No. 21-525

In The

Supreme Court of the United States

HEMANT BHIMNATHWALA,

Petitioner,

v.

JUDICIARY OF THE STATE OF NEW JERSEY, FAMILY DIVISION; LOPA S. SHAH; HONORA O'BRIEN KILGALLEN; JOANNE MCLAUGHLIN; LISA P. THORNTON; TERESA A. KONDRUP-COYLE; TONYA HOPSON; STUART RABNER; REBEKAH HEILMAN,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Fourteenth Amendment require a presumption of equal, joint custody of children in child custody proceedings? Is this presumption a logical induction from *Obergefell v. Hodges*, 576 U.S. 644 (2015), which held that fundamental right to marry may not be denied the under the Due Process and Equal Protection clauses of the Fourteenth Amendment to same-sex couples?

2. (a) Do disparate-impact claims apply to State Judiciaries, and specifically Family Courts, that receive federal assistance for collecting child support payments as enacted in S.1002 – Child Support Recovery Act of 1992 and implemented in 45 CFR § 305.31?

2. (b) If such disparate-impact claims are cognizable, what are the standards and burdens of proof that should apply?

3. What would the Statute of Limitations if either answer to either 1 or 2 above is affirmative? Would the arguments in *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101 (2002) apply?

PARTIES TO THE PROCEEDING

This petition seeks Supreme Court review of cases in Appeals and District Court describing gender bias in custody proceedings in family courts in the State of New Jersey and in most other states.

Petitioner is Hemant G. Bhimnathwala and was a Petitioner- Appellant in *Hemant G. Bhimnathwala v. New Jersey State Judiciary, et al.* in the Third Circuit Court of Appeals.

Petitioner was Plaintiff, pro se, in the District Court and Appellant, pro se, in the Court of Appeals.

Respondents are defendants in the District Court and are Lopa Shah ("Shah") and "State Defendants" – the State of New Jersey Judiciary (the "New Jersey Judiciary"); the Honorable Stuart Rabner, Chief Justice of the New Jersey Supreme Court; the Honorable Lisa P. Thornton, A.J.S.C.; the Honorable Teresa Ann Kondrup-Coyle, J.S.C.; the Honorable Honora O'Brien Kilgallen, J.S.C.; Tonya Hopson; Rebekah Heilman; and Joanne McLaughlin.

Respondents above voluntarily abstained from the proceedings in the Court of Appeals.

LIST OF ALL PROCEEDINGS

U.S. Court of Appeals for the Third Circuit, No. 20-3526, *Hemant G. Bhimnathwala v. New Jersey State Judiciary, et al.*, Sur Petition for Rehearing denied July 19, 2021.

U.S. Court of Appeals for the Third Circuit, No. 20-3526, *Hemant G. Bhimnathwala v. New Jersey State Judiciary, et al.*, judgment entered June 15, 2021

U.S. District Court for the District of New Jersey, D.C. Civil Action No. 3:19-cv-21389, *Hemant G. Bhimnathwala v. New Jersey State Judiciary, et al.*, judgment entered December 9, 2020.

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PETITION FOR WRIT OF CERTIORARI

I respectfully petition the Court to grant a writ of certiorari to the United States Court of Appeals for the Third Circuit in the case *Hemant Bhimnathwala v. New Jersey State Judiciary, et al.*, No. 20-3526. This petition is permitted by Supreme Court Rule 12.4 and warranted because of the identity of legal issues and interests in these cases.

This Court's intervention is urgently needed to correct the disparity between *Obergefell v. Hodges* and Statutes in New Jersey (and in most other states) Family Courts concerning custody of minor children, and to address questions of exceptional importance, particularly to **tens of millions of fathers** and their **children** nationwide.

OPINIONS BELOW

In the United States Court of Appeals for the Third Circuit, the petition for rehearing by the panel and the Court en banc, was denied on July 19, 2021 (App. 39). The opinion of the United States Court of Appeals for the Third Circuit was issued on June 15, 2021. This opinion is unpublished and is reproduced in App. 1. The Third Circuit affirmed the decision of the United States District Court for the District of New Jersey issued on December 9, 2020, document number 30 in the District Court's docketed matter number 3:19-cv-21389 (N.J.). District Court opinion is unpublished and is reproduced in App. 8.

JURISDICTION

The District Court issued its judgment on December 9, 2020. The court of appeals issued its judgment on June 15, 2021. The petition for rehearing by the panel and the Court en banc was denied on July 19, 2021. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1

> No State shall . . . 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.

The Civil Rights Act of 1964; 88-352 (78 Stat. 241)

> To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, ***to prevent discrimination in federally assisted programs***, to establish a Commission on Equal Employment Opportunity, and for other purposes.

S.1002 – 102nd Congress: Child Support Recovery Act of 1992; 18 U.S.C. § 228

45 C.F.R. § 305.31 – Amount of incentive payment.

> (a) The incentive payment for a State for a fiscal year is . . . during the fiscal year, that is: 2(Current Assistance collections + Former Assistance collections) + all other collections.

STATEMENT OF THE CASE

The case is about a fundamental right to equally participate in a parent-child relationship without discrimination by State due to gender.

