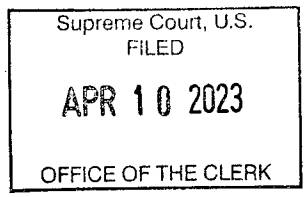
No. 22-1204

In The
Supreme Court of the United States

WILLIAM MUHR,

Petitioner,

v.



DAWNA BRASWELL
AND KRISTIN LEE (A.K.A. ELLIAS),

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Facts: Both cases were originally assigned to the same trial court judge, Chief Judge Bain (J.Bain) who was extremely prejudiced and disqualified himself. Nonetheless, J.Bain remained "with jurisdiction" and illegally appointed his replacement judge. The Colorado Court of Appeals (COA) have decided that, throughout its 22 judicial districts and its COA, any prejudiced disqualified Chief Judge, with a conflict of interest, remains with unfettered powers to pick the judge that he desires to decide your case. The judiciary now have the appearance and ability to make highly partisan judicial assignments to influence the outcome of every case.

Question 1. Whether Petitioner's Fourteenth Amendment rights to due process and equal protection were violated when Colorado allowed disqualified, prejudiced Chief Judges with a conflict of interest to pick whatever judge they want to decide Petitioner's case?

Facts: The judge, with actual bias, found that Petitioner is a fit father, and signed her order on 9/15/16 finding, ***"(E)ach party has demonstrated an ability to care for their... daughter."*** Yet, her Order did not allow M.M. to share any overnights, holidays, or special days with her dad, even during the most critical formative years of her life. The order did not allow Petitioner to travel with M.M. to visit his family or to practice his religion. It did not mandate that Ms. Lee allow M.M.'s dad to be involved in major decisions for M.M.. The 9/15/16 Order was made final on 10/26/20.

Question 2. Should a constitutionally minimum due process standard be established for the initial parenting hearing to protect fundamental liberty interests to raise children?

Facts: Years ago the parties wanted to end this litigation. If Ms. Lee never brought this action, the state could not inject itself into our lives without criminal conduct. However, the trial court would not let us end the case, even with an agreement benefiting M.M..

Question 3. Whether Colorado violated the parties' 14th Amendment rights by refusing to enforce their custody agreement?

Question 4. Whether remedies shall be afforded to vindicate harm suffered from the violation of unalienable and fundamental rights to parenting and to deter future violations?

RELATED CASES

In Re Parental Responsibilities for B.B., *William Muhr, Petitioner v. Dawna Braswell, Respondent*, Colorado Court of Appeals,18CA0176 (Announced **3/28/2019**), *filed 8/30/2019 with trial court in* 2012DR2531, El Paso County, Colorado.

In Re Parental Responsibilities for B.B., *William Muhr, Petitioner v. Dawna Braswell, Respondent*, COA, Case Number 21 CA 0326, Cert Denied in 22 SC 517. Judgment entered **1/9/2023**.

In Re Parental Responsibilities for M.M., *William Muhr, Petitioner v. Kristin Lee*, Respondent, COA, Case Nos. 20CA2066, 21CA0504 & 21CA0793, Opinion Issued June 2, 2022 by CHIEF JUDGE ROMÁN, Cert Denied in 22 SC 0561. Judgment entered **1/23/2023**.

In Re Parental Responsibilities for M.M., *William Muhr, Petitioner v. Kristin Lee, Respondent*, Colorado Court of Appeals, Case Number 23 CA 0118 (2023)(Pending appeal Re: Ongoing Rulings allowing only Ms. Lee to take vacations with M.M.).

In Re: B.B., minor, DOB 12-20-2002, *William Muhr, Appellant v. Colorado Department of Human Services, Office of Economic Security, Division of Child Support Services, Appellee* (State's Child-Support *Enforcement* Sanction Action) Colorado Court of Appeals 2022CA391, Appellant's Opening Brief filed 11/3/2022, Pending decision.

In Re: M.M. *Appellee Kristin Lee* (*aka Ellias*) *and Appellant William Muhr*, Colorado Court of Appeals, 2023CA702 (Pending dismissal per 5/23/2023 Order for lack of appealable order).

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SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the opinions below.

OPINIONS BELOW

The 4/28/2022 **COA's Opinion**, *Braswell*, unpublished.(Parental Responsibilities for B.B., a Child, *William Muhr, Petitioner v. Dawna Braswell, Respondent*, COA, 21CA0326, Cert. Denied, 22SC517 on 1/9/2023. Mandate entered 1/17/2023, **Appendix-A1**).

The **COA's Opinion,** *Lee*, unpublished. (Parental Responsibilities for M.M., *William Muhr, Petitioner v. Kristin Lee, Respondent*, COA, 20CA2066, 21CA0504 & 21CA0793, Opinion issued June 2, 2022 by CHIEF J.ROMÁN, Cert. Denied, 22SC0561 on 1/23/2023. Mandate entered 1/23/2023, **Appendix-F1**).

JURISDICTION

The highest state court decided *Braswell*, **Appendix-A1**: 4/28/2022.

A timely Petition for Rehearing (*Braswell*-PFR) was filed June 7, 2022 (**Appendix-B1**). Denied 6/16/2022.

A timely Petition for Certiorari in *Braswell* was filed on 9/22/2022. Denied **1/9/2023.** The 1/9/2023 order denying the Petition for Certiorari, *Braswell,* is at **Appendix-D1.** Mandate entered 1/17/2023, **Appendix-E1.**

The highest state court decided *Lee,* **Appendix-F1**: June 2, 2022. Mandate issued 6/6/2022.[Mandate at **Appendix-G1** is incorrectly dated January(sic) 6, 2022]

A timely Petition for Rehearing in *Lee* (*Lee*-PFR) was filed 6/30/2022 (**Appendix-G1**). Denied 7/14/2022. The Order denying *Lee*-PFR is at **Appendix-H1.**

A timely Petition for Certiorari was filed 10/20/2022 in *Lee.* **Denied 1/23/2023.** The order denying the Petition for Certiorari in *Lee* is at **Appendix-J1.** Its 1/23/2023 mandate is at **Appendix-K1.**

The combined Petition for Certiorari, timely filed 4/10/2023, was returned on 4/14/2023 with instructions, extending the deadline to re-file on 6/13/2023, under Sup.Ct.Ru14.5. Jurisdiction is under 28 U.S.C.§1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, First Amendment:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...."

U.S. Constitution, Fourteenth Amendment, §1:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to

any person within its jurisdiction the equal protection of the laws."

U.S. Constitution, Article III:

"Section 1, The judicial Power of the United States, shall be vested in one Supreme Court... The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour... Section 2, The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States..."

U.S. Constitution, Article IV,§2:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

28 U.S.C.§455:

"(a) Disqualification of justice, judge, or magistrate judge. Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party...."

42 U.S.C. §654(9)

"A State plan for child and spousal support must...-
(9)...Provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State...
(C) in securing compliance by a noncustodial parent residing in such State (whether or not permanently) *with an order issued by a court of competent jurisdiction against such parent* for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State;
(D) in carrying out other functions required under a plan approved under this part; and
(E) not later than March 1, 1997, in using the forms promulgated pursuant to section 652(a)(11) of this title for income withholding, imposition of liens, and issuance of administrative subpoenas in interstate child support cases."

42 U.S.C. §659(h) Moneys Subject to Process:
(1) In general
"Subject to paragraph (2), moneys payable to an individual which are considered to be based upon remuneration for employment, for purposes of this section-
(A) consist of-

(i) compensation payable for personal services of the individual, whether the compensation is denominated as wages, salary, commission, bonus, pay, allowances, or otherwise (including severance pay, sick pay, and incentive pay);

(ii) periodic benefits (including a periodic benefit as defined in section 428(h)(3) of this title) or other payments-

(I) under the insurance system established by subchapter II;

(II) under any other system or fund established by the United States which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by the individual or any other individual;

(III) as compensation for death under any Federal program;

(IV) under any Federal program established to provide "black lung" benefits; or

(V) by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer

pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation;

(iii) worker's compensation benefits paid or payable under Federal or State law;

(iv) benefits paid or payable under the Railroad Retirement System,[1] and

(v) special benefits for certain World War II veterans payable under subchapter VIII; but

(B) do not include any payment-

(i) by way of reimbursement or otherwise, to defray expenses incurred by the individual in carrying out duties associated with the employment of the individual;

(ii) as allowances for members of the uniformed services payable pursuant to chapter 7 of title 37, as prescribed by the Secretaries concerned (defined by section 101(5) of title 37) as necessary for the efficient performance of duty; or

(iii) of periodic benefits under title 38, except as provided in subparagraph (A)(ii)(V).

42 U.S.C. §666(8)(b)(i):

"The income of a noncustodial parent shall be subject to withholding."

42 U.S.C. §666 (16) and (17):

"(16)...(T)he State has...authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses...of individuals owing overdue support.
(17)....(T)he State agency shall enter into agreements with financial institutions...(to identify) each non-custodial parent... who maintains an account...."

42 U.S.C. §2000bb:

"(a) Findings. The Congress finds that-
(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;
(2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;
(3) governments should not substantially burden religious exercise without compelling justification;
(4) in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that
the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) Purposes

The purposes of this chapter are-

(1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government."

C.R.C.P.97:

"A judge shall be disqualified in an action in which he is interested or prejudiced, or has been of counsel for any party, or is or has been a material witness, or is so related or connected with any party or his attorney as to render it improper for him to sit on the trial, appeal, or other proceeding therein. A judge may disqualify himself on his own motion for any of said reasons, or any party may move for such disqualification and a motion by a party for disqualification shall be supported by affidavit. Upon

the filing by a party of such a motion all other proceedings in the case shall be suspended until a ruling is made thereon. Upon disqualifying himself, a *judge* shall notify forthwith the chief judge of the district who shall assign another judge in the district to hear the action. If no other judge in the district is available or qualified, the chief judge shall notify forthwith the court administrator who shall obtain from the Chief Justice the assignment of a replacement judge."

Colorado Constitution, Article II, §25, C.R.S. 2022. Due process of law:

"No person shall be deprived of life, liberty or property, without due process of law."

Colorado Constitution, Article II, §6, C.R.S.2022, "*Equality* of Justice:"

"Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay."

Colorado Constitution, Article VI, §5,¶4:

"Each chief judge shall... exercise administrative powers over judges...*as may be delegated.*"

Colorado Code of Judicial Conduct 2:11(A), (A)(1) and (A)(5):

> **"(A)** A judge *shall* disqualify himself in any proceeding in which the *judge's impartiality might reasonably be questioned*, including the following...:" **(A)(1)** The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.... or **(A)(5)** The judge: **(a)** served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association."

C.R.S.§13-1-122:

> "A judge shall not act as such in any of the following cases: In an action or proceeding to which he is a party, or in which he is interested; when he is related to either party by consanguinity or affinity in the third degree; or when he has been attorney or counsel for either party in the action or proceeding, unless by consent of all parties to the action."

