

No.
In The

Supreme Court of the United States

Linda Marie Sacks,
Petitioner,

v.

David Michael Sacks.,
Respondent.

On Petition for a Writ of Certiorari
to the Court of Appeals of Florida,
for the Fifth District

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- 1) Whether the First, Fifth, Ninth, and Fourteenth Amendments to the Constitution permit a court to deprive a parent of physical custody and the right to care and nurture their children without a finding of unfitness by clear and convincing evidence.

- 2) Whether the First, Fifth, Ninth, and Fourteenth Amendments to the Constitution permit a parent to be deprived of physical custody of their children if they are a victim of domestic violence and their children disclosed sexual and/or physical abuse, and that "Protective Parent" took reasonable action to protect the child(ren) from the offending parent named by the child(ren).

- 3) Whether the First, Fifth, Ninth, and Fourteenth Amendments of the constitution permit children to be placed in the physical custody of an abusive parent citing it's in the "Best Interest of The Child".

PARTIES TO THE PROCEEDING BELOW

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding is as follows:

The Petitioner is Linda Marie Sacks, Mother, Pro Se, individually, and on behalf of R.M.S. and S.R.S., natural born, minor children of the parties, and uses only their initials in this petition.

The Respondent, is David Michael Sacks, Father.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Linda Marie Sacks respectfully petitions for a writ of certiorari to review the judgment of the Fifth District Court of Appeals.

OPINIONS BELOW

The PCA, per curium affirmed by the Fifth District Court of Appeals is unpublished, as there is no written opinion.

JURISDICTION

The Fifth District Court of Appeals issued its PCA, per curium affirmed decision on 12/07/10. (App. A). Petitioner filed a timely Motion for Rehearing En banc, Motion for Certification, and Motion for Written Opinion and Clarification on 12/21/10. On 02/07/11, The Fifth District Court of Appeals issued an Order denying all of the above mentioned Motions. (App. B). This Court has jurisdiction pursuant to 28 U.S.C. § 1257 (a).

Because this petition challenges the constitutionality of a Florida Statute affecting the public interest, the terms of 28 U.S.C. § 2403(b) may apply and this petition is therefore being served on the Attorney General of Florida as required by Rule 29.4(c) of this Court.

**RELEVANT CONSTITUTIONAL PROVISIONS
AND STATUTES**

The Fourteenth Amendment to the United States provides in relevant part: "Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person

within its jurisdiction the equal protection of the laws”.....

The Ninth Amendment in relevant part “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”.....

The Fifth Amendment in relevant part “nor be deprived of life, liberty, or property without due process of law”.....

The First Amendment in relevant part “Congress shall make no law...abridging the freedom of speech, or of the press; or the right of people to peaceably assemble, and to petition the government for a redress of grievances”.....

FLORIDA STATUTES 61.13 “Best Interests of the Children”.

STATEMENT OF THE CASE

Petitioner, a fit Mother to R.M.S. and S.R.S. filed for dissolution of marriage on 01/26/04 in her efforts to protect her children from documented sexual and physical abuse to them by the Respondent, their Father, and in doing so, lost physical custody of the minor children on 04/16/07, and was placed on Supervised Visitation.

Mother appealed the ruling of Judge Shawn L. Briese and on 08/08 the Fifth District Court of Appeals REVERSED and REMANDED the issue of child custody back to the trial court for a new hearing, due to the Petitioner’s constitutional right to due process being violated. This rare reversal

provided no relief to Mother to be reunited with her children.

The trial court of Judge Shawn L. Briese refused to vacate the supervised visitation order after the Mandate from the Fifth District Court of Appeals, even though all of the supervised visitation reports from the Family Tree House Visitation Center were perfect and reflected a loving caring bond between Mother and her minor children.

Judge Briese insisted on hearing the "Retrial of Custody of Children" and refused legally sufficient Motions to be disqualified.

A "Retrial of Custody" was held 04/09. Judge Briese issued his oral ruling 06/09 on the "Retrial of the Custody of Minor Children" and he insisted that Mother must continue to be on supervised visitation because she did not buy greeting cards for the children to give to the father, (App. C) and that Mother did a TV interview at the Battered Mothers Custody Conference in Albany, New York in 01/09 about the family court crisis "and this could be detrimental to the children".

The trial court had NO evidence that Mother was ever a threat to her children, and there was ample evidence that Mother is a loving, caring Mother, class Mom, soccer Mom, community volunteer, car pool Mom, truly the all American Mom.

Mother is the longest family law referral case at The Family Tree House Visitation Center, and has only had 82 hours of contact in 4yrs and 1 month, the 2nd and 4th Saturday of the month for 1 hour.

