

No. _____

In the
Supreme Court of the United States

DONNITTA SINCLAIR,
Petitioner,

v.

CITY OF SEATTLE,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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May 25, 2023

QUESTION PRESENTED FOR REVIEW

Whether parental rights to the companionship of a child retains its constitutional dimension after the child reaches the age of majority.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before this court are as follows:

Donnitta Sinclair

City of Seattle

LIST OF PROCEEDINGS

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

Case No. 2:21-cv-00571-JCC

SINCLAIR V. CITY OF SEATTLE

Motion to Dismiss GRANTED in favor of City of
Seattle.

Judgment dated November 11, 2021.

UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

Case No. 21-35975

SINCLAIR V. CITY OF SEATTLE

Appeal GRANTED, Lower Court grant of Motion to
Dismiss AFFIRMED. Judgment reported as *Sinclair v.*
City of Seattle, 61 F.4th 674 (9th Cir. 2023) and
reproduced in the Appendix.

Judgment dated March 1, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Sinclair respectfully requests that a Writ of Certiorari be issued to review the granting of motion to dismiss by the United States District Court for the Western District of Washington and the subsequent affirmation of the same by the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The November 11, 2021, order granting the motion to dismiss in favor of Respondent from the United States District Court for the Western District of Washington is reproduced in the Appendix (“Appendix B”).

The March 1, 2023, order from the United States Court of Appeals for the Ninth Circuit is reproduced in the Appendix. (“Appendix A”). This order is published as *Sinclair v. City of Seattle*, 61 F.4th 674 (9th Cir. 2023).

BASIS FOR JURISDICTION IN THIS COURT

The United States Court of Appeals for the Ninth Circuit entered judgment on March 1, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides:

No person shall be deprived of life, liberty, or property without due process of law.

STATUTORY PROVISIONS INVOLVED

42 U.S. Code § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

STATEMENT OF THE CASE

A. Concise Statement of Facts Pertinent to the Question Presented.

As explained by the Ninth Circuit Court of Appeals – the Summer of 2020 consisted of nationwide protests following the murder of Georg Floyd. On June 8, 2020, as confrontations escalated between protestors and police officers, the City of Seattle withdrew all police officers from the Capitol Hill neighborhood. Protestors took the barricades that were left behind by the Seattle Police Department to seize a roughly sixteen-block area of Capitol Hill. Protestors declared the area to be autonomous from city governance and declared the area as the Capitol Hill Occupied Protest (“CHOP”). CHOP and the actions surrounding it are unlawful under the municipal code and the City should’ve been held liable.

Violence and lawlessness predictably increased as CHOP participants were seen carrying guns¹, committing acts of vandalism, drug use, and several other lawless behaviors. Despite the increase in violence and lawlessness, the Mayor of Seattle labeled CHOP a “block party” and characterized the events as a “summer of love.” Councilmember Sawant similarly described CHOP as a “peaceful” occupation.

¹ Katie Campbell, 9th Circuit judges say Seattle officials “just stood aside” during the Capitol Hill Occupied Protest KUOW (2022), <https://www.kuow.org/stories/9th-circuit-judges-say-seattle-officials-just-stood-aside-during-the-capitol-hill-occupied-protest> (last visited May 22, 2023).

Donnitta Sinclair is the mother of Horace Lorenzo Anderson, Jr., a nineteen-year-old with severe disabilities². On or about June 20, 2020, while Horace was walking past CHOP, he encountered Marcel Long: his lifelong antagonist. The altercation required Long to be restrained by other CHOP participants. When Horace tried to walk away, Long broke away from the restraints, pulled out a gun and shot Horace at least four times.

Due to the City of Seattle's surrender of the area, paramedics took so long to arrive to CHOP that CHOP participants had to transport Horace in a pick-up truck to a nearby medical center where he was pronounced dead.

