

No. \_\_\_\_\_

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In the  
**Supreme Court of the United States**

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C.S.,  
*Petitioner,*  
v.

L.S.,  
*Respondent.*

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**On Petition for Writ of Certiorari to  
the Supreme Court of New Jersey**

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**PETITION FOR WRIT OF CERTIORARI**

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May 29, 2019

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**QUESTION PRESENTED**

Where a state family court finds that the father has violated the mother's constitutional right to the care, custody, and management of her children, does the Due Process Clause of the Fourteenth Amendment require the state court to hold a hearing in order to measure then redress the damage done to the mother's constitutional right?

**PARTIES TO THE PROCEEDINGS**

Petitioner C.S. was the plaintiff in the New Jersey Superior Court, Chancery Division, Family Part, the appellant in the New Jersey Superior Court, Appellate Division, and the petitioner in the New Jersey Supreme Court. Respondent L.S. was the defendant in the New Jersey Superior Court, Chancery Division, Family Part, the respondent and cross-appellant in the New Jersey Superior Court, Appellate Division, and the respondent in the New Jersey Supreme Court.

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## **PETITION FOR WRIT OF CERTIORARI**

C.S. petitions this Court for a writ of certiorari to review the Orders and Decisions of the New Jersey Supreme Court and New Jersey Superior Court, Appellate Division, entered in the state courts below.

### **OPINIONS BELOW**

The March 21, 2019 Order of the New Jersey Supreme Court denying C.S.'s Petition for Certification is unpublished and appears at Appendix 1. The November 9, 2018 Decision of the New Jersey Superior Court, Appellate Division, is unpublished and appears at Appendix 2.

### **JURISDICTION**

The Order of the New Jersey Supreme Court was entered on March 19, 2019. (App. 1). This Court's jurisdiction is invoked under 28 U.S.C.A. § 1257 (West).

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

“[N]or shall any state deprive any person of life, liberty, or property, without due process of law,” U.S. Const. amend. XIV.

### **STATEMENT OF THE CASE**

This case involves mother C.S.'s constitutional right to the care, custody, and management of her two children.

The parties were married in 1992. They lived together in New Jersey and had two children, L. (born 10/3/99) and J. (born 3/24/01).

The parties' divorce in 2013 arose from the defendant father's unilateral decision to move the family from their New Jersey home to Georgia. The parties signed a Marital Settlement Agreement to enable both parents to remain meaningfully involved in their children's lives. This was critical for C.S. because, following filing of the divorce action, "the children continued to live with L.S. in Georgia even though I missed the children tremendously and the children missed me. I kept in touch with both children by telephone and I Face Timed with them."

Unfortunately, the defendant father began interfering with the relationship between the children and their mother, "needlessly and inappropriately involv[ing]" the children in the parents' issues and causing the children to resent their mother, who was in New Jersey, and who the father told the children was to blame for any problems or troubles the children were experiencing (as C.S. summarized in her Certification filed with the state courts). As C.S. affirmed below, "L. has completely failed to confer with me on major decisions concerning the children's health safety, education and welfare since the entry of our FJOD." Though he was a physician earning \$400,000-\$500,000 annually, defendant told the children that it was their mother who was to blame for financial issues -- further damaging C.S.'s parental rights and the mother-daughter relationship. C.S. asked the New Jersey courts to redress the harm that the father's actions had caused to her rights to and relationship with her children.

### The State Court Decisions

The Family court found that defendant had violated plaintiff's rights to a meaningful relationship with her children. Yet, despite the finding, the Family court did not modify the mother's parenting time and visitation with her children to redress the harm that defendant had caused to her parental rights.

C.S. appealed to New Jersey's Appellate Division, charging that the Family court erred in failing to redress the damage that defendant caused to the mother's parental right and relationships with her two children. As trial counsel illustrated before the Family court, "So I have a client who a couple of years ago agreed that the children could live in Georgia [when their father, a physician, decided to take a job there and move from what was their New Jersey home]. And part of the global resolution was that she would continue to have joint custody of these children, that she would be involved in their major decisions that affected their lives, that the kids would communicate with her, and she could Facetime with them, and that she could visit them. And we won't even get into how poorly the visits go because, unfortunately Dr. S. continues to tell the children your mom is bad, your mom is costing me money, your mom has mental health issues. Things that kids should not be involved in."

