No.

IN THE

Supreme Court of the United States

MICHAEL A. DEEM, PETITIONER,

v.

JOHN P. COLANGELO,
JUSTICE OF THE SUPREME COURT,
COUNTY OF WESTCHESTER

PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF NEW YORK COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner is involved in a high conflict divorce and custody proceeding due to his estranged wife filing fabricated allegations against him. They are the parents of two children. The New York State Supreme Court Appellate Division, Second Department and New York State Unified Court System (NYSUCS) have a custom and practice of summarily denying all discovery regarding, *inter alia*, custody to all litigants in contested custody disputes, including fit parents that have provided minimum standards of care and whose children are neither neglected nor abused, such as Petitioner. The Third and Fourth Departments permit custodial discovery. As a result, Petitioner has not had ***any*** contact with his children since June 9, 2018.

Petitioner originally agreed to a forensic evaluator (FE) in the divorce and custody dispute because his retained attorney, when he could afford one, said no custodial discovery was permitted. Petitioner was forced to go *pro se* and discovered the decision in *Janus v. AFSCME*, 585 U.S. ___ (2018). He moved to vacate the order appointing the FE. The matrimonial court refused to even consider Petitioner's motion. Petitioner filed for a writ of mandamus seeking to compel the matrimonial court to decide his motion. The Appellate Division granted the New York State Attorney General's motion to dismiss, without opinion. The New York State Court of Appeals dismissed the appeal "upon the ground that no substantial constitutional question is directly involved." The questions presented are:

1. Whether a court appointed FE's examination of a fit parent's children over that fit parent's

objection violates that fit parent's right to control the upbringing of his children.

2. Whether compelling a fit parent to cooperate with a court appointed FE, sanctioning a fit parent for not cooperating with a FE, or granting a FE sole discretion regarding what recommendations are made to the matrimonial court regarding custody and how those recommendations are derived, violates that fit parent's right to free speech.

3. Whether compelling a fit parent to pay the fees and expenses of a court appointed FE violates that fit parent's right to free speech.

4. Whether denying a fit parent all custodial discovery in a contested custody dispute in the Second Department, but not fit parents in the Third or Fourth Departments, violates that fit parent's rights to due process and equal protection.

PARTIES TO THE PROCEEDING

Petitioner

MICHAEL A. DEEM.

Respondents

JOHN P. COLANGELO, Justice of the Supreme Court, County of Westchester;

ALAN D. SCHEINKMAN, Presiding Justice, Supreme Court of the State of New York – Appellate Division, Second Judicial Department;

LAWRENCE K. MARKS, Chief Administrative Judge, State of New York;

JANET DiFIORE, Chief Judge, State of New York; and

LORNA M. DiMELLA-DEEM.

STATEMENT OF RELATED CASES

Deem v. Colangelo, et al., A.D. No. 528205, New York State Supreme Court Appellate Division, Third Department. Decision and Order on Motion entered Apr. 5, 2019. Unpublished.

Deem v. Colangelo, et al., No. SSD 26, New York State Court of Appeals. Order of Dismissal entered Jun. 6, 2019. Unpublished.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

CONSTITUTIONAL PROVISIONS

STATUTES

Rules

OPINIONS BELOW

The Order of the New York State Court of Appeals dismissing Petitioner's appeal "upon the ground that no substantial constitutional question is directly involved." April 5, 2019. (Appx. 1a)

The Decision and Order of the Third Department granting the judicial respondents' motion to dismiss the hybrid proceeding, without opinion. June 6, 2019. (Appx. 2a)

JURISDICTION

The order of the New York State Court of Appeals was entered on June 6, 2019. Justice Ginsburg granted an extension of the deadline for this petition to November 4, 2019, upon application in 19-A169. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1257(a).

RELEVANT PROVISIONS INVOLVED

a) The Free Speech Clause, First Amendment provides:

> Congress shall make no law [] abridging the freedom of speech.

b) The Due Process Clause, Fourteenth Amendment provides:

> nor shall any State deprive any person of life, liberty, or property, without due process of law.

c) The Equal Protection Clause, Fourteenth Amendment provides:

> nor shall any state [] deny to any person within its jurisdiction the equal protection of the laws.

d) Article I, §9, New York State Constitution provides:

> nor shall any divorce be granted otherwise than by judicial proceedings.

e) New York State Civil Practice Law & Rules, §104 provides:

> The civil practice law and rules shall be liberally construed to secure the just, speedy and inexpensive determination of every civil judicial proceeding.

f) New York State Judiciary Law, §35(5) provides,

> All expenses for compensation and reimbursement under this section shall be a state charge to be paid out of funds appropriated to the administrative office for the courts for that purpose. [] After such claim is approved by the court, it shall be certified to the comptroller for payment by the state, out of the funds appropriated for that purpose.

