Public Copy – Sealed Materials Redacted
No. 23-

IN THE

Supreme Court of the United States

GEOFFREY HAMILTON WOODWARD,
Petitioner,

v.

SARAH EDGE WOODWARD,
Respondent.

On Petition for a Writ of Certiorari to the Third Circuit Court for Davidson County, Tennessee

PETITION FOR A WRIT OF CERTIORARI

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October 3, 2023 * Counsel of Record

QUESTION PRESENTED

A Tennessee family court barred Petitioner from having any contact with his 17-year-old son until Petitioner completes invasive, unwanted mental health therapy, despite finding that Petitioner is a loving, fit parent and that severing the father-son relationship would not improve—and indeed may harm—the son's relationship with his mother. The question presented is:

Whether a court, consistent with the Due Process Clause, can condition a fit parent's ability to have any contact with his child on unwanted medical treatment without finding that the treatment is medically necessary to serve a compelling state interest.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Geoffrey Hamilton Woodward. Respondent in Sarah Edge Woodward. No party to this proceeding is a corporation.

RELATED PROCEEDINGS

Counsel are aware of no directly related proceedings.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Geoffrey Hamilton Woodward respectfully petitions for a writ of certiorari to review the decision of the Third Circuit Court for Davidson County, Tennessee that prohibits him from having any contact with his son.

OPINIONS BELOW

The decision of the Third Circuit Court for Davidson County prohibiting Geoffrey from having contact with his son is unreported, remains under seal, and is reproduced in a supplemental, sealed appendix to this petition at Suppl. App. 2a–8a (the "no-contact order"). The decision of the same court denying Geoffrey's motion to stay the no-contact order is unreported and is reproduced at Pet. App. 1a–9a.

JURISDICTION

The Tennessee Circuit Court issued the orders for which review is sought on March 7, 2023, Suppl. App. 8a, and April 17, 2023, Pet. App. 9a. Those orders became final on June 5, 2023, when the Supreme Court of Tennessee denied discretionary review. Pet. App. 32a. By order dated August 25, 2023, Justice Kavanaugh extended the time for filing this petition for a writ of certiorari to and including October 4, 2023.

For the reasons discussed below, *infra* III.B, this Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

Geoffrey and Sarah Woodward ("Geoffrey" and "Sarah") are engaged in a protracted divorce proceeding after having been married for over 20 years. They have three children: Two are adults; the other, W.E.W., recently turned 17. The proceeding commenced in May 2021, when Sarah filed for divorce in the Third Circuit Court for Davidson County, Tennessee. This appeal is about whether Geoffrey will be able to have any contact with his son during the final year of the boy's childhood.

Custody over W.E.W. has been a point of contention from the outset of the divorce proceedings. Evidence produced during several hearings showed that W.E.W. and his older siblings seemed to blame Sarah for the divorce. Based upon its belief that Geoffrey allowed the children to berate Sarah about their concerns, the court temporarily awarded Sarah sole custody of W.E.W. while the divorce was pending.

But with more time and more evidence, the court changed its view. In particular, the court repeatedly heard that W.E.W. strongly preferred to split his time evenly between his parents. In August 2022, the trial court accepted W.E.W.'s request and implemented a temporary parenting plan under which W.E.W. would alternate between staying with his father and his mother each week. The plan imposed no conditions on Geoffrey, but it was conditioned upon W.E.W. treating Sarah more respectfully. The order contemplated that this arrangement would last through the end of the divorce or W.E.W.'s emancipation.

Shortly thereafter, Sarah again sought to cut off Geoffrey's contact with W.E.W. Instead of the 50/50 plan, Sarah asked the court to order an intensive and intrusive therapy program that was recommended by

a court-appointed expert, Dr. Katie Spirko. During the pendency of the therapies, Geoffrey could have no contact with his 17-year-old son. [redacted]

On March 7, 2023, the trial court granted Sarah's request for a no-contact order. The court prohibited Geoffrey from having any contact with W.E.W until his emancipation. [redacted]

Other conditions for regaining contact are well outside of Geoffrey's control. [redacted]

