No. _____

In the Supreme Court of the United States

A.M.B. AND T.G.,

Petitioners,

V.

CIRCUIT COURT FOR ASHLAND COUNTY,
THE HONORABLE KELLY J. MCKNIGHT, PRESIDING,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF WISCONSIN

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioners A.M.B. and T.G. have been in a committed relationship for over a decade. Together, they have raised M.M.C, A.M.B.'s biological daughter, as their child. M.M.C.'s biological father was never a serious part of M.M.C.'s life, and his parental rights have been terminated. Everyone—including the State of Wisconsin—acknowledges that it would be in the best interests of M.M.C. for T.G. to adopt her, giving her the legal father she currently lacks. Yet, the Wisconsin Supreme Court disapproved that adoption on the basis of a Wisconsin law that categorically disqualifies unmarried people from adopting the children of their partners, even though Wisconsin law allows such second-parent adoption by married people, and even though Wisconsin law normally equates married and unmarried people for the purposes of adoption. The question presented is:

Whether a State's categorical disqualification of unmarried people from adopting the children of their partners violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners A.M.B. and T.G. were petitioners-appellants in the Supreme Court of Wisconsin.

Respondent Circuit Court for Ashland County, the Honorable Kelly J. McKnight, presiding, was respondent in the Supreme Court of Wisconsin.

RELATED PROCEEDINGS

In the Interest of M.M.C., No. 22AD02, Circuit Court for Ashland County, Wisconsin, order on petition for adoption entered on July 11, 2022.

In the Matter of the Adoption of M.M.C.: A.M.B. & T.G. v. Circuit Court for Ashland County, the Honorable Kelly J. McKnight, presiding, No. 2022AP1334, State of Wisconsin Court of Appeals District III, petition to bypass court of appeals granted on February 21, 2023.

In the Matter of the Adoption of M.M.C.: A.M.B. & T.G. v. Circuit Court for Ashland County, the Honorable Kelly J. McKnight, presiding, No. 2022AP1334, Supreme Court of Wisconsin, judgment entered on April 30, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners A.M.B. and T.G. respectfully petition this Court for a writ of certiorari to review the judgment of the Supreme Court of Wisconsin in this case.

OPINIONS BELOW

The opinion of the Wisconsin Supreme Court (App. 1a-46a) is reported at 5 N.W.3d 238. The district court's oral ruling (App. 54a-62a) and order denying the petition for adoption (App. 63a-65a) are unreported.

JURISDICTION

The Wisconsin Supreme Court entered a final judgment in this case on April 30, 2024 (App. 1a-46a). On July 25, 2024, Justice Barrett extended the time to file the petition for a writ of certiorari until September 27, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are set forth in the appendix to this petition. App. 47a-53a.

INTRODUCTION

This case presents a fundamental question concerning the Fourteenth Amendment's guarantee of equal protection when it comes to laws in nearly half the States standing between the individual and one of the most important aspects of life—family.

Petitioners A.M.B. and T.G. are a committed couple who have lived together and raised A.M.B.'s biological daughter, M.M.C., for more than a decade. M.M.C.'s biological father was never a serious part of her life, and his parental rights have been terminated. T.G. seeks to adopt M.M.C., giving her the legal father she currently lacks and legally cementing petitioners' family with M.M.C. After conducting a comprehensive home study, the State of Wisconsin not surprisingly found that it was in the best interests of M.M.C. to be adopted by T.G. Yet, the Wisconsin courts denied T.G.'s adoption petition because—and only because—A.M.B. and T.G. have chosen not to marry for deeply personal reasons that have nothing to do with their commitment to one another. As the courts explained, Wisconsin law classifies married and unmarried people differently for the purposes of adoption, permitting married people to adopt their partners' children, while categorically barring unmarried people from doing so.

Applying an exceedingly lax form of rational basis review, the Wisconsin Supreme Court upheld the State's categorical ban against adoption by unmarried people under the Equal Protection Clause of the United States Constitution and so barred M.M.C.'s adoption. App. 1a-2a. The court reasoned that it was reasonable for the State to enact a categorical ban against adoption by unmarried partners because "[a]

child joining a family with married parents enjoys a greater likelihood of a financially stable upbringing compared to a household with two unmarried parents." *Id.* at 19a. As one justice acknowledged, however, "the logical threads" of the court's reasoning "begin to shred under the weight of any sincere scrutiny." *Id.* at 41a (Karofsky, J., concurring).

This case urgently warrants this Court's review. The decision below presents the extraordinarily important constitutional question of whether, or when, the Equal Protection Clause permits a State to categorically disqualify a class of otherwise fit, potential adoptive parents on the sole basis of their choice not to get married. Approximately half the States have laws similar to Wisconsin's, categorically disqualifying otherwise fit adults from adopting the biological children of their partners and becoming second legal parents to those children. No adult, or child, should be denied the blessings and legal benefits of a parent-child relationship based solely on a decision not to marry. Yet, despite the crucial need for fit individuals willing to adopt, States like Wisconsin have enacted unconstitutional bans like the one at issue here, irrationally blocking adoptions even when they are in the best interests of the child. Given the extraordinarily important interests at stake, this Court's intervention is warranted.

The Wisconsin Supreme Court's decision is also indefensible on the merits. Wisconsin's categorical ban bears at least two hallmarks of *irrationality* recognized by this Court. First, instead of advancing the asserted state interest of providing adopted children with a more stable home, the ban actually undermines that interest by preventing adoptions that are concededly in the best interests of the child.

Second, Wisconsin's statutory scheme is self-contradictory. Wisconsin generally permits "an unmarried adult" to adopt children, and does not even give any automatic preference to a married adult over an unmarried one. Wis. Stat. § 48.82(1)(b).

The exceedingly lax review applied by the Wisconsin Supreme Court is particularly egregious considering that the legislative classifications at issue inhibit a host of personal relationships, discriminate against non-traditional family structures, and penalize children for choices made by adults, over which the children have no control. Those are all areas in which this Court has never hesitated to apply more probing scrutiny. However lenient rational basis review may be, it must still be meaningful. Indeed, that review is a fail-safe against countless classifications, including those—like the one at issue here—that affect the most important and fundamental relationships and personal interests.

