ORIGINAL

22-5129

No.

IN THE

Supreme Court of the United States

V.V.,
Petitioner,

v.

E.V.,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Connecticut

PETITION FOR A WRIT OF CERTIORARI

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Petitioner Pro Se

July 15, 2022

QUESTIONS PRESENTED

A Connecticut State law, in relevant part, provides:

> "Any family or household member ... who is the victim of domestic violence ... by another family or household member may make an application to the Superior Court for relief ... The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit. In making such orders ex parte, the court, in its discretion, may consider relevant court records if the records are available to the public from a clerk of the Superior Court ... Such orders may include temporary child custody or visitation rights, and such relief may include, but is not limited to, an order enjoining the respondent from (1) imposing any restraint upon the person or liberty of the applicant; (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking the applicant; or (3) entering the family dwelling or the dwelling of the applicant ... If the applicant is under eighteen years of age, a parent, guardian or responsible adult who brings the application as next friend of the applicant may not speak on the applicant's behalf at such hearing unless there is good cause shown as to why the applicant is unable to speak on his or her own behalf, except that nothing in this subsection shall preclude such parent, guardian or responsible adult from testifying as a witness at such hearing ... No order of the court shall exceed one year, except that an order may be extended by the court..." Conn. General Statute § 46b-15.

Thus, if a divorced parent alleges statutory aggrievement on behalf of the child against the other parent, in the absence of evidence, Connecticut law provides the first parent who claims to speak through the child to represent and plead on behalf of the Child against the other parent, regardless of what the parents' divorce decree says, based on a standardless exercise of a judge's discretion. All states have enacted similar restraining-order statutes. The questions presented are as follows:

(1) Does the respondent have standing to assert claims as next friend of the child against the petitioner under Article III of the United States Constitution?

(2) Does the federal law preempt a State's restraining-order statutes under the Supremacy Clause?

(3) Does a State violate the Fourteenth Amendment's guarantee of due-process and equal-protection by applying the restraining-order statutes to order no-contact, except for commitment to a "facility for the diagnosis, observation or treatment of persons with psychiatric disabilities," of the petitioner and her child?

(4) Does a state violate the Full Faith and Credit Clause to deny the enforcement of the parties' out-of-state divorce decree by applying the restraining-order statutes?

(5) Does a state impair the petitioner's contractual rights under the Contracts Clause, without due process, by applying the restraining-order statutes to deny the enforcement of the custody and visitation terms of the settlement agreement incorporated, but not merged into, the divorce decree that spells out the best interests of the child?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Vanessa Wang. Respondent is Edward Vytlacil. The minor child V.V. is an eight-year-old female issued from the prior marriage between Petitioner and Respondent that was dissolved on September 10, 2015 pursuant to New York Domestic Relations Law § 170(7).

No party is a corporation.

RELATED PROCEEDINGS

Connecticut Superior Court, Judicial District of New Haven:

Vanessa Vytlacil v. Edward Vytlacil,
Docket Number NNH-FA19-4073157-S
(Judgment entered Feb. 4, 2022)

V.V. v. Vanessa Vytlacil,
Docket Number NNH-FA22-5052692-S (Feb. 4, 2022)

V.V. v. Vanessa Vytlacil,
Docket Number NNH-FA20-5049453-S (Dec. 23, 2020)

Edward Vytlacil v. Vanessa Vytlacil,
Docket Number NNH-FA20-5049148-S (Nov. 16, 2020)

Connecticut Appellate Court:

V.V. v. E.V.,
Docket Number A.C. 45190
(Judgment entered March 16, 2022)

V.V. v. V.V.,
Docket Number A.C. 44752
(Direct Appeal filed June 1, 2021)

V.V. v. V.V.,
Docket Number A.C. 45304
(Direct Appeal filed Feb. 14, 2022)

Connecticut Supreme Court:

V.V. v. E.V.,
Docket Number S.C. 210373
(Judgment entered May 10, 2022)

United States District Court, District of Connecticut:

Edward Vytacil on behalf of Child V.V. v. Vanessa Vytlacil,
Case Number 3:22-cv-00311
(Notice of Removal filed Feb. 28, 2022)

United States Court of Appeals (2d Cir.):

Edward Vytacil on behalf of Child V.V. v. Vanessa Vytlacil,
Docket Number 22-1472
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LEGISLATIVE MATERIALS

PETITION FOR A WRIT OF CERTIORARI

Vanessa Wang respectfully petitions for a writ of certiorari to review the judgment of the Connecticut Supreme Court.

OPINIONS BELOW

The final judgment of the Connecticut Supreme Court is unpublished. Petition Appendix at 8a. (hereinafter "Pet. App.") The *en banc* decision and relevant orders of the Connecticut Superior Court (Pet. App. 3a-7a, 185a-190a) are unpublished.

JURISDICTION

The final judgment of the Connecticut Supreme Court was entered on May 10, 2022. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent constitutional provisions and statutes involved are reproduced in the Appendix, *Id.*, at 272a-287a. The challenged statutes, Conn. General Statutes § 46b-15, (the full text is set out in the Appendix, *Id.*, 273a-278a, pursuant to Rule 14.1(f) of this Court), in relevant part, provide:

> a) Any family or household member, as defined in section 46b-38a, who is the victim of domestic violence, as defined in section 46b-1, by another family or household member may make an application to the Superior Court for relief under this section. ...
> b) ... The application shall be accompanied by an affidavit made under oath which includes a brief statement of the conditions from which relief is sought. Upon receipt of the application the court shall order that a hearing on the application be held not later than fourteen days from the date of the order ... The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit. In making such orders ex parte, the court, in its discretion, may consider relevant court records if the records are available to the public from a clerk of the Superior Court or on the Judicial Branch's Internet web site. ... Such orders may include temporary child custody or visitation rights, and such relief may include, but is not limited to, an order enjoining the

respondent from (1) imposing any restraint upon the person or liberty of the applicant; (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking the applicant; or (3) entering the family dwelling or the dwelling of the applicant. ... If an applicant alleges an immediate and present physical danger to the applicant, the court may issue an ex parte order granting such relief as it deems appropriate. ... If the applicant is under eighteen years of age, a parent, guardian or responsible adult who brings the application as next friend of the applicant may not speak on the applicant's behalf at such hearing unless there is good cause shown as to why the applicant is unable to speak on his or her own behalf, except that nothing in this subsection shall preclude such parent, guardian or responsible adult from testifying as a witness at such hearing. ...

g) No order of the court shall exceed one year, except that an order may be extended by the court upon motion of the applicant for such additional time as the court deems necessary. ...

STATEMENT OF THE CASE

I. Statutory Background

In light of the prevalence of contracts, divorce, and restraining orders, whether the Constitution permits the States to apply restraining-orders statutes to order no-contact, except for commitment to a "facility for the diagnosis, observation or treatment of persons with psychiatric disabilities" of a child and his or her parent; deny enforcement of out-of-state divorce decree; and impair contractual obligations between the divorced parents has profound legal, moral, and practical implications.

Contract law has deep roots in the past, and much of its present structure is shaped by historical precedents.[1] Contrary to laws that impose duties on us, the obligations imposed by the law of contract are chosen obligations; they are the products of agreements, promises, and other voluntary undertakings.[2] Contracts

[1] Ian Ayres & Gregory Klass, *Studies in Contract Law (University Casebook Series)*, Foundation Press, 9th ed. (2017), at preface.

[2] Ian Ayres & Gregory Klass, *supra*, at 1.

formulate a wide range of economic relationships in our society. The principle underlying economic activities is that people are rational in their undertakings.[3] "The bounty of a contract is essential to the obligation,"[4] in the words of Justice Gorsuch citing Justice Washington in *Dartmouth College v. Woodward,* 17 U.S. 518 (1819).

The legitimacy of divorce law rests essentially on individuals' fundamental liberty and freedom ingrained in our Nation predated the Revolutionary War.[5] At the turn of nineteenth century, a husband's dominion over wife took the basic shape of family law where a wife was in the position of inability to completely divorce from her husband, which triggered the pioneering States, including early Maryland and the New England, to adopt divorce legislation that adjudicated private affairs through the State's General Assembly to overcome a husband's control over a wife in the private realm.[6] Though, for women with children, a partial divorce with the "bed and board arrangements"[7] was usually the only practical option, and gradually became the "custody norm" along with the acceptance of the legality of settlement agreements to reduce the need for legislative intervention in the process of divorce.[8] Around the Civil War, our conceptual view of marriage started to shift from a permanent to a transient state.[9] The majority of modern divorce laws construe a divorce as an

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[3] N. Gregory Mankiw, *Principles of Microeconomics*, South-Western Cengage Learning, 8th ed. (2016), at 6.