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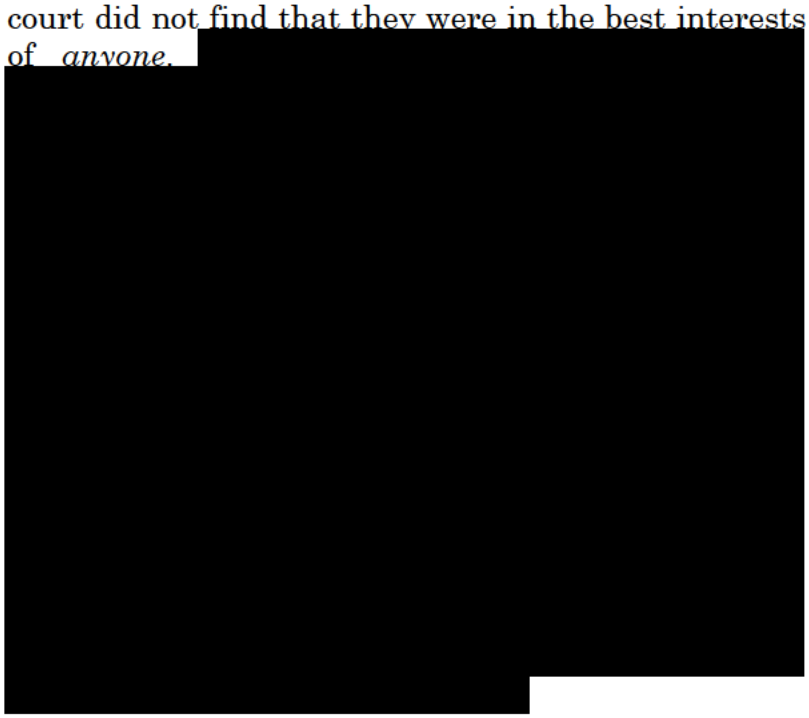
1 [redacted]

Despite imposing these draconian measures, the court did not find that they were in the best interests of *anyone*.



Geoffrey immediately filed a motion asking the trial court to stay the no-contact order pending appeal, returning the parties to the prior, 50/50 parenting arrangement. As relevant here, he argued that compelling him to undergo psychotherapy, at least on this record, violated his right under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to refuse medical treatment. The trial court denied the stay, concluding that it had authority, consistent with the Due Process Clause, to order Geoffrey to undergo psychotherapy. Pet. App. 4a. The court also extended the no-contact order, clarifying that it bars Geoffrey from attending W.E.W.'s school activities and sporting events even as a spectator. Pet. App. 38a–39a.

Raising the same federal due-process claim, Geoffrey sought leave from the Court of Appeals of Tennessee to take an emergency appeal of the trial court's no-contact order and sought a stay of the order. See Tenn. R. App. P. 10. That court declined to exercise discretionary jurisdiction over the appeal. Pet. App. 31a. It also did not grant a stay. Pet. App. 31a.

Geoffrey then applied to the Supreme Court of Tennessee for leave to appeal on the same due process grounds. He also requested a stay of the no-contact order. On June 5, 2023, the Tennessee Supreme Court declined review of the trial court's order. Pet. App. 32a. The court also denied the request for a stay. Pet. App. 32a. Geoffrey then sought a stay from Justice Kavanaugh, which was denied on August 18, 2023.

Geoffrey has exhausted all avenues to appeal or stay the no-contact order in the Tennessee courts and thereby enforce his fundamental right to have contact with his son.

REASONS FOR GRANTING THE PETITION

This case presents a profoundly important question: Under what circumstances, consistent with the Due Process Clause, may an undisputedly fit parent's contact with his child be conditioned on that parent undergoing unwanted medical treatment? That question arises frequently in family courts across the Nation, yet those courts have reached inconsistent answers. Certiorari is warranted to settle this division of authority and provide guidance on this critical issue.

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS HOLDING THAT THE DUE PROCESS CLAUSE PROHIBITS COMPELLED MENTAL HEALTH TREATMENT ABSENT COMPELLING CIRCUMSTANCES.

Certiorari is warranted because the trial court disregarded this Court's repeated holdings that an individual has a foundational constitutional right to refuse unwanted medical procedures.

