No. A-_____

In the Supreme Court of the United States

IN RE TERMINATION OF PARENTAL RIGHTS AS TO M.P.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

1. Pursuant to Supreme Court Rule 13.5, applicant M.P. respectfully applies for a 60-day extension of time, to and including January 29, 2027, within which to file a petition for a writ of certiorari to review the judgment of the Arizona Supreme Court in this case. That court entered its judgment on September 1, 2026. App., *infra*, 1a. Absent an extension, applicant's petition for a writ of certiorari would be due on November 30, 2026. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. The question presented by applicant's forthcoming petition concerns whether, consistent with the Due Process Clause of the Fourteenth Amendment, a State may terminate parental rights without clear and convincing evidence that a parent is unfit at the time of termination proceedings. The majority of States correctly require such proof. Arizona, in contrast, is among a minority of States that allow unfitness to be shown solely based on clear and convincing evidence of past neglect, without considering evidence of the parent's subsequent remedial efforts. As Justice Bolick wrote in dissent from the decision of the Arizona Supreme Court, that constitutionally deficient process "begs review by the United States Supreme Court." App., *infra*, 31a.

Applicant is a twenty-five-year-old survivor of domestic violence and postpartum depression, who pleaded guilty to attempted child abuse under tragic circumstances: her seven-month-old child was hospitalized for severe malnutrition that applicant had unintentionally failed to recognize. App., *infra*, 52a. In September 2023, applicant called 911, fearing that the child was having a seizure. *Id.* at 2a. The child was taken to the hospital, where her condition was described as "emaciated, malnourished, and in medical distress." *Id.* at 3a. The child responded well to treatment and is now a thriving three-year-old. *Id.* at 3a,

65a. Applicant pleaded guilty to one count of attempted child abuse and was sentenced to seventeen years of probation. *Id.* at 3a, 45a.

Before the child was born, applicant and the child's father had become estranged from applicant's family. App, *infra*, 52a. They adopted "a more holistic approach to life." *Id.* at 3a. The child's father was critical of applicant's parenting, to the point of violence. *Id.* at 4a. He had been arrested for strangling applicant and, upon his release from custody, was prohibited from contacting her. *Ibid.* Authorities suspected he was violating that order at the time of the 911 call; when interviewed at the hospital, applicant was not forthright about her contact with the father. *Id.* at 65a-66a.

The Department of Child Safety initiated dependency proceedings, and, at applicant's request, the court placed the child with applicant's sister. App., *infra*, 46a. The Department requested a concurrent case plan goal, simultaneously pursuing reunification and severance; the trial court ordered instead that the goal was reunification. *Id.* at 4a. To that end, applicant spent the next several months participating in reunification services, including engaging in treatment with a therapist, dietician, and lactation specialist, all "with the understanding that, if she did well, [her child] would be returned to her." *Id.* at 51a, 53a. At each of three regular hearings over the first half of 2024, the trial court found that applicant was compliant with the case plan and confirmed the goal of reunification. *Id.* at 46a. During that period, applicant was spending four to five hours per day, five to six days per week, parenting her child. *Id.* at 51a. At no time did the Department seek to limit applicant's parenting time with her child. *Ibid.*

Yet after just five months of reunification efforts, the Department filed a petition to terminate applicant's parental rights. App., *infra*, 51a. After a hearing, the court granted the petition, holding that Arizona's requirements for termination had been satisfied.

3. Arizona and her sister States have enacted essentially the same two-element test for terminating parental rights: a State must show first that the parent is unfit and, second, that termination is in the child's best interest. In this case, at the first step, the trial

court determined that the Department satisfied Arizona's standard for parental unfitness by adducing clear and convincing evidence of a statutory ground for termination—namely, an incident of past neglect. App., *infra*, 4a-5a. At the second step, applying only a preponderance-of-the-evidence standard, the trial court determined that the Department had satisfied the best-interests inquiry, which can be established in Arizona whenever the child can be adopted. *Id.* at 5a-6a. Although the trial court here acknowledged that applicant had complied with reunification services and "shown some benefit" from them, it nevertheless found that termination was in the child's best interest because applicant had "not benefited from her reunification services." *Id.* at 6a, 55a-56a. The court found by a preponderance that applicant had not "demonstrated any significant behavioral changes or understanding of how to protect [her child] from future abuse or neglect, including domestic violence between her parents." *Id.* at 6a. The trial court further found that applicant's testimony that she herself was likewise malnourished while the child's health was deteriorating was not credible. *Ibid.*

4. Applicant and her child appealed, and the Arizona Court of Appeals reversed, holding that the trial court's failure to consider applicant's current and ongoing participation in services when ascertaining whether the State had proven parental unfitness did "not pass 'constitutional muster.'" App., *infra*, 55a (citation omitted). The Arizona Supreme Court granted the Department's petition for review, vacated the judgment of the Court of Appeals, and affirmed the judgment of the trial court terminating applicant's parental rights. *Id.* at 19a. The Arizona Supreme Court held that allowing parental unfitness to be established solely on the basis of an incident of past neglect "fully satisfies due process." *Id.* at 11a-14a. The court relied on its precedent, concluding that the Constitution requires clear and convincing evidence only of the relevant ground for termination under Arizona law—here, the incident of past neglect. *Id.* at 15a-16a.

Justice Bolick dissented, stating his view that Arizona's law "is completely bereft of any meaningful consideration of parental rights." App., *infra*, 35a. He emphasized that

parental rights are among "America's foundational constitutional principles," *id.* at 31a, and objected that in Arizona, "[a]t no time does the state have to prove present parental unfitness"; "at no time does the state have to prove that rehabilitative and reunification efforts have proven unavailing"; and "[a]t no time does the state have to prove that no less destructive alternatives exist to permanent termination," *id.* at 30a. Such a process, he explained, "runs headlong" into the constitutional requirement of "fundamentally fair procedures" required to terminate parental rights. *Id.* at 36a. As Justice Bolick further reasoned, Arizona's practice of excluding "relevant evidence as to the parent's current and future unfitness would utterly flunk the *Mathews* test, given the powerful parental interests implicated in such a framework, the massive risk of erroneous deprivation, and the paucity of any state interest in excluding such evidence." *Id.* at 36a-37a (discussing *Matthews* v. *Eldridge*, 424 U.S. 319 (1976)).

5. This case is important because Arizona's failure to require clear and convincing evidence that a parent is presently unfit before terminating parental rights departs from this Court's instruction that "[b]efore a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence." *Santosky* v. *Kramer*, 455 U.S. 745, 747-748 (1982). By resting on clear and convincing evidence of past neglect, and relegating evidence of rehabilitation—if it is considered at all—to step two's preponderance standard, Arizona permits parental rights to be terminated without clear and convincing proof that the parent is unfit at the time of the termination hearing. That rule deepens a split with other courts that require—as a matter of federal constitutional law—a State to prove by clear and convincing evidence that a parent is unfit at the time of termination proceedings. See, *e.g.*, *In re Welfare of A.B.*, 232 P.3d 1104, 1109 (Wash. 2010); *Ex parte T.V.*, 971 So. 2d 1, 4, 9 (Ala. 2007); *Florida Department of Children & Families* v. *F.L.*, 880 So. 2d 602, 608-609 (Fla. 2004); *In re Gach*, 889 N.W.2d 707, 716 (Mich. Ct. App. 2016). But see *In re C.W.*, 766 N.E.2d 1105, 1116 (Ill. 2002). In contrast, the minority rule, applied in Arizona, gives

short shrift to "perhaps the oldest of the fundamental liberty interests recognized by this Court": "the interest of parents in the care, custody, and control of their children." *Troxel* v. *Granville*, 530 U.S. 57, 65 (2000) (plurality opinion). This Court's review "is essential because the Court has not meaningfully spoken on these issues for nearly a half-century since *Santosky*, and other states may have strayed (as Arizona has) from the due process principles applied in that decision." App., *infra*, 41a.

6. There is good cause to grant the extension of time requested in this application. Counsel was recently engaged to represent applicant and requires additional time to become familiar with the issues. In addition, a personal obligation has arisen that requires counsel to travel out of state in early November. Further, counsel for applicant have a number of cases with due dates proximate to the deadline for filing the petition in this case. See *Anderson* v. *Boeing Co.*, No. 25-2-00061-3 (Sup. Ct. Wash.) (briefs due November 9; hearings on November 20; petition for interlocutory appeal due November 24); *American Bridge Co.* v. *Clark/Lewis Joint Venture*, No. 89630-0-I (Wash. Ct. App.) (brief due November 30); *WHB 823* v. *Uber Techs., Inc.*, No. 26-1640 (4th Cir.) (brief due December 9). The requested 60-day extension of time within which to file a petition for a writ of certiorari in this case will provide the additional time needed to prepare a petition that fully addresses the complex, important issues raised by the decision of the Arizona Supreme Court.

November 4, 2026

Respectfully submitted.

s/ Abigail Frisch Vice

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IN THE

SUPREME COURT OF THE STATE OF ARIZONA

IN RE TERMINATION OF PARENTAL RIGHTS AS TO M.P.

No. CV-25-0173-PR

Filed September 1, 2026

Appeal from the Superior Court in Pima County
The Honorable Helena S. Seymour, Judge *Pro Tempore*
Nos. JD20230397; S20240024
AFFIRMED

Opinion of the Court of Appeals, Division Two
260 Ariz. 234 (App. 2025)
VACATED

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JUSTICE BEENE authored the Opinion of the Court, in which CHIEF JUSTICE TIMMER, VICE CHIEF JUSTICE LOPEZ and JUSTICES MONTGOMERY, KING, and CRUZ joined. CHIEF JUSTICE TIMMER and JUSTICE CRUZ authored concurring opinions. JUSTICE BOLICK dissented.

JUSTICE BEENE, Opinion of the Court:

¶1 The juvenile court may terminate a parent-child relationship if it finds by clear and convincing evidence that at least one of the statutory factors for termination exists and finds by a preponderance of the evidence that termination is in the child's best interests. *See Timothy B. v. Dep't of Child Safety*, 252 Ariz. 470, 474 ¶ 13 (2022); A.R.S. § 8-533(B). Section 8-533(B)(2) allows the court to terminate a parent's rights if: "the parent has neglected or wilfully abused a child. This abuse includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child."

¶2 In this case, we consider (1) whether the court of appeals misapplied § 8-533(B)(2) by requiring the juvenile court to consider a parent's "participation in and benefit from services" when determining whether the parent is unfit under the statute, and (2) whether the court of appeals incorrectly concluded that the juvenile court did not have to consider a parent's success in services as part of its best-interests finding. For the following reasons, we hold that the court of appeals erred in both respects and ultimately erred by vacating the juvenile court's judgment terminating parental rights.

BACKGROUND

¶3 Mother gave birth to M.P. in February 2023. In September, Mother called 911 after she observed her daughter having a seizure. M.P.

weighed "approximately seven pounds" when she arrived at the hospital and medical providers there documented her condition as "emaciated, malnourished, and in medical distress."

¶4 M.P. required medical care to prevent cardiac and circulatory failure, dehydration, metabolic crisis, and shock. A brain scan revealed atrophy consistent with prolonged malnutrition. Medical staff noted that M.P. did not exhibit gross motor skills typical of a seven-month-old child, and testing indicated developmental delays across all categories for her age. Advanced diagnostics aside, her malnourished state was evident from her sunken eyes and cheeks and loose, hanging skin. A healthy child of M.P.'s age should weigh approximately fifteen pounds—more than double her weight upon arrival at the hospital.

¶5 Mother reported that M.P. had weighed fourteen pounds a month earlier and that she was "cold to the touch" for several days before being taken to the hospital. Mother denied any illness or vomiting that could have contributed to M.P.'s weight loss, although Mother acknowledged that she and M.P.'s father had adopted "a more holistic approach to life" and that she may not have been producing enough breast milk to feed her daughter.

¶6 M.P. immediately began gaining weight while at the hospital. It was later determined that M.P.'s malnutrition was not a metabolic issue but rather resulted from a lack of proper care and feeding. M.P. stayed in the hospital for approximately two weeks. Upon her release, the Department of Child Safety ("DCS") took custody of M.P. and placed her in a certified medically fragile foster home to meet her ongoing needs.

¶7 Mother was arrested on child abuse charges, subsequently pleaded guilty to attempted child abuse, a class 3 felony, and was placed on probation for seventeen years.

¶8 DCS filed a dependency petition alleging that M.P. was dependent, as to Mother, due to neglect. Specifically, DCS asserted that Mother had "failed to recognize early signs of malnutrition" and had "failed to take appropriate action to ensure the child's wellbeing." DCS also alleged that Mother neglected M.P. because of domestic violence between

Mother and M.P.'s father.[1] Father was arrested and incarcerated for domestic violence in 2023 after strangling Mother during a dispute concerning Mother's ability to parent M.P. Even after Father was released from jail, Mother allowed him to have contact with M.P. at the family residence in violation of the release conditions in Father's criminal case.

¶9 The court adjudicated M.P. dependent after Mother did not contest the dependency allegations. DCS requested that the juvenile court set a concurrent case plan goal of both family reunification and severance and adoption. The court instead set an initial case plan with the goal of family reunification and ordered DCS to provide services to address Mother's neglect of M.P., as well as the domestic violence between Mother and M.P.'s father.

¶10 Although the juvenile court found that Mother was participating in services and complying with the case plan at later review hearings, DCS continued to express concerns about her ability to understand and respond to M.P.'s needs. DCS reported that Mother could not identify safety risks related to her relationship with M.P.'s father and failed to recognize the power and control dynamics present in that relationship. As a result, DCS filed a petition to terminate the parent-child relationship, alleging that Mother had neglected M.P. by "causing the child to have severe malnourishment while in her care and custody," under § 8-533(B)(2). After a multi-day hearing, the court found, in a comprehensive order containing detailed findings and conclusions, that DCS had proven this ground and determined that termination was in M.P.'s best interests—subsequently terminating Mother's parental rights.

¶11 In evaluating the § 8-533(B)(2) ground, the court turned to § 8-201(25)(a) for guidance on the meaning of "neglect." That statute defines "neglect," in pertinent part, as "[t]he inability or unwillingness of a parent . . . of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child's health or welfare." A.R.S. § 8-201(25)(a). The court also noted that § 8-533(B)(2) uses the past tense "neglected," suggesting that past neglect could be grounds for termination even in the absence of current neglect.

[1] M.P.'s father's parental rights were also terminated, but he is not a party to this appeal.

¶12 Applying the relevant law to the evidence presented at the termination hearing, the court concluded that "Mother's neglect caused a substantial risk of harm to [M.P.'s] health and well-being." The court noted that during this time Mother and M.P.'s father were the child's sole caregivers. The court further noted that M.P. lost nearly half of her body weight over a two-month period, despite the absence of any medical condition that could explain such drastic weight loss. Mother was aware that she was producing limited breast milk but still failed to take steps to seek timely medical care for M.P. As a result of Mother's inaction, the court determined that she "failed to provide the basic necessities for [M.P.], leaving her so severely malnourished and developmentally delayed that she had no gross motor functions and required hospitalization."

¶13 Accordingly, the juvenile court found that Mother was either unable or unwilling to provide her child with proper nourishment or timely medical care, creating a substantial risk of harm to the child's health and welfare. Alternatively, the court also found that Mother failed to protect her child from another person who was unable or unwilling to provide proper nourishment or medical care, likewise placing the child at substantial risk.

¶14 Turning to the best-interests analysis, the court considered two key factors in determining whether terminating Mother's parental rights would best serve M.P. First, the court concluded that M.P. would benefit from being "freed for adoption." The court highlighted Mother's "documented history of neglecting [M.P.'s] needs" and the fact that "[M.P.] was close to death at the time she was admitted to the hospital." Given that M.P. was thriving in a prospective adoptive placement, the court found that terminating Mother's parental rights was in M.P.'s best interests.

¶15 Next, the court found that continuing the parental relationship would harm M.P. It underscored that M.P. had "suffered severe malnourishment" due to Mother's neglect and that she failed to grasp "the severity of M.P.'s condition." The court further concluded that, given the parents' history of domestic violence, it was not in M.P.'s best interests to be denied a secure and stable adoptive home that was meeting her needs.

¶16 In determining M.P.'s best interests, the court "specifically considered [Mother's] completion of various reunification services." While it acknowledged that Mother had participated in multiple therapeutic programs aimed at improving Mother's mental and physical well-being and preparing her to protect both herself and M.P. from M.P.'s father, the court ultimately concluded that M.P. remained at risk of harm if returned to Mother's care.

¶17 The court rejected Mother's claim that she could safely care for M.P. based on her newfound insight into her relationship with M.P.'s father and their history of domestic violence. It acknowledged that Mother had complied with the "reunification services and shown some benefit," but found that she had "not demonstrated any significant behavioral changes or understanding of how to protect [M.P.] from future abuse or neglect[,] including domestic violence." Accordingly, the court determined that if returned to Mother's care, M.P. "would be at risk of continued neglect and/or domestic violence between her parents." The court thus concluded that "[M.P.'s] home was a potentially lethal environment due to the neglect that led to her hospitalization and the domestic violence she was exposed to. Mother has not benefited from her reunification services, and [M.P.] would remain at risk if left in Mother's unsupervised care."