1. Linda Marie Sacks married David Michael Sacks on June 12, 1993. Two children were born of the marriage R.S (born in 1994) and S.S. (born in 1996)

2. In April 2002, Mother received a phone call from Malka Altman, Preschool administrator of Temple Beth El, her daughter's private school, and was told that day that her daughter R.S. who was in kindergarten, had sexual knowledge beyond her years, was masturbating on the playground and in class, and was exhibiting sexualized behavior. More reports by school officials followed. These included: disclosures of sexual abuse made by the minor child to school teachers and the Mother of a teacher who heard, R.S. at 7 years old telling a little boy at Sunday school class "I suck my Daddy's penis", (App. F) and school officials who documented R.S. simulating oral sex with her Barbie Doll and a little boys penis area at car pool, and acting out at school. T.B.E. never called the child abuse hotline.

3. Mother sought help and the children's therapist, Diane Zedwig's summary that documented erotized behavior by both children, individually and in session together. Examples of this type of behavior included pulling each other's pants down, touching each other's nipples, arranging Barbie Dolls in suggestive sexual positions, and arranging anatomical dolls in also in suggestive positions, as well as drawing by R.S. that often indicated anger at her father.(App.G) and a drawing by R.S. that was sexual in nature. (At 8 she drew her father as an erect penis on legs. (App. H). This witness was never allowed to testify

as Father's attorneys got a protective order on her testimony. (App. I)

4. Mother witnessed numerous inappropriate behavior by the Respondent, Father, to the minor children and all are documented in the Injunction of Protection Case, (the Injunction of Protection was denied by Judge Briese) as well as the Dissolution of Marriage Case, and the two Court of Appeals cases.

5. During the Dissolution of Marriage case, and the Injunction of Protection case, the court appointed custody evaluator, Dr. Deborah O. Day told the court that R.S. had pediatric bipolar and that "negates any child sexual abuse". She dismissed all of the documented evidence of abuse, and then thwarted the investigation by the police department and the Dept. of Children and Families. (App. J)

6. R.S. has never had pediatric bipolar and Judge Briese was aware of this evidence but dismissed, ignored and suppressed credible evidence of child physical and sexual abuse and called R.S a "liar".

7. Through the failure of the family court to protect R.S. and S.S. from abuse, on April 3, 2007, the Father got Sole Physical Custody of the minor children, and Mother was Court Ordered to vacate the family home in 2 weeks. During this time the court allowed her to continue in her role as the children's primary caregiver and class Mom, but this all ceased when she abided by the court order to leave her children, April 16, 2007 and start the Supervised Visitation.

8. Mother was placed on Supervised Visitation at the Family Tree House Visitation Center with her contact limited to two hours a month.

9. On May 18, 2007, Justice for Children, a national organization that advocates for abused children when official avenues, judges, police, DCF have failed to protect them, wrote a letter to the Dept. of Children and Families Administrator, Reggie Williams, expressing their concern for the safety and well being of the minor children. It stated that "we have reviewed information regarding allegations of sexual and physical abuse of the children by their father. We are concerned that the evidence collected was never properly investigated by your agency. The information we have reviewed raises many concerns for the children's safety". (App. M).

Judge Briese had this letter as it was in the court records.

10. Mother appealed the ruling and in 08/08 the ruling on custody was REVERSED AND REMANDED due to Mother's constitutional rights to due process being violated. The rare reversal provided no relief, as the trial court of Judge Shawn L. Briese refused to vacate the Supervised Visitation Order, and he refused legally sufficient Motion's to be Disqualified, or allow any contact between Mother and her children unless supervised.

11. Mother filed a Writ of Prohibition (Case 5D08-3668) on 09/08 and asked the Fifth District Court of Appeals to prohibit Judge Briese from acting any further in the case and provided

documented evidence of judicial misconduct which included; documented evidence of ex-parte communication with the Respondents Attorney's James L. Rose and Leonard R. Ross, and violation of Judges Canon # 3, violations of FL. AD Code 2.330., as well as the violations of Petitioners due process rights which resulted in her losing custody of her children.

12. The Fifth District Court of Appeals denied the Writ and allowed Judge Briese to continue with the case. Without a hearing being called by either party, Judge Briese set the matter on his docket, and all of Petitioner's Motions to have a new Judge appointed were denied.

