APPENDIX

SUPREME COURT OF MARYLAND, Petition Docket No. 136, September Term, 2023, Order, September 22, 2023

APPELLATE COURT OF MARYLAND, No. 1805, September Term, 2022, Unreported Opinion, June 12, 2023

CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND, Case No. C-15-FM-22-003006, Order, November 21, 2022

CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND, Case No. C-15-FM-22-003006, Order, September 16, 2022

E-FILED
Gregory Hilton, Clerk,
Supreme Court of Maryland
9/22/2023 12:09 PM

	*	IN THE
	*	SUPREME COURT
DEANNE R. UPSON GIESE	*	OF MARYLAND
	*	
v.		Petition Docket No. 136
	*	September Term, 2023
WILLIAM EARL WALLACE, III	*	(No. 1805, Sept. Term, 2022 Appellate Court of Maryland)
	*	
		(Cir. Ct. No. C-15-FM-22-003006)
	*	

ORDER

Upon consideration of the petition for a writ of certiorari to the Appellate Court of Maryland and the petitioner's motion and amended motion to "Add Supporting Citations," it is this 22nd day of September 2023, by the Supreme Court of Maryland,

ORDERED that the petition for writ of certiorari is denied as there has been no showing that review by certiorari is desirable and in the public interest; and it is further

ORDERED that the motion and amended motion to "Add Supporting Citations" are denied as moot.

/s/ Matthew J. Fader
Chief Justice

Circuit Court for Montgomery County
Case No. C-15-FM-22-003006

E-FILED
Rachel Dombrowski, Clerk
Appellate Court of Maryland
6/12/2023 1:32 PM

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1805

September Term, 2022

DEANNE R. UPSON GIESE

v.

WILLIAM EARL WALLACE, III

Friedman,
Ripken,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: June 12, 2023

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This is an appeal from an order of dismissal in a child access case, by the Circuit Court for Montgomery County, on the ground that the child had reached the age of 18 years and, therefore, the court no longer has jurisdiction. We shall affirm.

BACKGROUND

Georgiana Rose Wallace ("Daughter"), the daughter of Deanne R. Upson Giese ("Mother"), the appellant, and William Earl Wallace, III ("Father"), the appellee, was born in May 2004, "in the Commonwealth of Virginia, nine months after her parents engaged in a brief intimate relationship." *Upson v. Wallace*, 3 A.3d 1148, 1151 (D.C. 2010). "After a contentious custody dispute in 2006 between" the parties, "a Virginia court awarded Wallace full custody in March 2007." *Wallace v. Poulos*, 861 F. Supp. 2d 587, 592 (D. Md. 2012).

On June 14, 2022,[1] Mother filed a petition in the Circuit Court for Montgomery County seeking, among other things, a "court Order invalidating all Virginia" custody orders previously issued that had awarded sole custody of Daughter to Father; a "court Order for Mother to have sole physical and legal custody of [Daughter] and entitled to child support through [Daughter]'s age of 21"; an order of protection to prevent Father from having any contact with either Mother or Daughter; and an order that Daughter's surname be changed from "Wallace" to "Upson." On July 13, 2022, Mother filed an amended petition, asking for Daughter "to be produced for law enforcement."

[1] Mother previously filed a similar petition on May 27, 2022, but it appears that the circuit court rejected the petition because of failure to conform to the requirements of the Maryland Electronic Courts filing system ("MDEC"), Maryland Rule 20-101.1, and because it was unsigned.

On July 21, 2022,[2] Father filed a motion to dismiss on several grounds, including that Daughter had attained age 18 and graduated high school, resulting in the termination of custody and child support obligations as a matter of Maryland law. On August 22, Mother filed a motion for summary judgment, asserting that "[n]o facts of this case are in genuine dispute" and that she was "entitled to judg[]ment as a matter of law," as well as a renewed emergency motion for protective order.

On August 26, 2022, the circuit court issued an order, dismissing, with prejudice, Mother's June 14th custody petition and July 13th amended petition, declaring that it "does not have jurisdiction over the child of the parties who is emancipated by age[.]" On August 31, 2022, a magistrate convened a virtual hearing on Mother's petitions and informed the parties of the circuit court's order and concluded the hearing. The circuit court's order was entered the same day and docketed in MDEC September 6, 2022. On September 16, 2022, the circuit court entered an order, denying Mother's motion for summary judgment.