C.R.S.§14-10-112:

> "(1) To promote the amicable settlement of disputes between the parties to a marriage.... , the parties may enter into a written separation agreement containing provisions for...

the allocation of parental responsibilities...and parenting time of their children."
(2) In a proceeding...for dissolution or legal separation, the terms of the separation agreement, except terms... for...parental responsibilities...and parenting time of children, are binding upon the court...."

C.R.S.§14-10-123.4(1)(c):

"(1) The general assembly hereby declares that children have certain rights in the determination of matters relating to parental responsibilities, including:.... **(c)** The right to reside in and visit in homes that are free of domestic violence and child abuse or neglect."

C.R.S.§14-10-124(1.5)(a):

"(1.5)(a). **Determination of parenting time**. "The court... may make provisions for parenting time that *the court finds are in the child's best interests* unless the court finds, *after a hearing*, that parenting time by the party would endanger the child's physical health or significantly impair the child's emotional development. *In addition to* a finding that parenting time would endanger the child's physical health or significantly impair the child's emotional development, in 'any order imposing or continuing a

> parenting time restriction, the court shall enumerate the specific factual findings supporting the restriction and may enumerate the conditions that the restricted party could fulfill in order to seek modification in the parenting plan."

C.R.S.§14-10-124(1.7)(3):

> "In determining parenting time or decision-making responsibilities, the court shall *not* presume that any person is better able to serve the best interests of the child because of that person's sex."

C.R.S.§16-6-201(1)(d):

> "A judge *shall* be disqualified if the judge is in any way interested or prejudiced with respect to the case, the parties, or counsel."

Colorado Chief Justice Directive 95-01, Amended 9/2020(C.J.D.95-01), Introductory Paragraph:

> "The chief judge of the Court of Appeals has the administrative authority and responsibility over the Court of Appeals and is covered by this directive.... The chief judge of each court has the authority and responsibility to manage the court consistent with this directive."

C.J.D.95-01,¶6(b):

"The chief judge may assign and reassign cases to courts."

C.J.D.95-01, ¶13:

"...(T)here shall be a Chief Judge Council consisting of the chief judge of each judicial district (and) the Chief Judge of the Court of Appeals...The Chief Judge Council shall meet at least quarterly...."

C.J.D.95-01,¶16:

"*Any* disputes arising from the exercise of the authority described in this directive *shall* be resolved by the Chief Justice (of the Colorado Supreme Court)."

F.R.C.P.29(C):

"In any proceeding in this Court in which the constitutionality of any statute of a State is drawn into question, and neither the State nor any agency, officer, or employee thereof is a party, the initial document filed in this Court 'shall recite that 28 U. S. C. §2403(b) may apply and shall be served on the Attorney General of that State.' In such a proceeding from any court of the United States, as defined by 28 U. S. C. §451, the initial document also shall state whether that court, pursuant to 28 U. S. C. §2403(b), certified to the State Attorney General the fact that the constitutionality of a

statute of that State was drawn into question.Rule 14.1(e)(v)."

28 U.S.C.§2403:

"In any action...to which a State...is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State and shall permit the State to intervene...on the question of constitutionality."

INTRODUCTION

This Petition combines two judgments, *Braswell,* and *Lee,* involving closely related questions, from the Colorado Court of Appeals (COA).(S.Ct.Ru.12.4). Both cases were originally assigned to the same trial court, Chief Judge Bain (J.Bain) who disqualified himself.

The COA in *Braswell* held that J.Bain, who was prejudiced, nonetheless remained "with jurisdiction" to issue additional orders after his disqualification **"to assign the case to Judge Miller once he (J.Bain) had recused."**(*Braswell*-COA, **Appendix-A9-A10,¶**s24-28; *Braswell*-Op.Br.Pgs.17-23).

The COA in *Lee,* then held, **"We agree with that division's analysis and disposition of the issue(*in Braswell*) and thus adopt it here.... We hold that Judge Bain...(after he had disqualified himself and was deemed interested and prejudiced) did not err in entering an...order reassigning the case to the**

successor...J.Miller."(*Lee*-COA, **Appendix-F4-F5,**¶s10-13).

Chief J.Román at the COA, did *not* disclose that he has been meeting every 90 days with prejudiced J.Bain before and throughout his involvement with both of these cases pursuant to C.J.D.95-01(Introductory paragraph and ¶13); **Appendix-I5-I6**). J.Román then picked his favored panel in the COA to decide the *Braswell* case and *assigned himself* to the *Lee* case.(**Appendices-B2-10; I3-4;I12-I13**).

Chief J.Román(J.Román), then *overextended his own jurisdiction* by ruling that "chief judges," who are prejudiced and have a conflict of interest, may assign your case to whomever they choose. J.Román changed the jurisdiction of Colorado Courts to confer onto himself, J.Bain, and all other Chief Judges, these unique, unfettered powers. J.Román has thus prevented Petitioner to have his cases decided free of taint and the appearance of partiality.(**Appendices-A9-A10**,¶s24-28; **F5**,¶s12-13; *Braswell*-PFC,Pgs.22-23).

In Re Parental responsibilities for B.B., 18CA0176,¶17(COA3/28/2019), J.Bain and J.Miller, refused to comply with the COA directive to immediately allow Petitioner to see his daughter.**[***Braswell*-PFC,Pgs.11-12,13(b);*Braswell*-**T.3/5/2020,**Pgs.16,L.2-12;17,L2-3;*Braswell*-1/19/2021 Motion to Disqualify,**R.5772-5810,¶s48-52,60,73-81**;*Braswell*-Supporting Affidavit,**R.5811-5846**); *Braswell*-R.4,189-1944,191**]**.

Regarding *Lee*, three trial courts, with actual bias, issued restrictive parenting orders, made permanent on 10/26/2020. All courts adopted the actual bias of the initial trial court and made

permanent her ruling based on sex and extrajudicial information.(**Appendices-G2-G3**; **L3-5**, **M2-3**; *Lee*-Op.Br.Pgs.5,10-14,22-38;*Braswell*-Record 5891; *Braswell*-PFC,Pgs.6,11,16-17,23-25).

Finally, J.Miller performed an unprecedented income determination in *Braswell* then applied it to *Lee*.(*Braswell*-Op.Br.10-11,15,**22-38**,44; *Braswell*-PFC,Pgs.6,11,16-17,23-25; *Braswell*-Record, R.4345-4363;5889-5892; R5598-5599;R.5569-5570;R.5560-5561; *Lee*-Op.Br.Pg.34; **Appendices-A7-8,**¶s17-19, **F13-14,**¶s39-41; **G4-G5,**¶3; **I2,I20**).

Colorado has never afforded Petitioner-Father with a hearing before a qualified judge. (**Appendices-G6-G10,**¶6; **I12-I14;** *Braswell*-PFC,Pgs.6-18).

STATEMENT OF CASE

2016

On 6/17/2016 the trial court J.Patrick/Cord found that Petitioner is a fit father. Yet, M.M. has not been allowed to have any overnights or special days with her dad.(**Appendix-L3-5**). Thus, Petitioner-Father appealed J.Patrick/Cord's order issued without subject-matter jurisdiction.(*Lee*-Op.Br.Pgs.26-33; **Appendices-G2-G4; I2,I6,I7; L3-L5**).

J.Patrick/Cord found Petitioner was a **good father**; "**...involved**" **...and "...looking out for the interest of the child**...(T.6/17/2016,Pgs.9, L.14-26;10,L.1-5;Pg.11,L8-10;Pg.13,L-25; Pg.14,L.1-4).(*Lee*-Op.Br.Pgs.26-30;**Appendices-G2; I6-7).**

However, by relying on **extrajudicial information**, J.Patrick/Cord ruled that it was a *women's* role(alone) to take care of a child:

> **"A lot of times it's the mom, and then the dad...hangs back and it isn't until maybe the child gets...older that the dad is a little bit more participatory....but...*there weren't any red flags(no negative indications at all) to me in terms of Mr.Muhr's ability to(care for) the baby.***
> ***I think that <u>often times there's like a primary-ish parent and then another parent and a lot of times it is the mom</u>*, certainly with the child....I just think that's usually how things work out..."**T.6/17/2016, Pgs.9,L.18-25,10,L.1-5; *Lee*-Op.Br.Pgs.26-30; **Appendices-G2; I6-7**).

J.Patrick/Cord ruled:

> "...**(T)here are studies that suggest that *short*...parenting time(*with Fathers*)...is the best... parenting..., and <u>*so that's what I'm looking at*</u>....I think *you guys are doing well* with trying to work on...things, but I don't think overnights right now make sense for her. <u>Again, it's not because Dad is a bad Dad or can't do it</u>."**(6/17/2016,T.Ruling,Pgs.20,L.21-

25,Pg.21,L-1,L.8-11;*Lee*-Op.Br.Pg.29-30,31,33-34).

J.Patrick's 9/15/2016 signed order states: "***(E)ach party*** ***has demonstrated an ability to care for their... daughter and place the needs of the child above their own***."**(**R.582,583,ParaB.; *Lee*-OpBr.Pgs.10,13,26-37**; Appendices-L3-5; G3,**¶2.).

Her order does *not* enumerate factual findings supporting undue parenting restrictions.(*Lee*-Op.Br.Pgs.26-33; **Appendices-G2-G3,**¶s1-2**; L3-5**, later made permanent).

9/24/2018

On **9/24/2018,** M.M.'s fit, *unmarried* parents reached an unopposed Settlement Agreement(SA) *for M.M.'s bests interests* and requested J.Bain to dismiss their parenting claims.[R.3053-3071;R3079;R583,¶B;*Lee*-Op.Br.36-49; **Appendices-L3-L4**¶B; **I2,I14-I18].**

The trial court and COA would not allow M.M.'s parents to end this litigation and treated them differently from unmarried parents *who chose to avoid litigation*.(J.Bain's 10/3/2018 Order,R.3079; *Lee*-Op.Br.Pgs.37-43;**Appendices-F10-11,**¶s27-30**; I14-I18**).

11/18/2019

On **11/18/2019** J.Bain found there is ***no "physical harm"*** or "***domestic violence***"; *both* parties testified that ***a "no-contact order* is *not* wanted" and would be "very harmful" to M.M.**; and Mr. Muhr's son "***thought his dad is a***

***'GREAT DAD' to which the court found, "I don't doubt* that**."(*Lee*-Op.Br.Pg.26-30;**Appendices-G2-3,**¶s1-2; **I17-I19**; **L3-5**).