13. In the "Retrial of Custody" in 04/09 Judge Briese heard the father admit to documented evidence of child physical and sexual abuse to the minor children as he testified (on transcript) that he admitted to wiping down the vaginas of his "school age children", and admitted to the altercation in the kitchen of the family home in 02/04 with R.S. and she got a split lip and blood, as well as father's admissions that he verbally abused the Mother in front of the children. These statements by the Father matched the police reports and the Dept. of Children and Families hotline calls made by professionals in the case, and Mothers Injunction of Protection request.

Father testified during the "Retrial of Custody of Minor Children", in 04/09 that that Mother did not buy greeting cards for the children to give to him, and the Mother did a Channel 9 News

Interview in Albany New York about being on Supervised Visitation. (App. N.) News Interview

In the "Retrial" Judge Briese knew all of the reports from the Family Tree House were perfect and reflected a loving, caring bond between Mother and children.

The respondent's attorneys of record for the Retrial, Mr. Ross and Mr. Rose never called any witnesses, never deposed any witnesses, never presented a case, and never presented any evidence that Mother was a threat to her children, yet they asked the trial court of Judge Shawn L. Briese to continue to keep Mother on Supervised Visitation.

In Judge Briese's oral ruling on the "Retrial of Custody" on June 26, 2009, stated (on transcript), in referring to the Father, said "He testified that nothing ever inappropriate never happened, sexually or physically, and the Court finds this to be the case, as it did the first time".

Judge Briese stated, regarding Mother, "she's made no attempt to get Birthday, Fathers Day cards, Christmas cards or Hanukah cards for the father so the children can give those to the father. And that goes to Factor A, and it goes to Factor J. This is not a willingness to provide on the Mom's behalf to encourage a close, continuing parent/child relationship with the child with the other parent. It's completely opposite."

Judge Briese said “Dr. Day’s finding that R.S. has a low probability of actually being abused and R.S. propensity to lie appears to be related to her mental health than abuse” (App M). On the next page of the transcript Judge Briese says R.S. was not bipolar. (App. N).

Judge Briese in his oral ruling in regards to Mother doing a Channel 9 News Interview in New York, expressed a concern that the minor children will discover these internet postings which would be detrimental to the minor children.

There was NO evidence that this was or would be detrimental to the minor children.

14. Without any finding of unfitness by clear and convincing evidence, nor any conduct by the Mother that was harmful to the children, the trial court of Judge Shawn L. Briese, on 06/26/09 insisted that Mother must continue to have her contact with her children supervised. In his oral ruling he stated: “Should the wife stop her destructive behavior toward the minor children and the situation settles down, the Court will entertain a post-dissolution petition to allow unsupervised visitation”. All of the reports were PERFECT from the Visitation Center, but Mothers, parent-child relationship was denied once again.

15. The trial court has never provided a case plan or reunification plan.

16. On 10/15/09 Mother filed a timely pro se appeal to the Fifth District Court of Appeal. The ruling was affirmed on 12/07/10. The Motion for Rehearing En banc was denied on 02/07/11, and this

ruling by the Fifth District Court of Appeals, denies Mother's fundamental right to parent and care for her children. Mothers contact at the Supervised Visitation Center has only amounted to 82 hours of contact in 4years and 1month, and all of her requests to be re-united with her natural born children have been denied.

17. This timely petition for certiorari has followed.

18. "Protective Parents" all over America are losing custody of their children, and having their parental rights terminated or are placed on Supervised Visitation, without a finding of unfitness, by clear and convincing evidence. The latest research the ABA American Bar Association states that parents whose children disclose sexual and /or physical abuse will lose custody in 70% of the challenged cases. (x)

19. This is a national crisis for children who are victims of child sexual and/ or physical abuse and whose Mothers are victims of Domestic Violence in the United States of America.

20. If the constitution equal protection of fit parents can be so cavalierly discarded with the mere invocation of the term "Best Interests of The Children" then this crisis for Battered Mothers and their children is an issue that needs to be addressed by the highest court.

MANNER IN WHICH THE FEDERAL QUESTIONS WERE RAISED

Petitioner, in the Amended Brief of Appellant, Reply Brief of Appellant, Motion for Rehearing En banc, Motion for Clarification and Written Opinion, and her Motion for Certification cite numerous references to the Constitution and parent's rights.

One example is that "the issue of a parent to the care and nurturing of her children is a fundamental right protected by the Constitution of the United States First, Fifth, Ninth and Fourteenth Amendments".

Another example is "no bond is more precious than the bond between parent and child and a parent's right to the care and custody of her children is an element of liberty guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution". In the Reply Brief of Appellant, the entire text of the Constitution of the United States and Amendments were included as Exhibit B.