Mother filed a motion for reconsideration the same day. On November 21, 2022, the circuit court denied her motion for reconsideration. Mother then noted this appeal.

DISCUSSION

Maryland Code (1984, 2019 Repl. Vol.), Family Law Article ("FL"), § 9.5-101(c) defines "[c]hild" as "an individual under the age of 18 years." The jurisdiction of a circuit

[2] Father's motion to dismiss is time-stamped July 21, 2022 but appears to have been entered July 26, 2022. This discrepancy is not material.

court in matters affecting such things as the custody, support, and visitation of a child is defined in FL § 1-201(b):[3]

> (b) An equity court has jurisdiction over:
>
> * * *
>
> (5) custody or guardianship of a child except for a child who is under the jurisdiction of any juvenile court and who previously has been adjudicated to be a child in need of assistance;
>
> (6) visitation of a child;
>
> * * *
>
> (9) support of a child;

FL § 5-203 states more specifically:

> (b) The parents of a minor child, as defined in § 1-103 of the General Provisions Article:
>
> (1) are jointly and severally responsible for the child's support, care, nurture, welfare, and education; and
>
> (2) have the same powers and duties in relation to the child.
>
> * * *
>
> (d)(1) **If the parents live apart, a court may award custody of a minor child to either parent or joint custody to both parents.**

[3] Family Law Section 1-201(a) provides: "For the purposes of subsection (b)(10) [concerning certain immigrant children] of this section, 'child' means an unmarried individual under the age of 21 years." Under basic principles of statutory construction, this clearly means that, for all other subsections of FL § 1-201(b), "child" means "an individual under the age of 18 years." FL § 9.5-101(c). *Griffin v. Lindsey*, 444 Md. 278, 287-88 (2015) (applying doctrine of *expressio unius est exclusio alterius* to jurisdictional statute), *disapproved on other grounds*, *Rosales v. State*, 463 Md. 552, 566 (2019).

> (2) Neither parent is presumed to have any right to custody that is superior to the right of the other parent.

(Emphasis added.)

Maryland Code (2014, 2019 Repl. Vol.), General Provisions Article ("GP"), § 1-103 states:

> (a) "Adult" means an individual at least 18 years old.
>
> (b) Except as provided in § 1-401(b) of this title, as it pertains to legal age and capacity, "minor" means an individual under the age of 18 years.

And finally, GP § 1-401(b) states:

> (b) An individual who has attained the age of 18 years and who is enrolled in secondary school has the right to receive support and maintenance from both of the individual's parents until the first to occur of the following events:
>
> (1) the individual dies;
>
> (2) the individual marries;
>
> (3) the individual is emancipated;
>
> (4) the individual graduates from or is no longer enrolled in secondary school; or
>
> (5) the individual attains the age of 19 years.

The undisputed facts are that Daughter's 18th birthday was in May 2022 and that she no longer attends secondary school. When Mother filed her petition, on June 14, 2022, the circuit court lacked subject matter jurisdiction over her petition. Therefore, the circuit

court correctly dismissed Mother's petition and supplemental petition and furthermore correctly denied Mother's motion for summary judgment and motion for reconsideration.[4]

ORDER OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[4] Even if Mother's original petition, filed May 27, 2022, had been accepted for filing, the case would have been rendered moot as a consequence of Daughter attaining her 18th birthday and graduating high school. Therefore, the circuit court, in that case, still would have been correct in dismissing Mother's filings in this case. *See generally In re M.C.*, 245 Md. App. 215, 224 (2020).

CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND
50 Maryland Avenue
Rockville, Maryland 20850
Main: 240-777-9400

Case Number: C-15-FM-22-003006
Other Reference Numbers:

DEANNE UPSON GIESE VS. WILLIAM WALLACE, III

ORDER

Upon consideration of Plaintiff's Motion to Reconsider Orders (entered on 8/31/22 and on MDEC on 9/6/22) any opposition thereto, and the record herein, it is by the Circuit Court for Montgomery County, Maryland hereby

ORDERED, that Plaintiff's Motion to Reconsider Orders is **DENIED.**

11/18/2022 5:13:16 PM

HARRY C. STORM
JUDGE

Date Judge

11/18/2022 4:05:08 PM
This is a proper order to be signed
Special Magistrate

Entered: Clerk, Circuit Court for
Montgomery County, MD
November 21, 2022

CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND
50 Maryland Avenue
Rockville, Maryland 20850
Main: 240-777-9400