On 11/18/2019, J.Bain adopted the actual bias of J.Patrick/Cord and made her temporary parenting order the permanent order.[*Lee*-Op.Br.Pgs.26-33,50, "***I'm ordering that the current Temporary Order Parenting Plan become the Permanent Order***." 11/18/2019 Ruling,T,Pg.9,L.6-8; **Appendix-L3-5**). However, J.Bain, was highly prejudiced. He was also conducting undisclosed job interviews with Petitioner's counsel. C.R.P.C.1.7,cmt.1. J.Bain disqualified himself pursuant to a motion and sworn affidavit of detailed facts.(*Lee*-Op.Br.Pgs.50-51; Affiavit-R.3443-3447,¶s 32-45; **Appendix-G5,**¶4).

The disqualification motion was filed on 2/13/2020.(**R.3391-3418**). In the **WHEREFORE** clause, J.Bain was requested to "set aside its permanent orders on 11-18-2019."(**R.3418**). On **2/23/2020**, J.Bain **GRANTED** the Motion.(R.3601;*Lee*-Op.Br.Pg.50**; Appendix-G5**¶4, **G8-G9**).

2/23/2020 and 2/24/2020 Orders

In his **2/23/2020** disqualification order, J.Bain unlawfully directed that his "Clerk of Court will randomly re-assign this case (*Lee*-2016DR30155) and Respondent-Father's other open DR case, *Braswell*-2012DR2531 to new 'judges.'" His clerk took no action.(R.3418;R.3601;*Lee*-Op.Br.16-17,22-23;**Appendix-B4,B7--B10;** *Braswell*-PFC,Pgs.7-18).

A day later, **2/24/2020**, J.Bain issued two more orders reassigning his *Braswell* and *Lee* cases to J.Miller.(R.3631;*Lee*-Op.Br.,Pgs.16-24).

The COA in *Braswell* ruled that prejudiced J.Bain with a conflict of interest may pick the judge he wants to decide your case "**once he had recused.**"**(Appendix-A9-A10,¶s24-27).**

The COA in *Lee* then held, **"We agree with that division's analysis...(*in Braswell*) and thus adopt it here."**(*Lee*-COA—**Appendices-F4-F5, ¶s10-13; B6,B2-B9; G6-G9,¶6; I3-I14).**

3/5/2020

On 3/5/2020 J.Miller voided J.Bain's 11/18/2020 order:

> COURT: "....**Then that order (J.Bain's 11/18/2019 order) is void...**"

(*Lee*-**T.3/5/2020,**Pg.8,L.15-20;Pg.29,L.10-25,Pg.30,L.8-11; *Lee*-Op.Br.Pgs.22,50; **Appendices-G6,¶5; I19).**

Status Conference, 10/19/2020

On **10/19/2020**, the successor J.Miller held a **"status conference"**--*not* an "October 2020 hearing" per the *Lee*-COA Opinion. **Appendices-F3,¶6; I9):**

> COURT:...**I want to start with my 'status conference'**... Is your client...attending?
> (T.10/19/2020,Pg.3,L.2-3).
>
> CYBORON:...Nope...
> (T.10/19/2020,Pg.3,L.10).

> COURT:"**I am going to *adopt Judge Bain's final orders*(regarding) parenting...(**T.10/19/2020,Pg.10, L.11-15)(*Lee*-Op.Br.12,13-14,49-50; **Appendix-G2,**¶1).

After J.Bain set aside his 11/18/2019 statements and J.Miller *voided* J.Bain's statements, there were NO orders to adopt and make permanent on 10/19/2020, when J.Miller adopted J.Bain's statements, *without a hearing*, as his final parenting order.(*Lee*-T.10/19/2020,Pg.10,L.11-15;*Lee*-Op.Br.49-50;R.3785,¶2;**Appendices-F3-F4,**¶s5-6**; L3-5, M1**; **G2,**¶1**;G5-G6,**¶s4-5; **I9**).

10/26/2020--J.BAIN AND J.PATRICK/CORD'S ORDERS MADE PERMANENT

On **10/26/2020**, the successor adopted the actual bias of J.Patrick/Cord: **"*The existing temporary order parenting plan from June 2016, shall remain in place*..."(**R.4312-4314; *Lee*-Op.Br.Pgs.12,24-36,50-53 §"C. Discussion;" **Appendices-G2-3,**¶1; **I11; L3-5**).

J.Miller also adopted the actual bias of J.Bain by rendering J.Bain's 11/18/2019 statements as his permanent *parenting* order.(**Appendices-M1** first sentence; **F12,**¶34**; G10-G11,**¶7; **I2, I11,I14,I17**; *Lee*.Op.Br.Pg.50,R.3418;R.3601).

The **10/26/2020** permanent order signed "*Nunc Pro Tunc* to 11/18/2019," entitled **"ORDER FROM HEARING HELD NOVEMBER 18, 2019"** states: "**This matter came before the Court Div.22-J.Bain** for final orders...on 11/18/2019...." **(Appendices-M1, L3-5**; **G2-G3,**¶1**).**

Thus, on **10/26/2020**, J.Miller, *without affording Petitioner-Father a hearing*, PERMANENTLY ordered **NO** contact between M.M.'s parents; **NO** overnights, holidays, vacations, special days, travel, or decision making for M.M.'s dad; prohibitions exercising Christian religion; and restricted calls with M.M. to one a day. None of these restrictions was requested by either parent at the 6/17/2016 hearing before disqualified J.Patrick/Cord or at the 11/18/2019 hearing before disqualified J.Bain.(**Appendices-L3-5; M1;G3,**¶2;*Lee*-Op.Br.10-12,26,30,39,41,46).

***Lee*-COA 12/2020 to 1/23/2023**

The conflicted COA J.Román then upheld the unconstitutional 10/26/2020 permanent order by relying on the findings (sic) of J.Bain who had disqualified himself, set aside his statements, and chose not to enter a final parenting order.(*Lee*-Op.Br.Pgs.11,28,42,46-47,50; **Appendices-F3-F4,**¶s5-6, **F12,**¶34; **G2-G6,**¶s1,4,5; **I7-I9**; **L3-5; M2-3,** C.R.C.P.58). J.Román also denied Petitioner's request to enforce the parent's SA with 51% of overnights and joint decision making for M.M.'s dad.**(Appendix-I17-I18;** *Lee*-Op.Br.Pgs.47,48,**37-48**; R.3053-4;R.3044-3055).

REASONS FOR GRANTING THE PETITION

Petitioner's fate, in his seven-year quest, as a fit father, to stop the state from interfering with important family relationships, and to be an involved father, was sealed before his appeals were even filed with no protection and no remedy

whatsoever against the onslaught of unconstitutional actions.[*Lee*-Op.Br.Pg.16; Disqualification Motion(**R.3391-3418**); Supporting Affidavit (**R.3433-3465**);J.Bain's 2/23/2020 Disqualification (**R.3601**); J.Bain's 2/24/2020 orders transferring *Braswell* and *Lee* to J.Miller (**R.3631**)].(**Appendices-B1-B10; G,¶s1-7; I3-I14,I18-I20**).

Colorado is now organized to influence the outcome of every case, and against every political opponent, in the very manner in which the judiciary, in the trial courts and COA, have, objectively, done so in the instant cases.C.J.D.95-01;C.R.S.§13-4-105;C.R.S.§14-10-112(2),C.R.S.§14-2-310(3);C.R.S.§14-10-124(1.5)(a);C.R.S.§6-6-201(3);C.R.S.§24-4-106(4)(Shall file action against state child-support enforcement agency *in Denver*);C.R.C.P.242.6.(a) and (d)(Affidavit,R.3433-3465);C.R.C.P.209.2. Judicial notice reveals that the Colorado Democratic Party controls every aspect of state government.

The COA also returned both cases to J.Bain's chosen successor, who is disqualified with actual bias, including as Petitioner's former counsel, thereby allowing continuing interference with the fundamental rights of Petitioner-Father, M.M., and their family relationships.(**Appendices-B2-10; A9-A10,¶s24-28; G2-G11,¶s1-7, I3-I14,I8,18-I20**).

The heart of the constitutional violations is the nontransparent case assignments by disqualified chief judges with a conflict of interest in violation of the Fourteenth Amendment. The matter conflicts with various federal laws and U.S. constitutional amendments and has not been but should be settled by this court.(**Appendices-A9-10¶s24-27,B2-11,¶s1-**

7;**F4-5**¶s10-13,**I3-I14,I18-20,** ***Marshall*** *v. Jerrico, Inc.*, 446 U.S. 238,242-243(1980)("**Due Process Clause entitles a person to an impartial and disinterested tribunal...(J)ustice must satisfy the appearance of justice**"); ***Weiss*** *v. United States*, 510 U.S.163,178 (1994)**["(A) fair trial in a fair tribunal is a basic requirement of due process.**");*United States v.* ***Will,*** 449 U.S. 200,212 (1980)("**The disqualified *judge* must step aside and allow the normal administrative processes...to assign the case to another judge....**");Fourteenth Amendment§1].

There is now insufficient protection from abuse of power when the conflicted Chief Judge of the COA, allowed the highly prejudiced, conflicted J.Bain to select his favored replacement judge after J.Bain had disqualified himself. The abuse of power by disqualified, conflicted judges occurs at the time of the favored judicial assignments, which is not open to public scrutiny, thereby obstructing the ability of the parties and all courts to consider violations of fundamental rights arising out of conflicted, nontransparent assignments.[**Appendices-B-9,¶4, G6-11,**¶s6-7**; I1-I14;I18-I21;** *Lee*-Op.Br.Pg.16;*Lee*-R.3433-3465; Article III, "Judicial power...extends to...cases...arising under this constitution and the laws of the United States."].

States can now follow Colorado's approved policies for political persecution and to influence the outcome of cases via its strained interpretation of the extended jurisdiction and assignment powers of prejudiced, conflicted chief judges. All Judges in America must remain neutral and independent,

enshrined in Article III(Colorado and U.S. Constitutions) and the Fourteenth Amendment§1.

Further, as a result of the instant case, this court now, finally, has the ability to protect the fundamental constitutional rights of parents, strengthen families, and safeguard children from harm throughout America.

Question 1. Whether Petitioner's 14th Amendment rights to due process and equal protection were violated when Colorado allowed disqualified, prejudiced Chief Judges with a conflict of interest to pick whatever judge they want to decide Petitioner's case?

This court has not decided whether disqualified "*Chief" Judges* with a conflict of interest have jurisdiction to assign whatever judge they want to decide your case. *See* ***Will*** at 212 [Disqualified "*judge*" must recuse and allow normal administrative process to assign the case to a neutral judge; and compare *Lawler Mfg. Co. v. Lawler*, 306 So. 3d 23, 24-25(Ala.2020], "When '*Presiding*' Judge...disqualified himself...*he (also) no longer had authority* to appoint his successor" or...enter orders (reassigning his cases to his chosen successor)." *See also* ***Weiss*** at 178 and ***Marshall*** at 242-243(Due Process right to impartial tribunal).

