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In the  
**Supreme Court of the United States**

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David Frank Campeau Jr., a natural born man and Citizen of the United States of America;

Christin Campeau, a natural born woman and Citizen of the Federal Republic of Germany

*Petitioners,*

v.

Kathleen Bausman, Field Office Director of the United States Customs and Immigrations Service, Philadelphia Field Office.

*Respondent.*

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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**Petition for Writ of Certiorari**

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## **Questions Presented for Review:**

In accord with the Tenth Amendment, how is it determined whether a power is reserved to the people or to the State?

Whether the Ninth and Tenth Amendments reserve the right, power, and authority to marry, to the people of the Commonwealth of Pennsylvania?

Whether the statutes at 23 Pa. C.S. §§1103 and 1301 are unconstitutional for violating the Ninth, Tenth, and Fourteenth Amendments?

Whether a federal officer is subject to suit under 42 U.S.C. §1983 when the officer's action is made by directly applying a State statute; and, said action deprives a citizen of the United States or other person within the jurisdiction thereof of rights, privileges, or immunities secured by the Constitution and laws?

**Lower Court Proceedings:**

Campeau v. Sandercock, No. 3:21-cv-00280, U.S. District Court for the Middle District of Pennsylvania. Judgement entered May 18, 2021.

Campeau v. Sandercock, No. 21-2357, U.S. Court of Appeals for the Third Circuit. Judgement entered May 20, 2022

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## **I. Jurisdictional Statement:**

The statute at 28 U.S.C. §1254(1) provides this Court with the jurisdiction to review cases in the court of appeals after rendition of judgement.

The United States Court of Appeals for the Third District rendered judgement in this case on May 20, 2022.

Said Court denied a petition for panel rehearing and rehearing en banc on August 11, 2022.

In accord with Supreme Court Rules 13(1) and 13(3), this petition has been timely filed within 90 days of the Order denying said petition for rehearing.

## **II. Federal Constitutional Provisions:**

**Ninth Amendment:** “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.”

**Tenth Amendment:** “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

**Fourteenth Amendment, Section 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.”

## **III. Commonwealth of Pennsylvania Constitutional Provisions**

**Article I, Section 1.** Inherent Rights of Mankind. All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

**Article I, Section 2.** Political powers. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and inalienable right to alter, reform or abolish their government in such manner as they may think proper.

**Article I, Section 25.** Reservation of Powers in people. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

#### IV. State Statutes:

**23 Pa. C.S. §1103:** No common-law marriage contracted after January 1, 2005, shall be valid. Nothing in this part shall be deemed or taken to render any common-law marriage otherwise lawful and contracted on or before January 1, 2005, invalid.

**23 Pa. C.S. §1301(a):** “No person shall be joined in marriage in this Commonwealth until a marriage license has been obtained.”

#### V. Statement of the Case:

Petitioner Christin Campeau (formerly Christin Schwamberger), entered the United States of America in August of 2014 with a K1 fiancé visa for the purpose of marrying Petitioner David Frank Campeau Jr.

In accord with Petitioners’ God-given inherent right, power and authority to marry, Petitioners entered into a formal marriage covenant for the purpose of obeying God’s commands to marry<sup>1</sup> and be fruitful and multiply<sup>2</sup> by creating children and raising a family.

Petitioners’ marriage covenant is recorded in writing in an instrument titled: Marriage Contract, which was executed in the presence of a Notary Public of the Commonwealth of Pennsylvania on August 29, 2014.

In said instrument, the father of the bride gave consent to Petitioners to so marry; and, Petitioners voluntarily agreed to be bound by the terms of said covenant.

Following the execution of the Marriage Contract, Petitioners solemnized their marriage in a formal wedding ceremony with the exchange of oral vows in front of many witnesses. Said ceremony took place in Wayne County, Pennsylvania.

Additionally, a Certificate of Marriage was created and was signed by the Petitioners, the father of the bride, and three witnesses who were present at the formal wedding ceremony.

