No. 19-891

In the Supreme Court of the United States

JOHN LEHMANN,

Petitioner,

v.

NICOLE HAIMS,

Respondent.

On Petition for Writ of Certiorari to the New York Court of Appeals

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

I. SUMMARY OF THE CONSTITUTIONAL ISSUES IN THIS MATTER.

This matter clearly involves very significant constitutional issues regarding due process and parental rights that are guaranteed by U.S. Const, amend. I, V, and XIV. In each substantive brief or letter regarding jurisdiction that John Lehmann ("Lehmann") submitted to the New York courts in this matter, he asserted both his and his daughter's ("child or Lehmann's daughter") constitutional rights. These rights include a parent to associate with their natural child (*i.e.* physical custody), determine what religious faith the child will be raised in, make educational decisions for the child, make legal decisions for the child, and make medical decisions for the child. Additionally, the significant violations of due process of the law in custody proceedings in New York that Lehmann and his daughter have suffered.

This matter is of significant importance to the federal government and all 50 states with regard to the use of objective scientific testing in legal proceedings. In this case, over the course of the Family Court ("FC") litigation, which lasted nearly two-and-a half years, Lehmann took over 100 tests of hair, urine, and breathalyzers ordered by the FC or its appointees that were all negative and had also been an active parent prior to the FC custody petition making him conclusively a fit parent. Yet were these things were essentially ignored by the New York courts. Accordingly, New York State is no longer relying on

these objective scientific tests in civil or criminal matters, as well as unrefuted testimony regarding the parent's parenting of his/her natural child. This same decision-making by courts across the country would have an enormous impact in criminal matters (*e.g.* DUI, drunk in public, domestic violence, possession or distribution of illegal drugs, and even in DNA evidence related cases), as well as in child custody and neglect matters.

The pace of this litigation has been painfully slow, now over four-and a-half years, during which the New York courts made significant factual and legal errors unsupported by the record and precedent. Since October of 2017, Lehmann has only been able to see his daughter for approximately an hour, or earlier an hour-an-half each week. This is due to the very high cost of court mandated supervision. Since October 2017 to the present this supervisor has been (previously Carmen Candelario) DR Benna Strober (PhD) who Lehmann must pay $250 per hour, in addition to his child support of approximately $2,400 per month (17 percent of his gross income, plus any medical costs—after taxes over 30 percent of his gross income and not even being able to claim the child as a dependent for tax purposes). Additionally, Lehmann's daughter's stepmother and paternal grandparents were effectively shunned from contact with the child (or even hidden as her stepmother) was at Nicole Haims' ("Haims") direction during most of the record period. Haims claims that Lehmann would not foster a relationship of Lehmann's daughter with her family while nearly excluding any contact from his family. Prior to the death of the child's mother / Lehmann's then legal spouse, Lehmann either lived with the child

or saw her three to five times a week for several hours and cared for her.

As discussed in Lehmann's Petition for the Writ for Certiorari ("Petition"), these are all violations of the U.S. Const, amend. I, V, and XIV. Certiorari should be granted, and Lehmann awarded sole physical and legal custody of his daughter away from Haims, the child's maternal aunt, who did not have a special relationship with the child until her sister's death—except for, as she testified to, knitting a hat and poncho for the child.

II. MANY OF HAIMS' FACTS IN HER OPPOSITION ARE NOT EVIDENCED IN THE RECORD OR ARE CREDIBLE.

Judge Hahn, the FC Judge, did not include any citations from the actual record to support her Decision and Order ("D&O"). In Lehmann's Petition he provided this Court with citations to transcripts and exhibits in the record (see Petition for citations for this reply's correct facts). Haims' Opposition cited to the D&O over 40 times in her fact section, while only citing to the actual transcript twice. The facts in the Petition are verified via transcripts and exhibits, Haims' are not, and include many inaccuracies based on the un-citationed FC D&O. This was a split the baby situation. Why would a judge give Lehmann unsupervised visitation with his daughter every weekend and most holidays if she believed he was incapable of taking care of the child—especially given the FC Judges facts enumerated in the D&O? The vast majority of Haims' facts are disproven buy Lehmann as cited to in the Petition.