"Issues of subject-matter jurisdiction can never be (lost) *while the case is pending.*" *U.S. v. Hartwell*, 448 F.3d 707,722(4th Cir.2006).

Once J.Bain disqualified himself from hearing *Braswell* and *Lee*, he could take no further action in either case, not even reassigning the cases under C.R.C.P.97 or C.J.D.95-01. J.Bain could not enter an

order recusing himself from both cases and then later enter separate orders assigning J.Miller as his chosen successor, because the impartiality of his reassignments might reasonably be questioned. *Will* at 212; *Marshall* at 242-243; Fourteenth Amendment§1.

Because J.Bain did not have the authority to appoint his successor, J.Bain's appointment of his successor was not valid. J.Bain's orders reassigning the cases to his successor must be vacated.

The successor judge's orders in *Braswell* and *Lee* must also be vacated. Because J.Miller never had jurisdiction over these cases, any orders entered by J.Miller are void. *Hartwell* at 722; *Will* at 212; *Marshall* at 242-243.

"Being without jurisdiction, its subsequent proceedings and judgment[are] not...simply erroneous, but absolutely void. Every order thereafter made in that court[is] *coram non judice*," meaning "not before a judge." *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano*, 140 S.Ct.696,700(2020). See also *Beren v. Goodyear* (*In re Estate of Beren*), 412 P.3d 487,491(Colo.App.2012). ("Upon recusing, a judge loses jurisdiction..."); **28 U.S.C. §636(b)(1)(C)**(A Judge "may be assigned...duties as *are not inconsistent with the Constitution...*"). ***Marshall*** at 242-243; ***Weiss*** at 178 (Due process mandates an impartial tribunal); ***Will*** at 212 (Disqualified *judge* must allow administrative process to assign his cases); ***Lawler Mfg. Co.*** at 24-25 ("When *Presiding* Judge...disqualified himself...he had no jurisdiction to appoint his successor." Fourteenth Amendment§1.

In a case of first impression, the COA held that by C.J.D.95-01(6)(b), a judge, upon recusing,

has jurisdiction to pick his favored judge to decide your case, contrary to *Aaberg v. District Court*, 136 Colo. 525,527-28(Colo.1957). Special interest groups and the judiciary now have the appearance and ability to make highly partisan judicial assignments to influence the outcome of every case.

C.J.D.95-01(6)(b), delegates to a qualified chief judge(*not to a disqualified, prejudiced chief judge*) that "(t)he chief judge may assign and reassign cases to courts." However, by the constitutional standard that this court properly announced in *Williams v. Pennsylvania*, 136 S.Ct.1899,1905(2016), *no* chief judge in America should be vested with unique powers to assign and reassign cases to chosen courts in a manner that is *not* open to public scrutiny.

Case assignments, to comply with the requirements of the Fourteenth Amendment§1, should be by *random* selection to guarantee impartial and disinterested tribunals. ***Williams*** at 1905("Due process *guarantees* 'an absence of actual bias' on the part of a judge."). *Marshall* at 242-243; *Weiss* at 178; *Will* at 212.

C.J.D.95-01,¶16 adds: "*Any* disputes arising from the exercise of the authority described in this directive *shall be resolved by* the Chief Justice (Colorado Supreme Court)," which also was *not* done. (**Appendicies-A9-10**,¶s24-28; **F4-F5**,¶s10-13); **B2-B5,B8-B10,**¶4; **G6-G10¶6; I3-I6,I8-I14,I18-I20**; Fourteenth Amendment,§1).

Further, neither the Supreme Court nor its COA ***may expand the court's jurisdiction by a rule of court*** (or by a C.J.D)—only the General Assembly may attempt to expand the jurisdiction of the courts to allow disqualified chief judges with a

conflict of interest to be vested with jurisdiction to decide which judge will preside over your case contrary to C.R.S.§13-1-122.(A judge is disqualified to act at all if he or she is interested or prejudiced or has been Petitioner's counsel); C.R.S.§16-6-201(1)(c)(d)(Criminal proceedings); and Fourteenth Amendment§1.(Colorado Lawyer, "*Civil Interlocutory Appeals in Colorado State Courts*," October 2020,n.4,n.5).

C.R.C.P.97 provides:

> "**Upon *disqualifying himself***, *a judge shall notify* forthwith the chief judge... who shall assign another judge...." **If no other judge...**(J.Bain is a judge) **is qualified (**to pick a successor --J.Bain is not qualified**)**, the chief judge (J.Bain) *shall* notify forthwith **the court administrator** (Mr. Vasconcellos, 1300 N.Broadway, Denver) **who shall obtain from the Chief Justice**(of Colorado's Supreme Court) the assignment of a replacement judge."

(Appendix-I13,I15,I18-I19).

As in *Lawler* at 24-25, the Supreme Court in *Aaberg* held:

> "(When Chief J.Bain) granted the motion(to disqualify), **such action(is) an admission of bias and prejudice**....(T)he charge of bias and

> prejudice...**remains as an accusation of unfitness to proceed with the case**, and logically this charge of unfitness would extend to unfitness to pick his successor or assign the case to another judge. When *a judge* is charged with bias and prejudice and sustains a motion so charging...*proper procedure **requires** that he not select his successor* or assign the case to another judge, but that he proceed(under) Rule 97."
>
> *Aaberg* at 527-528.

J.Bain was deemed partial and prejudiced when he "GRANTED" the disqualification motion on 2/23/2020 in both cases.(*Braswell* **R.3,821**; *Braswell* Disqualification Motion,**R.5258-5286**; Affidavit, **R.5,287-5319;** *Lee*-Op.Br.Pg.12,16-17,50;*Lee*-**Appendix-G6-G10**,¶6); C.J.C.2:11(A)and(A)(1), Cmts.2,4,5; C.R.C.P 97; Fourteenth Amendment§1.

C.J.D.95-01 does not overrule the requirements of the Fourteenth Amendment§1, that a disqualified, prejudiced judge *cannot* pick the judge he favors to decide your case. *Aaberg at* 527-28. *Braswell,* Op.Br.Pgs.17-19; **Appendices-B2-B9**; **G6-G10**,¶6; **I12-14**); *Marshall* at 242-243; *Beckord v. District Court,* 698 P.2d 1323,1329 n.7(Colo.1985)["...**A disqualified judge was without authority... to reassign the claims**...,(which) does not comport with the disqualification *procedures*...in C.R.C.P.97"]; *Will* at 212.

"It would be incongruous to permit a(*any*) disqualified judge to pick his...successor to decide the case." *Beren* at 491; *Will* at 212.(*Braswell-Op.Br.*Pgs.18-20; **Appendices-A9-10**¶s24-28; **F4-5**,¶s10,¶18; **I21**).

Colorado's Constitution, Article VI,§5,¶4, provides, "Each chief judge shall... exercise administrative powers over judges...*as may be delegated*."

However, J.Bain did not exercise administrative control granted by the constitution within the limitations of Supreme Court Rules, such as C.R.C.P. 97 or the Fourteenth Amendment§1. Chief J.Bain had the responsibility to ensure that the constitution, statutes, and rules are followed.(**Appendices-A9-10**,¶s24-27; **F5,**¶s12-13; **G6-10,**¶6); *State v. Schaeperkoetter*, 22 S.W.3d 740, 742,743-744(Mo.Ct.App.2000)["The administrative control granted by the constitution 'must be exercised within the limitations of applicable Supreme Court Rules...The (disqualified)...court is prohibited from taking any action other than to request the...Supreme Court to transfer a judge."]

See also *Joshi v. Ries*, 330 S.W.3d 512,517(Mo.Ct.App.2011).["Judge was *not* serving a ministerial(or administrative) function... when *his only option* was to sustain the application for the change of judge...."]. *See also Ries* at 517,n.13,"The application of [C.R.C.P.97; C.R.S.§13-1-122;C.R.S.§16-6-201(1)(d); 28 U.S.C.§455 and 28 U.S.C.§636(b)(1)(C)] is based *not* upon the judge's title (e.g., Trial or Chief Judge), but rather upon the nature of the authority he exercises (as a disqualified judge) over a litigant's case."

A party cannot be treated *unequally* under the Fourteenth Amendment,§1, by directing under the delegation of C.J.D.95-01, that prejudiced, disqualified *Chief Judges may pick* their successors when other parties are protected from prejudiced, disqualified *judges* who *cannot* pick their successors. C.R.C.P.97. Colorado Constitution, Article II,§6, "*Equality* of Justice; *In re Estate of Stevenson*, 832 P.2d 718,723 (Colo.1992)("...right to equal protection...assures that persons similarly situated *will* receive like treatment.").(**Marshall** at 242-243;*Lee*-Op.Br.Pg.46).

To avoid causing a party to question the impartiality of the successor selection, a disqualified Chief Judge "shall notify forthwith the court administrator who shall obtain from the Chief Justice the assignment of a replacement judge." C.R.C.P.97; *Weiss* at 178.(**Appendices-B2-B9; G9-G11,¶6; I13,I15,I18,I19,21;** *Lee*-Op.Br.Pgs.32-33,49-51).

Nonetheless, six COA judges have decided that, throughout Colorado's 22 judicial districts and in its COA, any prejudiced, disqualified Chief Judge with a conflict of interest remains with jurisdiction to pick the judge that he or she desires to decide your case. All parties to litigation are now subject to having their case presided over and decided by a judge who is personally picked by another judge who is prejudiced and has a prohibited conflict of interest.**[Appendices-A9-10,¶24-27; B2-B6; F4-5,¶s10-13,21: G5-11,¶s6-7; I2-I4,I18-I20**; *Braswell*-PFC,Pgs.6-18 and(¶i);22,23; *Lee*-Op.Br.,Pgs.17, 19,26-29**]**.

"(An)...impartial...judiciary...will apply the law....".*Preamble, Judicial Code of Conduct.*(*Lee*-

Op.Br.Pg.21)."...(T)he federal 'judicial power' is vested in independent judges." *Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC*, 138 S.Ct.1365,1381(2018), citing Article III.

Though J.Roman created new law, changed C.R.C.P.97 and C.J.D.95-01, and resolved a legal issue of continuing public interest under the Fourteenth Amendment§1, the COA inappropriately rendered the decisions in *Braswell* and *Lee* as "unpublished."(**Appendices-F4-5**,¶s10-13; **G6-G10**; **I-15-16).**[C.A.R.35(e)]. However, the *Braswell* and *Lee* cases can always be considered for persuasive value. *Mohammadi v. Kinslow*, 2022 CA 103,4 (Colo. App. 2022)("...Court...could consider...unpublished *Roske* decision for its "*persuasive value*." *Patterson v. James*, 454 P.3d 345, ¶40,(Colo.App.2018).**(Appendix-F5**,¶12).

