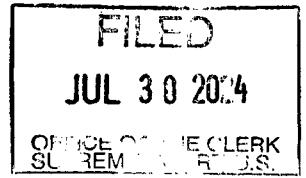


ORIGINAL

24-141
No. _____



IN THE
Supreme Court of the United States

SASIREKHA MAGUDAPATHI,
Petitioner,

v.

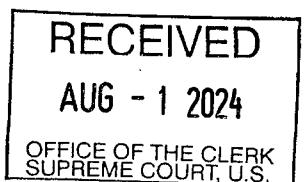
RANGARAJAN R. CALYANAKOTI,
Respondent.

On Petition for Writ of Certiorari to the
New Jersey Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the “fitness of the parent” is the appropriate test in determining child custody and reasonable visitation.
2. Whether “strict scrutiny” is the appropriate level is the appropriate level of scrutiny for judicial review.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

New Jersey Supreme Court, SM v. RRC, Case No. 088532

New Jersey Superior Court, SM v. RRC, Case No. A-1020-21

Superior Court of New Jersey, SM v. RRC, Family Division, Somerset County, NJ - Docket # FM 18-639-15

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PETITION FOR WRIT OF CERTIORARI

Petitioner Sasirekha Magudapathi respectfully requests the issuance of a writ of certiorari to review the judgment of the New Jersey Supreme Court.

DECISION BELOW

The decision of the New Jersey Supreme Court is reproduced at Pet. App. A.

JURISDICTION

The New Jersey Supreme Court entered judgment on May 29, 2024 *See* Pet. App. A. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, 14th Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. 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.

STATEMENT OF THE CASE

I. Proceedings below.

This case arises out of three post-judgment matrimonial orders issued by the Superior Court of New Jersey, Chancery Division, Family Part (Docket No. FM-18-0639-15) on June 28, 2021, November 19, 2021, and December 20, 2021, respectively, issued in favor of Respondent related to custody, visitation, and child support.

On December 21, 2021, Petitioner Sasirekha Magudapathi (“Petitioner”), appealed from the forgoing orders. On June 22, 2023, the Superior Court of New Jersey, Appellate Division, (Case No. A-1020-21), Affirmed the Judgment of Superior Court of New Jersey, Chancery Division, Family Part. Pet. App. B. On July 31st, 2023 Petitioner filed a Petition for Certification of Judgment to the New Jersey (entered in the computer system on August 17th 2023). Supreme Court (Case No. Case No. 088532). On May 29, 2024, the New Jersey Supreme Court Denied the Petition for Certification of Judgment. *See* Pet. App. A.

II. Statement of facts.

The parties were divorced in October 2015 and have three children: The children are currently ages 20, 19, and 17, respectively. The parties' October 5, 2015 marital settlement agreement

(MSA) was incorporated into their judgment of divorce and provided the parties would share joint legal custody of the children. Petitioner was designated as her son's parent of primary residence (PPR) and Respondent was designated as the PPR for their daughters. *See* Pet. App. B. at 3.

On June 21, 2018, Petitioner's son left her home to visit with Respondent. Approximately a few days later, the trial court directed Respondent to return their son to Petitioner's custody. The Appellate Division decision erroneously states that "the child refused." And further, "has continuously lived with Respondent for the past five years." *See* Pet. App. B. at 3, 4.

Petitioner filed a series of motions in the Superior Court of New Jersey, Chancery Division, Family Part from 2018 to 2021 seeking to enforce existing custody, visitation, and child support orders for all three children. Petitioner repeatedly informed the trial court that Respondent refused to make her children available for any visitation (*to note: Petitioner was/is self-represented due to financial crunch and Respondent has an attorney representing him*). The court refused to act on Petitioner's repeated requests for intervention to facilitate visitation, instead deciding that all three children were residing with Respondent as part of a "de facto" custody arrangement. The court then ordered Petitioner to pay child support to Respondent retroactive to the commencement of the "de facto" custody arrangement.

The Appellate decision states: "Also, when a trial court addresses a custody or parenting time dispute, *"it is well settled that the court's primary consideration is the best interests of the children."* *Hand v. Hand*, 391 N.J. Super. 102, 105 (App. Div. 2007) (citing *Kinsella v. Kinsella*, 150 N.J. 276, 317 (1997)). Therefore, a parent seeking to modify a custody or parenting time arrangement "bear[s] the threshold burden of showing changed circumstances which would affect the welfare of the children." *Todd v. Sheridan*, 268 N.J. Super. 387, 398 (App. Div. 1993) (citing *Sheehan v. Sheehan*, 51 N.J. Super. 276, 287 (App. Div. 1958)); see also *Lepis v. Lepis*, 83 N.J. 139, 157 (1980). See Pet. App. B. at 12, 13.

As will be discussed further herein, the Appellate Division's affirmation of the trial court's decision to grant de facto custody of the children to Respondent based on the "best interest of the children" despite there being no finding that Petitioner was an unfit parent, directly contradicts this Court's recognition of parents' primary and fundamental rights in the care, custody, and control of their children.

