed on the child abuse registry.

The State has admitted in this case, and the Second Circuit has held, that the substantiation proceeding is "akin to a criminal prosecution." But, notably, a criminal defendant has far more rights than a parent accused of child abuse or neglect in an administrative proceeding, including notice, a right to be provided with exculpatory evidence, a right to confront accusers, a right to counsel, a right to a neutral and dispassionate arbiter, and a right to a speedy trial by a jury of his peers. While not all of these procedural safeguards may be necessary in the context of an administrative substantiation, due process demands that a parent at least have notice of the allegation and evidence against them, a right to cross-examine the State employee conducting the investigation, and a right to compel other witness testimony and present the testimony of anyone willing to testify (including the subject minor, where the child wishes to recant or otherwise dispute the State's evidence).

Separate from the due process requirements that attend serious allegations, which are absent from the substantiation process, the pretense that an administrator within an administrative agency will determine the agency's own accusation is structurally

illegitimate. While there are many issues with this, the most serious is illustrated by *Axon Enter., Inc. v. Fed. Trade Comm'n*, 143 S. Ct. 890, 910 (2023). As *Axon* makes clear, an in-house administrative adjudication, when the agency has no particular "competence and expertise" to address the structural infirmities at hand, usurps the judicial function.

Seth Healey ("Mr. Healey") seeks relief from the substantiation procedure which violated his due process rights. The Review violated his rights not only due to a lack of procedural safeguards required as a matter of due process but because it was directly foreseeable before Mr. Healey's Review occurred during the pendency of the appeal to the Vermont Supreme Court that the State's child abuse substantiation Review Officer, Respondent Kathleen Greenmun, who was assigned to Mr. Healey's substantiation, relies on juvenile records and fails to disclose them to the accused. Ms. Greenmun has acknowledged in comparable cases that she engages in making findings after undisclosed extra-record or *ex parte* contact with the Vermont Department for Children and Families ("DCF"), as recently as 2021. Such undisclosed extra-record and *ex parte* contact is a practice that the Vermont Supreme Court has admonished and violated Mr. Healey's due process rights under the United States and Vermont Constitutions.

FACTUAL BACKGROUND

A. RELEVANT FACTS.

In August 2018, Ms. Lowell was falsely accused by her oldest daughter of crushing a pill and snorting it, although the daughter has confirmed, and is willing to testify, that this allegation was untrue. As a result of the pill allegation (which is not child abuse or neglect as defined under Vermont law), a counselor reported Ms. Lowell to the DCF. Without any substantive investigation, Respondents: (i) extrajudicially removed Ms. Lowell's three children from her home for 305 days for two of the children and 356 days for the third; (ii) violated confidentiality requirements and informed Ms. Lowell's former husbands of DCF's "investigation," and a false "substantiation" for child abuse; (iii) urged the biological fathers of the children to sue for full custody of the children, going so far as to ghost-write the court papers; (iv) improperly, without notice or invitation, appeared at a custody hearing in Ms. Lowell's divorce proceeding and advised the court on the status of the child abuse "substantiation"; (v) coerced Ms. Lowell to enter a drug treatment program, undergo urinalysis, and take the anti-addiction opiate drug suboxone, all despite the fact that Ms. Lowell had not used drugs for many years; (vi) fabricated evidence, made false accusations against Ms. Lowell and Mr. Healey, and ignored exculpatory evidence in conducting their initial "investigation"; and (vii) caused Ms. Lowell to lose her job based on the false claim that Ms. Lowell had been substantiated as a child abuser.

Promptly after receiving the report of the allegation, Respondent Christine Gadwah ("Ms. Gadwah") convened Ms. Lowell and Mr. Healey, along with Ms. Lowell's children, under threat that if they did not comply, the police would take the children from Ms. Lowell and Mr. Healey. Ms. Gadwah then conducted a summary "investigation" that consisted of interviewing Mary and Thaddeus Weld (pseudonyms), separately and independently but outside of the presence of Ms. Lowell and Mr. Healey. She did not permit Ms. Lowell or Mr. Healey to ask any questions, nor did she inform Ms. Lowell or Mr. Healey about the nature of the accusation against Ms. Lowell.

Instead, Ms. Gadwah threatened to invoke the State's police power if Ms. Lowell did not send her children to relatives or their fathers, who had long been estranged from the children at the time. Ms. Lowell, so threatened and coerced, believed she had no choice but to comply. Ms. Gadwah prohibited Ms. Lowell and Mr. Healey from having contact with the children for weeks, after which Ms. Lowell was allowed to have limited contact by phone and text message only.

Ms. Gadwah also contacted the biological fathers and told them to take the children and that Ms. Lowell was not to have access to or custody of the children. Ms. Gadwah encouraged the fathers to file for sole custody of their children and ghost-wrote pleadings on an emergent basis to help them petition for sole custody. One of the fathers swore under oath in connection with his petition for custody that "DCF

called me and told me that the kids were taken from mother and that I was able to pick my son up," and that "DCF told me that he is not to be with his mother." When the state family court signaled in one of the cases that it was disinclined to grant the emergency petition for sole custody, Ms. Gadwah volunteered in open court that Ms. Lowell was in the process of being substantiated for child abuse, although no substantiation had occurred yet.