Thus, the COA removed the ethical restraints and inhibitions from the conflicted judiciary to pick whatever favored judge they want to decide your case by the permission authorized by these cases.

Further, the circumstances surrounding the non-transparency of the selection of the favored judge facilitates misconduct.(**Appendices-A9-A10**,¶s24-28; **B2-B9**¶4; **F5**,¶s12-13; **G6-G10¶6; I3-11, I12-I14; I18-I20**); *Braswell*-PFC,Pgs.10-12).

The decisions in *Braswell* and *Lee* have exoneration value for any prejudiced chief judge in America, while acting with a clear conflict of interest, through special interest groups, lobbyists, self-interest or otherwise, who picks his favored judge to influence the outcome of your case. (**Appendices-A9-A10**¶s24-28; **B3-B6**; **D1**; **F4-5**,¶s10-13,21; **G6-G10**,¶6; **I1-I14; J1;** *Braswell*-Op.Br.Pgs.22-28).

Colorado's Supreme Court ratified this appearance of partiality of its judiciary and escalated injustice. Colorado's unprecedented policies regarding its application of C.J.D.95-01 represent a retreat from the promise of judicial independence. *Marshall* at 242-243.

The COA J.Román also inconsistently claimed that "*the record* does not indicate that the case was not randomly reassigned," by J.Bain's *clerk*. However, the COA creating a new rule of procedure that the disqualified judge's clerk may reassign the cases, is also violative of C.R.C.P.97 and the Fourteenth Amendment,§1. The Fourteenth Amendment,§1, does *not* allow a *disqualified, prejudiced* chief judge(R.5,257-5286;R.5,287-5,319) to issue orders directing his subordinate *Clerk of Court* to reassign her supervisor's cases after disqualification(R.3,821,R.5,850,R.3,851). *People v. Torkelson*, 22P.3d 560,562(Colo.App.2001); *People v. Roehrs*, 440 P.3d 1231,1234,¶8(Colo. App.2019)]. [*Braswell*-Op.Br.15,17-20; *Braswell*-PFC,Pgs.7-18; *Lee*.Op.Br.Pgs.10,12-13,16-24; Fourteenth Amendment§1. *Marshall* at 242-243.(Due Process right to disinterested tribunal).**Appendices-F4-F5**,¶s10-13; **A9-A10**,¶s24-28**; F4-F5**,¶s10-13; **B2-B10; I13,I18,I19;** *Lee*-Op.Br.Pgs.16-17].

Question 2. Should a constitutionally minimum due process standard be established for the initial parenting hearing to protect fundamental liberty interests to raise children?

This court has established that parents shall be free from governmental interference when raising their

children but has not established a constitutional process due to carry out the obligations of parenthood that this court has deemed so fundamental. *Troxel v. Granville*, 530 U.S. 57-58,66,68,72(2000). The recognition of fundamental rights to family relationships confers no benefit to a parent and child for many years when they are unjustly deprived of those rights at the initial hearing.[See J.Patrick/Cord's 6/17/2016 order: COURT: "Well, like I said, this Order(issued with actual bias) is appealable. You guys can appeal it all day long if you want."].T.Ruling,6/17/2016,Pg.19,L6-7).

The 9/15/2016 Order, made permanent on 10/26/2020, restricts travel, overnights, holidays, special days, religion, contact, and decision-making thereby seriously harming M.M.'s psychological, social, and cognitive development and relationship with her fit father.[*Bowen v. Gilliard*, 483 U.S. 587, 613,615,n.9(1987);*Lee*-Op.Br.Pg.26, C.R.S.§19-1-102(1.6); **Appendices-L3-5;M2-3**].

The Fourteenth Amendment§1 guarantees parents and children the right to be free from illegal discrimination based on extrajudicial information. ***Williams*** *at* 1905("Due process *guarantees* an absence of actual bias on the part of a judge.").

"Parents have a...duty to govern their children's growth." *Brown v. Entertainment Merchants Assn.*, 564 U.S. 786,821(2011).

Petitioner, found to be a fit father and "great dad" by *every* judge since 2016, has, so far, not been allowed one overnight stay with M.M. or even afforded a parenting hearing before a qualified judge.(*Lee*-Op.Br.26-36;**Appendices-G6-10,**¶6; **I12-14,I18-20;** *Braswell*-PFC,Pg.18). *Couple v. Girl*, 570

U.S. 637, 673(2013).("....*[A]... parent's...right* to the...custody and management of his...children...is an interest far more precious than any property right).See *Santosky* v. *Kramer*,455 U.S. 745, 758-759(1982)["(T)he biological connection...*offers the... father an opportunity* that no other male possesses *to develop a relationship with his offspring.*"]; *Troxel at* 72.("A fit custodial *parent has a fundamental right* concerning ...custody...").

C.R.S.§14-10-124(1.5)(a), mandating the *court to determine* what parenting is best for your children, violates the Fourteenth Amendment§1. (*Lee*-Op.Br.28-32,36-49,**Appendix-I14-I18**). This Court in *Reno* held:

> ...The child (cannot) be removed from... custody of its parents **so long as they were providing for the child *adequately.*** *Quilloin v. Walcott*, 434 U.S. 246,255(1978). Similarly, "**the best interests of the child" is not the legal standard that governs parents'...exercise of their custody: So long as...requirements of childcare are met, the interests of the child may be subordinated to the interests of...parents....**

Reno v. Flores, 507 U.S. 292,304(1993).

Similarly, Petitioner has neither seen B.B. nor has had an overnight with her *in over seven years, even though* the COA on 3/28/2019(**2018CA0176,** ¶17) eventually reversed J.Bain's unconstitutional

parenting order that deprived B.B.'s fit father of overnights with B.B. for years and directed the trial court that B.B. shall immediately have overnights pursuant to her "existing parenting time order, which will remain in place pending entry of a new order on remand." J.Bain and J.Miller refused to comply with the COA directive.**[***William Muhr, Petitioner-Father v. Dawna Braswell*, 2018CA0176, 2/28/2019,**¶17; *Braswell*,PFC**,Pgs.11-12;; R.4,189-4,191; *Braswell*-**T.3/5/2020,**Pgs.16,L.2-12;17, L2-3;*Braswell*-Op.Br.Pg.11;*Braswell*-1/19/2021 Motion to Disqualify,R.5772-5810,¶s48-52,60,73-81;*Braswell*-Supporting Affidavit,R.5811-5846; *Lee*-Op.Br.Pgs.12,16,50;*Lee*-Disqualification Motion(**R.3391-3418**);*Lee*-Supporting Affidavit **(R.3433-3465)]**.

This Court in *Stanley* held:

> "*A parent's right* to the management of his children..."undeniably warrants *deference and... protection*.... *What is the state interest in separating children from fathers without a hearing designed to determine whether the father is unfit* in a particular disputed case?....(T)he State registers no gain towards its declared goals *when it separates children from the custody of fit parents*...."
>
> *Stanley v. Illinois*, 405 U.S. 645, 651-53 (1972).(*Lee*-Op.Br.Pg.46).

This Court in *Troxel* held:

> ...The child is not the...creature of the State.(Parents) have the right...to...prepare (their children) for additional *obligations (that)...the state can neither supply nor hinder*...."
>
> The relationship between parent and child is constitutionally protected....
>
> *(T)he burden of litigating a domestic relations proceeding...(is) so disruptive of the parent-child relationship that the constitutional right of a custodial parent...becomes implicated*."

Troxel at 58,65-66, 68-69,72,75(2000).[*Braswell*-PFC,Pgs.21-22; *Lee*-Op.Br.Pgs.45-46; **Appendices-I14,I15,I18-19,I21**; **G1-G3,G5-G11**; *Pierce v. Society of Sisters*, 268 U.S. 510,535(1925).

To minimize governmental interference with fundamental rights, Kentucky established a constitutional standard for the initial child-custody decision: If both fit parents agreed on a temporary order, the court shall presume that it is the child's best arrangement. If they did not agree, the court shall presume that fit parents shall equally share temporary custody. These presumptions may be rebutted. If so, the trial court must enter facts and findings. If the trial court determines that a deviation from equal parenting is necessary, it must construct a parenting schedule *maximizing* the time each parent has with their child.[**K.R.S.403.270(2)**].

In *Carr*, the court decided:

> "(D)ivorce, is attended by conflict in virtually every case. To require goodwill between...parties prior to...joint custody (or decision making) would have the effect of...writing (joint custody) out of the law....
> ....(P)arental cooperation is *not* a condition precedent for...joint custody...."

Carr v. Carr, 2019-CA-1780-MR at *32-33(Ky.Ct.App.2022).

Kansas and South Carolina mandate equally shared parenting with parents who are willing and fit. The presumption can only be overcome by clear and convincing evidence.

South Dakota mandates "equal time-sharing" between fit parents. The only evidence that overcomes this presumption *shall be* that the visitation would *"endanger seriously"* the child's physical, mental, moral, or emotional health.

The requirement for equal time, *rather than* "should be approximately equal," protects fundamental rights and minimizes governmental interference, required by the Fourteenth Amendment§1.

Other fundamental rights of children and parents must be decided, with constitutional protections, at the initial parenting hearing *so that these established rights are not lost for years, with devastating consequences to children and families, while litigation is pending.*(**Appendix-L3-5, M2-3**). ***Reno*** at 302 ("Fourteenth Amendment "forbids the government to infringe...'fundamental' liberty

interests *at all...*"). "The identification *and protection* of fundamental rights is an enduring part of...judicial duty to interpret the Constitution." *Obergefell v. Hodges*, 576 U.S. 644,663 (2015). "Family relationships...and childrearing...are protected by the Constitution." *Obergefell at* 666.

A. Travel.

This court has *not* established a parent's fundamental right to travel with his child, which has burdened the constitutional rights of interstate travel for parents and their children.(U.S. Constitution, Article IV,§2; *Zobel v.Williams*, 457 U.S. 55,61,67(1982)("The right to travel...has long been accepted." *Zobel* at 61,n.6); *Martinez v. Bynum*, 461 U.S. 321,347,n.14(1983); *In re Marriage of Ciesluk*, 113 P.3d 135,146(Colo. 2005).

The permanent parenting Order to be present and on-time four days a week on an every-other-day schedule, has prevented Petitioner and M.M. to travel for more than a few hours, anywhere, such as to visit Petitioner's other children or family. **Appendices-G6-10,**¶s5,6; **L3-5**;**M2,**¶2; **I9,I14-I18**; *Lee*-Op.Br.Pgs.10-11,22,32-33,52-53.