The Court should grant review to decide the exceptionally important question presented. Granting review would also provide this Court with a clean, much-needed opportunity to clarify the minimum requirements for rational basis review, an issue that Justices of this Court have recognized warrants further guidance and that has vexed lower courts and confounded scholars. Guidance is needed to ensure that rational basis review remains meaningful, not a rubber-stamp of legislative classifications no matter how unreasonable and unsupported they are.

The petition should be granted.

STATEMENT OF THE CASE

A. Legal Background

In Wisconsin (as in other States), adoption is a "creature of statute," which "confers legal rights and duties on adopted children and their adoptive parents." App. 1a. Most fundamentally, adoption creates a legal parent-child relationship between the adoptive parent and the adopted child. Thus, after an "order of adoption is entered," "the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted person and the adoptive parents." Wis. Stat. § 48.92(1).

The "paramount consideration" of Wisconsin's adoption statute (and of all its laws pertaining to the treatment of children more generally) is—and has always been—the "best interests of the child." *Id.* § 48.01(1). Accordingly, Wisconsin law directs courts to grant a petition for adoption only after determining that the adoption "is in the best interests of the child." *Id.* § 48.91(3). In making that determination, the court is aided by "an investigation," conducted by a government agency, aimed at ascertaining "whether the petitioner's home is suitable for the child," including "whether the petitioner is fit and qualified to care for the child" and "displays the capacity to successfully nurture the child." *Id.* § 48.88(2)(a), (aj)(1).

Despite the singular focus of adoption law on the best interests of the child, Wisconsin has enacted laws categorically disqualifying one class of individuals from adopting, based solely on their choice to exercise their right not to marry. The result is a strange discrepancy. In Wisconsin, an unmarried adult *may*

adopt a child. *Id.* § 48.82(1)(b). And if a child lives with one of his or her biological parents and the other parent is deceased (or the other parent's parental rights have been terminated), then "the spouse of the child's parent" may adopt the child and become a second legal parent for the child (provided a court is satisfied that this is in the child's best interests). *Id.* §§ 48.81, 48.82. But the unmarried partner of the child's parent is categorically disqualified from adopting the child and becoming her second legal parent—even when, as the lower courts found here, such adoption would be in the best interests of the child. *See id.* § 48.82; App. 5a, 20a; *see* Wis. Stat.§ 48.92(2) (adoption results in cessation of legal relationship with birth parent "unless the birth parent is the spouse of the adoptive parent").

B. Factual Background

1. The relevant facts of this case are undisputed. M.M.C., who is now fifteen years old, has always lived with her biological mother, A.M.B. She was abandoned by her biological father and has long had no "meaningful relationship" with him. App. 4a. His parental rights have been terminated. *Id.*

A.M.B.'s male partner, T.G., has filled the void left by M.M.C.'s absent biological father. For over a decade, T.G. and A.M.B. have lived together in a committed, non-marital relationship, raising M.M.C. as their child and as part of a family. *Id.* They have chosen not to formally marry for deeply held personal reasons related in part to their own histories growing up in families with broken marriages.

T.G. has "assumed a variety of parental duties" as to M.M.C., *id.* at 4a, and has "demonstrated dedication and commitment" to her, *id.* at 42a

(Karofsky, J., concurring). T.G. and M.M.C. have strong emotional and psychological bonds. Because T.G. has raised M.M.C. as his daughter with selfless dedication, she "views T.G. as her father." *Id.* at 4a-5a; *see id.* at 73a.[1]

2. In January 2022, A.M.B. and T.G. sought legal recognition of "T.G.'s fatherly bond and relationship with M.M.C." by filing a petition to adopt M.M.C. *Id.* at 4a. In response, the Ashland County Department of Human Services (DHS) conducted a Multipurpose Home Study Report "to determine whether [M.M.C.] [wa]s a proper subject for adoption and whether [A.M.B. and T.G.'s] home [wa]s suitable for [M.M.C.]." Wis. Stat. § 48.88(2)(a); App. 66a-94a. Such reports are required under Wisconsin law and "provide" a "comprehensive" "qualitative evaluation of a petitioner's personal characteristics, civil and criminal history, age, health, financial stability, and ability to responsibly meet all [additional] requirements." Wis. Stat. § 48.88(2)(aj)(2).

As part of its investigation, DHS conducted lengthy interviews with A.M.B., T.G., and M.M.C. During those interviews M.M.C. (who was then 13-years old) reported that she regards T.G. as her only father and wishes to be adopted by T.G. as his legal—and permanent—daughter. App. 75a.

After completing its investigation, DHS recommended that the adoption petition be approved. App. 93a; *see* Wis. Stat. § 48.89; App. 87a, 89a, 91a,

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[1] Additional facts concerning T.G.'s close relationship with M.M.C. and the loving and secure home that T.G. and A.M.B. have created for M.M.C. are set forth in the Home Study Report conducted by the State. *See* App. 66a-94a.

93a (discussing DHS's findings as to the loving home A.M.B. and T.G. have provided for M.M.C.).

C. Proceedings Below

1. On June 22, 2022, the Circuit Court of Ashland County conducted a hearing on the petition to adopt M.M.C. App. 54a-62a; *see* Wis. Stat. § 48.91. The court noted that it had reviewed the home study and concluded that adoption of M.M.C. by T.G. was undoubtedly in M.M.C.'s best interests. App. 56a. Yet, the court was compelled to reject the petition because A.M.B. and T.G. have chosen not to marry. The court explained that while Wisconsin law permits second-parent adoption by the spouse of a child's parent, it categorically bans such adoption by the unmarried partner of a child's parent. *Id.* The court also explained that any contrary reading of Wisconsin's adoption statute is foreclosed by Wisconsin Supreme Court precedent. *Id.* (summarizing *Georgina G. v. Terry M. (In re Angel Lace M.)*, 516 N.W.2d 678, 682 (Wis. 1994)).