¶18 The juvenile court also based its decision in part on Mother's history of providing untruthful answers about her care of M.P. In its termination order, the court specifically noted Mother's testimony that she herself had suffered from malnourishment in the months before M.P.'s hospitalization. However, this statement was contradicted by photographs of Mother taken between June and September 2023, which showed no evidence of malnourishment or significant weight loss.

¶19 In a divided opinion, the court of appeals vacated the juvenile court's order terminating parental rights, finding that the court "erred in failing to consider [Mother's] participation in and benefit from services . . . in its finding of parental unfitness under § 8-533(B)(2)." *In re M.P.*, 260 Ariz. 234, 243 ¶ 29 (App. 2025). The court explained that when DCS seeks to terminate a parent's rights solely on the basis of neglect while providing services under a court-ordered family reunification plan, the parent's engagement with and benefit from those services "must be considered as part of the court's determination of parental unfitness." *Id*.

at 244 ¶ 29. In evaluating the juvenile court's best-interests analysis, however, the court indicated that this determination "requires no consideration of a parent's success in [rehabilitative] services." *Id.* at 243 ¶ 27.

¶20 We granted review to clarify the appropriate inquiry when making a termination finding under § 8-533(B)(2)—an issue of statewide importance. We have jurisdiction under article 6, section 5(3) of the Arizona Constitution.

DISCUSSION

I.

¶21 Juvenile courts apply a two-step analysis in determining whether to terminate a parent-child relationship. *Timothy B.*, 252 Ariz. at 474 ¶ 13. First, the court must decide whether clear and convincing evidence supports at least one ground for termination listed in § 8-533(B). *Id.* Second, the court must determine whether a preponderance of the evidence supports finding that termination is in the child's best interests. *Id.*

¶22 We will affirm a juvenile court's termination order unless it is clearly erroneous. *See Jessie D. v. Dep't of Child Safety*, 251 Ariz. 574, 579–80 ¶ 10 (2021). A decision is clearly erroneous if, as a matter of law, "no one could reasonably find the evidence to be clear and convincing." *Brionna J. v. Dep't of Child Safety*, 255 Ariz. 471, 479 ¶ 31 (2023) (quoting *Murillo v. Hernandez*, 79 Ariz. 1, 9 (1955)).

II.

¶23 Resolving whether the court of appeals erred by requiring the juvenile court to consider "all relevant evidence"—including Mother's "participation in and benefit from services"—when determining parental unfitness under § 8-533(B)(2) presents a question of statutory interpretation. The interpretation of a statute presents a question of law, which we review de novo. *Brionna J.*, 255 Ariz. at 476 ¶ 17.

¶24 "Our task in statutory construction is to effectuate the text if it is clear and unambiguous." *In re Drummond*, 257 Ariz. 15, 18 ¶ 5 (2024)

(quoting *BSI Holdings, LLC v. Ariz. Dep't of Transp.*, 244 Ariz. 17, 19 ¶ 9 (2018)). To effectuate the text "we interpret statutes according to their plain language," *id.*, giving "words 'their ordinary meaning unless it appears from the context or otherwise that a different meaning is intended,'" *State v. Luviano*, 255 Ariz. 225, 228 ¶ 10 (2023) (quoting *Arizona ex rel. Brnovich v. Maricopa Cnty. Cmty. Coll. Dist. Bd.*, 243 Ariz. 539, 541 ¶ 7 (2018)).

¶25 As relevant here, § 8-533(B)(2) provides, "[e]vidence sufficient to justify the termination of the parent-child relationship shall include . . . [t]hat the parent has neglected or wilfully abused a child."[2] Because § 8-533(B)(2) uses the phrase "has neglected," past neglect may support termination. *See Jade K. v. Loraine K.*, 240 Ariz. 414, 417–19 ¶¶ 12–20 (App. 2016) (past neglect may serve as a basis for termination). Thus, under the statute's plain language, termination is supported if the juvenile court finds by clear and convincing evidence that the parent neglected the child by being unable or unwilling to provide basic necessities, thereby placing the child's health or welfare at substantial risk of harm. *See* A.R.S. § 8-201(25)(a) (defining "neglected" as "[t]he inability or unwillingness of a parent . . . of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child's health or welfare").

¶26 At this point in the determination, the statute requires proof only of the enumerated elements—it does not require the juvenile court to also consider whether the parent has since participated in or benefited from rehabilitative services. Rather, that consideration is reserved for the best-interests analysis that follows. *See infra* ¶ 37. Additionally, in 1998, the Legislature amended § 8-533(B) to remove "the availability of reunification services to the parent and the participation of the parent in these services" from the evidence to consider when finding the statutory ground satisfied. *See* 1998 Ariz. Sess. Laws ch. 276, § 13 (2d Reg. Sess.). Section 8-533(B)'s evolution thus confirms that the statutory grounds must be considered without regard to a parent's reunification services, unless a specific subsection directs otherwise. Subsection (B)(2) contains no such directive. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 256 (2012) ("If the [L]egislature amends or reenacts a provision other

[2] DCS did not allege that Mother wilfully abused M.P. Thus, the issue in this case is whether Mother "neglected" M.P.

than by way of a consolidating statute or restyling project, a significant change in language is presumed to entail a change in meaning.").

¶27 Accordingly, we are unpersuaded by the court of appeals' majority's suggestion that the statutory definition of "neglect" requires consideration of Mother's later education and conduct. *See In re M.P.*, 260 Ariz. at 242 ¶ 23. As the court of appeals' dissent observed, the majority cited no statutory language supporting its analysis, and the definition of "neglect" "unambiguously does not require consideration of a parent's subsequent education and conduct." *Id.* at 247 ¶ 52 (Sklar, J., dissenting).

¶28 By requiring the juvenile court to consider a parent's subsequent conduct, it inserted an additional element into the statute—an action beyond the court's authority. *See Orca Commc'ns Unlimited, LLC v. Noder*, 236 Ariz. 180, 182 ¶ 11 (2014) ("[I]t is not the function of courts to rewrite statutes." (quoting *City of Phoenix v. Butler*, 110 Ariz. 160, 162 (1973))); *see also Brionna J.*, 255 Ariz. at 478 ¶ 27 ("[T]o the extent that the court of appeals imposed an additional showing of parental unfitness outside of § 8-533(B)(8)(c)'s elements, it misinterpreted the statute.").

¶29 As discussed above, we derive a statute's meaning by "determin[ing] the plain meaning of the words the [L]egislature chose to use." *In re Drummond*, 257 Ariz. at 18 ¶ 5 (quoting *Columbus Life Ins. Co. v. Wilmington Tr., N.A.*, 255 Ariz. 382, 385 ¶ 11 (2023)). Faithful adherence to the plain meaning of the Legislature's words requires us to conclude that the § 8-533(B)(2) ground, as alleged in this case, is established when the juvenile court finds based on clear and convincing evidence that a parent has neglected her child due to her inability or unwillingness to provide basic needs, thereby placing the child's health or welfare in substantial risk of harm. There is no statutory mechanism to negate proven past neglect.

III.

¶30 The court of appeals' majority further concluded that, in cases alleging neglect under § 8-533(B)(2), the juvenile court must consider "all relevant evidence," *In re M.P.*, 260 Ariz. at 241 ¶ 20, including Mother's "participation in and benefit from services," during the initial statutory unfitness inquiry, *id*. at 243 ¶ 29. It asserted that excluding such evidence would not "comport with our due process principles." *Id.* at 242 ¶ 20. That assertion is incorrect.

¶31 Over twenty years ago, this Court held that the grounds for termination listed in § 8-533(B) are synonymous with parental unfitness and that a juvenile court's finding of a termination ground under § 8-533(B) satisfies due process. *See Kent K. v. Bobby M.*, 210 Ariz. 279, 285–86 ¶¶ 31–32 (2005). More recently, in *Alma S. v. Deparment of Child Safety*, we "explicitly reiterate[d]" that holding, explaining that when a juvenile court finds by clear and convincing evidence that a statutory ground for termination exists, a parent's due process rights are satisfied. 245 Ariz. 146, 150 ¶ 9 (2018). The court of appeals' majority erroneously concluded that due process requires more based on a misapprehension of *Sandra R. v. Department of Child Safety*, 248 Ariz. 224 (2020).

¶32 In *Sandra R.*, we considered the findings a juvenile court must make when terminating parental rights under § 8-533(B)(2) with respect to a child who has *not* been abused or neglected. *Id*. at 225 ¶ 1. We concluded that due process requires the court to determine, during the parental unfitness inquiry, that the child faces a "risk of harm" before parental rights may be terminated. *Id.* at 228 ¶ 17. We further explained that this requirement is consistent with prior decisions protecting due process by establishing a nexus between the abuse of one child and termination proceedings involving a child for whom no abuse or neglect has been shown. *Id.* ¶¶ 15, 17.

¶33 The court of appeals' dissent here rightly emphasized that the majority "glides past this distinction" in its analysis. *In re M.P.*, 260 Ariz. at 246 ¶ 45 (Sklar, J., dissenting). Drawing on *Sandra R.*, which requires due process to include "a demonstrable connection between the ground for termination and the harm or risk of harm to a child," the court of appeals' majority held that a juvenile court's failure to consider parental fitness during the initial unfitness inquiry both violates due process and contradicts the Supreme Court's decision in *Santosky v. Kramer*, 455 U.S. 745 (1982). *In re M.P.*, 260 Ariz. at 241–42 ¶¶ 19–20 (quoting *Sandra R.*, 248 Ariz. at 229 ¶ 24). Again, that conclusion does not withstand scrutiny.

¶34 The majority misconstrues our jurisprudence on this issue. First, as previously discussed, § 8-533(B)(2)'s plain language does not require the juvenile court to consider a parent's subsequent education or conduct when determining parental unfitness. *See supra* ¶ 27. Second, the

majority misreads *Sandra R.* There, we held that when the state seeks to terminate a parent's right to a child who has not been abused under § 8-533(B)(2), the "risk of harm" to the child must be proven by clear and convincing evidence to satisfy due process and *Santosky*. *Sandra R.*, 28 Ariz. at 229 ¶ 24. The majority both distorts that holding and misapplies it here. In this case, unlike the child in *Sandra R.*, M.P. was neglected.[3]

¶35 Finally, the court of appeals' majority erroneously broadens the due process requirements for termination proceedings. It cites *Santosky* to argue that excluding relevant evidence—Mother's participation in and benefit from services—denies due process. *See In re M.P.*, 260 Ariz. at 242 ¶ 20. That reading stretches *Santosky* too far. In *Kent K.*, we clarified that "within the context of Arizona's legislative scheme [for terminating parental rights], *Santosky* mandates only that the findings of the statutory grounds for termination be supported by clear and convincing evidence." 210 Ariz. at 286 ¶ 32. Section 8-533(B) requires findings of parental unfitness by clear and convincing evidence, providing the "fundamentally fair procedures" necessary to satisfy due process. *Id.* at 284 ¶ 24 (quoting *Santosky*, 455 U.S. at 754). The majority cannot overlook this Court's clear precedent: compliance with § 8-533(B) fully satisfies due process. Any effort to circumvent this clear holding is misguided.

¶36 This conclusion also undercuts the court of appeals' majority's related assertion that the juvenile court's alleged failure to consider Mother's performance in reunification services renders its initial statutory unfitness findings illusory. *See In re M.P.*, 260 Ariz. at 243 ¶ 27. By determining that Mother "neglected" M.P., the juvenile court fulfilled the purpose of § 8-533(B)(2) and established parental unfitness. Once that determination was made, Mother's performance in and benefit from reunification services became relevant—not to unfitness, but to the subsequent inquiry: whether M.P.'s interest in maintaining a relationship with Mother is outweighed by the potential harm of remaining with an unfit parent. The majority's conclusion here implies that completing reunification services guarantees the restoration of parental rights. This reasoning is incorrect and inconsistent with § 8-533(B)(2) and our case law.

[3] In September 2023, Mother pleaded guilty to attempted child abuse. Because of this, Mother has never raised that M.P.'s neglect did not occur.

IV.

¶37 Once a juvenile court finds by clear and convincing evidence that a ground for termination under § 8-533(B) has been established, its inquiry shifts to determine whether a preponderance of the evidence supports a finding that termination is in the child's best interests. *Timothy B.*, 252 Ariz. at 474 ¶ 13. Regarding the best-interests analysis, this Court has instructed that "we can presume that the interests of the parent and child diverge because the court has already found the existence of one of the statutory grounds for termination by clear and convincing evidence." *Alma S.*, 245 Ariz. at 150 ¶ 12 (quoting *Kent K.*, 210 Ariz. at 286 ¶ 35). Thus, once a juvenile court "finds 'that a parent is unfit, the focus shifts to the interests of the child as distinct from those of the parent.'" *Id.* (quoting *Kent K.*, 210 Ariz. at 285 ¶ 31).

¶38 Consistent with this framework, this Court has held that termination is in the child's best interests if either of the following conditions are met: (1) the child will benefit from severance, or (2) the child will be harmed if severance is denied. *See Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4 ¶ 16 (2016). However, determining whether a child would be harmed by the continuation of the parental relationship or would benefit from its termination does not allow courts to disregard other relevant evidence bearing on the child's best interests. *See Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, 588 ¶ 11 (App. 2008) ("While a [factfinder] *may* find that severance is in a child's best interests if the child is found to be adoptable, the [factfinder] is not required to do so."). Although the best-interests inquiry ultimately centers on the child, juvenile courts should nonetheless consider a parent's rehabilitation efforts as part of that analysis. *See Alma S.*, 245 Ariz. at 151 ¶ 15. Accordingly, we reiterate the directive set forth in *Alma S.*: juvenile courts should take a parent's rehabilitation efforts into account when conducting the best-interests analysis. This review ensures that the process set forth in § 8-533(B) for terminating parental rights comports with constitutional requirements.

¶39 In making its best-interests determination in this case, the juvenile court noted *Alma S.*'s admonition and "specifically considered [Mother's] completion of various reunification services." The court acknowledged that Mother had been compliant with those services. However, it ultimately found that although Mother had shown some

benefit, she "[had] not demonstrated any significant behavioral changes or understanding of how to protect [M.P.] from future abuse or neglect, including domestic violence." The court therefore concluded that "[M.P.] remains at risk of harm if returned to [Mother's] care." *See supra* ¶¶ 16–18.

¶40 Based on this evidence, the court found that termination would benefit M.P., noting Mother's history of neglecting M.P.'s needs and the fact that M.P. was near death when admitted to the hospital. The court further determined that M.P. would be harmed if Mother's parental rights were not terminated, as M.P. had suffered severe malnourishment due to Mother's neglect and Mother's failure to comprehend the severity of M.P.'s condition.

¶41 As an appellate court, we owe deference to the juvenile court's factual findings and will accept them if reasonable evidence and inferences support them. *See Demetrius L.*, 239 Ariz. at 3 ¶ 9. Additionally, we do not reweigh the evidence. *See Alma S.*, 245 Ariz. at 151 ¶ 18.

¶42 The court of appeals' majority erred by failing to follow these established standards. In discussing the juvenile court's best-interests findings, the majority acknowledged that the court "considered [Mother's] compliance with the case plan and her benefit from services." *In re M.P.*, 260 Ariz. at 243 ¶ 27.[4] Although the majority recognized that evaluating Mother's participation in and benefit from services was "proper" as part of the best-interests analysis, it nevertheless "question[ed] whether consideration of a parent's benefit from services under the best-interests analysis is sufficient." *Id.* The majority doubted that assessing Mother's rehabilitation efforts was necessary, reasoning that "[t]he best-interests analysis can be proven in two ways—by showing that the child will benefit from severance or will be harmed if severance is denied." *Id.* Thus, it concluded that a best-interests finding may rest on evidence that the child is adoptable or in a more stable environment, without requiring evaluation of the parent's progress in services. *Id.* This conclusion is simply incorrect. As previously noted, a juvenile court's best-interests determination must

[4] Although the majority stated that the juvenile court considered Mother's participation and benefit from services, later in the same paragraph it inexplicably concluded that the "best-interests requirement was met in this case *without consideration* of [Mother's] participation in services." *In re M.P.*, 260 Ariz. at 243 ¶ 27 (emphasis added).

account for a parent's progress toward rehabilitation. *See Alma S.*, 245 Ariz. at 151 ¶ 15. Having mistakenly concluded that rehabilitation efforts are an optional consideration under the best-interests analysis, the majority then asserted that rehabilitation efforts, as a necessary "part of the termination calculus," must inform "the court's determination of parental unfitness." *In re M.P.*, 260 Ariz. at 243 ¶¶ 27, 29. Again, as previously explained, that assertion is incorrect. *See supra* ¶ 28.