III. LEHMANN SOUGHT TO PROTECT HIS AND HIS DAUGHTERS' CONSTITUTIONAL RIGHTS IN THE NEW YORK COURTS.

Lehmann Preserved the argument of his and his daughters' constitutional rights granted by U.S. Const., amend. I, V, and XIV in each of his substantive briefs/ letters in the New York courts, and they were ignored in opinions (Lehmann's daughter's name has been removed):

> Final Family Court Brief (p. 27)
>
> Lehmann's and [the child's] Constitutionally Protected Fundamental Rights While of the utmost importance, this case is not just about where Olivia will live and who will care for her on a daily basis, at its core this case implicates and threatens [the child's] and Lehmann's most fundamental constitutionally protected rights . . . .
>
> AD2D Brief (p. 46)
>
> There is not a "no harm, no foul" rule in New York by which the non-parent gets to keep custody of the child, simply because the FC perceives that the parent's relationship with the child will not be harmed. Such a legal principal not only violates New York law, but also the fundamental constitutional rights of both [the child] and Lehmann. Moreover, the [child]-Lehmann relationship would in fact certainly suffer under the custody and visitation terms of the D&O, as compared to Lehmann being awarded sole custody of his daughter (*e.g.* he would see, parent, guide, care for, make all decisions

> for, and interact with her daily, not just on weekends) . . . .
>
> New York Court of Appeals Letter regarding jurisdiction (June 21, 2019)

In response to your recent correspondence, this letter will provide information and case law on whether my petition was final and within the Court's jurisdictional boundaries, based on both the New York and the United States' Constitutions. The lower courts misinterpreted the facts in the record and misinterpreted the law. . . .

IV. CASELAW CITED TO BY HAIMS IS DISGUISABLE.

This case does involve settled law as identified in Lehmann's AD2D briefs and his Petition, while Haims cited to distinguishable case law. Many of these cases were addressed in the earlier by Lehmann's Petition and will not be repeated.

Haims' cited to the J. Steven's dissent in *Troxel v. Grandville*, 530 U.S. 57 (2000), not the primary J. O'Connor authored opinion, which included the Court's juris prudence on parental and children's rights that stated:

> The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of law.' We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process.' *Washington v. Glucksberg,* 521 U.S. 702, 719, 117 S.Ct. 2258 (1997). The Clause also includes a substantive component that 'provides heightened protection

against government interference with certain fundamental rights and liberty interests.' *Id.,* at 720, 117 S.Ct. 2258; *see also Reno v. Flores,* 507 U.S. 292, 301-302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993).

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. More than 75 years ago, in *Meyer v. Nebraska,* 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), we held that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and 'to control the education of their own.' . . .

[W]e have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. *See, e.g., Stanley v. Illinois,* 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) ('It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements' (citation omitted)); *Wisconsin v. Yoder,* 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) ('The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the

> parents in the upbringing of their children is now established beyond debate as an enduring American tradition'); *Quilloin v. Walcott,* 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978) ('We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected'); *Parham v. J. R.,* 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979) ('Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); *Santosky v. Kramer,* 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (discussing '[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child'); *Glucksberg, supra,* at 720, 117 S.Ct. 2258 ('In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the righ[t] . . . to direct the education and upbringing of one's children' (citing *Meyer* and *Pierce*)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.

Haims' cited to the J Stevens dissent, in which even he stated that:

> To remain effective, the Supreme Court must continue to decide only those cases which present questions whose resolution will have immediate importance far beyond the particular facts and parties involved.

As noted above, this matter regards the nation-wide issues of the use of forensic objective scientific testing (both federal and states) and parental rights (*i.e.* who is an unfit parent, as it differs from state to state).

In *Pettaway v. Savage*, 87 A.D.3d 796, 798 (3rd Dept. 2011) the court found that extraordinary circumstances existed where "prior to the mother's death, the father failed to play any significant role in the child's life, by visiting inconsistently and failed to attend to the child's emotional needs having "emotionally abandoned' the child). That is not the case here. Lehmann cared for his daughter along with her mother. Additionally, any psychological bonding with a non-parent during the litigation is irrelevant. *Bailey v. Carr*, 125 A.D.3d 853, 854 (2nd Dept. 2015). However, the loving bond between the parent and non-parent is clearly relevant to an extraordinary circumstances determination and must be considered. *Ambridge v. Cambridge*, 13 A.D.3d 443, 444 (2nd Dept. 2004). It is clear that Lehmann's daughter and her entire paternal family love each other or, Lehmann would not have gone to school events and parent teacher conferences, as well as he and her stepmother seeing or communicating with her as much as possible when aloud by Haims.