[4] Tr. of Oral Arg. *Sveen v. Melin,* No. 16-1432 (U.S. March 19, 2018).

[5] Sheldon S. Cohen, *"To Parts of the World Unknown": The Circumstances of Divorce in Connecticut,* 1750–1797. Canadian Review of American Studies, vol. 11 no. 3, p. 275-293 (1980).

[6] Richard H. Chused, *Private Acts in Public Places: A Social History of Divorce in the Formative Era of American Family Law,* University of Pennsylvania Press (1994), at 18-32.

[7] *Id., at* 21.

[8] *Id., at* 68.

[9] Andrew J. Cherlin, *Marriage, Divorce, Remarriage,* Harvard University Press (1981); Victoria Mather, *Evolution and Revolution in Family Law*, 25 St. Mary's L.J. 405 (1993).

exercise of individual choice rather than a punishment device adopted during the emergence of divorce between the eighteenth century and the Revolutionary era.[10] All States have incorporated some form of no-fault grounds into the divorce laws[11] and regulate divorce with the reserved police power by providing default rules and options to guide individual decision-making with the intent to safeguard fundamental interests of its people. For instance, the State courts tend to apply "equitable distribution rule" in property division[12] and "tender years doctrine" in deciding custody of young children; virtually all States have the same standard of "the best interest of the child" in initial custody determination.[13]

The national divorce rate had been steadily increasing since the Civil War, accompanied by a persistently growing domestic migration rate that peaked around 1970.[14] Approximately half of all marriages entered into during the past half-century ended in divorce;[15] the prevalence of divorce decree rests upon its enforceability. The inconsistency of family law rules across the States raised concerns under federal supremacy. Between the 1970s and 1990s, the widespread adoption of uniform acts among States[16] and mandates of federal legislation attempted to standardize family

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[10] Richard H. Chused, *supra*, at 66-67.
[11] Victoria Mather, *supra*, at 409-410.
[12] Homer H. Clark, Jr., *The Law of Domestic Relations in the United States*, West Publishing Company, 2nd ed. (1988); American Bar Association, Section of Family Law, *Economics of Divorce: A Collection of Papers*, American Bar Association (1978), at 21.
[13] Victoria Mather, *supra*, at 413-415.
[14] U.S. Department of Commerce, U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement 1948-2021, *Table A-1. Annual Geographic Mobility Rates, By Type of Movement: 1948-2021*, available at https://www.census.gov/data/tables/time-series/demo/geographic-mobility/historic.html
[15] U.S. Department of Health and Human Services, the Centers for Disease Control and Prevention, the National Vital Statistics System, National Marriage and Divorce Rate Trends (2020).
[16] Victoria Mather, *supra*, at 412.

law statutes and stabilize an opportunist's approach of "migratory divorce" that had contributed to "a national epidemic of parental kidnapping." [17] In a series of Congressional legislation, for instance, the Family Support Act of 1988,[18] the Child Support Enforcement Amendments of 1984,[19] the Parental Kidnapping Prevention Act of 1980 (the "PKPA"),[20] and Title IV-D of the Social Security Act in 1974,[21] the federal law mainly address post-divorce disputes concerning the enforcement of child custody and support orders under the Full Faith and Credit Clause. The federal statutes only attempt to improve interstate enforcement efforts and do not directly affect original child support awards or child custody determinations. In accord with the federal mandates, all fifty States have enacted the Uniform Interstate Family Support Act of 2008; [22] adopted in some form of the Uniform Child Custody Jurisdiction Act of 1968 (UCCJA);[23] and, except for Massachusetts, enacted the Uniform Child Custody Jurisdiction and Enforcement Act of 1997 (replacement of UCCJA reconciling the PKPA).[24]

Under Connecticut law, the State legislature's definite and clear intent to afford out-of-state divorce decrees, defined as "Foreign Matrimonial Judgment"

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[17] "At the time the PKPA was enacted, sponsors of the Act estimated that between 25,000 and 100,000 children were kidnaped by parents who had been unable to obtain custody in a legal forum. *See* Parental Kidnapping Prevention Act of 1979: Joint Hearing on S. 105 before the Subcommittee on Criminal Justice of the Judiciary Committee and the Subcommittee on Child and Human Development of the Committee on Labor and Human Resources, 96th Cong., 2d Sess., 10 (1980) (hereinafter PKPA Joint Hearing) (statement of Sen. Malcolm Wallop)." *Thompson v. Thompson*, 484 U.S. 174, 181 (1988).

[18] Pub. L. No. 100-485, 100 Stat. 2343 (1988) (codified in part at 42 U.S.C. §§ 666-667 (1988)).

[19] Pub. L. No. 98-378, 98 Stat. 1305 (1984) (codified in part at 42 U.S.C. §§ 666-667 (1988)).

[20] Parental Kidnapping Prevention Act of 1980, 28 U.S.C. § 1738A.

[21] Pub. L. No. 93-647, § 101, 88 Stat. 2351 (1975) (codified at 42 U.S.C. §§ 657-665 (1988)).

[22] Uniform Interstate Family Support Act (amended 2008), 9 U.L.A. 255.

[23] Uniform Child Custody Jurisdiction Act (1968), 9(1A) U.L.A. 271.

[24] Uniform Child-Custody Jurisdiction and Enforcement Act (1997), 9(1A) U.L.A. 657.

pursuant to General Statutes § 46b-70, more protection than the Full Faith and Credit Clause minimum, by enacting General Statutes §§ 46b-70 to 46b-75. Pet. App. 283a-284a. The State's legislative comment to § 46b-71(b) further provides: "[w]hen modifying foreign matrimonial judgment, Connecticut Superior Court's failure to apply substantive law of the foreign jurisdiction constitutes plain error." The Connecticut appellate courts repeatedly applied the Plain Error Doctrine in well-settled authorities at common law holding that "[Conn. General Statutes §] 46b-71 provides that the Superior Court where the foreign dissolution judgment is registered has jurisdiction to modify the judgment, provided that it applies the substantive law of the foreign jurisdiction." *Gershon v. Back*, 201 Conn. App. 225, 246, 242 A.3d 481 (2020). "Clearly, when modifying a foreign matrimonial judgment, the courts of this state must apply the substantive law of the foreign jurisdiction, and failure to do so constitutes plain error." *Vitale v. Krieger*, 47 Conn. App. 146, 149, 702 A.2d 148 (1997).

Meanwhile, in virtue of the common recognition that marriage is not a permanent institution and, under our Constitutional guarantee that no party in a marriage is the property of the other, the legal system began more actively dealing with the subject of domestic violence after much psychological and sociological research conducted since the 1960s that deepened our understanding of the problems in the private domain. Statutes were enacted, giving the victims of domestic violence greater and more efficient protection to address their needs. In contrast to divorce or contract law, domestic-abuse prevention proceedings did not exist at common law but

are wholly statutory.[25] The purpose of restraining orders is similar to a preliminary injunction to enjoin a person from taking a particular action in relation to another person. The statutory relief afforded by a restraining order is temporary, with a limited duration. All fifty States have statutes authorizing a court to issue a restraining order against the alleged perpetrator of domestic violence, upon application by the intimate partner or former partner of the alleged perpetrator.[26] Although the law varies among jurisdictions, this type of restraining order typically orders the respondent to refrain from further contact with the applicant, usually establishes custody and visitation for minor children, if necessary, and may order child or spousal support.[27] Restraining orders have become prevalent in recent years mostly because restraining-order adjudication is of relatively low cost and easy access to the judicial system in the form of providing injunctive interventions in domestic relations,[28] comparing to, for instance, the costs of divorce litigations.[29]

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[25] 25 Am. Jur. 2d Domestic Abuse and Violence § 1 (2022).