¶43 Viewing the record in the light most favorable to sustaining the court's best-interests finding, *Demetrius L.*, 239 Ariz. at 2 ¶ 2, and applying our deferential standard of review, *see id.* at 3 ¶ 9, we conclude that the finding is supported by sufficient evidence. M.P. was placed with a relative who is a prospective adoptive placement, where she is thriving and her needs are being met. In assessing the totality of the circumstances for its best-interests determination, the juvenile court further found that Mother failed to benefit from reunification services and that M.P. remains at risk in Mother's care.

V.

¶44 Although our dissenting colleague reprises objections he has expressed in prior writings concerning Arizona's parental-termination statute,[5] neither those objections nor the authorities on which he relies justify departing from well-settled Arizona law.

¶45 The dissent principally argues that Arizona's termination framework is "so far removed from federal procedural and substantive due process requirements" that it has become a "due process-free zone." *Infra* ¶¶ 88, 93. That characterization does not withstand even a cursory examination of Arizona law and controlling federal precedent.

[5] *See Alma S.*, 245 Ariz. at 152–56 ¶¶ 24–39 (Bolick, J., concurring in result); *Trisha A. v. Dep't of Child Safety*, 247 Ariz. 84, 92–100 ¶¶ 33–73 (2019) (Bolick, J., dissenting); *Sandra R.*, 248 Ariz. at 231 ¶ 34 (2020) (Bolick, J., concurring in result); *Jessie D.*, 251 Ariz. at 583–84 ¶¶ 31–35 (Bolick, J., concurring in part and in judgment); *Timothy B.*, 252 Ariz. at 479–81 ¶¶ 36–49 (Bolick, J., concurring in result); *Brionna J.*, 255 Ariz. at 481–83 ¶¶ 49–60 (Bolick, J., concurring in result).

¶46 Because the dissent relies heavily on *Santosky*, we begin there, focusing on the issue the Supreme Court was tasked with and what it actually held. In *Santosky*, the state of New York sought to terminate the parents' rights to their children. 455 U.S. at 751. Under New York law, parental rights could be terminated upon proof that the children were permanently neglected, a showing the state was required to establish by a preponderance of the evidence. *Id.* at 747. Throughout the state-court proceedings, the parents challenged the constitutionality of the preponderance-of-the-evidence standard. *Id.* at 751–52. The Supreme Court granted review to determine whether that standard satisfied due process. *Id.* at 750–51.

¶47 The Court recognized that a parent's interest in the care, custody, and management of his or her child is a fundamental liberty interest that does not evaporate merely because the parent has not been a model parent or has lost temporary custody to the state. *Id.* at 753. It further explained that, before the state may terminate parental rights, it must provide parents with "fundamentally fair procedures." *Id.* at 753–54.

¶48 The Court therefore considered what the Due Process Clause requires before the state may permanently terminate that interest. Applying the three-factor balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976),[6] it held that New York's preponderance-of-the-evidence standard was "inconsistent with due process." *Santosky*, 455 U.S. at 758. It further concluded that due process requires proof of parental unfitness by clear and convincing evidence because that burden "strikes a fair balance between the rights of the natural parents and the State's legitimate concerns." *Id.* at 769.

¶49 Mindful of *Santosky*'s bottom line, this Court has held that, under Arizona's statutory scheme, "*Santosky* mandates *only* that the findings of the statutory grounds for termination be supported by clear and

[6] *Mathews* requires consideration of: "[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including . . . the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

convincing evidence." *Kent K.*, 210 Ariz. at 286 ¶ 32 (emphasis added). Arizona's statutory framework thus faithfully implements the constitutional principles articulated in *Santosky*, which integrated the balancing framework established in *Mathews*. The dissent is therefore mistaken in asserting that today's opinion fails to engage those constitutional principles.

¶50 Recognizing those principles, however, does not mean parental rights are without limits. To be sure, parents possess a constitutionally protected liberty interest in raising their children, but "parental rights are not absolute." *Id.* at 284 ¶ 24. When a child's health or welfare is seriously jeopardized, the state has both the authority and the responsibility to act on the child's behalf. *See In re the Appeal in Cochise Cnty. Juv. Action No. 5666-J*, 133 Ariz. 157, 161 (1982). Thus, "[a] court may order severance of parental rights under certain circumstances, so long as the parents whose rights are to be severed are provided with 'fundamentally fair procedures' that satisfy due process requirements." *Kent K.*, 210 Ariz. at 284 ¶ 24 (quoting *Santosky*, 455 U.S. at 754).

¶51 Due process is satisfied when the state proves parental unfitness by clear and convincing evidence, as *Santosky* requires, and the case otherwise proceeds fairly. Here, the juvenile court found by clear and convincing evidence that Mother neglected M.P. by failing to provide her with basic necessities, a failure that nearly cost M.P. her life, thereby placing M.P.'s future health and welfare at substantial risk of harm. Although parents possess a fundamental right to direct their children's upbringing, that right does not extend to conduct that deprives a child of life's basic necessities and places the child at substantial risk of death or serious physical harm.

¶52 It is this unfitness determination—not the later best-interests stage—that supplies the constitutional safeguards a parent is owed, a point the dissent's critique of Arizona's framework misses. The dissent argues that the framework is deficient because it relegates consideration of the parent's rights to the best-interests analysis. *Infra* ¶¶ 106–07. Not so. Once the state has carried its clear and convincing burden under *Santosky*, the parent has already received all process demanded by the Constitution. From that point forward, the state bears both the responsibility and

authority to act in the child's interest—the parent's constitutional stake in the proceeding has already been protected, not deferred.

¶53 The dissent next contends that Arizona's parental-termination framework ignores a parent's rehabilitative efforts. *Infra* ¶ 105. The juvenile court's findings in this case demonstrate otherwise. We briefly recount those findings because they directly address the dissent's argument.

¶54 The court found that Mother had allowed M.P. to slowly starve. At seven months old, M.P. weighed only seven pounds. Her eyes were sunken, loose folds of skin hung from her body, and her ribs and other bones protruded. She had suffered bone demineralization, lost gross motor function, and experienced brain atrophy. The court further found that, absent immediate lifesaving treatment when finally seen, M.P. would have died. Although M.P. survived, the serious physical harm necessitated a two-week hospital stay and then placement in a certified medically fragile foster home to meet her ongoing medical needs.

¶55 The juvenile court ordered reunification services designed to address Mother's neglect of M.P. and the domestic violence between the parents. DCS provided those services. In determining whether termination was in M.P.'s best interests, the court evaluated Mother's participation in the court-ordered services. Although the court acknowledged that Mother had complied with some reunification services, it nevertheless found that she had not "demonstrated any significant behavioral changes or understanding of how to protect [M.P.] from future abuse or neglect, including domestic violence" and therefore concluded that "[M.P.] remains at risk of harm if returned to her [Mother's] care." The evidence presented at the termination hearing supported those findings. Mother offered contrary testimony, but the juvenile court did not find her credible. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280 ¶ 4 (App. 2002) ("The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings.").

¶56 Quoting *Department of Economic Security v. Mahoney*, 24 Ariz. App. 534, 537 (1975) in its termination order, the juvenile court specifically recognized that "termination of the parent-child relationship should not be

considered a panacea but should be resorted to only when concerted effort to preserve the relationship fails." It nevertheless concluded that termination was in M.P.'s best interests. Both Arizona's statutory framework and the juvenile court's findings in this case directly address the concern the dissent claims Arizona courts ignore—whether a parent's conduct and progress in reunification services demonstrate an ability to safely parent the child in the future.

¶57 This is not a case in which parental rights were terminated solely because of a single past act divorced from present circumstances or future risk. To the contrary, the juvenile court considered Mother's rehabilitative efforts, acknowledged the extent of her participation in services, evaluated whether she had meaningfully benefited from those services, and ultimately found that M.P. would remain at risk if returned to Mother's care.[7]

¶58 The dissent also contends that this opinion should address the parental rights codified in A.R.S. § 1-601. *Infra* ¶ 101. This statute recognizes a parent's fundamental right to direct their child's upbringing and subjects any state infringement of that right to strict scrutiny—requiring a compelling interest of the highest order, narrow tailoring, and no less restrictive alternative. But whether § 1-601 applies here is not a question properly before us. We do not address it because no

[7] The dissent also cites *Trisha A.*, 247 Ariz. 84, as support for its contention that Arizona's parental-termination framework violates due process. *Infra* ¶ 93 n.8. Our dissenting colleague asserts that the parent's rights in that case were "permanently severed in a mere 25 minutes" after she failed to appear for a court hearing. *Id.* This characterization materially understates the circumstances that led to the termination order. The mother's parental rights were not terminated "in a mere 25 minutes." Rather, they were terminated after a sixteen-month dependency during which DCS offered extensive reunification services and the mother failed to meaningfully engage in those services. *Trisha A.*, 247 Ariz at 86 ¶¶ 3–6. The missed hearing did not itself furnish the basis for termination; it occurred only after several months of unsuccessful reunification efforts and did not relieve DCS of its obligation to prove parental unfitness by clear and convincing evidence. Far from illustrating a denial of due process, *Trisha A.* demonstrates the procedural protections Arizona law affords before parental rights may be terminated.

party has argued the applicability of that statute, and the court of appeals likewise did not address it. Our role is to judge, not to advocate. That approach is consistent with *State ex rel. Brnovich v. City of Tucson*, where this Court explained that "[w]e generally do not reach out to decide important constitutional issues or to upset established precedent when no party has raised or argued such issues." 242 Ariz. 588, 599 ¶ 45 (2017); *see also State v. Valenzuela*, 239 Ariz. 299, 306 ¶ 21 (2016) (declining to address issues "[t]he parties did not brief"); *State v. Martinez*, 230 Ariz. 208, 212 ¶ 10 n.2 (2012) (declining to address Arizona constitutional issues "not separately argued"). The United States Supreme Court has articulated the same principle. In *United States v. Sineneng-Smith*, the Court explained that our adversarial system "rel[ies] on the parties to frame the issues for decision and assign[s] to courts the role of neutral arbiter of matters the parties present." 590 U.S. 371, 375 (2020) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)). It further observed that courts "normally decide only questions presented by the parties." *Id.* at 376 (quoting *United States v. Samuels*, 808 F.2d 1298, 1301 (8th Cir. 1987) (Arnold, J., concurring in denial of reh'g en banc)). Consistent with these settled principles of judicial restraint, we decline to decide sua sponte an issue neither party has raised or briefed.

¶59 At bottom, the dissent contends that Arizona's parental-termination framework fails to provide the fundamentally fair procedures required by due process. It does not. Arizona's statutory framework incorporates the constitutional protections required by *Santosky*, and the juvenile court faithfully applied that framework here. Because Mother received the fundamentally fair procedures the Due Process Clause requires, we respectfully reject the dissent's contrary assertions.

CONCLUSION

¶60 For the foregoing reasons, we vacate the court of appeals' opinion and affirm the juvenile court's judgment terminating Mother's parental rights.

Timmer, C.J., concurring in the result:

¶61 I concur entirely with the Court's opinion. I write separately to stress my view that A.R.S. § 8-533(B)(2) implicitly authorizes termination of parental rights based on past neglect or willful abuse only when that past conduct itself demonstrates that a parent is presently unfit.

¶62 Section 8-533(B)(2) provides a basis for terminating the parent-child relationship if "the parent has neglected or wilfully abused a child." Read broadly, that provision could be understood to permit termination based on a single past incident, however remote in time. The statute itself defines "neglect" to require conduct that "causes substantial risk of harm to the child's health or welfare," A.R.S. § 8-201(25)(a), but although that definition certainly speaks to risk at the time of the conduct, it does not expressly address whether the risk must persist to the time termination is sought. Without that construction, however, the statute would authorize severance for an act of neglect committed, say, a decade earlier, even if the child is no longer at risk of harm and the parent has long since become, by every measure, fit. That construction cannot be reconciled with the constitutional protections owed to the parent-child relationship, and we have not adopted it.

¶63 The liberty interest of parents in the care, custody, and management of their children is "perhaps the oldest of the fundamental liberty interests" existing under the Due Process Clause. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion). Our Legislature has codified that principle, declaring this right "fundamental" and prohibiting infringement absent a "compelling governmental interest as applied to the child involved" that "is of the highest order, is narrowly tailored and is not otherwise served by a less restrictive means." A.R.S. § 1-601(A)–(B). The State's interest in protecting children from unfit parents is unquestionably compelling, but § 1-601's "as applied to the child involved" language requires that interest to be assessed with respect to *this* child, *now*. Termination is the most drastic infringement the state can impose. It must therefore rest on a finding of present unfitness, not merely proof of past misconduct. *See Santosky v. Kramer*, 455 U.S. 745, 753 (1982) ("The fundamental liberty interest of natural parents . . . does not evaporate simply because they have not been model parents . . . .").

¶64 Our cases accommodate this principle by construing the grounds in § 8-533(B) as "synonymous with [parental] unfitness" because they "demonstrate a parent's inability 'to properly parent his/her child.'" *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 150 ¶¶ 9–10 (2018) (quoting *Roberto F. v. Ariz. Dept. of Econ. Sec.*, 232 Ariz. 45, 54 ¶ 42 (App. 2013)). A statutory ground that did not equate to present unfitness would not satisfy due process. *See Brionna J. v. Dep't of Child Safety*, 255 Ariz. 471, 476 ¶ 19 (2023) ("Due process requires that the parent-child relationship not be terminated unless the parent is unfit as a matter of law."); *Alma S.*, 245 Ariz. at 150 ¶ 9 ("If a statutory ground were not synonymous with unfitness, a contested severance based on such ground would be constitutionally infirm.").

¶65 Our opinion in *Sandra R. v. Department of Child Safety*, 248 Ariz. 224 (2020), reinforces this view. There, we concluded that when a parent has neglected or abused one child, § 8-533(B)(2) authorizes termination as to that parent's other, non-abused children only if "the juvenile court [finds] during the parental unfitness inquiry, by clear and convincing evidence, that there is a risk of harm to those children." 248 Ariz. at 228 ¶ 17. The same logic applies to the previously abused or neglected child. Undeniably, past harm to that child can itself evidence present risk. But past harm does not necessarily establish present unfitness, and the constitutional concern animating *Sandra R.*, that termination rest on a current, proven risk, does not turn on which child suffered the earlier conduct. Thus, in my view, a court may only find the existence of past neglect or abuse under § 8-533(B)(2) as grounds for termination if that neglect or abuse places the child at present risk of substantial harm. Otherwise, termination would punish the parent for a past act rather than protect the child from present danger and would not satisfy the "compelling governmental interest as applied to the child involved" that § 1-601(B) demands.

¶66 This understanding does not disturb our holding in *Alma S.* that a parent's rehabilitation efforts are considered at the best-interests stage. 245 Ariz. at 151 ¶ 15. The two inquiries ask different questions and put remediation evidence to different uses. The unfitness inquiry is backward-looking and asks whether the past neglect or abuse, considering its severity, recency, and surrounding circumstances, demonstrates that the parent still cannot safely parent the child. Evidence that conditions have

materially changed since the neglect or abuse occurred bears on that question, not because the parent earns credit for effort, but because such evidence affects what the past conduct proves about present capacity. The court considers remediation evidence at this stage only for what it reveals about the probative force of the past conduct.

¶67 The best-interests inquiry, by contrast, is forward looking. *Alma S.* situates the consideration of rehabilitation efforts at this stage. *Id*. There the juvenile court asks whether, even given present unfitness, severance serves the child, considering factors such as the parent's ongoing engagement with services and the strength of the parent–child bond. The court considers the parent's efforts at this stage as expressions of commitment and as predictors of future capacity, not as evidence of what past conduct proves.

¶68 The line is thus between what remediation evidence proves about the parent's present ability to safely parent the child—relevant at the unfitness stage—and what those efforts reflect about the parent's commitment and likely trajectory—reserved for the best-interests stage. Drawing the line here preserves *Alma S.*'s allocation while respecting the constitutional requirement that a finding of parental unfitness rests on present, not historical, fact. The same evidence may be relevant at both stages, but the court's use of it differs. At the unfitness stage, the question is what the evidence shows about the present force of the past conduct, and at the best-interests stage, the question is what the evidence shows about the parent's commitment and trajectory going forward.

¶69 I do not read the majority's opinion as authorizing a different result. The majority correctly concludes that once a parent has been found unfit under § 8-533(B)(2), the statute "does not require the juvenile court to also consider whether the parent has since participated in or benefited from rehabilitative services." *See supra* ¶ 26. But that conclusion presupposes that the past neglect or abuse itself demonstrates the parent's present inability to safely parent the child. Where it does not, § 8-533(B)(2) does not supply a ground for termination, and the Constitution forbids one. Here, the record establishes by clear and convincing evidence that Mother's past neglect was sufficiently severe and her remediation sufficiently limited to demonstrate a present risk of substantial harm to M.P. The § 8-533(B)(2)

ground is therefore satisfied, and I join the majority in affirming the juvenile court's judgment terminating Mother's rights.