The portions of the record are voluminous, and therefore are included in the Appendix. The Fifth District Court of Appeals, rejected this argument on the merits and issued a PCA, per curium affirmed. Thus, the claims were properly presented and are appropriate for this Court's consideration.

REASONS FOR GRANTING THE WRIT

This case perfectly fits the criteria for this Court's review. The lower court ruling and the PCA

affirmed ruling by the Fifth District Court of Appeals conflicts with other Court of Appeals and infringes on the constitutional right of a fit parent to custody of their children and addresses this national crisis of battered women who are losing physical custody of their children.

The children are being court ordered to live with the offending parent, with documented evidence of child physical and/or sexual abuse, and with whom the child identified as the perpetrator. The fact that this case is an opportunity to thoroughly explore domestic violence, battered mothers, child sexual and physical abuse and the family courts failure to protect America's children is a national concern for advocacy groups as well as governmental agencies.

Review is also warranted because The Office of Violence Against Women and The Dept. of Justice, as well as other national organizations are addressing this crisis, so this case and this issue is of great national importance.

Catherine Pierce 06/08, then Acting Director/ Violence Against Women, US DOJ, addressed the US Senate Committee on the Judiciary. It was "The Importance of the Violence against Women Act" and she said "the complicated issue of child custody presents another challenge involving the intersection of children and domestic violence. Battered women losing custody of their children is a serious and growing problem".

In August 2008, OVW, convened a Roundtable Discussion on Custody and Domestic Violence with experts and practitioners to inform OVW about how

battered women are losing custody of their children to either the perpetrators (through Family Court) or to the State (through Child Protective Services). As a result of the Roundtable discussion there will be increased public awareness about how children are being placed in the custody of batterers and how it is affecting those children. (xiii)

This case is also disturbing proof of how a custody and visitation judgment by the lower court and affirmed by the Fifth District Court of Appeals violated Mother's and her children's liberty interest and equal protection under the law, which is happening all over the U.S. and being addressed by national advocacy groups.

When there is a custom or policy of treating victims of domestic violence differently that constitutes gender bias discrimination. A Mother and her children must be treated equally under the First, Fifth, Ninth and Fourteenth Amendment. There is no reason to excuse the judiciary participating in depriving the parents of the care and custody of their children. Fundamental liberty interests involves retaining custody of one's own children, and the interests of one's own family is of the greatest importance.

To justify a loss of parental rights, the evidence MUST show abandonment, abuse, or neglect by clear and convincing evidence in order to terminate parents rights, or place that parent under court ordered supervised visitation. The evidence must show that the parent abused, neglected, or abandoned the child, or the child is at substantial risk of further abuse, neglect or abandonment.

The Petitioner, Linda Marie Sacks is a model parent. This Mother was the primary caregiver, class mom, soccer mom, community volunteer, and the court record shows she is a "squeaky clean" Mother.

The Fifth District Court of Appeals in affirming the erroneous judgment that gave the father sole physical custody and Mother supervised visitation once again, deserves the scrutiny of a review by this Court, as it is a clear violation of a parents right to raise and nurture their children, and Mothers rights were violated once again.

Parental rights of all fit parents to be with their children and to be free from sexual or physical abuse involves a fundamental liberty interest protected by the Constitution.

Only this court can resolve this conflict which is equal protection under the law for all fit parents and Mothers and children who are victims of abuse, and is rooted in this Court's decisions on the importance of a parent's liberty protected constitutional right to be a parent to their children.

Review is also warranted because this case is of national importance to Petitioner's children and all of America's children involved in child custody visitation scandal cases. This case is already a national case and it is typical of the national crisis and the statistical evidence revealing the blatant disregard of the documented evidence of abuse in the decision of custody. This strongly suggests total disregard for the victims of Domestic Violence including both Mother and children, which is a Human Rights Violations and should be protected

under the First, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States of America.

Finally this case is the ideal vehicle in which to resolve these questions, because the parties have a pristine case with an extensive record, including all of the transcripts from the beginning in 2004.

This case is typical of cases all over the United States, which fit, safe, protective parents are losing custody and the parent with documented evidence of child sexual and /or physical abuse is given Sole Physical Custody with great safety concerns for the well being and safety of the minor children placed in their care.

These rulings by the trial court and the Fifth District Court of Appeals challenge the constitutional rights of a fit parent to the care, custody and nurture of their children, as well as the "best interest of the children" standard for child custody decisions which involves domestic violence, child sexual and /or physical abuse.

Certiorari accordingly should be granted.