[26] Ala. Code § 30-5-1 et seq.; Alaska Statute § 18.66.100 et seq.; Ariz. Rev. Stat. § 13-3602; Ark. Code § 9-15-101 et seq.; Ann. Cal. Fam. Code § 6320 et seq; Colo. Rev. Stat. § 13-14-100 et seq.; Conn. Gen. Stat. § 46b-15 et seq.; Del. Code Tit. 10 § 1041 et seq.; Fla. Stat. § 741.30; Georgia Code § 19-13-1 et seq.; HI Rev. Stat. §586-4; Idaho Code § 39-6301 et seq.; 750 IL Com. Stat. 60/200 et seq.; Indiana code § 34-26-1-1 et seq.; Iowa Code § 236.1 et seq.; Kan. Stat. §§ 60-903 and 60-3107; Kentucky Rev. Stat. § 403.730 et seq.; LA Rev. Stat. § 2135; Maine Rev. Stat. 19-A § 4001; Maryland Code, Fam. Law § 4-504 et seq.; Mass. General Laws Ann. c. 209a § 1 et seq.; Michigan Compiled Laws Ann. § 600.2950; Minn. Stat. § 518B.01; Miss. Code § 93-21-15; Missouri Rev. Stat. § 455.010 et seq.; Mont. Code Ann. § 40-15-201 et seq.; Neb. Rev. Stat. § 42-924; Nev. Rev. Stat. § 33 et seq.; N.H. Rev. Stat. § 173-B:1 et seq.; N.J. Stat. § 2C:25-28; N.M. Stat. § 40-13-1 et seq.; N.Y. Fam. Ct. Act § 842; N.C. Gen. Stat. § 50B-1 et seq.; N.D. Cent. Code § 14-07.1-01 et seq.; Ohio Rev. Code § 3113.31; Okla. Stat. Tit. 22 § 60.2; Oregon Rev. Stat. § 107.700 et seq.; 23 PA Consolidated Stat. § 6101 et seq.; R.I. Gen. Laws § 15-15-1 et seq.; S.C. Code § 20-4-10 et seq.; S.D. Codified Laws § 25-10-1 et seq.; Tenn. Code § 36-3-601 et seq.; Tex. Fam. Code § 81.001 et seq; Utah Code § 78B-7-202; VT. Stat. Tit. 15 § 1101 et seq.; VA. Code § 16.1-253 et seq.; Wash. Rev. Code § 26.44.010 et seq.; W. Va. Code § 48-27-101; Wis. Stat. § 813.122; Wyo. Stat. § 35-21-101 et seq.

[27] Joseph M. Bessette, *American Justice*, Salem Press (1996), at 677.

[28] *Supra*, n. 25.

[29] "In Connecticut, attorneys who practice in the divorce area typically charge from $150 per hour to as high as $750 per hour." Renée C. Bauer, *Divorce in Connecticut: the Legal Process, Your Rights,*

Connecticut Restraining-Order Statutes under § 46b-15 was enacted by the State's General Assembly in 1981[30] and amended frequently, [31] almost every year between 1995 and 2017. A clerk of the Connecticut Superior Court assigns a distinct docket number to each restraining-order application. Restraining-order dockets are not available to the public on the Connecticut Judicial Branch's Internet website, but only from a clerk of the Superior Court for a limited duration varying between seven to ten years. General Statutes § 46b-15e (b) designate the responsibilities of the Chief Court Administrator to annually collect data on the number of restraining orders issued. In Connecticut, over the past two decades, an average of 4,687 restraining orders were issued annually *ex parte,* and 3,000 after hearing, under § 46b-15.[32] Connecticut Restraining-Order Statutes—if applied according to their terms, though vague and uncertain—give a judge over broad authority, based on a standardless

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and What to Expect, Addicus Books (2014), at 48. "A typical divorce process involves, but not limited to, "[Step 11] If there are minor children, parties attend parent education class, develop a parenting plan .... [Step 12] Both parties prepare financial statements, ... for the family during the marriage. [Step 13] The court schedules a case management conference.... [Step 14] Motions are filed if the parties cannot agree on support, custody, and other temporary arrangements pending a divorce. ... [Step 15] Both sides conduct discovery to obtain information.... [Step 16] Each party confers with his or her attorney to review facts.... [Step 17] Spouses, with attorneys, attempt to reach agreement through written proposals, mediation, settlement conferences, or other negotiation. [Step 18] If the parties cannot reach an agreement, the parties attend an early settlement and receive a recommendation as to a fair settlement in their case. ... [Step 19] The parties attend economic mediation to resolve any financial disputes for which there is no agreement. [Step 20] The parties reach an agreement on all issues .... OR The parties try their case before a trial court judge who makes a decision on all disputed issues in the case." *Supra*, at 3-4.

[30] 1981 Connecticut Public Act 272, Section 2.

[31] In 1986, the provision of § 46b-15(b) containing the discretionary language that give a superior court judge the authority to award statutory relief was amended by adding "such order may include temporary child custody or visitation rights;" and by replacing the term of "adult person" with "family or household member as defined in section 46b-38a." 1986 Connecticut Public Act 337.

[32] See the reports prepared by the Connecticut Judicial Branch pursuant to Conn. General Statutes § 46b-15e(b), containing restraining order and protection order information for the calendar years between 2003-2005 and 2017-2021, respectively, available at https://www.cga.ct.gov/2005/rpt/2005-R-0861.htm; https://jud.ct.gov/statistics/prot_restrain/default.htm.

exercise of its discretion, to order (1) no-contact between a child and his or her parent, except for commitment of the child and that parent to a "facility for the diagnosis, observation or treatment of persons with psychiatric disabilities" within the meaning of the Connecticut Patients' Bill of Rights, General Statutes § 17a-540 et seq. Pet. App. 281a-283a; (2) modification of the custody and visitation terms of the parents' out-of-state divorce decree; and (3) substantial impairment of the contractual obligations with respect to the care, custody and decision-making rights and responsibilities concerning the child that bind the parents under an independently survived settlement agreement.

This case presents an exceptional situation with three varying applications of restraining-order-statute interventions regulating a parent-child relationship in denying the enforcement of an out-of-state divorce decree and its independently survived settlement agreement between the parents. This case is also unusually important because it brings to light the fundamental questions of constitutional law under the Supremacy Clause, Full Faith and Credit Clause, Contracts Clause, Fourteenth Amendment, and standing requirement under Article III of the United States Constitution, on which there is an acknowledged conflict of authority that only this Court can resolve. This Court should grant certiorari.

II. Factual Background and Procedural History

Petitioner and Respondent were married in a civil ceremony on April 12, 2013 in New York and commenced an action of divorce on May 2, 2014. The child V.V. (hereinafter "Child") is an eight-year-old female born to Petitioner in December 2013.

The parties' marriage was dissolved pursuant to New York Domestic Relations Law § 170 (7) and the Judgment of Divorce was entered in the Supreme Court of the State of New York, County of New York, on September 10, 2015 (Cooper, J.) Pet. App. 203a-212a. In the best interests of the child, the parents settled and resolved the issues raised in the divorce action by the Stipulation of Settlement and Agreement dated June 18, 2015 (hereinafter "Settlement Agreement" or "Agreement"), *Id.*, at 213a-270a, incorporated in, *but not merged into*, the Judgment of Divorce.

Pursuant to the Judgment of Divorce and Article 2 of the Agreement, the parents share joint legal custody of, and joint decision-making rights and responsibilities concerning the Child and Petitioner is the primary custodian of the Child and facilitates Respondent's visitation schedule. *Id.*, at 207a; 216a-232a. If the parents are unable to agree on a decision regarding a material matter concerning the Child (including whether an issue is a material matter), the parents shall exhaust the first remedial attempt in good faith to resolve their differences and work together to reach a resolution with Parent Coordinator, before either parent has the right to invoke a Court of competent jurisdiction. *Id.*, at 217a. Article 18 of the Agreement provides its independently survived Binding Effect and waiver for modification. *Id.*, at 266a-267a.

Up until May 2019, the Judgment of Divorce had been followed faithfully, the Agreement had been executed accordingly, and the Child grew into a healthy, confident, and empathetic grade-schooler, and was able to adapt at ease between two separable households of the parents. On May 7, 2019, Respondent through counsel

filed a certified copy of the parties' Judgment of Divorce and Settlement Agreement in the Connecticut Superior Court. *Id.*, at 271a. Since then, Respondent through counsel has pleaded numerously, in separate Superior Court dockets, to modify the parties' Judgment of Divorce issued from the New York court in seeking sole custody of the Child; termination of his non-modifiable "Basic Child Support" obligation to Petitioner; and restraint against all contact between the Child and Petitioner, (See Brief for Petitioner 87-91; 272-279; 300-306, *V.V. v. V.V.*, Docket No. A.C. 45304 (Appellate Court of the State of Connecticut, June 2, 2022)(hereinafter "Pet'r Brief")) alleging whenever there was contact between Petitioner mother and the Child, either Petitioner or the Child is of "mental disability," in the absence of evidence. *See, supra,* at 500, 560, 586; Pet. App. 199a.