Cruz, J., concurring:

¶70 I join the Court's opinion in full. I write separately, and at greater length than I ordinarily would, because our dissenting colleague raises constitutional objections that deserve a direct answer on their own terms. The dissent contends that Arizona's severance framework has become a "due process-free zone" that ignores the fundamental character of parental rights, declines to apply strict scrutiny, disregards A.R.S. § 1-601, never performs the balancing required by *Mathews v. Eldridge*, 424 U.S. 319 (1976), and relegates parental rights to a proceeding "designed to determine the child's best interests." *Infra* ¶¶ 88, 99–108. I do not read our law that way, and I write to explain why.

¶71 We share more common ground than the dissent allows. Parents possess a fundamental liberty interest in the care, custody, and management of their children, and that interest does not evaporate because a parent has faltered or has lost temporary custody to the state. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Arizona's Legislature has codified the same principle, declaring that the liberty of parents to direct the upbringing of their children "is a fundamental right." A.R.S. § 1-601(A). I do not doubt that § 1-601 speaks to these proceedings. My disagreement with the dissent is therefore narrow, and it is twofold: the dissent overreads our decision in *In re M.N.*, 259 Ariz. 120 (2025), to make strict scrutiny the governing test, and it overlooks that Arizona's framework satisfies due process under any standard properly applied to it. Neither the fundamental status of the right nor the applicability of due process is in doubt; the only question is whether Arizona's framework honors those guarantees. It does.

¶72 The dissent's theory of the standard of review rests almost entirely on a single sentence in *In re M.N.* But *M.N.* will not bear that weight and understanding why requires attention to what that case actually decided. *M.N.* was an adoption case about the distinct statutory classifications of "potential" and "putative" fathers; the juvenile court there had terminated a potential father's rights for failing to register with the putative fathers registry. *In re M.N.*, 259 Ariz. at 122 ¶¶ 1–2. We resolved the case on purely statutory grounds, holding only that a potential father served with notice under A.R.S. § 8-106 is not required to file with the registry, so that his failure to register was not a ground for termination. *Id.* at ¶¶ 32–33. The disposition turned on the interaction of the notice and

registration statutes—not on any tier of constitutional scrutiny. Strict scrutiny decided nothing in *M.N.*

¶73 The sentence on which the dissent relies—that "infringement of this fundamental right is subject to strict scrutiny" under § 1-601(B)—cannot be read in isolation from the analytical work it does. *Id.* at 126 ¶ 29. It appears in a passage explaining that reading the two paternity statutes together to impose overlapping requirements would render provisions superfluous and "raise[] due process issues." *Id.* at ¶ 30. The Court invoked the constitutional concern in service of statutory construction—as a reason to prefer the reading that avoided a constitutional question, in the ordinary manner of constitutional avoidance—not as an operative test applied to sustain or strike a severance. The observation was a signpost pointing away from a constitutional collision, not a holding embracing one.

¶74 That distinction is dispositive. *M.N.* analyzed neither the elements of strict scrutiny—it identified no compelling interest, undertook no tailoring inquiry, and weighed no less restrictive means—nor purported to displace the due process framework the Supreme Court prescribed for termination proceedings in *Santosky*. A sentence that does none of the analytical work strict scrutiny demands cannot be the source of a strict-scrutiny command. Its strict-scrutiny language is therefore dictum, and dictum in a case whose facts and holding are far removed from the merits of a contested severance. I would not convert that passing observation into a new standard of review that neither the parties here nor the parties in *M.N.* ever litigated—a course that would rest a fundamental restructuring of Arizona severance law on language no party tested, and the Court never applied.

¶75 Displacing the dissent's misreading of *M.N.* returns us to the standard that actually governs. The constitutionality of Arizona's severance framework is measured by the one the Supreme Court has applied to parental terminations: the due process analysis of *Santosky*, which balances the three factors identified in *Mathews v. Eldridge*. *Santosky* held that, before a state may sever the parent-child relationship, it must prove parental unfitness by clear and convincing evidence—a standard that, in the Supreme Court's words, "strikes a fair balance between the rights of the natural parents and the State's legitimate concerns." 455 U.S.

at 769. That is not an incidental feature of *Santosky*; it is the constitutional rule the decision announced. This Court has faithfully implemented that command, holding that within Arizona's scheme *Santosky* requires the statutory grounds for termination to be proven by clear and convincing evidence. *Kent K. v. Bobby M.*, 210 Ariz. 279, 286 ¶ 32 (2005). Arizona's framework is not a departure from *Santosky*; it is its application.

¶76 The dissent presses the point rhetorically, asking at what point this Court applies the three-part test of *Mathews* and answering, "Never and nowhere." *Infra* ¶ 112. It is a fair question, and it deserves a direct answer rather than a rejoinder in kind. I will answer it factor by factor. *Mathews* directs consideration of three things: the private interest affected; the risk of erroneous deprivation under the procedures used and the probable value of additional or substitute safeguards; and the government's interest, including the fiscal and administrative burdens that additional procedures would entail. *See* 424 U.S. at 335. Applied honestly to Arizona's framework, each factor confirms the framework's constitutional adequacy rather than undermining it.

¶77 *The private interest.* The parent's interest is, as *Santosky* recognized, commanding, and I do not minimize it; few interests known to our law are weightier than a parent's stake in the companionship, care, and custody of a child. Arizona honors that weight not with rhetoric but with the burden of proof it imposes: it refuses to sever on anything less than clear and convincing proof of a statutory ground synonymous with unfitness. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 149 ¶ 8 (2018); A.R.S. § 8-537(B). The gravity of the private interest is thus built into the evidentiary standard the state must satisfy before it may act.

¶78 *The risk of erroneous deprivation.* Because the fact-finding stage focuses solely on the parent, this Court has recognized that without a heightened standard of proof "the risk that a fit parent might be found unfit increases," and so clear and convincing evidence is constitutionally required. *Kent K.*, 210 Ariz. at 287 ¶ 36. The elevated standard is calibrated precisely to the *Mathews* concern with erroneous deprivation: it allocates the risk of error away from the parent, whose interest is fundamental, and demands near-certainty before the state may sever. That risk is then further reduced by the procedural protections catalogued below and by appellate review of any termination order. Those safeguards are precisely the

"additional . . . procedural safeguards" whose value the second *Mathews* factor asks us to weigh—and the answer to that inquiry is that Arizona has already adopted them, leaving little marginal protection that additional process could supply. *See id.* at 286 ¶ 33 (quoting *Mathews*, 424 U.S. at 335).

¶79 *The government's interest.* The state's interest in protecting those who cannot protect themselves—such as infants—favors preservation of the family while a nurturing relationship remains possible and ripens into an interest in severance only once unfitness is established. That sequencing matters, because it shows the state does not weigh its interest on the scale until the parent has been shown unfit by the demanding standard *Santosky* requires. Arizona's two-step structure tracks that sequence exactly: unfitness first, by clear and convincing evidence; the child's best interests second. *Kent K.*, 210 Ariz. at 284 ¶ 22; *Timothy B. v. Dep't of Child Safety*, 252 Ariz. 470, 474 ¶ 13 (2022). The framework thus reflects, rather than defies, the balance *Santosky* struck—each *Mathews* factor, properly applied, points the same way.

¶80 A "due process-free zone" is not what Arizona law describes; the phrase is refuted by cataloguing the protections the framework in fact guarantees. A parent facing severance is entitled to appointed counsel if indigent (A.R.S. § 8-221(B)), to a contested adjudication hearing (A.R.S. § 8-537), to present evidence and to cross-examine the state's witnesses (*see* A.R.S. § 8-537(B)), to appellate review of any termination order (A.R.S. § 8-235(A)), and to the assistance of appointed counsel in any appeal (A.R.S. § 8-235(D)). The child, too, is independently represented by counsel at every stage. A.R.S. § 8-221. And the state must prove by clear and convincing evidence a statutory ground synonymous with unfitness, *Alma S.*, 245 Ariz. at 149 ¶ 8, before the court may consider the child's interests at all, *Kent K.*, 210 Ariz. at 287 ¶ 38. Each of these is a structural guarantee, not a discretionary courtesy. These are not the marks of a lawless process; they are the marks of a process built to satisfy due process.

¶81 The guarantee of appointed counsel deserves particular emphasis, because it answers the very concern that animated *Santosky*. The Supreme Court observed that parents subject to termination are often poor, uneducated, or members of minority groups—a circumstance that magnifies the risk of erroneous fact-finding, because those least equipped to marshal evidence and confront the state are precisely those most exposed

to mistaken deprivation. *Santosky*, 455 U.S. at 763. Arizona's provision of counsel to every indigent parent (§ 8-221) is a direct structural response to that danger: it places a trained advocate beside the parent at the moment of greatest vulnerability and thereby materially reduces the risk of erroneous deprivation for the very parents *Santosky* identified as most at risk. The dissent's suggestion that parents lack meaningful protection overlooks the protection the Legislature has already guaranteed them—and guaranteed it precisely where the constitutional concern is most acute.

¶82 The dissent's charge that Arizona ignores less restrictive alternatives is mistaken on its own terms, because the framework requires the least restrictive course before severance and preserves an intermediate option even after a ground for severance is proven. Reunification comes before severance: this Court has held that providing reunification services is a constitutional requirement under *Santosky*, and that severance is available "only in the most extraordinary circumstances, when all other efforts to preserve the relationship have failed." *Jessie D. v. Dep't of Child Safety*, 251 Ariz. 574, 581 ¶ 18 (2021) (quoting *In re Maricopa Cnty., Juv. Action No. JA 33794*, 171 Ariz. 90, 91–92 (App. 1991)) (emphasis omitted). Severance is thus the last resort the dissent says it should be, not the first.

¶83 And even where a statutory ground is proven, Arizona law supplies an intermediate option short of termination. A permanent guardianship ends the child's dependency and removes the child from foster care without terminating the parent's rights. *Timothy B.*, 252 Ariz. at 476 ¶ 25. That this alternative has real force is shown by our own practice: we recently reversed a termination precisely because the juvenile court failed to consider whether such a guardianship could serve the child while the parent retained parental rights. *Id.* at 477 ¶ 28. Far from ignoring less restrictive alternatives, our law compels their consideration—both before severance, through mandatory reunification efforts, and at the point of decision, through the availability of guardianship.

¶84 The foregoing shows that strict scrutiny is not the governing test. But the framework does not depend on that conclusion, because it would satisfy § 1-601 even if that standard applied of its own force—and for the reasons given earlier, *M.N.* does not make it the governing test. *See supra* ¶¶ 71–72. Section 1-601(B) permits the state to infringe the parental right only on a showing that the compelling governmental interest, as

applied to the child, is "of the highest order, is narrowly tailored and is not otherwise served by a less restrictive means." Taking the statute's three requirements in turn, each is met on this record.

¶85 *Compelling interest of the highest order.* The state's interest in preventing the death or permanent maiming of a child is of the highest order, and this case illustrates why in stark terms. The juvenile court found that Mother allowed M.P. to slowly starve; that at seven months of age M.P. weighed only seven pounds and had suffered bone demineralization and brain atrophy; and that she would have died without immediate lifesaving treatment. When the state intervenes to prevent the death of an infant days from death by her caregiver's neglect, its interest is as weighty as any the law recognizes.

¶86 *Narrow tailoring.* The requirement of clear and convincing proof of a ground synonymous with unfitness is narrow tailoring in operation, not merely in form. *Alma S.*, 245 Ariz. at 149 ¶ 8; A.R.S. § 8-537(B). By conditioning severance on that demanding showing, the framework reaches only those parents whose conduct has been proven, to a near-certainty, to render them unfit—and no further.

¶87 *Less restrictive means.* And the reunification-first structure, together with the availability of a permanent guardianship, supplies the less restrictive means the statute demands: the state must attempt to preserve the family before it may sever, and even then, a court may choose guardianship over termination. The framework thus survives even the scrutiny the dissent would impose—it satisfies § 1-601 element for element. The disagreement between the dissent and the majority is not, at bottom, about whether parental rights are fundamental or whether due process applies in termination proceedings. They plainly are, and it plainly does. The disagreement is whether Arizona's framework honors those guarantees. For the reasons given—that *M.N.*'s strict-scrutiny language is dictum; that *Santosky* and *Mathews* supply the governing analysis and are satisfied; that Arizona surrounds the parent with counsel, an evidentiary hearing, and appellate review; that the law compels consideration of less restrictive alternatives; and that the framework satisfies § 1-601 even on the dissent's own preferred standard—it does. I respectfully concur.

BOLICK, J., dissenting:

¶88 The Court's ruling here is yet another step toward making our termination of parental rights regime a due process-free zone; hence, I respectfully dissent.

¶89 My colleagues argue to the contrary, noting specific due process protections. *See supra* ¶ 59 (majority); *supra* ¶ 80 (Cruz, J., concurring). I do not mean to minimize those protections, particularly the right to counsel for indigent parents. But when a parent apparently has less than a one in one thousand chance of prevailing in a termination proceeding, *see infra* ¶ 126, it ought to raise alarm bells that important procedural and substantive due process protections are lacking.

¶90 If the Constitution makes anything clear in this area, it is that the permanent termination of a family relationship must be a last resort, not an automatic outcome. Yet in Arizona, too often that result is largely preordained, and even the minimal procedural protections can be short-circuited.

¶91 As I will describe in greater detail below, in summary, our termination of parental rights regime falls markedly short of essential due process requirements in a variety of ways. At no time does the state have to prove present parental unfitness in order to terminate her rights. Relatedly, at no time does the state have to prove that rehabilitative and reunification efforts have proven unavailing. At no time does the state have to prove that no less destructive alternatives exist to permanent termination. And any failure on part of the parent during the process, even if through no fault of the parent, can result in immediate termination. Given that the termination of the family relationship touches the real lives of real people, parents and children alike, in ways that could hardly be more devastating, the perception of meaningful substantive and procedural due process "guardrails" is largely a facade.

¶92 Ordinarily, I would consider concurring in the result rather than dissenting. Mother's past neglect leading to removal of her child here was truly horrific; and the trial court made the additional finding, considered unnecessary by my majority colleagues, that rehabilitative services provided to her were not sufficiently curative to mitigate future

risk of harm. Even under a constitutionally compliant termination process, those findings might be enough to justify termination; but only after fully considering Mother's evidence of rehabilitation, any other relevant evidence, and her bonds with her daughter, who joins her in opposing termination. *See infra* ¶ 122.

¶93 But just as bad facts often make bad law, bad law makes even worse law. Our statutes, court rules, and judicial opinions have congealed into what I have elsewhere referred to as a "constitutionally toxic concoction."[8] *Trisha A.*, 247 Ariz. at 97 ¶ 60 (Bolick, J., dissenting). This framework is so far removed from federal procedural and substantive due process requirements—and indeed even from state law that codifies those requirements—that any product of that process is necessarily constitutionally suspect. That process begs review by the United States Supreme Court.

I.

¶94 Before turning to the specific issues presented by this case, I will briefly review the applicable constitutional and statutory parameters pertaining to parental rights and then describe the process we have created in Arizona to terminate those rights. Such a comparison will illustrate the gaping chasm between what the Constitution commands and our practices.

¶95 The right of parents to direct and control the upbringing of their children is one of America's foundational constitutional principles. *See, e.g.*, *Troxel v. Granville*, 530 U.S. 57, 65, 68–69 (2000) (plurality opinion) ("[T]he interest of parents in the care, custody, and control of their

[8] Our due process deprivations are not confined to final termination of parental rights determinations. In *Trisha A. v. Department of Child Safety*, 247 Ariz. 84, 90–91 ¶¶ 24–30 (2019), we held that a routine status conference at which a parent failed to appear could be immediately converted into a final termination hearing, during which the mother's lawyer could not present a full defense and her rights were permanently severed in a mere 25 minutes. The acceleration was triggered not by any deficiency on the part of the mother but solely by her failure to appear at the status conference. Thereafter, we tied her up in such a series of procedural knots that she could not meaningfully explain her absence or challenge the termination.

children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court."); *Wisconsin v. Yoder*, 406 U.S. 205, 213–14 (1972); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399–402 (1923).

¶96 The Court has recently reaffirmed those rights. In *Mahmoud v. Taylor*, the Court held that a school district that failed to provide an opt-out from books that offended parents' religious beliefs violated their right to free exercise of religion. 606 U.S. 522 (2025). Although that opinion was grounded in the First Amendment, all nine justices subsequently reiterated, in a case involving a school district's lack of parental notification regarding children's sex transitioning, that parents have a substantive due process right under the Fourteenth Amendment to the care and control of their children. *Mirabelli v. Bonta,* 607 U.S. 492, 496–97 (2026) (per curiam) (stating that the policies "cut out the primary protectors of children's best interests: their parents") (citing *Troxel, Pierce,* and *Meyer*); *id.* at 500 (Barrett, J., joined by Roberts, C.J., and Kavanaugh, J., concurring) (noting that *Meyer* and *Pierce* remain good law); *id.* at 507 (Kagan, J., joined by Jackson, J., dissenting) (stating "I have no doubt that parents have rights, even though unenumerated, concerning their children and the life choices they make").

