No. 19-6214

In the Supreme Court of the United States

Luis Fuquen

Petitioner,

vs.

Trina Everitt

Respondent.

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

PETITION FOR WRIT OF CERTIORARI (CORRECTED)

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QUESTIONS FOR REVIEW

Whether Luis and his children are entitled to due process protections for their individual intimate and expressive, close family, parent-child speech, association, worship, and family privacy rights as provided by the First Amendment and applied to the state TC through the Fourteenth Amendment in a child custody controversy incident to divorce between two fit natural parents;

whether the state may vacate individual intimate and expressive, close family, parent-child speech, association, worship, and family privacy rights as a consequence of the parents exercising a lawful and constitutionally protected choice regarding marriage—to dissolve the marital association—and license these rights back to the state's preferred parent based solely upon the viewpoint of a sole government official regarding matters of conscience in child-rearing—the best interest of the child determination; and

whether the family law TC (TC), in this controversy between two fit parents regarding their constitutional rights, has lawful authority or jurisdiction to limit constitutional rights beyond the scope and limitations imposed through Article VI of the United States Constitution.

TABLE OF CONTENTS

OPINIONS

In No. C-02-FM-15-000375, the order of the circuit court was entered on April 23, 2018 (App. 1a-2a) granting an absolute divorce to Trina from Luis. Appellant, Luis, filed his notice of appeal on April 23, 2018 (App. 1a-2a). The trial court entered its order denying a request for a new trial on May 8, 2018. In No. 313, the order of the Special Court of Appeals was entered on March 5, 2019 affirming the trial court's order. [App. X2057]

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257. Luis has exhausted all appellate remedies in the state of Maryland.

DATE OF APPEALABLE ORDER

The decision by the Maryland Court of Appeals denied Luis' request for Writ of Certiorari reported as Fuquen v. Everitt on June 21, 2019, signed by Chief Judge Mary Ellen Barbera. (Maryland App. 0065) as having no showing of his request being desirable or in the public interest.

This order is attached at Appendix ("App.2057:1-49").

CONSTITUTIONAL PROVISIONS

Pertinent constitutional and statutory provisions are:

1) Article VI, United States Constitution

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

2) Amendment the First, United States Constitution

a. Reproduced in the appendices to the jurisdictional statements [App x px]

3) Amendment the Fourteenth, United States Constitution

Section 1

a. 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.

STATEMENT OF THE CASE

This case presents whether this Court's obiter dicta in *Flores*,[1] "'The best interests of the child,' a venerable phrase familiar from divorce proceedings, is a proper and feasible criterion for making the decision as to which of two parents will be accorded custody" authorizes state courts to violate fundamental rights of the child in direct violation of this Court's holding in *Flores*, "the child's fundamental rights must not be impaired" when a state court makes the policy choice.

Parents have no paths for relief. The number of deaths of parents, children, grandparents, and other bystanders is increasing because of the unjust, unfair, and deadly unconstitutional practices of the state family courts. Most recent deaths related to the same practices as occurred in Luis' case, Ryan Kelley, Sr. (suicide), [App. X2105] and Pam Deal [App. X2104] (broken heart 9/17/19), grandmother, cut off from her grandchildren when her son/the father's rights were affected by the

[1] Reno v. Flores, 507 US 292, 303-305 (Supreme Court 1993)

family court using nothing more than preponderance, and an overbroad, vague unconstitutional best interest policy, just like is used in this case. And Luis was subject to suicide multiple times during the heights of this case, but he fortunately was able to be saved and instead holds out hope that his grievance might be heard here. [App. 2, 7, 26]

Parents are crying out about unjust court practices and being jailed. Most recently, Jonathan Vanderhagen. [App. 2002] Luis' judge used his speech as one of her factors where she said he knew he would "lose" yet persisted, shared his beliefs about the process with his children, and objected to health professionals he disagreed with. [App. 68, 83, 85]

1. The custody determination and Luis' unduly burdensome 5-day long trial

Luis and Trina exercised their First Amendment right of association in asking the trial court TC to recognize their dissolution of their marital association. As a consequence of exercising this choice, the parties were stripped of constitutional protections for their parent-child associations and subjected to a state censorship scheme where the state enhanced the speech and parental authority of one parent and diminished the speech and parental authority to the other parent based on the viewpoint of a sole government official regarding matters of conscience. [APP. X051-X056]

On April 23, 2018 Luis and Trina were declared divorced and the TC ordered time, place, and manner restrictions on Luis' and his children's intimate and expressive, close family, parent-child speech, association, worship, and family privacy

as prior restraints based on the TC's viewpoint regarding parent-child speech, parent child associational values, and the TC's personal preferences regarding the lawful treatment of pets during a family event where Luis was conveying personal values to his children regarding respect for elders and living up to the agreements one makes in life. Luis was summarily punished with loss of fundamental rights for the lawful and constitutionally protected manner in which he conveyed values to his child. [App. X028-X050]

The TC was able to place itself in the position of a super parent by avoiding application of the constitutional guarantees that would require a hearing with balancing tests sufficient to prevent bias and personal preference and prejudice for parenting style differences. This is demonstrated in the record where the TC forced Luis into hiring mental health professionals despite knowing that Luis disagreed with their viewpoints, with the Court using the excuse that Luis had "alienated at least four of the five medical/mental health professionals who have attempted to treat his [children] . . ." further stating father to be "physically fit to have custody of the children," but noted that it was "greatly concerned about [Father's] psychological fitness" claiming that Father was "combative and antagonistic by nature." [App. X008]