Ms. Gadwah's claimed rationale for removing the children extrajudicially has also morphed. She and DCF have also claimed that Ms. Lowell and Mr. Healey forced Mary Weld to drink alcohol and smoke marijuana (an allegation that Ms. Lowell, Mr. Healey, and the children all deny). Then they changed their story again to claim that unnamed friends of Ms. Lowell and Mr. Healey forced alcohol on Mary Weld. They also appear to have later alleged that Thaddeus Weld was permanently scarred on his back due to physical abuse from Mr. Healey, which is patently and demonstrably false. To date, it remains unclear exactly what Respondent Gadwah's, and therefore DCF's, actual accusations are against Ms. Lowell and Mr. Healey.

In October 2018, DCF made the administrative decision to "substantiate" their initial findings for "Risk of Harm." The only information that they received regarding the claim against them was perfunctory letters informing them that they were being substantiated but without identifying any particular allegation or evidence, let alone anything sufficient to put them on notice of the nature of the

claims against them. After numerous requests, Ms. Lowell and Mr. Healey received a heavily redacted version of DCF's investigation files (the "Redacted Investigation Files"), through which they gleaned some of the apparent and morphing accusations against them. The Redacted Investigation Files are redacted so heavily as to obscure the charges and evidence against them. They also often contain fabricated evidence and ignore exculpatory evidence in the few portions that are unredacted. The file is so heavily redacted that it conceals all the information that Ms. Lowell and Mr. Healey required to defend themselves against the morphing charges against them. Ms. Lowell's children would have testified that these allegations were false – as are the DCF's characterizations of their interview – but as children (albeit adolescents) were not permitted to testify despite being the most knowledgeable sources of information.

Ms. Lowell and Mr. Healey timely sought a Substantiation Review (the "Review") within 14 days, as required by 33 V.S.A. § 4916a(c)(1). That statute requires that the Review take place "within 35 days of receipt of the request for review." *Id.* Nevertheless, the Reviews were not originally scheduled until August 28, 2019, almost nine full months after the statutory deadline. Ms. Lowell's and Mr. Healey's Reviews took place on March 15, 2024, during the pendency of the appeal to the Vermont Supreme Court.[3]

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[3] Mr. Healey timely appealed to the Human Services Board, a post-deprivation administrative tribunal that does allow some

Vermont law defines an abused or neglected child, in relevant part, as "a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare." 33 V.S.A. § 4912(1). "Harm" is defined as: (a) "physical injury or emotional maltreatment"; (b) "failure to supply the child with adequate food, clothing, shelter, or health care. . . ."; or (c) "abandonment of the child." *Id.* § 4912(6). A "risk of harm," means:

> a significant danger that a child will suffer serious harm by other than accidental means, which harm would be likely to cause physical injury, or sexual abuse, including as the result of: (A) a single, egregious act that has caused the child to be at significant risk of serious physical injury; (B) the production or preproduction of methamphetamines when a child is actually present; (C) failing to provide supervision or care appropriate for the child's age or development and, as a result, the child is at significant risk of serious physical injury; (D) failing to provide supervision or care appropriate for the child's age or development due to use of illegal substances, or misuse of prescription drugs or alcohol; (E) failing to supervise appropriately a child in a situation in

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confrontation, before an agency employee. That appeal remains pending.

> which drugs, alcohol, or drug paraphernalia are accessible to the child; and (F) a registered sex offender or person substantiated for sexually abusing a child residing with or spending unsupervised time with a child.

Id. § 4912(14).

Vermont law provides that, upon receiving a report of abuse or neglect, the DCF "shall promptly determine whether it constitutes an allegation of child abuse or neglect as defined in section 4912 . . . ." 33 V.S.A. § 4915(a). If the allegation meets this initial threshold, DCF "shall determine whether to conduct an assessment as provided for in section 4915a . . . or to conduct an investigation as provided for in section 4915b . . . ." *Id.* § 4915(b).

An assessment "focuses on the identification of the strengths and support needs of the child and the family and any services they may require to improve or restore their well-being and to reduce the risk of future harm." 33 V.S.A. § 4912(2). It "does not result in a formal determination as to whether the reported abuse or neglect has occurred." *Id.* In contrast, an investigation "begins with the systematic gathering of information to determine whether the abuse or neglect has occurred and, if so, the appropriate response. An investigation shall result in a formal determination as to whether the reported abuse or neglect has occurred." *Id.* § 4912(7).

In this case, the DCF purported to undertake an investigation rather than an assessment. Section 4915b requires that an investigation include a visit to the child's place of residence and an interview with or observation of the child (monitored by a disinterested adult, if not the parents), and consideration of "all other data deemed pertinent." However, there is no requirement that the DCF interview the parents or give the parents any opportunity to be heard as part of the investigation or substantiation. 33 V.S.A. § 4915b(a)(1)-(8). DCF's investigation did not include any visit to Ms. Lowell's home, any interview of Ms. Lowell or Mr. Healey, or any consideration of any exculpatory evidence.

Once a report of abuse or neglect is substantiated, the individuals that are the subject of the substantiated report are added to the DCF's Registry. A report is "substantiated" if the DCF "has determined after investigation that a report is based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected." 33 V.S.A. § 4912(16).

By statute, once a report is substantiated, the DCF is required to notify the accused person *only* of:

> (1) the nature of the substantiation decision, and that the Department intends to enter the record of the substantiation into the Registry; (2) who has access to Registry information and under what circumstances; (3) the implications of having one's name placed

> on the Registry as it applies to employment, licensure, and registration; (4) the right to request a review of the substantiation determination by an administrative reviewer, the time in which the request for review shall be made, and the consequences of not seeking a review; and (5) the right to receive a copy of the Commissioner's written findings made in accordance with subdivision 4916(a)(2) of this title if applicable.