Men are treated as the male equivalent of "handmaids" for contributing their sperm, thrown crumbs of parenting time to pay lip service to parental rights, but forced to pay child support. **While The Handmaid's Tale[1] is fiction, this is reality.** Not only do the fathers lose their constitutional rights to parenting time, but adding insult to injury, they are forced to pay via child support obligations. Even men who defend our freedom are not spared. Worse, some men are treated as criminals – they are often jailed for inability to meet

[1] The Handmaid's Tale is a dystopian novel by Canadian author Margaret Atwood, published in 1985. "Handmaids" are forcibly assigned to produce children for the commanders – the ruling class of men. The novel explores themes of subjugated women in a patriarchal society. The book has been adapted into a 1990 film, a 2000 opera, a 2017 television series, and other media (wikipedia.org).

the obligations. I have never heard of instances where women are subjected to the same fate.

Does this gender discrimination shock your conscience?

Defendants:

The State of New Jersey Judiciary (the "New Jersey Judiciary"); the Honorable Stuart Rabner, Chief Justice of the New Jersey Supreme Court; the Honorable Lisa P. Thornton, A.J.S.C.; the Honorable Teresa Ann Kondrup-Coyle, J.S.C.; the Honorable Honora O'Brien Kilgallen, J.S.C.; Tonya Hopson; Rebekah Heilman; and Joanne McLaughlin (collectively, the "State Defendants);" and Lopa Shah ("Shah"), Plaintiff's former wife.

Petitioner:

I am the Petitioner, filing this petition pro se. I was the defendant in divorce proceedings in the State of New Jersey. I am the Plaintiff in the civil action in District Court in New Jersey; I was the Appellant in the Third Circuit Court of Appeals; and Petitioner for rehearing by the panel and the Court en banc.

District Court Proceedings:

I filed a "Complaint" against the Defendants in December 2019 in the District Count in New Jersey alleging violation of my equal rights to parenting under U.S. Const. amend. XIV, § 1 – Civil Action No.

3:19-cv-21389. Defendant Shah filed for divorce from the Plaintiff in New Jersey, county of Monmouth, with case FM-13-1686-06 in April 2006. Defendant Shah was Plaintiff in FM-13-1686-06 and the Plaintiff in this case was the defendant in FM-13-1686-06 the Superior Court, Family Vicinage, in Freehold, New Jersey. The Divorce Order was finalized on February 27, 2008 some two years after filing.

In spite of my efforts and some $50,000 plus in legal expenses, I received alternate weekends as parental time as defined as "Standard Custody."[2] This is not equal and violates Fourteenth Amendment rights of fathers.

Individual State Defendants (App. 8) were involved with the proceedings in New Jersey's Family Courts at some points in time in aiding and abetting in the violation of the Fourteenth Amendment rights. Ex-wife was an accomplice and denied parenting time with two sons over the many years since separation and divorce.

State Defendants raised procedural issues but did not address Questions 1, 2(a) and 2(b) raised in this petition nor did they dispute my assertion in the District Court that I was discriminated on the basis of gender. State Defendants also claimed that statute of limitation limits my claims to two years, even though they denied violating any constitutional rights. Question 3 pertains to statute of limitation when

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[2] Alternate weekends or Standard Custody gives fathers alternate weekends, half of major holidays and one or two weeks a year of vacation time.

discrimination is pervasive, institutional, and ongoing for decades, and is held unconstitutional. Defendant Shah claimed, contrary to facts, that the divorce proceedings in family court treated me equally without any discrimination by gender. While conceding that equal treatment is a right, she nonetheless exploited lack of equal treatment.

District Court ruling in regards to Question 1 erroneously dismissed the basic pillar in my Complaint in a footnote (footnote # 3), App. 12:

> *Specifically, Plaintiff contends that the Supreme Court's decision in Obergefell v. Hodges, 576 U.S. 644 (2015), which held that same-sex couples may not be denied the fundamental right to marry under the Due Process and Equal Protection clauses of the Fourteenth Amendment, also applies to child custody and child support. Thus, Plaintiff asserts, without any legal basis, that the Fourteenth Amendment requires a presumption of equal, joint custody of children in child custody proceedings.*

District Court ruling dismissed Question 2(a) by merely proclaiming that the requirement arising from The Civil Rights Act of 1964 did not apply to family courts (App. 33).

Provisions of 45 C.F.R. § 305.31 – Amount of incentive payment also raise the issue of conflict of interest in judicial decisions affecting child support. State Defendants, District Court and the Third Circuit did not address this issue.

State Defendants also claimed (absolute) judicial immunity (App. 30) and that they were improperly served (App. 17). These raise additional constitutional questions on violations of Duty of Oath, about judicial procedures and on judicial immunity. **Petitioner feels that these questions are radioactive and is not asking this court to address these questions in this petition.** I would leave it to the Presidential Commission on Supreme Court and the political process to consider these issues.

Appeals Court Proceedings:

I asked the Third Circuit Court of Appeals to review all aspects the District Court ruling. I also added much more detail and explanation in support of on Question 1 above. Appeals court upheld the ruling by the District Court. I would add more on the Appeals Court opinion later in this petition.