Before beginning trial, Luis' attorney stated that the court was being asked to protect rights and to issue a parenting plan that was least restrictive and that the trial testimony would be on nothing more than matters of conscience which were not sufficient to restrict rights from either party. During the trial Luis testified his belief

that the federal constitution protects his parental choices, his beliefs, and his right to teach his children those beliefs. Opposing counsel categorized these values and beliefs as theories, a contradiction the TC did not address due to the belief that the court was free to "neutralize" constitutional rights and apply its own viewpoint of what is "best"[2] for the children, contradicting the well-settled position of this Court that these rights are fundamental in nature and of the utmost importance which would require the highest level of constitutional protection of strict scrutiny. This is the struggle and treatment parents face without these constitutional protections. And the ultimate loser is the children, who lose fundamental rights in every case and who learn at a very early age in very personal terms that justice is not to be found in America's courts. [Exhibit TFinal-P202, 219:17, 219:21] Is this really what we want children to learn about American courts?

The children in this case lost a father whom they loved very much. That loss started with the stress reactions of the father fearing the loss of his children upon recognizing that the TC would NOT protect his or his children's constitutional rights to be together as family. Every criticism of Luis' behavior that the TC levels at Luis is directly caused by the TC's rejection of constitutional guarantees and the fear of loss that resulted. [App. TFinal-P202:4-19] The 5-day trial was nothing but a

[2] One has to ask whether any court can lay claim to knowing what is best for any child any more than it can make a holding that one sports team is the best or one opera is the best or one movie is the best. Best is always a subjective matter of personal choice and can be nothing else. What is best for a child can only be described as a matter of conscience for individuals and a matter of policy for governments. Matters of conscience are absolutely protected and policy choices are always constrained by constitutional limitations.

defamatory subscribing of blame and application of labels to these TC induced reactions like "a Munchausen by proxy diagnosis. [App. T1P15L6-13 and P167-9] When all of this was just disagreement and are protected viewpoint discrimination used to limit the children's time and influence of one of their involved parents. [App. T1P34-36]

The court granted Mother an absolute divorce based on a one-year separation. With respect to the parents' competing claims for custody, and prior consent orders, the TC found that there had been a material change in circumstances since the time the court had entered a consent order in June 2015 providing for joint legal custody of the children. The court found that Father's move back to Maryland from New Jersey was a material change in circumstances, as was "the deterioration in the parties' ability to communicate" as alleged by Mother, [App. X006] and mainly based on the amount of time the children were seeing the father at the time, assigning fault to the father for the problems the children were having, for the state of his relationship with his youngest child. The court found, based "on the factors set forth in Montgomery County v. Sanders, 38 Md. App. 406 (1977) and Taylor v. Taylor, 306 Md. 290 (1986)," plus the reasons articulated in the court's opinion, that it was "in the best interests of the parties' children to be in the primary physical custody of" Mother.1 [App. X006]

Luis and Trina entered these proceedings with full and equal parental rights. Based on the TC's viewpoint regarding the best interest of the children—a matter of personal conscience—and in the complete absence of substantive guarantees for the

constitutional rights at issue, Luis' parent-child speech, association, worship, and family privacy was restricted while Trina's was enhanced. [App. X051-X056]

Luis repeatedly asked for due process protections in this child custody proceeding, during trial, and post-trial, but was repeatedly denied. [App. X06-X012, X057-X096] [Ex T34-36] [Ex. TFinal 71:L18-22, 172:L21-25, 207:L22, 219:L15-25] The TC elaborated on Luis' speech with his children, the content of what he taught his children, and the relative merits of each parent-child association as the basis of her best interest of the child determination. [App X057-X096]

2. An Unwinnable Battle for Parents – Content Based Disagreements

Luis filed a post-trial motion requesting a new trial stating the constitutional violations. [App. X057-X096] Luis argued that this content-based justification for limitation of his and his children's constitutional rights violated their constitutional rights. This Court has repeatedly held that content based and viewpoint-based discrimination cannot serve to justify infringements of First Amendment rights unless they survive strict scrutiny review. Yet the TCs in all 50 states persist with masking these civil rights violations through the best interest of the child policies. Maryland is a common example of how the states are incorrectly handling these fundamental rights of children's parents and the impossible burden on parents where the state claims to now be "constrained" within the confines of these violative practices:

> The reported decision issued on March 5, 2019. According to the majority, this Court's decision in *Boswell v. Boswell,* 352 Md. 204, 236, 701 A.2d. 1153 (1997), *Taylor,* 306 Md. at 302-11, aff'd, 352 Md. 204, 721

A.2d 662 (1998), *Sanders, 38 Md. at 419-21;* and *McDermott v. Dougherty,* 385 Md. 320, 353-55 (2005) constrained the court to hold that:

> "The best interests of the child are paramount to conflicting interests of parents who are not in agreement about the care and custody of a minor child."
>
> "The best interests of the child standard is always the starting—and ending—point."
>
> "The best interest of the child" is the "paramount concern" in "any child custody case," ... "of transcendent importance." *Id.*
>
> it is necessary to resolve the matters of custody and visitation ... solely, by an application of the "best interests of the child" standard.
>
> Effectively, then, each fit parent's constitutional right neutralizes the other parent's constitutional right, leaving generally, the best interests of the child as the *sole standard* to apply to these types of custody decisions. ... balancing of each parent's relative merits to serve as the primary custodial parent; the child's best interests tips the scale in favor of an award of custody to one parent or the other." [App. X015-X016]

The State claims that it is "constrained" within the confines of the best interest of the child standard. This precedent turns on a conflict between parents, which means this conflict turns on the content of the parents' conflicting parental beliefs. This entire line of precedent therefore is content based regulation of times, the places, and the manner in which parents and children may speak, association, worship, and share family privacy.