In seeking no-contact orders between the Child and Petitioner, Respondent petitioned three consecutive applications made of Connecticut Restraining-Order Statutes under General Statutes § 46b-15. Each of the three applications was commenced upon the "Application for Relief from Abuse" form[33] filed by Respondent along with his Affidavit (hereinafter the "first, second, or third Restraining-Order Application," respectively) and was granted *ex parte* upon default and for a hearing by the Connecticut Superior Court. *See, supra,* at 272, 299; Pet. App. 200a-202a.

Respondent's first Restraining-Order Application filed on October 30 was heard and dismissed on November 16, 2020 for "failure to meet his burden of proof." *See, supra,* at 280-283. But the subsequent two other applications were granted; and

[33] The "Application" form provided by the Connecticut Judicial Branch can be found on the Judicial Branch Website at https://www.jud.ct.gov/webforms/forms/fm137.pdf.

two consecutive restraining orders were issued, each with a duration of one year, on behalf of the Child against Petitioner on December 23, 2020 and February 4, 2022 when the child was at the age of seven and eight, respectively.

Respondent's second Restraining-Order Application was filed on behalf of the Child on December 11, 2020—seven days after Petitioner filed a grievance complaint on December 4th against Respondent to the Yale University under Title IX of the Education Amendments of 1972 and Title VI of the Civil Rights Act of 1964 for discrimination, harassment, and retaliation against Petitioner (a doctoral student enrolled in the same Department of Economics where Respondent was employed as a Professor) for asserting her rights (hereinafter "Title IX Complaint"). *See, supra,* at 284-298. On December 23, 2020, the Connecticut Superior Court heard Respondent's second Application, while the Child was neither represented by counsel nor present at the trial. Petitioner raised the issue, at court and upon Motion to Dismiss, that Respondent's Restraining-Order Application was not served upon Petitioner and the court lacked subject matter and personal jurisdiction in the action commenced upon Respondent's Application sought against Petitioner on behalf of her Child. *See, supra,* at 474-481. The Superior Court improperly removed Petitioner at trial and proceeded *ex parte* with Respondent's testimony alone in issuing a no-contact restraining order, invoking General Statutes § 46b-15. *See, supra,* at 482, 324-326.

On May 20, 2021, Petitioner requested the Superior Court to appoint independent counsel for the guardian ad litem of the Child. *See, supra,* at 331-333. On June 15, 2021, Respondent's Attorney, Attorney Gayle A. Sims, filed her

appearance as counsel for the Child and simultaneously represented Respondent in the same and substantially-related litigations in the Superior Court; and on August 24 in the Connecticut Appellate Court. *See, supra,* at 341; 349. On September 17, 2021, Petitioner moved the court for an Expedited Motion to Disqualify Respondent's Attorney from representing the Child. *See, supra,* at 351-366. The Connecticut Superior Court, *Hon. Jane K. Grossman,* denied Petitioner's motion for an appointment of independent counsel for the Child. *See, supra,* at 367-368. On November 24, 2021, Petitioner moved the court for a protective order against Respondent's Attorney from conducting discovery pending the Superior Court's determination of Petitioner's motion to disqualify Respondent's Attorney from representing the Child and the Statewide Grievance Committee's resolution of professional misconduct of Respondent's Attorney. *See, supra,* at 379-384. *Grossman, J.* denied Petitioner's request for a protective order in its summary judgment issued on December 9, 2021. Pet. App. 3a. On January 27, 2022, shortly after the prior restraining order issued by the Superior Court on December 23, 2020 expired while its appeal was pending, [34] Respondent, for the third time in a row, filed an "Application for Relief from Abuse" form on behalf of the Child against Petitioner. *Id.* at 195a-199a. Respondent's third Application was again granted upon default, a no-contact restraining order issued *ex parte* by the Superior Court, and a hearing scheduled on February 4, 2022. *Id.*, at 200a-202a.

[34] Docket No. A.C. 44752, *V.V. v. V.V.*, Appellate Court of the State of Connecticut, directly from the Superior Court's judgment issued on May 20, 2021.

On February 1, 2022, Petitioner entered her appearance as the next friend of the Child under General Statutes § 46b-15 in the Superior Court clerk's docket assigned for Respondent's third Restraining-Order Application. Petitioner simultaneously filed, including but not limited to, Motion for Protective Order against Respondent's Attorney from conducting discovery; three Applications for Issuance of Subpoena; and Request to Bring Items into the Courthouse. The Superior Court (Grossman, J.) instantly denied all said filings. *See supra*, at 100-112. Petitioner filed her Motion to Dismiss dated February 2, 2022 on the ground that the Superior Court lacked subject matter and personal jurisdiction. *See supra*, at 124-149. To date, said Motion to Dismiss is still pending.

At the February 4, 2022 hearing, the Connecticut Superior Court (Grossman, J.) referred to the question of custody and visitation in the parties' foreign matrimonial post-judgment matter, at the same time tried Respondent's third Restraining-Order Application brought on behalf of the Child *de novo*. The Superior Court improperly waived the Child's due process right to appoint independent counsel but solicited Respondent's Attorney to represent the Child at trial, over Petitioner's objection. Pet. App. 45a. Nor was Petitioner notified prior to the trial that the Child was to be represented by Respondent's Attorney. The counsel for the guardian ad litem for the Child, Attorney Corrine Boni-Vendola, attended the February 4, 2022 hearing only as a "credible" witness, but refused to appear as counsel for the Child in the Restraining-Order action. Pet. App. 12a, 45a. *Grossman, J.* concluded the hearing

by issuing a restraining order invoking General Statutes § 46b-15 with the statutory relief (*see ante*, at 9) upon the court's findings as follows (*en banc*):

> "this situation does meet the standards under [§] 46b-15, that based on the evidence before it, the court finds that the [child] would be at risk of psychological harm if the restraining order were not in place." *Id.*, at 185a.

On February 28, 2022, Petitioner removed the Superior Court action commenced upon Respondent's third Restraining-Order Application to the United States District Court, *inter alia*, challenging the constitutionality of Connecticut Restraining-Order Statutes. On March 16, 2022, the Connecticut Appellate Court denied Petitioner's direct appeal on the ground that there were no orders issued on February 4, 2022 and the December 9, 2021 order was not appealable. *Id.*, at 1a-2a. On May 20, 2022, the Connecticut Supreme Court denied its review of Petitioner's petition for certification to appeal from the Connecticut Appellate Court. *Id.*, at 8a.

REASONS FOR GRANTING THE PETITION

I. The Questions Presented are Exceptionally Important and Warrant Review in this Particular Case.

A. The issues raised in this case are recurring and ripe for judicial review.

Although the restraining order disputed in this case is of a duration of one year, the controversy presented meets the "capable of repetition, yet evading review" exception to the mootness doctrine under Article III of the United States Constitution. Because first, the substantial majority of the restraining orders issued under a State's statute are in their duration too short to be fully litigated prior to cessation or expiration; second, the claims presented in this case reveal that "there [is] a reasonable expectation that the same complaining party [will] be subject to the same

action again." *Spencer v. Kemna*, 523 U.S. 1, 17 (1998) (citation omitted). Said restraining order is the second no-contact order to enjoin contact between Petitioner and her Child issued under Connecticut Restraining-Order Statutes and upon the third recurrence of the same dispute between the same parties in this case where Respondent sought a no-contact order on behalf of the Child against Petitioner. *See ante*, at 12-15. This Court held that the "capable of repetition, yet evading review" exception applies when "the claimant had demonstrated that the recurrence of the dispute was more probable than not. Regardless, then, of whether respondent has established with mathematical precision the likelihood..." *Honig v. Doe*, 484 U.S. 305, 320 (1988). In applying this holding to the present case, this controversy is "capable of repetition, yet evading review," hence not moot for review.

Additionally, the issues raised in this present case are ripe for review because they satisfy the two-part "fitness" and "hardship" test established by this Court in *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967). First, this case meets the "hardship" requirement of the ripeness doctrine under Article III, because it presents a post-enforcement challenge to a State's statute which is served with codified retribution of "an immediate and substantial impact" for noncompliance. Connecticut Restraining-Order Statutes threaten noncompliant parties with criminal liabilities in violation of a restraining order. For example, Conn. General Statutes § 53a-223b classifies criminal violation of a civil restraining order issued pursuant to §46b-15 as class D or D felony; §§ 53a-41(3) and (4) and 53a-35a (7) and (8) provide the fine and imprisonment for the conviction of a felony, respectively, in relevant part:

> For a class C felony, an amount not to exceed ten thousand dollars, and a term not less than one year nor more than ten years; for a class D felony, an amount not to exceed five thousand dollars, and a term not more than five years.