I. The Ruling By The Fifth District Court of Appeals Conflicts With This Courts First, Fifth, Ninth and Fourteenth Amendments On a Fit Parents Equal Protection and Liberty Right To The Custody, Care, Companionship and Nurture Of Their Children, Without Findings of Unfitness by Clear and Convincing Evidence.

This Court has repeatedly affirmed that a parent's right to a relationship with their children is among the most fundamental liberties protected

by the Constitution of The United States of America.

The constitutional protection of a right to parent children is a fundamental right and upheld in the recent decision in *Troxel v. Granville*, 30 U.S. 57, (2000), as this Court stated:

The 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. More than 75 years ago, in *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, (1923), we held that the “liberty” protected by the Due Process Clause includes the right of parents to “establish a home and bring up children” and “to control the education of their own.” Two years later, in *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925), we again held that the “liberty of parents and guardians” includes the right “to direct the upbringing and education of children under their control.”...We explained in *Pierce* that “[t]he 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. *Id.* at 535. We returned to the subject in *Prince v. Massachusetts*, 321 U.S.

158, (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first within the parents, whose primary function and freedom include preparations for obligations the state can neither supply or hinder". *Id.*, at 166

Accordingly, this Court has held that no State may deprive a parent of parental rights without a finding of by clear and convincing evidence that parent is unfit. *Santosky v. Kramer*, U.S. 745, 769-770 (1982).

Here, no Court has made the required findings of fact and conclusions by law, applying the clear and convincing evidence standard, to show that a deprivation has occurred and that termination of parental rights is warranted. No Court has found the Petitioner, Linda Marie Sacks to be an unfit parent.

Notwithstanding the absence of such findings she was court ordered, not once but twice by the trial court and affirmed the second time by the Fifth District Court of Appeals, that her contact with her children must be supervised.

The judicial determination in child custody rulings has such a significance, the severance of a parent-child relationship must be exercised cautiously and scrutinized.

This constitutional right of a parent-child relationship should only be infringed upon only under the most compelling circumstances. Based upon this liberty interest, for example, this Court has concluded that parents have the right to establish a home, direct the upbringing of their children, and control their children's education, and the state may not sever the rights of their natural born children, in a court proceeding, unless it proves by clear and convincing evidence that the parent is unfit to raise their children.

Judge Shawn L. Briese in his Oral ruling stated, Mother, while she was under supervised visitation for 2 years, she did not by greeting cards for the children to give to the father and that she did a TV interview in New York at a Battered Mothers conference. The interview is protected by the 1st Amendment, Freedom of Speech.

The Petitioner is a model parent and to keep her on Supervised Visitation, seeing her daughters at the Family Visitation Center for 1 hour, the 2nd and 4th Saturday of the month, violated her constitutional rights, once again.

In *May v. Anderson*, 345 U.S. 528; 73 S.Ct.840, 843, (1952) this Court noted that a parent's right to "the companionship, care custody and management of his or her children" is an interest "far more precious" than any property rights. Rights of parents historically have been addressed by the US Supreme Court and protected by the Constitution. As noted in *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) the US Supreme Court stated that:

“the parent–child relationship is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection.” A parent’s interest in the companionship, care, custody and management of his or her children rises to a constitutionally secured right, given the centrality of family life as the focus for personal meaning and responsibility.

Linda Marie Sacks rights to R.S. and S.S.’s care, custody, and companionship is a central right that “warrants deference and absent a powerful countervailing interest, protection.” *Stanley*, 405 U.S. at 651. This is especially true in the termination context, because termination “works[s] a unique kind of deprivation.” *Lassiter*, 452 U.S. at 27.

Mother was given “Shared Parental Responsibility”, but the court ordered supervised visitation which cancels out the normal visitation schedule for custody, and limits her contact to 2 hours a month at the local visitation center, essentially terminating her constitutional right to have a home and family with her natural born children.

Fit parents, who are victims of domestic violence, and whose children disclose sexual and/ or physical abuse, are faced with the loss of their parental rights, and have more critical need for Constitutional protections as their liberty interest to their children as their rights are being

terminated completely by the family court or parents are being placed on supervised visitation for years without a case plan or reunification plan.

Without a finding of unfitness by clear and convincing evidence, how can this Mother be deprived of her constitutional rights and be denied contact with her minor children and be court ordered for over 4 years at the local visitation center and have only 82 hours of contact?

Protective parents rights in the United States of America are in need of constitutional protection as they are losing custody for taking action, based on good faith allegations of abuse, made by the children, supported by the facts, that they need protection from abuse, and that should be a fundamental right of a fit parent, to protect their children without losing custody, without findings by the trial court of any detriment. This violates their substantive due process rights, because they took reasonable action to protect them from abuse and lost custody.