On July 11, 2022, the circuit court issued an order denying the petition to adopt M.M.C. App. 63a-65a. The order reiterated that T.G. is otherwise fit and that the adoption would be in the best interests of M.M.C. *Id.* at 64a. Yet, the court was compelled to deny the petition under Wisconsin law because T.G. is not married to A.M.B. *Id.* at 64a-65a.

2. T.G. and A.M.B. appealed to the Wisconsin Court of Appeals. But because the court of appeals was itself bound by *Angel Lace* (which also foreclosed their constitutional arguments), T.G. and A.M.B. then petitioned the Wisconsin Supreme Court for bypass of the Court of Appeals, which the state Supreme Court granted. *Id.* at 5a-6a.

As relevant here, petitioners argued that the denial of the petition to adopt M.M.C. violated T.G and M.M.C's federal equal protection rights. *Id.* at 5a.[2] More specifically, they argued that Wisconsin's adoption statute violates the Equal Protection Clause of the United States Constitution by (1) excluding the child of a parent in an unmarried relationship from the category of children "[w]ho may be adopted" while including the child of a parent in a married relationship in that category; and (2) excluding the unmarried partner of a child's parent from the category of adults "[w]ho may adopt" a child, while including the married partner of a child's parent in that category. Wis. Stat. §§ 48.81, 48.82.

3. On April 30, 2024, the Wisconsin Supreme Court rejected petitioners' equal protection challenge to Wisconsin's adoption statute and affirmed the circuit court's denial of the petition to adopt M.M.C. App. 1a-22a. The court first explained that "the legislative classifications restricting adoption" are subject only to "rational basis" review because they "do not infringe a fundamental right or affect a protected class." *Id.* at 22a. The court then held that the classifications survive that test "[b]ecause the state has a legitimate interest in promoting stability for adoptive children through marital families," so a "rational basis exists" for the classifications. *Id.*

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[2] Petitioners also argued that Wisconsin's classifications violate Article I, Section 1 of the Wisconsin Constitution, but the Wisconsin Supreme Court rested its decision exclusively on its interpretation of the federal Constitution, based on its "general principle" to treat "the United States and Wisconsin Constitutions as consistent with each other in their due process and equal protection guarantees." App. 7a n.6 (citation omitted).

Justice Karofsky filed a separate concurring opinion. *Id.* at 40a-46a. She explained that, in her view, the "connection between the statutes and their stated goal of promoting a child's best interest" is "specious" and rests on "nothing more than a fraying tangle of dubious assumptions[] [and] circular reasoning," and "the logical threads" of the classifications at issue "begin to shred under the weight of any sincere scrutiny" *Id.* at 41a. Yet, Justice Karofsky concurred in the result reached by the court, reasoning that rational basis review is an exceedingly "low bar" that is satisfied even by "threadbare" connections between a challenged classification and the purported state interest. *Id.* at 46a.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari for at least three reasons. First, the decision below implicates an extraordinarily important constitutional question that affects access to adoption by otherwise fit adults—and access by children to fit adults who wish to assume the obligations (and blessings) of parenting—in approximately half the States. Second, the decision below employs an indefensibly lax form of rational basis review to uphold a state classification riddled with self-contradictions and other problems. And, third, this case presents this Court with an ideal opportunity to provide needed guidance about the minimum requirements for rational basis review of legislative classifications, including those impinging on crucially important interests like family.

I. THE CONSTITUTIONALITY OF STATE LAWS CATEGORICALLY BANNING ADOPTION BY A CLASS OF OTHERWISE FIT ADULTS IS VITALLY IMPORTANT

The context in which this equal protection case arises—adoption—is instrumental to understanding this case's importance and the urgent need for this Court's review. For both potential adoptive parents and potential adopted children, the availability of adoption is literally life-changing. Adoptive parents assume the solemn legal and moral responsibility to care for children as their own. And adopted children benefit from being in the loving, stable, and supportive environment that adoptive parents can provide. Successful adoptions are thus virtually always—indeed, as a matter of law must be—in the best interests of the child. *Supra* at 5. Adoption is also critical to family, enriching the lives of parents, as well as children and other family members.

The importance of adoption extends beyond the creation of stable families for adopted children. Under the typical adoption statute, adoption "is recognized as the legal equivalent of biological parenthood," *Smith v. Organization of Foster Fams. for Equality & Reform*, 431 U.S. 816, 844 n.51 (1977); 2 Joan Haifetz Hollinger, *Adoption Law & Practice* § 12.01 (2024 online) (describing the "legal relationship created by an adoption" as "a complete substitution of adoptive parents for birth parents for all purposes").[3] This means that adopted children enjoy the same legal benefits and rights that biological children enjoy. For example, an adopted

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[3] *See, e.g.*, Wis. Stat. § 48.92; Del. Code Ann. tit. 13, § 919; Nev. Rev. Stat. § 127.160.

child has the same priority as a natural child with respect to intestate succession, and an adoptive parent is required to pay for the support and health care expenses of an adopted child just like a parent must pay such expenses for a natural child. *Adoption Law & Practice*, *supra*, §§ 12.02-12.07.[4] Likewise, under federal law, adopted children are entitled to the same social security benefits as biological children. 42 U.S.C. §§ 402(d), 416(e).

Second-parent adoption is no different. In addition to "provid[ing] additional economic security," *In re Adoption of Child ex rel. J.M.G.*, 632 A.2d 550, 551 (N.J. Super. Ct. Ch. Div. 1993), a legal relationship between the child and the second parent not only cements the family relationship but "enable[s] [the child] to preserve her unique filial ties" with the second parent in the event that her biological parent dies or her two parents separate—as happens in the case of married as well as unmarried relationships. *Adoption of Tammy*, 619 N.E.2d 315, 320 (Mass. 1993). This allows the child "to achieve a measure of permanency with both parent figures," *In re Jacob*, 660 N.E.2d 397, 399-400 (N.Y. 1995), and prevents the child from "remain[ing] in legal limbo" should any "issues of custody and visitation" arise. *Adoption of Tammy*, 619 N.E.2d at 320-21.