Moreover, Conn. General Statutes § 53a-40d codify a separate punishable crime for a repeated violation of a civil restraining order issued under § 46b-15. Pet. App. 279a-280a. This Court further held that a pre-enforcement challenge to such regulation or state statute is ripe for review. *See Pacific Gas & Elec. v. Energy Resources Comm'n*, 461 U.S. 190 (1983). This Court opined in *Pacific Gas & Elec.* that courts ordinarily must entertain challenges to state legislation that threatens affected entities with serious penalties if they fail to comply with the legislation by modifying their behavior. Following this principle, this court shall find that this case satisfies "the hardship to the parties of withholding court consideration." *Id., at* 191-192.

B. Whether Restraining-Order Statutes are pre-empted under the Supremacy Clause is predominantly legal and ripe for review.

This case also presents the reserved issue in this Court's decision in *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423 (1974) whether a State's Restraining-Order Statutes are pre-empted by federal law under the Supremacy Clause. Rule 65(b) of the Federal Rules of Civil Procedure, in relevant part, provides:

> "[the temporary restraining] order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record."

Whereas Provision §§ 46b-15(g) and 46b-15(b) of Connecticut's Restraining-Order Statutes, in relevant part, provide: "[n]o order of the court shall exceed one year" and "such orders may include temporary child custody or visitation rights." *Ante*, at 2.

This Court affirmed that "under federal law, [temporary restraining orders] should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer." *Granny Goose Foods, Inc.*, 415 U.S., at 439. "Once a case has been removed to federal court, federal law, including the Federal Rules of Civil Procedure, controls the future course of proceedings, notwithstanding state court orders issued prior to removal." *Id., at* 424. This Court further explained that the purpose of Congress in establishing the rule of decision for resolving the discrepancy in the durations of temporary restraining orders between the federal and state laws as follows: "an ex parte temporary restraining order issued by a State court prior to removal remains in force after removal no longer than it would have remained in effect under state law, but in no event does the order remain in force longer than the time limitations imposed by Rule 65(b), measured from the date of removal." *Id., at* 439-440. Petitioner removed the Restraining Order action to the federal court after the restraining order was issued by the State court. Following this Court's decision in *Granny Goose Foods, Inc.*, the federal law governs the future course of proceedings regarding a State court's restraining order upon and after removal and the State court's restraining order shall expire by the time limitations imposed by Rule 65(b).

The basic principle enshrined in the Clause—federal supremacy—is well-settled. *See, e.g., California v. Federal Energy Regulatory Commission*, 495 U.S. 490 (1990); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218. 236 (1947). Preemption cases are primarily exercises in *statutory* interpretation, rather than *constitutional*

analysis. When evaluating whether federal law pre-empts state law, this Court announced in *Rice* its principle by "start[ing] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Id., at* 230. Within the cognizance of the Supremacy Clause, the federal law governing interstate child-custody and child-support decree enforcement can be found in an array of legislation enacted by Congress between the 1980s and 1990s. (*See ante*, at 5.) Congress manifests its express intent to afford child-custody decrees the "Full Faith and Credit Given to Child Custody Determinations." 28 U.S.C. § 1738A under the PKPA. The Supremacy Clause required state officials to comply with Congress' directive under the PKPA when enforcing or modifying out-of-state child custody decrees. The PKPA afford the Full Faith and Credit to out-of-state decrees for the "clear and manifest" purpose of preventing the situations where a divorced parent "who does not have custody to snatch the child from the parent who does and take the child to another State to relitigate the custody issue in a new forum" for the purpose of obtaining a favorable court ruling. *Thompson v. Thompson*, 484 U.S. 174, 182 (1988).

The scope of provisions, §§ 46b-15(b) and 46b-15(g), of Connecticut Restraining-Order Statutes is inconsistent with Rule 65(b) and the above-mentioned federal law. Although a State action in the nature of regulating "domestic relations" is not subject to the restrictions placed on historic police powers of the States, Connecticut by applying Restraining-Order Statutes to deny enforcement or modify the child-custody provisions of an out-of-state divorce decree, based on a judge's

standardless exercise of its discretion, is not functioning as police; its scheme is tantamount to "regulation" and further threatens the "regulated" parent and child with criminal penalties for noncompliance. The provisions of Connecticut Restraining-Order Statutes do not accord with the child's best interest at all, instead authorize a judge "unbounded" discretion to award "temporary child custody or visitation right" of whatever duration of "temporary" to "a parent, guardian, or responsible adult" who bring an application, regardless of what a child custody order provides. The instrument of the Statutes serves the practical effect of *sub silentio* encouraging a parent who does not have custody to snatch the child from the parent who does; take the child to another State; race to the courthouse to seek a restraining order alleging some form of harm on behalf of the child against the other parent; and relitigate the custody issue in a new forum from the conditions imposed by a State's restraining order, in violation of the PKPA and the Full Faith and Credit Clause.

The Connecticut Superior Court's applications of restraining-order-statute interventions regulating a parent-child relationship overthrow the purpose of the statutes and contravene the state's interests and public policy. The State legislature's intent to afford out-of-state divorce decrees more protection than the Full Faith and Credit Clause minimum is definite and clear as manifested in General Statutes §§ 46b-70 to 46b-75. *See ante*, at 5-6. Accordingly, Provision §§ 46b-15(b) and 46b-15(g) of Connecticut Restraining-Order Statutes "on those subjects must therefore give way by virtue of the Supremacy Clause." *Rice*, 331 U.S., at 236. Petitioner challenged the constitutionality of a State statute, while the Connecticut Supreme Court denied its

review. Although, as this Court has noted, waiting until state courts have had a chance to interpret a challenged law may sharpen the issues for review, because "the question of pre-emption is predominantly legal,"... "the resolution of the pre-emption issue need not await that development." *Pacific Gas & Elec.,* 461 U.S., at 201. Indeed, the restraining-orders statute is ripe for adjudication, because it further satisfies the "fitness" prong of the ripeness doctrine under Article III of our Constitution.

C. This case is the best possible vehicle to resolve these issues.

Not only is now the right time for this Court to intervene, but this unique case is as clean a vehicle as this Court will see. Connecticut Restraining-Order Statutes reflect the State legislature's intent to address domestic violence prevention. All States have substantially similar restraining-order or civil-protective-order statutes. (*See ante,* at 8, n. 32) Thus, this Court's ruling will have ramifications throughout the entire Nation. This case is jurisprudentially significant: only this Court can resolve the conflict between the federal law and a State statute regulating "domestic relations" on this issue of federal supremacy concerns. This case squarely presents the constitutional questions reserved by this Court in *Granny Goose Foods, Inc.* (whether the federal law pre-empted a State's restraining-order statutes) and *Sessions v. Morales-Santana,* 582 U.S. 47, ___ (2017) (slip op., at 7) (how does Article III of the United States Constitution distinguish between mother and father in asserting rights on behalf of their child as the third party against each other under a State's restraining-order statutes?)

The issues raised in this case are prevalent and exceptionally important as they address the fundamental question of whether the Constitution permits a State

to apply Restraining-Order Statutes to interfere with the fundamental liberty interest of a parent in the care, custody, and control of his or her child—"perhaps the oldest of the fundamental liberty interests recognized by this Court" *Troxel v. Granville*, 530 U.S. 57, 65 (2000) and "deeply rooted in [our] history and tradition." *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ___ (2022) (slip op., at 2). "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

This case involves a State statute, on the text of the statute alone, allows the court to alter the touchstone of our divorce law regarding child-custody determination, specifically in the post-judgment enforcement or modification of out-of-state divorce decrees, in complete disregard of the best interests of the child, against public policy. If a State is allowed to exercise its police powers regulating "domestic relations" in such a way, without any restrictions, it leaves no room for any reliance interest of a divorcee upon a settlement agreement that binds independently upon the two divorced. Under Connecticut Restraining-Order Statutes, a judge can, based on a standardless exercise of its discretion, sweep away, to whatever duration of "temporary" with possible extension, the child's interests in securing unhampered, free, and natural development of love, affection, and respect for one of two divorced parents and due-process rights against government interference, in the absence of evidence of any harm caused by that parent to the child.