Case Number: C-15-FM-22-003006
Other Reference Numbers:

DEANNE UPSON GIESE VS. WILLIAM WALLACE, III

ORDER

Upon consideration of Plaintiff's Motion for Summary Judgment filed on August 22, 2022, Plaintiff's Motion for Summary Judgment with address filed on August 22, 2022 and Plaintiff's Motion for Summary Judgment without address filed on August 22, 2022, any opposition thereto, and the record herein, it is by the Circuit Court for Montgomery County, Maryland hereby

ORDERED, that of Plaintiff's Motion for Summary Judgment filed on August 22, 2022, Plaintiff's Motion for Summary Judgment with address filed on August 22, 2022 and Plaintiff's Motion for Summary Judgment without address filed on August 22, 2022 are **DENIED.**

9/16/2022 10:11:51 AM

Bibi M. Berry

9/16/2022
Date

Judge

9/15/2022 1:55:02 PM
This is a proper order to be signed
Special Magistrate

Entered: Clerk, Circuit Court for
Montgomery County, MD
September 16, 2022

ATTACHMENT 1

National Archives, Equal Rights Amendment – Proposed March 22, 1972, List of State Ratification Actions

EQUAL RIGHTS AMENDMENT - PROPOSED MARCH 22, 1972
LIST OF STATE RATIFICATION ACTIONS

The following dates reflect the date of the state legislature's passage, the date of filing with the Governor or Secretary of State, or the date of certification by the Governor or Secretary of State, whichever is the earliest date included in the official documents sent to the NARA, Office of the Federal Register. (Updated as of: 03/24/2020)

STATE	RATIFICATION	STATE	RATIFICATION
Alabama	not ratified	Montana	Jan. 25, 1974
Alaska	April 5, 1972	Nebraska*	March 29, 1972
Arizona	not ratified	Nevada**	March 22, 2017
Arkansas	not ratified	New Hampshire	March 23, 1972
California	Nov. 13, 1972	New Jersey	April 17, 1972
Colorado	April 21, 1972	New Mexico	Feb. 28, 1973
Connecticut	March 15, 1973	New York	May 18, 1972
Delaware	March 23, 1972	North Carolina	not ratified
Florida	not ratified	North Dakota	Feb. 3, 1975
Georgia	not ratified	Ohio	Feb. 7, 1974
Hawaii	March 22, 1972	Oklahoma	not ratified
Idaho*	March 24, 1972	Oregon	Feb. 8, 1973
Illinois**	May 30, 2018	Pennsylvania	Sept. 26, 1972
Indiana	Jan. 24, 1977	Rhode Island	April 14, 1972
Iowa	March 24, 1972	South Carolina	not ratified
Kansas	March 28, 1972	South Dakota*	Feb. 5, 1973
Kentucky*	June 27, 1972	Tennessee*	April 4, 1972
Louisiana	not ratified	Texas	March 30, 1972
Maine	Jan 18, 1974	Utah	not ratified
Maryland	May 26, 1972	Vermont	March 1, 1973
Massachusetts	June 21, 1972	Virginia**	January 27, 2020
Michigan	May 22, 1972	Washington	March 22, 1973
Minnesota	Feb. 8, 1973	West Virginia	April 22, 1972
Mississippi	not ratified	Wisconsin	April 26, 1972
Missouri	not ratified	Wyoming	Jan. 26, 1973

* Purported Rescission

Nebraska	March 15, 1973
Tennessee	April 23, 1974
Idaho	Feb. 8, 1977

** Ratification actions occurred after Congress's deadline expired. *See* U.S. Dep't of Justice, Office of Legal Counsel, *Ratification of the Equal Rights*

ATTACHMENT 2

1 U.S.C. § 106b. Amendments to Constitution

Memorandum for the Archivist of the United States

By the authority vested in me as President by the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, I hereby authorize you to ascertain whether the printed enrollments of H.R. 4637, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461), H.R. 4776, the District of Columbia Appropriations Act, 1989 (Public Law 100-462), and H.R. 4781, the Department of Defense Appropriations Act, 1989 (Public Law 100-463), are correct printings of the hand enrollments, which were approved on October 1, 1988, and if so to make on my behalf the certifications required by Section 2(c) of H.J. Res. 665 (Public Law 100-454) [set out as a note above].