The constitutional protection of a right to parent children is a fundamental right and upheld in the recent decision in *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000).

A fundamental right may only be limited in circumstances where the government's interest in a specific matter of public importance outweighs the individual's fundamental right, and where the limitation on the fundamental right is as narrow as possible for achievement of an important governmental goal.

In Fourteenth amendment liberty analysis, a determination that a party's constitutional rights have been violated requires a "balancing [of] liberty interests against the relevant states interest." *Youngberg v. Romeo*, U.S. 307, 321, 73 L. Ed. 2d 28, 102 S.Ct. 2452 (1982). This balancing of interests has been applied in cases involving intimate association rights. See *Winston ex rel. Winston v. Children & Family Servs.*, 948 F. 2d 1380, 1391 (3d Cir. 1991), cert. denied, 119 L. Ed. 2d 225, 112 S. Ct. 2303 (1992); *Arnold*, 980 F. 2d at 313; *Franz*, 791 F. Supp. At 833; *Aristotle P. v. Johnson*, 721 F. Supp. 1002, 1010 (N.D. Ill. 1989); *Whitcomb v. Jefferson Dept' of Social Servs.*; 685 F. Supp. 745, 747, (D. Colo. 1987).

Perhaps the best example of the government's interest is in child abuse cases. To determine if a person's familial association rights have been violated, a court must weigh two factors. A court may intrude on the fundamental right to parent only where the intrusion makes sense on an objective basis. Of course, preventing a child from being injured or killed objectively is the kind of governmental interest that warrants intrusion into a fundamental right. If the action of the court or governmental actor constitutes an unreasonable intrusion into the associational right it is not allowed and cannot be tolerated.

In *M.L.B. v. S.L.J.* 519 US 102, 117 S. Ct. 555 (1996) states that choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as "of

basic importance in our society” rights sheltered by the 14th Amendment”.

Justice Thomas wrote in his dissenting opinion in *M.L.B.*, (joined by Chief Justice Rehnquist and Justice Scalia) examined the safeguards usually present in a termination action: an impartial tribunal applying procedural and evidentiary rules, the right to confront opposing evidence and witnesses, application of clear and convincing evidence standard, representation by counsel or alternatively the trial court’s determination no counsel is required under the circumstances, and appellate review of the denial of counsel and the merits of termination. See *M.L.B.*, 519 U.S. at 132 (Thomas, J. dissenting).

The standard of clear and convincing evidence was not met, and the record clearly shows Petitioner is a model parent.

This Court in *Lassiter v. Dept. of Social Services* 452 US 18 (1981) held that “the companionship, care, custody, and management of his or her children” is an important interest that “undeniably” warrants deference and, absent a powerful countervailing interest, protection”. A parent’s interest in the accuracy and justice of the decision to terminate his or her parental status is a commanding one.

The liberty interest at issue in this case – the interest of parents who have never relinquished their fundamental right to the care and upbringing of their children, but whose rights were terminated or restricted by rulings by family courts who failed to protect their children from documented abuse, and violated the safe parent’s rights to access to their children, and gave unsupervised, total contact, and sole physical custody to the known child molester and /or batterer.

In this Court’s ruling on *Moore v. East Cleveland* 431 US 494 (1977) and *Meyer v. Nebraska* and *Pierce Society of Sisters* have consistently acknowledged a “private realm of family life which the state cannot enter”.

The Petitioner lost physical custody of her children in April 2007, and all of the reports of the Family Visitation Tree House Center are perfect. This ruling violates Mother liberty rights to have a meaningful relationship with her children.

In *Cleveland Board of Education v. La Fleur* 414 US 632 (1974) this court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. There is a right “to be free from unwarranted governmental intrusion so fundamentally affecting a person as to whether to bear or beget a child”.

There is a long history of this Court’s protection of parental rights as in *Wisconsin v. Yoder* 406 US

205 (1972) when it stated “The 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.

Battered mothers and their children have their fundamental liberty rights violated when they lose physical custody of their children.

Alarming statistics about the plight of America’s children are stated in The Leadership Council, Child Abuse and Interpersonal Violence (LC), which says that more than 58,000 children a year are ordered into unsupervised contact with physically or sexually abused parents following a divorce in the United States. Experts at the LC consider the crisis in our family courts to constitute a public health crisis.(xii)

On March 2, 2011, The SF Weekly published an article by Peter Jamison, front cover of the paper said “ILLEGAL GUARDIANS” When judges award child custody to abusive parent’s, the family court system is broken. (xiv)

It states that “Interviews with dozens of parents, activists, lawyers, judges, children, and former family court employees, as well as a review of hundreds of pages of family and criminal court documents, indicate that the system’s methods for assessing whether child sexual abuse or spousal battery has taken place findings that are critical to deciding

whether a parent should retain custody of or visitation rights with a child fall short of standards accepted by domestic violence experts and the criminal justice community. The results can be tragic”.