STATEMENT

Facts

Petitioner is involved in a high conflict custody dispute and high conflict family offense proceedings with his estranged wife, Respondent DiMella-Deem. They are the parents of two adopted children, now 14 and 12 years old. There is no question that Petitioner and Respondent DiMella-Deem have provided minimum standards of care for the children, and the matrimonial court has not found either to be unfit parents.

Before filing the action for divorce, Petitioner's retained attorney, when he could afford one, informed Petitioner that only financial discovery was allowed in matrimonial court. No custodial discovery was permitted by the parties. Accordingly, Petitioner agreed to a court appointed FE and signed a stipulation to that effect. The stipulation was then "so ordered" by the matrimonial court.

Subsequently, an order issued appointing the FE with terms Petitioner never agreed to; the hourly rate was draconian, the chosen FE was not on the list of pre-approved mental health practitioners for the Second Department,[1] the FE did not have special expertise in the issues at bar (borderline, anti-social and narcissistic personality disorders, bi-polyamorous sex addiction

[1] The Second Department's rules governing appointments of FEs required that all appointments be made from a preapproved list of mental health professionals, unless the list did not contain a professional with the required expertise. There was no basis to deviate from the list in Petitioner's case.

involving incest and pedophilia, and mythomania), and the FE was granted too much discretion in how to conduct the examination. The difference between the terms Petitioner reasonably believed would govern and the actual terms in said order was tantamount to bait and switch tactics. Petitioner moved to amend the order 17 days later.

Petitioner adhered to the letter and spirit of the Westchester County Matrimonial Part Rules, Rule E, which governs motion practice. Petitioner then attempted to vacate the order appointing the FE and modify the preliminary conference order based on the decision in *Janus*, *supra*. Respondent Colangelo and the court referee refused to abide by Rule E, repeatedly. The court referee scoffed at Petitioner's statement that the matrimonial court was compelled to follow the U.S. Supreme Court's ruling in *Janus*, *supra*.

Respondent Colangelo refused to even consider Petitioner's motion to vacate, without justification, and denied Petitioner all custodial discovery pursuant to a custom and practice within the Second Department and NYSUCS of denying all custodial discovery to litigants in contested custody disputes. Petitioner had no alternative but to file an Article 78 proceeding seeking a writ of mandamus to compel Respondent Colangelo to rule on the motion to vacate. In an abundance of caution, Petitioner argued in the alternative for a writ of prohibition and declaratory relief pursuant to state and federal law.

At base, Petitioner sought to control his own discovery and recommendations to the court regarding custody. He argued, *inter alia*: appointing an FE when

the children were neither neglected nor abused and Petitioner was a fit parent violated his right to parental relations; compelling Petitioner to speak to the FE and pay his court determined fees violated his right to free speech; and denying Petitioner all custodial discovery violated his federal constitutional rights to due process and equal protection, and state constitutional right to divorce by judicial proceedings.

Two matrimonial judges, the commercial part judge assigned to try the underlying divorce and custody dispute and the Third Department all refused to stay the underlying trial. Transcripts of the trial are pending.

Petitioner, a loving, loved, caring and cared for father, seeks the protection of this Court to vindicate his rights and commensurate rights of his children, and be reunited with his children. The first attorney for the children (AFC) stated on the record "the[children] do love their father]." The current AFC stated on the record that the children "want to see their father." However, all three levels of the New York State judicial system have failed or refused to address Petitioner's claims or permit reunification, without cause.

Procedural History

On November 7, 2017, Petitioner filed an action for divorce seeking, *inter alia*, joint custody of the parties' two children. On December 6, 2017, Respondent DiMella-Deem answered seeking, *inter alia*, sole custody of the children. On January 2, 2018, Petitioner filed a reply.

On May 23, 2018, a preliminary conference was held. The parties agreed to the appointment of an FE, and the matrimonial court so ordered same in the preliminary conference order.

On June 5, 2018, Respondent Colangelo entered an order appointing Stephen P. Herman, M.D., as the FE in Petitioner's custody dispute at an hourly rate of $500, approximately twelve times what Petitioner was earning at the time, plus expenses. The FE's rate was approximately twice the market rate.