Attached are the printed enrollments of H.R. 4637, H.R. 4776, and H.R. 4781, which were received at the White House on December 1, 1988.

This memorandum shall be published in the Federal Register.

RONALD REAGAN.

Memorandum of the President of the United States, Jan. 28, 1988, 53 F.R. 2816, provided:

Memorandum for the Archivist of the United States

By the authority vested in me as President by the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, I hereby authorize you to ascertain whether the printed enrollments of H.J. Res. 395, Joint Resolution making further continuing appropriations for the fiscal year 1988 (Public Law 100-202), and H.R. 3545, the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203), are correct printings of the hand enrollments, which were approved on December 22, 1987, and if so to make on my behalf the certifications required by Section 101(n)(4) of H.J. Res. 395 and Section 8004(c) of H.R. 3545 [set out as notes above].

Attached are the printed enrollments of H.J. Res. 395 and H.R. 3545, which were received at the White House on January 27, 1988.

This memorandum shall be published in the Federal Register.

RONALD REAGAN.

§ 106a. Promulgation of laws

Whenever a bill, order, resolution, or vote of the Senate and House of Representatives, having been approved by the President, or not having been returned by him with his objections, becomes a law or takes effect, it shall forthwith be received by the Archivist of the United States from the President; and whenever a bill, order, resolution, or vote is returned by the President with his objections, and, on being reconsidered, is agreed to be passed, and is approved by two-thirds of both Houses of Congress, and thereby becomes a law or takes effect, it shall be received by the Archivist of the United States from the President of the Senate, or Speaker of the House of Representatives in whichsoever House it shall last have been so approved, and he shall carefully preserve the originals.

(Added Oct. 31, 1951, ch. 655, §2(b), 65 Stat. 710; amended Pub. L. 98-497, title I, §107(d), Oct. 19, 1984, 98 Stat. 2291.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "Archivist of the United States" for "Administrator of General Services" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

SIMILAR PROVISIONS; REPEAL; SAVING CLAUSE; DELEGATION OF FUNCTIONS; TRANSFER OF PROPERTY AND PERSONNEL

Similar provisions were contained in R.S. §204; act Dec. 28, 1874, ch. 9, §2, 18 Stat. 294; 1950 Reorg. Plan No. 20, §1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1272, which with the exception of the reorganization plan, were repealed by section 56(h) of act Oct. 31, 1951. Subsec. (*l*) of that section 56 provided that the repeal should not affect any rights or liabilities existing under those statutes on the effective date of the repeal (Oct. 31, 1951). For delegation of functions under the repealed statutes, and transfer of records, property, personnel, and funds, see sections 3 and 4 of 1950 Reorg. Plan No. 20, set out in the Appendix to Title 5, Government Organization and Employees.

§ 106b. Amendments to Constitution

Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

(Added Oct. 31, 1951, ch. 655, §2(b), 65 Stat. 710; amended Pub. L. 98-497, title I, §107(d), Oct. 19, 1984, 98 Stat. 2291.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "National Archives and Records Administration" and "Archivist of the United States" for "General Services Administration" and "Administrator of General Services", respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

SIMILAR PROVISIONS; REPEAL; SAVING CLAUSE; DELEGATION OF FUNCTIONS; TRANSFER OF PROPERTY AND PERSONNEL

Similar provisions were contained in R.S. §205; 1950 Reorg. Plan No. 20, §1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1272. R.S. §205 was repealed by section 56(h) of act Oct. 31, 1951. Subsec. (*l*) of section 56 provided that the repeal should not affect any rights or liabilities existing under the repealed statute on the effective date of the repeal (Oct. 31, 1951). For delegation of functions under the repealed statute, and transfer of records, property, personnel, and funds, see sections 3 and 4 of 1950 Reorg. Plan No. 20, set out in the Appendix to Title 5, Government Organization and Employees.

§ 107. Parchment or paper for printing enrolled bills or resolutions

Enrolled bills and resolutions of either House of Congress shall be printed on parchment or paper of suitable quality as shall be determined by the Joint Committee on Printing.

(July 30, 1947, ch. 388, 61 Stat. 635.)

§ 108. Repeal of repealing act

Whenever an Act is repealed, which repealed a former Act, such former Act shall not thereby be revived, unless it shall be expressly so provided.