¶97 Given that the recognition of parental rights predates the Arizona Constitution, surely those rights are among the "fundamental principles" that are "essential to the security of individual rights and the perpetuity of free government," Ariz. Const. art. 2 § 1; and they can hardly be subject to less protection in a state whose constitution proclaims the purpose of its governments "to protect and maintain individual rights," *id.* art. 2 § 2. Our state's elected representatives enshrined those rights in statute. Section 1-601(A) of the Arizona Revised Statutes establishes that "[t]he liberty of parents to direct the upbringing . . . of their children is a fundamental right." Section 1-601(B) provides that the state "shall not infringe on these rights without demonstrating that the compelling governmental interest . . . is of the highest order, is narrowly tailored and is not otherwise served by a less restrictive means."

¶98 Those rights are never more salient than when the government moves to sever the parental relationship, because "[w]hen the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it." *Santosky v.*

Kramer, 455 U.S. 745, 759 (1982). Because "[f]ew forms of state action are both so severe and so irreversible," *id.*, the Constitution demands that when the government seeks to dissolve parental rights, "it must provide the parents with fundamentally fair procedures," *id.* at 753–54. Such procedures are especially essential given that, even in the best of circumstances, "[t]he State's ability to assemble its case almost inevitably dwarfs the parents' ability to mount a defense," given the state's resources, expertise, and investigative powers; the fact that the state's own experts and caseworkers typically comprise the main witnesses; and that the child is in agency custody. *Id.* at 763.

¶99 Applying both the federal jurisprudence and § 1-601, this Court has recognized that "[p]arental rights are fundamental," that "[t]he state's decision to end a parent's right to his or her child implicates a fundamental right," and that "infringement of this fundamental right is subject to strict scrutiny." *In re M.N.*, 259 Ariz. 120, 126 ¶ 29 (2025).

¶100 At this point, the reader cannot help but notice that this demanding and obligatory constitutional framework is completely absent from the majority opinion, as it is from nearly all of our termination of parental rights opinions. Our opinions usually briefly recite parental rights verbiage, much like a perfunctory meal blessing, quickly forgotten. The majority here dispenses with that nicety. Although the opinion pays lip service to the lodestar *Santosky* opinion without seriously engaging it, nowhere does it recognize the fundamental rights at stake, nor does it apply strict scrutiny, nor consider less restrictive alternatives.

¶101 Nor does it even mention § 1-601, except in response to the dissent, and then only to say that "whether § 1-601 applies here is not a question properly before us" because "no party has argued the applicability of that statute." *Supra* ¶ 58. By dismissing the statute in this manner, the Court reduces § 1-601 to the proverbial tree in the forest that falls yet makes no sound because no one was there to hear it.

¶102 Is the majority saying that we will have two sets of jurisprudence regarding termination of parental rights, one where the parties argued § 1-601, and one where they didn't? Do we really mean that the law is a function not of what the statutes say, but of what a party argues?

¶103 Such a discordant approach is unnecessary for multiple reasons. First, because we have already held that § 1-601 applies to termination cases and "infringement of this fundamental right is subject to strict scrutiny." *M.N.*, 259 Ariz. at 126 ¶ 29. Second, as we have held repeatedly, we do not read statutes in isolation, but rather *in pari materia*, encompassing other statutes addressing the same subject. *See, e.g.*, *Rodriguez-Ramirez v. State*, No. CR-25-0157, 2026 WL 2329934, at *3 ¶ 20 (Ariz. Aug. 12, 2026); *Williams v. Ariz. Dep't of Econ. Sec.*, No. CV-25-0157, 2026 WL 2409127, at *2 ¶ 9 (Ariz. Aug. 18, 2026); *Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137, 142 ¶ 15 (2024). When two statutes govern the same subject matter, it is black-letter law that we seek to harmonize them and give meaning to each. *See UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz 327, 329 ¶ 11 (2001); *Pima Cnty. ex rel. City of Tucson v. Maya Constr. Co.*, 158 Ariz. 151, 155 (1988) (stating that when "statutes relate to the same subject," we construe them "together . . . as though they constituted one law" in order to "give effect to all the statutes involved"). We do not typically harmonize statutes and give effect to both by enforcing one and ignoring the other.

¶104 What the majority instead applies is the statutory termination of parental rights framework as interpreted by the Court in a number of opinions. It begins with § 8-533(B), which provides that "[e]vidence sufficient to justify the termination of the parent-child relationship shall include any one of the following," followed by a number of grounds including neglect. § 8-533(B)(2). Although the statute uses the word "include," it does not specify what else "sufficient evidence" could or must include.

¶105 The majority here cites *Kent K. v. Bobby M.*, 210 Ariz. 279, 285–86 ¶¶ 31–32 (2005), for the proposition that "the grounds for termination listed in § 8-533(B) are synonymous with parental unfitness," and that if proven by clear and convincing evidence, "a parent's due process rights are satisfied." *Supra* ¶ 31. On this basis, the Court holds that the court of appeals' consideration of "all relevant evidence," including Mother's participation in rehabilitation services, was improper in determining her unfitness. *Supra* ¶ 30. Thus, at this stage, the parent is limited to arguing one thing only: that the ground for termination did not exist at any moment in time, which of course would be a futile exercise for someone convicted of the very offense on which termination is based. Once

the ground is proven, as the majority states, the statute requires no further showing that the parent is unfit. *See supra* ¶ 26.

¶106 Once this inquiry is satisfied, the Court proceeds to consider the child's best interests. Although the statute provides that "in considering any of the [grounds for termination], the court shall also consider the best interests of the child," § 8-533(B), the Court has bifurcated this inquiry. This is where the Court purportedly takes the parent's interests into account. *Supra* ¶ 36. But under this inquiry, which is subject only to a preponderance of the evidence standard, the "focus shifts to the interests of the child as distinct from those of the parent." *Supra* ¶ 37 (citation modified). Pointedly, in this part of the analysis, the parent's and child's interests are presumed to diverge. *Supra* ¶ 37; *Kent K.*, 210 Ariz. at 285 ¶ 31. As the majority notes, "termination is in the child's best interests if either of the following conditions are met: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Supra* ¶ 38 (citing *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4 ¶ 16 (2016)). Indeed, the court may permissibly find best interests satisfied if the child is found to be adoptable. *Id.* (citing *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, 588 ¶ 11 (App. 2008)); *see also Alma S. v. Dep't of Child Safety*, 245 Ariz 146, 150 ¶ 13 (2018).

¶107 What is the gaping and obvious omission from this process? It is completely bereft of any meaningful consideration of parental rights. Such consideration is completely absent from the threshold finding of unfitness (and indeed, today's decision even removes any consideration of rehabilitation services and efforts from that part of the analysis). Instead, the parent's rights are relegated to the child's best-interests analysis, where the parent's and child's interests are *presumed to diverge.*

¶108 That is hardly an apt context in which to vindicate fundamental rights. On its face, it violates the most basic and fundamental due process precept: the right to be heard at a meaningful time and in a meaningful manner. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970). Consigning the consideration of fundamental rights to a process designed to determine a child's best interests, especially where the interests are deemed to diverge, does not come close to meeting that standard.

¶109 After emphasizing that the parent's interests are considered in the child's best-interests inquiry, the majority curiously states that "[i]t is

this unfitness determination—not the later best-interests stage—that supplies the constitutional safeguards a parent is owed, a point the dissent's critique of Arizona's framework misses." *Supra* ¶ 52. But that is *exactly* my point—the parent's rights cannot be meaningfully protected in the context of a child's best-interests analysis. Where we diverge is the majority's belief that once the state proves a past act under the statute that is deemed a proxy for unfitness, "the parent has already received all process demanded by the Constitution." *Id.*

¶110 This process runs headlong into *Santosky*'s insistence on "fundamentally fair procedures" before terminating parental rights. 455 U.S. at 754. The Court emphasized that the "fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Id.* at 753. Indeed, "[i]f anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs." *Id.*

¶111 As a court should do in *every* case involving a governmental deprivation of life, liberty, or property, *Santosky* applied the three basic and essential due process elements from *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). *Santosky* concluded that "[i]n parental rights termination proceedings, the private interest affected is commanding; the risk of . . . using a preponderance [of evidence] standard is substantial; and the countervailing government interest favoring that standard is comparatively slight." 455 U.S. at 758. Consequently, the Court ruled that the proper standard in assessing parental unfitness is clear and convincing. *Id.* at 769.

¶112 At what point in the termination process does this Court apply the *Mathews* three-part test? Never and nowhere. Rather, the State need only prove that a parent, at one moment in time, committed one of the statutory violations that the Court deems a proxy for permanent unfitness.[9] *Supra* ¶ 25. The exclusion of relevant evidence as to the parent's current

[9] The Department of Child Safety ("DCS") notes, chillingly, that as to the § 8-533(B)(2) criterion, the statute does not use the word "willful" neglect, so that even a past instance of *unintentional* neglect could be a ground for termination of parental rights.

and future unfitness would utterly flunk the *Mathews* test, given the powerful parental interests implicated in such a framework, the massive risk of erroneous deprivation, and the paucity of any state interest in excluding such evidence.

¶113 In the majority's framework, the constitutional requirements fold into the statutory analysis—which is antithetical to the Supreme Court's approach in *Santosky*. Indeed, *Santosky* addressed precisely that point, declaring that "[t]he 'minimum requirements [of procedural due process] being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.'" 455 U.S. at 755 (quoting *Vitek v. Jones*, 445 U.S. 480, 491 (1980)). And by relegating parental rights to the child's best-interests determination, it subjects those rights, to the extent they are considered at all, to a preponderance of evidence standard, opposite from what *Santosky* requires. Indeed, given the child's best interests are the primary focus at this stage of the proceeding, and those interests are deemed to diverge from the parent's, the determination that the parent's rights fail is subject to no standard of proof whatsoever.

¶114 I cannot say the majority clearly errs in its analysis of the statutes it construes here, especially in light of past precedents. Those precedents date back more than twenty years to *Kent K.*, but the constitutional principles we are bound to apply date back more than a century. Nor does it apply § 1-601(A), which was enacted after *Kent K.* and statutorily codifies the constitutional requirements. Hence, no strict scrutiny, no consideration of less-restrictive alternatives. The Court simply ignores the statute, just as it ignores *Mathews* and avoids the holding and analytical framework of *Santosky*. Our jurisprudence in this area is judicial legerdemain of the highest order: that which is paramount and fundamental is made to disappear.

II.

¶115 Today's decision widens the chasm between our termination of parental rights system and the rudiments of due process. The question here is whether the court should consider a parent's rehabilitation efforts in determining whether grounds exist for the permanent termination of parental rights. The majority chastises the court of appeals for requiring

the juvenile court to consider "all relevant evidence," including a parent's participation in state-mandated rehabilitation services. *Supra* ¶¶ 23–28.

¶116 Considering "all relevant evidence" before visiting upon a person one of the greatest possible deprivations of liberty is exactly what due process requires. But even if the statute requires no such thing, as the majority holds, the Constitution surely does. We are supposed to interpret statutes, where possible, to preserve their constitutionality. *See, e.g.*, *Williams*, 2026 WL 2409127, at *2 ¶ 9; *State v. Arevalo*, 249 Ariz. 370, 373 ¶ 9 (2020); *cf.* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 247–51 (2012) (discussing the "constitutional-doubt canon" which requires a court interpret a statute in a manner which avoids placing the statute's constitutionality in doubt). Instead, the majority reads the statute narrowly, further depriving the parent of a meaningful opportunity to demonstrate why her rights should not be permanently altered, thereby rendering an already profoundly unconstitutional statutory regime even more unconstitutional.

¶117 The relevant statute, A.R.S. § 8-533(B)(2), provides that "[e]vidence sufficient to justify the termination of the parent-child relationship shall include . . . [t]hat the parent has neglected or wilfully abused a child." The majority laser-focuses on the verbiage "has neglected" to conclude that the use of past tense means that "termination is supported if the juvenile court finds by clear and convincing evidence that the parent neglected the child." *Supra* ¶ 25. Because the statute requires no additional showing, it "does not require the juvenile court to also consider whether the parent has since participated in and benefited from rehabilitative services." *Supra* ¶ 26.

¶118 The majority overlooks that the evidence "shall include" such a finding, thus specifying what is necessary but not what is sufficient. The Constitution supplies that crucial additional detail. For termination of parental rights requires not merely proof of past conduct but also a forward perspective regarding whether the family unit can be restored.

¶119 *Santosky* makes that clear. That case entailed a finding of *permanent* neglect, with a neglect showing necessary for removal but permanent neglect required for termination. 455 U.S. at 748. And that makes sense, given that removal is reversable, while termination is

irreversible, a "disparity of consequence" that "strongly favors heightened procedural protections." *Id.* at 761. Thus, at the factfinding stage in a termination proceeding, the evidence must focus on what the state did—that is, make diligent efforts to restore the family relationship; and what the natural parents did not do—maintain contact with or plan for the future of the child. *Id.* at 759–60. It necessarily entails "appraising the nature and quality of a complex series of encounters among the agency, the parents, and the child." *Id.* at 762. Indeed, the Court justified the heightened standard of review at this stage of the process on the risk that termination could be based on a few isolated instances of unusual conduct or idiosyncratic behavior. *Id.* at 764. During this part of the proceeding, "the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Id.* at 760.

¶120 Obviously, a parent's efforts toward rehabilitation are an important part of that determination; and it would be a cruel and pointless hoax to offer or require such services if there was no prospect of reunification. Indeed, in *Jessie D. v. Department of Child Safety*, 251 Ariz. 574, 582 ¶ 21 (2021), this Court noted that rehabilitation services are "a constitutional requirement under *Santosky*," and unanimously declared that a court may permanently sever the parent-child relationship "only in the most extraordinary circumstances, *when all other efforts to preserve the relationship have failed*." *Id.* at 581 ¶ 18 (emphasis in original) (citation omitted); *accord Michael J. v. Ariz. Dep't of Econ. Sec.,* 196 Ariz. 246, 253 ¶ 39 (2000) (Zlaket, C.J., concurring in part and dissenting in part) (stating that given "[t]he right to have custody and care of . . . children is among our most precious liberties," the state must "make some attempt to preserve" the family relationship). It is difficult to say that "efforts to preserve the relationship have failed" if the court must conclude, as a matter of law, that a parent who has committed a statutory violation is permanently unfit. But the majority here does exactly that, short-circuiting *Santosky*'s totality of the circumstances requirement by holding that nothing more than a finding that a parent once neglected the child is sufficient to terminate the relationship, and that evidence to the contrary is legally irrelevant.

¶121 In a case, like here, where the termination factor is also the basis for a criminal conviction, the conviction will necessarily deprive the parent of any possibility, much less a meaningful one, to rebut the State's assertion of unfitness. Which transforms her criminal sentence into one that

carries with it a penalty nowhere found in the criminal statutes—an automatic finding of unfitness, which will almost inevitably lead to permanent loss of her parental rights following the filing of a petition to that effect by DCS. Thus, even beyond the substantive and procedural due process ramifications, applying the statute in this manner creates the very real possibility of an excessive criminal penalty. U.S. Const. amend. VIII; Ariz. Const. art. 2, § 15.

¶122 If allowed to do so, Mother here could present evidence rebutting the State's case. The rehabilitation services were part of a reunification case plan sought by DCS and ordered by the court, the court reconfirmed that plan with no opposition from DCS, repeated reports concluded that Mother was in compliance with the services, Mother had continuous and regular supervised parenting time with her daughter, and the Foster Care Review Board officially signed off on the rehabilitation plan. No precipitating event in the record explains why DCS reversed course from the family reunification goal in favor of termination. And significantly, *the child here is represented by counsel, who states that she has bonded with her mom and opposes termination.*

¶123 Let me be completely clear here: the Court is holding that termination of parental rights is permissible even if the trial court had not made an express finding of current and future unfitness, and absent consideration of less-restrictive alternatives (such as continuing the rehabilitation services as initially ordered). *See, e.g.*, *Timothy B.*, 252 Ariz. at 477 ¶ 28 (remanding to trial court to consider, among other things, whether a permanent guardianship is an appropriate less-restrictive alternative to termination). To put it mildly, this is an extreme deprivation of both substantive and procedural due process.

III.

¶124 If I am correct that our opinions sharply diverge from applicable due process principles, why hasn't the U.S. Supreme Court corrected us? The answer, I believe, is simple: the parents whose rights are terminated typically lack the resources to seek Supreme Court review. *See Santosky*, 455 U.S. at 763 (noting that parents subject to termination

proceedings are often poor or uneducated); and I am unaware of public interest law firms that are dedicated to protecting parental rights.[10]

¶125 Such review is essential because the Court has not meaningfully spoken on these issues for nearly a half-century since *Santosky*, and other states may have strayed (as Arizona has) from the due process principles applied in that decision.[11] Amicus Arizona Center for Law in the Public Interest ("ACLPI") depicts Arizona's as "what may be the least protective scheme in the country regarding what is necessary to forever take a baby away from her mother's care." ACLPI Brief at 2. I have no reason to doubt that assertion; and if true, marked differences in legal approach among the states warranting the Court's resolution should not be hard to identify.