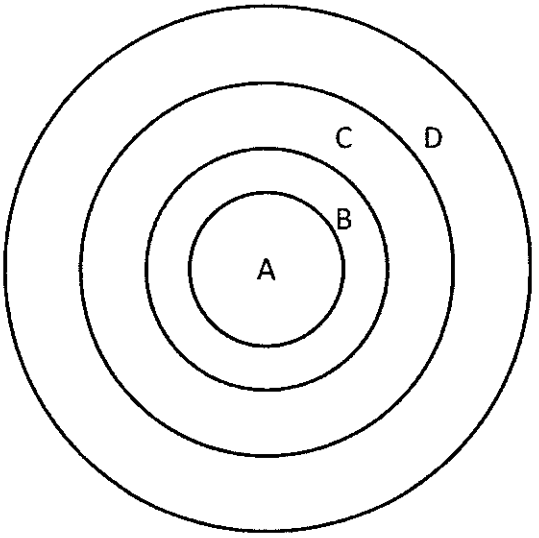
Presumption[3] of equal parenting time:

In *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Obergefell), this court held that States shall not discriminate on the basis of sex and the institution of marriage could not be withheld to a couple of same sex. The court reached this conclusion entirely by applying Fourteenth Amendment rights to the institution of marriage within the construct of a family. The ruling states

[3] For clarification, I use the word with the same legal meaning as in "presumption of innocence."

that the right to marry is derived from the right to form a family. Family is not merely a married couple, but includes children, grandchildren, parents, grandparents, siblings, cousins etc. Figure 1 below depicts the strength of the relationships with inner circles representing stronger relationships.

Figure 1: Relative strengths of family relationships



A: Children & Parents; B: Siblings; C: Spouse;
D: Uncles, Aunts, Nieces/nephews, Cousins

No one disputes that a parent-child relationship is the strongest of all relationships. Procreation is at the heart of survival of all species, including humans. There is dignity in the bond between a parent and child. The relationship between a parent and a child is more fundamental than a spousal relationship. The latter exists for the benefit of the first. Children are at

the focus of a family. Both men and women go to great lengths to have child(ren); it gives so many people a purpose in life. A parent-child relationship is enduring – one rarely sees permanent cessation of this relationship. On the other hand, about half the marriages end in a divorce; many are bitter breaks with former partners not to communicate ever again.

Someone who has lost a parent understands the loss and pain of losing one. I have, twice. I gather the pain in loss of a child is even greater. I pray I do not have to see such a day. Likewise the joy in the birth of a child is like no other. Clearly, parent-child(ren) relationship is unique and strong, stronger than a marital bond. Is it this Court's position that such feelings for children/parents are reserved only for women, not men?

An example of discrimination in circle A would be if a state, in the absence of a will, disparately distributed estates primarily to male heirs. This was common in patrilineal societies of the past. There is no doubt that this would violate the Fourteenth Amendment.

One can argue about relative strength of a relationship among married couples or siblings (i.e., circle B or C), but there is no doubt that that a parent-child relationship is the strongest (i.e., that A is the innermost circle).

Quoting the Declaration of Independence – "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are

Life, Liberty and the pursuit of Happiness." For fathers, the happiness comes from being integral parent in raising their offspring and building memories with their offspring that they can share all through their lives. Procreation is at the heart of survival of all species, including humans. I can truthfully say that the standard custody arrangement denied me these pleasures, merely because my ex-wife had other plans. I hold biases in the family court, which also flow down to how divorce attorneys practice their trade, responsible for the denial of this happiness.

Parents have children even though it costs money to raise them to adults. There is an emotional, life, happiness part to having children and economic value or utility must exceed the cost; else there would be no reason to have children. There is an obligation on one side and there is a reward. The standard custody arrangement unconstitutionally discriminates in allocating rewards and obligations differently.

Obergefell allows same-sex partners to get married. I am certain some of them will lead to divorces, if there aren't such cases already. Obviously gender can't be a basis for determination on how to divide parenting time. This would mean that same-sex couple would enjoy presumption of equal parenting time. What then legitimizes discrimination on parenting time for heterosexual couples? Family court procedures in not recognizing explicit rebuttable presumption of joint legal custody and equal physical custody for temporary and final court orders have no ethical basis and violate the Constitution.

Application of Fourteenth Amendment to Circle C also applies to the Circle A. State cannot discriminate in a parent-child relationship based on sex. In fact, if you make simple substitutions in the text of majority opinion of *Obergefell* – "Parent-Child relationship" for "marital relationship", "having children" for "getting married", etc. the majority opinion in *Obergefell* doesn't read rubbish; it makes a lot of sense. All arguments presented in *Obergefell* petition and amici curiae in support would also apply. In addition, there is no opposition based on religion.

This would imply that in separations and divorces, both parents have presumption of equal parenting time. Almost all states define standard custody as alternate weekends for fathers. This is not equal and violates Fourteenth Amendment. If this is permissible, then States can deny custody to, for example, same-sex male couples. That would be in contradiction to the rationale behind *Obergefell.*

If states can discriminate on the basis of sex in A, then there is no rationale to bar it in C, i.e., there would be no basis for *Obergefell.* The decision would just hang without a foundation – it would be like a law for speeding violation for 65mph-75mph, but not for speeds above 75mph! Allowing discrimination based on sex in custody and parenting time (guardianship) should be a basis to overturn *Obergefell.*

In many countries the primary guardianship rests with fathers, for example in India. The Hindu Minority and Guardianship Act, 1956 (INDIA) makes the father

the natural guardian of minor children unless the children are below five, in which case they can be with their mother.

