

NUMBER

19-356

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IN THE  
Supreme Court of the United States

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SAMUEL COLLIN ROBINSON,  
Petitioner

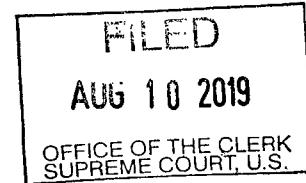
v.

KATHERINE LYMAN ROBINSON,  
Respondent

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On Petition for a Writ of Certiorari  
to the Colorado Court of Appeals

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PETITION FOR WRIT OF CERTIORARI

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Samuel Collin Robinson  
Petitioner  
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QUESTION PRESENTED FOR REVIEW

Where divorce involves children, where shared parenting has been declared to be in the best interests of all, and where criteria for exception have not been met, does disproportionate allocation of parenting time honor the constitutional requirement that equal protection of law be given to the rights of the children to time with each parent?

### PARTIES TO THE PROCEEDING

All parties to this proceeding are named by the caption of the case on the cover page. Katherine Lyman Robinson has remarried, taking the surname Freeman.

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

**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

**OPINIONS BELOW**

The opinion of the highest state court to review the merits, the Colorado Court of Appeals, appears as Appendix B to the petition and is unpublished.

The opinion of the Colorado Supreme Court appears as Appendix A to the petition and is unpublished.

**JURISDICTION**

The date on which the highest state court, the Colorado Supreme Court, decided this case was May 20<sup>th</sup>, 2019. A copy of that decision appears as Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). 28 U.S.C. § 2403(b) may apply.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitution of The United States of America,  
Amendment Fourteen, Section One:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Colorado Revised Statutes § 14-10-124:

The statute is lengthy. The relevant portions appear as Appendix E.

## STATEMENT OF THE CASE

Katherine Freeman, formerly Katherine Lyman Robinson, is the: Respondent, here and before the Colorado Supreme Court; Appellee, before the Colorado Court of Appeals; and Petitioner, in District Court.

Samuel Collin Robinson is the: Petitioner, filing this request for review and the petition to the Colorado Supreme Court; Appellant, before the Colorado Court of Appeals; and Respondent, in District Court.

Katherine and Collin were married in 2005. A daughter, Grace, and a son, Gordon, were born to the couple after their marriage. In 2012, Katherine and

Collin divorced. The Parenting Plan specified joint decision-making and provided that the children would spend about a quarter of the time with their dad, Collin, and the balance with their mom, Katherine.

In 2016, Collin Robinson filed a motion to modify parenting time to an equal schedule, alternating by week. Katherine Freeman responded to the motion by requesting sole decision-making and a parenting plan that would reduce the amount of time the children could spend with their father to about an eighth of the time.

After a hearing in 2017, Magistrate Stephanie Rubinstein issued an order perpetuating the unequal parenting time schedule. Appendix D, at pp 44-45. The magistrate mentioned concerns that arose during consideration of the case, but did not reach a finding that equal parenting time would endanger the children. Instead, Rubinstein found it clear that the children love their dad and want to spend time together. Appendix D, at p 44.

Robinson petitioned for judicial review of the disproportionate allocation, citing several deficiencies, including violation of equal protection. Having concluded review in January of 2018, District Court Judge Thomas William Ossola denied relief. Appendix C.

Robinson appealed to the Colorado Court of Appeals, again citing deficiencies, including denial of equal protection. On January 3rd, 2019, the Court of Appeals declined to grant relief, stating that since

the statute governing determination of parenting time does not create a classification, no valid equal protection issue was presented. Appendix B, at p 20-21.

Robinson petitioned the Colorado Supreme Court for a writ of certiorari, reiterating the equal protection claim, based on the lopsided result of faulty application of the statute. The petition was rejected May 20<sup>th</sup>, 2019. Appendix A.

The present petition requests that the Supreme Court of the United States grant certiorari review of the equal protection claim.

#### REASONS FOR GRANTING THE PETITION

Parenting time is allocation of opportunity for minor children of divorce to be with each parent. Constitutionality of division of time, in the best interests of children, is an inquiry worthy of the attention of the Supreme Court of the United States, because such decisions have fundamental impact on the lives of a multitude of people<sup>1</sup>. Research indicates that forty-five states have adopted some form of best interests statute<sup>2</sup>, such as the law used

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<sup>1</sup> Census data indicate that two thirds of people marry (Marital Status of People 15 Years and Over, by Age, Sex, and Personal Earnings: 2018). The National Vital Statistics System reports a rate of divorce and annulment that is over four tenths of the rate of marriage (ratio of provisional rates, 2017). Many couples that divorce have children and such cases often go before local courts, setting the tone for those that settle.

<sup>2</sup> Bajackson, Erin. (2013). "Best Interests of the Child - A Legislative Journey Still in Motion." *Journal of the American Academy of Matrimonial Lawyers*, Vol. 25, pp 311-355 at 348.

in this case. Similar laws are also in use across the globe.