Luis' request for new trial or reconsideration was denied. [App. X100]

The best interest of the child standard applied transcends and neutralizes the constitution precisely when two parents disagree over matters of conscience in child rearing, which means the best interest of the child standard is triggered specifically by content-based discrimination. [App. X011-X012]

2. Direct appeal

Over 34 years ago, this Court in *Palmore* held that the TC's best interest of the child determination is subject to constitutional review, that the TC is a state actor, that the best interest of the child constitutes only a substantial governmental interest, and that discrimination based upon race must be justified with a compelling governmental interest. Consequently, the Palmore Court overturned the TC's best interest of the child determination on constitutional grounds.

The Maryland Court of Appeals has held that the state's viewpoint of the child's best interest is "'of transcendent importance' and the 'sole question'" which the Maryland Court of Special Appeals held to mean that constitutional guarantees have been obviated in child custody cases and that the TC's best interest of the child determination was not subject to federal constitutional review, [App. 015] but instead based on a judge's "best guess" [App. 006] in direct violation of Article VI of the federal constitution and this Court's holding in *Palmore.* [App. 057]

Luis argued to the Maryland Court of Appeals that this holding violated the *Palmore* Court's holding that the best interest of the child determination was subject to constitutional review. [App. 063-064] The Maryland Court of Appeals held that the

First Amendment rights of parents to their children and the rights of the children to their parents was not of sufficient public interest to warrant their review. [App. 2106] In essence, the Maryland Court of Appeals allowed the lower court's determination that the Maryland Court of Appeals can override the federal constitution to stand as law in Maryland. See Petitioner's argument in the brief he filed with the Maryland lower appellate court. [App. 21-2079]

Luis is asking simply that this Court hold that the constitution does apply to divorced parents and their children, that substantive and procedural due process guarantees must be provided in child custody cases, that the best interest of the child determination is subject to constitutional review, and that viewpoint discrimination in child custody cases must survive strict scrutiny review including application of the least restrictive means test and to overturn the Maryland courts because without this ruling from the Supreme Court parents and children have no hope of protecting their close family associations.

REASONS WHY THIS WRIT SHOULD BE GRANTED

This Court has specifically held, in *Zablocki*, that the state may not exercise its domestic relations power outside of constitutional limitations.[3]

[3] Zablocki v. Redhail, 434 US 374, 399 (Supreme Court 1978), (State power over domestic relations is not without constitutional limits. The Due Process Clause requires a showing of justification "when the government intrudes on choices concerning family living arrangements")

This Court has held, in *Elrod*, that even minor infringements of a child's First Amendment interests constitutes irreparable harm.[4]

This Court held, in *Rotary International*, that the First Amendment protects family associations.[5]

This Court held, in Casey, that the constitution protects all individuals from abuses of government power even where government power is supposedly used to protect another family member.[6] The stated intent and purpose of the best interest determination is to protect the child from the choices of its fit parents, even where those choices are lawful and constitutionally protected.

The following describes how these and other precedents of this Court were resoundingly rejected in favor of absolute discretion being exercised by a state TC judge to violate fundamental rights based on viewpoint discrimination.

Luis was punished for disagreeing with Trina and the mental health professionals that the court said he "alienated." [App. 008] However, Luis has a First

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[4] Elrod v. Burns, 427 US 347, 373, 374 (Supreme Court 1976), (The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury)

[5] Board of Directors of Rotary Int'l v. Rotary Club of Duarte, 481 US 537, 545 (Supreme Court 1987), (We have emphasized that the First Amendment protects those relationships, including family relationships, that presuppose "deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life.")

[6] Planned Parenthood of Southeastern Pa. v. Casey, 505 US 833, 898 (Supreme Court 1992), (The Constitution protects all individuals, male or female, married or unmarried, from the abuse of governmental power, even where that power is employed for the supposed benefit of a member of the individual's family.)

Amendment right to disagree, especially on matters of conscience in child-rearing, and the exercise of that right cannot justify infringement of other rights.[7]

Luis raised his and his children's constitutional rights at trial where he asked the TC to protect his rights from the attack made on them by Trina, and filed a motion for reconsideration post-trial outlining in specific detail the rights asserted and how they were violated by the TC giving the TC ample opportunity to correct its errors. [App. 057-096]

Luis raised as error post-trial the fact that the TC failed to make a determination of what process was due [App. 064, 068] and specifically raised the error of violating intimate and expressive close family association rights when the court limited his time with his children and on Luis' right to determine how he addresses his relationship with his daughters when the court ordered and imposed reunification therapy. [App. 091, 094] Luis argued at trial and post-trial that the TC could not legitimately interfere with his and his children's rights to be together equally to that of the mother as a least restrictive means [App. 088, 090] required by the constitution since the court had not met its burden to show that the children were in imminent danger or would suffer significant harm. The TC held there was harm

[7] Texas v. Johnson, 491 US 397, 408, 409 (Supreme Court 1989), (The State's position, therefore, amounts to a claim that an audience that takes serious offense at particular expression is necessarily likely to disturb the peace and that the expression may be prohibited on this basis. Our precedents do not countenance such a presumption. On the contrary, they recognize that a principal "function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.")

to the children where Luis' lawful and constitutionally protected parenting choices conflicted with the court's personal preferences.