The value of the "emotional security" that adoption provides in such situations cannot be

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[4] With respect to intestate succession, *see, e.g.*, Wis. Stat. §§ 48.92(1), (3), 852.01, 854.20; Nev. Rev. Stat. § 127.160; Cal. Prob. Code § 6450(b); Tex. Est. Code Ann. § 201.054. With respect to the requirement of an adoptive parent to pay support, *see, e.g.*, Wis. Stat. §§ 48.92, 767.511; Cal. Fam. Code §§ 3900, 8616.

overestimated. *In re Jacob*, 660 N.E.2d at 399. Stability and permanence are likely the most important factors in a child's emotional and psychological flourishing. Vera I. Fahlberg, *A Child's Journey through Placement* 23-24 (1991). This is particularly true for the very young. *See, e.g.*, Virginia L. Colin, U.S. Dep't of Health & Human Servs., *Infant Attachment: What We Know Now* at ii (June 1991), https://aspe.hhs.gov/sites/default/files/private/pdf/73816/inatrpt.pdf ("[E]arly infant attachment ... is at the heart of healthy child development ....").

The importance of adoption is not only qualitative. Approximately 100,000 children are adopted each year in the United States.[5] Many others await adoption in foster care or other alternative child-care arrangements.[6] Some find themselves in homes, but without the security that comes with adoption. Accordingly, the need for States to maintain steady pools of willing and fit adoptive parents is acute.

As noted above, *supra* at 5-6, although Wisconsin allows unmarried *single* people to adopt, Wis. Stat. § 48.82(1)(b), it categorically bans unmarried people from adopting the children of their partners. Approximately half of the States have similar laws categorically preventing second-parent adoptions by unmarried partners, despite the fact that "the goal of

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[5] Eun Koh et al., National Council for Adoption, *Adoption by the Numbers* 5 (2022), https://adoptioncouncil.org/wp-content/uploads/2022/12/Adoption-by-the-Numbers-National-Council-For-Adoption-Dec-2022.pdf.

[6] Nicole Devi, National Council for Adoption, *Foster Care and Adoption Statistics – AFCARS Annual Update* (Mar. 20, 2024), https://adoptioncouncil.org/article/foster-care-and-adoption-statistics/.

adoption statutes is to protect the best interests of children." *In re Adoption of Zschach*, 665 N.E.2d 1070, 1073 (Ohio), *cert. denied*, 519 U.S. 1028 (1996). Those States permit a married person to adopt the child of his or her spouse and become the second legal parent of that child, but categorically disqualify an unmarried person from doing the same with the child of his or her partner, without regard for whether such adoption is in the best interests of the child. [7]

Such categorical disqualifications shrink the pool of otherwise fit and loving adults who can adopt in large swaths of the country—penalizing not just potential adoptive parents, but the children who could be adopted too. What is more, as this case well illustrates, such laws bar adoption even when it is clearly in the child's best interests—as the State itself determined here. App. 56a. This causes immeasurable hardship to otherwise fit adults who wish to adopt and to the children themselves, who are

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[7] *See, e.g.*, Ala. Code § 26-10A-27 (2023) (repealed by Act 2023-92, § 5 (effective Jan. 1, 2024); *In re Adoption of K.R.S.*, 109 So.3d 176 (Ala. Civ. App. 2012); Alaska Stat. § 25.23.130(a)(1); Ariz. Rev. Stat. Ann. § 8-117(B); Ark. Code Ann. §§ 9-9-204, -215; Fla. Stat. §§ 63.042(2), 63.172(b); Ga. Code Ann. § 19-8-5; Haw. Rev. Stat. §§ 578-1, 578-16(d), (e)(1); Iowa Code §§ 600.4, 600.13(4); Ky. Rev. Stat. Ann. § 199.520(2) *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804, 811-12 (Ky. Ct. App. 2008); Minn. Stat. § 259.59, subds. 1, 1a; Mo. Rev. Stat. §§ 453.010(4), 453.090(1); *B.P. v. State (In re Adoption of Luke)*, 640 N.W.2d 374, 382-83 (Neb. 2002); N.C. Gen. Stat. § 48-1-106(c), (d); N.D. Cent. Code § 14-15-14(1)(a); N.M. Stat. Ann. § 32A-5-32; Ohio Rev. Code Ann. § 3107.15(A)(1)(a); S.D. Codified Laws § 25-6-17; Tex. Fam. Code Ann. § 162.001(b)(2); Utah Code Ann. § 78B-6-117(2), (3); W. Va. Code § 48-22-703(a).

arbitrarily denied the practical, legal, and emotional advantages of adoption and a second legal parent.

II. THE WISCONSIN SUPREME COURT'S DECISION UPHOLDING WISCONSIN'S CATEGORICAL BAN ON ADOPTION BY THE UNMARRIED PARTNERS OF BIOLOGICAL PARENTS IS INDEFENSIBLE

The decision below is indefensible for several reasons, and it cries out for this Court's review.

1. The Equal Protection Clause of the United States Constitution forbids any State from "deny[ing] any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Broadly speaking, this provision "limits the authority of a State to draw such 'legal' lines as it chooses." *Stanley v. Illinois*, 405 U.S. 645, 652 (1972) (citation omitted). To that end, the Equal Protection Clause "embodies a general rule" of non-discrimination requiring that all legislative classifications be sufficiently justified. *Vacco v. Quill*, 521 U.S. 793, 799 (1997).

Not all legislative classifications demand the same level of justification. If a legislative classification "jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic" (e.g., race), it is analyzed under strict scrutiny, *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992), which means that the classification needs to be "narrowly tailored" to "'further compelling governmental interests,'" *Johnson v. California*, 543 U.S. 499, 505 (2005) (citation omitted). If, however, a classification does not jeopardize a fundamental right and does not involve a suspect class, then it is subject only to rational basis review—so the classification

need only "rationally further a legitimate state interest." *Nordlinger*, 505 U.S. at 10.[8]

Even the rational basis standard, however, "is not a toothless one," and it cannot be satisfied by implausible justifications. *Matthews v. Lucas*, 427 U.S. 495, 510 (1976). As this Court admonished more than a century ago, only "differences" that "furnish a *reasonable* basis for separate laws" can "support class legislation." *Gulf, Colo. & S.F. Ry. Co. v. Ellis*, 165 U.S. 150, 155-56 (1897) (emphasis added).