² Lorenzo was born premature, around 26 weeks gestation at the time of birth. Notably, throughout his schooling, Lorenzo required disability accommodations at school, including IEPs. To wit, it follows that Petitioner's son should have been protected under the American with Disabilities Act. Lorenzo had overwhelming public support from his community. First, a video surfaced of Lorenzo Teachers honored Lorenzo by recalling memories of his life and describes Lorenzo as a fighter through obstacles society imposed upon him, and that he was full of life, joy, and zest. Second, in a SAY HIS NAME video discussing the mural of Lorenzo Anderson Jr., its vandalism, and ultimate removal. It addresses the concerns of Lorenzo's mother, who already felt she was being failed by elected officials before the mural of Lorenzo was keyed and then removed. The video implores society to provide Lorenzo the humanity and dignity he deserves after his life was stolen from him.

Before CHOP, there were zero homicides in the area for six months, and three in the entire Capitol Hill area in 2019. During CHOP’s nine-day reign of terror, there were several shootings, multiple homicides, robberies, sexual assaults, and numerous other crimes. As a result, Mayor Durkan was forced to end the “block party,” and issue an executive order restoring official control over CHOP. Notably, the city was then found liable for their negligence.³

After burying her son, Ms. Sinclair brought this 42 U.S.C. Code § 1983 claim in her individual capacity as the mother of the decedent, seeking to hold the City of Seattle liable for violating her Fourteenth Amendment substantive due process right to the companionship of her adult son.

B. Procedural History.

On November 1, 2021, Judge John C. Coughenour for the United States District Court for Western District of Washington dismissed Ms. Sinclair’s claim for failure to state a claim of action brought against the City of Seattle.

³ Mike Carter, JUDGE SLAPS SANCTIONS ON SEATTLE FOR DELETING THOUSANDS OF TEXTS BETWEEN TOP OFFICIALS THE SEATTLE TIMES (2023), <https://www.seattletimes.com/seattle-news/law-justice/judge-sanctions-city-of-seattle-for-destroying-evidence-in-chop-lawsuit-lets-claims-go-to-trial/> (last visited May 22, 2023); Jseattle, CITY SETTLES CHOP “DELIBERATE INDIFFERENCE” LAWSUIT WITH CAPITOL HILL PROPERTY OWNERS AND BUSINESSES - UPDATE: \$3.6 MILLION CHS CAPITOL HILL SEATTLE NEWS (2023), <https://www.capitolhillseattle.com/2023/02/city-settles-chop-deliberate-indifference-lawsuit-with-capitol-hill-property-owners-and-businesses/> (last visited May 22, 2023).

On March 1, 2023, the United States Court of Appeals for the Ninth Circuit affirmed the District Court's dismissal.⁴

Now, this Petition for Writ of Certiorari follows.

⁴ Curt Varone, NINTH CIRCUIT RULES SEATTLE NOT LIABLE FOR CHOP ZONE DEATH FIRE LAW BLOG (2023), <https://www.firelawblog.com/2023/03/01/ninth-circuit-rule-seattle-not-liable-for-chop-zone-death/#:~:text=The%20Ninth%20Circuit%20Court%20of,the%20CHOP%20zone%20in%202020>. (last visited May 22, 2023) (Blog post summarizing the points of Sinclair's suit against the Ninth Circuit, and the Ninth Circuit's reasoning for upholding the trial court ruling. In that reasoning, the Circuit Court addressed that it has "recognized implicitly that parents maintain a constitutionally protected liberty interest in the companionship of their adult children." (PDF p. 2). Despite the explicitly recognized "state-created danger doctrine", which is an exception to the rule that "members of the public have no constitutional right to sue state [actors] who fail to protect them against harm inflicted by third parties", the Circuit Court maintained that Sinclair's concerns can be viably addressed at the Seattle ballot box. Even in so doing, the Circuit Court affirmed that the city's conduct was "egregious", and that the city itself "created an actual danger of increased crime".

REASONS TO GRANT THIS PETITION

I. THE INTEREST OF A PARENT IN THE COMPANIONSHIP OF HER CHILD IS DEEPLY ROOTED IN OUR HISTORY AND TRADITION AND IS ESSENTIAL TO OUR NATION’S SCHEME OF ORDERED LIBERTY.

The Due Process Clause of the Fourteenth Amendment provides that no person shall be deprived of “life, liberty, or property, without due process of law.” U.S. Const. amend XIV, § 1. To determine whether a right falls within one the categories, the right must be “deeply rooted in this Nation's history and tradition” and “implicit in the concept of ordered liberty.” *Dobbs v. Jackson Women’s Health Org.*, 213 L. Ed. 2d 545, 142 S. Ct. 2228, 2243 (2022) (citing *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997)).