In *Rodriguez v. Rodriguez*, 150 A.D.3d 1016 (2nd Dept. 2017), the mother admitted that she could not care for the child, that she had not acted as a parent since [the child] was born, and that she had provided

no support for him. Here Lehmann assumed a parental role in all manners for three-and-a half years, and has been litigating to get his daughter back since then.

In *Curry v. Ashby*, 129 A.D.2d 310 (1st Dept. 1987) is irrelevant, because Lehmann's daughter did not have a pre-existing close relationship with anyone in the Haims household prior to her mother's death.

In *Mary H v Helen P*, 131 A.D.2d 571 (2nd Dept. 1987) is irrelevant, because the mother abused the child and this has certainly never occurred with Lehmann's daughter or in the record.

Suarez v Williams, 12 N.Y.3d 440 (2015) is irrelevant, because Haims is not a grandparent. (see N.Y. Domestic Relations Law § 72(2)). The mother gave the child to the grandparents, days after birth, she was ten at the time of the decision. Lehmann allowed Haims to house his child for three months, until the school year, when he had obtained a two bedroom apartment, and even when Lehmann had already enrolled the child in preschool in the area of his new home in August 2015. He was able to visit his daughter for eight hours per week (based on the distance from Manhattan to Pound Ridge where Haims lives). Lehmann was to have custody of his child after approximately three months. Then Haims filed her FC Petition for custody. Since then it has only been the litigation that has separated them. With Lehmann drafting 95 percent of the written briefs and outlines of witness examination questions for his attorney, when he could not afford legal services to begin with, and ultimately her stepmother has had to endure this loss of time when both of Lehman and her were endeavoring, along with the

paternal family, to have custody of Lehmann's natural daughter.

Rodriguez v. Delacruz-Swan, 100 A.D.3d 1286 (3rd Dept. 2012) is irrelevant, because the mother violated the custody order by relocating to North Carolina without providing the natural father with an address and telephone number where the child could be reached. Additionally, she was intoxicated while caring for the child and she admitted such. There is nothing in the record stating that Lehmann relocated (after the move to the two bedroom apartment in White Plains in August 2015) or being intoxicated while caring for his daughter alone.

V. HAIMS' CLAIM THAT "CLEAR AND CONVINCING" IS NOT THE STANDARD OF PROOF IN THIS LITIGATION.

The "clear and convincing" standard is appropriate in custody cases where it is between a natural parent and a non-parent in order to provide adequate due process to the natural parent. This Court has ruled that this is the standard in permanent child neglect cases. *Santosky*, 455 U.S. at 753. Such a standard should apply here where Lehmann now gets one hour per week with his daughter, with purported therapy—we actually simply play together while the therapist sits at her desk. Additionally, the child's stepmother was hidden from her for six months after the wedding (which of course did not participate in). Moreover, Lehmann's parents were shunned by Haims after a call on Valentine's Day 2017, because they, like Lehmann, had not "accepted" their granddaughter's life with the Haims as it existed then. For all intents and purposes Lehmann's daughter has been perman-

ently walled off from her father and the paternal side of the family based on Haims' decisions.

VI. THIS MATTER HAS BEEN FULLY ADJUDICATED BY THE NEW YORK COURTS.

This matter was remanded in 2019. It was finalized in 2019 in FC, before January 13, 2020 when Lehmann petitioned this Court, so the decision and order should now be in the record—in print or transcript. Haims' primary counsel was at the hearing, as was my over 14-year teacher wife and the child's stepgrandmother who has never had an opportunity to even communicate with Lehmann's daughter, yet still gives her very thoughtful holiday presents like Lehmann's parents in Ohio do as well.

CONCLUSION

This is a matter of national importance. Not only was Lehmann's daughter from him. The entire paternal family (including step-family) have been blocked from communications by Haims. And now due to the virus, Lehmann can only speak to his daughter once a week, with supervision at $250 per hour. Violating Lehmann and his daughter's due process and parental rights that are guaranteed by U.S. Const, amend. I, V, and XIV. Please accept this Petition.

Respectfully submitted,

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