¶126 In prior opinions I have shared public statistics showing that DCS termination petitions in recent years have resulted in severance of parental rights approximately 99.94 percent of the time. *Trisha A.*, 247 Ariz. at 99 ¶ 72 (Bolick, J., dissenting). ACLPI reports that those figures remain above 99 percent, and that "Arizona's per-capita rate at which it terminates parental rights is . . . over twice the national average." ACLPI Brief at 1 (citing Vivek S. Sankaran & Christopher E. Church, *The Ties That Bind Us: An Empirical, Clinical, and Constitutional Argument Against Terminating Parental Rights*, 61 Fam. Ct. Rev. 246, 250 (2023)). Those statistics do not themselves demonstrate a constitutional violation, but they are highly consistent with a system in which the judicial scales are badly unbalanced.

¶127 I regret that my words on this subject have not persuaded my colleagues, who I so greatly respect, and that most of my dissenting opinions have been solitary. Yet I am hardly alone: in all or nearly all of

[10] I note that counsel for the child in this case was provided by the Child and Family Law Clinic at the James E. Rogers College of Law at the University of Arizona; and that helpful amicus curiae briefs in support of Mother were filed by the Arizona Center for Law in the Public Interest and by indigent defense agencies.

[11] Indeed, in its Petition for Review and its Supplemental Brief, DCS does not once cite *Santosky*, relying entirely on Arizona decisions notwithstanding the federal constitutional issues that permeate every termination of parental rights case. I find that omission shocking, dismaying, and revealing.

our problematic termination of parental rights opinions, as here, we have overruled conscientious court of appeals judges who have done their level-best to squeeze a few drops of due process from our decisions, despite overwhelming odds of reversal.

¶128 I understand the enormous stakes for children who have been scarred or abused. I share the sense of urgency to promptly remove them from dangerous circumstances, and to permanently sever the rights of adults who have betrayed the precious gift of parenthood where the family bonds are irreparable or the parents' deficiencies irremediable. But due process requires much more, as I have described our system elsewhere, than "a railroad with no stops and only one destination." *Alma S.*, 245 Ariz. at 153 ¶ 28 (Bolick, J., concurring in the result).

¶129 I suspect that most Americans, if faced with a choice between a loss of their liberty or a loss of their children, would not hesitate for a moment to choose the former. That is why parental liberty occupies the apex of our hierarchy of natural rights. And yet, in Arizona, the termination of parental rights is not clothed with even a modicum of the due process rights to which those who face criminal charges are entitled. Indeed, as I have written elsewhere, the degree to which a legal system protects parental rights is greatly correlated to how much that system reveres individual rights and the rule of law. *See id.* at 152–53 ¶ 25.

¶130 Moreover, to the extent we make it relatively easy to terminate parental rights, without the necessity of demonstrating compelling need and the absence of less-restrictive alternatives, the more we license those who may define parental deficiencies differently in the years to come based on the fashions of the time. This is simply too much power and discretion to place in the hands of government officials, who almost never lose once they have decided to terminate the parental relationship. As Justice Robert H. Jackson warned in a different context, under such circumstances "[t]he principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need." *Korematsu v. United States*, 323 U.S. 214, 246 (1944) (Jackson, J., dissenting).

¶131 I hope that the Supreme Court will rectify our errors and provide needed guidance in this highly important area. For all of the foregoing reasons, and with great respect to my colleagues, I dissent.

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE TERMINATION OF PARENTAL RIGHTS AS TO M.P.

Nos. 2 CA-JV 2024-0093 and 2 CA-JV 2024-0094 (Consolidated)
Filed June 3, 2025

Appeal from the Superior Court in Pima County
Nos. S20240024 and JD20230397
The Honorable Helena S. Seymour, Judge Pro Tempore

VACATED AND REMANDED

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OPINION

Judge Vásquez authored the opinion of the Court, in which Presiding Judge Eckerstrom concurred and from which Judge Sklar dissented.

V Á S Q U E Z, Judge:

¶1 Maria P. and her daughter M.P. each appeal the juvenile court's November 2024 ruling terminating Maria's parental rights to M.P., born in February 2023, based on neglect.[1] *See* A.R.S. § 8-533(B)(2). Their primary argument in this consolidated appeal is that Maria's constitutional rights were violated because the court terminated her parental rights without considering her compliance with the case plan and participation in reunification services. They also challenge the sufficiency of the evidence to support the court's best-interests finding. For the following reasons, we vacate and remand.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming the juvenile court's ruling. *See Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, ¶ 13 (App. 2011). In September 2023, Maria called 9-1-1 after M.P. refused to eat and Maria was concerned that her daughter was having a seizure. Seven-month-old M.P. weighed approximately seven pounds at the hospital and was diagnosed with severe malnutrition. She was observed to have sunken eyes and cheeks and loose, hanging skin. A computed tomography scan of M.P.'s brain showed atrophy from the malnutrition. Maria reported that she was breastfeeding M.P. and that she and M.P.'s father had adopted "a more holistic approach to life." The Department of Child Safety (DCS) took custody of M.P., and Maria was arrested for child abuse. Maria subsequently pled guilty to one count of attempted child abuse and was placed on probation for seventeen years.

¶3 In September 2024, DCS filed a dependency petition, alleging, as to Maria, that M.P. was dependent due to neglect—specifically, that Maria had "failed to recognize early signs of malnutrition" and had "failed to take appropriate action to ensure the child's wellbeing." DCS

[1]The juvenile court also terminated the parental rights of M.P.'s father, Alonzo M. He is not a party to this appeal.

additionally alleged that Maria had neglected M.P. because of domestic violence between Maria and M.P.'s father. In November 2023, Maria entered a no-contest plea to an amended petition, and the juvenile court adjudicated M.P. dependent as to her. Consistent with DCS's recommendation, the court set a case plan goal of family reunification and ordered DCS to provide services to accomplish the goal. Upon Maria's motion, the court placed M.P. with Maria's sister. At a review hearing in January 2024, the court found that DCS was making reasonable efforts to accomplish the case plan goal and that Maria was compliant with the plan tasks. The court therefore affirmed reunification as the goal.

¶4 The following month, however, DCS filed a petition for termination of the parent-child relationship, solely alleging that Maria had neglected M.P. by "causing the child to have severe malnourishment while in her care and custody." Meanwhile, at a permanency hearing in March 2024, the juvenile court again found Maria was "fully compliant with the case plan tasks" and affirmed the case plan goal of family reunification. In April 2024, the court held an initial severance hearing and set the trial.

¶5 On June 7, 2024, M.P. filed a motion for summary judgment on the petition for termination. She argued that DCS's petition was "constitutionally deficient for failure to consider the parent's progress toward reunification or current ability to safely and effectively parent." M.P. further asserted that DCS could not "now claim that reasonable efforts would be futile" because DCS had "prepared and presented a reunification case plan," suggesting it thought the plan had a "reasonable prospect of success." DCS moved to strike the motion as untimely. It reasoned that Rule 318(b), Ariz. R. P. Juv. Ct., requires such motions to be filed at least forty-five days before the adjudication hearing and that M.P.'s motion was filed forty-one days before the trial. In response, M.P. asked the juvenile court to deny the motion to strike because DCS was asking "for a hypertechnical reading of a procedural rule—from which it suffers no prejudice—to prevent [the juvenile court] from addressing the merits of the constitutionality" of the petition for termination. Maria joined M.P.'s response. After a hearing, the court found M.P.'s motion for summary judgment untimely and granted DCS's motion to strike.

¶6 At a dependency review hearing days before the start of the severance trial, the juvenile court again found Maria to be complying with the case plan and affirmed the goal of family reunification. The severance trial took place over several days, ending in August 2024. M.P. requested that the court deny the petition for termination, again arguing that the petition had "failed to consider the parents' progress towards reunification

or their current ability to safely and effectively parent their child." She maintained that because DCS had implemented "a significant array of reunification services, the hopes of which the parents, [M.P.,] and many others relied upon, [DCS] is estopped from terminating the parental rights based solely on circumstances that existed before the services were put in place." Maria joined that argument.

¶7 In November 2024, the juvenile court granted DCS's petition for termination of the parent-child relationship based on neglect.[2] The court explained, in part, that Maria had neglected M.P. by causing malnourishment and that she "was aware that she was producing limited breast milk" but "took no steps to obtain timely medical care for" M.P. The court also found that termination was in M.P.'s best interests, explaining that M.P. would benefit from termination as she would be "freed for adoption," is entitled to permanency, and is in "a prospective adoptive placement," where she has been thriving. The court further found M.P. "would be harmed if termination is denied notwithstanding the bond she has with [Maria]." The court considered Maria's completion of various reunification services but found she had not "demonstrated any significant behavioral changes or understanding of how to protect [M.P.] from future abuse or neglect, including domestic violence." M.P. and Maria each appealed, and we consolidated their appeals.[3]

Discussion

¶8 Although Maria and M.P. frame their arguments somewhat differently, the thrust is the same—Maria's constitutional rights were violated when the juvenile court terminated her parental rights based solely on neglect without adequately considering her progress in reunification services. Specifically, Maria argues that her due process rights were violated because the juvenile court "relied on prescience rather than the facts in the record." She further contends that the court's best-interests

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[2]Although the severance trial pertained to both parents, the juvenile court asked the parties whether they would need to submit additional evidence if it were inclined to order a "one-parent severance." At the end of the trial, the court gave the parties leave to file notices regarding their positions, which they did, and the court ultimately granted termination as to both parents.

[3]Although M.P. opposed the termination as to both parents below, her challenge on appeal is seemingly limited to the termination of Maria's parental rights.

finding was not supported by reasonable evidence because she "consistently has demonstrated she now understands the necessity of proper medical care for" her daughter. M.P. asserts that where DCS "has offered reunification services for months and a parent is in full compliance with the . . . case plan, the constitution and Arizona public policy require" consideration of "the parent's efforts to determine if all other efforts to preserve the family have failed and there is no hope of return" before a court may order termination. And because the juvenile court failed to do so here, M.P. maintains that it erred as a matter of law.

¶9 We will affirm a severance order if reasonable evidence supports the factual findings and the juvenile court's legal conclusions are not clearly erroneous. *Brionna J. v. Dep't of Child Safety*, 255 Ariz. 471, ¶¶ 30-31 (2023). In doing so, we generally defer to the juvenile court's factual findings because, as the trier of fact, that court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4 (App. 2004). However, we review issues of law de novo. *Holly C. v. Tohono O'odham Nation*, 247 Ariz. 495, ¶ 26 (App. 2019).

¶10 "Parents possess a fundamental liberty interest in the care, custody, and management of their children." *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 24 (2005); *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (describing interest of parents in care, custody, and control of their children as oldest of fundamental liberty interests). "Although fundamental, parental rights are not inviolate." *Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, ¶ 7 (App. 2016). "A court may order severance of parental rights under certain circumstances, so long as the parents whose rights are to be severed are provided with 'fundamentally fair procedures' that satisfy due process requirements." *Kent K.*, 210 Ariz. 279, ¶ 24 (quoting *Santosky v. Kramer*, 455 U.S. 745, 754 (1982)). To that end, Arizona has established a formal process for terminating parental rights. A.R.S. §§ 8-531 through 8-544.

¶11 Specifically, § 8-533(B) provides a two-step inquiry for termination of a parent-child relationship. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, ¶ 8 (2018). First, the juvenile court must find by clear and convincing evidence that at least one of the enumerated statutory grounds for termination exists. *Sandra R. v. Dep't of Child Safety*, 248 Ariz. 224, ¶ 12 (2020). Second, the court must find by a preponderance of the evidence that termination of the parent's rights is in the child's best interests. *Id.* While the first step focuses on the fitness of the parent, the second centers on the best interests of the child. *Alma S.*, 245 Ariz. 146, ¶¶ 9, 12. The petitioner—

DCS in this case—bears the burden of proof as to both inquiries. Ariz. R. P. Juv. Ct. 353(c).

¶12 When our legislature adopted § 8-533(B) in 1970, it identified the purpose of the act as providing for the "voluntary and involuntary severance of the parent-child relationship . . . by judicial process which will safeguard the rights and interests of all parties concerned." 1970 Ariz. Sess. Laws, ch. 153, § 1. The legislature added:

> Implicit in this act is the philosophy that, wherever possible, family life should be strengthened and preserved and that the issue of severing the parent-child relationship is of such vital importance as to require a judicial determination . . . . This judicial action is intended primarily for those situations where other judicial remedies appear inappropriate.

Id. Thus, our system seeks to preserve "parental interests when the parent grasps the opportunity quickly, diligently, and persistently." *In re Pima Cnty. Juv. Severance Action No. S-114487*, 179 Ariz. 86, 101 (1994).

¶13 As relevant here, § 8-533(B)(2) provides, as a ground for termination, "[t]hat the parent has neglected or willfully abused a child." Neglect is statutorily defined as "[t]he inability or unwillingness of a parent . . . of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child's health or welfare." A.R.S. § 8-201(25)(a). Neglect is, thus, not a fixed concept but "varies as the context of the circumstances changes." *In re Pima Cnty. Juv. Action No. S-111*, 25 Ariz. App. 380, 389 (1975); *cf. Joelle M. v. Dep't of Child Safety*, 245 Ariz. 525, ¶ 13 (App. 2018) (explaining that "dependent child," despite statutory definition, "is a variable standard, necessarily tethered to the child's medical condition and individual needs"). With respect to the best-interests determination, termination is appropriate "if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Alma S.*, 245 Ariz. 146, ¶ 13.

¶14 Here, the juvenile court found by clear and convincing evidence that Maria had neglected M.P. under § 8-533(B)(2). However, the court declined to consider Maria's participation in reunification services as part of its statutory finding. The court observed that § 8-533(B)(2) "does not expressly require that the parents be provided reunification services" and

that "there is not a constitutional requirement to provide reunification services." However, the court considered Maria's participation in services as part of its best-interests finding. The court noted Maria's compliance with the case plan and found she had shown "some benefit," but it also found she had not "demonstrated any significant behavioral changes or understanding of how to protect [M.P.] from future abuse or neglect, including domestic violence."

¶15 As an initial matter, we agree with the juvenile court that § 8-533(B)(2) does not require DCS to provide reunification services. The text of § 8-533 plainly requires DCS to make diligent efforts to provide appropriate reunification services for terminations based on out-of-home placement under § 8-533(B)(8) and (B)(11). *See* § 8-533(D). No such language appears in subsection (B)(2). Courts have also concluded that DCS must make diligent and reasonable efforts to preserve the family or show that preservation efforts would be futile before the juvenile court may terminate parental rights under § 8-533(B)(3) based on mental illness, *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶¶ 29-34 (App. 1999), and chronic substance abuse, *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, ¶ 12 (App. 2005), or under § 8-533(B)(4) based on incarceration, *Jessie D. v. Dep't of Child Safety*, 251 Ariz. 574, ¶¶ 20-21 (2021). However, we are not convinced the same constitutional principles obligate DCS to provide reunification services when the termination is based on abuse or neglect. *Cf. Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶ 11 (App. 2008) ("[N]either § 8-533 nor federal law requires that a parent be provided reunification services before the court may terminate the parent's rights on the ground of abandonment."); *Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, ¶ 9 (App. 1999) (legislature amended § 8-533(B) to remove requirement that services be provided before parental rights may be terminated based on abandonment). Indeed, M.P. recognizes that "[t]here may well be situations of neglect or abuse that are so egregious that, at the outset, reunification efforts would be futile or even harmful."

¶16 Notwithstanding the lack of a requirement to provide reunification services, however, DCS chose to offer such services to this family rather than immediately petition for termination of the parent-child relationship. *See* Ariz. R. P. Juv. Ct. 351(a)-(b) (describing petition versus motion for termination). We recognize that part of the reason DCS offered services was to allow it to undertake additional investigation into the circumstances that had brought M.P. into its care and custody. However, that does not change the fact that services were offered and that the juvenile court adopted a case plan goal of family reunification. This is significant because it shows that DCS did not deem the alleged neglect to be willful

and signals DCS's necessarily limited level of concern over Maria's parenting ability.

¶17 As the juvenile court repeatedly found, Maria complied with the case plan and participated in reunification services with the understanding that, if she did well, M.P. would be returned to her.[4] Importantly, for several months, Maria and M.P. continued to build their relationship and bond through regular and consistent parenting time that lasted at least four to five hours per day for five to six days a week by the time of the severance trial. At no point did DCS seek to eliminate Maria's parenting time out of concern for M.P.'s wellbeing. Instead, DCS recommended that Maria "continue to engage in and benefit from services recommended in her Case Plan to ensure that she w[ould] be a safe and appropriate parent for [M.P.]"