The Supreme Court has long “emphasized the importance of the family.”⁵ For over half a century, the

⁵ *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972); *see also Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 626, 67 L. Ed. 1042 (1923) (The Court has frequently emphasized the importance of the family); *Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S. Ct. 1110, 1113, 86 L. Ed. 1655 (1942) (The rights to conceive and to raise one's children have been deemed “essential,” “basic civil rights of man”); *May v. Anderson*, 345 U.S. 528, 533, 73 S. Ct. 840, 843, 97 L. Ed. 1221 (1953) (“(r)ights far more precious . . . than property rights”); *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S. Ct. 438, 442, 88 L. Ed. 645 (1944) (“It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder”); *Little v. Streater*, 452 U.S. 1, 101 S. Ct. 2202, 2209,

Court has consistently recognized the deeply rooted right of a parent “in the companionship, care, custody, and management of his or her children.” *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972); *Lassiter v. Dep’t of Soc. Servs. of Durham Cnty., N. C.*, 452 U.S. 18, 27, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981); *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982).

In *Stanley v. Illinois*, the Court held that “[i]t is plain that the interest of a parent in the companionship, care, custody, and management of his or her children ‘come(s) to this Court with a momentum for respect’” 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972) (quoting *Kovacs v. Cooper*, 336 U.S. 77, 95, 69 S. Ct. 448, 458, 93 L. Ed. 513 (1949) (Frankfurter, J., concurring)). In *Stanley*, the petitioner lived with Joan Stanley for eighteen years but never married. During their relationship, the couple had three minor children. *Id.* at 646. Unfortunately, Joan would eventually pass away. *Id.* As a result, the petitioner not only lost her, but, due to an Illinois law, his children. *Id.* The Illinois law

68 L. Ed. 2d 627 (1981) (the importance of familial bonds demands procedural fairness); *Roberts v. United States Jaycees*, 468 U.S. 609, 620 (1984) (human relationships are “an intrinsic element of personal liberty”); *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511 (1978); *Smith v. Organization of Foster Families*, 431 U.S. 816, 845, 97 S. Ct. 2094, 2110, 53 L. Ed. 2d 14 (1977); *Moore v. East Cleveland*, 431 U.S. 494, 499, 97 S. Ct. 1932, 1935, 52 L. Ed. 2d 531 (1977); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639–640, 94 S. Ct. 791, 796, 39 L. Ed. 2d 52 (1974); *Pierce v. Society of Sisters*, 268 U.S. 510, 534–535, 45 S. Ct. 571, 573–574, 69 L. Ed. 1070 (1925).

required children of unwed fathers to become wards of the state. *Id.* “Accordingly, upon Joan Stanley's death, in a dependency proceeding instituted by the State of Illinois, Stanley's children were declared wards of the State and placed with court-appointed guardians.” *Id.*

While the case primarily dealt with petitioner's rights to equal protection and procedural Due Process, the Court relied on previous substantive Due Process cases to note that “[t]he Court has frequently emphasized the importance of the family.” *Id.* at 651. As a result, “[t]he private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection.” *Id.*

While the children in *Stanley* were minors, the right of a parent in the companionship of her children may be extended to adult children based on the Court's rationale. Nothing in the Court's opinion in *Stanley* precludes the possibility of extending the right of parental companionship to adult children. In *Stanley*, the Court based its reasoning in reliance on *Levy*.⁶

In *Levy*, the Court “declared unconstitutional a state statute denying natural, but illegitimate, children a wrongful-death action for the death of their mother, emphasizing that such children cannot be denied the right of other children because familial bonds in such cases were often as warm, enduring, and important as those arising within a more formally organized family unit.” *Id.* at 651-652 (see *Levy v. Louisiana*, 391 U.S. at

⁶ *Levy v. Louisiana*, 391 U.S. 68 (1968).

71-72. While the couple in *Stanley* was never married, the Court still held that “[the petitioner’s] interest in retaining custody of his children is cognizable and substantial.” *Id.* at 652.

In applying *Stanley* to this case, there are two main takeaways. First, just as a father does not lose his right in companionship of his children when he is not married to the mother, a mother does not lose her right in companionship of her child as soon as the child reaches the age of majority.