33 V.S.A. § 4916a(a). The notice sent to Ms. Lowell and Mr. Healey did not include any notice of a right to receive a copy of any written findings. In fact, there do not appear to be any written findings. Substantively, Ms. Lowell and Mr. Healey were only informed that "[b]ased on the information [DCF] gathered, [DCF] [has] determined that a reasonable person would conclude that you did place your children at risk for physical harm," that they could appeal, and that otherwise they would be placed on the Registry.

Section 4916a governs the Review. It provides that "[t]here shall be no subpoena power to compel witnesses to attend a Registry review conference." 33 V.S.A. § 4916a(d). It further provides that:

> the person who requested the review shall be provided with the opportunity to present documentary evidence or other information that supports his or her

> position and provides information to the reviewer in making the most accurate decision regarding the allegation. The Department shall have the burden of proving that it has accurately and reliably concluded that a reasonable person would believe that the child has been abused or neglected by that person.

Id. § 4916a(e).

In this case, Ms. Lowell's children were not allowed to attend as minor witnesses (two of three did attend the Review as adults, given the time elapsed), or provide evidence at the Review, including direct testimony that the allegations of abuse are false. For example, this meant that Ms. Lowell and Mr. Healey could not produce testimony or direct evidence that Ms. Lowell's son, Thaddeus Weld, does not have scarring on his back, which directly rebuts the information alleged in Mr. Healey's Redacted Investigation File, and evidence that Ms. Lowell's daughter has recanted her earlier allegation about the pill, which appears to be the primary (perhaps the only) evidence supporting the original substantiation finding. In addition, Ms. Lowell and Mr. Healey were not permitted to bring the children to testify that other allegations of abuse by DCF are patently false. The children were also prevented from stating that Respondent Gadwah lied about her conversations with them and was looking for scandalous facts and was disappointed. Further, Ms. Lowell and Mr. Healey were prevented from compelling third-party

witnesses. Ms. Lowell and Mr. Healey were only able to testify themselves.

Of course, such peripheral hearsay evidence is weaker than State employees showing up, often with counsel preparation, to testify about the "abuse" they are willing to claim. "[U]nder our adversary system of justice, cross-examination has always been considered a most effective way to ascertain truth." *Watkins v. Sowders*, 449 U.S. 341, 349 (1981). Cross-examination would be particularly important here, where the Redacted Investigation Files contain contradictory explanations as to where exactly the scar on Thaddeus Weld's back was alleged to be. The Redacted Investigation File for Mr. Healey alleges that the scar is on the "lower hand [*sic*] side of his back" and elsewhere claims that there is a "long scar down the center of his back." *Id*. Of course, neither are true. There is no scar. But Mr. Healey and Ms. Lowell could not present any direct evidence of the absence of a scar (other than their own testimony) because Thaddeus Weld could not testify or show that his back lacks any such scar. In this case, no one from the State testified as to the allegations the State made. The accused were left to explain how they did not commit child abuse, but without the ability to present compelling evidence other than their own testimony. They also were unable to show that the supposed investigator had had cases thrown out for misrepresentation and had been terminated just after her actions in this case.

Not only are individuals accused of child abuse unable to cross-examine accusers and witnesses or

present any direct evidence other than their own testimony at the Review, but the Review Officer and DCF officials routinely engage in post-hearing, extra-record, *ex parte* communication. The accused would not know about, and therefore could not contest, challenge, or present contrary evidence to, any post-hearing *ex parte* communications. In *Sheldon v. Ruggerio*, the Supreme Court of Vermont explained that:

> [t]he apparent custom followed by defendant and cited in defendant's brief creates a situation where, as here, the administrative-review decision is at least partially based on extra-record evidence about which the subject has no notice or opportunity to respond. This appears to be inconsistent with the applicable statutory and regulatory protections of the subject. If this is truly an accepted custom at DCF, the Department should review its policies and practices in light of the applicable law.

202 A.3d 241, 245 n.3 (Vt. 2018). While DCF has represented that it has "taken steps" to correct this practice, Ms. Lowell and Mr. Healey informed the Trial Court that there is evidence that the practice continued at least three years later. For example, the Review Officer assigned to Ms. Lowell's and Mr. Healey's substantiations has claimed that she does not engage in *ex parte* communications and review of extra-record evidence, but she has done so in other

cases that Mr. Healey's counsel is familiar with in 2020 and 2021.

If the substantiated report is affirmed in the Review (as was the case with Mr. Healey), the accused person's name is added to the Registry immediately. 33 V.S.A. § 4916a(e). The accused may thereafter appeal to the Human Services Board and, if necessary, thereafter to the Vermont Supreme Court. 33 V.S.A. § 4916b. The Human Services Board is supposed to hold a hearing within 60 days of the appeal and issue a decision within 30 days after the hearing. *Id.* § 4916b(b)(1). During that time, however, the names of the accused remain on the Registry.

Information on the Registry is available to employers and prospective employers who are regulated by the DCF or who provide "care, custody, treatment, transportation, or supervision of children or vulnerable adults." 33 V.S.A. § 4919(a)(3). This is a *de facto* disqualification from vast swathes of employment, including health care, social services, education, and even janitorial work in those facilities, as well as a preclusion of involvement with Girl Scouts, Little League, or chaperoning school trips.