The TC indirectly held that it was not restrained by Article VI or the Fourteenth Amendment to the United States Constitution because this was a domestic relations case between fit parents and MD precedent obviates those requirements for this class of litigant which, as demonstrated within this Writ, is unanimously applied as MD judicial policy, practice, or tradition.

The MD Court of Special Appeals directly held that the TC is not limited by federal or state limitation on its jurisdiction or discretion to limit constitutional rights in a child custody dispute between fit parents. [App. 001-026]

The MD Court of Appeals directly held that the First Amendment rights of Luis, his children, and all other MD parents and children in the class of person subject to child custody disputes between natural parents are not "desirable" or "in the public interest" to warrant review by Md's highest court.

The TC examined the content of Luis' lawful and constitutionally protected parental choices and speech with his children, expressed its own viewpoint regarding those choices and that speech, and then specifically limited Luis' fundamental rights based on that viewpoint[8] by awarding Trina Sole legal and sole physical custody and

[8] The court interprets Luis as "combative and antagonistic by nature," and says that father "had "alienated at least four of the five medical-mental health professionals who have attempted to treat his [children]," and his concern and due diligence with being aware of his children's medical needs was twisted into "projects his own medical conditions onto the [children], causing them extreme anxiety and depression," and "manipulates the children by overtly threatening to abandon them and more

granting Luis only every other weekend with one daughter and every other Sunday with the other. [App. 27-059] Both appellate courts upheld in error. [App. 001-026]]

These errors happened because the TC failed to determine what substantive rights were at issue, failed to determine what process was due to the rights at issue in this case and failed to apply adequate error-reducing mechanisms in the proceedings. [App. 072, 094] And used his political position against him. [App-092, 093] And upheld the error regarding seizure of his money. [App. 093]

Consequently, the TC infringed the fundamental rights of the children absent any constitutional guarantees being provided. A sole government official's opinion of what is best for a child even where, as here, a MD judge applies the Taylor factors, is not a valid substitution for due process protecting that child's intimate and expressive family association rights with its parents. [App. 010-012]

How can it be in the children's best interest for the TC to infringe their fundamental rights without any constitutional protections being afforded? Is the TC empowered to be a super-parent applying its own parenting choices over those of a fit parent?[9]

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obliquely threatening suicide." [APP x p6] and then stated that one of the therapists "directly attributed [R.'s] depression to exhaustion from the parties' custody battle and pressure placed upon her by [Father]."

[9] Troxel v. Granville, 530 US 57, 72 (Supreme Court 2000), (this case involves nothing more than a simple disagreement between the Washington Superior Court and Granville concerning her children's best interests.)

In *Palmore*, this Court applied well-established rules of constitutional review in overturning a TC's best interest of the child determination, holding that opinion insufficiently compelling to support racial discrimination. If *Palmore* is good law, then how can this TC's opinion legitimately depend upon viewpoint discrimination as a basis to infringe First Amendment rights?

The MD judiciary has openly rejected the Palmore Court's precedent by holding that *Palmore* is inapplicable here and unequivocally stating that the factors in Taylor obviate any due process requirements mandated by the constitution. [App. 010-012]

Deprivations of fundamental rights absent constitutional guarantees are by definition erroneous deprivations, unless the constitution doesn't apply in this case as the MD courts have held. This Court has consistently held, in civil cases where constitutional rights are at risk, that the TC must make a determination of what process is due and then apply appropriate risk reduction measures. Maryland's rejection of this due process analysis in favor of viewpoint discrimination ensures erroneous deprivation of fundamental rights in every child custody case.

Universal Behavior

This judicial policy, practice, or tradition of disregarding due process in favor of a sole government official's viewpoint regarding matters of conscience in child-rearing is universal in all fifty states.

In Louisiana, parental rights continue to be directly tied to the marriage of the parents to each other and rights this Court has deemed individual and not tied to the marriage are terminated upon completion of the divorce process, directly punishing

parents and children for the parent's constitutionally protected choice to end the marital association and essentially continuing the bastardy laws this Court held to be unconstitutional in the 1970s. See Louisiana Civil Code, Title VII, Chapter 5, SECTION 6 - TERMINATION OF PARENTAL AUTHORITY: Parental authority terminates upon... termination of the marriage of the parents of the child.[10]

In Texas, the appellate courts hold that family law judges are not state actors in a dispute between private parties, even though the suit is compelled as a consequence of divorce, Tex. Fam. Code Sec. 6.406, see Sanchez v. Sanchez, ____ (Tex: 4th Dist. 2007):

> In issue six, Edward raises what he deems "constitutional issues." He first contends "the state" has infringed upon his "fundamental liberty interest" with regard to his right to custody and care of his children without a compelling state interest. Edward appears to assume this case involves state action because it was presided over by a state district judge. There is no legal support for Edward's presumption and his argument is wholly without merit. There has been no "state action" in this case; rather, this was a private suit between two individuals concerning issues of divorce and child custody.