The Due Process Clause of the Fourteenth Amendment "guarantees more than fair process, and the 'liberty' it protects includes more than the absence of physical restraint." *Washington* v. *Glucksberg*, 521 U.S. 702, 719 (1997). Among those personal liberties safeguarded by the Clause is an individual's right to be free from state-imposed medical treatment absent an "overriding" state interest and thorough consideration of "less intrusive alternatives." *Riggins* v. *Nevada*, 504 U.S. 127, 134–35 (1992). This freedom applies to all forms of medical treatment; whether physical, pharmacological, or psychiatric, the state's interest in forcing medical treatment must be extraordinary to overcome an individual's fundamental right to "the possession and control of his own person." *Union Pac. Ry.* v. *Botsford*, 141 U.S. 250, 251 (1891); see *Vitek* v. *Jones*, 445 U.S. 480, 492 (1980) (recognizing due-process protection against mandatory behavioral modification programs); *Riggins*, 504 U.S. at 133–34 (recognizing due-process protection against involuntary administration of antipsychotic drugs).

This right has ancient roots in Anglo-American law, tracing back to the "common law" principle that "even the touching of one person by another without consent and without legal justification was a battery." *Cruzan ex rel. Cruzan* v. *Dir., Mo. Dep't of Health*,

497 U.S. 261, 269 (1990). The "notion of bodily integrity" enshrined in the common law is embodied in the doctrine of informed consent and its "logical corollary"—"the right not to consent, that is, to refuse treatment." *Id*. at 269–70. Indeed, this Court has recognized that "[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Botsford*, 141 U.S. at 251.

Robust protection of this liberty interest is particularly apt when, as here, the State has pitted a parent's right to be free from unwanted medical treatment against "perhaps the oldest of the fundamental liberty interests recognized by this Court"—parents' interest in the "care, custody, and control of their children." *Troxel* v. *Granville*, 530 U.S. 57, 65 (2000) (plurality). This interest holds firm "[e]ven when blood relationships are strained." *Santosky* v. *Kramer*, 455 U.S. 745, 753 (1982). State interference with the parent-child relationship thus requires a substantial state interest, see, *e.g.*, *Pierce* v. *Soc'y of the Sisters*, 268 U.S. 510, 534–35 (1925), proven in each case by "clear and convincing evidence," *Santosky*, 455 U.S. at 747–48. In the eyes of the Due Process Clause, there is no difference between compelling medical treatment on pain of incarceration or on pain of terminated parental rights. Either way, the State must provide a compelling justification and explore less onerous alternatives. See *Riggins*, 504 U.S. at 134–35.

The no-contact order in this case spurns these vital constitutional protections. It puts Geoffrey to the Hobson's choice of either submitting to invasive and unwanted psychiatric treatment, or losing all contact

with his son at a pivotal age in the child's educational and social development. This is an egregious infringement of Geoffrey's due-process right to be free from unwanted medical treatment, because the treatment is not "necessary to accomplish an essential state policy." *Id.* at 138.

The trial court seemingly justified ordering Geoffrey to submit to psychotherapy [redacted] by citing to the best-interests-of-the-child standard. [redacted] But this Court has repeatedly refused to permit States to run roughshod over fundamental constitutional rights by mechanically invoking that nebulous standard. *Troxel*, 530 U.S. at 67, for example, held that a state statute authorizing a third-party to obtain court-ordered visitation over a parent's objection—"based solely on the judge's determination of the child's best interest"—violated the parent's "fundamental" right to "make decisions concerning the care, custody, and control of their children." Similarly, *Palmore* v. *Sidoti*, 466 U.S. 429, 433–34 (1984), recognized that while "the best interests of the child is indisputably a substantial governmental interest for purposes of the Equal Protection Clause," it nonetheless could not justify terminating a mother's custody based on her having an interracial relationship. In short, a State's unadorned incantation of the best-interests-of-the-child standard cannot overcome Geoffrey's fundamental right to refuse unwanted medical treatment or forgo all contact with his son.