¶18 After Maria participated in and benefited from months of reunification services,[5] DCS filed its petition for termination based solely on the neglect arising from M.P.'s malnourishment. Yet, at the same time, DCS did not oppose the juvenile court's affirmance of the case plan goal of family reunification as part of the dependency. By offering reunification services and not opposing the goal of family reunification, DCS made Maria's participation in and benefit from services relevant to a determination of her parental fitness under § 8-533(B)(2). *See Jessie D.*, 251 Ariz. 574, ¶ 18 (court may sever parent-child relationship "only in the most extraordinary circumstances, when all other efforts to preserve the relationship have failed" (emphasis omitted) (quoting *In re Maricopa Cnty. Juv. Action No. JA 33794*, 171 Ariz. 90, 91-92 (App. 1991))).

¶19 Section 8-533(B)(2) provides that termination is justified if a parent "has neglected" a child. The past-tense verb "neglected" establishes that a previous inability or unwillingness to provide for a child justifies termination. *See Jade K. v. Loraine K.*, 240 Ariz. 414, ¶¶ 12-20 (App. 2016) (past neglect may serve as basis for termination); *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, n.5 (App. 2011) (section 8-533(B)(2) directed at

[4]On a notice provided by DCS at the start of the dependency, Maria signed her name indicating she understood that she "must participate in all the services that DCS offers . . . to help reunite [her] with [M.P.]"

[5]Maria completed every service on her case plan, except for the psychological evaluation, which her criminal defense attorney had advised against. At the time of trial, however, Maria indicated that she was willing to complete the evaluation.

preventing future abuse based on past conduct), *abrogated on other grounds by Sandra R.*, 248 Ariz. 224, ¶ 15. Neglect is therefore considered proxy for parental unfitness. *Alma S.*, 245 Ariz. 146, ¶ 10. However, § 8-533(B)(2) does not require—it merely permits—termination upon a finding of neglect. This is because the parental unfitness requirement is also "circumscribed by constitutional considerations." *Sandra R.*, 248 Ariz. 224, ¶ 23; *see also Santosky*, 455 U.S. at 753 ("The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."). "Inherent in this requirement is a demonstrable connection between the ground for termination and the harm or risk of harm to a child." *Sandra R.*, 248 Ariz. 224, ¶ 24.

¶20 The question before us is whether a juvenile court may constitutionally decline to consider evidence of parental fitness simply because it has made a finding of neglect under § 8-533(B)(2). The answer must be no. "[A]s with any parental rights termination, *Santosky* requires a finding of parental unfitness as to a child by at least clear and convincing evidence." *Sandra R.*, 248 Ariz. 224, ¶ 24 (citing *Santosky*, 455 U.S. at 769-70). Implicit in such a finding is that the juvenile court consider all relevant evidence. *See* Ariz. R. Evid. 401 (evidence is relevant if it has any tendency to make a fact more or less probable and fact is of consequence). Put another way, a court cannot conduct proper factfinding on parental unfitness if it excludes from its analysis substantial pertinent evidence that contradicts that finding. Our supreme court has directed that no application of § 8-533(B)(2) "may circumvent this fundamental constitutional requirement" that parental unfitness be proven by clear and convincing evidence. *Sandra R.*, 248 Ariz. 224, ¶ 24. Exclusion of relevant evidence would do just that and, therefore, fails to comport with our due process principles. *See id.* ¶ 12; *Santosky*, 455 U.S. at 769 ("We hold that such a standard adequately conveys to the factfinder the level of subjective certainty about his factual conclusions necessary to satisfy due process.").

¶21 Here, the record shows that, at the time M.P. was hospitalized, Maria, who was twenty-one years old, was struggling with mental-health issues and postpartum depression, which led to a lack of eating. She was estranged from her family and in a relationship with Alonzo, who was physically and emotionally abusive, which further contributed to her depression. Maria did not realize that she was not getting adequate nutrition herself to breastfeed M.P.

¶22 By the time of the severance trial, however, Maria's heath had improved both physically and mentally. She testified to an improved relationship with her family, as well as a better understanding of "the cycle of abuse" and "healthy relationships." Her therapist stated that, since starting therapy, Maria had "demonstrated a lot of insight" into her relationship with Alonzo and "how that relationship impacted other aspects of her life." The therapist also recognized the "positive changes" Maria was making to herself, including working with a recovery coach and enrolling in additional programs. According to the therapist, Maria's "assertiveness," "confidence," and "increased ability for abstract thought and problem solving" had improved. Maria also saw a dietician, a primary care physician, and a lactation specialist, who helped her to understand what she needed to eat to be able to produce enough breastmilk.

¶23 "[T]he permanent severance of the parental relationship is a power of awesome magnitude that must be exercised with great rectitude and always cognizant of the fundamental rights at stake." *Alma S.*, 245 Ariz. 146, ¶ 26 (Bolick, J., concurring); *see also* 1970 Ariz. Sess. Laws, ch. 153, § 1. In a case like this, where the neglect largely consisted of Maria's ignorance related to her inability to produce adequate breastmilk and therefore nourish her child, which was compounded by her mental-health issues, Maria's subsequent education and conduct—encouraged and enabled by DCS's provision of reunification services—is undoubtedly relevant to an assessment of whether she had an "inability or unwillingness" to provide for M.P. § 8-201(25)(a); *see Sandra R.*, 248 Ariz. 224, ¶ 23 (extrapolation of parental unfitness "circumscribed by constitutional considerations"); *see also Pima Cnty. Juv. Action No. S-114487*, 179 Ariz. at 101.

¶24 We recognize the severity of the situation Maria had exposed M.P. to before she was admitted to the hospital—the record establishes that M.P. was severely malnourished. And issues of credibility are undoubtedly reserved for the juvenile court. *See Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶ 15 (App. 2014) ("[T]he juvenile court is in a much better position than this court to evaluate the effectiveness and impact of the services provided, as credibility determinations may be required to weigh the evidence presented."). But the question before us is not one of credibility. It is a question of whether DCS established by clear and convincing evidence that Maria was an unfit parent.

¶25 As explained above, neglect is statutorily defined in § 8-201(25)(a), but it is also a malleable concept based on the individual circumstances of the case. *Pima Cnty. Juv. Action No. S-111*, 25 Ariz. App. at 389. We disagree with our dissenting colleague that we are rewriting the

definition of neglect by interpreting it in this way. Instead, we are simply giving meaning to the necessarily broad language of § 8-201(25)(a), which is intended to reach numerous types of neglect, from willful to, as in Maria's case, unintentional. *See* § 8-201(25)(a); *Tanya K. v. Dep't of Child Safety*, 240 Ariz. 154, ¶ 5 (App. 2016) (we apply clear language of statute, giving meaning to all provisions and considering statute's context); *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, ¶ 14 (App. 2015) (primary purpose of severance statute is to protect health and safety of children). And the type of neglect alleged in this case is one that can reasonably be addressed, largely through education. *Cf. Alma S.*, 425 Ariz. 146, ¶ 10 (grounds listed in § 8-533(B) "are proxies for parental unfitness because" they "address the most serious instances of parental abuse, neglect, or incapacity").

¶26 It is axiomatic that we will not interpret a statute in such a way as to produce absurd results. *See Tanya K.*, 240 Ariz. 154, ¶ 5. Allowing the juvenile court to sever a parent's rights under § 8-533(B)(2) based solely on an unintentional act of neglect that was the result of the parent's ignorance and that has since been remedied would do just that. It would also eviscerate that parent's fundamental liberty interests in the care, custody, and control of his or her children. The legislature made us the judicial backstop to safeguard these rights. 1970 Ariz. Sess. Laws, ch. 153, § 1. We respect that great responsibility, also bearing in mind our role as interpreters of the law. Thus, we conclude the juvenile court must consider Maria's compliance with the court-ordered case plan and completion of reunification services when determining whether DCS met its burden of proof of establishing neglect. *See Kent K.*, 210 Ariz. 279, ¶ 36 ("Use of a heightened standard of proof at the fact-finding stage recognizes the severe consequence of an erroneous determination of unfitness: Error at this stage could lead to permanently extinguishing the relationship between a fit parent and his or her child.").

¶27 As noted above, the juvenile court considered Maria's compliance with the case plan and her benefit from services as part of its best-interests finding. Arguably, consideration of those matters as part of that analysis was proper. *See Alma S.*, 245 Ariz. 146, ¶ 1 (in making best-interests determination, courts must consider "totality of the circumstances existing at time of severance," including parent's rehabilitation). But we question whether consideration of a parent's benefit from services under the best-interests analysis is sufficient. The best-interests analysis can be proven in two ways—by showing that the child will benefit from severance or will be harmed if severance is denied. *Alma S.*, 245 Ariz. 146, ¶ 13. The benefit prong can be satisfied by a showing that the child is adoptable or in a more stable setting. *See Dominique M.*, 240

Ariz. 96, ¶ 8. Such a finding, therefore, requires no consideration of a parent's success in services, even if significant and highly commendable. Indeed, as shown below, the best-interests requirement was met in this case without consideration of Maria's participation in services. A parent's hard work to remedy his or her child's removal must be part of the termination calculus, particularly when DCS encourages the parent to participate for return of the child. *See Pima Cnty. Juv. Action No. S-114487*, 179 Ariz. at 101.

¶28 In any event, the statutory grounds for a termination finding requires a separate analysis with a heightened burden of proof—clear and convincing evidence. *Sandra R.*, 248 Ariz. 224, ¶ 12; *see also Kent K.*, 210 Ariz. 279, ¶ 24 ("Application of the proper standard of proof in a termination hearing is a critical component of the 'fundamentally fair procedures' necessary to satisfy due process."). Such consideration as part of a best-interests determination, with a preponderance standard of proof, therefore does not pass "constitutional muster." *Sandra R.*, 248 Ariz. 224, ¶¶ 12, 24 (citing *Santosky*, 455 U.S. at 769-70).

¶29 In sum, the juvenile court erred in failing to consider Maria's participation in and benefit from services—which were offered by DCS as part of the related dependency proceeding with a case plan goal of family reunification—in its finding of parental unfitness under § 8-533(B)(2). It is important to note that we are not suggesting reunification services or a case plan of family reunification are required, even in cases of unintentional neglect. We simply conclude that when DCS seeks to terminate a parent's rights based solely on neglect while also offering services as part of a court-ordered family reunification plan, the parent's performance in and benefit from those services must be considered as part of the court's determination of parental unfitness. We therefore vacate the court's termination ruling and remand for the court to reconsider whether DCS established by clear and convincing evidence the statutory ground for termination. However, because the parties' best-interests arguments are unaffected by our remand and will likely recur in a potential subsequent appeal, we address them.

¶30 As stated above, termination is in a child's best interests if: "(1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Alma S.*, 245 Ariz. 146, ¶ 13. Here, the juvenile court found that M.P. "would benefit from a termination of her parents' rights as she would be freed for adoption" and that she "would be harmed if termination is denied notwithstanding the bond she has with each of her parents." In part, the court explained its primary concern was "ensuring

that [M.P.] has stability and security" and "M.P.'s need for structure and stability outweighs her bond with her parents."

¶31 At bottom, Maria and M.P. both seem to request that this court reweigh the evidence on appeal. This we will not do. *Oscar O.*, 209 Ariz. 332, ¶ 4. Instead, we review the record for reasonable evidence supporting the juvenile court's findings. *Brionna J.*, 255 Ariz. 471, ¶¶ 30-31.

¶32 M.P. is a healthy two-year-old child and is adoptable. At the time of the severance trial, she was placed with her maternal aunt, who was meeting all of her needs and was willing to adopt M.P. *See Dominique M.*, 240 Ariz. 96, ¶ 8 (termination benefits child if child is adoptable or more stable in existing placement). The caseworker testified that M.P. was bonded with her aunt but, given her age, M.P. "would be able to bond with other families should that need to happen." The caseworker had also identified another family member, the maternal grandmother, who was willing to adopt M.P. Because the juvenile court's findings of a benefit to M.P. are supported by the record, we cannot say it erred in concluding that termination was in M.P.'s best interests.[6] *See Brionna J.*, 255 Ariz. 471, ¶¶ 30-31.

Disposition

¶33 We vacate the juvenile court's termination ruling and remand for the court to consider whether DCS established Maria's parental unfitness under § 8-533(B)(2), in light of her completion of reunification services.

S K L A R, Judge, dissenting:

¶34 Today's opinion rewrites Arizona law. Juvenile courts considering termination for neglect under A.R.S. § 8-533(B)(2) must now consider the parent's "participation in and benefit from services" provided by DCS. The statutory scheme does not require them to do so. Rather, it provides that neglect is "sufficient to justify the termination of the

[6]Because reasonable evidence supports the juvenile court's benefit finding, we need not address its additional finding of a harm to M.P. if the termination were denied. *See Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 16 (2016) ("Framed in the disjunctive, this standard permits a finding of best interests based on either a benefit to the child from severance or some harm to the child if severance is denied.").

parent-child relationship" if termination is in the child's best interests. Under the majority's opinion, "sufficient" now means "necessary."

¶35 The majority justifies this rewrite by framing it as an application of due process. It is not. As our supreme court has concluded, a parent's due-process rights are satisfied when a juvenile court finds, by clear and convincing evidence, that a statutory ground for termination exists. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, ¶ 9 (2018). The majority also reasons that neglect "is a malleable concept based on the circumstances." But "neglect" is defined by statute. A.R.S. § 8-201(25). That definition includes a parent's "inability or unwillingness" to provide a child with food or medical care. And past neglect supports termination. § 8-533(B)(2).

¶36 Properly applying the law, the evidence supports the juvenile court's conclusion that Maria neglected M.P. by allowing her to starve. The evidence also supports the court's conclusion that termination of Maria's parental rights is in M.P.'s best interests. This is true even after consideration of Maria's rehabilitation. Although reasonable minds could disagree with the court's weighing of the evidence, I find no error in its analysis. I therefore respectfully dissent.

I. Background on due-process considerations in termination proceedings based on neglect

¶37 As the majority explains, a juvenile court must undertake two inquiries before terminating parental rights. First, the court must find by clear and convincing evidence the existence of at least one statutory ground set forth in Section 8-533(B). *Sandra R. v. Dep't of Child Safety*, 248 Ariz. 224, ¶ 12 (2020); *see also* A.R.S. § 8-537(B) ("The court's findings with respect to grounds for termination shall be based on clear and convincing evidence."). If such a ground exists, the court must also find by a preponderance of the evidence that termination is in the child's best interests. *Sandra R.*, 248 Ariz. 224, ¶ 12. When a court makes those findings, it is "sufficient to justify the termination of the parent-child relationship." § 8-533(B).

¶38 This case concerns one of the statutory grounds, Section 8-533(B)(2), which applies when the "parent has neglected or willfully abused a child." There is no suggestion that Maria willfully abused M.P., so the issue is whether she "neglected" her. As relevant here, "neglect" means a parent's "inability or unwillingness . . . to provide [a] child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child's

health or welfare." § 8-201(25)(a). And because the legislature in Section 8-533(B)(2) used the words "has neglected," past neglect is sufficient to satisfy the standard. *See Jade K. v. Loraine K.*, 240 Ariz. 414, ¶¶ 12-20 (App. 2016). When a court makes a finding of neglect, that is "sufficient to justify the termination of the parent-child relationship," provided that doing so is also in the child's best interests. § 8-533(B).

¶39 This determination, like the determination of any statutory ground, involves a constitutional dimension, as it concerns parental fitness. *See Alma S.*, 245 Ariz. 146, ¶ 9. Thus, consistent with due process, the United States Supreme Court requires courts to make findings of a statutory ground by clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745, 769 (1982). This requirement is among the "fundamentally fair procedures" that are "necessary to satisfy due process." *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 24 (2005) (quoting *Santosky*, 455 U.S. at 754).

¶40 More broadly, due process prevents a court from terminating a parent's rights "unless the parent is unfit as a matter of law." *Brionna J. v. Dep't of Child Safety*, 255 Ariz. 471, ¶ 19 (2023). As applied in Arizona, this requires juvenile courts to "evaluat[e] the facts of a case through the lens" of Section 8-533(B). *Id.* When they do so, they "provide[] the appropriate due process protections." *Id.* As the Arizona Supreme Court has explained, this is because the grounds laid out in that section are "synonymous with parental unfitness." *Jessie D. v. Dep't of Child Safety*, 251 Ariz. 574, ¶ 8 (2021) (quoting *Jessica P. v. Dep't of Child Safety*, 249 Ariz. 461, ¶ 31 (App. 2020), *vacated on other grounds by* CV-20-0241-PR, 2020 WL 8766053, at *1 (Ariz. Dec. 15, 2020)); *see also Alma S.*, 245 Ariz. 146, ¶ 10 (providing that most Section 8-533(B) grounds are "proxies for parental unfitness because they demonstrate a parent's inability 'to properly parent his/her child'" (quoting *Roberto F. v. Ariz. Dep't of Econ. Sec.*, 232 Ariz. 45, ¶ 42 (App. 2013))).