In New Jersey, the Supreme Court holds that parents should know that their constitutional rights are waived by their own consent when they enter a New Jersey courtroom and that the sole benchmark for determining parental rights is the state's viewpoint of the child's best interest:

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[10] Art. 235. Parental authority terminates upon the child's attaining the age of majority, upon the child's emancipation, or upon termination of the marriage of the parents of the child. [Repealed and reenacted by Acts 2015, No. 260, §1, eff. Jan. 1, 2016]

> Indeed, by seeking a divorce and invoking the jurisdiction of the Family Part, each party assented to the possibility that there will be some curtailment of what would otherwise be the ordinary rights concomitant to parenthood. For example, a party may be denied custody. N.J.S.A. 9:2-4(b). Visitation may be circumscribed. N.J.S.A. 9:2-4(c). Vacations may be shared or lost. Ibid. One parent may be granted the right to move away with the child. N.J.S.A. 9:2-2. All such orders impair to some extent one of the parties' parental rights, and the party participants are deemed to have consented to the possibility of such impairment when they submit their disagreement to a court. The only limitation on the court is the application of correct legal principles to the facts, subject to the standards governing appellate review of judicial decisions.
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> In such cases, the sole benchmark is the best interests of the child.

In Tennessee, the State Supreme Court at least sets the standard at harm to the child. However, it then holds that the parents' lawful and constitutionally protected choice to divorce is sufficient presumptive harm to infringe fundamental rights, see Hawk v. Hawk, 855 S.W.2d 573, 580 (Tenn.1993)

> Implicit in Tennessee case and statutory law has always been the insistence that a child's welfare must be threatened before the state may intervene in parental decision-making. In a divorce case, for example, the harm from the discontinuity of the parents' relationship compels the court to determine child custody "as the welfare and interest of the child or children may demand... ." T.C.A. § 36-6-101 (1991).

In Maryland, the state's highest court holds that the rights of parents are neutralized when a parent asks the court to infringe the First Amendment rights of the other parent. Somehow, jurisdiction, which the First Amendment removes from government, is granted back to the TC when a parent asks the court to violate the other parent's civil rights under color of state law. See McDermott v. Dougherty, 869 A. 2d 751, 770 (Md: Court of Appeals 2005):

> Effectively, then, each fit parent's constitutional right neutralizes the other parent's constitutional right, leaving, generally, the best interests of the child as the sole standard to apply to these types of custody decisions. Thus, in evaluating each parent's request for custody, the parents commence as presumptive equals and a trial court undertakes a balancing of each parent's relative merits to serve as the primary custodial parent; the child's best interests tips the scale in favor of an award of custody to one parent or the other.

Of special note in Maryland is that the Court of Appeals specifically directs the lower courts to balance the "relative merits" of the parents to choose the better parent. The lower courts are directed to evaluate the parents' exercise of their constitutionally protected parenting rights, exercise unbridled discretion in determining which is the "better" parent, and presumptively reissue natural constitutional rights that the court previously neutralized in compliance with that unbridled discretion. However, even those reissued rights are not constitutionally protected and can later be altered based on the same unbridled discretion, limited only by the existence of a change in circumstance. In this manner the reissued parental rights are more akin to a license granted by the TC subject to arbitrary revocation, or in other words, a license issued in a state censorship scheme.

While both parents may stand on equal footing, this does not eliminate the equal protection issues when the TC denies one parent rights or benefits available to the other.[11]

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[11] Jimenez v. Weinberger, 417 US 628, 637 (Supreme Court 1974), (the two subclasses of illegitimates stand on equal footing, and the potential for spurious claims is the same as to both; hence to conclusively deny one subclass benefits presumptively available to the other denies the former the equal protection of the laws guaranteed by the due process provision of the Fifth Amendment.)

It takes very little research to uncover similar perversions of constitutional rights in family law across all of the states. Denial of constitutional guarantees in family law is universal in every state as the universal belief is that family law courts are empowered to assign, grant, or award legal and physical custody to one parent based solely upon a divorce between the parents. This presumption presupposes that the individual rights are terminated with the dissolution of the marital association, a presumption this Court has found to be invidious.

The federal government incentivizes the states with roughly four billion dollars in annual financial payouts based on child support payments in the Social Security Title IV-D scheme. This creates a pecuniary interest in maintaining unequal custody and possession as justification for case payments of child support instead of direct support by each parent in 50/50 child custody arrangement. The least restrictive means test would seem to require a presumption of an equal balance of custody and possession unless compelling justification for a more restrictive option is demonstrated.

There is a massive industry surrounding child custody that is estimated to be fifty billion dollars per year. The pecuniary and political power interests of every single actor in the system critically depends upon the lack of constitutional guarantees being applied in the adjudication by the TC judge and for that error to be overlooked by the appellate courts. Consequently, no reasonable TC judge can be expected to buck the system by holding that constitutional guarantees apply. Apparently, this system is powerful enough to compel even the highest courts in

Maryland to hold that family law is a constitution free zone in direct and open contradiction to their Article VI oaths.

Children are being erased from one half of their families by the millions, not bonding with extended family members, grandparents, cousins, aunts and uncles. Children are suffering extreme levels of increased anxiety, depression, and suicide from these practices. When children are deprived of two full and equal parents they more often fail to reach their potential as adults and very often end up a burden on society.

Recently, a popular website pushing to get a parental rights amendment passed explained it's belief that the Supreme Court created confusion with its *Troxel v. Granville* ruling from 2000 stating that prior to *Troxel* it was more clear what protections the state is supposed to apply to parental rights but that after *Troxel* "There's Now No Clear Precedent."[12] [App. 108-111]

This Court's holdings are clear. In *Palmore*, the TC judge is a state actor, the Fourteenth Amendment applies, best interest is a "substantial" interest and not "compelling." However, *Palmore* dicta holds that best interest is a proper standard in violating the individual rights of divorced parents. The states embrace the dicta and reject the holdings creating the question of whether that was the actual intent of the

[12] ParentalRights.org, https://parentalrights.org/understand_the_issue/supreme-court/ accessed on September 15, 2019

dicta. Luis argued *Palmore* to the MD Court of Special Appeals and to the MD Court of Appeals.