Petitioner has been *legally unable to visit his own family* or travel with M.M. within an approximate 30-mile distance from the exchange location.(*Lee*-Op.Br.11,32-34, **Appendix-L3-4**). The permanent order even prevents Petitioner to travel to his *own* residence with M.M..(**Appendices-L3-4,**¶sB,C;**L4,**¶1, **M2,**¶2):

J.Miller: "The parenting order does not "require you to go ... home... exercise it...near the exchange location..." *Lee*-T.3/5/2020,Pg.32,L.17-22; Compare J.Bain's 11/18/2019 order, "Dad needs to have... parenting... at his residence." C.R.S.§14-10-123.4(1)(c). (*Lee*-Op.Br.Pgs.11,30,32-33,52-53; T.11/18/2019,Ruling,Pg.11,L.24-25,Pg.12,L.1-5; **Appendices-L4**¶1, **M2**,¶2,I9).

"The State...has a duty...to protect the interests of...children...."*Palmore v. Sidoti*, 466 U.S. 429, 432-33,n.1(1984); *Attorney General of N.Y. v. Soto-Lopez*, 476 U.S. 898, 901-03(1986); *Maher v. Roe*, 432 U.S. 464,487(1977) ["...(T)he compelling-state-interest test is applicable...to *restraints that make exercise of (fundamental) rights more difficult.*"](**Appendices-L4**¶1, **M2**¶2).

B. Religion.

What your child is taught to pray and how to pray, remains with your child into adulthood. This court stated in *Troxel* at 93,n.2.["**I note that respondent is...not asserting, *on behalf of her children, their* First Amendment *rights of association or free exercise*. I therefore do *not* have occasion to consider whether...the parent could assert (these) enumerated rights.**"].

"(G)overnments should not substantially burden religious exercise...(in parenting orders)...." Religious Freedom Restoration Act(RFRA) of 1993; **42 U.S.C.§2000bb(3)** and Executive Documents,§1.

This Court in *Burwell* held:

> "Congress enacted RFRA...to provide...broad protection for religious liberty... Governments shall *not* substantially burden a person's exercise of religion...unless the Government demonstrates that...the burden...(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."

Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 693-95(2014); **42 U.S.C.§2000bb(3).**

Christmas Day is disproportionately limited to three hours with M.M.'s dad.(*Lee*-Op.Br.Pg.50; *Lee*-**R.3418;R.3601; Appendices-G3,**¶3; **I18; M-3,**¶4).

Petitioner is not entitled to be present with M.M. on *all other* Christian holidays.(**Appendices-L4**¶C,¶4; **I17-I18**).

The permanent parenting orders prevent M.M. from attending Sunday services and practicing her Christian religion with her father and impose a substantial burden on their religious exercise in violation of RFRA,**42 U.S.C.§2000bb(3).** (**Appendices-L4-L5,**¶1;**M2-M3,**¶s2,4,7; *Lee*-Op.Br.Pgs.27,32,50-53).

The restrictive parenting orders infringe fundamental rights in the Establishment and Free Exercise Clauses of the First Amendment.*Kennedy v.*

Bremerton School Dist., No. 21-418, at *1,*70(U.S. June 27, 2022).(The Constitution establishes a "prohibition on...state intervention in religious affairs.").

The orders impair M.M.'s development in Christianity and promote atheism. Petitioner's fundamental right to exercise his religion with M.M. must be *proportionally afforded* at the initial parenting hearing. *Espinoza v. Montana Dept. of Revenue*, 140 S.Ct.2246,2261(2020).("We have... recognized...rights of parents to direct...religious upbringing of their children.").

C. Decision Making; Parental Cooperation

Decision making must be afforded equally to *fit parents* at the initial hearing.

J.Bain ruled: **"(S)*ince I find that the parties cannot (now) work together***(because of J.Bain's no-contact order), **I... order *mom***(not Dad) **to be the sole decision-maker**...."(*Lee*-Op.Br.Pgs.11-12; **Appendices-I14,I16,I17**; **M3**,¶7).

Petitioner-Father has demonstrated a seven-year history, four times per week, of being a fit father to M.M. "(*P*)*arental cooperation is not a condition precedent for...* ***custody*** (or decision making)" which violates the Fourteenth Amendment§1. *Carr* at 32.(**Appendix-L3-5**; **M2-3**). See also *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 73(1983)(Parents have fundamental rights to counsel child on important decisions."). *Troxel* at 57,(Fit father has "due process right to make decisions concerning the...custody and control" of his child.) (*Lee*-Op.Br.11-12,13,28,30,39,40,41,44,

45,48,51-52,53;**Appendices-I9;I13-14;I17,I18; I19; L3-5; M3,**¶7).

J.Bain perpetuated the discrimination from the 9/15/2016 parenting order issued with actual bias and without jurisdiction: "**Mom has been...the...decision-maker *as the primary parent for the last three-and-a-half years...*"**(*Lee*.T.,Ruling,11/18/2019,Pgs.11-12).

The 10/26/2020 permanent decision-making order resulted in expanding discrimination. **(Appendices-G2-G4; M3,**¶7**).** ***Williams*** at 1905.("Due process *guarantees* an absence of actual bias...").*Lee*-Op.Br.,Pg.34; *Braswell*-PFC,Pgs.17-18; *Quilloin* at 255; *Reno* at 304.

D. M.M. Cannot Speak with her Parents.

In Troxel this court ruled that because mother was "**not asserting, *on behalf of her children, their* First Amendment rights of association...," this court did not "have occasion to consider" the issue** regarding a child's free-speech rights to associate with her parents and whether permanent restrictions to **"one-call-a-day"** with M.M.'s parents during her formative years into adulthood is an unconstitutional abridgment of freedom of speech. *Troxel* at 93,n.2;" *Reno at 301-302,305.* Neither parent requested this harmful restriction on M.M. or on her parents.**(Appendix-M2-3**¶3**;** *Lee*.Op.Br.Pgs.10-13;53; Fourteenth Amendment§1,First Amendment, Freedom of Speech).

E. NO Contact between Parents.

The 10/26/2020 order that M.M.'s parents, over their objection, can *never* communicate again, violates M.M.'s, her Father's, and her Mother's First Amendment Free-Speech rights as well as their Fourteenth Amendment liberty interests of family association and the pursuit of happiness. This infringement is not narrowly tailored to serve a compelling state interest. *Parham v. J.R.*, 442 U.S. 584,602 (1979); *Quilloin* at 255.(**Appendix-M3**¶7; *Lee*-Op.Br.Pgs.11,**27**,43,51-53).

"While the U.S. Supreme Court has *not* articulated a clear standard of review in the context of parental rights cases, when fundamental rights such as these are implicated, strict scrutiny is the generally employed standard."*M.S.S. v. J.E.B.*, 638 S.W.3d 354,373(Ky. 2022).

"The opinions of the plurality, Justice Kennedy, and Justice Souter recognize such a right, but curiously *none of them articulates the appropriate standard of review*. I would apply strict scrutiny to infringements of fundamental rights." M.S.S. at 374,n.71, citing *Reno* at 292, 301-302,305 (reaffirming that due process "forbids the government to infringe *'certain'* fundamental liberty interests...unless the infringement is narrowly tailored to serve a compelling state interest"); and *Troxel* at 69, which currently *confuses* the standard of review: ("Judges must give some, *undefined* 'special weight' to the views of fit parents before overriding their judgment").*M.S.S.* at 374,n.71.

"Both parties testified that *a "no-contact order*...would be "harmful" to M.M.."**[Appendices-I17**; **F12,**¶s34-35; *Lee*-Op.Br.Pg.11,27,43,51-53; 11-18-2019.T.(Ruling).Pg.6,L.14-15].

Ms. Lee's lawyer then made a *self-serving* argument for a permanent no-contact order: "**This case screams for a no-contact order, "*aside from the fact that my client (Lee) would like there not to be one*."**(*See unopposed* "Request to Approve...Settlement..."¶s3-4, and its Exhibit C, R.3053-3071;R3079).

J.Bain then directed NO-contact.(2ndSRec.T., Complete,11/18/2019,Pg.167,L.21-23; *Lee*-Op.Br.Pgs.16,51;*Lee*-R.3433-3465).

The successor adopted J.Bain's NO-contact order(that J.Bain had set aside). See *Reno* at 305.(*Lee*-Op.Br.11-12,26-29,51-52; **Appendices-G2;I7; L3-L5, M3,**¶7).

The interests of M.M.'s parents in *maintaining a relationships with M.M.,* "...warrants deference and...protection." *Lassiter* v. *Department of Social Servs. of Durham Cty.*, 452 U.S. 18, 27(1981); *M.L.B. v. S.L.J*, 519 U.S. 102,131(1996); *Quilloin* at 255.("The *relationship* between parent and child is constitutionally protected.").(*Lee*-Op.Br.39,41-42,45-47,52-53).

This Court is *Bowen* decided:

> "(C)hildren have a fundamental interest in sustaining a relationship with their mother...***(and) father***...
> **[P]aternal deprivation...is a highly significant factor in the development of serious psychological and social problems....Father absence (is) associated with a wide range of**

disruptions in social and cognitive development in children."

Bowen at 613,615,*n*.9.

Appendix-F12,¶34, First and Fourteenth Amendments; *Carr* at 32-33,42-45).

F. Right to Specific Conditions.

"Due process requires that laws (not parenting orders) give people...notice of what is prohibited." *Brown* at 807. This court has not decided that conditions *in parenting orders* must be specific, fair, and equally applicable to both parents to satisfy due process and equal protection requirements; to protect fundamental rights of children and parents; and to minimize governmental interference with those rights.(Fourteenth Amendment§1).

Parenting orders may result in criminal contempt.*Marshall* at 243,n.2. "(Thus),...people (must)...receive...notice of what is prohibited." *Beckles v. United States*, 137 S.Ct.886, 898-899(2017); *Roell v. Withrow*, 538 U.S. 580,593(2003).

Three vague, unequal, and unconstitutional conditions apply to M.M.'s father to qualify for an overnight. If **everything does not "go well;"** if there are "**issues;**" or if *father* (not Mother) does not "**exercise all that parenting time**," then M.M. cannot have an overnight with her dad.

The conditions do not:

a. Identify Petitioner-Father's actions required to obtain overnights or that cause Petitioner to lose parental rights;

b. Prevent the court from imposing conclusions of non-compliance not stated in the permanent order;
c. Prevent the court from injecting his subjective interpretations and adding new conditions that fit into the vague conditions.(*Bowen* at 613,615; *Troxel* at 72).

Ms. Lee, *inter alia*, has been found in contempt of court on 5/12/2021 for failing to show up many times for child exchanges with no adverse consequences on *her* parenting times. When Ms.Lee creates "issues," ensures that things do not "go well," and does not show up to drop off M.M., her misconduct allows her *more* parenting time.

Ms. Lee has control over the compliance or non-compliance of the conditions which are, therefore, not achievable by M.M.'s father except at the whim of M.M.'s mother. Ms. Lee may fabricate any circumstance to ensure that things do not "go well" or to create any "issue." (**Appendices-M2**,¶2; **G5-6**¶5; **I8-I10;I18-I19**; *Lee*-Op.Br.Pgs.11,28-29,42, Fourteenth Amendment§1; *Beckles* at 998-999).