ATTACHMENT 3

ArtVI.C2.1 Overview of Supremacy Clause

CONSTITUTION ANNOTATED
Analysis and Interpretation of the U.S. Constitution

ArtVI.C2.1 Overview of Supremacy Clause

Article VI, Clause 2:

> *This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*

The Supremacy Clause was a response to problems with the Articles of Confederation (the Articles), which governed the United States from 1781 to 1789. The Articles conspicuously lacked any similar provision declaring federal law to be superior to state law. As a result, during the Confederation era, federal statutes did not bind state courts in the absence of state legislation implementing them. To address this issue and related political difficulties, the Confederation Congress called for a convention in 1787 to revise the Articles. While the Supremacy Clause was not a source of major disagreement at the Constitutional Convention that followed, it generated intense controversy during debates over the Constitution's ratification. But advocates of federal supremacy prevailed. The Constitution was ratified in 1788 with the Supremacy Clause.[1]

The Supremacy Clause is among the Constitution's most significant structural provisions. In the late eighteenth ar ↑ Back to top

nineteenth centuries, the Supreme Court relied on the Clause to establish a robust role for the federal government in managing the nation's affairs. In its early cases, the Court invoked the Clause to conclude that federal treaties and statutes superseded inconsistent state laws. These decisions enabled the young Republic to enforce the treaty ending the Revolutionary War, charter a central bank, and enact other legislation without interference from recalcitrant states.[2]

The Supreme Court continued to apply this foundational principle—that federal law prevailed over conflicting state law—throughout the latter half of the nineteenth century.[3] But other aspects of the Court's federalism jurisprudence limited the Supremacy Clause's role during that era. Throughout this period, the Court embraced what academics have called the doctrine of "dual federalism," under which the federal government and the states occupied largely distinct, non-overlapping zones of constitutional authority.[4] While federal supremacy persisted as a background principle during these years, the Court's bifurcation of federal and state authority minimized the instances in which the two could conflict.[5]

To the extent that the Supremacy Clause did play an explicit role in the federalism disputes of this era, the Supreme Court applied it in ways that reinforced dual federalism's sharp division of federal and state power. In a series of early-twentieth-century decisions, the Court developed a precursor to the doctrine of "field preemption"—the principle that some federal legislation implicitly prevents states from adopting any laws regulating the same general subject. Some of the Court's early field-preemption decisions aggressively emp

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new doctrine, concluding that *any* congressional action in certain fields *automatically* displaced all state laws in those fields.[6]

But the Supreme Court's initial foray into field preemption soon gave way to broader legal and political trends. During the New Deal era of the 1930s and 1940s, the Court acceded to demands for a more active national government by revising other elements of its federalism jurisprudence.[7] This about-face marked the demise of dual federalism, as the Court expanded the areas in which the federal government and the states possessed concurrent authority. To prevent the federal government's newly expanded powers from smothering state regulatory authority, the Court simultaneously *narrowed* the circumstances in which federal law displaced state law. Besides retreating from the "automatic" field preemption of the early twentieth century, the Court articulated a "presumption against preemption," under which federal law does not displace state law "unless that was the clear and manifest purpose of Congress."[8]

As the preceding discussion suggests, the Supreme Court has channeled contemporary Supremacy Clause doctrine into the language of "federal preemption." The Court's cases recognize several types of preemption. At the highest level of generality, federal law can preempt state law either *expressly* or *impliedly*. Federal law *expressly* preempts state law when it contains explicit language to that effect.[9] By contrast, federal law *impliedly* preempts state law when that intent is implicit in its structure and purpose.[10]

The Court has also identified different subcategories of implied preemption. As noted, *field preemption* occurs where fed

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"so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it," or where "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."[11] In contrast, *conflict preemption* occurs where compliance with both federal and state law is impossible ("impossibility preemption") or where state law poses an obstacle to federal objectives ("obstacle preemption").[12]

Because preemption issues are primarily questions of statutory interpretation, the Supremacy Clause's role in contemporary legal doctrine differs from that of many other constitutional provisions. The basic principle enshrined in the Clause—federal supremacy—is now well-settled. Generally, litigants do not dispute the Clause's meaning or advance conflicting theories on its scope. Rather, preemption cases ordinarily turn on the same types of issues—like the textualist/purposivist divide and administrative deference—that recur in all manner of statutory litigation.[13]

This essay chronicles the Supremacy Clause's evolution from a deeply controversial repudiation of the Articles of Confederation to its contemporary role as an essential bedrock of the structural Constitution.