In *Reno*, the best interest decision exercised by an executive officer is a "policy choice" which cannot issue if it limits the rights of the child and the child has no constitutional right to its best interest being applied. However, *Reno* obiter dicta holds that best interest a "venerable phrase familiar from divorce proceedings, is a proper and feasible criterion for making the decision as to which of two parents will be accorded custody." This obiter dicta completely ignores the fact that parental rights are, by this Court's holdings, individual rights independent from marriage.[13] It ignores this Court's holdings that the child's rights may not be violated for the lawful and constitutionally protected choices of the parents.[14] It ignores the fact that each parent enters divorce proceedings with full and equal natural First Amendment protected rights that cannot be afforded to either parent by a court—they can only be protected or violated by the court.

In almost every case in which this Court has addressed parent and child rights, this Court has hedged its bets with dicta *(Palmore, Reno v. Flores)* and made the state

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[13] Shelley v. Kraemer, 334 US 1, 22 (Supreme Court 1948), (The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights.)

[14] Weber v. Aetna Casualty & Surety Co., 406 US 164, 175 (Supreme Court 1972), (The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing.)

court's believe that this Court cares nothing at all for the rights of divorced or single parents and their children; so why should the states care?

This Court has reinforced this belief by very rarely ever addressing a case regarding divorced parents. When it does, there is always another hot button issue involved which gets all the Court's attention, like racial discrimination in *Palmore*, while the underlying rights are given short shrift, or only appear in a footnote.[15]

This Court and many federal appellate courts have held that close family association rights are the highest order of association rights[16] which deserve the greatest due process protections. However, this Court's reluctance to address these issues when the state is directly attacking the family association makes a mockery of family rights being the highest protected rights. And the result is what you see here from Maryland, Louisiana, New Jersey, and Texas, state judges claim the constitution does not apply to them because they have a best interest license from this Court.

The policies, practices, and traditions of the federal courts directly contradicts this idea ensuring that close family associations actually receive the absolute lowest constitutional protections of any association right. This is due to the states assigning administration of their state domestic relations policy directly to state court judges

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[15] *Palmore*

[16] Parham v. Hughes, 441 US 347, 358 (Supreme Court 1979), (The interests which the Court found controlling in Stanley were the integrity of the family against state interference and the freedom of a father to raise his own children.)

who make the policy choices and then adjudicate the constitutionality of their own choices.

The consequences of this separation of powers violation is that parents and children are denied virtually all federal question relief in the federal courts in child custody disputes between fit parents. The federal courts routinely and improperly dismiss based on Younger or Rooker-Feldman abstention grounds and completely neuter the plain language of 42 U.S.C. 1983 in challenging state court judicial duty to apply substantive and procedural due process guarantees when administering state domestic relations policy, and stating that the federal rights can be heard in the state TC. In this case, and all others, these rights have not been heard in the state courts but rather are shut down every day with statements from judges such as "the constitution doesn't apply in my court," "if you bring up the constitution again, I'll throw you in jail," and appellate courts stating that the constitution is overridden by best interest of the child as in this case.

The Fifth District has gone so far as to sanction a pro se parent, a corporate attorney, for daring to presume that he could receive declaratory relief from a federal court. This opinion left the parent with no adjudication of the federal question as the state courts have held that the constitution does not apply. The state TC adamantly

refused to make a determination of what process was due and argued that improper notice and an unfair hearing were all the due process required.[17]

The federal district court presumed that the state TC would protect constitutional rights even though the state court judge argued before the federal court that nothing more than inadequate notice and an unfair hearing are necessary under federal due process standards. Substantive rights protections were rejected out of hand by the state court judge.

This parent was subsequently summarily stripped of all of his parental rights and has been relegated to only supervised visitation in a facility which treats him as if he had been proven to be a danger to his children. [App. 116-122] He had to agree to an extensive list of prior restraints for this privilege and is completely barred from parenting his children or teaching them his religious beliefs. He was prevented from participating in or being present at one child's Catholic Confirmation ceremony and is barred from the ceremony of the younger child under current orders. This is a

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[17] MACHETTA v. Moren, ____, (5th Circuit 2018), (To the extent that Machetta seeks declaratory relief—and assuming we could discern what that declaration would be—we agree with the district court's Younger abstention analysis. See Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 72 (2013). State court, which is an adequate forum for raising the constitutional claims Machetta asserts, is the proper forum for this family law dispute. Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 431 (1982) ("Minimal respect for the state processes, of course, precludes any presumption that the state courts will not safeguard federal constitutional rights.")... We also affirm the district court's award of attorney fees to the defendants. ... Defendants may be awarded attorneys' fees if the plaintiff's suit is "frivolous.")

Machetta directly challenged the trial court's "judicial duty" to determine what process was due which is a requirement of federal law. The district court and the appellate court converted this to a challenge to the statute which it was not. The federal courts refused to rule on the judicial duty of a state court judge under federal law. Machetta raised many of the same questions raised here in his state case and that case is currently awaiting a Texas Supreme Court ruling on petition for certiorari.

parent with no criminal background or criminal history, no convictions, who was Ruled Out as a danger to his children by TDFPS, and who has never been served with any written allegations. This is how fit parents get treated when the states are allowed to ignore federal constitutional guarantees. These orders are punishment for daring to sue the TC judge in federal court seeking prospective relief regarding federal due process requirements in pre-trial proceedings.[18]

His older child will age out before this Court will even have the opportunity to hear his appeal.