G. Child-Exchange Location Cannot Harm Child**.**

The child-exchange order disproportionally impairs M.M.'s relationship with her dad and harms M.M.. Such restriction is *not* narrowly tailored to achieve a legitimate governmental objective. *M.S.S.* at 373,374,n.71; *Reno* at 292.

J.Bain found there was no physical harm... M.M.'s Father is a "great dad."(T.11-18-2019,

Ruling,Pg.6,L.24-25.Pg.7,L.1-2.Pg.8,L.19-20;Pg.11.L.15-21;*Lee*-Op.Br.26-28).

Ms.Lee undisputedly testified, "I have stopped coming to visitations;" she has not attended visits with M.M's dad for years. (T.11/18/2019,Hearing,Pgs.58,L23;63,L23-24; **Appendix-F12,**¶34).

J.Bain ruled: "**The parties shall meet (permanently) at the Police Operations Center(POC)...(T)he child is to be swapped...inside the lobby...**For the last four years, M.M. has been exchanged four times a week in the presence of police cars, armed police, and persons under arrest. (**Appendices-F12,**¶34; **I7,I9;** *Lee*-Op.Br.Pgs.11,32-34; T.11/18/2019,Ruling, Pg.9,L.11-14;*Lee*-T.3/5/2020,Pgs.32-35). No parent requested J.Bain to order M.M.'s exchanges at a POC.

Moving the exchange location from the previous mid-point-distance location at Starbucks to the POC by Ms. Lee's home, without considering Petitioner-Father's congested traffic route, prevents Father from traveling to his home with M.M.. J.Miller responded:"**(The parenting order) does not require you to go...home....**"C.R.S.§14-10-123.4(1)(c). *Lee*-T.3/5/2020,Pg.32,L.17-22;*Lee*-Op.Br.,Pgs.11,30,33, 52-53; **Appendix-I9**).

H. "Best Interests" Standard Conflicts with Fundamental Rights

The "Best Interests" standard conflicts with this court's cases affording fundamental rights *to parents for their children*—and *not* to the courts.

See *Mahanoy Area Sch. Dist. v. B. L.*, 141 S.Ct. 2038,2053(2021): "This primary role *of the parents* in the upbringing of *their children* is...an enduring American tradition."

Due Process protects *against government interference* to raise your child. *Troxel* at 58. Yet, the "Best Interests" standard shifts the decision from parents to the state to determine what is the best parenting.[Compare SA at *Lee*-Op.Br.Pgs.36-48 and Appendix-**I14-I18** with **Appendices-L4**(¶1), **M2-3**(¶s1-7) and **I8**].

C.R.S.§14-10-124(1.5)(a) requires the court to determine parenting times "*that the court finds* are in the child's best interests," which violates the Fourteenth Amendment§1.(*Lee*-Op.Br.28-32,36-49,**Appendices-L4**¶4, **M2-M3**,¶s1-7).

This Court must abandon the best interest standard and replace it with the standard that this court articulated in *Reno*: Parents cannot lose their fundamental rights to equal parenting and joint decision making "**so long as they were providing for the child *adequately*.**" *Quilloin* at 255; *Reno* at 304.

I. Income Determination; Support

Due Process property and fundamental family-relationship protections afford a right to an income determination by a qualified judge, establishing a child support obligation, that cannot be based on money that a parent is *not entitled* to actually receive, what a parent does not legally possess or control, and what is otherwise not legally available to a parent to pay the child support ordered. For example, J.Miller ruled: "The Court is

not going to give Father credit for(court-ordered) child support(*undisputed* monthly support payments from 1/2016 to present)....The...(other) children (and former spouse) could get jobs...."(*Braswell*-Op.Br.Issue 1,Pgs.32,23-38;R.5891;*Braswell*-PFC,Pgs.11,23-25; **Appendix-I20**).

The COA's decisions, which did not address J.Miller's unprecedented income-determination analysis in *Braswell*, and applied to *Lee* by *res judicata*, are destructive to families and conflict with federal law. **42U.S.C.§659(h)(Income); 42U.S.C.§654(9)(C)(Jurisdiction),** and the **Fourteenth Amendment§1**. *Braswell*-Op.Br.10-11,15,**22-38**,44; *Braswell*-PFC,Pgs.11,16-17,23-26; *Braswell*-Record, R.4345-4363;5889-5892; R5598-5599;R.5569- 5570;R.5560-5561; **Appendices-A7-8,**¶s17-19; **F13-F14,**¶s39-41**; G3-G4,**¶2; **I2,I20**).

The court's failure to comply with due process requirements, resulted in over $200,000.00 in support arrearages for *Braswell* and *Lee* and exposed M.M.'s dad to sanctions, **which "undermine other constitutional liberties.**" *Timbs v. Indiana*, 139 S.Ct. 682,689(2019)(Excessive fines); **42 U.S.C. §666(8)(b)(16)(17);** *Turner v. Rogers*, 564 U.S. 431,435(2011)("Incarceration for contempt"); **42 U.S.C.§654(31)**(Passport revoked).(J.Miller's analysis facilitates retaliation and judicial bullying against political enemies as demonstrated herein; enables Colorado to benefit by matching federal funding for its child-support-enforcement actions; and exposes M.M.'s father to loss of driver's license, incarceration and termination of parental rights).

"The...purpose...(of child support) is "...to *protect* the child *and...her...interests.*" *State v. Miller*, 283 Wis. 2d 465,478,n.5.(Wis.Ct.App.2005).

When trial courts, acting with actual bias and without jurisdiction, issue unaffordable support orders that deprive a father of his liberty and property in violation of 42 U.S.C.§654(9)(C) (Jurisdiction); 42 U.S.C.§659(h)(Income); and the Fourteenth Amendment§1(*Troxel* at 58), the purpose of child support is defeated; the family relationship upon which the child forever depends is destroyed; and the child is irreversibly harmed. 42U.S.C.§654(9)(C)(**Only support orders issued by a court of competent jurisdiction are enforceable**).*Williams* at 1905("Due process *guarantees* an absence of actual bias on the part of a judge.").*Hartwell* at 722. (**Appendices-G2-4,G-10; I3-7,I-11-I14,I18-19;I20;** *Lee*-Op.Br.31-36).

States cannot assume the availability of income which may not be available to pay support or over-evaluate income. *Schweiker v. Gray Panthers*, 453 U.S. 34,53,n.2.,n.4(1981). *Braswell*-Op.Br. Pgs.10-11;15,**22-38**,44;*Braswell*-PFC,Pgs.6,11,16-17-18,23-25l; *Lee-Op.Br.*Pgs.14-15; **Appendices-G3-G4¶2; I2**, Sub-issue 5;**I20**, Sub-Issues 4,5; C.R.S.§14-10-115(3)(a)(I), and (6)(A)(I); 42 U.S.C.§659(h) (Income); Fourteenth Amendment§1.

Support orders by J.Patrick/Cord and J.Miller, issued with actual bias and without jurisdiction, must be set aside. *Braswell*-PFC,Pgs.24-25);42U.S.C.§654(9)(C); Fourteenth Amendment§1.See *Lee*-Op.Br.31-36,"reliance on extrajudicial information and actual bias... mandated immediate disqualification;..."; "judge cannot...decide matters when disqualification is required;..."; "Judicial remarks...*require recusal* when they reveal an opinion that derives from an extrajudicial source;..."; "Judge must completely

dissociate himself from participating in the case...." ***Williams*** at 1905.("Due process guarantees an absence of actual bias..."). (**Appendices-G3-4**,¶2; **I2,I20; L4**;*Lee*-Op.Br.31-36).

The record on appeal was *not* provided to Petitioner in 2021CA504(child support) and 2021CA793 (*Lee*-arrearages since 6/17/2016 of $78,380.00).(**Appendix-G4-G5,**¶3). Thus, the appeal in *Lee,* 2020CA2066, could only proceed on parenting, but Petitioner, nonetheless, challenged J.Patrick's 9/15/2016 support Order and J.Miller's subsequent support orders issued without jurisdiction and as Petitioner's former counsel. *Marshall* at 242-243; *Weiss* at 178; *McCall v.District Court*, 783 P.2d 1223,1227-28(Colo.1989); *People v. Jennings*, 498 P.3d 1164,1170-71(Colo.App.2021). [*Lee*-OpBr.Pgs.1, Caption Title,Pgs.10,13,Issue 1, Pgs.14-22(Jurisdiction),26-36;**Appendices-B10; F4,**¶s9-11,**F14-F15,**¶s41-45; **G3-G5**,¶s2-3,**G10-G11**; **I2,I8;I18-I20**;*Braswell*-PFC.Pg.18,23].

Due Process property and fundamental family-relationship protections also require that a parent who incurs fees defending false allegations necessary to protect a child's relationship with her parent, and thereby suffers an impairment of his ability to pay child support, must result in waiving statutory sanctions, including interest, for non-payment of support.(Fourteenth Amendment§1).(**Appendices-L3-4**¶B; **I13-14;I18-I19**; *Lee*-Op.Br.Pgs.18,26-30,36). *Carr* at 32(A contrary decision "would invite contemptuous conduct."); *Timbs* at 689; *In re Johnson*, 380 P.3d 150,156(Colo.2016).

The above rulings must be reversed and constitutional protections must be afforded.

Question 3. Whether Colorado violated the parties' 14th Amendment rights by refusing to enforce their custody agreement?

After an initial hearing on 6/17/2016, both parents were deemed fit.(**Appendices-G2-G3, L3-4**¶B--9/15/2016 order); *Reno* at 304.

On 9/24/2018, M.M.'s parents requested J.Bain to dismiss this litigation to, *inter alia*, "unite our family; allow M.M. to spend more time with her parents; share holidays; and raise M.M. together." *Troxel* at 58,66,68;94(State "interfered with a parent's right to raise his child free from unwarranted interference.").(See 9/24/2018 Unopposed "Request to Approve Signed Settlement Re Parenting..."¶s3-4 thereof, R.3065-69, Typed version of signed SA, Exhibit B; *Lee*-Op.Br.36-40,43-49; **Appendices-F10,**¶28; **I2,I14-I18);**Fourteenth Amendment§1.

The parties informed J.Bain that they had been following their agreement, which was "working well."(¶s1-5 of 9/24/2018 *unopposed* "Request to Approve Signed Settlement";**R.3053-4;R.3044-3055;***Lee*-Op.Br.Pgs.37,39-44; **Appendix-I2,I14-I18**).

The *Lee*-COA, ruled:

"...(A)greements by(fit) parents to allocate parental responsibilities (equally with joint decision making) are not binding on the court, *See* **C.R.S.§14-10-112(2)...**"*In re Marriage of Chalat*, 112 P.3d 47,52(Colo. 2005); *See also* §14-2-310(3)...."