Footnotes

1. ^ *See* ArtVI.C2.2.1 Articles of Confederation and Supremacy of Federal Law to ArtVI.C2.2.3 Debate and Ratification of Supremacy Clause.

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2. ^ *See* Gibbons v. Ogden, 22 U.S. 1 (1824); McCulloch v. Maryland, 17 U.S. 316 (1819); Ware v. Hylton, 3 U.S. 199 (1796).

3. ^ *See* Davis v. Elmira Sav. Bank, 161 U.S. 275 (1896).

4. ^ *See, e.g.*, Edward S. Corwin, *The Passing of Dual Federalism*, 36 VA. L. REV. 1, 4 (1950).

5. ^ *See* N.Y. Cent. & Hudson River R.R. Co. v. Tonsellito, 244 U.S. 360 (1917); Charleston & W. Carolina Ry. v. Varnville Furniture Co., 237 U.S. 597 (1915); Chi., Rock Island & Pac. Ry. v. Hardwick Farmers Elevator Co., 226 U.S. 426 (1913).

6. ^ *See Chi., Rock Island & Pac. Ry.*, 226 U.S. at 435.

7. ^ Wickard v. Filburn, 317 U.S. 111 (1942); United States v. Darby, 312 U.S. 100 (1941); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).

8. ^ Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

9. ^ *See* Hillsborough Cnty. v. Automated Med. Labs., Inc., 471 U.S. 707, 713 (1985).

10. ^ *See id.*

11. ^ Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 98 (1992) (internal quotation marks and citation omitted).

12. ^ *See id.*

13. ^ *See* ArtVI.C2.3.4 Modern Doctrine on Supremacy Clause. For an overview of the textualist/purposivist debate in statutory interpretation, see VALERIE C. BRANNON, CONG. RSCH. SERV., R45153, STATUTORY INTERPRETATION: THEORIES, TOOLS, AND TRENDS (2018), https://crsreports.congress.gov/product/pdf/R/R45153. For an overview of administrative deference, see VALERIE C. BRANNON & JARED P. COLE, CONG. RSCH. SERV., LSB10204, DEFERENCE AND ITS DISCONTENTS: WILL THE SUPREME COURT OVERRULE *CHEVRON*? (2018), https://crsreports.congress.gov/product/pdf/LSB/LSB10204.

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ATTACHMENT 4

Ducote et al v. S.B. U.S.C. No. 20-1627, Brief Amici Curiae, Women's and Children's Advocacy Project

No. 20-1627

In the

Supreme Court of the United States

RICHARD DUCOTE, ESQ., VICTORIA MCINTYRE, ESQ., & S.S.,
Petitioners,

v.

S.B.
Respondent.

ON PETITION FOR A WRIT OF CERTORARI TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF AMICI CURIAE, WOMEN'S AND CHILDREN'S ADVOCACY PROJECT, ET AL.

WENDY J. MURPHY, ESQ.
WOMEN'S AND CHILDREN'S ADVOCACY PROJECT
CENTER FOR LAW AND SOCIAL RESPONSIBILITY
NEW ENGLAND LAW | BOSTON
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MA BBO#550455

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INTERESTS OF AMICI CURIAE[1]

The issues before the Court are of great concern to amici, who have a particular interest in ensuring equal justice under law for all persons, especially women.

This brief will provide the Court with research demonstrating the systemic and intolerable prevalence of sex bias in family courts nationwide.

Women's and Children's Advocacy Project

The Women's and Children's Advocacy Project (WCAP) at New England Law | Boston is a project of the school's Center for Law and Social Responsibility (CLSR). The WCAP provides pro bono advocacy services on a variety of legal matters related to the rights of women and children. WCAP has submitted many briefs to state and federal courts around the country, including this Court, on issues pertaining to the maltreatment of women and children in law and society.

National Family Violence Law Center

The National Family Violence Law Center (NFVLC) is housed at George Washington University* in Washington, D.C. NFVLC propels systemic change to ensure that courts deliver safe, beneficial outcomes for children in family court and related matters. Through research, policy development and advocacy, the Center supports legal, legislative and

[1] No party or counsel for a party authored this brief in whole or in part. No one other than amici or counsel for amici made any monetary contribution to fund the preparation or submission of this brief. Petitioners have assented to the filing of this brief, Respondents declined Movants' request for permission to file.

grassroots initiatives aimed at developing safer family court processes. The Director of the Center has litigated over 100 appeals around the country including twelve in this Court on issues affecting safety and justice for survivors of abuse. *The Center does not speak for George Washington University.