On June 22, 2018, Petitioner filed a motion to modify the order appointing the FE by, *inter alia*, appointing an FE with more suitable qualifications and lower hourly rate.

On September 26, 2018, a pre-motion conference was held with the matrimonial court referee regarding, *inter alia*, Petitioner's intended motion to vacate the order appointing Dr. Herman. During the conference the court referee stated that "no custodial discovery is permitted in Westchester County." The referee refused to certify Petitioner's motion to vacate even though it did not suffer from any procedural defects.

On October 15, 2018, Petitioner filed his motion to vacate pursuant to Westchester County Matrimonial Rules, Rule E.

On November 7, 2018, a compliance conference was held with the court referee. The referee stated Respondent Colangelo wanted Respondent DiMella-

Deem to file a note of issue and certify the case as trial ready.

On November 9, 2018, a conference was held with Respondent Colangelo. Respondent Colangelo refused to consider Petitioner's motion to vacate as it, allegedly, was not properly before the court because it was not certified by the referee. Petitioner responded that Rule E "specifically states that the intent of the rule is not to deny a party's ability to file motions." (Appx. 7a) Respondent Colangelo refused to change his ruling. (Appx. 9a, 11a)

On December 21, 2018, Petitioner filed the underlying hybrid proceeding pursuant to CPLR, §7801, *et seq.* seeking a writ of mandamus to compel Respondent Colangelo to decide the motion to vacate and writ of prohibition to prevent future violations of Petitioner's rights. Petitioner also pled claims for declaratory judgment pursuant to CPLR, §3001 and 42 U.S.C. §1983, that, *inter alia*, Petitioner's federal constitutional rights to parental relations and free speech were violated by appointment of the FE.

Petitioner also named Respondents Scheinkman, Marks and DiFiore, in their administrative capacities as supervising judges, seeking declaratory judgment pursuant to CPLR, §3001 and 42 U.S.C. §1983, that, *inter alia*, the Second Department and NYSUCS have a custom and practice of violating litigants in contested custody disputes their federal constitutional rights to parental relations, free speech, due process and equal

protection, and state constitutional right to "divorce [] by judicial proceedings." Specifically, denial of all custodial discovery and court appointed FEs controlling discovery and recommendations to the court regarding custody, even when the parents are fit and minimum stndards of child care are met. CPLR §506(b)(1) required the Article 78 claims to be filed in the Second Department.

On January 7, 2019, the Second Department transferred the matter to the Third Department, *sua sponte*.

On February 22, 2019, the New York State Attorney General filed a motion to dismiss.

On March 11, 2019, Petitioner opposed the motion to dismiss.

On April 5, 2019, the Third Department granted the motion and dismissed the matter without opinion.

On June 6, 2019, the New York Court of Appeals dismissed Petitioner's appeal *sua sponte* "upon the ground that no substantial constitutional question is directly involved."[2]

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[2] On May 24, 2019, opposing counsel in the underlying custody dispute filed a letter with the matrimonial court opposing Petitioner's request to depose a relative of the parties that was believed to have personal knowledge of certain sexual misconduct by Respondent DiMella-Deem that is punishable under the New York State Penal Law as a Class E Felony. Opposing counsel's

REASONS FOR GRANTING PETITION

I. APPOINTMENT OF A FORENSIC EVALUATOR TO EXAMINE A FIT PARENT'S CHILDREN OVER THAT FIT PARENT'S OBJECTIONS VIOLATES THAT FIT PARENT'S RIGHT TO CONTROL THE UPBRINGING OF HIS CHILDREN.

"The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 68 (2000). *See, e.g., Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) ("The child is not the mere creature of the State."); *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923) ("The [governmental] interference [with parental decisions] is plain enough, and no adequate reason therefore [] has been shown.").

The matrimonial court "gave no special weight to [Petitioner]'s determination of his [children's] best interests." *Troxel v. Granville*, 530 U.S. at 69. "More importantly, it appears that the [state] Court applied exactly the opposite presumption." *Id.*

Here, Petitioner sought to prove that Respondent DiMella-Deem placed her interests above those of the children by filing fabricated allegations

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letter expressly provides, "A deposition of [] is not warranted *nor allowed* in the Second Department." Petitioner was denied the deposition. (emphasis added)

against Petitioner in matrimonial and family court. She knowingly and unnecessarily compelled a custody dispute that, under the custom and practice of the Second Department and NYSUCS, required an intrusive government imposed forensic examination of the children. Such an examination was not in the children's best interests. Petitioner could have proven that Respondent DiMella-Deem forfeited her right to custody if he had been afforded the discovery the New York State legislature provided for in the CPLR, and is supposed to be guaranteed by the New York State Constitution, Art. I, §9. That opportunity still exists. The evidence awaits to be "discovered" in preparation for a new trial.

