No. _____

IN THE

Supreme Court of the United States

MATTIE WALLS

Petitioner,

vs.

SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES

Respondent.

On Petition for a Writ of Certiorari to the South Carolina Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The South Carolina Court of Appeals affirmed the lower court's order terminating Petitioner's parental rights as to Minor Child. The Supreme Court of South Carolina granted a writ of certiorari in the matter but dismissed that writ as improvidently granted.

The question presented is as follows:

Whether it violates the Due Process Clause of the United States Constitution to terminate a person's parental rights based on the person's inability to explain the cause of injuries to a child.

LIST OF PARTIES

Petitioner Mattie Walls and Respondent South Carolina Department of Social Services were parties to the appellate proceeding as to which review is sought in this petition. Carley Jason Walls, Dwayne Anderson and Barbara Anderson were named as defendants in the family court proceedings below but did not participate in the appeal. Ralphine Patterson was named as a guardian *ad litem* in the family court proceedings below but did not participate in the appeal.

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Mattie Walls respectfully requests that this Court issue a writ of certiorari to review the decision of the South Carolina Court of Appeals in her case.

OPINIONS BELOW

The opinion of the South Carolina Court of Appeals in *South Carolina Department of Social Services v. Mattie Walls,* No. 2016-UP-483 (Nov. 16, 2016), is not reported. The opinion of the South Carolina Supreme Court dismissing a writ of certiorari to the South Carolina Court of Appeals, *South Carolina Department of Social Services v. Mattie Walls,* Mem. Op. 2017-MO-019 (Oct. 25, 2017), is also not reported.

JURISDICTION

The South Carolina Supreme Court issued an opinion dismissing a writ of certiorari to the South Carolina Court of Appeals on October 25, 2017. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution provide as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On October 1, 2014, Mattie Walls gave birth to the minor child at issue in this matter ("MC"). After a difficult delivery, MC remained hospitalized until October 5, 2014, when her parents took her to their home in Clinton, South Carolina.

Mattie Walls took MC to her pediatrician's office on October 6th, October 7th, October 9th, October 15th, and October 18th for routine infant examinations and digestive issues. The medical professionals who examined the child found no injuries and raised no concerns of possible abuse.

On October 20th or 21st, MC fell from her changing table while her father Carley Jason Walls ("Jason Walls") was changing her around midnight as Mattie Walls slept. MC did not appear to be injured and, therefore, was not taken to the doctor.

On October 23rd, Mattie Walls took MC to her pediatrician's office for routine care. Again, a medical professional examined MC but did not find any injuries and did not indicate any concern regarding abuse.

Less than 24 hours later, during the early morning of October 24th, Mattie Walls was awoken by her husband and told that MC was breathing abnormally. They immediately called 911, and MC was transported by ambulance to the hospital.

Paramedics who examined MC found no sign of injury. At the hospital, however, it was discovered that MC had a left femur fracture. After additional testing and scans, it was discovered that MC also had a skull fracture, lesion on the right tibia, evidence of subarachnoid hemorrhage, and a potential

fracture of the L2 vertebra of the lumbar spine. Other than a harness for the femur fracture, MC did not require any other medical treatment.

On October 25, 2014, the South Carolina Department of Social Services ("DSS") took MC into emergency protective custody. On October 27, 2014, DSS filed a child removal petition in the family court for Laurens County, South Carolina. On November 25, 2014, DSS filed an amended petition seeking termination of parental rights ("TPR").

The matter went to trial beginning on June 22, 23, and 24, 2015, and continuing on August 17 and 18, 2015. At the commencement of the proceedings, Mattie Walls' trial counsel stated as follows:

> Our Supreme Court has stated—the United States Supreme Court held for the first time that a parent's unfitness must be proved by clear and convincing evidence before his or her parental rights can be terminated. The Court's analysis in reaching that conclusion is instructive here and it commenced by noting that the fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents or they have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing irretrievable destruction of their familial bonds. If anything, persons faced with forced dissolution of their parental rights have a more critical need for the procedural protections than those do—

> than do those resisting State intervention in their ongoing family affairs.

(*Record on Appeal* at 114).

At trial, the State candidly admitted that it could not identify the perpetrator of MC's injuries:

> Q. Were you ever able to identify a potential perpetrator of these injuries?
>
> A. No, we weren't. But we also were not given a plausible explanation for the injuries. Mr. and Mrs. Walls couldn't tell us where the injuries occurred and they were the ones that were accountable for the child.

(*Id.* at 605-606).

