

In the Supreme Court of the United States

M.W.,

Applicant,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, N.G., AND O.A.,

Respondents.

*On Application for a Stay of the Order
Issued by the Superior Court of
California, County of Los Angeles*

**BRIEF AMICUS CURIAE OF AMERICANS UNITED FOR LIFE
IN SUPPORT OF APPLICANT'S EMERGENCY APPLICATION
FOR ADMINISTRATIVE STAY AND
STAY PENDING PETITION FOR CERTIORARI**

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STATEMENT OF INTEREST OF *AMICUS CURIAE*¹

Americans United for Life (“AUL”) is a national pro-life legal advocacy organization. Founded in 1971, before the Supreme Court’s decision in *Roe v. Wade*, 410 U.S. 113 (1973), AUL has committed over fifty years to protecting human life from conception to natural death. Supreme Court opinions have cited briefs and scholarship authored by AUL attorneys. *See, e.g., Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 271 (2022) (citing Clarke D. Forsythe, *Abuse of Discretion: The Inside Story of Roe v. Wade* 127, 141 (2012)). AUL is an expert on constitutional law and pro-life public policy, tracking and analyzing bioethics cases across the nation and publishing life-affirming model legislation, including legislation that ensures informed consent before a patient uses artificial reproductive technology. *Life Litigation Reports*, Ams. United for Life, <https://aul.org/topics/life-litigation-reports/> (last visited Sept. 10, 2026); *Pro-Life Model Legislation and Guides*, Ams. United for Life, <https://aul.org/law-and-policy/> (last visited Sept. 10, 2026). AUL advocates for the human dignity and legal rights of surrogate mothers and children born of artificial reproductive technology.

SUMMARY OF ARGUMENT

It is “the rare case in which a child’s maternity is in issue.” *Johnson v. Calvert*, 851 P.2d 776, 779 (Cal. 1993) (in banc). Yet, maternity and parental rights are core issues within this gestational surrogacy case.

¹ No party’s counsel authored this brief in whole or in part. No person other than *Amicus Curiae* and its counsel contributed any money to fund the preparation or submission of this brief.

Here, “[t]he Commissioning Parties, a California couple, executed a surrogacy contract with M.W., a single mother and registered nurse from Anchorage, Alaska.” Appl.3. At twenty weeks gestation, Baby G. received a medical diagnosis for hypoplastic left heart syndrome, a condition that “[u]ntreated, . . . is fatal within days of birth.” Appl.3. However, “a well-known, proven series of procedures exists, beginning with a first surgery within days of birth, that offers Baby G. a near-100% chance of survival beyond his first year.” Appl.3–4. Nevertheless, the Commissioning Parties requested an abortion of Baby G., which M.W. refused. Appl.4–5.

The Commissioning Parties filed a parentage proceeding in Los Angeles Superior Court in California, notwithstanding the surrogacy contract’s forum selection clause that designated an Alaska forum, and the Commissioning Parties subsequently requested the proceeding to be *ex parte*. Appl.5. The Los Angeles Superior Court claimed personal jurisdiction over M.W., disregarding the improper service upon M.W. and M.W.’s special appearance that she limited to contesting jurisdiction. Appl.5–7.

Baby G. was born in Texas so he could receive life-saving surgery since the necessary medical treatment was unavailable in Alaska, Appl.4, and a Texas court order ensured he received life-saving care upon his birth, Appl.9. However, Baby G. remains in “critical” condition, and “[t]he Commissioning Parties . . . continue to challenge the order requiring life-saving care.” Appl.10. On top of that, “the Texas court granted full faith and credit to the California judgment and dismissed M.W. from the proceeding with prejudice,” recognizing that the Los Angeles Superior

Court's decision stripped M.W. of her fundamental right to be informed about and make medical decisions for Baby G. Appl.10.