This sanction for daring to presume that 42 U.S.C. 1983 means what it says on its face is especially alarming when the Fifth Circuit just months earlier affirmed suit against Texas District Court judges in pre-trial criminal proceedings under 42 U.S.C. 1983 under a scenario so similar that the only significant difference is that suing state judges is now allowed in criminal proceedings but denied and sanctionable in civil family law proceedings in the Fifth Circuit, turning the basis of Younger abstention on its head.

With perhaps one lone exception,[19] the federal courts appear to be at war with the idea that state court judges are subject to federal declaratory relief in family law

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[18] In the state case the appellate court held that the constitution does not apply, due process and jurisdictional issues are mere technicalities that cannot stand in the way of the best interest determination, and that Appellant failed to prove that the trial court is required to be neutral and disinterested. The Texas Supreme Court just recently allowed this holding to stand by denying certiorari. Appellant Machetta is expected to file with this Court within the next 80 days.

[19] Wise v. Bravo, 666 F. 2d 1332, 1337 (10th Circuit 1981), (The state's power to legislate, adjudicate and administer all aspects of family law, including determinations of custodial and visitation rights, is subject to scrutiny by the federal judiciary within the reach of the Due Process and/or Equal

civil cases and at war with the constitutional rights of parents and children in favor of unbridled state TC discretion in these matters.[20]

Many parents have resorted to removing their cases to federal court as a political protest even when they know that their attempts to remove will be denied, based on this court's removal precedent, because they are frustrated with the absolute denial of justice they receive at every turn from every court.

When you add this court's reluctance to hear these cases, the only thing left is the appearance and the absolute reality of abject Victorian era discrimination against divorced parents, against unmarried parents, against single, never-married parents, and against the children of these unfortunate parents. The bastardy laws are alive and well in Maryland, in Texas, and in the 48 other states, seemingly with this Court's tacit consent and approval.

These parents and their children are powerless, they stand apart from other parents and other children, they have been subjected to a thousand-year history of persecution which continues today. In an age where every conceivable minority group is seeing dramatic improvements in the protection of their rights, the Maryland judiciary has declared unconditionally that this class of parent and child are

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Protection Clauses of the Fourteenth Amendment... "[R]estricting state power within constitutional bounds is an appropriate task for the federal judiciary.")

[20] Many federal district court judges were state court judges who presided over child custody cases and who themselves used their own viewpoints to deprive fit parents and their children of fundamental rights. This presents the very real concern that having committed these errors themselves, these judges appear to be biased against applying constitutional analysis to the questions of law raised here.

undeserving of any constitutional protections of any kind beyond inadequate notice and an unfair hearing.

Where should intimate and expressive close family parent-child associations fit in the hierarchy of protected association rights, not as a meaningless academic platitude, but in the daily reality of applying constitutional protections in family law courts on a case-by-case basis?

The federal appellate courts have been abundantly clear that it is always in the public interest "to prevent the violation of a litigant's civil rights" and to uphold essential First Amendment principles, except as it seems for this class of parent and this class of child who cannot be heard in the federal courts.

Prior family law cases have been resolved under the due process clause by interpreting the term Liberty. Luis believes that acknowledging the First Amendment rights at issue provides for a far simpler and more comprehensive resolution. Where previous dissenters, such as Justice Scalia in *Troxel*, were reluctant to interpret the term Liberty, those dissenters are much less averse to upholding well-established First Amendment law, which is clearly applicable here, and that precedent provides robust and well-developed rules of analysis to guide the state family law courts, greatly reducing further clarification burdens on this Court.

Even if the public cares nothing for these parents and these children, as is clearly evident in the lower courts, surely the First Amendment principles of intimate

and expressive, close family, parent-child speech, association, worship, and family privacy deserve the attention of this Court for their own sake.

Is the state TC's viewpoint on matters of conscience in child-rearing, in a parent vs. parent custody dispute, one of this Court's established exceptions to the near-absolute prohibition against prior restraint on First Amendment rights,[21] or is the magical incantation *it's in the child's best interest* more important than even national security?[22]

Was the TC required as a non-discretionary judicial duty to determine what process was due the First Amendment rights at issue and was the TC required as a non-discretionary judicial duty to protect the substantive rights at issue, as matters of federal law? Does the mere disagreement of two fit parents on matters of conscience in child-rearing convey jurisdiction to the family law TC which the First Amendment has removed? If statutory commands limiting judicial action are jurisdictional,[23] are constitutional commands limiting government action likewise jurisdictional? Does Article VI provide a jurisdictional limitation on state court actions?

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[21] Nebraska Press Assn. v. Stuart, 427 US 539, 592 (Supreme Court 1976), (the purpose for which a prior restraint is sought to be imposed "must fit within one of the narrowly defined exceptions to the prohibition against prior restraints.")

[22] United States v. Robel, 389 US 258, 263, 264 (Supreme Court 1967), (the phrase "war power" cannot be invoked as a talismanic incantation to support any exercise of congressional power which can be brought within its ambit. "[E]ven the war power does not remove constitutional limitations safeguarding essential liberties.")

[23] See Hamer v. Neighborhood Housing Services Of Chicago, ___ (Supreme Court 2017) generally for decisional logic related to denial of jurisdiction by higher authority. The constitution can and does convey jurisdiction. It can and does remove jurisdiction. The First Amendment removes jurisdiction from congress to make certain laws. Article VI and the Fourteenth Amendment apply this limitation to state court judges.