After the close of the State's case, trial counsel reiterated that "[i]n 1982, the United States Supreme Court held for the first time that a parent's unfitness must be proved by clear and convincing evidence before his or her parental rights can be terminated," citing *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 138, 71 L. Ed. 2d. 599 (1982). (App. to Pet. for Writ of Cert. to S.C. Ct. App. at 467). At the close of the evidence, both defendants argued that the State had failed to offer sufficient evidence to terminate their parental rights:

> [C]learly we're at the point where we haven't met the burden of proof of clear and convincing evidence because it's simply just not clear what caused these injuries or who cause these injuries to this child.

(*Record on Appeal at* at 988).

On October 9, 2015, the family court issued an order terminating Mattie Walls' parental rights, along with those of her husband. The family court found as follows:

> Viewed as a whole, the Court finds that the above proven facts constitute clear and convincing evidence that the child is an abused or neglected child as defined in [South Carolina Code] Section 63-7-20; the child's injuries were the result of non-accidental trauma; the injuries were severe and repetitious. This Court finds that the minor child was physically abused by *one or both of the defendant parents* during the first twenty three days of her life.

(*Id.* at 17) (emphasis added) . The family court did not specifically find that Mattie Walls, as distinct from her husband Jason Walls, abused or neglected their child.

Mattie Walls timely appealed from the family court's orders. In her brief before the South Carolina Court of Appeals, Mattie Walls again invoked this Court's precedents in *Santosky* and *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054 (2000), in arguing that the State was required to prove its TPR case by clear and convincing evidence. (App. at 27a-28a).

The South Carolina Court of Appeals affirmed the family court in an unpublished opinion filed on November 16, 2016. In so affirming, the South Carolina Court of Appeals held that "given the severity of [MC's] injuries and Mother's *inability to offer a plausible explanation for those injuries*," termination was in MC's best interest. *South Carolina Department of Social Services v. Mattie Walls*, No. 2016-UP-483

(S.C. Ct. App. Nov. 16, 2016) at 3 (emphasis added) (App. at 6a-7a).

After her petition for rehearing was denied, Mattie Walls petitioned the South Carolina Supreme Court for a writ of certiorari. In her petition, Mattie Walls argued that the Court of Appeals had effectively shifted the burden to her to disprove the grounds for termination of her rights in violation of *Santosky*. *Petition for Writ of Certiorari to the South Carolina Court of Appeal.* at 11-12 (App. at 13a-15a).

The South Carolina Supreme Court granted Mattie Walls' petition on June 16, 2017. (App. at 16a). In her certiorari brief, Mattie Walls argued, among other things, that this Court's due process cases placed the burden on the State to prove grounds for TPR by clear and convincing evidence. *Petitioner's Brief on Certiorari to the South Carolina Court of Appeals* at 14-15 (App. at 20a-24a).

Shortly before oral argument on October 18, 2017, Mattie Walls filed a motion to supplement the record to include proof that Jason Walls had recently pleaded guilty to injuring MC and that similar charges against Mattie Walls had been dismissed. The South Carolina Supreme Court granted this motion by order dated November 1, 2017. On October 25, 2017, however, the South Carolina Supreme Court dismissed its prior writ of certiorari as improvidently granted. (App. at 17a-18a).

REASONS FOR GRANTING THE WRIT

This is a case in which the appellate courts of South Carolina blatantly disregarded this Court's due process jurisprudence in the area of parental rights. It is axiomatic that the State bears the burden of proof in an action to terminate parental

rights. This Court's decision in *Santosky*, furthermore, requires the State to prove its case by at least clear and convincing evidence.

Here, however, that burden of proof was reversed, with Petitioner Mattie Walls being required to exonerate herself of any complicity in the injuries inflicted on her child in order to preserve her parental relationship. The Court should not allow this injustice to stand.

This petition comes before this Court in an odd procedural posture. The South Carolina Supreme Court granted a petition for certiorari to the South Carolina Court of Appeals, received briefs, and heard oral argument—only to dismiss the writ a week later. Thus the final decision on appeal is the opinion of the South Carolina Court of Appeals. The Court of Appeals upheld the termination of Mattie Walls' parental rights based on her "inability to offer a plausible explanation" for her child's injuries.

That plausible explanation came to light when Jason Walls later pleaded guilty to injuring MC, with all charges against Mattie Walls being dismissed. Although the South Carolina Supreme Court granted Mattie Walls' motion to supplement the record to include Jason Walls' guilty pleas and the dismissal of charges against Mattie Walls, it ultimately allowed the decisions of the Court of Appeals and family court to stand. Mattie Walls thus faces the injustice of losing her child after having been exonerated of involvement in that child's harm.

The constitutional issue, however, remains as follows: can a court shift the burden of proof to the parent in a TPR case, and require the parent to come forward with evidence exonerating him or her from

any responsibility for injuries sustained by a child? Can the State rest its case on the parent's inability to explain away apparent injuries to the child, even in the absence of evidence proving that those injuries were the result of abuse or neglect by the parent?