In any event, even if it paid lip service to a recognized state interest, the trial court's order contains no finding that compelled psychotherapy is medically necessary to support W.E.W.'s (or anyone else's) best interests. [redacted]

[redacted] State action that undermines its purported objective surely cannot justify infringing Geoffrey's fundamental rights. [redacted]

To be sure, the trial court was exasperated, albeit primarily with W.E.W. But exasperation is not sufficient. Only a "determination of the need" for Geoffrey's psychotherapy and a finding that there are no "reasonable alternatives" can justify the court's order in this case. *Riggins*, 504 U.S. at 136.

Because the trial court's no-contact order lacks either finding, it "conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). Only this Court's review can change that result and align Tennessee law with this Court's holdings. The Court therefore should grant certiorari to review the judgment below.

II. THE DECISION BELOW WIDENS A CONFLICT AMONG THE STATES OVER THE CIRCUMSTANCES UNDER WHICH A FAMILY COURT CAN MANDATE MENTAL HEALTH TREATMENT FOR A PARENT AS A CONDITION OF CONTACT WITH HIS OR HER CHILD.

In addition to disregarding this Court's decisions, the decision below also deepens a conflict of authority among state family courts as to whether, and under what circumstances, they can condition parental contact on completing mental health treatment.

Some States have suggested that no circumstances justify ordering a parent to undergo medical treat-

ment as a condition of maintaining a relationship with a child. It has long been the law of New York that a family court simply "has no power to compel . . . parents to undergo therapy treatments" as a condition of visitation. *Grado* v. *Grado*, 356 N.Y.S.2d 85, 87 (N.Y. App. Div. 1974); accord *C.B.* v. *J.U.*, 798 N.Y.S.2d 707, at *10 (N.Y. Sup. Ct. 2004) (Table) (holding it "is not permissible to compel therapy as a condition to visitation").

California law similarly holds that even if "psychiatric therapy" would "decrease the animosity" between divorced parents, that "praiseworthy motiv[e] furnish[es] no basis for requiring that [a parent] undergo involuntary psychiatric therapy of an unspecified duration." *In re Marriage of Matthews*, 161 Cal. Rptr. 879, 882–83 (Cal. Ct. App. 1980). As California courts later recognized, unless there are specific findings to "justify subjection of a party to involuntary psychiatric treatment" as a condition of visitation, court-imposed treatment "is a direct violation of [a parent's] due process rights." *Camacho* v. *Camacho*, 218 Cal. Rptr. 810, 814 (Cal. Ct. App. 1985).

In other States, by contrast, family courts order mental health treatment as a condition of child custody or visitation with little regard for the parents' liberty interest in being free from such treatment. Washington law is clear, for example, that "[a] judge in a family court proceeding can order remedial services, such as . . . treatment . . . as a condition to custody or visitation." *In re Mahaney*, 51 P.3d 776, 781 (Wash. 2002). And in West Virginia, the State's interest in "heal[ing]" the parent-child relationship justifies "direct[ing] participation in [professional] counseling" as a condition of visitation, even over the parent's objection. *Mary Ann P.* v. *William R.P., Jr.*, 475

S.E.2d 1, 8 (W. Va. 1996) (per curiam); see also *Mary D.* v. *Watt*, 438 S.E.2d 521, 528 (W. Va. 1992) ("The family law master or circuit court may condition such supervised visitation upon the offending parent seeking treatment."). Texas takes a similar approach. See *In re L.M.M.*, No. 03-04-00452-CV, 2005 WL 2094758, at *10 (Tex. Ct. App. Aug. 31, 2005) (affirming order conditioning mother's visitation rights on 30 days of treatment with a psychotherapist).

Tennessee falls into this latter group. In this case, for example, the court brushed aside, without any analysis of this Court's decisions, Geoffrey's claim that conditioning his contact with W.E.W. on mandatory psychotherapy violated due process. The court merely asserted that it "does have the authority to order Mr. Woodward to participate" in therapy because he "has issues that need to be addressed to try to give this remaining minor child the best opportunity to have a relationship with both parents." Pet. App. 4a. See also *Beyer* v. *Beyer*, 428 S.W.3d 59, 70–72 (Tenn. Ct. App. 2013) (affirming parenting plan that conditioned father's visitation on completing therapy).

This Court should grant certiorari to resolve this difference of authority, which results in divergent case outcomes in different jurisdictions. Parents facing loss of contact with their children should not be subject to disparate legal standards based on the vagary of where they reside.