Stop Abuse Campaign

Stop Abuse Campaign (SAC) is located in Bronx, NY. Its mission is to prevent adverse childhood experiences through public policy and education. SAC strives to protect children from trauma, including abuse, neglect, and domestic violence.

National Organization for Men Against Sexism

The National Organization for Men Against Sexism (NOMAS) is located in Denver, Colorado. NOMAS is an activist organization of men and women who support positive changes for men. NOMAS advocates a perspective that is pro-feminist, gay affirmative, anti-racist, dedicated to enhancing men's lives, and committed to justice on a broad range of social issues including class, age, religion, and physical abilities. We affirm that working to make this nation's ideals of equality substantive is the finest expression of what it means to be men.

Battered Mothers Custody Conference

The Battered Mothers Custody Conference (BMCC) is located in Latham, NY. BMCC is an annual weekend event dedicated to educating

professionals and the general public about the serious legal and psychological challenges faced by battered women who seek protection for themselves and their children from the family court system. The conference aims to inform, support, and advocate for these survivors, allowing them to network with each other and with professionals and advocates. The conference aims to help survivors enhance their ability to better cope with and overcome the impacts of abuse and to better advocate for themselves and their children within the legal arena.

Domestic Violence Legal Empowerment and Appeals Project

The Domestic Violence Legal Empowerment and Appeals Project (DV LEAP) is a national non-profit organization that makes the law work for family violence survivors through appellate advocacy, technical training, and policy initiatives. Working in partnership with a network of law firms, DV LEAP provides survivors across the country *pro bono* appellate representation to fight unjust trial outcomes, hold courts accountable to the law, and uphold survivors' rights. DV LEAP's amicus briefs, including numerous briefs filed in the United States Supreme Court, advance judicial understanding of what the law can and must do to protect survivors and their children. Through appellate advocacy and broader reform efforts, DV LEAP is a national leader in its work to ensure that family courts apply the law to keep child and parent survivors safe.

Woman's Coalition

The Woman's Coalition is located in San Diego, CA. It advocates for a future in which women have the power to maintain custody and protect their children after divorce or separation. The Woman's Coalition raises awareness of systemic maltreatment of women in family court and advocates for a better system that does not allow for male entitlement or discrimination against women.

Child Justice

Child Justice is located in Silver Spring, MD. It is a national organization that advocates for the safety, dignity, and self-hood of abused, neglected and at-risk children. The mission of Child Justice, Inc. is to protect and serve the rights of children in cases where child sexual, physical abuse or domestic violence are present. It works with local, state, and national advocates as well as legal and mental health professionals and child welfare experts to defend the interests of affected children. It provides public policy recommendations, community service referrals, court watching services, research, and education. Child Justice also serves important public interests by securing pro bono representation for protective parents in financial distress and by seeking appropriate judicial solutions to the threats facing abused, neglected, and at-risk children.

California Protective Parents Association

The California Protective Parents Association (CPPA) is located in Davis, California. CPPA strives to protect children from family violence through research, education, and advocacy. CPPA seeks to improve and reform family court to ensure that children are not placed at risk because of unsafe custody and visitation decisions.

Engendered Collective

Engendered Collective is located in New York, NY. It is a community for survivors, advocates, and feminist allies to come together in learning, transformation, and advocacy through knowledge-sharing and knowledge-building, collective care and healing, and advocacy to increase accountability for sex-based violence and exploitation.

Protective Mothers of Solano County

Protective Mothers of Solano County (PMSC) is located in Sacramento, California. PMSC is dedicated to exposing and rectifying the pervasive practice of mothers losing custody of their children in Family Court when they seek to protect themselves and their children from abuse.

The Mama Bear Effect

The Mama Bear Effect (MBE) is located in Burlington, Massachusetts. MBE is dedicated to raising awareness of and preventing child sexual abuse, by producing educational materials and exposing failures in protective systems, including family court.