II. The Ruling By The Fifth District Court of Appeals Conflicts With Decisions of Other Florida Appeals Courts and US Supreme Courts, and Fails to Protect Battered Mothers from Losing Custody of their Children, When They Took Reasonable Action To Protect Them From Abuse. This Violates A Fit Parents Constitutionally Protected Right To Custody of Their Children, Without A Finding Of Unfitness By Clear And Convincing Evidence. The Ruling is Unconstitutional and Challenges the “Best Interests of the Child Standard”.

This case is of national importance and US Supreme Court review is needed as this case conflicts with the rulings from the First, Second, Fourth, and Fifth District Court of Appeals cases on the fundamental right of a fit parent to the care and nurture of their children, and whether courts can deprive a fit parent of their constitutional rights to their biological children, because the court determined it was in the children’s best interest, without a finding of unfitness by clear and convincing evidence.

The Public Policy of the State of Florida in regards to Florida Child Custody determinations, Best Interests of the Children 61.13 (2)(b)1.states:

The Court shall determine all matter relating to custody of each minor child of the parties in accordance with the best interests of the children and in accordance with the UCCJE, Uniform Child Custody Jurisdiction and Enforcement Act. It states:

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage is dissolved and to encourage parents to share in the rights and responsibilities and joys of child rearing. There is no presumption for or against the father or the mother of the child or for any specific time-sharing schedule when creating or modifying the parenting plan of a child.

3. For purposes of establishing or modifying parental responsibility and creating, developing, approving or modifying a parenting plan, including a time-sharing schedule, which governs each parent's relationship between each parent with regard to his or her minor child and the best interest of the child shall be the primary consideration. "Best Interests of The Child" shall be made by

evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including but not limited to:

(m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless whether a prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

In this case, in the “Retrial of Custody of Children”, the court heard father admit (on transcript) to child physical and sexual abuse to the minor children, and that he verbally abused the Mother in front of the minor children. The trial court in the oral ruling on June 26, 2009, states: “The Court again finds that nothing inappropriate, sexually or physically ever occurred between the Former husband and the children”. A parenting plan is to consider the “Best Interests of the Child” by evaluating all the factors, including evidence of domestic violence, and child abuse.

This ruling was erroneous as the father admitted to abusing the children, but the trial court dismissed, suppressed, and ignored credible evidence of child abuse and domestic violence, and ruled once again that it was “in the best interests of

the children” for the father to continue to have Sole Physical Custody and Mother was to continue her Supervised Visitation. This contact is 2 hours a month at the local visitation center, as father has refused all of Mothers 15 proposed supervisors

The ruling by the Fifth District Court of Appeals on 12/7/10 affirmed the trial court’s ruling on the “Retrial of Custody of Children” of Judge Shawn L. Briese. The Honorable Judge Torphy, Presiding Judge, and the Honorable Judge Evander and Honorable Judge Cohen affirming the ruling that Mother’s contact must continue to be Supervised, and that Father should continue to have Sole Physical Custody, conflicts with the prior rulings by this Fifth District Court of Appeals and the First, Second and Fourth District Court of Appeals, and US Supreme Court cases.

The issue of a fit parent to the custody, care and nurturing of her children is a fundamental right protected by the Constitution of the United States First, Fifth, Ninth and Fourteenth Amendments.

In Padgett v. Dep’t of Health & Rehab. Services., 577 So. 2d 565 (Fla.5th DCA1991) it states that there is a well-recognized fundamental right of parents to have the custody and companionship of their children.

In O.M. v. Dep’t of Children and Family Servs. (In G.C.A.), 863 So. 2d 476, 480 (Fla. 2d DCA 2004) states that the least restrictive test requires that “measures short of termination be utilized if such and permit the safe re-establishment of the parent-child bond”.

In this case before this Honorable Court the Petitioner, Linda Marie Sacks, Mother to R.S. and S.S. for 4 years and 1 months has had a PERFECT record at the Family Tree House Visitation Center, and all of the records show a loving, caring, parent, and a loving, caring bond with her children, R.S. and S.S.

No bond is more precious than the bond between parent and child, and a parent's right to the care and custody of her children is an element of liberty guaranteed by the First, Fifth, Ninth and Fourteenth Amendment of the United States Constitution.