Amicus agrees with M.W. that the Los Angeles Superior Court's exercise of purported personal jurisdiction over M.W. "offend[s] traditional notions of fair play and substantial justice" under the Due Process Clause. *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982) (citation modified); *see also* Appl.17–19 (arguing the "findings of consent to jurisdiction offend due process"). *Amicus* writes separately to provide this Court background on the parentage and parental rights issues within surrogacy practices. *Amicus* then elaborates upon the irreparable harm to M.W.'s parental rights, *see* Appl.21–23, and characterizes the due process merits issue in a different manner: whether the Los Angeles Superior Court's decision deprives M.W. of her fundamental parental right to care for her infant without procedural due process.

The Constitution protects the fundamental rights of parents to direct the care and upbringing of their children. The law presumes that a birth mother is the legal mother of a child, and absent termination of her parental rights, the birth mother has a fundamental right to direct the care and upbringing of her child. The Los Angeles Superior Court's decision denied M.W. due process when it terminated her parental rights, as shown by an application of the procedural due process test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Under the *Mathews* test, "a court evaluates (A) the private interest affected; (B) the risk of erroneous deprivation of that interest through the procedures used; and (C) the governmental interest at

stake.” *Nelson v. Colorado*, 581 U.S. 128, 135 (2017) (citing *Mathews*, 424 U.S. at 335). Accordingly, the Los Angeles Superior Court’s decision violated M.W.’s Fourteenth Amendment right when it terminated her fundamental right to direct the care and upbringing of her infant without procedural due process.

Amicus urges the Supreme Court to grant M.W.’s application.

ARGUMENT

I. Surrogacy Raises Significant Bioethical and Legal Questions About Parentage and Parental Rights.

Surrogacy is “[t]he process of carrying and delivering a child for another person.” *Surrogacy*, Black’s Law Dictionary 1752 (12th ed. 2024). A surrogacy contract can be commercial, which permits “the surrogate and often a third party stand to gain financially from the birth of the child,” or it can be altruistic, which “may involve payment to the surrogate to cover expenses associated with the pregnancy and birth, but neither she nor a third party is paid a fee for the service itself.” *In re Paternity of F.T.R.*, 833 N.W.2d 634, 657 n.10 (Wis. 2013) (Abrahamson, C.J., concurring). Of the two types, a commercial surrogacy—which was the type of surrogacy the parties contracted for in this case, Appl.5—is more bioethically contentious since it poses a heightened risk of “‘commodify[ing]’ women and children by treating the female reproductive capacity and the children born of gestational surrogacy arrangements as products that can be bought and sold.” *Johnson*, 851 P.2d at 792 (Kennard, J., dissenting).

Beyond the financial aspect, surrogacies fall into two general categories: traditional and gestational. *Surrogacy*, Black's Law Dictionary 1752.² This case involves a gestational surrogacy. Appl.3. As the Wisconsin Supreme Court describes in *In re Paternity of F.T.R.*:

In a traditional surrogacy, the surrogate is the genetic mother of the child and is artificially inseminated with the sperm of the intended father or a sperm donor. In a gestational surrogacy, the surrogate is not genetically related to the child; instead sperm is taken from the father (or from a donor) and an egg is taken from the mother (or from a donor), fertilization happens outside the womb (called *in vitro* fertilization), and the fertilized embryos are then implanted into the surrogate mother's uterus.

833 N.W.2d at 643 (citation modified). Gestational surrogacy raises complex legal questions about parentage and parental rights as “relevant parties could include the genetic mother, genetic father, intended parents, the surrogate, and the surrogate's husband.” *Id.* at 644.

State legislatures have taken different approaches in addressing surrogacy's bioethical and legal complexities when they have enacted surrogacy statutes. *See In re Baby*, 447 S.W.3d 807, 819 (Tenn. 2014). Some states declare surrogacy contracts to be void for being against public policy. *E.g.*, Ind. Code Ann. §§ 31-20-1-1 to -3 (West 1997). Some states permit gestational surrogacy but declare traditional surrogacy contracts as void. *E.g.* N.D. Cent. Code §§ 14-18-05, -08 (2005). And some states permit both gestational and traditional surrogacy but regulate the practices. *E.g.*, Wash. Rev. Code Ann. §§ 26.26A.700 to .730 (West 2019).

