

No. 20-_____

In The
Supreme Court of the United States

— ♦ —
JAMES ALAN CLARK,

Petitioner,

v.

WENDY KRISTINE CLARK,

Respondent.

— ♦ —
**On Petition For A Writ Of Certiorari To The
Washington Court Of Appeals, Division One**

— ♦ —
PETITION FOR A WRIT OF CERTIORARI
— ♦ —

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QUESTIONS PRESENTED

The need for equitable child support orders impacts millions of parents nationally. For an obligor parent, every right they have and all their property is at risk if they fail to pay child support.

Per the legislative intent and finding of Washington State's Child Support Schedule (RCW 26.19.001), "the legislature also intends that the child support obligation should be equitably apportioned between the parents."

Residential credit apportions child support to the higher income obligor parent for the child(ren)'s residential expenses directly incurred in their household and is only awarded in Washington State by the discretion of the court. The default denial of residential credit results in the most restrictive child support order with 100% of the total presumptive support obligation money awarded to the obligee parent and \$0 to the obligor parent.

In Washington State, 25.3% of all families have 50/50 equally shared custody and 58.1% significantly share custody defined by both parents having a minimum of 25% shared residential time. Residential credit is awarded to obligor parents in only 7.3% of all child support orders.

- 1.) If the interest of parents in the care, custody, and control of their children is one of the oldest of the fundamental liberty interests recognized by the U.S. Supreme Court, whether

QUESTIONS PRESENTED – Continued

Strict Scrutiny protections apply to child support orders that are most restrictive when least restrictive or narrowly tailored orders would meet the State's interests?

- 2.) If the due process clause of the Fourteenth Amendment applies to matters of substantive law as well as procedure, whether the lack of an Attachment for Residential Schedule Adjustment (in Washington State) or any other court approved process to narrowly tailor child support orders is a due process violation?
- 3.) For parents with equal custodial rights and equal residential visitation, whether the default denial of residential credit that apportions 100% of child support (up to \$2,880 monthly as in this case) to the obligee and \$0 to the obligor equally protects children in both parental households?

RELATED CASES

In re Marriage of Clark, No. 77253-8-I, Washington Court of Appeals, Division One, Judgment entered Jun. 11, 2018.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the Washington State Supreme Court.

**OPINIONS BELOW**

The opinions below (Pet.App. 1a) are published at Washington State Court of Appeals, Division One, 79424-8-I, Jan. 13, 2020. The opinions denying a motion to revise (Pet.App. 21a) are published at Washington State, County of Snohomish, 10-3-011-58-9, Dec. 11, 2018. The district court's opinions (Pet.App. 25a, 22a, 29a) are published at Washington State, County of Snohomish, 10-3-01158-9, Oct. 24, 2018, Nov. 19, 2018, and Apr. 8, 2020.

**JURISDICTION**

The Washington State Court of Appeals, Division I, entered judgment on Jan. 13, 2020. Pet.App. 1a. The Washington State Supreme Court denied petitioner's request for review on Jun. 3, 2020. Pet.App. 32a. The Court has jurisdiction under 28 U.S.C. §1257(a).



INTRODUCTION & STATEMENT OF CASE

In Washington State, “a parent’s obligation for the care and support of his or her child is a basic tenant recognized in this state without reference to any particular statute.” *State v. Wood*, 89 Wn.2d 97 (1997). Child support is the duty of both parents to pay.

Child support for each parent is calculated on the Washington State Child Support Schedule (WSCSS) worksheets. For most parents with two children, their standard calculation of support is approximately 20 to 25% of their net income and used to pay the children’s basic support obligation (BSO) expenses of housing, food, clothing, and transportation. In 1991, Washington State repealed the residential credit threshold of 91 overnights and substituted the residential schedule as a standard for deviation.¹ Default child support orders are most restrictive and apportion 100% of the obligor parent’s standard calculation as a cash transfer payment to the obligee parent and are not narrowly tailored to credit the obligor for the children’s BSO residential visitation expenses in their household.