In Sacks v.Sacks 991 So. 2d (Fla.5th DCA 2008), a ruling by the Fifth District Court of Appeals in August 2008, (Case 5D07-1682), REVERSED and REMANDED the issue of child custody back to the lower Court, for a violation of Mothers Constitutional rights, so Petitioner should never have lost custody of her children.

This latest ruling by the Fifth District Court of Appeals under review by this Court conflicts over abuse of discretion when the substantial competent evidence does not support the erroneous findings by the trial court, and violates the constitutional liberty protections long upheld by this Court.

The Retrial of the Custody of Minor Children in April 2009, showed no evidence that Mother ever engaged in any conduct toward her children that would threaten their lives, safety, well being, or physical, mental or emotional health.

Respondent, David Sacks, and his two co-counsel, Mr. Rose and Mr. Ross never presented any case, never called any witnesses, but asked the trial court to give Father sole physical custody of the minor children and continue to restrict Mother to Supervised Visitation.

The trial court, in his oral ruling on the issue of child custody insisted that Mother should continue to be supervised because she did not buy greeting cards or presents for the father while on Supervised Visitation and that Mother talked about the trial court's ruling restricting her to Supervised Visitation with a media outlet in New York.

The trial court also stated there is NO child physical or sexual abuse by the father to the minor children, and this ruling was not supported by the trial record as Father admitted to wiping down the vaginas of his school age children and father also admitted to an altercation in the home where R.S. at age 8, got a split lip and blood.

This is consistent with the ruling in Donn v. Donn, 733 So. 2nd 581 (Fla. 4th DCA, 1999) where the appeals court noted that there were numerous inconsistencies between the Final Judgment and fact as presented in the Final Hearing and this was REVERSED and REMANDED for a NEW HEARING.

In Clark v. Clark, 852 So. 2nd 1016 (Fla. 1st DCA 2002), the court's ultimate finding, expressed either on the record or in the Final Judgment that an award of primary residential custody to one parent is in the best interests of a child, is sufficient to sustain the award so long as there is substantial

evidence in the record that permits the court to properly evaluate the relevant facts.

In Bevil v. Carson, 966 So. 2nd 1007, 1009 (Fla. 5th DCA 2007), in reviewing a custody determination the appellate court considers where there is substantial evidence to support the factual finding by the trial court and whether it is in the best interests of the child. If substantial evidence does not support the factual finds then the trial court abused its discretion, Fuller v. Fuller 13 So. 3d 1108 (Fla. 5th DCA 2009).

In Knifley v. Knifley, 944 So. 2d 1136 (Fla. 5th DCA 2006) the trial court finds that the best interest of the child must be supported by competent, substantial evidence. The evidence in this case, clearly shows that Linda Marie Sacks, Mother to R.S. and S.S. is a loving, caring Mother, yet the trial court again took the erroneous position that it was in the children's best interest that Mother's contact must continue to be supervised, and Father should have Sole Physical Custody, once again.

In the Retrial of the Custody of the Minor Children, April 2009, Mother admitted that she did an interview on Chan. 9 News in New York and the trial court of Judge Shawn L. Briese, in his oral and written ruling expressed a concern that the minor children will discover these internet postings which would be detrimental to the minor children. There was no evidence that was or would be detrimental to the minor children.

In Burger v. Burger 862 So. 2nd 828, 28 (Fla. 2nd DCA 2003) for the trial court to consider a

parents conduct on the issue of child custody, the evidence MUST show a direct impact on the child, the possibility of a negative impact is not sufficient. The connection between the conduct and the harm to child must have an evidentiary basis but cannot be assumed.

In the same "Retrial of Custody" the trial court heard documented evidence of child physical and sexual abuse as Respondent, Father, David Sacks admitted to an altercation in the kitchen of the family home, with R.S. that resulted in her getting a split lip and blood, but this was not a concern to Judge Briese.

The father also admitted to wiping down the vaginas of his school age children, and these admissions by father, matched the Dept. of Children and Family, Child Abuse Hotline Reports, and matched the Police reports, as well as the Mothers Injunction of Protection filed to protect her children from documented abuse, all of which were dismissed, ignored and suppressed by the trial court.

While the state and family courts have a paramount interest in protecting children from harm, the trial court heard documented abuse by the Father to the minor children, but failed to protect R.S. and S.S. and gave father sole physical custody once again.

It is a well-recognized fundamental right of a parent to have custody and companionship of their children, one has to wonder is it an abuse of discretion by the trial court for not removing the unjust supervised visitation ruling and a violation