The issues are also practically significant because the statutory retribution for noncompliance with a State's restraining-order statutes allow the State's superior courts adjudicating "domestic relations" to invoke the criminal justice system to alter the composition of families. Traditionally, our criminal justice system is designed to handle criminal matters, rather than civil matters such as child-custody determinations. The dispute, in this case, is initiated through the child-custody terms of an out-of-state divorce decree, and the criminal justice system may find itself in the awkward position of deciding how to strike a balance between a divorce decree and civil restraining orders if their terms are in conflict. Furthermore, the facts of the case cleanly present the issues for resolution and make it an especially compelling candidate for this Court's review. In particular, the Connecticut Superior Court viewed the entire record of the foreign matrimonial post-judgment matter in issuing a restraining order under General Statutes § 46b-15. Petitioner preserved all constitutional claims in the Superior Court upon appeal. (*See* Pet'r Brief 151-156). The presence of a viable Supremacy Clause claim is a strong reason to grant certiorari in this case, thus permits this Court to view the heart of the matter *de novo*.

II. The Decision Below is Incorrect

A. Respondent lacks standing as next friend of the Child against Petitioner under the Restraining-Order Statutes.

The doctrines of justiciability under Article III of the United States Constitution guide this Court's determination of whether a case and controversy is appropriate for adjudication. In accord with these ancient principles of jurisprudence, this Court has established the Article III requirement for a third party's standing to

assert claims on behalf of a minor in several cases involving third-party-standing determination, *see, e.g.*, *Sessions,* 582 U.S., at ___ (slip op., at 7); *Kowalski v. Tesmer*, 543 U.S. 125 (2004); *Powers v. Ohio*, 499 U.S. 400, 401 (1991).

When a third-party's standing is at issue, this Court held in *Powers* that "certain, limited exceptions" applied to the fundamental restriction on a third-party's lack of standing to "rest a claim to relief premised on the legal rights or interests of third parties." *Id., at* 410. To meet such exceptions to Article III's standing requirement, this Court provided three important criteria, "(1) the litigant [on behalf of third parties] must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute; (2) the litigant must have a close relation to the third party; and (3) there must exist some hindrance to the third party's ability to protect his or her own interests." *Id., at* 411 (citation omitted). This Court applied the three-criterion exception to the standing doctrine in considering *Kowalski* and held that "[t]he attorneys lack third-party standing to assert the rights of Michigan indigent defendants denied appellate counsel," *Id., at* 125, because, as the court further explained, it was not that "an attorney-client relationship" is insufficient to satisfy third-party standing but rather the attorney-client relationship asserted in *Kowalski* was a "hypothetical" one. *Id., at* 127.

In *Sessions*, this Court considered the child-parent relationship in determining the third-party standing of the respondent in asserting equal protection rights under the Fourteenth Amendment on behalf of his deceased father. The Court upheld that the child-parent relationship satisfied the "close relationship" requirement, and the

"hindrance" requirement was met because "[the deceased father]'s failure to assert a claim in his own right 'stems from disability,' not 'disinterest.'" *Id.*, (slip op., at 7).

This case presents a third-party's standing challenge to the above-mentioned authorities, because none controls this case. In this case, however, both Respondent and Petitioner satisfy the third-party's "close relationship" requirement, and the "hindrance" requirement was satisfied because the Child's "failure to assert a claim in [her] own right 'stems from disability,' not 'disinterest,'" *Ibid.*, due to the fact that the child is of tender years. If this Court starts by assuming Respondent can assert third-party's standing on behalf of the Child against Petitioner, the Court shall equivalently conclude that Petitioner is the "best available proponent" (quoting *Singleton v. Wulff*, 428 U.S. 106, 116 (1976)) of the Child's rights under a State statute and our Constitution against Respondent's asserted claims. This is incompatible with our established authorities.

In *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008), this Court held that "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the Respondent is entitled to such relief." *Ibid.* (citation omitted). Meanwhile, Connecticut Restraining-Order Statutes are silent as to the applicable standard of proof. In view of the entire record of the foreign matrimonial post-judgment matter before the court, Pet. App. 89a, the Connecticut Superior Court issued a no-contact restraining order, invoking General Statutes § 46b-15, upon the court's finding that "the [child] would be at risk

of psychological harm if the restraining order were not in place." *Id.*, at 185a. The Superior Court's conclusion that the Child would suffer a "hypothetical" injury does not meet the first criterion of the third-party's standing requirement under Article III for Respondent to assert claims on behalf of the child against Petitioner, because, as this Court held, "the litigant [on behalf of third parties] must have suffered an 'injury-in-fact,'" *Powers*, 499 U.S., at 411, to satisfy the standing requirement.

At common law, "[t]he only real test for whether a person attempting to bring an action as the minor's next friend is a proper person to do so is whether that person's interests are adverse to those of the child." *Orsi v. Senatore*, 31 Conn. App. 400, 416 (1993). By applying the "adverse interest test" established in *Orsi*, this Court shall find that a serious conflict of legal interests existed between the Child and Respondent that impaired Respondent's ability to serve as the next friend of the Child. Instead, Respondent sought a series of Restraining-Order Applications to advance his nonjusticiable interests that are adverse to the Child's interests and meant to subject the Child to his maltreatment "continuously," (*see* Pet'r Brief 500; 560) and in retaliation against Petitioner because she filed a Title IX Complaint against him at the Yale University of which the Superior Court was informed and aware. *See supra*, at 732; 736. Nevertheless, under Connecticut Restraining-Order Statutes, the Superior Court standardlessly, without good cause shown as to why the Child is unable to speak on her own behalf, picked sides of presuming Respondent spoke on behalf of the Child against Petitioner. The Superior Court ruled the fact that Petitioner appeared on the record as the next friend of the Child in the Restraining-

Order Action was irrelevant in deciding Respondent was entitled to plead on behalf of the Child against Petitioner. Pet. App. 11a. The decisions above are flat wrong.

This case presents an issue reserved in our authorities that, when the two opposing parents in this case both satisfy the "close relationship" requirement on behalf of a third party—the minor Child—who meets the "hindrance" requirement, *Sessions,* 582 U.S., at ___ (slip op., at 7), whether one parent has more rights to assert a claim on behalf of the child than the other parent does under a State's restraining-order statutes. This Court shall grant the petition and take up this issue anew because it implicates the standing requirement of our ancient doctrines of justiciability under our Constitution.

B. Restraining-Order Statutes violate Petitioner's and her Child's civil liberties and freedom guaranteed under the Fourteenth Amendment.

Connecticut Restraining-Order Statutes violate Petitioner's and her child's Fourteenth Amendment rights for the following five reasons. First, the statutes permit the court to issue orders that are solely discretionary, not on the merits of the legal issues, to *ex parte* enjoin one of the two divorced parents from taking care, custody, and control of his or her child and restrain all contact between that parent and his or her child as long as "a parent, guardian or responsible adult who brings the application as next friend of the [child] applicant" alleges statutory aggrievement on behalf of the child, in the absence of evidence of the alleged harm.

Second, the statutes do not place on "a parent, guardian or responsible adult" seeking a restraining order on behalf of a minor child against the other family

members—the other parent in this case—the burden of proof that such person has standing to seek such order, or such order is in the child's best interest.

Third, the statutes are not child custody or visitation statutes; however, they permit a standardless exercise of a judge's discretion to invoke the statutes and award the temporary child custody and visitation rights to "a parent, guardian or responsible adult" who brings an application so long as he or she alleges some form of harm on behalf of the child against another family member of the child's.

Fourth, the statutes are invoked if "a parent, guardian or responsible adult" who brings an application alleges either the child or the respondent is of (perceived) "mental disabilities" in the absence of evidence and the child would be "at risk of psychological harm if the restraining order were not in place." Pet. App. 185a. The scope of the statutes is beyond what they were designed for. The State, by no means, has any compelling interest in denying equal protection of the law "in the exercise or enjoyment of [an individual's] civil or political rights" on the ground of "mental disability" Conn. Const., amend. XXI, *Id.*, at 272a, in the application of the statutes.

Lastly, the statutory process for issuing a restraining order on behalf of a minor child fails to meet the requirement of "fundamental fairness" and violates the child's due process rights to appoint independent counsel, assessing the child's interests at stake. Without the child's due process rights being protected, Connecticut Restraining-Order Statutes are used for a purpose contrary to the State's legislative intent, but instead to weaponize the child in retaliation against the other parent, so long as one of the divorced parents races to the courthouse.

i. Equal Protection Clause

"Whether a State statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied." *Concordia Ins. Co. v. Illinois*, 292 U.S. 535, 545 (1934). In the three varying applications made of the Statutes in this case, Petitioner and the Child are scrutinized, not as a parent and her child, but rather in a way that the (perceived) "mental disability" of Petitioner's and/or her child's is the "overriding, predominant force" in the fact-finding process to meet the standard of proof of the statutory aggrievement to the Child alleged by Respondent on behalf of the Child against Petitioner. This case presents an equal protection challenge to a State's statute based on the extension of standard categories to include "mental disability" of an individual or of his or her associates resting upon the well-endorsed concept held by this Court that the equal protection afforded under the Fourteenth Amendment "enjoy a greater elasticity than the standard categories might suggest." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 268 (1995). This Court has held that a State's statute imposing infringements upon "a 'fundamental right' ... triggers strict scrutiny when government interferes with an individual's access to it." *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 451 (1988).