However, as in *Troxel*, Respondent Colangelo "applied exactly the opposite presumption." Respondent Colangelo presumed he knew what was in the best interests of the children (appointment of a FE to examine the children) and how to determine their interests (by having the FE conduct a forensic examination with no clear parameters and make recommendations to the court based on that examination). Appointment of a FE and compelling the children to undergo a forensic examination violated Petitioner's right to the care, custody and control of his children. It also violated controlling precedent of the New York State Court of Appeals that a forensic evaluation may only be conducted with consent of the parents. *Kessler v. Kessler*, 10 N.Y.2d 445, 459 (1962).

This Court has also held that "[s]o long as certain minimum requirements of child care are met, the interests of the child[ren] may be subordinated to the interests of other children, or indeed even to the

interests of the parents or guardians themselves." *Reno v. Flores*, 507 U.S. 292, 304 (1992).

Here, there were no allegations that the children were neglected or abused. Petitioner and Respondent DiMella-Deem unquestionably provided minimum standards of child care to both children. There was no basis for the matrimonial court to delve into what it perceived to be "the best interests of the children." Both parents, on the pleadings, were entitled to the presumption that they were fit, *Parham v. J.R.*, 442 U.S. 584, 602 (1979) ("natural bonds of affection lead parents to act in the best interests of their children"), and joint custody presumed, unless discovery and a trial proved otherwise. Because both parents were fit, "the [matrimonial court]'s interest in [provid]ing for [Petitioner]'s children [wa]s *de minimis*." *Stanley v. Illinois*, 405 U.S. 645, 657 (1972).

Respondent Colangelo should have vacated the order appointing the FE, granted the parties full discovery, as provided for by the state legislature in the New York State Civil Practice Law and Rules and New York Constitution. Petitioner could have then used tools of discovery to prove Respondent DiMella-Deem filed fabricated allegations. And in doing so she forfeited her right to custody by having Petitioner completely ripped out of the children's lives with fabricated allegations. *See, Daghir v. Daghir*, 82 A.D.2d 191, 194, *aff'd*, 56 N.Y.2d 938 (1982) ("Indeed, so jealously do the courts guard the relationship between a noncustodial parent and his child that any interference with it by the custodial parent has been said to be an act so inconsistent with the best interests of the children as to, *per se*, raise a strong probability

that the offending party is unfit to act as custodial parent.").

Petitioner's iterative approach to determining custody by trial is supported by *Newton v. McFarlane*, 174 A.D.3d 67, 103 N.Y.S.3d 445 (2d Dept. 2019). There the court held, "before plunging full-bore into a contested custody hearing, the Family Court should have first considered whether the mother's petition for modification alleged sufficient facts which, if established, would have warranted a full inquiry into the existing custodial arrangement." *Id.*, at 77. Likewise, the matrimonial court below should have first determined if Respondent DiMella-Deem forfeited her right to custody by seeking a custody dispute against a fit father or was unfit in light of Petitioner's allegations that she suffered from grave mental illness, bi-polyamorous sex addiction involving incest and pedophilia, and mythomania, before compelling a highly intrusive and detrimental forensic examination of the children.

II. COMPELLING A FIT PARENT TO COOPERATE WITH A COURT APPOINTED FORENSIC EVALUATOR, SANCTIONING A FIT PARENT FOR NOT COOPERATING WITH A FORENSIC EVALUATOR, GRANTING A FORENSIC EVALUATOR SOLE DISCRETION REGARDING WHAT RECOMMENDATIONS ARE MADE TO THE MATRIMONIAL COURT REGARDING CUSTODY AND HOW THOSE RECOMMENDATIONS ARE DERIVED, VIOLATES THAT FIT PARENT'S RIGHT TO FREE SPEECH.

> Forcing free and independent [fit parents] to endorse ideas [of a court or FE] they find objectionable is always demeaning, and for this reason, one of our landmark free speech cases said that a law [or court order] commanding 'involuntary affirmation' of objected-to beliefs would require 'even more immediate and urgent grounds' than a law [or court order] demanding silence.