This, unfortunately, even predated the marital settlement agreement. You can see from the text messages early on in this case when my firm sent standard discovery to Dr. S., she -- my client got a text message from L. saying stop with the discovery process, it's enough. We were

maybe two months into the case at that point.  
It's not okay.

And what has continued to escalate for the last three years has now gotten to the point where my client has no meaningful connection with her children and nobody here, not me, not Michelle, not Mr. Mullen will argue that my client was not -- my client was the stay-at-home mother for these children.

THE COURT: Uh-huh.

MS. VEISBLATT: She was always a stay-at-home mother. She did amazing things for them. The children excelled in school under her care. Now they're in Georgia and they literally block her calls. And I just -- I want to go backwards in time for a second.

Counsel reiterated how defendant had interfered with the mother's relationship with her children since the parties' separation and divorce:

If you look just Exhibit N of our moving papers, I just want Your Honor to get a sense of what C. is dealing with trying to see her children. She tries to communicate with L. and she says to her, "You have such an easy life, I don't want to hear your s-h-i-t." Then C. says, "Do you want me to come to see you? Do you want me to come fly to see you?" "No. Leave me alone. You'll just make things worse." This is all because whenever C. tries to communicate with the kids, L., Dr. S., makes their life worse. And then my client just says, "I love you. I miss you. I wish

you were -- I wish I was there." She tries to do everything to stay in these kids' lives and it's just -- it's just so sad.

And then L. writes to her when she says "I love you. I miss you," she says, "wow, you really don't understand. You need to die. You are literally making our lives a living hell. You're pretty much making us live with you because if you get what you want, dad won't be able to afford to take care of us."

These are not conversations that Dr. S. should be having with L. Where does L. come up with this idea that, you know, dad, who earns 500 plus thousand dollars a year is somehow financially struggling to take care of the children?

C.S. argued that the Family court erred by failing to ascertain the best interests of the children then modify parenting time to protect both the children and the mother's right to the custody, care and nurture of her children. The Appellate Division (and subsequently New Jersey's Supreme Court via its Order denying C.S.'s Petition for review), acknowledged that the family court "granted plaintiff's request for an order that defendant violated the Children's Bill of Rights 'for repeatedly discussing this litigation with the children and failing to facilitate a relationship between the [p]laintiff and the children.'" But the state appeals court said that the family court was not required to hold a hearing to determine then redress the harm the father had caused to the mother's constitutional right

to the care, companionship, and nurture of her children.

### **REASONS FOR GRANTING THE PETITION**

The Court should hold that the Due Process clause of the Fourteenth Amendment required the state court to hold a hearing in order to measure and repair the damage done by father L.S. to mother C.S.'s constitutional right, which this Court has long protected. Washington v. Glucksberg, 521 U.S. 702, 720, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997) ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the righ[t] ... to direct the education and upbringing of one's children"); Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); Parham v. J. R., 442 U.S. 584, 602, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course."); Quilloin v. Walcott, 434 U.S. 246, 255, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected" because the right to "custody, care and nurture of the child reside[s] first in the parents"); Wisconsin v. Yoder, 406 U.S. 205, 232, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972) ("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”); Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972) (“It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children ‘come [s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.’”)

This case presented a sensitive custody arrangement to begin with following the defendant father’s decision to move his family from their home in New Jersey to Georgia. The state family court found that the father had wrongfully alienated C.S.’s affections with her children – part of her constitutional right. Yet the state courts did nothing to redress the harm to the mother’s constitutional right. As detailed in the Certifications filed with the state court, the parties lived happily together with their children in New Jersey for years. Plaintiff was very involved in her children’s lives as their stay-at-home mom. She excelled in the role, enriched her children’s lives, and developed deep bonds with them. In 2013, defendant accepted a job offer and relocated the family unilaterally to Georgia; plaintiff did not even know that her husband had sold the family’s New Jersey home. The divorce grew out of that relocation. It became a “very difficult time” for plaintiff because “the children continued to live with L.S. in Georgia even though I missed the children tremendously and the children missed me.” Defendant interfered with plaintiff’s

parental right by interfering with the relationship between the children and their mother.