CONCLUSION

The deprivations of constitutional guarantees in this case and for this class of person are comprehensive. The affront to our constitution is profound. However, the solution is simple.

Luis simply asks that this Court reiterate well-established constitutional guarantees as being applicable to Luis, his children, and other parents and children in the class of parent and child subject to child custody proceedings between fit parents.

1) Luis and his children are entitled to constitutional guarantees in this case.

2) The TC judge is a state actor subject to Fourteenth Amendment limitations.

3) The TC's best interest of the child determination is subject to review under well-established standards of constitutional review.

4) The rights at issue are individual rights independent of the marital status of the child's parents to each other, or to changes in that marital status.

5) Parents and child have a right to have and maintain, free from unwarranted government interference, an intimate and expressive, close family, parent-child association for the purposes of sharing information and values through speech and daily example, sharing of daily family intimacy, and sharing of daily religious practices protected as speech and privacy rights by well-established First Amendment substantive guarantees.

6) The parties are entitled to a determination by the TC of *what process is due* as a due process requirement essential to the provision of fair proceedings.

7) The parties are entitled to the presumption of fitness and the presumption that their best interest of the child determinations are constitutionally protected as privacy choices regarding matters of conscience in child-rearing.

8) That the TC may not presume harm to the child from constitutionally protected privacy choices exercised by the parents regarding marriage or divorce nor may the TC predicate the limitation of constitutional rights upon those choices.

9) That any court order limiting rights protected at enhanced scrutiny must be justified by the TC judge, as the state actor taking state action.

10)That a judge's viewpoint of a child's best interest does not constitute a compelling state interest.

11)That the TC must apply a means-end test appropriate to the rights being infringed.

12)That the TC judge may not directly or indirectly violate the rights of the child absent justification.

13)That the established requirements of standing and subject-matter jurisdiction applied to all other civil litigants must be applied equally to this class of litigant.

14)That the TC judge lacks jurisdiction to take any judicial action outside the scope and limitations imposed by Article VI of the United States Constitution.

The simple solution Luis is asking for is that his and his children's First Amendment rights be protected at strict scrutiny. That each parent's right to exercise care, custody, control, and association with their child separately from the other parent be equally protected, and for a presumption that the least restrictive means of achieving this goal is equal custody, equal possession, and equal parental authority where exceptions must be narrowly tailored to achieve a narrow and specific compelling state interest.

This solution complies with well-established rules of constitutional review and leaves ample authority for the TC to resolve conflicts which have a compelling justification for resolution, i.e. what school the child will attend.

This solution will likely result in a savings of billions of dollars spent on frivolous and unnecessary attempts to emotionally manipulate the viewpoint of TC judges and is likely to be strongly resisted by those people who are enriching themselves through judicial destruction of essential parent-child associations. Many state bar associations openly and vigorously fight against this solution for the reason that it deprives their members of easy revenue.

Most importantly, this solution will greatly reduce the ills this country is experiencing from increasingly large numbers of children being raised by one parent and the harmful impacts of children growing up without a father's parental authority influencing their futures. This County has been engaged in a multi-generational social experiment conducted by a tiny number of government officials acting as super-parents overriding the parental authority that is so essential to our way of life. This

experiment has failed on a massive scale and has utterly destroyed the family fabric of our country.

Children deserve two equal parents in their lives, they have a constitutional right to have two equal parents in their lives, and they have a constitutional right to be free from unwarranted judicial super-parenting in their lives. Our country is being destroyed in highly visible ways by this unconstitutional experiment of destroying parent-child bonds. Parents are being traumatized and suffering increased levels of depression, anxiety, PTSD, parental alienation, and suicide. Violent crimes are being committed by parents and children who had no previous criminal records. More parents are having to represent themselves pro se because they do not get help protecting their rights and increasingly more parents are needing ADA accommodations in court due to the disabilities being generated from these practices.

Luis asks this court to overturn the TC's orders, remand and direct the TC to protect the rights of the parties equally and protect the rights of Luis' children to have two equal fit parents in their lives, regardless of the TC's viewpoint regarding Luis' value as a parent, and to restore the integrity of our judicial system by ensuring that parents in custody disputes receive *a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law.*[24]

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[24] Excerpt from Rule 1 of the Texas Rules of Civil Procedure which has been held by the Texas First District Appellate Court not to apply to fit parents in custody disputes and which the Texas Supreme Court has let stand as the law in Texas. See IN THE INTEREST OF IMM, Tex: Court of Appeals (1st Dist. 2019)

This case presents this Court with an opportunity to clarify and reaffirm the *Flores* and *Palmore* holdings, in the face of the state judicial actions that violate *Flores* and *Palmore.* Absent intervention by this Court, the Maryland Court of Appeals' published decisions McDermott and Taylor will work to undermine the carefully crafted procedural safeguards that this Court has spent at least the past 95 years developing, since *Meyer v. Nebraska,* affirming that the Constitution protects the privacy choices of the parent over less than compelling state policies.

CERTIFICATE OF COMPLIANCE

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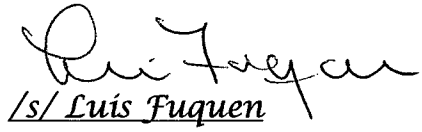

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Certiorari was served via USPS, this 19th day of September 2019, to:

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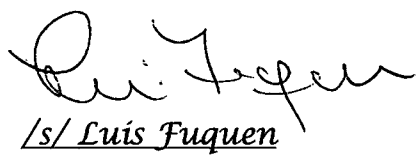

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