Janus v. AFSCME, 138 S.Ct. at 2464.

Further, "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." *Buckley v. Valeo*, 424 U.S. 1, 48 (1976).

Here, Respondent Colangelo did both. Three possibilities exist regarding the children's wishes for

custody: (1) they wished for their father to have sole custody; (2) they wished for their mother to have sole custody; or (3) they wished for joint custody. If the first possibility was present, the FE was not authorized to speak for Petitioner and should be precluded from doing so even if it would be to his tactical advantage. *See, Janus v. AFSCME*, 138 S.Ct. at 2463 ("right to refrain from speaking"). If the children wished for the second it would enhance the relative voice of Respondent DiMella-Deem, impermissibly. *See, Buckley v. Valeo*, 424 U.S. at 48. If they wished for the third, it would enhance the relative voice of the children, nonparties that lack capacity and standing. Enhancing the relative voice of the children violates Petitioner's right to free speech, *see, id.*, as well as his right to parental relations because there was no finding that Petitioner was unfit or minimum standards of child care were not provided. *See*, *e.g.*, *Stanley v. Illinois*, 405 U.S. at 657 ("The State's interest in caring for [Petitioner]'s children is *de minimis* if [Petitioner] is shown to be a fit father."); *Reno v. Flores*, 507 U.S. at 304.

III. COMPELLING A FIT PARENT TO PAY THE FEES AND EXPENSES OF A COURT APPOINTED FORENSIC EVALUATOR VIOLATES THAT FIT PARENT'S RIGHT TO FREE SPEECH.

Compelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns. As Jefferson famously put it, 'to compel a man to furnish contributions of money for the propagation of opinions [of a court

> or FE] which he disbelieves and abhors is sinful and tyrannical. []
>
> Because the compelled subsidization of [a] private [FE's] speech seriously impinges on First Amendment rights, it cannot be casually allowed. Our free speech cases have identified 'levels of scrutiny' to be applied in different contexts.

Janus v. AFSCME, 138 S.Ct. at 2464 (emphasis in original).

Here, Respondent Colangelo compelled Petitioner to pay the fees and expenses of the FE. The matrimonial court had absolutely no basis to compel Petitioner to pay any of the FE's fees or expenses, because Petitioner provided the minimum standards of child care, *see, Reno v. Flores*, 507 U.S. at 304, and was not found to be unfit. *See, Stanley v. Illinois,* 405 U.S. at 657. The state cannot meet its burden regardless which level of scrutiny is used.

IV. DENYING A FIT PARENT ALL CUSTODIAL DISCOVERY IN A CONTESTED CUSTODY DISPUTE IN THE NEW YORK STATE SUPREME COURT APPELLATE DIVISION, SECOND DEPARTMENT, BUT NOT THE THIRD OR FOURTH DEPARTMENTS, VIOLATES THAT FIT PARENT'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION.

The New York State Constitution has guaranteed a right to "divorce [] by judicial

proceedings" since 1846. N.Y. Const., Art. I, §10 (1846); N.Y. Const., Art. I, §9 (1894); N.Y. Const., Art. I, §9 (1938); N.Y. Const., Art. I, §9 (2015). CPLR §104 provides, "[t]he civil practice law and rules shall be liberally construed to secure the just, speedy and inexpensive determination of every civil judicial proceeding." Divorce is a civil judicial proceeding. CPLR §3120 expressly provides for the "discovery and production of documents and things for inspection, testing, copying or photographing." CPLR §3121 expressly provides for "physical or mental examination" "of a party."

Litigants in contested custody disputes in the Second Department are denied the discovery provided for by the New York State legislature in, *inter alia*, CPLR §§3120 and 3121 pursuant to the custom and practice of the Second Department and NYSUCS. However, litigants in the Third and Fourth Departments are afforded full access to, *inter alia*, those discovery provisions and the process guaranteed by the New York State Constitution for 173 years, "divorce [] by judicial proceedings."

Because the aforementioned custom and practice burdens Petitioner's fundamental liberty interest to the care, custody and control of his children, his right to meaningful access to the courts and his right to meaningful opportunity to be heard, denial of all custodial discovery violates both the due process and equal protection clauses. *See, e.g., M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996); *Boddie v. Connecticut*, 401 U.S. 371, 383 (1971) ("Thus, we hold only that a State may not, consistent with the obligations imposed on it by the Due Process Clause of the Fourteenth Amendment,

preempt the right to dissolve this legal relationship without affording all citizens access to the means it has prescribed for doing so.").