Standard custody is discriminatory to women too. With women as the primary caregiver in standard custody, women are disproportionately handicapped in workplace with caregiving duties. In addition, there are numerous studies to show that children raised in fatherless families are more prone to violence.

If the Court concludes that women should get primary custody as in a standard custody arrangement, the only rationale is that mothers make a better parent. That argument is on a slippery slope and permits all sorts of gender discrimination. Does this mean that states could mandate that women stay home while men go to work, making Title VII inconsistent with this argument? One often hears some women argue that women have special rights in custody proceedings because they carried the babies in pregnancy. Fourteenth amendment confers so such right; in fact, it specifically calls out that there shall be no discrimination based on sex. This also is in conflict with intentions of Title VII – which was enacted specifically to address glass ceiling for women in workplace.

Many employers now offer paternity leave. In fact, New Jersey recently mandated paternity leave on par with maternity leave on childbirth and adoption.

While congress did pass Defense of Marriage Act, later overturned by this court, it has passed no such laws against father-child(ren) relationships. There are

no religious objections to gender roles in parent-child relationships, unlike vociferous objections to *Obergefell*. Every congressional action has treated parent-child relationship in gender neutral manner. This would imply that in separations and divorces, both parents should have presumption of equal parenting time.

If the court does not accept the arguments above, I would urge this court to explain why of all the relationships in a family structure, does marriage merit Fourteenth Amendment protection, but no other? What is so special about having sex that it outweighs human role in rearing children?

Unequal parenting is parent-shaming. Fathers overwhelmingly are deemed unfit for parenting their own child and yet they often end up being step-fathers to other children (via second marriage that is recognized as a fundamental right), while their own children have to contend with a stepfather, albeit a different person. This makes absolutely no sense and is completely stupid. How does this reflect on soundness of judicial decisions? This is all driven by increasing child support amounts and for mothers as a "control tool". In aggregate, statistics demonstrate that these are not impartial decisions and violate the Constitution.

Equal physical custody may appear to present practical challenges on how one divides the responsibility/pleasure by two. One can be creative – it does not have to be split week, or alternate weeks. It can

be one-child for each parent, for example. Or it could be structured as alternate years or primary/elementary/middle/high school years, etc.

In 2018, Kentucky was the first state to enact an explicit rebuttable presumption of joint legal custody and equal physical custody for temporary and final court orders, H.B. 528, modifying KRS § 403.270. That means that equally shared decision-making and joint time with a child is assumed (unless there is sufficient evidence supporting the need for a different arrangement). After one year, court reports showed divorce filings went down by more than 10 percent.

What may be driving this inequity in custodial proceedings? This is further described in the following sections.

Incentive payments driving discrimination

While New Jersey has not offered statistics in custodial proceedings, many other states have provided the data[4] and it points to blatant discrimination.

Money may be driving this unconstitutional behavior by the family courts nationwide. It is best to explain with examples. We will consider two cases, in each case we will assume the cost of supporting children is $1000 per month and two sub-cases: equal parenting times or father gets alternate weekends

[4] "Does Gender Still Matter? Child Custody Bias in the Illinois Family Court System" Master's Thesis, Derek K. Ronnfeldt, Illinois State University, 2016.

plus 5 holidays (i.e. standard schedule) (father's share of nights is 15.6% and mother's share of nights is 84.4%).

(i) Mother's and Father's income is identical: there is no child support for equal parenting times and Father pays Child support of (844-156)/2= $344 in standard schedule.

(ii) Father's income is 2x mother's income: When parenting times are equal, Father pays child support to mother of (666.67-333.33)/2 = $167.67. However, in standard schedule, Father would pay child support of ((666.67-333.33) x 15.6% + 666.67 x (84.4%-15.6%)) or about $524. Reducing father's parenting time increased child support amount over 3 times.

It is the structure of the incentive payments to states under 45 C.F.R. § 305.31 that creates this perversion. States[5] receive about $0.5 Billion in incentive payments in proportion to child support payments collected. This amount is fixed for a fiscal year. When one state invented an illicit way to jack-up their collections, it received disproportionately larger incentive

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[5] Besides incentive payments, states may charge other fees and interest. Gov. Newsome of California recently vetoed two bills calling the proposal to "pass through" more child support money to families, SB337, would "lead to an estimated revenue loss of millions of dollars outside the budget process,"; and the other bill, AB1092, which would have eliminated interest on child support payments, Newsom wrote, would "have a General Fund impact of tens of millions of dollars annually, thus it should be considered as part of the budget process." These monies are almost exclusively paid by men. (Calmatters.org, Oct 15, 2019)

payments. The state not using such methods received smaller amount of a fixed pie (which is prorated for inflation). As a result of competition, all states follow this method. (Smaller incentive payment would result in a smaller budget for staff and cause some layoffs.)