All agree that Wisconsin's ban on adoption by unmarried people in committed relationships presents a classic legislative classification amenable to federal equal protection analysis. Under Wisconsin law, a *married* person may adopt the child of his or her spouse, while an *unmarried* person in a committed relationship is categorically disqualified from doing so—even when, as here, the adoption would be in the best interests of the child. Wis. Stat. § 48.81; App. 56a.[9] Meanwhile, an unmarried person who is *not* in a committed relationship with a child's parent *can* adopt. Wis. Stat. § 48.82(1)(b).

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[8] A small group of discriminatory classifications—those "based on sex or illegitimacy"—are subject to "intermediate scrutiny," requiring that a classification be "substantially related to an important governmental objective." *Clark v. Jeter*, 486 U.S. 456, 461 (1988).

[9] Two legislative classifications, which are the flip sides of the same coin, are at issue here: (1) the omission of an unmarried partner of a child's parent from the category of adults who may adopt a child, Wis. Stat.§ 48.82; and (2) the omission of the child of a parent who is in an unmarried relationship from the category of children who may be adopted. *Id.* § 48.81.

2.a. The Wisconsin Supreme Court's decision upholding the State's categorical bar on second-parent adoption by otherwise fit, unmarried adults in committed relationships flouts the minimum constitutional requirements of equal protection, in conflict with decisions of this Court and other federal and state courts. In upholding that categorical bar, the court applied an overly lenient form of rational basis review, devoid of "any sincere scrutiny," as Justice Karofsky correctly pointed out. App. 41a.

That was wrong. While rational basis review is the least rigorous form of equal protection scrutiny, it remains an important protection, especially when it comes to state laws intruding on personal liberty and other critical interests—including family—based on "arbitrary or irrational" distinctions. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985).

Even under the most deferential standard a state classification is unconstitutional unless it *"rationally* furthers a legitimate state purpose." *Hooper v. Bernalillo Cnty. Assessor*, 472 U.S. 612, 618 (1985) (emphasis added). Thus, a State "may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne*, 473 U.S. at 446. As the first Justice Harlan observed long ago, courts are "under a solemn duty" to "give effect to the [C]onstitution" by striking down laws that "purport[] to have been enacted to protect the public health, the public morals, or the public safety," but in fact have "no real or substantial relation to those objects." *Mugler v. Kansas*, 123 U.S. 623, 661 (1887).

Otherwise, rational basis review becomes a "rule of law which makes legislative action invulnerable to constitutional assault," *Borden's Farm Prods. Co. v.*

Baldwin, 293 U.S. 194, 209 (1934)—which it was never meant to be, and which would constitute "virtual abdication" of the judicial role, rather than "genuine judicial inquiry," *Ross v. State, Dep't of Revenue*, 292 P.3d 906, 910 n.11 (Alaska 2012) (citation omitted); *see King v. State*, 818 N.W.2d 1, 86 (Iowa 2012) (Appel, J., dissenting) (explaining that overly deferential rational basis review "tends to be no review at all"); *Hettinga v. United States*, 677 F.3d 471, 482 (D.C. Cir. 2012) (Brown, J., concurring) (explaining that excessive deference under rational basis review "allows the legislature free rein to subjugate the common good"), *cert. denied*, 568 U.S. 1209 (2013). A test that calls on judges to "rationalize a basis" instead of meaningfully probing for an actual "rational basis" is less demanding than "the straight-face test"—and is thus no test at all. *Patel v. Texas Dep't of Licensing & Regul.*, 469 S.W.3d 69, 112 (Tex. 2015) (Willett, J., concurring); *see generally* Randy E. Barnett, *Scrutiny Land*, 106 Mich. L. Rev. 1479, 1485 (2008) (decrying version of rational basis review that creates a presumption of constitutionality that is, "for all practical purposes, irrebuttable").

Here, the Wisconsin Supreme Court flouted those principles. It upheld the classifications at issue on the ground that they "serve the legitimate state interest in promoting the adoption of children into stable, marital families." App. 22a. That undoubtedly is a legitimate state interest, but the court never engaged in any serious attempt to discern a real "link between classification and objective," as required under the Equal Protection Clause. *Romer v. Evans*, 517 U.S. 620, 632 (1996). Had it done so, it would have realized that, in reality, Wisconsin's legislative classifications *undermine* the very interest they purport to serve.

That is because in cases like this one (where the child's parent is in a committed relationship and her partner seeks to adopt the child), the choice is not between the child being adopted by her parent's spouse or her parent's unmarried partner. Rather, the question is whether the child will be adopted *at all*, and thus be granted a second legal parent, or whether the child will remain unadopted with a single legal parent. Under those circumstances, categorically disallowing adoption leads to *less* stability for the child, not more. By rubber-stamping the State's rationale, without even minimally testing it, the court below permitted the State to "rely on a classification whose relationship to [its] asserted goal is so attenuated as to render the distinction arbitrary or irrational," *City of Cleburne*, 473 U.S. at 446, and thus failed to "give[] substance to the Equal Protection Clause." *Romer*, 517 U.S. at 632.

The facts of this case vividly illustrate that marriage, without more, is an inapt proxy for the asserted state interest in stability for adopted children. The State itself found that adoption by T.G. would provide financial, physical, and emotional security and would clearly be in M.M.C.'s best interests. App. 56a, 66a-94a; *supra* at 8. Yet, the State's categorical disqualification of unmarried people from second-parent adoption prevented M.M.C.'s adoption from being approved, depriving her of a second legal parent and leaving her in a less stable situation that is necessarily *not* in her best interests. The connection between Wisconsin's classifications and the reasons offered for it are so "attenuated" that they cannot avoid being labeled "arbitrary or irrational." *City of Cleburne*, 473 U.S. at 446.

b. Wisconsin's categorical disqualification of unmarried people from adopting their partners' children fails rational basis for another fundamental reason: it is self-contradictory. To survive rational basis review, a legislative classification must, of course, be *rational.* As this Court has explained, while a legislature need not defend its legislative choices with "statistical evidence," those choice still need to be based on "*logical* assumptions." *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 812 (1976) (emphasis added). Or, as the Ninth Circuit has put it, the government "cannot hope to survive *rational* basis review by resorting to *irrationality*." *Merrifield v. Lockyer*, 547 F.3d 978, 991 (9th Cir. 2008) (second emphasis added). Statutory schemes that are self-contradictory are by definition irrational. At a minimum, rational basis review must be able to ferret out self-contradictory schemes.