B. PROCEEDINGS BELOW.

This case arises out of Ms. Lowell's and Mr. Healey's complaint filed in the Trial Court seeking injunctive relief and mandamus to prevent the Reviews from proceeding. Ms. Lowell and Mr. Healey took an appeal to the Vermont Supreme Court as of

right from the Trial Court's decisions granting Respondents' Motion to Dismiss and denying Petitioners' Motion for Reconsideration. During that appeal, Ms. Lowell's substantiation review occurred in May 2024, after which the administrative reviewer overturned DCF's substantiation decision against Ms. Lowell. The Vermont Supreme Court held that the claims as to Ms. Lowell were moot. A1. As to the remaining issues for Mr. Healey on appeal, the Vermont Supreme Court found that the Review provided adequate pre-listing procedures, and that additional post-listing procedure rendered the Review process constitutionally sufficient. A2-A22. This Court should grant review and reverse the decision below.

REASONS FOR GRANTING THE WRIT

This petition presents critically important questions about the application of *Axon* to administrative agency determinations. It also presents important issues about the pre-deprivation due process applicable to parents accused of child abuse or neglect, and whether due process requires notice of the allegations and evidence, the right to cross-examine, the right to present witnesses, and the right to avoid *ex parte* communications and consideration of extra-record evidence before being placed on the state's child abuse registry. This issue affects parents in 25 states and the District of Columbia which have enacted procedures that could result in a parent being listed on a child abuse registry *before* having a meaningful opportunity to be heard. Finally, this petition presents important questions about the right to a jury trial in an

administrative proceeding that concerns a liberty interest and is "akin to a criminal proceeding."

I. THE SUBSTANTIATION REVIEW IS ITSELF AN UNCONSTITUTIONAL PROCESS THAT MUST BE ADDRESSED BY THIS COURT.

It was recently illustrated in *Axon Enter., Inc. v. Fed. Trade Comm'n*, 143 S. Ct. 890, 910 (2023) that when an administrator within an administrative agency determines the agency's own accusation, that is structurally illegitimate. As *Axon* makes clear, an in-house adjudication, when the agency has no particular "competence and expertise" to address the *structural infirmities* (not the claims' subject matter, the structure) at hand, usurps the judicial function. This issue is of importance because all 50 states maintain central registries or other similar recordkeeping systems for those substantiated of child abuse or neglect, and approximately half the states permit a person to be listed as a child abuser before being given due process.

Axon holds that a plaintiff may have a freestanding constitutional interest in the courts addressing an improper administrative proceeding. It is well established that Mr. Healey had a right to pre-deprivation due process, which the substantiation review process at hand does not provide. In the federal system, structural concerns with the intra-agency adjudication system are a justiciable case or controversy that may be brought in federal court. Here, the interest in having that structural concern

about a State in-house agency process heard, which implicates separation of powers, bias, and basic due process concerns, is much greater. The Trial Court in Vermont, as in other states, has the remit for "original civil actions" and "mandamus," as set forth in 4 V.S.A. § 31, and that includes blocking an improper proceeding.

In *Axon*, the plaintiffs in two companion cases asserted that they were entitled to have a court, and not the agency seeking to sanction them, hear cases. *Axon Enter., Inc.*, 143 S. Ct. at 910. Their claims included structural challenges to the process itself which they had a right to challenge before "stand[ing] trial" (there, as here, there is no real trial, by the agency's design). *Id.* And there, as here, the supposed remit to the agency to serve as prosecutor, judge, jury, and enforcer was a matter of longstanding, presumed validity. There, as here, the supposed "remedy" of a plaintiff to seek later review in the court system, after he is already sanctioned, was inadequate. But it did not work there, for several reasons that are highly apt in concerning state substantiation review processes.

In *Axon* this Court unanimously illustrated how it is a matter for judicial review to determine whether an agency may create a "combination of prosecutorial and adjudicative functions," and preclude the pre-injury review of that (and other) structural due process issues. Although the federal district court's original jurisdiction is remitted per 28 U.S.C. § 1331, the same is true as to structural and

other questions in Vermont per Vt. R. Civ. P. 75 and 4 V.S.A. § 31.

In Vermont, the intra-agency review process is not statutorily specified as exclusive, and there is no provision for any consideration of due process issues, hence Vt. R. Civ. P.75 applies. So, if for example, the actual adjudicator was engaging in improper violations of due process and freelancing inquiry by *ex parte* and extra-record inquiry, that same systemic issue would need to be presented to the very same in-house adjudicator that is violating due process. Essentially, the elision of prosecutorial and adjudicative functions means that the judicial function (adjudication) is being performed by an agent of the prosecutor. And an improper process by that same adjudicator is also to be adjudicated by that same person. That is not due process. As courts have noted, a "meaningless hearing is no hearing at all." *Los Angeles Sheriff Deputies v. County of Los Angeles*, 648 F.3d 986, 995 (9th Cir. 2011).