The disparate impact described above is largely a consequence of intentional discrimination in a two-step process. First, the family courts, in cahoots with lawyers representing both mothers and fathers, principally award primary or sole custody (and parenting time) to mothers. Second, they apply child support obligations on fathers with threat of incarceration under S.1002 – Child Support Recovery Act of 1992. Family courts get away with this astounding discrimination of fundamental rights as it is difficult to prove discrimination at an individual level (see for example – *Family Civil Liberties Union v. New Jersey Department of Child, No. 20-1455 (3d Cir. 2020.)* The discrimination is very obvious when looking at aggregate statistics.

Family court judges are not neutral arbiters; they are driven to maximize child support payments. There is a conflict of interest when Judges and the family courts are seeking to maximize child support payments. The *S.1002 – Child Support Recovery Act of 1992* was meant to incentivize state to collect child support from parents that do not want to parent. State defendants have bastardized this to prevent fathers from parenting and then assess child support

payments. Given economic incentives,[6] actions of the New Jersey Judiciary in custodial matters are not impartial.

Disparate impact and The Civil Rights Act of 1964

Preamble to the Act says "To enforce the constitutional right. . . . , **to prevent discrimination in federally assisted programs**, . . . and for other purposes" (emphasis added).

Various titles under the Act barred specific acts of discrimination addressing major issues of the time. Some of the major issues at the time were disparity in educational and employment opportunities for women. Discriminatory acts addressed in various titles were already unconstitutional under fourteenth Amendment. More recently, Congress has passed the Bill H.R.5 – 117th Congress (2021-2022): Equality Act and finds in 2(a)(10) –

> Discrimination by State and local governments on the basis of sexual orientation or gender identity in employment, housing, and public accommodations, and in **programs and activities receiving Federal financial assistance**, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States" (emphasis added). In many circumstances, such discrimination also violates

[6] I urge the court to invite economics experts to provide amicus briefs on incentives driven behavior.

> other constitutional rights such as those of liberty and privacy under the due process clause of the Fourteenth Amendment.

This reinforces my claim that Congress has always required since the passage of Civil Right Laws that recipients of federal funds shall not discriminate on the basis of sex, among other attributes.

More specifically, The Civil Rights Act of 1964 spelled out a statistical measure for systemic discrimination which otherwise would be difficult to prove in individual cases. More importantly, when the statistical measures point to systemic discrimination, the Act shifts the burden of proof to the institution, the defendant.

Consider an extreme case where mothers always get full custody and 100% of parenting time for children. You would agree that this would violate fathers' rights under Equal Protection Clause and Due Process Clause of the Fourteenth Amendment. If in a single instance a father was to get 50% percent custody/parenting time, would that address the violation of Fathers' rights? I am sure the answer is no. What if 5% of the divorces resulted in 50% parenting time for fathers? I believe that would still constitute discrimination.

Statistics do matter. I would like to draw your attention to another US Supreme Court decision – *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, No. 13-1371, 576 U.S. (Inclusive Communities or ICP) – which held that disparate impact claims are cognizable [under the Fair Housing

Act]. Justice Kennedy, in delivering majority opinion, began his analysis by reviewing the historic development of disparate impact claims in federal law and concluded that Congress specifically intended to include disparate impact liability in a series of amendments to the Fair Housing Act that were enacted in the year 1988.

States, and specifically family courts, receive federal assistance for collecting child support payments as enacted in S.1002 – Child Support Recovery Act of 1992, popularly referred to as "deadbeat dads law". While the public discourse focused on deadbeat dads (for example, Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law in Boston College Journal of Law & Social Justice, Volume 34, Issue 2), the law specifically used gender neutral term "parent" clearly signifying that it did not intend to discriminate based on gender of the parent. This law was passed in 1992 few years after Fair Housing Act and its amendments and three decades after The Civil Rights Act of 1964, clearly intending to incorporate disparate impact provision. *Preamble of The Civil Rights Act of 1964 clearly includes all programs that receive federal assistance.*

Child Support, more often than not, gets deducted before any employee gets his/her paycheck. Child Support thus has impact on employment compensation. If there is discrimination in Child Support determination, there is discrimination in employment. This impacts employment not just at the New Jersey Courthouse, but impacts all fathers with child support

obligations. Also, **Child Support payments are made to parent with primary custody. This is form of employment.** In my particular case, child support obligations included payments to a nanny. Title VII, as amended, 42 U.S.C. § 2000e-2, bars discrimination based on sex in employment matters.

In providing for disparate impact to root out systemic discrimination in public institutions in enacting the 1964 Civil Right Laws, the congress provided a metric and a method for public institutions to use for self-correction for any discrimination. Even as The Civil Rights Act of 1964 does not explicitly address rules in custody proceedings, questions remain –

- Would New Jersey Judiciary provide statistics on child support and parental custody by sex? Or is it hiding blatant systemic discrimination?