New Jersey and nearly all states hold that a plenary hearing “is required when the submissions of the parties reveal a genuine and substantial factual dispute regarding the welfare of the children.” Shaw v. Shaw, 138 N.J. Super. 436, 440, 351 A.2d 374 (App. Div. 1976); R. 5:8-6 (“Where the court finds that the custody of children is a genuine and substantial issue, the court shall set a hearing date no later than six months after the last responsive pleading”). The Court should clarify that the hearing is required not just to protect the child’s best interests under state law, but because of the parent’s federal constitutional right to the care, custody, and management of her children. The right to the hearing is part of the parent’s right to a meaningful opportunity to be heard pursuant to the procedural protections afforded by the Due Process Clause. Cf. Santosky, 455 U.S. at 749, 753–54 (holding that interest of a parent, whose custody to child has been taken away, in avoiding elimination of “rights ever to visit, communicate with, or regain custody of the child” is important enough to entitle parent to procedural protections mandated by the Due Process Clause); Hodel v. Virginia Surface Min. & Reclamation Ass’n, Inc., 452 U.S. 264, 299, 101 S. Ct. 2352, 2372, 69 L. Ed. 2d 1 (1981) (“due process ordinarily requires an opportunity for ‘some kind of hearing’ prior to the deprivation of a significant” interest). This is in accordance with the Fourteenth Amendment’s liberty analysis requiring “a balancing [of] liberty interests against the relevant state interests” in assessing whether a particular process is constitutionally-

required. Youngberg v. Romeo, 457 U.S. 307, 321, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982). This balancing of interests has been applied in cases involving intimate association rights such as parental rights. Winston by Winston v. Children & Youth Servs. of Delaware Cty., 948 F.2d 1380, 1391 (3d Cir. 1991); Franz v. Lytle, 791 F. Supp. 827, 833 (D. Kan. 1992), *aff'd*, 997 F.2d 784 (10th Cir. 1993). The New Jersey court's failure to hold a hearing after finding that the mother's rights were infringed violated the protections afforded to the mother by the Due Process Clause.

The Court should clarify this area of law because it affects the constitutional right of so many parents undergoing custody disputes throughout our Country. Courts of Appeals have struggled in applying Santosky to custody disputes between two parents (as in this case), as opposed to disputes between one parent and the government or third party. See, e.g., Hagberg v. New Jersey, 751 F. App'x 281, 286 (3d Cir. 2018) (noting "Santosky was a "custody dispute ... between one parent and a third party, not two parents ... In contrast, the result of a custody dispute between two parents does not result in the complete and irrevocable loss of parental rights or involve a vast disparity in litigation resources between the parties"); Kowalski v. Boliker, 893 F.3d 987, 1000–01 (7th Cir. 2018) ("Admittedly, the Supreme Court has treated a parent's interest in child custody as a form of liberty interest for purposes of Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), and has described the termination of custody as a 'unique kind of deprivation' in which the parent has a 'commanding' interest. Lassiter v. Dep't of Soc. Servs. of Durham Cty., N. C.,

452 U.S. 18, 27, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981). Kowalski therefore has a right to due process before an adverse decision in his custody case, which presumably includes a right to an impartial judge. *See Goldberg v. Kelly*, 397 U.S. 254, 271, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). Yet as things stand, Kowalski has not alleged that he suffered any adverse consequences to his parental (or other) rights as a result of his allegedly prejudiced judge. Therefore, Kowalski's section 1983 claim cannot proceed.") The Court should clarify that where a state court finds the constitutional right of one parent has been violated and damaged by the other, the state court must hold a hearing to provide the impacted parent with the meaningful opportunity to be heard that *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and its progeny guarantees – to enable the state court to redress the harm done to the parent's constitutional right to the care, custody, and companionship of her children.

## CONCLUSION

For the foregoing reasons, the Court should grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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Dated: May 29, 2019