This is exactly how and why *Axon* disregards the circular presumption of agency expertise and allows exogenous challenge by a judicial function (in that case, by Article III courts). Starting with the idea that "agency adjudications are generally ill suited to address structural constitutional challenges," *Carr v. Saul*, 141 S. Ct. 1352, 1354 (2021), *Axon's* opinion clarifies that those challenges are addressable in an Article III court.[4] Effectively, if the consideration of

[4] As set forth above, Ms. Lowell and Mr. Healey initially brought claims in an Article III court. The District Court directed Ms. Lowell and Mr. Healey to seek relief in state court. Mr. Healey

the serious constitutional issues at play here, then "absent district court jurisdiction, [plaintiff] might never have had judicial recourse." *Axon Enter., Inc.*, 143 S. Ct. at 903. It further recognizes that the "here-and-now injury" of "'being subjected' to 'unconstitutional agency authority'" is itself a present harm. *Id.* at 893 (citations omitted).

The *Axon* concurrences make this even clearer, relating to "grave doubts about the constitutional propriety of Congress vesting administrative agencies with primary authority to adjudicate core private rights with only deferential judicial review on the back end," which is exactly what the Vermont statutory structure at hand here implies. *Id.* at 906 (Thomas, J., concurring). That concurrence also points out the history of the "appellate review model" (which is exactly the type of scheme that the Review at hand here deploys), resulting in a review by an actual court with judicial rules and independence only after one has actually suffered the sanction, in many instances years later. *Id.* at 908.

The concurrence by Justice Gorsuch calls the issue into even starker relief, which is even more egregious when one is talking about something that is akin to a criminal sanction "[this scheme] rests on a view that it is sometimes more important to allow agencies to work without the bother of having to answer suits against them than it is to allow individuals their day in court." *Id.* at 913 (Gorsuch,

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has now exhausted his state court remedies and submit this Petition to this Court, which may exercise direct appellate review under 28 U.S.C. § 1254(1).

J., concurring). That concurrence points out how wreckage results from cavalier internal agency investigation, enforcement, and adjudication. As the concurrence stated in *Axon*:

> Agencies like the SEC and FTC combine the functions of investigator, prosecutor, and judge under one roof. They employ relaxed rules of procedure and evidence — rules they make for themselves. The numbers reveal just how tilted this game is. From 2010 to 2015, the SEC won 90% of its contested in-house proceedings compared to 69% of the cases it brought in federal court . . . meanwhile some say the FTC has not lost an in-house proceeding in 25 years . . . that review is available in a court of appeals after an agency completes its work hardly makes up for a day in court before an agency says it's done.

Id. at 918.

Moreover, the functions of an adjudicator as to what her own agency prosecutes are a judicial matter, which an executive agency may not prosecute and adjudicate at the same time. Just as in *Axon*, there is no presumption of any especial competence in adjudicative matters by the DCF. In fact, it itself is seeking an outcome, and it has a stake in the controversy, meaning there is a conflict of interest embedded in the statute.

For Vermont courts reviewing agencies' actions, there is a baseline of vigilance, which should be heightened when the agency is prosecuting, and the agency has a history of going so far away. "Although we approach the examination of actions of an administrative body under a presumption of validity, adjudicatory functions of an administrative body are reviewed with special vigilance." *In re Vermont Verde Antique Int'l, Inc.*, 174 Vt. 208, 211, 811 A.2d 181, 183-84 (2002) (citations omitted); *see also In re Agency of Admin.*, 141 Vt. 68, 76, 444 A.2d 1349, 1352 (1982) ("Where [an administrative body] exercises its adjudicative function we will be especially vigilant, since proper utilization of the judicial process is unrelated to expertise in any particular subject matter."). But this is the opposite of what actually occurs (and occurred here).

In effect, the export of judicial functions to any agency, including matters relating to fundamental liberty interests, is a category mistake: "[I]t may be said that where the duty is primarily to decide a question of private right, based upon a claim for reparation for injuries suffered in the past, involving a determination of the facts or the construction and application of existing laws, the function is judicial, and, constitutionally is to be performed by the Courts." *Trybulski v. Bellows Falls Hydro-Elec. Corp.*, 112 Vt. 1, 8-9 (1941). These are judicial functions.

This Court should take this opportunity to hold that the same considerations that are applicable to federal agency administrative processes in *Axon*

apply equally to state processes concerning allegations of child abuse or neglect and listing on the state registry to ensure that rights do not continue to be violated by a structurally illegitimate in-house adjudication process.

II. THE DUE PROCESS ISSUES BEFORE THE COURT ARE VITALLY IMPORTANT AND NATIONALLY APPLICABLE.

Whether a parent has a right to notice of the allegations of abuse, evidence supporting those allegations, and a meaningful opportunity to rebut that evidence, including by ensuring *ex parte* and extra-record evidence is not considered before being placed on a child abuse registry, affects numerous parents across the country.

As noted above, all 50 states maintain central registries or other similar recordkeeping systems for those substantiated for child abuse or neglect. In many cases, parents have alleged that they were listed on a central child abuse registry without due process, as Mr. Healey claims here. Approximately 24 states and the District of Columbia have statutes or regulations that permit the placement of an individual on a central child abuse registry prior to any hearing or administrative review. *See, e.g.*, Ala. Code 1975 § 26-14-8, *et seq*.; Alaska Stat. § 12-18-908; Cal. Pol. & Proc. Man. § 31-021; Colo Rev. Stat. § 19-3-313.5; D.C. Code §§ 4-1302.05; 4-1302.06; Fla. Department of Children and Families CF Operating Procedure No. 170-16; Ga. Code § 49-5-182; Ill. Comp. Stat. Ch. 325, § 5/7.16; Ind. Code § 31-33-26-8(b); Iowa