- If not disparate impact, **what yardsticks** does New Jersey Judiciary (for that matter any other Judiciary in US, a State or Federal) apply to determine if there is **systemic discrimination** with respect to protected traits (e.g., sex) **in its collective rulings? With gender bias tilting the scales, where is justice in the Judiciary?**

In another example, a news article reports that *McCleskey v. Kemp*, 481 U.S. 279 (1987) has not aged well. In 1991, Justice Lewis F. Powell Jr., the author of the majority opinion in *McCleskey v. Kemp*, was asked after his retirement whether there was any vote he would like to change. "Yes," he told his biographer. "McCleskey v. Kemp." (NY Times, Aug. 3, 2020). In the

matter before this court, the number of cases is huge – over 30 thousand dissolution cases in New Jersey each year. Statistical confidence with such a large number of cases is close to 100%, proving that there is gender discrimination in Family Courts.

The State Defendants also did not address this issue. The opinion of the District Court merely stated that disparate impact principle did not apply to custody proceedings.

Statute of Limitations:

Once establishing a fundamental right to parenting and that facts presented above REQUIRE an explicit rebuttable presumption of joint legal custody and equal physical custody for temporary and final court orders in custody proceedings is established, I would note that this discrimination has been ongoing for over decades. Given entrenched, pervasive, systemic discrimination, District Court's and Appeal Court's opinion on statute of limitation is wrong.

Two year statute encompasses the Material Settlement Agreement (MSA) and every part of it. The MSA is not an event at one point in time, rather it stretches from May 2006 when the underlying marital case (Docket No. FM-13-1686-06D) was filed until 2019 when this case was filed in District Court. This is no different than in a hypothetical case where one is erroneously imprisoned in 2006 and released in 2019. This person would be due compensation for the whole period of imprisonment, rather than just most recent two

years. The statute of limitation just limits when a case can be filed, but does not prescribe how the damages are calculated. See *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101 (2002). Complaint claims a systemic, entrenched discrimination going back to decades. Therefore, all incidences in the Complaint, beginning with filing of the marital case (Docket No. FM-13-1686-06D), are valid and eligible. While *Morgan* considered this in matters of employment, which is not a fundamental right, the matter under consideration here applies to parent-child relationship, which is a fundamental human and constitutional right.

Time is money and money grows with time. I can employ monies recovered from unconstitutional child support payments to rebuild relationship with my children. Strangely child support payment also included payments for a nanny – while I lost parenting time, I was paying for a nanny to take care of the children, which included making meals and doing laundry for my ex.

Recent proceedings began about three years back when I petitioned NJ Family Court to preserve my thanksgiving break with my children[7]. The

[7] I filed a motion under FM-13-1686-06 on Aug. 23, 2018 to preserve my visitation with my children for the 2018 thanksgiving break. In the proceedings, I pleaded with the court not to discriminate against me because of my gender. Family Court filed a ruling with a six weeks inexplicable delay on November 7, 2018 that I received by mail a week before thanksgiving. After letters to various State Defendants through March 2019, I filed a motion

discrimination is so ingrained and so pervasive that this has not reached resolution in three years. The divorce agreement is dated February 27, 2008 when the financial crisis of 2008 was well underway. I was practicing in the financial service industry then and could not have managed a long litigation while finding my footing during the crisis. I had to make a choice – litigate or run to make a living. It is the same choice that slaves faced in slavery. It is the same choice that Morgan faced in *National Railroad Passenger Corporation v. Morgan*.

The discrimination is deeply entrenched and has been happening for several decades, and yet no one has presented arguments presented here. This involves an estimate of about 2000 family court judges and tens of thousands of family law lawyers. Many of these lawyers market and fashion themselves as father's rights lawyers. Yet, no lawyer has made these arguments before! It is very clear that the unconstitutional discrimination drives the gravy train for the judiciary, the judges and the lawyers involved. This unconstitutional gender discrimination is happening at an enormous scale.

I did have legal representation but what did that get me? Given the financial crisis and given that my children were young, there is no way I could have litigated this in 2006-2007 on my own. In addition, most court opinions were not easily searchable and

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with District Count on December 12, 2019 within statute of limitation of two years (App. 11).

available on the Internet. My pro se filings are made possible more recently, thanks to Google and availability of more content on the internet. I am filing pro se as no lawyer (I even asked on Lawyers.com) was willing to sue the judiciary.

There are numerous examples when men have litigated custody decision for years and have resulted in them getting broke. See *Family Civil Liberties Union v. New Jersey Department of Child*, No. 20-1455, 3d Cir. where a father has been litigating since Feb. 2011 and the matter is still pending resolution. Moreover, my arguments are made simpler by *Obergefell* and *Inclusive Communities*.

REASONS FOR GRANTING THE PETITION

Both the New Jersey District Court and the Third Circuit Court of Appeals have really punted on important constitutional questions, perhaps because the proceedings implicate judiciaries. State Defendants did not address issues relating to key Fourteenth Amendment Rights and Civil Rights and instead falsely claimed absolute judicial immunity. Circuit Court deflected the issue in a footnote (App. 12) by merely stating that there is no legal basis, as if laws are completely devoid of any logic. Similarly, the Appeals Court called perfectly logical arguments "creative extrapolations (App. 5)."

I. A United States court of appeals (wrongly) has decided important questions of Constitution and federal law that have not been, but should be, settled by this Court.