II. Due process does not require juvenile courts, in neglect cases, to consider the broad scope of evidence identified by the majority

¶41 Consistent with our supreme court's case law, the juvenile court evaluated the termination issue under Section 8-533(B). *See Jessie D.*, 251 Ariz. 574, ¶ 8. This court may not contradict the supreme court's conclusion that a court's compliance with that statute satisfies due process. *Id.*; *City of Phoenix v. Leroy's Liquors, Inc.*, 177 Ariz. 375, 378 (App. 1993) ("[W]e are bound by decisions of the Arizona Supreme Court and have no authority to overrule, modify, or disregard them."). Nevertheless, the majority concludes that due process requires more. Under its opinion, juvenile courts determining whether a statutory ground exists must also

consider "all relevant evidence" concerning parental fitness. As applied here, that means Maria's "participation in and benefit from services."

¶42 But the boundaries of "parental fitness" are not for the court to determine. The legislature has already determined them, as set forth in Section 8-533(B). Any other definition amounts to rewriting the statute to substitute the court's own boundaries. We may not do so. *Orca Commc'ns Unlimited, LLC v. Noder*, 236 Ariz. 180, ¶ 11 (2014) ("It is not the function of the courts to rewrite statutes." (quoting *City of Phoenix v. Butler*, 110 Ariz. 160, 162 (1973))). Indeed, under the majority's view, the categories listed in Section 8-533(B) simply function as necessary conditions for termination, though the statute makes them "sufficient."

¶43 As support for its view, the majority relies on *Sandra R. v. Dep't of Child Safety*, 248 Ariz. 224 (2020). However, the constitutional issues implicated in *Sandra R.* are not present here. That case also involved a termination proceeding under Section 8-533(B)(2), but with an important distinction. In that case, the child who was the subject of the proceeding had not been the subject of abuse or neglect. *Sandra R.*, 248 Ariz. 224, ¶¶ 8-9 (explaining that child's sibling had been abused). When that occurs, *Sandra R.* requires juvenile courts to find "by clear and convincing evidence, that there is a risk of harm" to the child at issue. *Id.* ¶ 17.

¶44 This requirement is consistent with a prior line of cases that required a "constitutional nexus" between the abuse of the child who is subject to the termination proceeding and another child. *See, e.g.*, *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, ¶ 16 (App. 2011), *overruled in part by Sandra R.*, 248 Ariz. 224, ¶¶ 15-17; *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, n.3 (App. 2005), *overruled in part by Sandra R.*, 248 Ariz. 224, ¶¶ 15-17. I am unaware, however, of any case that imposes a similar requirement for circumstances involving abuse or neglect of the child at issue in the same case.

¶45 The majority glides past this distinction, pointing to language in *Sandra R.* that due process requires "a demonstrable connection between the ground for termination and the harm or risk of harm to a child." 248 Ariz. 224, ¶ 24. But the connection between the ground for termination and "the harm" necessarily exists where the child at issue has been abused or neglected. And *Sandra R.* uses the word "or" between "the harm" and "risk of harm." 248 Ariz. 224, ¶ 24. Thus, either is sufficient to satisfy due process. Because the juvenile court found harm here, it did not need to separately address risk of harm.

¶46 Aside from *Sandra R.*, the majority cites no case law to suggest that due process requires the analysis that juvenile courts must now undertake. Nor have I found any case to impose such a requirement. I acknowledge, however, that one justice on our supreme court appears to support doing so. *Alma S.*, 245 Ariz. 146, ¶ 30 (Bolick, J., concurring) ("A glaring omission from the statute, from a due process perspective, is its failure to expressly require consideration of a parent's rehabilitation where the statutory ground for termination does not necessarily suggest permanent unfitness."). That may be good public policy. But unless a majority of our supreme court agrees, I cannot conclude that due process requires it.

¶47 I recognize that in some instances, due process requires the state to offer rehabilitation services. *Jessie D.*, 251 Ariz. 574, ¶ 18. I offer no opinion on whether doing so was required here. The services were offered, so that issue is irrelevant. And even if DCS must provide services, it does not follow that due process also requires courts to consider the results of those services in analyzing the applicability of a statutory ground under Section 8-533(B)(2). Rather, unless the applicable ground expressly requires courts to do so, it is sufficient to address this issue in the best-interests inquiry. *Alma S.*, 245 Ariz. 146, ¶ 15. As I detail below, the juvenile court did precisely that.

¶48 Nor am I persuaded that DCS prejudiced Maria by offering services then seeking termination, as the majority suggests and as M.P. has argued. Early in the case, DCS on multiple occasions proposed a concurrent case plan goal of reunification and severance. Thus, Maria was on notice that DCS might seek to terminate her parental rights, though the court did set a case plan of reunification that DCS followed.

III. The majority's conclusions rewrite the statutory scheme for terminating parental rights due to neglect

¶49 To some extent, the majority also grounds its conclusion in the view that "neglect is a malleable concept based on the circumstances," which include a parent's benefit from services. But because "neglect" is a statutorily defined term, we cannot reach such a conclusion without engaging in statutory construction. The majority does very little. And to the extent it purports to, it violates multiple rules of statutory construction. Specifically, the majority: (1) rewrites the requirements for terminating parental rights due to "neglect"; (2) ignores the statutory context, which does not make subsequent education and conduct relevant to a

determination of "neglect"; and (3) overlooks Section 8-533's statutory history.

A. The statutory text does not support the majority's analysis

¶50 As required in any case of statutory construction, I begin my analysis with the text. *Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137, ¶ 15 (2024) ("We look first to the language of the provision, for if the statutory language is clear, judicial construction is neither required nor proper." (cleaned up)). As the majority does not dispute, Section 8-533(B)(2) reads "has neglected," so past neglect can support termination.

¶51 The majority, however, suggests that the statutory definition of "neglect" requires consideration of Maria's "subsequent education and conduct." In support, it cites no statutory language. Instead, it relies on a fifty-year-old case, *In re Pima County Juvenile Action No. S-111*, 25 Ariz. App. 380, 389 (1975). That case does say, "The expression 'neglect' has no fixed meaning; its meaning varies as the context of circumstances changes." *Id.* But in the very next sentence, it cites a legislative definition of "neglected." *Id.* That is the essence of a fixed meaning, even if it may be difficult to apply in some cases. And since then, the legislature has refined the definition of "neglect" to be even more precise. § 8-201(25)(a).

¶52 That definition unambiguously does not require consideration of a parent's subsequent education and conduct. It looks instead to whether a parent's "inability or unwillingness" to provide basic needs placed the child's "health or welfare" at substantial risk. § 8-201(25)(a). By reading an additional requirement into that definition, the majority improperly rewrites it. The majority also rewrites Section 8-533(B)(2) by adding the requirement that courts consider subsequent conduct. *See Brionna J.*, 255 Ariz. 471, ¶ 27 ("Thus, to the extent that the court of appeals imposed an additional showing of parental unfitness outside § 8-533(B)(8)(c)'s elements, it misinterpreted the statute.").

B. The majority ignores the broader statutory context

¶53 The broader statutory context also reinforces the understanding that a court may find "neglect" without considering a parent's subsequent conduct. *S. Ariz. Home Builders Ass'n v. Town of Marana*, 254 Ariz. 281, ¶ 31 (2023) (requiring courts to consider "broader statutory context, unless the legislature directs us to do otherwise").

¶54 Unlike Section 8-533(B)(2), many of the grounds for termination expressly require courts to consider matters that arose after the conduct that resulted in the child being removed. Among these is subsection (B)(3), which concerns mental illness, substance abuse, and similar issues. It requires consideration of whether "there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." Subsection (B)(4), which concerns incarcerated parents, is another example. It requires courts to consider "the unfitness of that parent to have future custody and control of the child" or "if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years." Yet another example is subsection (B)(10), which concerns parents who have had their rights previously terminated under certain circumstances. It requires consideration of whether the parent is "currently unable to discharge parental responsibilities due to the same cause."

¶55 For one of the most common grounds for termination, the statute expressly requires courts to consider a parent's participation in services. That ground, sometimes referred to as "time in care," is set forth in subsection (B)(8). That subsection includes three categories. Among these is subsection (B)(8)(b), which concerns a child under three years old who has been in an out-of-home placement for six months or more, where the parent "has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement." In evaluating this issue, courts must consider the "refusal to participate in reunification services offered by [DCS]." *See also* § 8-533(B)(11) (allowing termination after child returned home, then removed again, where agency "made diligent efforts to provide appropriate reunification services").

¶56 When the legislature includes a requirement in some contexts but not others, we must effectuate that distinction. In Latin, the rule is *expressio unius est exclusio alterius*—the expression of one item implies the exclusion of others. *City of Surprise v. Ariz. Corp. Comm'n*, 246 Ariz. 206, ¶ 13 (2019). As applied here, the legislature's expression of rehabilitation requirements for some grounds under Section 8-533(B) implies their exclusion in the remaining grounds, such as subsection (B)(2). This conclusion is further reinforced by other statutory grounds that also allow termination based on past conduct. *See, e.g.*, § 8-533(B)(4) (allowing termination where parent has been convicted of felonies that "prove the unfitness of that parent to have future custody and control of the child"); (B)(12) (allowing termination where parent "committed a sexual assault against the petitioning parent and the child was conceived as a result of the sexual assault").

¶57 In its sole attempt to engage in statutory construction, the majority reasons that this distinction among the statutory grounds would produce an absurd result. I agree that the result is harsh. But it is not absurd. *See Members of Bd. of Educ. Of Pearce Union High Sch. Dist. v. Leslie*, 112 Ariz. 463, 465 (1975) ("[C]ourts must observe the natural import of the language used and are not free to extend the meaning though the result may be harsh, unjust or mistaken policy."). The legislature deemed certain categories of conduct sufficient to terminate parental rights regardless of subsequent conduct. It is not absurd to include neglect among these categories, even if we might prefer a more forgiving policy.

¶58 At any rate, even if the result were absurd, the majority is not free to add new statutory requirements. It must still ground its analysis in the statutory language. *See Welch v. Cochise Cnty. Bd. of Supervisors*, 251 Ariz. 519, ¶ 15 (2021) (requiring use of "other interpretive tools" when plausible interpretation of statute leads to absurd results). It has not done so. The statutory scheme is unambiguously not susceptible to the construction the majority gives it.

C. The majority's reading is at odds with the statutory history

¶59 Even if the definition of "neglect" were ambiguous, the tools for statutory construction counsel against the majority's view. Among those tools is the statute's "historical background." *Planned Parenthood*, 257 Ariz. 137, ¶ 17. This includes the "historical sequence" giving rise to the current statutory scheme. *Roberts v. State*, 253 Ariz. 259, ¶ 25 (2022).

¶60 Here, the statutory history is illuminating. In 1997, Section 8-533(B) was amended to require that, regardless of the ground for termination alleged, courts must consider "the availability of reunification services to the parent and the participation of the parent in these services." 1997 Ariz. Sess. Laws, ch. 222, § 1 (H.B. 2255). The following year, though, the legislature amended the statute again, this time to remove that language. 1998 Ariz. Sess. Laws, ch. 276, § 1 (H.B. 2645). Since then, availability and participation in reunification services has been relevant only where required by the subsection that supplied the alleged ground for termination. *Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, ¶ 9 (App. 1999).

¶61 The majority's interpretation reverts our law back to 1997, in spite of the 1998 amendment. *See Planned Parenthood*, 257 Ariz. 137, ¶ 31 ("We do not interpret the act to negate its own purpose."). Now, even where the statutory ground says nothing about participation in

reunification services, courts must consider it at the first step of the inquiry. I cannot agree. In my view, there is no basis for the majority's conclusion that "neglect" should be rewritten as "malleable" enough to include a parent's rehabilitation efforts.

IV. Sufficient evidence supports the juvenile court's conclusion

¶62 Having concluded that neither due process nor the rules of statutory construction support the majority's approach, I turn next to application of the statutory text. Our standard of review requires us to affirm the juvenile court if its conclusion is supported by reasonable evidence, and if the legal conclusions are not clearly erroneous. *Brionna J.*, 255 Ariz. 471, ¶¶ 30-31.

A. The evidence supports the juvenile court's conclusion that Maria neglected M.P.

¶63 I first address the juvenile court's conclusion that Maria neglected M.P. As noted, the definition of neglect includes a parent's "inability or unwillingness . . . to provide [a] child with . . . food . . . or medical care" if it "causes substantial risk of harm to the child's health or welfare." § 8-201(25)(a).

¶64 Here, when Maria took seven-month-old M.P. to the hospital in September 2023, M.P. weighed only seven pounds and her brain was atrophied. Describing her appearance, a detective testified, "Her eyes were closed. Her face appeared sunken. Her eyes appeared sunken. Her cheek bones were sticking out. . . . And it just looked like skin over bones." A treating physician recalled the "profoundness of the malnutrition and failure-to-thrive situation," which resulted in M.P. initially being treated in the intensive care unit. And a DCS investigator described her as "resembl[ing] pictures from World War II of children from Auschwitz of being starved to death."

¶65 Given these circumstances, there was clear and convincing evidence of neglect. Maria failed to provide M.P. with food or timely medical care for malnutrition. That failure profoundly damaged M.P.'s health. Thus, the juvenile court did not err in concluding that Maria had neglected M.P.

B. The evidence supports the juvenile court's best-interests findings

¶66 I turn next to the best-interests findings. In making those findings, the juvenile court extensively discussed Maria's participation in services, including the benefits she received. This was the appropriate analytical step for doing so. *See Alma S.*, 245 Ariz. 146, ¶ 15 ("We recognize that although the focus of the best-interests inquiry is on the child, courts should consider a parent's rehabilitation efforts as part of the best-interests analysis."). The majority notes that this may not have been necessary, as the best-interests requirement can be satisfied in several ways. But we need not consider the implications of declining to consider a parent's rehabilitation at this stage, given that the court did so here.

¶67 Maria benefited from the services she received. She displays improved knowledge about child development and an awareness of how her prior care for M.P. was inadequate. Of the services offered, the only one that she did not participate in was a psychological evaluation. And her refusal to do so was on her counsel's advice due to a related criminal investigation, which subsequently concluded. By the time of trial, she was willing to undergo the evaluation.

¶68 Maria also benefited from therapy, including developing improved coping skills, safety planning, and support systems. Her physical condition and behavior improved, and she developed a proper diet. These improvements likely helped her overcome her mental-health struggles, including postpartum depression, which contributed to her neglect of M.P.

¶69 M.P.'s condition has also improved significantly. As of the trial date, she was in the 80th percentile for height and weight, and she was meeting developmental milestones. Multiple specialists no longer deemed it necessary to treat her. And Maria has been extensively involved in M.P.'s life as these improvements occurred, through lengthy and frequent supervised visits. Maria characterized herself as M.P.'s primary caregiver. She has developed a strong bond with M.P. All of this evidence counsels against finding termination in M.P.'s best interests. *See Alma S.*, 245 Ariz. 146, ¶ 13.

¶70 Other evidence, however, pointed to a contrary conclusion. The juvenile court's chief concern was that Maria would be unable and unwilling to provide a safe home for M.P. given the history of domestic violence from Alonzo, M.P.'s father. Indeed, Maria acknowledged that when M.P. was at the hospital, Maria had lied to a Tucson Police

Department detective to protect Alonzo. She had also allowed M.P. to have contact with him, despite his having been arrested for attempted strangulation and a court order prohibiting contact. He appeared to have been living in an apartment with Maria when M.P. was taken to the hospital. Alonzo acknowledged that he had stayed with her "[s]ometimes."

¶71 Even after services had been provided, concerns persisted that Maria and Alonzo would resume a relationship. This was a reasonable concern because Alonzo had not been working to correct his violent tendencies. In his testimony, Alonzo likewise seemed to suggest that he wanted to resume a relationship with Maria, though she testified that she was not open to that possibility. Weighing the evidence, the juvenile court was unconvinced that M.P. would be "safe in [Maria's] care until she can determine those individuals who pose a risk of harm to the child's safety and well-being—most importantly, Father." Also counseling in favor of termination is that M.P. was adoptable.

¶72 In addition, there were concerns about the timeliness of Maria's explanations that she had neglected M.P. due to mental-health issues. Maria did not raise these explanations to DCS until after it had changed the case plan to termination. She testified that this was because she "did not realize at the time" that she had been experiencing depression. She also testified that she did not realize she had been getting insufficient nutrition to breastfeed M.P., which caused her malnutrition.

¶73 Under these circumstances, whether termination was in M.P.'s best interests was a close question. I am not sure I would have weighed the evidence as the juvenile court did. Maria's self-improvement was remarkable, as was the improvement in her parenting abilities. But as an appellate court, we owe deference to the juvenile court, which observed the proceedings and was able to weigh the witnesses' credibility. We may not reweigh the evidence. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002). Under our standard of review, I cannot find any error in that court's conclusions. I therefore believe we must affirm the termination of Maria's parental rights. I respectfully dissent.