No. _____

In the
Supreme Court of the United States

CHERYL LYNN HAGER-REILLY,
Petitioner,

v.

THOMAS REILLY,
Respondent.

On Petition for a Writ of Certiorari to The New York Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Due Process Clause of the Fourteenth Amendment require a certain quantum of proof before a state court, in a custody proceeding between the two natural parents, can reduce to limited, supervised visitation one parent's constitutional right to the care, custody, and management of her child?

PARTIES TO THE PROCEEDINGS

Petitioner Cheryl Lynn Hager-Reilly was the defendant in the New York Supreme Court (trial court), the appellant in the New York Supreme Court, Appellate Division, and the appellant (movant) in the New York Court of Appeals. Respondent Thomas Reilly was the plaintiff in the New York Supreme Court (trial court), the respondent in the New York Supreme Court, Appellate Division, and the respondent in the New York Court of Appeals.

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Cheryl Lynn Hager-Reilly petitions this Court for a writ of certiorari to review the Orders and Decisions of the New York Court of Appeals and New York Supreme Court, Appellate Division, entered in the state courts below.

OPINIONS BELOW

The March 21, 2019 Order of the New York Court of Appeals denying Ms. Hager-Reilly's motion for leave to appeal is unpublished and appears at Appendix 1. The November 14, 2018 Decision of the New York Supreme Court, Appellate Division, is unpublished and appears at Appendix 2.

JURISDICTION

The Order of the New York Court of Appeals denying petitioner's motion for leave to appeal was entered on March 21, 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 Petition arises from a divorce action heard in New York state court. The issue raised before the state appeals courts was whether the family court judge (Judge Iliou) erred in granting the mother, Ms. Hager-

Reilly, only limited, supervised visitation with her 10-year-old daughter, J.R.R. Though Ms. Hager-Reilly – not Mr. Reilly -- had been the primary caretaker for her daughter her entire life, Judge Iliou said that "joint custody is not feasible" and defendant had "interfered" with the relationship between the daughter and her father. Judge Iliou accorded weight to a psychologist who interviewed Ms. Hager-Reilly for a few hours in a single session and purported to find she suffered from Bipolar Disorder.

Ms. Hager-Reilly argued that it was inequitable and illegal for Ms. Hager-Reilly and her daughter to be so separated post-divorce such that they have only limited, supervised visitation twice per week. Only an extreme and unusual record could justify such a one-sided custodial arrangement, and the record presented to Judge Iliou did not show such extreme circumstances nor demonstrate that it was in the child's (J.R.R.'s) best interests to be placed in the sole custody of her father and have only limited – and supervised -- contact with the parent who had been her primary caretaker her entire life. Among other errors,

- Judge Iliou failed to accord *any* weight to what 10-year-old J.R.R. told Judge Iliou were her express wishes on custody – that she wanted to be with her mother.

- The record did not show that it was (or is) in the best interest of J.R.R. to be in the sole custody of the parent who works all day and away from the parent who had been the child's stay-at-home mom.

- Providing supervised parenting time for four hours on Saturdays and for four hours one day of the week failed to preserve meaningful visitation for the mother and daughter and a meaningful role for the mother in her daughter's life post-divorce.

- The state court record showed that defendant had never been diagnosed with any mental health issues, yet the family judge found such issues based on a single three to four hour meeting defendant was ordered to attend with a psychiatrist she had never met before. *See* https://www.psychologytoday.com/blog/bipolar-you/201402/misdiagnosis-bipolar-disorder ("The reality is bipolar disorder is usually difficult to diagnose based on just an initial diagnostic interview with an individual.")

Ms. Hager-Reilly argued that, whatever weight was afforded to the factors Family Judge Iliou cited in his custody decision (many of which were not supported by the record in the first place), the factors neither singly nor in combination justified such limited supervised visitation to this stay-at-home mother.

The State Appeals Court Decisions

New York's Appellate Division affirmed the family court's decision, and New York's Court of Appeals denied further review. The state appeals court ruled that the family court's determination "that awarding the defendant supervised parental access with the child would be in the child's best interests has a sound and substantial basis in the record *** There was evidence

in the record of, among other things, the defendant's interference with the child's relationship with the plaintiff, as well as the defendant's lack of appropriate judgment in many of her decisions regarding the child, including allowing the defendant's obsession with the child's acting career to take precedence over the child's attendance at school, causing the child to miss a significant number of days at school, despite indications that the child was struggling in various areas of her education. Additionally, in a one year period, the defendant called the police a dozen times regarding the plaintiff, without sufficient reason, often while the child was present, one of those times being while the child was defendant revealed that the defendant acts erratically, in ways affecting her ability to competently parent the child, that she is 'decompensating,' and that while she suffers from mental illness, she rejects treatment." (Nov. 14, 2018 Appellate Division Decision, Appx 2).

