

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

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In the  
Supreme Court of the United States

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LC,

Petitioner,

v.

MG

Respondent.

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**PROOF OF SERVICE**

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I HEREBY CERTIFY that on this date a true and correct copy of the foregoing documents were served upon the following parties by U.S. Mail:

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DATED: Berkeley, California, March 4, 2019.

  
ROBERT H. THOMAS

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, petitioner LC respectfully requests that the time to file a petition for a writ of certiorari in this case be extended for thirty days to June 5, 2019. Petitioner will ask this Court to review a judgment by the Supreme Court of the State of Hawaii entered on February 4, 2019. *See* App. 1. Absent an extension of time, the petition would be due on May 6, 2019. Petitioner is filing this application at least ten days before that date. *See* Rule 13.5 of the Supreme Court Rules. This Court has jurisdiction under 28 U.S.C. § 1257 to review this case.

### **Background**

The Hawaii Supreme Court interpreted Hawaii's version of the Uniform Parentage Act law to create an irrebuttable presumption of paternity when one spouse undergoes assisted reproduction without the other spouse's consent.

1. Petitioner LC and MG were a same-sex married couple. MG, designated LC as a co-parent on the birth certificate of a child born to MG through assisted reproduction. LC filed a petition to disestablish parentage to formally remove her name from the birth certificate because she is not the natural parent of the child and did not consent to the assisted reproduction procedure. Without asking LC, MG had undergone assisted reproduction while LC, who serves as a flight officer in the United States Navy, was deployed overseas. Contemporaneous with her petition, LC filed for divorce. LC has never met the child and MG is the sole caregiver.

2. In a consolidated parentage/divorce action, the Family Court of the State of Hawaii concluded that LC is the legal parent of the child and denied her request to disestablish parentage. The family court awarded MG temporary sole legal custody, declined to award LC visitation, and ordered LC to pay child support.

3. LC filed an appeal to the Intermediate Court of Appeals of the State of Hawaii and the case was then transferred for review by the Supreme Court of the

State of Hawaii. In a 3-2 decision, the Hawaii Supreme Court held “that a spouse cannot rebut the HRS § 584-4(a)(1)<sup>1</sup> marital presumption of parentage pursuant to HRS § 584-4(b)<sup>2</sup> by demonstrating by clear and convincing evidence a lack of consent to the other spouse’s artificial insemination procedure.” *LC v. MG*, 430 P.3d 400, 418 (Haw. 2018); *see* App. 2. In other words, the Hawaii Supreme Court created an irrebuttable presumption that when a spouse undergoes assisted reproduction, regardless of whether the other spouse consents, he or she is legally the parent and cannot prove otherwise.

4. LC filed a motion for reconsideration with the Hawaii Supreme Court, which was denied, again with two Justices dissenting. *See* App. 3.

### **Opinions Below**

1. The Hawaii Supreme Court issued the opinions in the case on October 4, 2018.

2. The court denied Petitioner’s Motion for Reconsideration and Reargument on November 2, 2018.

3. The Hawaii Supreme Court issued the Judgment on Appeal on February 4, 2019.

### **Jurisdiction**

This Court has jurisdiction under 28 U.S.C. § 1257.

### **Reasons for Granting an Extension of Time**

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<sup>1</sup> Haw. Rev. Stat. § 584-4(a)(1) provides in pertinent part: “(a) A man is presumed to be the natural father of a child if: (1) He and the child’s natural mother are or have been married to each other and the child is born during the marriage . . . .”

<sup>2</sup> Haw. Rev. Stat. § 584-4(b) provides:

A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

The time to file a petition for a writ of certiorari should be extended for thirty days, to June 5, 2019 for several reasons:

1. The forthcoming petition will present important federal constitutional questions that this Court should consider.

**Procedural Due Process.** Both parties and the amicus State of Hawaii presented their cases presuming the marital presumption could be rebutted by demonstrating lack of consent. The Hawaii Supreme Court's majority *sua sponte* imposed an irrebuttable presumption and did not allow further briefing on the matter, denying LC an opportunity to be heard. Further, a statutory presumption that is irrebuttable deprives a spouse of fair notice and an opportunity to be heard that they did not agree to either have a child or to becoming a parent.

**Substantive Due Process.** An irrebuttable presumption of paternity where consent has been deemed irrelevant simply by virtue of their marital status arbitrarily and capriciously forces someone to become a parent against their will, infringing on their fundamental liberty and property interests. Whether to have a child goes to the most fundamental of our constitutional rights.

**Equal Protection.** There is no rational reason to impress parenthood upon someone who did not consent to have a child simply because of their marital status.

2. Additional time is necessary and warranted for appellate counsel of record, retained after the Hawaii Supreme Court's opinion, to review the record in the case, research case law and federal and state constitutional law, and prepare a clear and concise petition for certiorari for the Court's review.

3. LC is current with child support.

4. No prejudice to Respondent MG would arise from the extension.

5. Counsel for MG, and Counsel for the State of Hawaii do not oppose this request for an extension of time.

### **Conclusion**

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended thirty days to and including June 5, 2019.

Respectfully submitted,



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Robert H. Thomas

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