² In practice, these categories are much more nuanced since there are many permutations of surrogacy.

Surrogacy is a complex blend of family, contract, and property law.³ “In the vast majority of cases, state law determines the final outcome” of surrogacy’s complex legal questions. *Lehr v. Robertson*, 463 U.S. 248, 256 (1983). “In some cases, however, this Court has held that the Federal Constitution supersedes state law and provides even greater protection for certain formal family relationships” since there is a “paramount interest in the welfare of children and . . . the rights of the parents are a counterpart of the responsibilities they have assumed.” *Id.* at 257. This is one of those exceptional cases because of the egregious deprivation of M.W.’s fundamental right to parent her child without procedural due process.

II. The Constitution Protects a Birth Mother’s Fundamental Right to Direct Her Minor Child’s Medical Treatment.

The United States has a rich legal history of protecting parental rights as a fundamental liberty guaranteed by the Fourteenth Amendment’s Due Process Clause. This liberty includes the right to direct medical treatment for one’s minor child.

Ultimately, the goals of a surrogacy contract must yield to the requirements of constitutional due process, which safeguards a birth mother’s fundamental right to parent her infant. Parental rights caselaw recognizes the presumption that a birth mother is a legal parent of a minor child. *Lehr*, 463 U.S. at 260 n.16. In a gestational surrogacy, although the surrogate mother does not have a genetic link (*i.e.*, does not

³ To be clear, “children are not property,” yet a surrogacy contract treats a child as a good for sale. *Johnson*, 851 P.2d at 796 (Kennard, J., dissenting). Regardless of the legal characterization, a child born of surrogacy—including Baby G. in this case—is entitled to the full protection of federal law. 1 U.S.C. § 8; *see also* Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd (establishing a right to medical screening and, if necessary, stabilization for an emergency medical condition).

contribute the egg) to the child, the surrogate mother is indisputably the child's birth mother. Furthermore, she possesses a unique, irreplaceable physiological tie to the child by nurturing and caring for the child during pregnancy. *See* Mahesh Chandra & Ansar Ahmad Paray, *Natural Physiological Changes During Pregnancy*, 97 Yale J. Biology & Med. 85, 85 (2024). Accordingly, a surrogate mother is entitled to the presumption that she is the legal parent of an infant absent proper termination of her parental rights. Limiting a surrogate mother's contact with and ability to make medical decisions for her infant thus causes irreparable harm to the surrogate mother's parental rights.

A. The Constitution Protects the Fundamental Rights of Parents to Direct the Care—including Medical Care—of Their Minor Children.

Western legal tradition has long recognized parental rights as a natural right. Legal philosopher John Locke wrote, “parents in societies, where they themselves are subjects, retain a power over their children, and have as much right to their subjection as those who are in the state of nature.” *Second Treatise of Government*, ch. VI, § 71 (Ian Shapiro ed., 2003). Sir William Blackstone stated, “[t]he duty of parents to provide for the maintenance of their children is a principle of natural law . . . laid on them not only by herself, but by their own proper act, in bringing them into the world,” and from this duty is a corresponding “power of parents over their children” 1 *Commentaries*, *435, *440.

American law adopted natural law's protection of parental rights as part of “this Nation's history and tradition.” *Smith v. Org. of Foster Fams. for Equal. &*

Reform, 431 U.S. 816, 845 (1977) (citation omitted). In *Commentaries on American Law*, James Kent noted, “[t]he wants and weaknesses of children render it necessary that some person maintain them, and the voice of nature has pointed out the parent as the most fit and proper person.” Vol. 2, p. 159 (O. Halsted ed., 1827). The Supreme Court recognized in *Wisconsin v. Yoder*, “[t]he history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.” 406 U.S. 205, 232 (1972).