V. THE CUSTOM AND PRACTICE OF THE SECOND DEPARTMENT AND NEW YORK STATE UNIFIED COURT SYSTEM OF APPOINTING FORENSIC EVALUATORS TO CONTROL ALL DISCOVERY IN ALL CONTESTED CUSTODY DISPUTES WILL CONTINUE WITHOUT INTERVENTION BY THIS HONORABLE COURT.

In *Plovnick v. Klinger*, 10 A.D.3d 84, 781 N.Y.S.2d 360 (2d Dep't 2004), the Second Department held that New York state courts may compel litigants with sufficient means to pay the fees and expenses of court appointed attorneys for the children, referred to as direct pay or private pay. *Id.*, at 88-90. The same authority is relied on for appointment of experts, including FEs. *See*, Judiciary Law, § 35(4); 22 NYCRR § 36.1(a)(4).

The *Plovnick* court, grounded its decision in Judiciary Law, § 35(3). However, the *Plovnick* court failed to address, let alone distinguish, Judiciary Law, § 35(5), which provides,

> All expenses for compensation and reimbursement under this section shall be a *state charge* to be paid out of funds appropriated to the administrative office for the courts for that purpose. [] After such claim is approved by the court, it shall be certified to the comptroller for

> payment *by the state*, out of the funds appropriated for that purpose.

(emphasis added).

The Third Department has held, "there is no specific statutory or regulatory scheme for direct payment of an appointed [FE] by a parent or parents." *Redder v. Redder*, 17 A.D.3d 10, 15, 792 N.Y.S.2d 201 (2005).

On March 21, 2017 and October 18, 2018, the Chief Judge of New York State, "upon consultation with the Administrative Board of the Courts, and with the approval of the Court of Appeals of the State of New York," approved direct payment for, *inter alia*, attorneys for the child(ren) and FEs through her rulemaking authority. 22 NYCRR Part 36 (*see*, amendments in letter format). There are no caps for individual cases, only annual caps of $100,000 which if exceeded precludes them from accepting assignments the following year. Said caps are waivable by the appointing court.

On April 7, 2015, Alan D. Scheinkman, then Chief Judge of the Ninth District, now Presiding Justice of the Second Department, acknowledged that assignment of cases can be "relatively random." *Taxes: No accountability on lawyers for kids*, The Journal News (Apr. 7, 2015) (https://www.lohud.com/story/news/investigations/2015/04/05/law-guardians-accountability/70861238/). The list is a virtual "Who's Who" of the politically connected and court insiders.

> Judges routinely require the adult parties in custodial disputes[, residing within some of the most well-heeled counties in this nation,] to pay [AFCs and FEs]s out of pocket. But in many cases, judges determine that the litigants can't afford the fees. In some counties, including Rockland, most of those assignments go to the Legal Aid Society. In most, including Westchester, they go to [AFC]s who are reimbursed by taxpayers. [All private pay cases go to court appointed private parties.]

Taxes: No accountability on lawyers for kids.

In *N.Y.S. Bd. of Elections v. Lopez Torres*, this Court upheld New York State's system of selecting judges by political "party bosses." 552 U.S. 196, 128 S.Ct. 791, 799, 169 L.Ed.2d 665 (2008). Judge Scheinkman also acknowledged that his wife is prohibited from accepting direct pay cases. *Taxes: No accountability on lawyers for kids*. Yet, his wife, Faith Miller, was appointed as the first AFC in the underlying divorce and custody proceeding and family court proceedings, before her malpractice carrier compelled her to withdraw.

Clearly, the Second Department and the New York Court of Appeals refuse to recognize the prior decisions of this Honorable Court, prior decisions of the New York Court of Appeals respecting parental rights to control their own discovery, blackletter provisions of the New York State Constitution and blackletter state statutory law. Doing so would not be in the pecuniary interests of court insiders and the politically connected. This Honorable Court is the only forum available to fit

parents and their children to remove the ilk present in the New York State Unified Court System. The petition at bar must be granted.

CONCLUSION

For the foregoing reasons and good cause shown, Petitioner respectfully requests that this Honorable Court grant this petition because substantial constitutional questions *are* involved.

Respectfully submitted,

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