Restraining-Order Statutes shall be viewed subject to strict scrutiny. The case further meets the narrow tailoring requirement associated with the strict scrutiny because the invocation of the Statutes based on the mental-disability differential contravenes the State's compelling interests. *See Zablocki v. Redhail*, 434 U.S. 374, 399 (1978). In defining the interest in equality protected by the Equal Protection

Clause, the State's compelling interest in affording equal protection of the law to individuals of "mental disability" is explicitly expressed in the Constitution of the State of Connecticut. Connecticut Constitution afford the equal protection guarantee to the (perceived) "*mentally ill*" in the same manner as the "*sane*" peers; and prohibit the denial of equal protection of the law "in the exercise or enjoyment of his or her civil or political rights" under the classification of "mental disability." Conn. Const., amend. XXI. "[R]egardless of whether a patient's admission status [to a 'facility' defined in § 17a-540(1)] is voluntary or involuntary, the state may not subject any citizen 'to the deprivation of any rights, privileges, or immunities secured by the Constitution.' 42 U.S.C. § 1983." *Mahoney v. Lensink*, 213 Conn. 548, 571, 569 A.2d 518 (1990). Although Restraining-Order Statutes do not explicitly regulate commitment of the "*mentally ill*", their scheme is tantamount to "regulation" and infringes the "regulated" parties' fundamental rights.

Suppose to the contrary by setting the mental-disability-based differential aside, in determining whether a restraining order should be awarded on behalf of the child, under the equal protection guarantee of the Constitution of the United States, "States must treat like cases alike but may treat unlike cases accordingly." *Vacco v. Quill*, 521 U.S. 793 (1997). Nevertheless, the state issued a no-contact restraining order on behalf of the Child against Petitioner mother in favor of Respondent father in this case. "Prescribing one rule for mothers, another for fathers, we declared unconstitutional in *Reed, Frontiero, Wiesenfeld, Goldfarb*, and *Westcott.*" *Sessions*, 582 U.S., at ___ (slip op., at 9) (citing *Reed v. Reed*, 404 U.S. 71 (1971); *Frontiero v.*

Richardson, 411 U.S. 677 (1973); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); *Califano v. Goldfarb*, 430 U.S. 199 (1977); *Califano v. Westcott*, 443 U.S. 76 (1979)).

Assuming, arguendo, that the findings of the fact were correct—Petitioner and her Child were indeed of (perceived) "mental disability." Connecticut Constitution explicitly include "mental disability" as a protected class for purposes of equal protection guarantee and prohibit "segregation or discrimination in the exercise or enjoyment of his or her civil or political rights" under the classification of "mental disability." Conn. Const., amend. XXI. This then leads to the conclusion that, under the federal and state constitutions, irrespective of whether a child is of (perceived) "mental disability", a State can equally invoke the restraining-order statutes and issue no-contact orders to enjoin a parent from contacting his or her child, so long as "[the other] parent, [a] guardian or responsible adult" who brings an application on behalf of the child, in an exercise of a judge's "unbounded" discretion as if performing a coin toss. The scope of the statutes goes to both sides of a coin for the issuance of a no-contact restraining order to the "*mentally ill*" parents equally in the same manner as the "*sane*" peers. This Court shall grant the petition and view the validity of the Restraining-Order Statutes in this extraordinary situation under the Equal Protection Clause of the Fourteenth Amendment.

ii. Due Process Requirement

"[T]he Privileges and Immunities Clause, the Due Process Clause, and the Equal Protection Clause of the Fourteenth Amendment are each protective of the individual as against 'state' action." *Adickes v. Kress Co.*, 398 U.S. 144, 186 (1970). In *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981) and *Santosky v. Kramer*,

455 U.S. 745 (1982), "the Court was unanimously of the view that 'the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment,' and that '[f]ew consequences of judicial action are so grave as the severance of natural family ties.'" *M.L.B. v. S.L.J*, 519 U.S. 102, 103 (1996) (citation omitted).

This case involves a State action in violation of the Fourteenth Amendment that resulted in imposing "great and immediate irreparable injury" to Petitioner and her child due to the practical effect of the "severance of natural family ties" *Id., at* 103, caused by the State's twice, consecutive issuance of no-contact restraining orders against Petitioner on behalf of her minor child, without due process, each of a duration of one year, in the clear absence of all jurisdictions. "State power over domestic relations is not without constitutional limits. The Due Process Clause requires a showing of justification 'when the government intrudes on choices concerning family living arrangements' in a manner which is contrary to deeply rooted traditions." *Zablocki*, 434 U.S., at 399; *see also Troxel*, 530 U.S., at 66; *Dobbs*, 597 U.S., at ___ (slip op., at 2). Upon close tailoring, the provisions of Connecticut Restraining-Order Statutes providing a judge's authority in regulating "domestic relations" in such manner, as evidenced in the instances of their applications in this case, contravene the State's interests and defeat the purpose of the statutes. First, when enforcing or modifying an out-of-state divorce decree, Connecticut legislature's intent to comply with Congress' directive under the PKPA that the State shall afford the Full Faith and Credit to foreign decrees was clear and manifest. *Ante*, at 5-6.

Second, Connecticut law on commitment of the "mentally ill" provide the commitment due process where the State probate courts, rather than the superior courts, are vested with the jurisdiction of the commitment of a person, including a child, with psychiatric disabilities pursuant to General Statutes § 17a-497. Pet. App. 280a. Additionally, Connecticut law criminalize "[f]raudulent or malicious application, order, request, certification or report re commitment or mental disorder of child" under General Statute § 17a-83 and codify the "[p]enalty for wrongful acts re the commitment or psychiatric disabilities of another person" under § 17a-504. *Id.*, at 281a. Because Connecticut Restraining-Order Statutes equally impose criminal penalties for violation, this court shall grant the petition to view the statutes with a higher standard of certainty involved in the unconstitutional vagueness review of its provisions. *See Winters v. New York*, 333 U.S. 507, 515 (1948).

The orders issued under Connecticut Restraining-Order Statutes are solely discretionary. The Superior Court, without resolving the jurisdiction issues, including whether Respondent has "standing" to assert a claim on behalf of the Child, proceeded with Respondent's Application made of Restraining-Order Statutes pled "on behalf of the Child" against Petitioner. "Subject-matter jurisdiction, then, is an Art. III as well as a statutory requirement." *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 702 (1982). The Superior Court, regardless, issued a restraining-order awarding Respondent the sole custody of the Child, in the clear absence of jurisdiction. Nor has Respondent on behalf of the Child sought the relief of the temporary custody or visitation rights of the Child in his Application. Pet. App. 197a. This Court held

that when the provisions of the statute contain discretionary language, the exercise of discretion must be "cabined by the purposes" of the statute; the discretion created by the statute cannot be used to defeat the purposes of the statute. *See Caplin Drysdale, Chartered v. United States*, 491 U.S. 617, 639 (1989). This case provides the court a unique occasion to view the uncertainty and vagueness of a State's statute in violation of the Fourteenth Amendment that is derived from both its terms of provisions and "application of a standard of conduct to the varying circumstances of different cases." *Winters*, 333 U.S., at 534.

C. Restraining-Order Statutes conflict with the Full Faith and Credit Clause.

By the 1950s, the common law revealed that suits where the state of the domicile of one spouse, using constructive service, entered a decree that changes every legal incidence of a separation decree issued from its original legal forum had been widespread. *See, e.g., Estin v. Estin*, 334 U.S. 541 (1948); *Sutton v. Leib*, 342 U.S. 402 (1952); *Armstrong v. Armstrong*, 350 U.S. 568 (1956). This Court had applied the divisible divorce doctrine developed in *Estin* to accommodate the conflict between the status of the States as independent sovereigns and the Full Faith and Credit Clause of the United States Constitution arose from the so-call "migratory divorce" or "forum-shopping" as mentioned above, (*see ante*, at 5, n. 17) with rarely invoked "public policy exception" permitting one State to resist recognition of the full faith and credit due judgments. *Id., at* 545.