Parental rights are a fundamental liberty safeguarded by the Fourteenth Amendment’s Due Process Clause. In fact, “[t]he liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality). The Supreme Court highlighted in *Washington v. Glucksberg* that “[i]n a long line of cases, [the Supreme Court] ha[s] held that . . . the ‘liberty’ specially protected by the Due Process Clause includes the right[] . . . to direct the education and upbringing of one’s children.” 521 U.S. 702, 720 (1997) (citing *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925)). As such, “it is cardinal with [the Court] that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

A birth mother’s maternal rights are firmly established by the time of the baby’s birth. During pregnancy, the birth mother exercises the “custody, care and nurture” of the unborn child, *see id.*, so that at birth, she is “readily identifiable” as the legal mother from the fact that she carried and gave birth to the child, *Stanley v. Illinois*, 405 U.S. 645, 664 (1972); *see also infra* Section II.B.

The Constitution’s protection of parental rights “includes the right not to be shut out of participation in decisions regarding their children’s . . . health.” *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam) (citing *Parham v. J.R.*, 442 U.S. 584, 602 (1979)). In *Parham v. J.R.*, this Court determined that “parents generally have the right, coupled with the high duty, to recognize and prepare their children for additional obligations. . . . Surely, this includes a ‘high duty’ to recognize symptoms of illness and to seek and follow medical advice.” 442 U.S. at 602 (citation modified). Accordingly, parents’ fundamental right to “bring up children,” *Meyer*, 262 U.S. at 399, extends to medical decisions for one’s child.

Thus, the Fourteenth Amendment’s Due Process Clause protects parental rights as a fundamental liberty, including the right of the birth mother to make medical decisions for her minor child.

B. The Presumption that a Birth Mother Is the Legal Parent of Her Child is Legally Binding Absent Proper Termination of Her Parental Rights.

Supreme Court caselaw presumes that a woman who carries and gives birth to a child is the legal mother of the child. “The mother carries and bears the child, and in this sense her parental relationship is clear.” *Lehr*, 463 U.S. at 260 n.16 (citing

Caban v. Mohammed, 441 U.S. 380, 397 (1979) (Stewart, J., dissenting)). “[T]he existence of a biological parent-child relationship” is apparent for a mother since “the mother establishes [it] by giving birth.” *Sessions v. Morales-Santana*, 582 U.S. 47, 65 (2017). Accordingly, birth confirms maternal rights, as “[i]n the case of the mother, the relation is verifiable from the birth itself. The mother’s status is documented in most instances by the birth certificate or hospital records and the witnesses who attest to her having given birth.” *Tuan Anh Nguyen v. INS*, 533 U.S. 53, 62 (2001).

Consider if this legal presumption of the birth mother’s maternity did not exist. Maternal rights would cease to be an inherent liberty right. Rather, every mother would need to go into state court to establish her maternal rights. *Contra* U.S. Const. amend. XIV, § 1 (“nor shall any State deprive any person of . . . liberty . . . without due process of law”). This rule would unconstitutionally infringe upon mothers’ procedural due process rights, burden state courts, upend families, and may leave infants without any legal parent until a court says otherwise. *Cf. Caban*, 441 U.S. at 399 (Stewart, J., dissenting) (recognizing that, for an unwed mother, the “physical reality [is] that only the mother carries and gives birth to the child,” while “[t]he biological father, unless he has established a familial tie with the child by marrying the mother, is often a total stranger from the State’s point of view”).

Surrogacy does not change the legal presumption that the birth mother is the legal mother; rather, it creates a situation in which a third party must rebut the presumption that the birth mother has the fundamental right to care for her infant. Before the advent of artificial reproductive technology, it was medically impossible

for a mother to carry and birth a child who was biologically not her own, but “advances in reproductive technology render[ed] a different outcome biologically possible.” *Johnson*, 851 P.2d at 781. Yet family law still presumes that the birth mother is the legal mother. *See* Cal. Fam. Code § 7610(a) (West 2014) (“The parent and child relationship may be established as follows: Between a child and the natural parent, it may be established by proof of having given birth to the child . . .”). In fact, as M.W. notes, “[u]nder the ordinary operation of Texas law, [she] would likely be Baby G.’s rightful mother because she gave birth to him in Texas.” Appl.21 (citing Tex. Fam. Code Ann. § 160.201(a)(1) (West 2001)). Although a surrogacy law may authorize a method to “rebut any presumptions . . . as to the gestational carrier surrogate . . . being a parent of the child or children,” Cal. Fam. Code § 7962(f)(1) (West 2020), the surrogacy law must nevertheless respect the Constitution’s procedural due process requirement that safeguards the birth mother’s parental rights, *see Santosky v. Kramer*, 455 U.S. 745, 753–54 (1982).