Equal custodial parents with 50/50 shared residential schedules, and all other substantially shared parents that also provide a full household for the children, may only receive a least restrictive and narrowly tailored child support order that includes residential

¹ 2007 Child Support Schedule Workgroup Final Report, <https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/finalreportofworkgroup.pdf>

credit in Washington State through the discretion of the court per RCW 26.19.075(1)(d):

(d) Residential schedule. The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

While the Washington legislature may intend that the support obligation is equitably apportioned between parents per RCW 26.19.001, the vague wording of RCW 26.19.075(1)(d) leaves any award of residential credit discretionary. With no legal requirement to provide residential credit, the courts use their discretion in only 7.3% of all support orders to include obligee/obligor homes with similar net incomes, obligor women,²

² In the Washington State 2018 Child Support Order Review sample data (obtained from WA Division of Child Support via

or for split custody cases in which each parent has majority residential time of at least one of the couple's children requiring parents to cross pay each other. Washington State ensures that nearly 100% of women's homes are apportioned support but denies residential credit to the remaining 92.6% of mostly obligor men.

The default denial of residential credit for 50/50 shared parenting plans shifts the financial obligation of child support exclusively to the obligor parent. Obligor shared parents pay over 100% of the basic support obligation (BSO) because they pay 50.1% or more of the BSO as a cash payment to the obligee in addition to

open records and submitted into the record to the WA Court of Appeals on Dec. 27, 2019 with Appellant's Affidavit of Financial Need), higher income obligor women are awarded residential credit but higher income obligor men in similar circumstances are not. Specific data includes when a mother earns \$9,557.93 and the father earns \$3,341.19 (page 21, record 17), a residential credit deviation (deviation reason 'o') is provided to reduce the mother's transfer payment from \$1,849.98 to \$547.48. In nearly identical financial circumstances as this case, the court does not block a residential credit when the mother has a significant higher income nor does it quote 'public policy' not codified in RCW as the reason to block a deviation as the court did in 2014: "The bigger the differential in income, the less likely you are to get a residential credit, and the reason for that is because the household that has 50% of the time with the lower income is at an economic disadvantage in maintaining the life that these kids have, and it is a public policy and deal with the Legislature if you don't agree with it basis that quite frankly they don't want to buy kids into a rich household at the expense of a poorer household. That's pretty blunt, but that's quite frankly where it's at." (Verbatim Transcript of 7/21/14 Hearing 21:1-14).

the 50% of the children's BSO expenses they directly pay in their household.

In this case, the equal custodial obligor father with 50/50 shared residential visitation has been paying 72% of the maximum child support award per RCW 26.19.020 as a cash transfer payment (\$2,054 monthly) in addition to paying 50% of the children's BSO expenses (\$1,440) out of pocket. In total, the father pays 122% of the BSO (\$3,494) while the mother pays her \$1,440 share of BSO expenses using a \$2,054 cash payment from father. Is mother actually paying her \$826 standard calculation of support towards the \$1,440 in BSO expenses at her household when she receives a \$2,054 support check or is she relieved of her child support obligation while pocketing an extra \$614 monthly? The Washington Court of Appeals believes the 50/50 shared parents are paying the standard calculation of support calculated on the WSCSS worksheets despite a denial of residential credit. The Washington Supreme Court denied the petition for review.

The MBA educated mother earns over \$4,500 per month to support her \$4,300+ current household budget.³ In 2014, 2017, 2018, and 2020, the court has repeatedly cited the income difference between the parents as the reason residential credit is denied and not because mother has insufficient resources. Just

³ At the time of separation in May 2010, the obligee mother was awarded the family home and a total monthly budget of \$4,000 to support it. She continues to live in the same home.

because an obligor parent earns more, they should not be ordered to pay more than 100% of the BSO so that the obligee parent is relieved of their support duty.

Most restrictive child support orders implicate fundamental liberty rights of parents to direct the education and preparation of their children for future obligations. Obligor father in Jun. 2017 petitioned the court for a least restrictive and narrowly tailored child support order that would equally split the apportionment of \$2,880 of support between homes and put an end to litigation. On father's proposed child support order, \$1,000 of the \$1,440 monthly residential credit would be put into an educational savings account for the children's college education meaning father would pay \$3,054 monthly – \$614 to the obligee, \$1,440 in his house, and another \$1,000 for college. The court refused to deviate and overruled the judgement of a fit custodial parent, the MBA educated father whose proposed college savings plan would fully fund the children's undergraduate educations (\$200,000+) over 10 years. The court's stated objection was that the proposed order was "a "cynical" and transparent attempt to further his own financial interests" while ignoring the long term benefit to the children of helping to prepare them for future obligations with guaranteed college tuition.