Second, the Court looks to the actual relationship between the parent and child when determining whether the parent has a right to companionship with his or her children. In *Levy*, the relationship was “warm, enduring, and important.” *Levy*, 391 U.S. at 71-72. Like the relationship in *Levy*, the relationship here is not only one of importance, but dependence. Horace not only just reached the age of majority but was severely disabled. A mother should not be denied her right to companionship of her child simply because the child just reached the age of majority. This is especially true when, as in this case, the child was severely disabled and in reliance on his mother.

Since *Stanley*, the Court continues to acknowledge the interest of a parent in the companionship of her child. In *Santosky v. Kramer*, the Court similarly held that it was “plain beyond the need for multiple citation” that a natural parent’s right to “the companionship, care, custody, and management of his or her children is an interest far more precious than any property right.” 455 U.S. 745, 758-759 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). In doing so, the Court highlighted its

“historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.” *Id.* at 753.

Similarly, in *Lassiter v. Dep’t of Soc. Servs. of Durham Cnty., N. C.*, the Court held that a parent’s right to “the companionship, care, custody and management of his or her children” is an important interest that “undeniably warrants deference and, absent a powerful countervailing interest, protection.” 452 U.S. 18, 27, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981) (quoting *Stanley*, 405 U.S. at 651). The continued acknowledgement of a parent’s right is due to the fact that such a right is deeply rooted in our history and tradition and is essential to our Nation’s scheme of ordered liberty.

II. THERE IS A CIRCUIT SPLIT AND LACK OF UNIFORMITY REGARDING PARENTAL COMPANIONSHIP RIGHTS WHEN A CHILD REACHES THE AGE OF MAJORITY.

This petition brings to the Court’s attention the apparent Circuit split and lack of uniformity regarding parental companionship rights when a child reaches the age of majority. Circuits that have extended constitutional protection to the parental right of companionship in adult children are the Ninth Circuit⁷

⁷ See *Kelson v. City of Springfield*, 767 F.2d 651 (9th Cir.1985); *Smith v. City of Fontana*, 818 F.2d 1411 (9th Cir.1987); *Strandberg v. City of Helena*, 791 F.2d 744 (9th Cir. 1986); *Lee v. City of Los Angeles*, 250 F.3d 668 (9th Cir. 2001); see also *Morrison v. Jones*, 607 F.2d 1269 (9th Cir.1979); *Porter v. Osborn*, 546 F.3d 1131

and Tenth Circuit.⁸ Circuits that have not extended such a right include the First Circuit,⁹ Third Circuit,¹⁰ Seventh Circuit,¹¹ Eleventh Circuit,¹² and the D.C. Circuit.¹³ While the Court had the opportunity to rule on this issue twice before, it held that certiorari was granted improvidently on both occasions.¹⁴ As a result, circuits continue to come down on both sides of the issue in additional contexts. The question used to only arise in the context of constitutional challenges to state

(9th Cir. 2008); *Moreland v. Las Vegas Metropolitan Police Department*, 159 F.3d 365 (9th Cir. 1998); *Curnow v. Ridgecrest Police*, 952 F.2d 321 (9th Cir.1991); *but see Sinclair v. City of Seattle*, 61 F.4th 674 (9th Cir. 2023).

⁸ See *Trujillo v. Bd. of Cnty. Comm'rs of Santa Fe Cnty.*, 768 F.2d 1186 (10th Cir. 1985).

⁹ See *Ortiz v. Burgos*, 807 F.2d 6 (1st Cir. 1986).

¹⁰ See *McCurdy v. Dodd*, 352 F.3d 820 (3d Cir. 2003).

¹¹ See *Russ v. Watts*, 414 F.3d 783 (7th Cir. 2005), *but see Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984).

¹² See *Robertson v. Hecksel*, 420 F.3d 1254 (11th Cir. 2005).

¹³ See *Butera v. District of Columbia*, 235 F.3d 637 (D.C. Cir. 2001); *see also Franz v. United States*, 707 F.2d 582 (D.C. Cir. 1983).