REASONS FOR GRANTING THE PETITION

The Court should grant this Petition to clarify the quantum of proof required by the Due Process Clause of the Fourteenth Amendment before a state court can so severely restrict a stay-at-home mother's constitutional right to the care, custody, and companionship of her only daughter following a divorce action. The quantum of proof required is part and parcel, this Court should hold, of the parent's due process right. See Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (discussing "fundamental liberty interest of natural parents in the care, custody, and management of their

child"); 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"); 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.'")

The New York courts failed to abide by Ms. Hager-Reilly's federal constitutional right under Santosky by, among other things,

Failing to consider the wishes of the child on the post-divorce custody arrangement. JRR's age and maturity made her input meaningful. Judge Iliou found JRR "to be an articulate and energetic child who was eager to discuss and enlighten the Court as to certain issues relevant to the Court's determination. The child clearly understood the importance of being truthful with the Court." The principal of JRR's elementary school said JRR was a "typical child, kind, poised and appropriate." A12. The family judge, following his *in camera* interview with JRR, said, "She is clearly happy when she is with each of her parents" and that "her primary concern is that her mother continue to be the party responsible for taking her to those activities related to acting." Yet Judge Iliou discounted what JRR told him.

Considering negatively Ms. Hager-Reilly's religious affiliations and practices. Judge Iliou said that a lapse in judgment by Ms. Hager-Reilly was her "choosing to introduce JJR to Scientology while she is in the midst of completing her Catholic religious training for her Confirmation. Such questionable judgment will affect the child's emotional and intellectual development." A23-24. This was improper even under New York law applied below, see Aldous v. Aldous, 99 A.D.2d 197, 199, 473 N.Y.S.2d 60 (1984) ("New York courts will consider religion in a custody dispute when a child has developed actual religious ties to a specific religion and those needs can be served better by one parent than

the other"). This Court should clarify that religious preferences of the parent may not be used to limit – or in this case so severely restrict – the parent's federal constitutional right as a natural parent without a commensurate showing of harm to the child caused by the religious affiliation or practice (which was not shown in this case).

Considering negatively Ms. Hager-Reilly's conflict with her ex-husband while disregarding that Ms. Hager-Reilly was "fearful" of and "intimidated" by her ex-husband. Ms. Hager-Reilly affirmed that in one incident "he grabbed me by the neck and he choke hold me to the floor and I literally felt like he was going to snap my neck."

Finding a mental health issue of the parent based on a single meeting with a psychiatrist and in the absence of any prior diagnoses of mental health issues.

The Court should hold that the state court proceedings in this case did not satisfy the quantum of proof required before a natural parent's constitutional right can be so severely restricted in a civil divorce proceeding. The Court should hold that federal constitutional law does not permit such extreme, one-sided custody decisions absent an equally extreme record showing that such a drastic decision is needed to protect and preserve the child's best interests while still abiding by the parent's fundamental constitutional right. This matter did not present such a case. J.R.R. is in every respect a healthy and thriving ten-year-old girl who has no substantial issues of concern. She attends elementary school. She has friends. She participates in activities. She goes to parties. As her

school principal affirmed in her testimony before the state family court, "Typical child. She has friends. She is not -- she is not boisterous, but she is not alone. She fits in to where she is. She is appropriate. She is kind, and she is poised." JRR's guardian *ad litem* confirmed, "Your Honor, [JRR] is doing very well, she looks very healthy. She was beautifully dressed. And very poised and very confident. She -- her mood was very good. She's indicated that she would like to see her mom. She does spend a lot of time on the telephone with her mother, which she doesn't like as much. My understanding is that Miss Reilly calls at approximately six and they stay on the phone until about seven, which I think is a very long time. But she's looking forward to the summer, she's doing well in school. She participated in NYSMA, she is doing a lot of nice artwork. And she seems very content at this point in time. But I think, obviously, the whole issue of to what extent she should be seeing her mom is a question for the Court to determine based on the evidence that's been heard and the case law." This Court should clarify that providing only twice per week supervised visitation for such a stay at home mother contravenes the mother's federal constitutional right under Santosky.

The Court should clarify this area of law because it affects the constitutional rights 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 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 the quantum of proof required by the Due Process Clause of the Fourteenth Amendment and Santosky and its progeny before a state court can so severely restrict a natural parent's constitutional right to the care, custody, and companionship of her child.

CONCLUSION

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

Respectfully submitted,

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