This petition does not simply argue that the Court of Appeals misapplied a properly stated rule of law. The clear import of the Court of Appeals' opinion is that parental rights are subject to termination in instances where a potentially innocent parent is unable to explain the existence of harm to a child. This case therefore falls under Rule 10(c) of this Court's rules, in that a state court has "decided an important federal question in a way that conflicts with relevant decisions of this Court."

Although the opinion of concern in this case is both unpublished and from an intermediate appellate court, the issue presented is of considerable importance in the area of parental rights. [1] It is not un-

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[1]The fact that the Court of Appeals' opinion was not published should not deter granting certiorari. Indeed, this Court routinely grants certiorari in cases appealing an unpublished opinion. *See*, *e.g.*, *Murphy v. United Parcel Serv., Inc.*, 527 U.S. 516, 119 S. Ct. 2133, 144 L. Ed. 2d 484 (1999), *superseded by statute*, ADA Amendments Act of 2008, Pub.L. No. 110-325, 122 Stat. 3553 (granting certiorari after the Tenth Circuit Court of Appeals affirmed a district court order in an unpublished opinion); *Doe v. United States*, 487 U.S. 201, 108 S. Ct. 2341, 101 L. Ed. 2d 184 (1988) (granting certiorari after the Fifth Circuit Court of Appeals affirmed a district court order in an unpublished opinion); *Burlington N. R. Co. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 107 S. Ct. 1855, 95 L. Ed. 2d 404 (1987) (granting certiorari after the Tenth Circuit Court of Appeals affirmed a district court order in an unpublished opinion); *McDonald v. City of W. Branch, Mich.*, 466 U.S. 284, 104 S. Ct.

common for mysterious injuries to be diagnosed in the course of otherwise routine child medical care. Unsuspecting parents are sometimes confronted with medical evidence of hidden injuries and asked how they could have occurred. In the absence of a credible explanation, the child is often placed in foster care and the parent accused of child abuse. *See* Matthew B. Seeley, *Unexplained Fractures in Infants and Child Abuse: The Case for Requiring Bone-Density Testing Before Convicting Caretakers*, 2011 Byu L. Rev. 2321 (2011). The parent is then subject both to criminal liability and the loss of parental rights.

Several recent medical and legal articles have questioned the rote assumption that certain injuries, such as a classic metaphyseal lesion, are inherently probative of child abuse. *E.g.* Jay Simmons, *Ironic Simplicity: Why Shaken Baby Syndrome Misdiagnoses Should Result in Automatic Reimbursement for the Wrongly Accused*, 38 Seattle U. L. Rev. 127 (2014); Cassandra Ann Jenecke, *Shaken Baby Syndrome, Wrongful Convictions, and the Dangers of Aversion to Changing Science in Criminal Law*, 48 U.S.F. L. Rev. 147 (2013); Keith A. Findley, Patrick D. Barnes, David A. Moran, and Waney Squier, *Shaken Baby Syndrome, Abusive Trauma, and Actual Innocence: Getting it Right*, 12 Hous. J. Health L. & Pol'y 209 (2012); *see also* David M. Ayoub, et al., *A Critical Review of the Classic Metaphyseal Lesion: Traumatic or Metabolic?*, 202 Am. J. Roentgenology 185 (2014). Several state appellate courts have grap-

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1799, 80 L. Ed. 2d 302 (1984) (granting certiorari after the Fifth Circuit Court of Appeals affirmed a district court order in an unpublished opinion); *Connick v. Myers*, 461 U.S. 138, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983) (granting certiorari after the Sixth Circuit Court of Appeals reversed and remanded a district court order in an unpublished opinion).

pled with the question of how changes in the medical science of child injury should be managed in the legal system. *See, e.g. Commonwealth v. Epps*, 474 Mass. 743, 766, 53 N.E.3d 1247, 1265 (2016); *Commonwealth v. Millien*, 474 Mass. 417, 418, 50 N.E.3d 808, 809 (2016); *State v. Edmunds*, 308 Wis. 2d 374, 384, 746 N.W.2d 590, 595 (Ct. App. 2008); *In re Fero*, 192 Wash. App. 138, 151, 367 P.3d 588, 594 (2016), rev. granted, 187 Wash. 2d 1024, 390 P.3d 356 (2017) (noting "paradigm shift" in medical science relating to shaken baby syndrome); *Ex parte Henderson*, 384 S.W.3d 833, 839 (Tex. Crim. App. 2012). Three justices of this Court took note of the shift in medical opinion in the context of child injury cases in *Cavazos v. Smith*, 565 U.S. 1, 14, 132 S. Ct. 2, 11, 181 L. Ed. 2d 311 (2011) (Ginsberg, Breyer and Sotomayor, J.J., dissenting).