¹⁴ *Jones v. Hildebrant*, 550 P.2d 339 (Colo. 1976), *cert. dismissed* 432 U.S. 183 (1977); *Espinoza v. O'Dell*, 633 P.2d 455 (Colo. 1981), *cert. dismissed* 456 U.S. 430 (1982); *see also* Issac J.K. Adams, *Growing Pains: The Scope of Substantive Due Process Rights of Parents of Adult Children*, 57 Vand. L. Rev. 5, 1902 (2004).

regulations but now arises in the context of tort suits brought under 42 U.S.C. § 1983.¹⁵

A. Circuits That Have Extended Constitutional Protection to the Parental Right of Companionship in Adult Children.

1. The Ninth Circuit.

In *Kelson v. City of Springfield*, the Ninth Circuit held that parents “possess a constitutionally protected interest in the companionship . . . of their children.” 767 F.2d 651, 653 (9th Cir.1985). In *Kelson*, the plaintiffs “filed a complaint under 42 U.S.C. § 1983, alleging violations of their fundamental parental rights . . .” *Id.* at 653. The plaintiff’s section 1983 claim was based upon the death of their minor son at the hands of the state. *See id.* at 652. The Ninth Circuit relied on the Court’s precedent in *Little, Lassiter*, and *Santosky*, to “establish that a parent has a constitutionally protected liberty interest in the companionship . . . of their children.” *Id.* at 655.

In *Smith v. City of Fontana*, the Ninth Circuit, in reliance on *Kelson*, similarly acknowledged that “parents can challenge under section 1983 a state’s severance of a parent-child relationship as interfering with their liberty interests in the companionship . . . of their children.” 818 F.2d 1411, 1418 (9th Cir.1987). However, in *Smith*, the facts were reversed, as the plaintiffs filed a complaint under 42 U.S.C. § 1983

¹⁵ Issac J.K. Adams, *Growing Pains: The Scope of Substantive Due Process Rights of Parents of Adult Children*, 57 Vand. L. Rev. 5, 1902 (2004).

against the City of Fontana, claiming that the city violated their substantive due process right not to be deprived of the life of their father and his love, comfort, and support . . .” In other words, parents weren’t suing for their right in companionship to their children, but children were suing for their right in companionship to their father that died from excessive police force. *Id.* at 1417.

However, this fact pattern did not prevent the Ninth Circuit to extend companionship rights to children that lose their parents from state action or inaction. Instead, the court held “that this constitutional interest in familial companionship . . . logically extends to protect children from unwarranted state interference with their relationships with their parents.” *Id.* at 1418. Due to “[t]he companionship and nurturing interests of a parent and child in maintaining a tight familial bond are reciprocal,” the court “s[aw] no reason to accord less constitutional value to the child-parent relationship than we accord to the parent-child relationship.” *Id.*

This brings us to *Strandberg v. City of Helena*, where the Ninth Circuit recognized parental rights to the companionship of an adult child. *See* 791 F.2d 744, 748 n. 1 (9th Cir. 1986). Such recognition was confirmed in *Lee v. City of Los Angeles*, 250 F.3d 668, 685 (9th Cir. 2001). In *Lee*, Kerry’s mother filed a complain under 42 U.S.C. § 1983, alleging violations of their fundamental parental rights when the city mistakenly identified Kerry and took him into custody. *Id.* at 677. Additionally, Kerry had a long history of mental illness and “obvious” disabilities. *Id.* at 677-78.

Despite the fact that Kerry was an adult, the Ninth Circuit recognized and applied the well-established principle of law: “that a parent has a ‘fundamental liberty interest’ in ‘the companionship and society of his or her child’ and that ‘[t]he state’s interference with that liberty interest without due process of law is remediable under [42 U.S.C. §] 1983’”. *Id.* at 685 (quoting *Kelson*, 767 F.2d at 654-55; *Santosky*, 455 U.S. at 753).

2. *The Tenth Circuit.*

In *Trujillo v. Bd. of Cnty. Comm’rs of Santa Fe Cnty.*, the plaintiffs son and brother died while incarcerated at the Santa Fe County Jail. The Tenth Circuit held that there are human relationships that “must be secured against undue intrusion by the State.” 768 F.2d 1186, 1188 (10th Cir. 1985). The court recognized the “[f]amily relationships, [which] by their nature, involve deep attachments and commitments to the necessarily few other individuals, with whom one shares not only a special community of thoughts, experiences, and beliefs, but also distinctly personal aspects of one’s life.” *Id.* at 1188. As a result, the court concluded that the plaintiffs had constitutionally protected interests in relationship with their son and brother. *Id.* at 1189.