Code § 235A.19; Maine Child & Fam. Pol. Man. § XV. E; 110 Mass. Code Regs. § 10.06(12); MI Comp. Laws § 722.627(4)-(6); MO Rev. Stat. § 210.152; N.D. Cent. Code § 50-25.1-05.2; N.D. Admin. Code §§ 75-03-18-02; 03; 04; 05; 07; 12; 13; Neb. Rev. Stat. § 28-723; N.H. Rev. Stat. § 169-C:35; N.J. Rev. Stat. § 9:6-8.10a; N.Y. Soc. Servs. Law § 424; Okla. Admin. Code tit. 340, § 75-3-530; 23 Pa. Cons. Stat. § 6338; Tex. Fam. Code § 261.309; Va. Code § 63.2-1526; Wa. Rev. Code § 26.44.125; Wyo. Stat. Ann. § 14-3-213.

Even where states, like Vermont, nominally provide a right to an administrative review or hearing prior to placement on the Registry, that review often lacks even the basic hallmarks of due process, such as adequate notice of the allegations or evidence or a right to present evidence to rebut those allegations or evidence. This Court has long held that "[n]otice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.'" *Application of Gault*, 387 U.S. 1, 33 (1967) (internal citation omitted). In Vermont, the only notice provided to a parent is the conclusion that abuse, neglect, or a risk of harm has occurred. A parent is entitled only to a Redacted Case File that is redacted so heavily as to obscure most relevant information. In this case, there was not even a witness to testify, just a highly-redacted set of loose notes, without clarity as to what the particular accusation is. Similarly, in California, the information presented to a parent may exclude evidence that the person reporting the abuse observed

indicating that child abuse occurred. That is, the information disclosed to a parent may exclude the evidence that prompted the initial allegation. Cal. Pol. & Proc. Man. § 31-021. The procedures adopted in Vermont and other states fail to provide the minimum notice required for a parent or other party accused of child abuse or neglect to mount a defense. This increases the risk of erroneous deprivation and distances the procedure from anything akin to a criminal proceeding or even many other types of administrative processes with lesser rights at stake.

In Vermont, another issue has also arisen – the reliance on extra-record and *ex parte* communications. Such undisclosed extra-record and *ex parte* contact is a practice that the Vermont Supreme Court has admonished but that appears to have continued. *Sheldon v. Ruggerio*, 202 A.3d 241, 245 n.3 (Vt. 2018).

> Nothing in the statutory scheme, see 33 V.S.A. § 4916a, or the DCF regulatory scheme concerning the administrative review process, see Procedures for Conducting an Administrative Review § 3005, Code of Vt. Rules 13 172 300, allows for the administrative reviewer to have ex-parte, extra-record contact with DCF caseworkers concerning the subject of the substantiation review. Indeed, the entire statutory framework for administrative review of a DCF abuse substantiation suggests that the Legislature intended a baseline of due process for the subject of the

> substantiation. . . . The apparent custom followed by defendant and cited in defendant's brief creates a situation where, as here, the administrative-review decision is at least partially based on extra-record evidence about which the subject has no notice or opportunity to respond. This appears to be inconsistent with the applicable statutory and regulatory protections of the subject. If this is truly an accepted custom at DCF, the Department should review its policies and practices in light of the applicable law.

Sheldon, 2018 VT at 39 n. 3.

Yet, there is evidence that this practice has continued into at least 2021. For example, the Review Officer assigned to Mr. Healey's substantiation has confirmed that she would go on an unexposed freelance inquiry in regard to forming decisions. This issue may have national consequences because no state statutes or rules concerning the substantiation process permit undisclosed extra-record and *ex parte* contact.

The due process issues are also seen in the investigative procedures used, where parents lack protections in investigations similar to those that they would have in a criminal proceeding, such as *Miranda* rights. *See* Donald Dickson, When Law and Ethics Collide: Social Control in Child Protective Services, 3 ETHICS & SOC. WELFARE 264, 268–69

(2009) ("[M]any of the constitutional protections available in a criminal setting, namely the right to a 'Miranda warning', the right to counsel, the right to know one's accuser, and protections against self-incrimination, among others, are not automatically available to parents or guardians in civil child abuse actions."). In this case, Respondent Gadwah employed improper methods to cause an extrajudicial removal of Ms. Lowell's children from her under threat of police force based on an allegation that did not even meet the statutory definition of abuse or neglect in the first place.

Furthermore, the standards for listing an accused parent on a central child abuser registry vary from state to state and also often fail to safeguard parents' rights to be heard. U.S. Dep't of Health and Human Services, Children's Bureau, Review and Expunction of Central Registries and Reporting Records 3-26 (2018), *available at* https://www.childwelfare.gov/pubPDFs/registry.pdf. For example, Vermont's standard for the Review is, in practice, so vague as to lack any meaningful guiding principle. *See* 33 V.S.A. § 4916a(e) (A46) (providing that at the Review, DCF has "the burden of proving that it has accurately and reliably concluded that a reasonable person would believe that the child has been abused or neglected . . . ."). Approximately 17 states permit substantiation of child abuse allegations and placement based on a low evidentiary threshold, such as "probable cause" or "credible evidence." *See, e.g.*, Ala. Code § 26-14-8(a)(1) (stating that a report is indicated "[w]hen credible evidence and professional judgment substantiates . . . abuse or