REASONS FOR GRANTING THE PETITION

This case centers upon parents' fundamental rights in directing the care, custody, and control of their children as a family and the State's power to affect, limit, or even terminate those rights even without a finding that a parent is unfit to do so.

This Court has previously decided that parents have a fundamental right to direct the care, custody, and control of their children. This Court also has determined that the government shall not interfere with this right unless and until a parent is proven unfit. In contravention to this determination, the New Jersey Supreme Court denied review in the case below when an appellate court declared protection of that fundamental right irrelevant in a custody dispute between two natural parents. Instead, the Superior Court of New Jersey, Appellate Division upheld the trial judge's denial of custody and reasonable visitation to the Petitioner based on the judge's findings related to the best interest of the child, even though the trial judge did not find the mother unfit. The holding below directly contradicts this Court's recognition of parents' primary and fundamental rights in the care, custody, and control of their children.

A contributory factor to this contradiction can be found in the fact that this Court has not clearly articulated the appropriate test for adjudicating the protection of parents' rights when involving both natural parents. This Court also has not clearly articulated the level of scrutiny in judicial review of parents' fundamental right in such cases. In an earnest attempt to safeguard against such government infringement and avoid such contradictions in state courts, this Court should explicitly adopt a national standard articulating both the appropriate test and the appropriate level of scrutiny consistent with the Constitution and this Court's precedent.

Petitioner sincerely believes that this case presents the opportunity for the Court to definitively state that fitness of the parent is that test and strict scrutiny is that level of scrutiny for judicial review. Moreover, this case presents the appropriate scenario to do so because it involves the rights of two natural parents.

I. THE COURT SHOULD GRANT CERTIORARI TO CLARIFY THE APPROPRIATE TEST COURTS MUST USE IN ADJUDICATING PARENTS FUNDAMENTAL RIGHTS OF CARE, CUSTODY, AND CONTROL OF THEIR CHILDREN

In 1925 this Court acknowledged that “the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Later, in *Stanley v. Illinois*, 405 U.S. 645 (1972), this Court affirmed the fundamental rights of parents “in the companionship, care, custody, and management” of their children. *Id.* at 651. Also, in 1972 in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Court declared that “[t]his primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.” *Id.* at 232. Thereafter, this Court declared in *Washington v. Glucksberg*, 521 U.S. 702 (1997), that the Constitution, and specifically the Due Process Clause of the Fourteenth Amendment, protects the fundamental right of parents to direct the care, upbringing, and education of their children. *Id.*

at 720. And in *Troxel v. Granville*, 530 U.S. 57 (2000), this Court again undeniably affirmed the fundamental right of parents to direct the care, custody, and control of their children.

In *Troxel*, this Court stated that “so long as a parent adequately cares for his or her children (*i.e.*, *is fit*), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of the parent to make the best decisions concerning the rearing of that parent’s child.” 530 U.S. at 68-69 (emphasis added). Therefore, a failure to consider the fitness of the parent represents “an unconstitutional infringement on [that parent’s] fundamental right to make decisions concerning the care, custody, and control” of her children. 530 U.S. at 72. Moreover, because this right is so inviolable and sacred this Court declared a presumption that “a fit parent will act in the best interest of his or her child.” *Id.* at 69. Yet, in the case below, the New Jersey Supreme Court denied review and allowed the decision of the Superior Court of New Jersey, Appellate Division to stand that rejected this presumption in favor of the natural mother of the children. Pet. App. B. at 12, 13.

In 2024, State courts of last resort throughout the United States are split, adjudicating children as “creatures of the State” by limiting or terminating parents’ rights through using a subjective “best interest of the child” test or by evaluating some level of “harm” to the child. In fact, in the case below the Superior Court of New Jersey, Appellate Division determined that, in a dispute between two natural parents, “*it is well settled that the court’s primary*

consideration is the best interests of the children." *Hand v. Hand*, 391 N.J. Super. 102, 105 (App. Div. 2007) (citing *Kinsella v. Kinsella*, 150 N.J. 276, 317 (1997)). "Therefore, a parent seeking to modify a custody or parenting time arrangement "bear[s] the threshold burden of showing changed circumstances which would affect the welfare of the children." Pet. App. B. at 12, 13. Such a test blatantly violates the fundamental rights of natural parents in custody cases.