The result of the court's refusal to deviate is that \$0 is now saved for the children's college instead of \$39,000 over the past 39 months and in Sep. 2021 the oldest child will be ready to start college. The mother is funded at least \$1,500 over her monthly budget, has

twice the estimated⁴ net worth of father, and is not required to financially support the children all while the father has almost completely sold out his 401K retirement and refinances his house to pay for hundreds of thousands of dollars of extra support and litigation costs including the mother's choice of lawyers and nearly all her legal fees.

Pro se father last petitioned the trial court for a support modification on Apr. 28, 2020 for a least restrictive and narrowly tailored support order. His arguments were based on the Due Process Fourteenth Amendment considerations and U.S. Supreme Court rulings including *Troxel v. Granville* (2000) and *Washington v. Glucksberg* (1997). The trial court showed no restraint due to constitutional limitations, due process considerations, or equal protection of the households. The least restrictive order of \$357 was father's request, the mother countered with a \$1,005 offer that included partial residential credit, and the court still ordered the most restrictive \$1,547 to provide mother with more money than she requested or needs while placing the full financial obligation onto obligor for all court costs, legal fees, and future litigation costs to arbitrate the now temporary order as punishment for continuing to seek a least restrictive order with residential credit.

⁴ For the Apr. 28, 2020 support modification petition hearing, obligee mother refused to release tax returns, checking account statements, and her investment balances that would provide a fair accounting of her actual net income and current net worth. Four months of paystubs starting in Jan. 2020 is all the court required.

The state has a financial self-interest that rewards the most restrictive custody and child support orders due to Title IV-A and Title IV-D incentives (see Title 45 §304.12). This is the complete opposite of 50/50 shared parenting and equitable child support orders that minimize parental conflict through equal shared custody, equally protect the children at both parent's homes through residential credit, and is in the overwhelming best interests of children according to current shared parenting research.⁵

When the overwhelming majority of custody and support orders are most restrictive, it is very much in the public interest and the Supreme Court's duty to ensure fundamental liberty interests and constitutional limitations including strict scrutiny and due process are respected in family law decisions.



REASONS FOR GRANTING THE PETITION

Parents need the constitutional protections of strict scrutiny on their side to protect them in family court rooms nationwide from the most restrictive custody and child support orders. Shared parenting is in the proven best interest of children and strict scrutiny

⁵ From the growing body of shared parenting research, Linda Nielsen of Wake Forest University reviewed 40 studies in "Shared Physical Custody: Summary of 40 Studies on Outcomes for Children" (2014) that all reached similar conclusions that shared parenting was linked to better outcomes for children and there was no convincing evidence that overnighting or shared parenting was linked to negative outcomes for toddlers or infants.

needs to apply to all the state's choices that impact parents in the care, custody, control, and education of their children. Most restrictive orders are invidious, adversarial, and do more to harm children than protect their best interests.

Granting the petition will help ensure the highest level of care (strict scrutiny) is used to equally protect the fundamental liberty rights of all parents and that due process is followed to create least restrictive and/or narrowly tailored orders that are equitable, predictable, and fair to all.

When the vast majority of custody and support orders are most restrictive, it is very much in the public interest and the Supreme Court's duty to ensure fundamental liberty interests and constitutional limitations including due process to create least restrictive and narrowly tailored orders are followed in family law decisions.



STRICT SCRUTINY

- 1.) If the interest of parents in the care, custody, and control of their children is one of the oldest of the fundamental liberty interests recognized by the U.S. Supreme Court, whether Strict Scrutiny protections apply to parental rights including child support orders that are most restrictive when least restrictive or narrowly tailored orders would meet the State's interests?

Parental rights deserve Strict Scrutiny protections so that equality becomes the necessary and “compelling state interest” instead of default most restrictive orders that are designed to protect the state’s financial interests in children. The highest and most stringent standard of judicial review is called for when the majority of all custody and support orders are most restrictive and many of them unnecessarily so.