B. Circuits That Have Not Extended Constitutional Protection to the Parental Right of Companionship in Adult Children.

1. *The First Circuit.*

In *Ortiz v. Burgos*, the First Circuit held that a stepfather and siblings did not have a “constitutionally

protected interest in the companionship of their adult son and brother.” 807 F.2d 6, 7 (1st Cir. 1986). As a result, the court declined to “make the leap [] from the realm of governmental action directly aimed at the relationship between a parent and a young child to an incidental deprivation of the relationship between appellants and their adult relative.” *Id.* at 9. This was due to the court’s unwillingness to “erect a new substantive right upon the rare and relatively uncharted terrain of substantive due process when case law, logic and equity do not command us to do so.” *Id.* Thus, the First Circuit took more of a categorical approach, denying parental rights to companionship of their adult children.

It is important to note that the reason the First Circuit refused to recognize parental rights to the companionship of an adult child was because of the “limited nature of the Supreme Court precedent in this area.” *Id.* Not only does this rationale highlight the existence of a genuine circuit split, but the need for resolution.

2. *The D.C. Circuit.*

While the D.C. Circuit in *Butera v. District of Columbia* held “that there is no parental due process right to the company of an adult child who is independent,” such holding is not dispositive for two reasons. 235 F.3d 637, 641 (D.C. Cir. 2001).

First, the court’s rationale in *Franz v. United States* does not preclude it from recognizing parental rights to the companionship of an adult child. *See* 707 F.2d 582 (D.C. Cir. 1983). In *Franz*, the court found that the

non-custodial father's right to companionship of his minor child was a "fundamental liberty interest." *Id.* at 603. In finding that the father's parental right to companionship with his minor child was violated, the court highlighted that "the freedom of a parent and child to maintain, cultivate, and mold their ongoing relationship" was "[a]mong the most important of liberties." *Id.* at 595.

The D.C. Circuit's rationale in *Franz* provides that parental rights to the companionship of a child remain even when a parent does not have custody of the children. *See id.* This is probative as it provides the court's broad view of the parental right to the companionship of a child. A parent does not have to fit within or satisfy some type of rigid test in order to have a right to companionship with their child. Applying that rationale to this case, Ms. Sinclair clearly has a companionship right to her adult child. If a parent has a companionship right to a child outside their custody, then certainly a parent has a companionship right when the child remains in their custody. This is especially true when their child is severely disabled and still in reliance on their care. Such a fundamental liberty interest should not be eliminated as soon as a child reaches the age of majority.

Second, not only does the court's rationale in *Franz* not preclude it from recognizing parental rights to the companionship of an adult child, but *Butera* explicitly allows for its recognition. *See Butera*, 235 F.3d at 641. In *Butera* the court held "that there is no parental due process right to the company of an adult child who is *independent*." *Id.* (emphasis added). In other words, if

the adult child is not independent, a parent may have a right to the companionship of their adult child. This is especially relevant here, as Horace was just nineteen years old, severely disabled, and in reliance of his mother. Unlike Horace, the adult child in *Butera* was a thirty-one-year-old police officer. Thus, while the D.C. Circuit in *Butera* found no parental right to companionship to an adult child, it did not do so categorically, but only after a fact specific inquiry with facts significantly dissimilar to the facts of this case.

3. *The Eleventh Circuit.*

While the Eleventh Circuit in *Robertson* held that parental rights to the companionship of a child does not extend to adult children, it did so on the same reasoning as the D.C. Circuit in *Butera*. *Robertson v. Hecksel*, 420 F.3d 1254, 1259 (11th Cir. 2005). The court cited *Butera's* holding, “that a parent-child relationship between two *independent* adults does not invoke ‘companionship’ interests.” *Id.* at 1259 (quoting *Butera*, 253 F.3d at 656 n. 23) (emphasis added). The court continued, stating “[l]ike the District of Columbia Circuit, we hold *Robertson* has not asserted a cognizable due process interest.” *Id.* As previously illustrated, since Horace is not independent, *Butera* and *Robertson* do not preclude Ms. Sinclair from parental rights to the companionship of Horace.