Moreover, scholars recognize that the "best interest of the child" standard provides "no standard at all because of its vagueness" and uncertainty. See, e.g., Janet Weinstein, *And Never the Twain Shall Meet: The Best Interest of Children and the Adversary System*, 52 U. Miami L. Rev. 79, 108 (1997). Furthermore, Notre Dame Law School Professor Eugene Volokh recognized that courts applying "the best interest of the child" test in parent custody cases violate sacred, fundamental, constitutional rights of those parents. See Volokh, "Parent-Child Speech and Child Custody Speech Restrictions," 81 N.Y.U. L. Rev. 631 (2006). Professor Volokh also recognized that "harm" analyses have significant limits, foremost being their highly subjective nature and risk of the fact-finder's personal hostilities entering into the determination. Volokh, *supra* at 700. Put plainly, both tests violate the due process rights of parents guaranteed by the Fourteenth Amendment to the Constitution if the fitness of the parents is disregarded. As in the instant case, State courts still apply these inappropriate tests without first making the required constitutional finding of a parent's unfitness. As a result, these

courts continue to violate the fundamental right of parents to direct the care, custody, and control of their children.

As of the filing of this Petition the Court has alluded to the fitness of the parent test but has not articulated the exact standard in these cases. See *Troxel*, 530 U.S. at 73 (“We do not, and need not, define today the precise scope of the parental due process right in the visitation context”). The complexities of the current American family dynamic and the crucial interest of the parties involved in these cases compels Petitioner to respectfully submit that the time has come for the Court to adopt the fitness of the parent test as the appropriate standard moving forward for cases involving both natural parents.

The instant case presents this Court with the opportunity to clearly articulate the fitness of the parents test as the appropriate test for all State courts because this case involves a lower court’s review of the rights of both natural parents. While *Troxel* providing cogent precedent, it involved the rights of a natural parent and the rights of grandparents after the children’s father died. *Stanley*, likewise, is factually distinguishable because it involved the natural but unwed father of the children who had been declared wards of the state after their mother died. This case involves two natural biological parents, both of whom have fundamental rights protected from unwarranted government interference by the Fourteenth Amendment and both of whom seek care, custody, and control of their children. The fitness test provides protection of constitutional

rights of both natural parents in a custody case such as this one presented in the Petition.

II. THE COURT SHOULD GRANT CERTIORARI TO CLARIFY THE LEVEL OF SCRUTINY COURTS MUST USE IN ADJUDICATING PARENTS' FUNDAMENTAL RIGHTS OF CARE, CUSTODY, AND CONTROL OF THEIR CHILDREN

This Court also has the opportunity to clearly articulate the appropriate level of scrutiny courts should use in adjudicating parents' constitutional rights of care, custody, and control of their children. In the words of one State court judge regarding the failure of State courts and judges to follow what this Court has suggested as the appropriate standard:

Despite the United States Supreme Court's determination to subject infringement upon such fundamental rights to strict scrutiny and of our own legislature's mandate to preserve and foster parent-child relationships . . . courts have developed a jurisprudence under which trial court decisions severely curtailing that relationship stand absent an abuse of discretion. Considering the importance of and the risk to the rights at issue and the legislature's clear mandates that courts take measures to protect this most sacred of relationships, I believe we need to carefully re-examine the standards by which decisions that limit a parent's access

to, or possession of a child are made and reviewed.

In Re: J.R.D. and R.C.D., 169 S.W.3d 740, 752 (Tex. App. 2005) (Puryear, J., concurring) (internal citations omitted)

It is beyond dispute that these cases involve deeply grounded fundamental rights guaranteed under the Constitution to the parents requiring courts to consistently apply the appropriate level of judicial scrutiny. As such, just as the fitness of the parent test alone satisfies the constitutional requirements, only strict scrutiny will suffice for judicial review in these situations.

In his concurring opinion in *Troxel*, Justice Thomas summarized an important aspect of this Court's precedential opinion in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), writing that "parents have a fundamental constitutional right to rear their children, including the right to determine who shall educate and socialize them." *Troxel* at 80 (Thomas, J., concurring). This fundamental right is no less critical and sacred today as when Justice Thomas wrote those words twenty-four years ago and when this Court affirmed that truth in 1925. Justice Thomas moved the analysis forward by concluding: "I would apply strict scrutiny to infringements of fundamental rights." *Id.*

Petitioner respectfully submits that strict scrutiny is the appropriate level of review and that this issue alone, as presented in this case, supports this Court granting the Petition. Petitioner provides

this Court with the ideal opportunity to declare the appropriate level of scrutiny for the courts of this nation to apply in such cases.

CONCLUSION

This Petition presents this Court with the opportunity to resolve the conflict among the States and articulate one test – the fitness of the parent test – for adjudicating natural parents' rights in the care, custody, and control of their children. The New Jersey Supreme Court in denying review let stand the opinion below of Superior Court of New Jersey, Appellate Division, essentially declaring this test irrelevant.

This Petition also presents this Court with the opportunity to resolve the conflict among the States and articulate one standard of review – strict scrutiny – when reviewing the fundamental rights of natural parents in the care, custody, and control of their children. The Superior Court of New Jersey, Appellate Division, in the opinion below, required no such level of review.

For the reasons stated herein, Petitioner respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,

SASIREKHA MAGUDAPATHI

A handwritten signature in black ink, appearing to read "Sasirekha M".

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Dated: July 30th, 2024