Even in a gestational surrogacy—where the surrogate mother does not contribute genetic material to the child—a surrogacy contract cannot override a surrogate mother’s fundamental rights under the Constitution. Under surrogacy statutes, a “natural mother” can be either the “biological mother . . . who provides the egg that develops into an embryo” or in this case, the “birth mother . . . who carries an embryo during the gestational period and who delivers the child.” *Mother*, Black’s Law Dictionary 1212 (12th ed. 2024). Certainly, this can create “controversy between a birth ‘mother’ and a genetic ‘mother’ where the genetic and gestational roles have

been separated and distributed among two women.” *In re C.K.G.*, 173 S.W.3d 714, 730 (Tenn. 2005). However, that statutorily contrived conflict between the genetic and birth mother cannot displace federal constitutional safeguards that guarantee procedural due process for the birth mother before the government terminates her fundamental right to parent her child. *See* Section III.⁴

The birth mother’s physiological connection to her baby supports the presumption of her maternity. Pregnancy is a “unique” relationship between mother and child. *Dobbs*, 597 U.S. at 290. The birth mother’s actions during pregnancy may impact the baby’s health. *See, e.g., Ferguson v. City of Charleston*, 532 U.S. 67, 70 (2001) (concerning illicit drug use by pregnant patients and the harm to their unborn children). And the unborn child’s medical condition may affect the mother’s health. *See, e.g., Moyle v. United States*, 603 U.S. 324, 335–36 (2024) (Barrett, J., concurring) (identifying conditions that may require maternal-fetal separation to safeguard the pregnant woman’s life). The caring relationship a birth mother has with her unborn child does not dissipate at birth; it solidifies. The birth mother and infant have a “familial relationship . . . stem[ming] from the emotional attachments that derive from the intimacy of daily association . . . as well as from the fact of blood relationship” formed during pregnancy. *Smith*, 431 U.S. at 844 (quoting *Yoder*, 406 U.S. at 231–33). Accordingly, a surrogate mother has a unique, physiological connection to her

⁴ To exclude a surrogate mother in a gestational surrogacy case from the presumption that the birth mother is the legal mother may raise a significant equal protection issue, because the government would be discriminating against her parental rights based upon the circumstances of how she became pregnant and gave birth to the baby. *Cf. Levy v. Louisiana*, 391 U.S. 68, 72 (1968) (holding wrongful death statute violated the Equal Protection Clause because it permitted a legitimate child to recover for wrongful death of a mother but denied an illegitimate child a cause of action solely based upon the child’s illegitimacy).

infant, which supports the presumption that a surrogate mother, as the birth mother, has the fundamental right to parent her infant.

Thus, Supreme Court caselaw recognizes that there is a presumption that a birth mother is the legal parent of her child. This presumption extends to a surrogate mother even in a gestational surrogacy, which the physiological reality of pregnancy confirms. Since a birth mother presumptively has parental rights over her child, the government may not terminate her parental rights without due process of law. Yet, due to the Los Angeles Superior Court's decision, a Texas court "denied [M.W.] any information about or control over the medically fragile child," Appl.2, which caused irreparable harm to M.W.'s fundamental right to parent her infant.

To clarify, the issue before this Court is not whether a state may authorize surrogacy contracts or permit a party to rebut the presumption that a birth mother is the legal mother in surrogacy cases. Rather, *Amicus* asks the Court to acknowledge that there is a *presumption* that the birth mother is the legal parent, which entitles the surrogate mother to the full protection of procedural due process under the Fourteenth Amendment before a third party may rebut the presumption of the birth mother's parental rights. *See infra* Section III.