III. THIS CASE PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW AND IS AN APPROPRIATE VEHICLE FOR RESOLVING IT.

A. This case poses a recurring and "important question" of federal law that warrants this Court's review.

See Sup. Ct. R. 10(c). The issues at the heart of this case are: what state interests suffice to overcome a parent's liberty interests in avoiding forced medical treatment, and how the nebulous "best interests of the child" standard fits into the analysis.

The implications of these issues are enormous and extend far beyond the current dispute. Indeed, these issues are faced by family courts throughout the Nation on a regular basis. See L. Fidnick et al., *Special Feature: Association of Family and Conciliation Courts Guidelines for Court-Involved Therapy*, 49 Fam. Ct. Rev. 557, 558 (2011) (noting prevalence of mental health professionals in child custody cases). This case presents a compelling opportunity for this Court to provide much-needed guidance on these matters.

B. Although the divorce proceedings between Geoffrey and Sarah remain pending, those ongoing proceedings pose no obstacle to this Court's review.

This Court has certiorari jurisdiction over all "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." 28 U.S.C. § 1257(a). The judgment, in other words, "must be final 'in two senses'": "It must be the final word of a final court." *Jefferson* v. *City of Tarrant*, 522 U.S. 75, 81 (1997) (quoting *Mkt. St. Ry.* v. *R.R. Comm'n of Cal.*, 324 U.S. 548, 551 (1945)). The trial court's order in this case is final in both senses.

1. The trial court's order is the Tennessee courts' "final word" on the federal due-process issue. This Court considers a state-court order final if "the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Cox Broad. Corp.* v. *Cohn*, 420 U.S. 469, 480 (1975). As

the Court recently explained, if subsequent proceedings—such as the remainder of the marital dissolution proceedings here—will "neither alter[] [the state court's] analysis of the federal issue nor negate[] the effect of its judgment," then the state court's judgment is sufficiently final for this Court to exercise jurisdiction. *Moore* v. *Harper*, 143 S. Ct. 2065, 2078 (2023).

That is undoubtedly the case with the Tennessee trial court's no-contact order. The federal issue—whether the court could constitutionally mandate that Geoffrey undergo psychotherapy as a condition of having contact with his son—will survive regardless of what happens in the rest of the divorce proceedings. Even if W.E.W. and Sarah comply with the remaining conditions for reconsideration of the no-contact order, Geoffrey will be denied any relationship with his son unless he sacrifices his constitutional right to be free from unwanted medical treatment. That is a choice no parent should have to make. But it is the choice Geoffrey will continue to face unless and until this Court intervenes.

It does not matter that the no-contact order is, in some sense, a *preliminary* injunction. There is no "indication that the injunction rests on a disputed question of fact that might be resolved differently upon further hearing." *Org. for a Better Austin* v. *Keefe*, 402 U.S. 415, 418 n.1 (1971) (exercising jurisdiction to review state court preliminary injunction). And the no-contact order expressly provides that it will remain in effect until Geoffrey complies with its terms, including the psychotherapy requirement. Such injunctions are "clearly final for purposes of review by this Court." *Amalgamated Foods Emps. Union Loc. 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308, 312 n.5

(1968), *abrogated on other grounds by Hudgens* v. *NLRB*, 424 U.S. 507 (1976).

2. The trial court's no-contact order and subsequent refusal to stay that order are the judgments of the "final court" on the federal issue. When a state trial court's judgment is subject to only discretionary appellate review, its decision becomes "the highest court of the state in which a decision could be had" when the state appellate tribunals decline review. *Virginian Ry.* v. *Mullens*, 271 U.S. 220, 222 (1926); see also *Am. Ry. Express Co.* v. *Levee*, 263 U.S. 19, 20–21 (1923). Because the Court of Appeals of Tennessee and Supreme Court of Tennessee denied Geoffrey's applications for an emergency appeal, this Court has certiorari jurisdiction to review the Tennessee trial court's no-contact order. It should exercise that jurisdiction to protect Geoffrey's fundamental due process right not to have to choose between undergoing unwanted medical treatment or losing all contact with his son.

CONCLUSION

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

Respectfully submitted,

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