The *Merrifield* case is illustrative. There, the Ninth Circuit addressed the constitutionality of California's licensing requirements for pest controllers. The law exempted certain pest controllers who do not use harmful pesticides (e.g., those who "engaged in the live capture" of "bats, raccoons, skunks, and squirrels") from the requirement to obtain a license, while not exempting other pest controllers (those who capture "mice, rats, or pigeons"). *Merrifield*, 547 F.3d at 981-82. In an opinion by Judge O'Scannlain, the court concluded that this regulatory distinction was unconstitutional. It explained that whatever rationale existed for exempting pest controllers who capture skunks and squirrels would exist for those who capture mice, rats, and pigeons as well, so by excluding those who capture mice, rats, and pigeons from the exemption,

the State "undercut its own rational basis for the licensing scheme." *Id.* at 992. Accordingly, the State flunked "the principle of non-contradiction," and the regulatory scheme was "not supported by a rational basis." *Id.* at 991-92.

Wisconsin's adoption classification likewise violates the "principle of non-contradiction." *Id.* at 991. The State bans the adoption of a child by the unmarried partner of the child's parent on the ground that a child needs the stability of being in a married home. App. 3a, 19a-20a. But the State permits adoption by "an unmarried adult." Wis. Stat. § 48.82(1)(b). In fact, as a general matter, an unmarried adult is treated equally to a married person for the purposes of adoption: both are eligible to adopt, neither is categorically deemed unfit based on marital status, and no automatic preference is given to one over the other. *See id.* Wisconsin cannot justify its wholesale ban on second-parent adoption by unmarried partners based on a rationale that the statutory scheme itself plainly contradicts. Like the statue in *Merrifield*, Wisconsin's statute "undercut[s] its own rational basis." 547 F.3d at 992.

c. Wisconsin's ban on adoption by unmarried partners conflicts with other aspects of the State's adoption regime, compounding its irrationality and self-contradictory nature. In other respects, the State's adoption statutes eschews categorical determinations and rests instead on individualized determinations about whether a particular adoption is in the child's best interests. Indeed, the statutory scheme does not even categorically disqualify felons, drug addicts, or adults with serious psychological conditions from adopting. *See* Wis. Stat. § 48.82. That is as it should be, for the best-interests

determination is inherently individualized, and as this Court said in *Stanley,* legal presumptions should not substitute for the case-by-case specificity that a child's best interests require; to do so "needlessly risks running roughshod over the important interests of both parent and child." 405 U.S. at 657.

In most respects, Wisconsin law tasks government agencies and courts with accounting for the many relevant factors as part of their individualized investigations and determinations as to the best interests of potential adoptive children. *See* Wis. Stat. § 48.88(2)(aj)(2)-(3) (requiring a "qualitative evaluation" of various factors, including the "civil and criminal history" and "health" of a potential adoptive parent, and permitting "a clinical assessment of the petitioner's mental health); *id.* § 48.91 (reiterating individualized, multi-factor assessment).

Wisconsin's categorical ban on adoption by unmarried partners irrationally departs from that case-specific, child-focused, and nuanced approach. As with the presumption against unmarried fathers that this Court found invalid under the Equal Protection Clause in *Stanley*, 405 U.S. at 657, the law here simply bans unmarried people from second-parent adoptions, regardless of the circumstances. Such a sharp deviation from the individualized assessments that are otherwise the linchpin of the adoption statute "forecloses the determinative issues of competence and care" and further undermines the ban's rationality. *Id.* at 656-57.

d. The Wisconsin Supreme Court relied in part on the State's interest in promoting marriage. App. 21a. Obviously, States may, and do, condition certain benefits on marriage, in order to encourage marriage. But the statute here is at best conflicted on marriage,

since it permits unmarried adults to adopt in many circumstances. Wis. Stat. § 48.82(1)(b). And, in any event, there is a difference between carrots and sledge-hammers. States may not penalize adults, much less innocent children, in the extreme—and patently coercive—form of a ban on the ability to adopt a child based solely on a decision not to marry. *Cf. Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972) (explaining that punishing child for parents' decision is "illogical and unjust").

Marriage is a deeply personal and often religious decision. The freedom to marry not only is a fundamental right but also includes the freedom *not* to marry. *See Loving v. Virginia,* 388 U.S. 1, 13 (1967) (observing that the Fourteenth Amendment includes "the freedom to marry, *or not marry*, a person of another race" (emphasis added)). States may not use their adoption laws to penalize the decision not to marry by categorically deeming unmarried individuals unfit to adopt. *Cf. Zablocki v Redhail*, 434 U.S. 374, 387 (1978) (States may not "interfere directly and substantially with the right to marry"). Instead of taking these interests into account, the Wisconsin Supreme Court summarily declared that Wisconsin's "adoption statutes do not restrict a fundamental right," and then proceeded to apply an overly lax form of rational basis review. App. 2a.

Moreover, whatever interest a State has in promoting marriage in the abstract, the means chosen here fail any applicable tailoring analysis, because the connection between adoption and any pro-marriage policy pursued by Wisconsin's adoption law is so attenuated. In *Glona v. American Guarantee & Liability Insurance Co.*, this Court held that a Texas law banning mothers of illegitimate children

from recovering in tort for the deaths of their children was unconstitutional in part because it was so unlikely to discourage illegitimacy—and so, the "causal connection" between end and means was too "farfetched" to survive constitutional scrutiny. 391 U.S. 73, 75 (1968). The causal connection between end and means is even more farfetched for Wisconsin's statute, particularly given that Wisconsin law allows unmarried adults to adopt—just so long as they are not trying to create a legal family with the child of a loving, permanent partner.

e. In short, Wisconsin's categorical disqualification of unmarried people from adopting their partners' children bears multiple indicia of irrationality: it undermines the State's own asserted interest of providing children with stable adoptive homes; it evinces a distrust of unmarried people for the purposes of second-parent adoptions that is at odds with the adoption statute's general acceptance of unmarried people as adoptive parents; and it is out of step with the holistic, case-by-case adjudication with which virtually all other characteristics are dealt with. In other words, the classifications at issue are "not only 'imprecise,' [they are] wholly without any rational basis," and are therefore unconstitutional. *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 538 (1973).