III. The Los Angeles Superior Court's Decision Deprived M.W. of Her Parental Rights Without Procedural Due Process.

The Due Process Clause directs that no "State [shall] deprive any person of life, liberty, or property, without due process of law" U.S. Const. amend. XIV, § 1. As part of this protection, "[t]he Due Process Clause . . . encompasses . . . a guarantee of fair procedure." *Zinerman v. Burch*, 494 U.S. 113, 125 (1990). It establishes "minimal

requirements of notice and a hearing . . . esp[ecially] if the deprivation of a significant life, liberty, or property interest may occur,” *Procedural Due Process*, Black’s Law Dictionary 631 (12th ed. 2024), because “[w]hen protected interests are implicated, the right to some kind of prior hearing is paramount,” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569–70 (1972). Accordingly, “[i]n procedural due process claims, the deprivation by state action of a constitutionally protected interest in ‘life, liberty, or property’ is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law*.” *Zinerman*, 494 U.S. at 125 (citations omitted).

The Constitution ensures that a parent receives due process before a state terminates his or her parental right. “The termination of parental rights is one of the most intrusive actions available to the State.” *Interest of J.F.-G.*, 627 S.W.3d 304, 318 (Tex. 2021) (Blacklock, J., dissenting) (citation modified). “[F]ew consequences of judicial action are so grave as the severance of natural family ties,” *M.L.B. v. S.L.J.*, 519 U.S. 102, 119 (1996) (citation omitted), since it causes “the irretrievable destruction of their family life,” *Santosky*, 455 U.S. at 753. As such, “state intervention to terminate the relationship between [a parent] and her child must be accomplished by procedures meeting the requisites of the Due Process Clause.” *Lassiter v. Dep’t of Soc. Servs. of Durham Cnty.*, 452 U.S. 18, 37 (1981) (Blackmun, J., dissenting).

The Constitution requires procedural due process in cases involving the termination of parental rights, and the Supreme Court has applied the *Mathews* test

in these instances to ensure a state complies with a parent’s due process right. *Id.* at 27 (majority opinion); *see also Santosky*, 455 U.S. at 753–54. Under this three-part test, a court considers:

First, 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 the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335 (citation omitted). In this way, the *Mathews* test ensures “[t]he fundamental requirement of due process is [met through] the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.* at 333 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

The Los Angeles Superior Court’s decision violated M.W.’s constitutional right to procedural due process when it terminated her parental rights, as shown by an application of the *Mathews* test. First, “the private interest affected,” *Nelson*, 581 U.S. at 135, in this case is a fundamental right: a birth mother’s right to direct the care and upbringing of her child. *See supra* Section II. “[A] natural parent’s desire for and right to the companionship, care, custody, and management of his or her children is an interest far more precious than any property right.” *Santosky*, 455 U.S. at 758 (citation modified). A “case, involving the State’s authority to sever permanently a parent-child bond, demands the close consideration the Court has long required when a family association so undeniably important is at stake.” *M.L.B.*, 519 U.S. at 116–17. Accordingly, “[a] parent’s interest in the accuracy and justice of the decision to

terminate his or her parental status is, therefore a commanding one.” *Lassiter*, 452 U.S. at 27.

Second, “the risk of erroneous deprivation of that interest through the procedures used,” *Nelson*, 581 U.S. at 135, in this case is significant. The procedures included:

- An ex parte proceeding filed by the Commissioning Parties that would terminate M.W.’s parental rights, Appl.5;
- Substituted service to M.W.’s babysitter—not household member, Appl.5; *cf.* Cal. Civ. Proc. Code § 415.20(b) (West 2026) (permitting substituted service upon “a competent member of the household”);
- Failure to inform M.W.’s babysitter of the package’s contents during service, Appl.5; *cf.* Cal. Civ. Proc. Code § 415.20(b) (directing that a person served during substituted service “shall be informed of the contents thereof”);
- Two days’ notice for M.W. to appear at a hearing in California, although she resides in Alaska, Appl.3, 5–6;
- A determination that M.W.’s counsel’s special appearance to contest jurisdiction and forum was a general appearance to resolve the merits questions although M.W. did not address the merits questions, Appl.6–7; and
- Improper forum in California notwithstanding the surrogacy contract between the Commissioning Parties and M.W. that included a forum selection clause establishing an Alaska forum for legal disputes, Appl.1.