Given the changing science and the inherent disadvantage of a layperson confronted with medical evidence of alleged child abuse, the procedural protections against the wrongful severing of parental rights are of heightened importance. This Court has recognized that "freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Thus, a state's intervention to terminate the relationship between parent and child must accord with the requirements of the Due Process Clause. *Id.* (quoting *Lassiter v. Department of Social Services*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed. 26 640 (1981). "When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." *Santosky*, 455 U.S. at 754-55; *see also Lassiter*, 452 U.S. at 27 ("[A] parent's desire for and right to the companionship, care, custody and management of his or her children is an important interest that undeni-

ably warrants deference and, absent a powerful countervailing interest, protection." (internal quotation marks omitted)). In *Santosky*, this Court held that states have the burden of proving grounds for TPR by *at least* a clear and convincing evidence standard. 455 U.S. at 769-770.

In South Carolina, a family court may order TPR only after "a finding of one or more of the following [twelve] grounds" and "a finding that termination is in the best interest of the child." S.C. Code Ann. § 63-7-2570. In this case, DSS relied only on the first of the grounds listed in that statute, namely that "[t]he child or another child while residing in the parent's domicile has been harmed as defined in Section 63-7-20, and because of the severity or repetition of the abuse or neglect, it is not reasonably likely that the home can be made safe within twelve months." S.C. Code Ann. § 63-7-2570(1).

"Harm," as the term is used in South Carolina's TPR statute, is defined to occur "when the parent . . . inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child." S.C. Code Ann. § 63-7-20(6)(a). Thus, in South Carolina, it is not enough for the State merely to show that a child has been "harmed" in some fashion. The statutory definition of "harm" requires the State to establish the parent whose rights are to be terminated either inflicted the harm or allowed it to be inflicted. Under this Court's due process jurisprudence, the State must do so by clear and convincing evidence. *Santosky*, 455 U.S. at 753. This proof standard obviously subsumes a more fundamental due process tenet, namely that the burden is on the State to establish the necessary grounds for TPR.

Here, the State obviously failed to prove that Mattie Walls herself inflicted any abuse on her child. That much is apparent from the lower court's finding that "one or both of the defendant parents" inflicted the harm. On appeal, Mattie Walls naturally argued that her parental rights could not be terminated without a finding specific to her, as opposed to the family court's disjunctive finding. The South Carolina Court of Appeals, however, endorsed the State's view that a parent's ignorance as to the cause of injury to the child is somehow grounds for termination. Thus Mattie Walls' "inability to offer a plausible explanation for those injuries," according to the Court of Appeals, sufficed as a reason for taking away her child. Instead of the State having to prove its case by clear and convincing evidence, it was up to Mattie Walls to explain how injuries that went undetected in a series of routine medical visits, but were noted for the time during an emergency room visit, could have occurred.

The State seems to have faulted Mattie Walls for not immediately accusing her husband of being the culprit. But it is clearly possible, if not common, for one parent to remain ignorant of misconduct by another. A non-abusive parent can hardly be blamed for insisting that there must be some innocent explanation for mysterious injuries to a child. Here, however, Mattie Walls' ignorance of how her child came to be injured, and understandable reluctance to accuse her husband, became the very basis for terminating her rights.

Such an approach could have devastating effects on spousal relationships. An innocent spouse would be forced to choose between accusing the other, perhaps unjustly, and putting the parental rela-

tionship at heightened risk in the event no other "plausible explanation" emerges. One parent should not be punished for believing in the other, as Mattie Walls did before her husband confessed to his crimes. To be sure, there are cases in which one parent's willful blindness to unmistakable abuse rises to the level of abuse or neglect. But the State should still be required to meet its burden of proof in such cases. That means more than simply pointing to the absence of a "plausible explanation" for injuries revealed for the first time in the course of a medical examination.

CONCLUSION

Mattie Walls has yet to have a court tell her what she did to deserve the loss of her baby. The family court identified her as one of two people who might or might not have hurt the infant. An intermediate appellate court faulted her with nothing other than her inability to explain a series of medical findings. The Supreme Court of South Carolina took up her case initially, only to dismiss its writ of certiorari.

We know now what happened in this case. Mattie Walls' husband pleaded guilty to child abuse charges. But even apart from this newly discovered evidence, the appellate courts of South Carolina should not have relieved the State of its usual burden of proof in a termination of parental rights case.

Although this is Mattie Walls' last opportunity for justice, it is also an opportunity to clarify and reaffirm the law. The Court should not tolerate the subtle erosion of due process standards in the context of child abuse cases based mainly on medical evidence and opinion. The State must meet its burden of proof. Any number of parents may find themselves at

some point unable to offer a "plausible explanation" for injuries doctors insist are present. They are entitled to due process of law before their children are taken away.

The Court should grant this petition for a writ of *certiorari.*

Respectfully submitted,

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