neglect"); Alaska Stat. § 47.17.290(9) (requiring "reasonable cause"); A.R.S. § 8-804.01(D) (using "probable cause"); Ct. Gen. Stat. § 17a-101g ("[T]he commissioner shall determine, based upon a standard of reasonable cause, whether a child has been abused or neglected . . . ."); Fla. Admin. Code r. 65C-30.001 ("'Finding' means the investigative determination that there is credible evidence to support or refute the alleged child maltreatment."); Haw. Admin. Rules § 17-1610-2 (using "reasonable cause"); 325 Ill. Comp. Stat. 325, § 5/3 (requiring "credible evidence" for a report to be indicated); Juvenile Law: The Definition of 'Unfounded' within Meaning of § 235A.18(2), 1982 Iowa Op. Att'y Gen. 7 (1981), 1981 WL 37084 (interpreting Iowa statute on child abuse report standard to mean "some credible evidence" (citing Iowa Code § 232.71D)); *see also* LSA-Ch. C. Art. 615; MD Code, Family Law, § 5-701; 110 Mass. Code Regs. § 4.32; NAC 432B.170; N.M. Code R. § 8.10.3.17; N.Y. Soc. Servs. L. § 412; Okla. Stat. tit. 10A § 1-2-106; Utah Code § 62A-4a-101; and 33 V.S.A. § 4912 (A35) (stating that a substantiated "report is based upon accurate and reliable information that would lead a reasonable person to believe" that abuse or neglect occurred). Some states, such as New York, require only "some credible evidence" or "probable cause," as determined by a caseworker, to place individuals on the registry. N.Y. Social Serv. Law § 424-a(e)(ii)-(v). Low evidentiary standards present a high risk of erroneous deprivation, especially where the other hallmarks of due process are lacking.

In contrast, at least 15 states require "substantial evidence" or a "preponderance of the

evidence." Colo Rev. Stat. § 19-1-103(111); Del. Code tit. 16 § 925A; O.C.G.A. § 290-2-30-.02(f); Kan. Stat. Ann. § 600.020(1); MD Code Regs. 07.02.07.10; M.C.L. § 722.627; MO Rev. Stat. § 210.183; Mont. Admin. R. 37.47.602; N.C. Gen. Stat. §§ 7b-101,7B-311 (defining substantial evidence as "relevant evidence a reasonable mind would accept as adequate to support a conclusion"); N.H. Rev. Stat. § 169-C:3(XIII); N.J.A.C. § 10:44D-3.2; Neb. Rev. Stat. § 28-720 (stating a case will be entered into the central registry if "the subject of the report of child abuse or neglect was supported by a preponderance of the evidence"); R.I. Department of Children, Youth and Families Operating Procedure No. 100.0280; S.C. Code 1976 § 63-7-930; 22 Va. Admin. Code § 40-705-10.

The allegation of child abuse leaves an indelible mark even after it is disproven, which is difficult to do without notice of the allegations or the incriminating evidence, a right to cross-examine, and a right to present testimonial evidence. The fundamental right of parents to a relationship with their children and the right to pursue employment free from the unwarranted stigma of being labeled child abusers requires consistency in the basic, minimal due process in child abuse substantiation procedures.

This Court should take this opportunity to clarify the minimum due process that the Constitution requires to safeguard parents' rights in the context of administrative proceedings to list parents as child abusers so as to minimize the risk of erroneous deprivation of protected liberty interests.

III. THE RIGHT TO A JURY TRIAL SHOULD APPLY TO THE SUBSTANTIATION REVIEW PROCESS.

The right to a jury trial should apply to the substantiation review process under state constitutional provisions and the Seventh Amendment.

The Vermont Constitution is explicitly clear in Article 10:

> That in all prosecutions for criminal offenses, a person hath the right to be heard by oneself and by counsel; to demand the cause and nature of the accusation; to be confronted with the witnesses; to call for evidence in the person's favor, and a speedy public trial by an impartial jury of the country; without the unanimous consent of which jury, the person cannot be found guilty;. . . **nor can any person be justly deprived of liberty, except by the laws of the land, or the judgment of the person's peers**.

Vermont Const. Ch. I, Art. 10 (emphasis added).[5]

To escape the scrutiny of the federal court system by court abstention, the State claimed that

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[5] All 50 states have similar provisions preventing the taking of a liberty interest without due process. *See, e.g.*, Alabama, Const. Art. 1, § 10 ("nor shall he be deprived of his life, liberty, or

this proceeding is in the species of "criminal" proceedings and has that level of due process protection. But now it purports to deny all of it, and remit that "criminal"-like proceeding to a freestyle process. That is inconsistent. Even if the sanction of being deemed a "child abuser" for life were somehow less worthy of due process then being accused of, for example, "excessive speed,"[6] it would still fall into the zone of issues "proper for the cognizance of a jury" as protected under the Vermont Constitution, Article 12, which provides the right for a trial by jury for all prosecutions for any criminal offense.

Placement on the Registry meets the "stigma plus" criterion and causes sufficient harm to reputation to establish deprivation of a liberty interest. *Valmonte v. Bane*, 18 F.3d 992, 1000 (2d Cir. 1994).[7] Moreover, the Vermont Supreme Court has

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property, but by due course of law"); Alaska Const., Art. 1, § 7; Arkansas Const., Art. 2, § 8; Colorado, Art. II, § 25. In addition, eight other states have provisions stating a liberty interest warrants a jury trial, like in Vermont. *See, e.g.*, Delaware Const. Art. 1 § 7 ("nor shall he or she be deprived of life, liberty or property, unless by the judgment of his or her peers or by the law of the land."); Kentucky Const. § 11; Maine Const. Art. 1 § 6; Massachusetts Const. Pt. 1, Art. 12; New Hampshire Const. Pt. 1, Art. 15; Pennsylvania Const. Art. 1 § 9; Rhode Island Const. Art. 1 § 10; and Virginia Const. Art. 1 § 8.