Christin Campeau, timely filed a Form I-485, Application to Register Permanent Residence or Adjust Status with the United States Customs and Immigration Services (hereinafter “USCIS”) after marrying David Frank Campeau Jr.

In October of 2015, Petitioners attended an interview at the USCIS field office in

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<sup>1</sup> Genesis 2:24: “Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh.” (King James Version)

<sup>2</sup> Genesis 1:28: “And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth...(King James Version)

Philadelphia wherein Petitioners presented the interviewer with their Certificate of Marriage along with a copy of the Marriage Contract.

In November of 2015, USCIS sent Christin Campeau a Notice of Intent to Deny, Form I-485 alleging that Petitioners failed to prove Petitioners' marriage was legal and recognized by the Commonwealth of Pennsylvania.

In order to obtain evidence that Petitioners' marriage was recognized by the Commonwealth of Pennsylvania, David Campeau requested to record the Certificate of Marriage in the public marriage records of the Court of Common Pleas of Wayne County, Pennsylvania, which records are overseen by Edward Sandercock, Prothonotary.

Sandercock refused to record Petitioners' Certificate of Marriage, alleging: in order to marry, the Pennsylvania Marriage Law at 23 Pa C.S. §1301 requires a marriage license; and, 23 Pa C.S. §1103 makes all privately contracted marriages after January 1, 2005 invalid.

Because 23 Pa C.S. §§1103 and 1301 usurp the God given-inherent right, power, and authority to marry and perverts said right into a licensed privilege of the State, David Campeau filed suit against Sandercock in the Commonwealth Court of Pennsylvania, challenging the constitutionality of said statutes and seeking injunctive relief to compel the recording of Petitioners' Certificate of Marriage.

Ultimately, Commonwealth Court dismissed Petitioners' claims for failure state a claim upon which relief can be granted, alleging that because the Constitution of the United States of America does not mention marriage, the power to marry is reserved to the State by the Tenth Amendment.

David Campeau appealed, as a matter of right, to the Supreme Court of Pennsylvania.

In April of 2016, before the Supreme Court of Pennsylvania rendered judgement in the matter, the USCIS issued a Decision denying Christin Campeau's Form I-485.

Because of the ongoing litigation, Christin Campeau filed a Form I-290B, Notice of Appeal or Motion, seeking reconsideration of the April Decision regarding said Form I-485.

Then in May of 2017, the Supreme Court of Pennsylvania affirmed the order of the Commonwealth Court of Pennsylvania without issuing an opinion.

David Campeau then petitioned this Court for a writ of certiorari in October of 2017, which petition was denied in January of 2018.

After waiting for the USCIS' reply regarding said Form I-290B for some time, Christin Campeau finally received a Decision on February 15, 2019.



In said Decision, Respondent Kathleen Bausman denied the legal validity of Petitioners' lawful marriage, alleging that said marriage did not conform with the Pennsylvania Marriage Law. Further, Bausman denied in finality, Christin Campeau's Form I-485.

Because Christin Campeau had exhausted all administrative remedies available through the USCIS; and, David Campeau had exhausted all remedies in the Pennsylvania State courts, Petitioners filed a 42 U.S.C. §1983 lawsuit in the District Court against both Edward Sandercock in his capacity as Prothonotary and Kathleen Bausman in her capacity as written in the caption of this matter.

In accord with 28 U.S.C. §1391(e)(1), the United States District Court for the Middle District of Pennsylvania has venue jurisdiction over this matter because: Petitioners' marriage and Sandercock's actions occurred in Wayne County, Pennsylvania; and, Plaintiffs live in Wayne County, Pennsylvania; which county is within the jurisdictional venue of said District Court.

In accord with 28 U.S.C. §1331 and 28 U.S.C. §1343(a)(3), said District Court has subject matter jurisdiction over Petitioners' 42 U.S.C. §1983 lawsuit.

In said suit, Petitioners challenged the constitutionality of the alleged statutes at 23 Pa. C.S §§1103 and 1301 for violating the Ninth, Tenth, and Fourteenth Amendments to the Constitution of the United States of America.