Strict scrutiny will help ensure that the “Least restrictive means” starting point for custody orders will be 50/50 shared parenting and child support orders that include residential credit that fairly apportion support between homes. Currently, custody orders favor the custodial / noncustodial parent split of custody and are paired with the most restrictive default child support orders that apportion 100% of the total presumptive support obligation to the obligee. At least 71.1%⁶ of all obligor shared parents determined enough to fight for and receive equal residential visitation must do so with the court ordered punishment that denies residential credit and leaves obligors to pay over 100% of the children’s BSO expenses for often times 10 years or more.

For obligor parents, the weight of late payments and arrears has disastrous legal and financial consequences. Any partial or late payment by the obligor is instantly a contempt of court violation and several

⁶ 7.3% of orders receive residential credit and 25.3% of homes have 50/50 shared parenting plans resulting in 71.1% of 50/50 homes denied residential credit.

missed payments could result in jail time, a felony conviction for child support arrears (especially if over state lines), the loss of parental visitation, employment, passport, driver's license, professional licenses, hunting rights, fishing rights, garnishment including tax returns, COVID-19 relief payments, unemployment payments, and the loss of everything else that may result from a felony conviction including privacy rights, gun rights, voting rights, and new obstacles to secure employment. A most restrictive child support order can have punishing consequences that can literally ruin a shared parenting obligor's life if they can't pay more than 100% of the BSO expenses.

Most restrictive child custody and support orders interfere with parental rights and are extremely disruptive to the parent-child relationship. Any state practice that interferes with a parent's fundamental constitutional rights is subject to a tripartite strict scrutiny test. This means it survives constitutional scrutiny only if it is narrowly tailored to serve a compelling state interest and uses the least restrictive means available to do so. *Washington v. Glucksberg*, 521 U.S. 702 (1997).



DUE PROCESS

- 2.) If the due process clause of the Fourteenth Amendment applies to matters of substantive law as well as procedure, whether the lack of an Attachment for Residential Schedule Adjustment (in

Washington State) or any other court approved process to narrowly tailor child support orders is a due process violation?

The U.S. Supreme Court has observed in *Troxel v. Granville*, 30 U.S. 57, 65 (2000) that:

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.”

Although fair process is guaranteed before a state can deprive a parent of their fundamental liberty rights, a least restrictive and narrowly tailored child support order that includes residential credit may be ordered only by the court’s discretion using a statute, RCW 26.19.075(1)(d), that fails the vagueness test. “Vague statutes thus carry three dangers: the absence of fair warning, the impermissible delegation of discretion, and the undue inhibition of the legitimate exercise of a constitutional right.” *Alsager v. District Court of Polk Cty., Iowa*, 406 F. Supp. 10 (S.D. Iowa 1975).

There is no fair warning for what an obligor’s child support payment will be due to the unpredictable nature of the court’s impermissible delegation of discretion. There is no court approved Attachment for Residential Schedule Adjustment form or similar process to fairly credit the obligor’s shared parenting BSO expenses on the child support order. Nor is there any standard or guidance to determine what ‘insufficient

resources' mean, how much of a difference in income matters before a deviation is refused, or how close incomes need to be to receive a deviation.

Even when a residential credit is warranted because both the obligor and the obligee have the ability to pay, the court is under no obligation to deviate and denies 92.7% of orders for any number of reasons. As Justice Gorsuch has noted:

“The implacable fact is that this isn’t your everyday ambiguous statute. It leaves the people to guess about what the law demands – and leaves judges to make it up. You cannot discern answers to any of the questions this law begets by resorting to the traditional canons of statutory interpretation. No amount of staring at the statute’s text, structure, or history will yield a clue.” *Sessions v. Dimaya*, 584 U.S. ____ (2018).

The refusal to narrowly tailor orders is further quantified in the Washington State 2018 Child Support Order Review and 2016 Residential Time Summary Report. When 58.9% of all custody cases in Washington State involve shared parenting (both parents having a minimum of 25% residential time) but only 7.3% of custody cases actually receive a residential credit deviation, it results in an 87.6% denial rate to shared parents that total a 51.6% majority of all custody cases. For the 25.3% of parents with 50/50 plans, the denial rate is 71.1%. The pervasive refusal to deviate amounts to the undue inhibition of the legitimate exercise of a parent’s constitutional right to a least

restrictive and narrowly tailored child support order. There's no due process when there is no fair process.