Men are treated as the male equivalent of "handmaids" for contributing their sperm, thrown crumbs of parenting time to pay lip service to parental rights, but forced to pay child support. While The Handmaid's Tale is a fiction, this is reality. Worse, fathers are treated as criminals (The hostility towards fathers in the New Jersey Family Court mirrors what Maria Bartiromo described as her experience as a new reporter on the New York Stock Exchange trading floor). Not only do the fathers lose their constitutional rights to parenting time, but adding insult to injury, they are forced to pay via child support obligations. Many are often jailed for inability to meet the obligations. I have never heard of instances where women are subjected to the same fate.

The scale is unprecedented. While there are less than 750 thousand same sex-marriages in U.S., currently there are **over 15 million children impacted by child support payments, involving about 10 million mothers and 10 million fathers.** This does not include even larger cases since 1992 where the children have grown past the age of 18 years. The department of Health and Human Services reports that the child-support payments are **over $25 Billion each year** and the incentive payments to states total about $0.5 Billion a year.

This involves an estimate of about 2000 family court judges and tens of thousands of family law lawyers. The gender discrimination against fathers is happening at an enormous scale. This is particularly noteworthy as this is the centenary (plus one) year of women's suffrage and passing of the 19th Amendment. Gender discrimination by family courts is unlawful. If the discrimination is driven by financial incentives as described above, then the implications are worse. Considering the scale, this would constitute and complete failure of institutions as contemplated by our founding fathers.

What is the rationale for being so hostile and unfair to fathers, besides being "we can, therefore we do." It is driven by perverse economic incentive. It is intentional discrimination. May I ask the court what larger purpose does this discrimination serve for the society? Is it surprising that a very large fraction of citizens do NOT feel that the government is working for them?

If this does not shock the conscience, what would? It is impossible to notice injustice in an individual case, but in a collective sense this is shocking. I have other words to describe this, but would refrain in a court proceeding. State Defendants' action is "arbitrary in the constitutional sense" and it is "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." See *L.R. v. School Dist. of Philadelphia, et al.*, No. 14-4640 (3d Cir. Sept. 6, 2016).

The matter before the court impacts significantly higher fraction of population than involved in *Loving*

v. Virginia, 388 U.S. 1 (1967), *Obergefell* and *Roe v. Wade*, 410 U.S. 113 (1973).[8] In *Loving* and *Obergefell*, while the people impacted were denied rights, they were not being intentionally harmed. In the case before this court, impacted population is denied fundamental human and constitutional rights and more importantly they are monetarily and psychologically harmed. If the court is tempted to duck by labeling this case moot (which it is not), I would note that *Roe* was heard long after Roe's baby was born.

As The North Star proclaimed "Right is of no sex . . . ," given the enormous impact of the proceedings this Court should grant this petition.

II. A United States court of appeals has decided important federal questions in a way that conflicts with relevant decisions of this Court.

Third Circuit Court of Appeals dismissed Questions 1 and 2 as "creative extrapolations", which they are not. Even my son called the characterization "creative extrapolations" legitimately hilarious. The arguments are truisms, based on logical inductions. Allow me to explain the equivalence logic –

(i) *Obergefell*: Marriage is (P) a fundamental right; GIVEN (Q) Constitution, including Bill of rights;

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[8] Ironically, while *Roe* is about women's right to have a choice in their reproductive life, cases where fathers have obtained equal parenting rights have also depended on mothers opting for equal parenting, sometimes against Judges pleadings.

Fourteenth Amendment, including Equal Protection clause, Due Process Clause etc.; IMPLIES conclusion (C) that it is unlawful to discriminate by sex, in (P) marriage.

By replacing "marriage" with "parent-child relationship", i.e., P & Q implies C, one obtains the corollary to *Obergefell* – discrimination in parent-child relationships by sex/gender is unlawful. Also citing *Obergefell*, has the same effect as incorporating all of (Q) – all the background that is cited in *Obergefell*, including Due Process Clause and the Equal Protection Clause; and the arguments contained therein.

Even a simple substitution of "marriage" with "parent-child relationship" in the text of *Obergefell* makes so much sense. In fact, *Obergefell* states that it is the parent-child relationship that yields to the fundamental right to marriage, implying the parent-child relationship is more fundamental.

It is definitely not an extrapolation as noted in the Figure 1 – it is inside the circle, not outside. Parent-child relationship is stronger than marital relationship. The argument is a theorem or mathematical tautology as taught in high-school algebra or geometry. The case here is **in the middle of the logical path** from Fourteenth Amendment to *Obergefell*, it is **NOT** an extrapolation.

(ii) *Texas Dept. of Hous. and Cmty. Affairs v. Inclusive Communities Project, Inc.*: (P1) Texas Dept. of Housing receives federal funds under Fair Housing Act (FHA), (P2) FHA was amended in 1988 after Civil

Rights Act of 1964; (Q)) – all the background that is cited in *Inclusive Communities*; IMPLIES (C) Disparate Impact claims are cognizable under FHA.

By replacing Texas Dept. of Housing with New Jersey Courts – Family Division (P1), FHA with S.1002 – Child Support Recovery Act of 1992; i.e., P1, P2 and Q implies C,; the corollary is that Disparate Impact claims are cognizable under S.1002 – Child Support Recovery Act of 1992. Also citing *Inclusive Communities* has the same effect as incorporating all of Q, and the arguments contained therein.