Petitioners also brought claims against Sandercock and Bausman for depriving, under color of said statutes, Petitioners': right to marry; the rights, privileges and immunities pertaining to marriage; right to due process of law; right to equal protection of the laws; and, right to good reputation.

In addition, Petitioners brought a claim against Sandercock for depriving, under color of said statutes, Petitioners' right to the people's public record.

Sandercock and Bausman both filed motions to dismiss Petitioners' claims. Sandercock moved to dismiss for untimeliness. Bausman moved to dismiss pursuant to Fed. R. Civ. P. 12(b) but did not argue Petitioners' complaint was untimely.

When considering the magistrate judge's Report and Recommendation regarding Sandercocks' motion to dismiss, the District Judge entered an Order adopting said Report, and dismissing Petitioners' Complaint in its entirety.<sup>3</sup>

The Order also denied Bausman's motion to dismiss as moot and ordered the case

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<sup>3</sup> Before the District Court was the report of the magistrate judge concerning Sandercocks' motion to dismiss the causes of action against Sandercock. Instead of dismissing only the claims against Sandercock, the District Court sua sponte dismissed all of Petitioners' claims as untimely.

to be closed.

Petitioners the Filed a motion to alter or amend the District Court's order, but said motion was denied.

A timely appeal in the United States Court of Appeals for the Third Circuit followed.

On appeal, Petitioners conceded that their claims against Sandercock were untimely. Respectively, the only matter before the appellate court was Petitioners' claims against Bausman.

In the Opinion, the Third Circuit Court assumed arguendo that Petitioners' claims against Bausman were timely but affirmed the District Court ruling on the alternate means of failure to state a claim.

Petitioners filed a petition for panel rehearing and rehearing en banc but said petition was denied.

This Petition for a Writ of Certiorari follows.

## **VI. Arguments for Granting Certiorari:**

### **A. This Court Should Grant Certiorari to Clarify How to Properly Apply the Tenth Amendment**

In dismissing Petitioners' claim that the 23 Pa. C.S. §§1103 and 1301 are unconstitutional, the Court ruled that "State laws requiring a marriage license do not violate [the right to marry], as has been made plain to David Campeau in his litigation before", citing Campeau v. Sandercock, No. 597 M.D. 2015 at 6-7 (Pa. Commw. Ct. Aug. 15, 2016). In said case, the Commonwealth Court ruled on page 6 that:

"[T]he Tenth Amendment to the United States Constitution provides that powers not delegated to the United States, nor prohibited by it to the states, are reserved to the states or to the people.... Because the United States Constitution does not address the regulation of marriage, the authority to regulate entry and dissolution of marriage is left to the states subject to the constitutional rights of its citizens."

Because the powers reserved in the Tenth Amendment are reserved either to the State, or to the people, there must be a standard of review to determine whether a power is reserved to the people rather than to the State.

Argument 2 of Petitioners' Complaint demonstrates how such a determination is made regarding the power to marry by properly applying the law.

As presented in Argument 2 of Appellants Complaint at pages 11-15:

1. The people of the United States of American are the sovereigns who delegate power to the government, and the law (constitutions, et. seq.) is the definition and limitation of power. See Yick Wo. V. Hopkins, 118 U.S. 369, 370 (1886).

2. The executive, legislative, and judicial branches of both State and Federal governments are governments of enumerated powers, which powers are limited and defined. See McCulloch v. Maryland, 17 U.S. 316, 405 (1819), Citizens' Savings & Loan Ass'n v. City of Topeka, 87 U.S 655, 662 (1874).

3. The powers enumerated to the States are found in their respective constitutions.

4. In the Constitution of the Commonwealth of Pennsylvania, there are no grants of power that delegate to the State the right, power, or authority to marry; rather, Article I, Sections 1 and 25 together except the right, power, and authority to marry out of the general powers of government.<sup>4</sup>

5. Because the right, power, and authority to marry are not delegated to the State, the same are reserved to the people by the Ninth and Tenth Amendments of the Constitution of the United States of America.