These procedural defects make “the risk of an erroneous deprivation of the parent’s rights insupportably high.” *Lassiter*, 452 U.S. at 31. This is especially problematic when a court terminates a parent’s fundamental rights in an ex parte proceeding yet lacks personal jurisdiction. *Cf. May v. Anderson*, 345 U.S. 528, 533–34 (1953) (holding that ex parte divorce proceeding that terminated a mother’s custody over her children was not entitled to full faith and credit because the court lacked personal jurisdiction over the mother). Accordingly, the risk of erroneous deprivation of M.W.’s parental rights is high.

Third, “the governmental interest at stake,” *Nelson*, 581 U.S. at 135, includes both the best interests of the child and judicial economy. As this Court recognized in *Santosky v. Kramer*, “[t]wo state interests are at stake in parental rights termination proceedings—a *parens patriae* interest in preserving and promoting the welfare of the child and a fiscal and administrative interest in reducing the cost and burden of such proceedings.” 455 U.S. at 766. Here, neither interest overcomes the significant risk of depriving M.W. of her fundamental right to parent her child.

The Los Angeles Superior Court’s interest in acting in the best interests of the child aligns with M.W.’s interests. “Since the State has an urgent interest in the welfare of the child, it shares the parent’s interest in an accurate and just decision.” *Lassiter*, 452 U.S. at 27. In fact, the California legislature has recognized that “[t]here is a compelling state interest in establishing parentage for all children. Establishing parentage is the first step toward a child support award, which, in turn, provides children with equal rights and access to benefits” Cal. Fam. Code § 7570(a)(1)

(West 2020). As such, “the State registers no gain towards its declared goals when it separates children from the custody of fit parents.” *Stanley*, 405 U.S. at 652. M.W. entered a special appearance in this case, limiting her arguments to the jurisdiction and forum questions. Appl.6–7. However, a complete adjudication of the merits requires M.W.’s full participation. As the birth mother, M.W.’s merits briefing and arguments would create “concrete adverseness which sharpens the presentation of issues,” enabling a better judicial outcome. *Camreta v. Greene*, 563 U.S. 692, 701 (2011) (citation omitted). Adversarial proceedings are critical here, as the legal parents of Baby G. will make life-altering medical decisions for Baby G.

The Los Angeles Superior Court’s interest in judicial economy does not overcome M.W.’s constitutional right to due process. The Constitution guarantees “the opportunity to be heard.” *Armstrong*, 380 U.S. at 552. This is the “constitutional floor” that requires states, at minimum, to hold “a fair trial in a fair tribunal” before the deprivation of a fundamental liberty right. *Bracy v. Gramley*, 520 U.S. 899, 904 (1997) (citation modified). The Los Angeles Superior Court failed to provide M.W. a meaningful opportunity to be heard, *see Mathews*, 424 U.S. at 333, when it terminated her parental rights by (1) holding an ex parte proceeding; (2) failing to require proper service on M.W.; (3) ruling on the merits when M.W. made a special appearance limited to jurisdiction and forum issues; and (4) issuing a ruling without proper jurisdiction in blatant disregard of the forum selection clause in the surrogacy contract. The Los Angeles Superior Court’s interest in judicial economy cannot cure the deprivation of M.W.’s constitutional right to due process.

In sum, the application of the *Mathews* test in this case shows “the result of the judicial proceeding was permanently to deprive a legitimate parent of all that parenthood implies.” *Armstrong*, 380 U.S. at 550. The Los Angeles Superior Court’s interests in safeguarding the best interests of the child and judicial economy do not overcome the high risk of erroneously depriving M.W. of her fundamental right to parent Baby G. “The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Pierce*, 268 U.S. at 535. Yet, the lower court’s decision terminated M.W.’s fundamental right to direct the care and upbringing of her infant without procedural due process.

CONCLUSION

Amicus urges the Supreme Court to grant M.W.’s application.

Respectfully submitted,

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