For close to seven decades, the problems associated with "forum-shopping" remain today. Congress has since enacted in series of legislation to address

widespread incidences that cause jurisdictional deadlocks among forum States, especially when there are children in marriage relationship at stake. *See ante*, at 5. For instance, under the PKPA, Congress' principal aim was to extend the requirements of the Full Faith and Credit Clause to child custody determinations. At the time the PKPA was enacted in 1980, the issues in state courts that systematically contributed to "a national epidemic of parental kidnapping" (*Ante*, at 5, n. 17) were, as the *Thompson* court further explained, "[b]ecause courts entering custody orders generally retain the power to modify them, courts in other States were no less entitled to change the terms of custody according to their own views of the child's best interest." *Id., at* 180 (citation omitted). The provisions of the Statutes neglect the child's best interests, instead authorize the State "unbounded" discretion in issuing a restraining order to award "temporary child custody or visitation right" under § 46b-15 (b), with a duration of one year plus possible extension under § 46b-15 (g), to "a parent, guardian, or responsible adult" who brings an application, regardless of what the out-of-state child custody orders provide. The State's Restraining-Order Statutes were designed to provide low-cost, rapid access to the judicial system to meet the needs of victims of domestic violence. Their applications, however, as seen in this case, defeat the purpose of the statutes by weaponizing a child against his or her parent so long as the other parent races to the courthouse to evade the Full Faith and Credit due judgment in a new forum. In the words of Justice Douglas in *Estin*, "the tail must go with the hide." *Id., at* 544. In almost a half-century since Congress' enactment of the PKPA, this case raises caution when harnessing innovations of judicial machinery

and presents the concerns reflected in the federal supremacy that demand this court's view of a State's statute weighing under the Supremacy Clause and Full Faith and Credit Clause of the United States Constitution.

D. Restraining-Order Statutes violate the Contracts Clause by "substantially" impairing contractual obligations.

Upon the New York court granting the Judgment of Divorce, each party was fully informed by its independent counsel regarding the perspective to modify its terms in a different forum. The parties undertook the step of entering into the Agreement specifying each party's respective contractual rights and obligations with respect to the care, custody, and decision-making rights and responsibilities concerning the Child, and further expressly waived such right of seeking a modification of the Agreement under its Provision 4 of Article 18. Pet. App. 267a. The Agreement provides its own independently survived "Binding Effect" from the parties' Judgment of Divorce. *Id.*, at 266a. In *Sutton*, 342 U.S., at 405, "[this Court] have searched the numerous cases decided by the Supreme Court of the United States on the subject of migratory divorce for a definitive holding as to the judicial status of such divorce in the state that decreed it. It appears to be assumed that the decree is valid and binding in the state where it is rendered." *Ibid.* "A stipulation of settlement not merged into the [divorce] judgment is independently binding on the parties, and [state] courts may not impair the parties' contractual rights under the agreement by modifying the divorce judgment." *Gershon v. Back*, 201 Conn. App. 225 (2020).

This case presents individuals' undertaking upon divorce to self-regulate by entering into an independently binding settlement agreement incorporated, *but not*

merged into, the divorce decree. This self-regulation approach has been prevalently applied since the emergence of divorce in the eighteenth century when divorce was regulated legislatively through a State's General Assembly. (*See ante*, at 3, n. 6) The modern version of this approach incorporates provisions in a binding agreement that specifically address the public policy concerns arose from the "national epidemic of parental kidnapping" that Congress intended to remedy by enacting the PKPA.

Whether a State's Restraining-Order Statutes substantially impair contractual obligations is vitally important, subject to the constitutional analysis under the Contracts Clause. "The contracts clause, which prohibits a State from passing any 'Law impairing the Obligation of Contracts,' is an example of the part the common law must play in our system." *D'Oench, Duhme Co. v. F.D.I.C*, 315 U.S. 447, 470 (1942). In *Dartmouth College v. Woodward*, 17 U.S. 518 (1819), this Court held "[a]n act of the state legislature of New Hampshire, altering the charter ['granted by the British crown to the trustees of Dartmouth College, in New Hampshire, in the year 1769',] without the consent of the corporation, in a material respect, is an act impairing the obligation of the charter, and is unconstitutional and void." *Ibid.*

Since *Dartmouth*, a modern Contracts Clause interpretation was developed and more widely applied by this Court that weighs between the intended meaning of the words of the Constitution and the reserved police power of the States to safeguard the vital interests of its people. *See, e.g., Home Bldg. L. Assn. v. Blaisdell*, 290 U.S. 398, 434-435 (1934); *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 472 (1987). The question raised in this case essentially inquires whether the

development of the Contracts Clause shall progress along with the development of the law of domestic relations. Specifically, can a State's Restraining-Order Statutes be applied post-divorce to dissolve all contractual obligations that independently bind two divorcees in a settlement agreement, without the consent of one of the two?

This Court held in *D'Oench, Duhme Co.* that "upon a long line of authority, that in applying the [contracts] clause we are not bound by the State's views as to whether there is a contract." *Id., at* 470. The Connecticut Appellate Court decision was wrong because the Connecticut Superior Court issued an order on February 4, 2022 that modified the child custody terms of the parties' Judgment of Divorce issued in the New York court and Agreement that independently binds the parties. Pet. App. 4a-7a. The Superior Court also issued an order on December 9, 2021 that denied Petitioner's motion for a protective order against Respondent's Attorney from conducting discovery into the Child's records, pending Petitioner's motion to disqualify Respondent's Attorney from representing the Child. *Id.,* at 3a.

As analyzed in *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541 (1949), this Court held that "[t]he matters embraced in such an order are not of such an interlocutory nature as to affect, or to be affected by, a decision on the merits;" and "[t]he order is appealable because it is a final disposition of a claimed right which is not an ingredient of the cause of action and does not require consideration with it." *Id., at* 546-547. The December 9, 2021 order is appealable because it is a final disposition of a claimed right entitled to Respondent's Attorney in the Superior Court's order that (1) violates the Child's due process right to independent counsel under the Fourteenth

Amendment; (*see, e.g.*, *In re Gault*, 387 U.S. 1, 2 (1967); *Lassiter*, 452 U.S., at 18) and (2) substantially impaired Petitioner's contractual rights under the Agreement regarding the joint legal custody of, and joint decision-making rights and responsibilities concerning her Child and infringed Petitioner's liberty interest in the care, custody, and control of her Child further guaranteed under the Fourteenth Amendment. *See Troxel*, 530 U.S., at 65.

The State's interest is to faithfully administer the Full Faith and Credit Clause. The reserved police power of the State in this case regarding the enforcement of an out-of-state judgment that has been filed in Connecticut was that "[i]n accordance with this federal mandate, [Connecticut] legislature enacted the Uniform Enforcement of Foreign Judgments Act, General Statutes § 52-604 et seq, which permits an out-of-state judgment that has been filed here to be enforced in the same manner as an in-state judgment." *Nastro v. D'Onofrio*, 76 Conn. App. 814, 822 A.2d 286 (2003). Meanwhile, at the February 4, 2022 hearing, the Superior Court acknowledged that there was an out-of-state Agreement concerning the parties' joint decision-making rights and responsibilities of the Child but ruled that the parties' contractual rights under the Agreement were not relevant (Pet. App. 89a, 129a-130a, 153a) in deciding Respondent's third application made of Restraining-Order Statutes to dissolve all executed contractual obligations between the parties post-judgment, without due process. Since specific contractual provisions concerning the parties' joint decision-making rights and responsibilities concerning the child are involved here, including a waiver for modification, a direct result of Connecticut Restraining-Order

Statutes applied is in complete disregard of the contractual rights between the parents independently bound by the Agreement that spells out the best interest of the Child.

The scope of the State's Restraining-Order Statutes sweeps too broadly; the statutory relief afforded constitutes "substantial impairment" under the Contracts Clause. This Court has struck down state statutes under Contracts Clause protections to a contractual relationship. *See, e.g., United States Trust Co. v. New Jersey,* 431 U.S. 1, 25 (1977); *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234 (1978); *Maryland v. Louisiana,* 451 U.S. 725, 746 (1981). Accordingly, Connecticut Restraining-Order Statutes are overbroad and utilized for illegitimate purpose in their applications contravening the purpose of the statutes and public policy. As a result, the applications made of the statutes are no longer valid exercises of the State's police power to "safeguard the vital interests of its people;" (quoting *Home Bldg. L. Assn.,* 290 U.S., at 434) and "contravened the rights of [Petitioner's] under the Contracts Clause of the Constitution and the Due Process Clause of the Fourteenth Amendment." (quoting *Penna. Coal Co. v. Mahon,* 260 U.S. 393 (1922)).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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