3. The Wisconsin Supreme Court's exceedingly lax version of rational basis review is particularly problematic given the nature of the classifications and interests at issue in this case.

For one thing, by categorically disqualifying an unmarried person from adopting his partner's child, Wisconsin's adoption statute effectively "penaliz[es]" *the innocent child* for the decision of two adults not to

marry, a decision over which the child has no control and for which she bears no "individual responsibility." *Weber*, 406 U.S. at 175. Punishing children for such decisions is "illogical and unjust," not rational. *Id.* at 175-76. In this case, M.M.C.'s punishment is particularly cruel, as the Wisconsin Supreme Court has barred an adoption that the State itself found to be in M.M.C.'s best interests. *Supra* at 7-8.

For another thing, this case involves an intrusion into many different intimate personal relationships: the relationship between A.M.B. and her partner, T.G.; the parent-daughter relationship between A.M.B. and her daughter, M.M.C.; the relationship between T.G. and M.M.C., which is functionally a father-daughter relationship; and the familial relationship among A.M.B., T.G., and M.M.C.

This Court has consistently demanded a fulsome application of the rational basis test where, as here, "the challenged legislation inhibits personal relationships." *Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (O'Connor, J., concurring in the judgment). The personal relationships here implicate familial bonds and "the oldest of the fundamental liberty interests recognized by this Court"—i.e., "the interest of parents in the care ... and control of their children"—which only heightens the constitutional significance of those relationships. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The Wisconsin Supreme Court's analysis utterly failed to account for these crucially important interests and, instead, engaged in the most superficial kind of review.

Finally, the classifications at issue discriminate against people and children in a non-traditional family structure, where two adults have made a deeply personal choice not to get married yet remain

committed to each other and their relationship. When such discrimination is implicated, this Court has never hesitated to engage in probing rational basis review and to strike down legislative classifications, in sharp contrast to what the Wisconsin Supreme Court did here. *See, e.g., Moreno*, 413 U.S. at 535-36 (striking down statute disqualifying "otherwise eligible households" from receiving food stamps solely because those households "contain[ed] unrelated members"); *City of Cleburne,* 473 U.S. at 432, 447-50 (striking down zoning ordinance "treating a home for the mentally [disabled] differently" from homes with other types of residents); *cf. Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977) (explaining that government intrusion "on choices concerning family living arrangements" requires a court to "examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation").

The Wisconsin's Supreme Court's departure from well-settled principles governing review of statutes under the Equal Protection Clause warrants this Court's intervention, especially given the important interests affected by the classifications at issue.

III. THE COURT'S REVIEW IS WARRANTED GIVEN THE PROFOUNDLY IMPORTANT INTERESTS AT STAKE AND CONFUSION OVER THE MINIMUM REQUIREMENTS OF RATIONAL BASIS REVIEW

The decision below implicates fundamentally important interests involving the family, children, and parental rights. Moreover, this case provides an opportunity to provide much-needed guidance about the minimal requirements of rational basis review, so

that lower courts do not persist in confusing rational basis review with abdication of their duty to engage in judicial review. This case is a clean vehicle for doing so because the record is simple and undisputed, the case turns entirely on the validity of the classifications at issue, and the question presented was the only issue litigated below.

1. The Constitution "protects the sanctity of the family" because "the institution of the family is deeply rooted in this Nation's history and tradition." *Moore*, 431 U.S. at 503. Consistent with that history and tradition, this Court "has frequently emphasized the importance of the family." *Stanley*, 405 U.S. at 651. Indeed, few interests are as important and fundamental as those concerning the family, children, and parents. *See, e.g.*, *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (describing the right "to marry, establish a home[,] and bring up children" as "essential to the orderly pursuit of happiness"); *Troxel*, 530 U.S. at 65 (describing "the interest of parents in the care, custody, and control of their children" as "perhaps the oldest of the fundamental liberty interests recognized by this Court"); *May v. Anderson*, 345 U.S. 528, 533 (1953) (describing the "right to the care, custody, [and] management" of one's children as "far more precious ... than property rights"). The statutes at issue here—which are replicated in similar form in roughly half the States across the country—undermine those interests at the expense of children, robbing them of loving adoptive homes that are in their best interests. Given the unquestionably important interests at stake, this Court should, at a bare minimum, review the constitutionality of Wisconsin's classifications.

2. This case also presents an opportunity to provide lower courts with badly needed guidance on the minimum requirements of rational basis review. A "necessary corollary to and implication of rationality as a test is that there will be situations where proffered reasons are not rational." *Doe v. Pennsylvania Bd. of Probation & Parole*, 513 F.3d 95, 112 n.9 (3d Cir. 2008). But the Wisconsin Supreme Court applied a particularly lax version of rational basis review, essentially abdicating its responsibility to enforce the Constitution's equal protection guarantee. App. 17a-22a. Indeed, Justice Karofsky stressed in her concurrence that the rationale for Wisconsin's legislative classifications is "specious" and rests on "dubious assumptions[]"—but she read this Court's precedents as blessing this type of analysis under rational basis review. *Id.* at 40-41a.

The decision below is thus emblematic of an attitude toward rational basis scrutiny that has been aptly described as a "virtual rubber-stamp" of legislative action. *Trujillo v. City of Albuquerque*, 965 P.2d 305, 314 (N.M. 1998) (citation omitted). In reality, "[t]he rational basis inquiry does not have to be largely toothless," *id.*, as many of this Court's cases show, *City of Cleburne*, 473 U.S. at 446-50; *Moreno*, 413 U.S. at 533-38; *Hooper*, 472 U.S. at 621-24; *Zobel v. Williams*, 457 U.S. 55, 61-63 (1982).