EQUAL PROTECTION

- 3.) For parents in the same classification with equal custodial rights and equal residential visitation, whether the default denial of residential credit that apports 100% of child support (up to \$2,880 monthly as in this case) to the obligee and \$0 to the obligor equally protects children in both parental households?

Each equal custodial parent provides a home for the children with a 50/50 residential visitation schedule and directly pays for half the children's BSO expenses in their homes. However, the default support order awards the obligee parent the entire \$2,880 presumptive support obligation for 15 custody days (\$192 per day) each month while the obligor parent receives \$0 for their 15 custody days. Obligee is apportioned \$2,880 to support a \$4,000+ household budget (approximately 72% of the total household budget) which is far out of proportion⁷ of what the children's BSO expenses actually cost her household.

⁷ According to the USDA's "Expenditures on Children by Families, 2015," the average two child married family spends between 31% to 44% of total expenditures on the children. The basic support obligation (BSO) costs of housing (29%), food (18%), transportation (15%), and clothing (6%) total 68% of children's expenditures. Since food and transportation are split equally

Equal protection is achieved through residential credit so both parents have \$1,440 for 15 custody days (\$96 per day) to pay the children's BSO expenses. A child support order award with residential credit makes the obligor pay more (\$2,054), the obligee pay less (\$826), and the children receive the same (\$1,440) high standard of living at both homes. That means \$1,440 of residential credit⁸ to the obligor and a \$614 transfer payment to obligee so they each pay their narrowly tailored standard calculation of support.

Once the children are equally protected in both households through an equal apportionment of child support via the least restrictive order, the state has no compelling interest or constitutional imperative to create a more restrictive order that unequally protects homes. The state must subordinate and treat *de minimis* the state's concern for the child's best interest over the fundamental liberty interest of parents in the care, custody, and control of their children. *Reno v. Flores*, 507 U.S. 292 (1993).

When the minimum needs of the child are being met at both households with residential credit, the parent's fundamental liberty interest prevails. The state

between 50/50 residential plans (subtracting $(18\% + 15\%)/2$ from $68\% = 51.5\%$), the BSO expenses single parents pay are about 16% to 23% of their total household expenditures. 23% of a \$4,000+ monthly budget is \$920, compared to the \$1,440 least restrictive order that is 36%, and the \$2,880 most restrictive order that is 72%.

⁸ \$1,190 of residential credit per the updated economic support tables of RCW 26.19.020 effective Jan. 1, 2019.

should not be allowed to overrule a fit custodial obligor parent's decision to fund their children's education so that the obligee parent has an easier and more luxurious lifestyle. Fit parent's interests in child support simply outweigh the state's *parens patriae* interests absent a showing of clear and present danger.

When obligor shared parents are 50/50 partners in raising their children and jointly paying for their expenses, it is grossly inequitable and an abuse of discretion for the court to only protect the children when they are with the obligee with double the per diem support. Without strict scrutiny to require least restrictive and narrowly tailored orders, invidious and punishing child support orders will continue to unfairly burden obligor shared parents.

Strict scrutiny offers hope for equality and to make family courts abide by the constitution. A proposed framework in *The Nebraska Lawyer* (July/August 2018) noted:

“Constitutional compliance requires trial courts to start every case from a position of joint legal custody and equal parenting time. Clear and convincing evidence must justify a departure from this equality. Decisions cannot rest on personal preferences of the judge or on gender stereotypes. Any deviations from joint legal custody and equal parenting time must be achieved by the least restrictive means available.” (Pet.App. 53a, *Yes Virginia, The Constitution Applies in Family Court Too*)



THIS ISSUE IS VITALLY IMPORTANT

Were anything more required, I add three simple indicia of this case's importance.

Parents to include pro se litigants with equal or substantially shared residential custodial schedules need to be able to obtain least restrictive and narrowly tailored custody and support orders without the unnecessary legal expense and unpredictability of the court's discretion.

The 2011 Child Support Schedule Workgroup final report specifically recommended that "There should be a residential schedule credit adjustment, not just a deviation, based on the number of overnights a child spends with each parent." The 2015 Child Support Schedule Workgroup final report provided eight recommendations including "Recommendation One: There should be a formula based on the residential schedule of the children for whom support is being set." The 2019 Child Support Schedule Workgroup final report also recommended "that the Legislature find a way to resolve the related issues of shared parenting and an adjustment to child support based on the residential schedule."