It is creative only in the sense that of the millions of people who have suffered (or taken advantage) of these unconstitutional practices in family courts, only I connected the dots and have filed a federal lawsuit with these arguments.

The panel opinion brings up the concept of "best interests of the child standard". There is no logical connection from "best interests of the child standard" to "standard custody". There was never any evidence of this connection; it was made up to deny fathers equal physical custody.

How would the "best interests of the child standard" be applied for same-sex couples with children on getting divorced? If fathers are not good parents, how is that gay couples, e.g., Pete & Chasten Buttigieg and Anderson Cooper, can adopt children?

The evolving evidence indicates that "joint legal custody and equal physical custody" is in the best

interest of the children. When the practices violate Fourteenth Amendment and/or the Civil Rights laws, the state or agency must provide evidence of a societal imperative. It is no surprise that a couple of states have passed equal parenting laws recently.

The question before the court is simple – if my treatment, and general practices, in the New Jersey family court violate both the Fourteenth Amendment and the Civil Rights laws. If the court disagrees, it must submit a detailed analysis just as in dissents in *Obergefell* and *Inclusive Communities*. In addition, the court must show evidence of societal imperative.

The case before the court impacts a very broad fraction of the society and is of utmost importance. Statutes & policies in family courts in almost all states and Appeal Court ruling clearly conflict with logical consequences of *Obergefell* and *Inclusive Communities*. Given several conflicting precedents and policies and since the Appeals Court opinion has failed to understand and apply basic concepts in logic, this Court should accept this petition.

Appeals Court appeared to characterize my inability to find a counsel as lack of merit. On the contrary, the fact that no lawyer wants to take this case (against New Jersey Judiciary) points to a potential flaw in code of conduct for the Bar members and perhaps "closing rank with the tribe" behavior by lawyers; it has nothing to do with merits of the case.[9] This may help the

[9] Key difference with *Obergefell* appears to be the Defendants attributes – they were Health Department and its officers in

tribe in the short term, but ultimately **detrimental to them and to the democracy**. One lawyer preempted by asking if I wanted to sue NJ Judiciary and then replied that they are not in the business of suing Judiciary. This lawyer did not cite lack of merit as reason. The defense offered by State Defendants cited procedural matters and judicial immunity but was otherwise silent on the key pillars on my case, indicating their acceptance. I have talked to lawyers in social settings and their response to the elevator pitch is that yes, family court practices constitute discrimination by gender and are unconstitutional. I have it in writing (email) from one of the lawyers who had submitted an amicus brief to this Court that family court practices are unconstitutional.

District Court and the Appeals court have made irrational and illogical arguments to defend unconstitutional practices in family courts. Ruling rejected "invitation to rewrite New Jersey law in the manner he desires". The court should note that *Obergefell* rewrote codes on marriage in all of US. The panel directed Petitioner to "avail himself of the political process, rather than the judicial one". First, the matter before the Appeals Court was that of constitutionality of practices and policies in family courts. Second, the panel ignored the long tortured history of *Obergefell* that includes ruling a federal law borne of a political process unconstitutional. Judiciary has dug a hole for itself and is

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Obergefell and they are State Judiciary and its officers in this case.

now looking for "politicians" to rescue them? What a disgrace!

III. Entrenched, pervasive, systemic and unconstitutional gender discrimination against fathers in almost all states must end. It is the credibility of the nation's judicial system that is on trial.

Albert Einstein – "If I were to remain silent, I'd be guilty of complicity."

I am imploring this court to respect democracy – "For the People, By the People" and halt the unconstitutional practices as described herein. This case represents pervasive abuse of power – the power of judicial immunity.

Slavery had to stop. Women got their right to vote. The Holocaust had to end. The discrimination described here has to end too. This court has the power to do the right thing.

Allow me to state the obvious. The case here is not about conservative or liberal judicial philosophies, or religious preferences. The arguments presented are irrefutable, and the conclusions logical just like a mathematical equation or Pythagoras theorem. Lower courts have obfuscated, deflected and buried their heads in the sand. It is the credibility of the nation's judicial system that is on trial.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant his petition for a writ of certiorari.

I dedicate this petition to my late parents and my children.

Respectfully submitted,

HEMANT G BHIMNATHWALA
Pro se

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-3526

HEMANT G. BHIMNATHWALA,

Appellant

v.

JUDICIARY OF THE STATE OF NEW JERSEY, FAMILY DIVISION; LOPA S. SHAH; HONORA O'BRIEN KILGALLEN; JOANNE MCLAUGHLIN; LISA P. THORNTON; TERESA A. KONDRUP-COYLE; TONYA HOPSON; STUART RABNER; REBEKAH HEILMAN

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 3:19-cv-21389)
District Judge: Honorable Freda L. Wolfson

Submitted Pursuant to Third Circuit LAR 34.1(a)
April 20, 2021
Before: GREENAWAY, Jr., KRAUSE, and BIBAS,
Circuit Judges

(Opinion filed: June 15, 2021)