[6] In the criminal context, even minor infractions like speeding tickets are subject to a jury trial by right in Vermont. *See State v. Mitchell*, 147 Vt. 218, 218, 514 A.2d 1047, 1048 (1986).

[7] *See also N.M. v. Buckner*, No. 2:22-CV-442-RAH, 2023 WL 2876166, at *7 (M.D. Ala. Apr. 10, 2023) ("The stigma associated with being labeled as a child abuser affects the Plaintiffs' right

indicated that a liberty interest may arise "from the Constitution itself, by reason of guarantees implicit in the word 'liberty,' or it may arise from an expectation or interest created by state laws or policies." *Wool v. Off. of Pro. Regul.*, 2020 VT 44, ¶ 20 (2020). The Vermont Supreme Court in *Wool* held that to determine if a liberty interest arises under Article 10 of the Vermont Constitution, the Vermont Supreme Court must conduct "a fact-sensitive examination of the particular circumstances involved, including consideration of the nature and significance of the interest at stake, the potential impact of any decision resulting in a deprivation of that interest, and the role that procedural protections might play in such a decision." *Id.* (citations omitted). Vermont law has found that the protection of liberty is "the right 'to engage in any of the common occupations of life.'" *Herrera v. Union No. 39 Sch. Dist.*, 2006 VT 83, ¶ 27 (2006). Branding Appellants as child abusers meets this standard because Mr. Healey is likely to be placed on the Registry, depriving them of their liberty to maintain and seek employment in many fields

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to establish a home and bring up children and the right to family integrity, all of which are well-established liberty interests worthy of the constitutional protection of procedural due process.") (citing *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)); *McCoy v. Admin. for Children's Servs.*, No. 23-CV-03019-HG-SJB, 2024 WL 4379584, at *5 (E.D.N.Y. Aug. 9, 2024), *report and recommendation adopted as modified*, No. 23-CV-03019 (HG) (SJB), 2024 WL 4344791 (E.D.N.Y. Sept. 30, 2024) (recognizing that placement of one's name on a central registry satisfies the "stigma-plus" standard); *Rossow v. Jeppesen*, No. 1:23-CV-00131-BLW, 2023 WL 7283401, at *3 (D. Idaho Nov. 3, 2023) (same).

including childcare or elderly care. Moreover, it will affect their interest in the care, custody, and control of their children, which is among the most fundamental interests protected under the Constitution. *See, e.g.*, *Troxel v. Granville*, 530 U.S. 57 (2000). Beyond the State's admission that the substantiation proceeding is "akin" to a criminal one, Vermont Constitution, Article 12 makes clear that its provisions for a jury trial also apply to any deprivation of "liberty" like the one Mr. Healey has suffered.

Moreover, as this Court held in *Granfinanciera, S.A. v. Nordberg*, Congress cannot divest a person's Seventh Amendment right (to a jury trial) merely by relabeling preexisting common-law causes of action to which that right attaches and assigning it to specialized court of equity. 492 U.S. 33 (1989). *Granfinanciera* held that Congress cannot "conjure away the Seventh Amendment by mandating that traditional legal claims be . . . taken to an administrative tribunal." *Id.* at 2796. The same reasoning applies here. The State should not be permitted to effectively bring criminal prosecutions (by its own admission) that affect a person's "liberty" against parents without parents being afforded the protections of a criminal prosecution, including a jury trial.

While this Court has yet to decide whether the Seventh Amendment applies to the States through the Fourteenth Amendment, this Court should apply it in circumstances like here, where important liberty interests are at stake. In *Sec. & Exch. Comm'n v.*

Jarkesy, 144 S. Ct. 2117, 2120 (2024), the defendants claimed that a civil enforcement action for securities fraud, which required an in-house adjudication, violated the defendants' rights to a jury trial under the Seventh Amendment. This Court considered whether the SEC's enforcement action implicated the Seventh Amendment. *Id*. The Court opined that because the SEC sought to enforce issues that replicate common law fraud and because common law fraud claims are traditionally heard by juries, the SEC's enforcement action did implicate the Seventh Amendment. *Id*.

There can be little doubt that a substantiation procedure similarly implicates rights, like in criminal cases, traditionally heard by juries. The Second Circuit has already found that the substantiation procedure was sufficiently "akin to a criminal prosecution," implicated vital state interests, and provided a sufficient opportunity to raise constitutional issues, albeit only after placement on the Registry.[8] Whether under State constitutional provisions concerning jury trials or the Seventh Amendment, this Court should take this opportunity to guide the States with respect to whether a jury trial is required when a parent faces allegations of child abuse and faces being branded as a child abuser and added to a state registry.

The Review violates the Vermont Constitution because it fails to afford individuals a trial by jury

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[8] *Lowell, et al. v. Vermont Department for Children and Families, et al.,* No. No. 19-3987-cr (2d Cir. Dec. 15, 2020).

even where their protected liberty interests are at stake.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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