A foundation of equity for parenting time decisions is vital to the integrity of the social fabric of humanity. Equal Protection is a constitutional mandate, interpreted by the Supreme Court.

“The Equal Protection Clause of the Fourteenth Amendment...is essentially a direction that all persons similarly situated should be treated alike.”

*Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985), citation omitted.

The children in this case are in a situation similar to that of most children of divorce, yet, the orders below give different treatment to them than the treatment prescribed for most circumstances. The Colorado Court of Appeals found that the underlying statute does not create a classification, so no valid equal protection issue was presented. Such hurried disposition of the question is contrary to Supreme Court precedent establishing that equal protection claims need not cite classification.

"Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly

situated and that there is no rational basis for the difference in treatment. In so doing, we have explained that “[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.”” *Village of Willowbrook et al. v. Olech*, 528 U.S. 562, 564 (2000), citations omitted.

The law in question, Colorado Revised Statute 14-10-124 starts with a declaration by the Colorado General Assembly that, in most circumstances, it is in the best interests of all to encourage frequent continuing contact between each parent and the children, effectuated by sharing parenting responsibilities. The assembly provides for parenting time to be determined in the best interests of the children, as is their right, and requires that the court make findings on the record giving reasons.

Urging parents “to share...rights and responsibilities of child-rearing...”, the assembly uses “share” without any modifier. There is nothing indicative of imbalance. Instead, “frequent and continuing contact” with “each parent” is encouraged. Although the word “equal” is not explicit in the text, equality is required for optimal achievement of contact with each parent in the “best interest of all”. Between parents, equal before the law, equal shares

of time are indicated. Shared parenting is declared to be in the best interest of the children and their parents, and is the prescribed treatment for most circumstances.

Exceptions are defined by (1.5)(a), specifying that time not be allocated according to best interests where the court finds that it would endanger the children's physical health or significantly impair their emotional development. Ensuring that the exceptions not be invoked lightly, the assembly requires that in any order imposing or continuing a parenting time restriction, the court enumerate the specific factual findings supporting the restriction and conditions that the restricted party may fulfill in order to seek modification of the parenting plan.

The statute also lists best interest factors to be considered by the court; however, it does not give criteria for evaluation of the factors. There are neither standards for assessment of evidence, nor guidance for balancing advantages. The terms are so broad as to invite arbitrary execution.

In the present case, the hearing magistrate considered the statutory factors. Appendix E, pp 54-55, Appendix D, pp 33-45. She noted concerns about mental health and anxiety; however, the magistrate did not reach a finding of endangerment of physical health or of significant impairment of emotional development of the children. The magistrate did not find that there was credible evidence of child abuse or neglect. Appendix D, pp 33-34. The magistrate did find it to be clear that the children love their dad,

and found that there was credible evidence that they want to spend time together. Appendix D, pp 44.

Since the statutory exceptions were not triggered, the situation of the children here, regarding their eligibility to have parenting time allocated in their best interests and their best interests being declared by the legislature to be served by shared parenting, is the same as that of most children of divorce. Still, the magistrate ordered perpetuation of a schedule that restricts their opportunity to be with their dad to less than one quarter of the time, instead of the equal share prescribed and sought.

As reason for denying modification of the parenting plan to an equal schedule, Rubinstein stated there was not adequate evidence the change would benefit the children. Appendix D, p 44. Her rationale ignored statutory declaration that shared parenting is in the best interests of the children. Findings of the hearing did not trigger exception. Therefore, disparate allocation constitutes improper execution of the statute. The result denies equal protection by assigning Grace and Gordon different parenting time proportions than prescribed for children of like circumstance.

### CONCLUSION

Parenting time is a fundamental interest of children that merits equal protection of law. Although the situation of the children in this case is similar to the situation of most children of divorce, these children have been subjected to different

treatment. The relevant Colorado statute, §14-10-124, was not executed in proper manner. For most circumstances, the statute urges shared parenting. Although exception was not warranted, equal opportunity for the children in this case to be with each parent was denied by the opinions below. The lopsided result is unconstitutional. Justice requires reversal. A strong precedent on this topic from the highest court in the land will mend the framework that supports personal growth of children and their development of relationships that are essential to the longevity, success, and perpetuation of our free republic. For these reasons, please grant this petition for a writ of certiorari. Thank you!

Pled with respect and gratitude,

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Samuel Collin Robinson  
Petitioner

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Date

# Colorado Supreme Court

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2019SC123

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Certiorari to the Court of Appeals, 2018CA265  
District Court, Mesa County, 2012DR18

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In re the Marriage of  
Petitioner, Samuel Collin Robinson  
and  
Respondent, Katherine Lyman Robinson

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ORDER OF COURT  
Date Filed: May 20, 2019

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Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MAY 20, 2019