(**Appendix-F10**,¶28; Fourteenth Amendment§1; *Troxel* at 58,66,68;94; *Reno* at 304).

C.R.S.§14-10-112(1) applies to marriages; the parties were not married: *"To promote the amicable settlement of disputes* ***between parties to a marriage****...,* the ***parties may enter into a written separation agreement*** *containing provisions for...*parenting."

However, by **C.R.S.§14-10-112(2)**, their agreement is *not* binding on any court: "...for *dissolution or legal separation,* the *terms* of the separation agreement, ***except terms... for...parental responsibilities...and parenting time of children***, are binding upon the court...."

Thus, Colorado judges, *not* parents, make the decision *for* fit parents regarding the wellbeing of their own children.[Compare SA at *Lee-*Op.Br.Pgs.36-48 and **Appendices-I14-I18 with L4**(¶1), **M2-3**(¶s1-7) and **I7-I8**]. Consequently, all fit parents must undergo expensive, unnecessary hearings before a judge who is required to tell you how to parent your child. If either parent is dissatisfied with the judge's order, then the parent may continue with a decade of litigation over the judge's decisions.

C.R.S.§14-10-112(2) violates the Fourteenth Amendment§1. *Fit Parents* have the constitutional right to inform the court regarding what *they have agreed to* for the benefit, joy, and security of their own child. *The judge's decision for them, to the contrary, is not binding on the child's parents.* Their agreement *is* binding on the court.[*Troxel* at 58,66,68,94; *Santosky at* 774, Father's relationship with his children is fundamental and protected by the Fourteenth Amendment; *Lehr v. Robertson*, 463 U.S. 248,258(1983), "(T)he relationship of love and duty in a...family... is...liberty entitled to

constitutional protection." See *Bowen at* 613, "child...has a fundamental interest in...parental care and...to be *free* of governmental action that would jeopardize it."]

The *Lee*-COA is now unconstitutionally treating *unmarried* parents in the same unconstitutional framework as *married* parents. All married parents *must* submit themselves to a court to get divorced. However, **C.R.S.§14-10-112(2)** does *not* apply to *unmarried* people who, with or without children, have *no legal obligation whatsoever to submit themselves to the courts or to have orders entered* that interfere with their lives or the lives of their children.(*Troxel* at 58). If there is *no* dispute; and *unmarried* parents do *not* desire court intervention to interfere with their freedoms, then *unmarried* parents have no obligation to avail themselves before Colorado Courts.(*Troxel* at 58,66,68,94).

M.M.'s fit, *unmarried* parents have a right under the Fourteenth Amendment§1 *to enter into a binding custody agreement* for M.M. that benefits M.M. and ends their litigation, just like other fit, *unmarried* parents have *no* obligation to become involved in the court system when there is *no* parenting dispute between them.

J.Bain did not find the parties' agreement to be seriously harmful to M.M. nor could he.(*Lee*-Op.Br.Pgs.36-40). J.Bain, along with having a typed version of it, simply ruled that he did not understand it, which propelled M.M.'s *unmarried* parents into seven years of litigation.(*Lee*-Op.Br.Pgs.36-48;**I14-I18**).

The *Lee*-COA also cited **C.R.S.§14-2-310(3)**, which provides "... a <u>*premarital agreement*</u> *or*

marital agreement which defines rights...regarding custodial responsibility is *not* binding...".

M.M.'s parents did not enter a pre-marital/marital agreement.(*Lee*-Op.Br.11-13,28,36-41,44,4851-53; **Appendices-F10,**¶28; **I14-18**).

The *Lee*-COA, also cited at **Appendix-F10,**¶28, *Chalat*: ("Negotiated terms concerning child custody...are *not* binding."). However, unlike *Chalet*, the instant case involved *unmarried fit* parents who reached an *unopposed custody agreement to benefit M.M.,* consistent with public policy articulated in *Chalet*, that the "needs of children are of paramount importance."*Chalat* at 52-53.

Since this court erroneously decided *Ford* in 1962, this court has not ruled whether fit parents have a Fourteenth Amendment right to end child-custody litigation pursuant to *their* agreement for equal parenting and joint decision making or what is otherwise their arrangement chosen for *their* child. (*Lee*-Op.Br.Pgs.37-40). *Ford v. Ford*, 371 U.S. 187,194(**1962**)(It is the role of the courts in "determining the best interest of these children and entering a decree accordingly.")(**Appendices-L3-L4,** Fit Parents; **I2,I14-I18**).

Once the fit, unmarried parties reached a custody agreement to benefit M.M., there was no longer a dispute over custody. "The court may resolve *the dispute* between joint custodians." *Abbott v. Abbott*, 560 U.S.1,15(2010).(*Lee*-Op.Br.36-39;43-49; **Appendix-I2, I14-18**).

Since *Ford* in 1962, this court recognized various fundamental rights regarding parents, children, and family relationships.[See *Parham* at

610, "Pitting parents and child as adversaries often will be at odds with the presumption that parents act in the best interests of their child;" *Firefighters v. Cleveland*, 478 U.S. 501,523(1986), "*obligations may be created by agreement of the parties* rather than imposed by the court;" *Troxel* at 57,58,66;94,**97-98,** "natural bonds of affection lead parents to act in the best interests of their children;" *Parham* at 602-603, "Simply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to...the state;" *Mahanoy Area Sch. Dist.* at 2053, "This primary role of parents in the upbringing of their children is now established beyond debate as an enduring American tradition."**[**E.g.,**C.R.S.§14-10-112(2); §14-2-310(3) §14-10-124(1.5)(1)and(a);** See *In re J.W.*, 645 S.W.3d 726,754,n.4(Tex. 2022)("Successful outcomes for children are more likely to follow from preserving their parents' marriages (or relationships);" and *Lee*-Op.Br.Pgs.36-39**].**

Colorado cannot interfere with *unmarried* parents who chose *not* to enter litigation over custody.(*Troxel* at 58).

Yet, when the unmarried parties requested J.Bain to dismiss their parenting case in 2018, he forced continued litigation for five more years and later imposed undue restrictions on M.M.'s parents. *Lee*-Op.Br.Pgs.37-44).

Unmarried fit parents who chose *not* to enter litigation over their custody decision are, unconstitutionally, treated differently by the state than unmarried parents who desire to end litigation and agree themselves how to care for their children.(*Lee*-Op.Br.Pgs.36-49; *Lee*-PFC,Pgs.21-26,

Appendix-I2,I14,I17-I18; Fourteenth Amendment§1, Due Process, Equal Protection).

"There is...no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children."*Troxel* at 58.

> The...Due Process Clause... provides...*protection against government interference* with...parents' fundamental right to make decisions concerning the care...of their children....
> The problem...is...this case involves nothing more than a...disagreement between the court and Granville concerning her children's best interests...
> (T)he visitation order was an unconstitutional infringement on Granville's right to make decisions regarding the rearing of her children... .... (T)he parties should not be forced into additional litigation that would further burden Granville's parental rights....

Troxel at 58,66,68(2000).

This court should enforce the parents' 9/24/2018 agreement per **Appendix-I17-I18**. *Firefighters* at 523, "*Obligations may be created by agreement of the parties* rather than imposed by the court." M.M.'s fit, unmarried parents, "who demonstrated their ability to care for their...daughter..." must be able to end parenting

litigation and not be treated differently than unmarried parents who decided *not* to bring a custody action to the courts and who, instead, decided to make their own decisions regarding parenting.**(Appendices-L3-4,¶B; I2,I14-I19; B2-B9;** Fourteenth Amendment§1).

<u>Question 4</u>. Whether remedies shall be afforded to vindicate harm suffered from the violation of unalienable and fundamental rights to parenting and to deter future violations?

"...All men are created equal...with... unalienable rights...--Life, liberty, and...happiness. (W)henever any...Government becomes destructive of these ends; it is the Right of the People to alter it..."(Declaration of Independence).

There are entrenched harms done by violations of unalienable and fundamental rights affecting families and children. B.B., through years of litigation, lost crucial development with her dad, which is "a highly significant factor in the development of serious...problems....(including) disruptions in social and cognitive development." *Bowen at* 614-615,n.9

Similarly, M.M's suffering, caused by the state's discriminatory conduct, transcends to M.M.'s children and their children and so on for generations of entrenched harms within American Families. *Ginsberg v. New York*, 390 U.S. 629,639 (1968)["parents'...authority...to (raise) their children is basic in the structure of our society."].

Though an aggrieved parent may ultimately obtain justice through many legal obstacles, the innocent child will always suffer irreversible

emotional harm and cannot obtain equal justice. *Bowen* at 613 ["child has a...right to be free of governmental action that would jeopardize(her) fundamental interest in parental care"].

This court must provide to aggrieved parents more than what was taken away by constitutional violations in order to make known, at the beginning of custody litigation, that such unconstitutional conduct will confer greater benefits to the parent harmed than to the parent unjustly served.(**Appendices-B3-5;B-9-10; G-3-G4; I6-7;***Lee*-Op.Br.Pg.36). *Freeman v. Pitts*, 503 U.S. 467,489 (1992)(U.S. Supreme Court's "powers may be exercised...on the basis of a constitutional violation....").

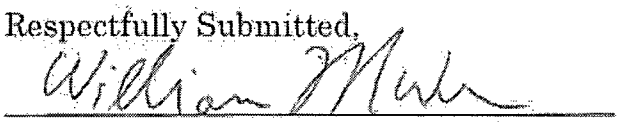
This Court has not yet fashioned a needed remedy to *deter* violations of unalienable and fundamental rights affecting American families. *Troxel* at 89,n.8(2000)("...children are...possessed of constitutionally *protected* rights and liberties."). *In re Gault*, 387 U.S. 1,13(1967)("... Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."). *Carlson, v. Green*, 446 U.S. 14,42 (1980)("The broad power of federal courts to grant equitable relief for constitutional violations has long been established."). *Matter of C.V.*, 579 N.W.2d 17,23 (S.D.1998)("....A parent deprived of...due process rights regarding a child will *always* have a remedy."). *Michael H. v. Gerald D*, 491 U.S. 110,123 n.2(1989)["We do not understand what JUSTICE BRENNAN has in mind by an interest 'that society traditionally has thought important . . . *without protecting it*'....(The purpose of the due process clause) is *to prevent* future generations from lightly casting aside important traditional values...."].

This Honorable Court's interest in protecting the well-being of children is compelling. The consequences of violating unalienable and fundamental rights of children and families are devastating to our society. A decade-long legal process, necessary to correct constitutional infringements, only deepens the harm to innocent children.

CONCLUSION

The Petition for Certiorari should be granted.

Respectfully Submitted,



/s/ William Muhr, Petitioner-Father
(*Pro Se*, yet will certainly obtain counsel)

Date: June 9, 2023