The Workgroup recommendations are clear but there has been no legislative action. The issue holding back progress is that in Washington State, \$241.8M of

the state budget is dependent on the \$104.5M⁹ in Title IV-D matching funds, and another \$137.3M¹⁰ in total cost avoidance by using Title IV-A child support payments to offset the cost for Medicaid, Basic Food, and TANF programs. Most restrictive orders increase child support incentive measures including Current Collections and Cost Effectiveness for which the state earned 77% and 80% of the maximum incentives in 2019. There is a clear financial benefit when a most restrictive child support order changes the transfer payment from \$614 to \$2,054, as in this case, which increases the Current Collections by 334% and similarly increases the Cost Effectiveness ratio because the state spent the same costs to receive more than triple the collections.

Custody orders that are unnecessarily restrictive and have extremely unequal residential visitation schedules more frequently result in parental alienation, which has many far reaching and long lasting costs to society. The benefits of shared parenting include “better outcomes . . . across a wide range of emotional, behavioral, and physical health measures” (Shared Physical Custody: Study . . . , Nielsen, L., page 631) that are lost in sole custodial households with children that are more likely to have mental health,

⁹ ESA Briefing Book, State Fiscal Year 2019, page 23 at https://www.dshs.wa.gov/sites/default/files/ESA/briefing-manual/2019ESA_Briefing_Book_Full.pdf

¹⁰ ESA Briefing Book, Child Support Program, SFY 2019, page 4 (financial highlights) and page 5 (incentive scorecard) at https://www.dshs.wa.gov/sites/default/files/ESA/briefing-manual/2019Child_Support.pdf

drug abuse, and other behavioral, educational, and employment issues that cost the state money for decades. States are unconstitutionally splitting apart families to cash in on child support incentives only to incur significant public health and criminal justice costs later that likely cost far more over the child's lifetime. The less the state interferes with the family early on, the less tax payers will pay in the long run.

Shared parenting laws including Virginia's H.B. 1351 (effective Jul. 1, 2018) and Kentucky's H.B. 528 (effective Jul. 14, 2018) create a "presumption that joint custody and equally shared parenting time is in the best interest of the child, and to require the court to consider the motivation of adults involved when determining the best interest of the child for custody orders . . . [and] to allow a parent not granted custody or shared parenting time to petition for reasonable visitation rights." These laws are extremely popular because parents want equally protected access to their children and children want equally protected access to both their parents.



THIS CASE IS AN IDEAL VEHICLE

This case provides a clear example of how the most restrictive child support orders can relieve the obligee of their duty of child support while requiring obligors to pay more than 100% of support. Both parents are in the same classification of equal custodial shared parents.

Obligee mother is 100% above full budget with a least restrictive child support order so it is clear that sufficient resources are available for her to pay support and a residential credit is warranted. She has never been on TANF or any public assistance nor should she ever need to be with her MBA education.

In Jul. 2010, the parents finalized their CR2A property agreement with a near even split. Ten years later, the higher income obligor father has approximately the same net worth while the lower income mother has twice the net worth. The inequitable apportionment of support since 2014 and all legal expenses reversed to obligor since 2017 have resulted in a transfer of wealth from obligor to obligee.

The obligor simply seeks to pay his standard calculation of support and has sought a constitutionally least restrictive child support order that is narrowly tailored to both income and residential time for ten years.

The Washington State Court of Appeals, Division I, ruled that obligor's constitutional arguments for strict scrutiny and due process must be first made in Superior Court. However, making these constitutional arguments in a Petition to Modify Support (Apr. 28, 2020) and subsequent Motion for Reconsideration (May 20, 2020) had no effect in preventing a Superior Court judge from ordering the most restrictive temporary child support order (Pet.App. 29a) and sending the case to binding arbitration with obligor to pay all the

legal costs to fight an unconstitutionally restrictive order.

It doesn't matter if parents argue for constitutional protections in Superior Court when there is no need for orders to pass constitutional muster. That is why this case is the ideal vehicle to rule that strict scrutiny protections apply to protect parental rights so that fit custodial shared parents are equally protected and then left to each decide the financial best interests of their children with minimal state intrusion.



CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted,

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