4. *The Seventh Circuit.*

In *Russ v. Watts*, the Seventh Circuit overruled its decision in *Bell*,¹⁶ and held that the parents did not

¹⁶ *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984).

have constitutional right to the companionship of their adult child. 414 F.3d 783, 791 (7th Cir. 2005). In doing so, the court clarified that it “need not impose an absolute rule that parents of adult children lack any liberty interest in their relationship with their children.” *Id.* at 790. Instead, the court simply “agree[d] with our sister circuits that minor children’s need for the guidance and support of their parents warrants ‘sharply different constitutional treatment.’” *Id.* (quoting *Butera*, 235 F.3d at 656; *McCurdy*, 352 F.3d at 829). Thus, the Seventh Circuit provided for the possibility for parental rights to companionship of adult children under certain circumstances. Additionally, due to the court’s reliance on *Butera*, certain circumstances would presumably include the extent of the adult child’s independence. Such circumstances weigh in favor of Ms. Sinclair, due to Horace’s disability and reliance on his mother.

5. *The Third Circuit.*

In *McCurdy v. Dodd*, the Third Circuit held that “the fundamental guarantees of the Due Process Clause do not extend to a parent’s interest in the companionship of his independent adult child.” 352 F.3d 820, 830 (3d Cir. 2003). Further, a parent’s right to companionship “must cease to exist at the point at which a child begins to assume that critical decisionmaking responsibility for himself or herself.” *Id.* at 829. The court also “recognize[d] that the Due Process Clause is not a rigid phrase, fixed in time and substance.” *Id.*

That being said, in an attempt “to clarify the contours of due process protections,” the court stated

that “[i]n most cases, the point at which a child legally becomes an adult may be established by the presumed stage of majority.” *Id.* at 830. However, since “[a]dulthood is often a fact-specific inquiry heavily dependent on the unique context of each situation,” there may be cases that rebut the presumption. *Id.* The court went on to cite a case involving a disabled adult child as an example where the court might find parental rights in the companionship of an adult child. *Id.*; see *Geiger v. Rouse*, 715 A.2d 454, 458 (Pa.Super.Ct.1998). Thus, “there may be rare instances where the more flexible concept of emancipation more appropriately fits the parent-child relationship at issue.” *Id.* Since the plaintiff provided insufficient evidence of the adult child’s “lack of emancipation,” the court held that the plaintiff “failed to satisfy the threshold requirement of asserting the violation of a recognized constitutional right.” *Id.* at 830-831.

Unlike the plaintiff in *McCurdy*, Ms. Sinclair was able to provide sufficient evidence of Horace’s lack of emancipation. Horace was severely disabled and continued to rely on his mother, Ms. Sinclair. Thus, Ms. Sinclair satisfied the threshold requirement of asserting the violation of a recognized constitutional right.

After reviewing the five circuits that have not extended constitutional protection to the parental right of companionship in adult children, there are two main takeaways. First, there is a genuine circuit split that has subjected a fundamental right, deeply rooted in our history and tradition, to inconsistent tests and treatment. The D.C. Circuit and Eleventh Circuit ask

whether the adult child is independent. The Seventh Circuit asks whether there are certain circumstances that warrant constitutional protection. The Third Circuit asks whether there is a lack of emancipation. Of the five circuits, only the first circuit categorically rejects the existence of a companionship right in adult children, and only does so due to the lack of Supreme Court precedent. Such inconsistent treatment illustrates the need for resolution.

The second takeaway is that even when subjected to various circuit tests, the circumstances surrounding Ms. Sinclair's case warrant constitutional protection of her right to companionship of her adult child. The Ninth Circuit and Tenth Circuit recognize such a right, and four of the five circuits allow for such a right based on the circumstances of this case. In other words, only the First Circuit would categorically reject Ms. Sinclair's right to companionship with her adult child.

For over half a century, the Court has consistently recognized the deeply rooted right of a parent in the companionship of his or her children. As already acknowledged by many circuit courts throughout the country, that right should not be denied as soon as a child reaches the age of majority.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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