Wherefore, prior rulings of this Court recognized marriage as “a relationship having its origins entirely apart from the power of the State...” and “the individual’s freedom to marry and reproduce is ‘older than the Bill of Rights’” Smith v. Organization of Foster Families, 431 U.S. 816, 845 (1977), quoting in part Griswold v. Connecticut, 381 U.S. 479, 486 (1965).

Throughout the entire history of legal proceedings regarding this matter, the courts have repeatedly failed to apply any sort of standard of review to determine whether a power is reserved to a State, or to the people.

Additionally, Petitioners have been unable to find any other cases which set out a standard of review for properly applying the Tenth Amendment when there is a controversy between one or more of the people and the State as to which party a power is reserved to.

Therefore, this Court should grant this Petition for Certiorari and provide the lower courts with a proper standard of review to apply when determining whether a power is reserved to the State or to the people.

**B. 42 U.S.C. §1983 Can be Applied to Federal Officers When the Officer’s**

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<sup>4</sup> The courts both State and Federal have repeatedly ruled that marriage is a protected right of liberty and is necessary to the pursuit of happiness. See Meyer v. Nebraska, 262 U.S. 390, 399 (1923). Article I, Section 25, reserves the inherent right of liberty and pursuit of happiness mentioned in Article I, Section 1, to the people, and excepts said rights out of the general powers of government to prevent transgression upon said inherent rights.

### **Action is Made by Directly Applying a State Statute**

In the appellate court's Opinion at footnote 2, the panel stated that dismissal of the Petitioners' claims asserted against Kathleen Bausman would also be appropriate under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, alleging:

"42 U.S.C. §1983, which, by its own terms, authorizes suits against state and local officers; it does not provide a cause of action against federal actors." See *id.*; Kach v Hose, 589 F.3d 626, 646 (3d Cir. 2009)(to state a claim under §1983, a party must allege deprivation of a federal constitutional or statutory right by a state actor.)"

However, in Kach, *Ibid.* and the cases cited therein, the issue before the court was whether a private individual's action could be considered as state action for the purposes of 42 U.S.C. §1983 and under what circumstances.

This instant proceeding does not involve a private actor; rather it is a unique situation wherein, a federal officer's action was dictated directly by a state statute as required by federal law. In all of Petitioners' research, Petitioners have not found a single case wherein a federal officer's action was made by directly applying an unconstitutional state statute and was subsequently sued under 42 U.S.C. §1983.

This Court has set forth a two-part test to determine whether an action is considered as state action for the purposes of a §1983 suit:

"First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible. ...Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State. Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982).

In this case, the procedural scheme of mandating a marriage license as a prerequisite to marriage is the product of the state and therefore satisfies the first part of the test.

Regarding the second part of the test, this Court has held: "When the State has commanded a particular result, it has saved to itself the power to determine that result and thereby 'to a significant extent' has 'become involved' in it."Adickes v. Kress Co., 398 U.S. 144, 170 (1970) quoting in part Peterson v. City of Greenville, 373 U.S. 244, 248 (1963)

In this instance, the statutes at 23 Pa. C.S. §§1103 and 1301, required Bausman to determine Petitioners' marriage as invalid. Therefore, the state became involved in Basuman's action, satisfying the second part of the test. Therefore, Bausman's

actions are subject to suit under 42 U.S.C. §1983.

Whereas the appellate court's ruling contradicts the application of the two-part test this Court has put forth to determine whether an action is considered a state action; and,

Whereas this is the first time a 42 U.S.C. §1983 suit has been brought against a federal officer directly applying a state law as required by federal law;

Wherefore, this Court should grant certiorari to settle this matter.

## **VII. Conclusion**

For the foregoing reasons, Petitioners, David Frank Campeau Jr. and Christin Campeau. request that this Court grant this Petition for Writ of Certiorari and reverse the Order of the United States Court of Appeals for the Third District.

Date: November 9, 2022.

Respectfully submitted,

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