The truth is that this Court's pronouncements on the proper standard for reviewing equal protection challenges to state classifications—as well as its cases applying rational basis review—"ha[ve] not been altogether consistent," as this Court itself has acknowledged. *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 174 (1980). According to one formulation—which demands a more robust analysis and tracks Justice

Harlan's articulation in *Mugler*, 123 U.S. at 661—"for a classification to be valid under the Equal Protection Clause of the Fourteenth Amendment it 'must rest upon some ground of difference having *a fair and substantial relation* to the object of the legislation.'" *Fritz*, 449 U.S. at 174 (quoting *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920) (emphasis added)). But according to another, looser formulation, a classification is valid under the Equal Protection Clause "if *any state of facts reasonably can be conceived* that would sustain it." *Id.* (emphasis added) (quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911)). As the Court candidly acknowledged in *Fritz*, even "[t]he most arrogant legal scholar would not claim" that the Court's cases have "applied a uniform or consistent test" for rational basis. 449 U.S. at 176 n.10.

This Court has never fully "resolved the tensions" in its rational basis cases and pronouncements. *King*, 818 N.W.2d at 85 (Appel, J., dissenting); *see generally* Robert C. Farrell, *Successful Rational Basis Claims in the Supreme Court from the 1971 Term Through* Romer v. Evans, 32 Ind. L. Rev. 357 (1999) (struggling to present coherent theory that explains this Court's rational basis jurisprudence). As a result, rational basis review functions as little more than "a Magic Eight Ball that randomly generates different answers" based on "who happens to be shaking it and with what level of vigor." Clark Neily, *No Such Thing: Litigating Under the Rational Basis Test*, 1 NYU J.L. & Liberty 898, 898 (2005).

Leaving these tensions unresolved has led to confusion and frustration in the lower courts. Lower court judges have complained about the confusing and illogical nature of rational basis review as actually

practiced by many courts, referring to it as "a misnomer, wrapped in an anomaly, inside a contradiction," *Patel*, 469 S.W.3d at 98 (Willett, J., concurring), and as a form of judicial "abdicat[ion]," *Hettinga*, 677 F.3d at 481 (Brown, J., concurring), that amounts to judges "cup[ping] [their] hands over [their] eyes." *Arceneaux v. Treen*, 671 F.2d 128, 136 n.3 (5th Cir. 1982) (Goldberg, J., concurring).

With respect to confusion, the Tenth Circuit, for example, has expressed uncertainty as to whether rational basis cases in which this Court has engaged in a more searching review represent "traditional" rational-basis review, "a new category" of rational-basis review, or "exceptions to traditional rational basis review." *Powers v. Harris*, 379 F.3d 1208, 1223-24 (10th Cir. 2004), *cert. denied*, 544 U.S. 920 (2005). Meanwhile, the Sixth Circuit assures that "rational basis review is not a rubber stamp," *Hadix v. Johnson*, 230 F.3d 840, 843 (2000), and that it is deferential but "not 'toothless'," *Berger v. City of Mayfield Heights*, 154 F.3d 621, 625 (6th Cir. 1998) (citation omitted). The Ninth Circuit concedes that its rational basis review "more or less" *is* a "a judicial rubber stamp." *United States v. Sahhar*, 917 F.2d 1197, 1201 n.5 (9th Cir. 1990), *cert. denied*, 499 U.S. 963 (1991). And the Seventh Circuit describes rational basis as not only "deferential," but also "toothless." *In re Agnew*, 144 F.3d 1013, 1014 (7th Cir. 1998) (per curiam). The circuits, in short, are all over the map.

This Court's silence has also led to some lower courts sanctioning clearly irrational laws under a remarkably weak form of rational basis review that has been accurately described as the "anything goes" test. *Arceneaux*, 671 F.3d at 136 (Goldberg, J., concurring). In just one case, the Third Circuit

upheld a Pennsylvania ban on funeral establishments serving "food or intoxicating beverages" on the ground that contamination from the embalming procedure might be unhealthy, while ignoring that the statute's tolerance of serving any non-alcoholic beverage completely undermined and contradicted the purported rationale. *Heffner v. Murphy*, 745 F.3d 56, 85-86 (3d Cir.) (citation omitted), *cert. denied*, 574 U.S. 871 (2014); *see, e.g., Meadows v. Odom*, 360 F. Supp. 2d 811, 824-25 (M.D. La. 2005) (upholding safety-training requirement for professional florists), *vacated as moot*, 198 F. App'x 348 (5th Cir. 2006). Review that tolerates such irrationality is no review.

The Equal Protection Clause is one of the most important protections standing between liberty and tyranny. While forgiving, rational basis review remains a frontline protection for citizens against countless government classifications. In reviewing the decision below, this Court should take the opportunity to clarify the proper standard for rational basis review, ensuring that it remains a meaningful inquiry, not a mere formality or an abdication of the "obligation to safeguard constitutional values by ensuring *all* legislation complies with those values." *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 9 (Iowa), *cert. denied*, 541 U.S. 1086 (2004).

3. This case provides a clean vehicle for resolving the question presented and providing broader guidance to lower courts. The factual record is simple and undisputed, and the question presented was the sole issue litigated below. Additionally, all agree that the adoption of M.M.C. is in her best interests, as the State itself has found. App. 56a; *supra* at 8. Thus, only Wisconsin's categorical ban on adoption by unmarried partners stands in the way of T.G. and

A.M.B.'s adoption petition being granted. This case presents a perfect opportunity to review the constitutionality of that ban and to clarify the minimal requirements of rational basis review.

* * *

Wisconsin, like nearly half the States, has erected an irrational impediment to adoption by otherwise fit adults in the form of a categorical ban on second-parent adoptions by unmarried people. In this case, the Wisconsin Supreme Court's decision upholding that ban deprived a young girl, abandoned by her biological father, of a loving and legal father, even though the State determined that the adoption was clearly in her best interests. That decision was the product of an overly lax version of rational basis review that has become all too common. This Court should grant certiorari, reverse the decision below, and make clear that rational basis review remains a real protection against arbitrary government action.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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