New Jersey Crime Victims Law Center

The New Jersey Crime Victims' Law Center (NJCVLC) has been providing *pro bono* legal assistance to victims of violent crime for 29 years. Many of the victims it represents are female and child victims of domestic violence and sexual assault, who, in addition to being victims in the criminal courts, are required to litigate tangential matters in family courts. The unequal treatment of female and child litigants in family courts is of great interest to NJCVLC because it impacts the rights of these victims to be treated with fairness, compassion, and dignity. NJCVLC has submitted numerous briefs in state and federal courts concerning the rights and treatment of women and children by the courts.

Westchester County Family Court Reform Initiative

Westchester County Family Court Reform Initiative (WCFCRI) is located in Tarrytown, NY. WCFCRI works to expose systemic injustice and abuse of judicial power in the Westchester County family and matrimonial courts. Through data-collection, education, advocacy, and political activism, WCFCRI seeks reform of judicial procedures which currently place an undue and unbearable burden on, and thereby deny due process to, financially weaker litigants, substantially all of whom are women and children.

Mother-Child Human Rights Foundation-Mothers ReVolution

Mother-Child Human Rights Foundation-Mothers ReVolution (MCHRFM) is located in Zwolle, Netherlands. MCHRFM assists protective mothers with high

conflict custody disputes litigated under the Hague Convention and promotes mothers' and children's rights worldwide.

The Nurtured Parent

The Nurtured Parent is located in Woodcliff Lake, new Jersey. It is dedicated to protecting women and children and educating the public about the disproportionate harm and injustices endured by women and children in family court.

Equal Means Equal

Equal Means Equal (EME) is located in Los Angeles California. It is dedicated to the fully equal treatment of women and girls. Through the use of grassroots activism, social media, and documentary filmmaking, EME has actively led or participated in hundreds of events to support sex/gender equality in law and society.

Jane Does Well

Jane Does Well is located in Wellesley, Massachusetts. It provides empowerment, mentoring, information, and resources to women confronting divorce and beyond. It also promotes awareness on important issues facing women such as childcare, financial inequality, and emotional, physical, and sexual abuse.

Incest Survivors Speakers' Bureau of California

Incest Survivors Speakers' Bureau of California is located in Davis, California. Its mission is to serve as a catalyst for change by giving voice to victims of incest, advocating for reforms, partnering with supportive government, non-

profit, and corporate entities to achieve the common goal of protecting children from abuse, educating the community, encouraging, and supporting survivors, and facilitating healing.

INTRODUCTION

This case arises out of a Pennsylvania family court dispute involving the custody of a child, in which the court issued a gag order only against the mother and her attorneys, forbidding them to speak or communicate publicly about the case. A similar gag order was not issued against the father and his attorneys.

SUMMARY OF ARGUMENT

The biased gag order at issue here exemplifies pervasive and systemic sex bias in family courts nationwide. Amici urge the Court to grant the petition so that it may address the widespread and intolerable problem of bias against women in family courts.

ARGUMENT

I. THE PETITION SHOULD BE GRANTED SO THE COURT CAN ADDRESS WIDESPREAD SEX BIAS IN FAMILY COURTS

This Court's commitment to unbiased decision-making is emblazoned on the exterior of its building where the words "Equal Justice Under Law" are inscribed. These words were approved by the Court's Justices in 1932, no doubt because the Court believes biased justice is intolerable in civilized society. Indeed, scholars have long noted the myriad of harmful consequences that flow from even the appearance of judicial bias. Greene, N., *How Great Is America's Tolerance for Judicial Bias? An Inquiry into the Supreme Court's Decisions in Caperton and Citizens United, Their Implications for Judicial Elections, and Their Effect on the Rule of Law in the Uni,* 112 W. Va. L. Rev. 873 (2010) (internal citations omitted):

> biased decision-making erodes confidence in the justice system, causing citizens to "distrust and cease to see courts as places where justice is done ... The rule of law [is] the loser if parties dispute adverse judgments as rendered in biased courts. Far worse, negative perceptions about the justice system encourage citizens to resort to violent, extralegal, and possibly criminal practices to secure their rights. If private citizens perceive that judges are not impartial, it is likely that courts will not be relied upon as the ultimate fora for dispute resolution.

Id. at 886-87. See also, Burnett, L., *The Global Context of the Civil Rights Movement*, Cross Cultural Solidarity, http://crossculturalsolidarity.com/the-global-context-of-the-civil-rights-movement.

While perfect justice in every case may be impossible, there should be little doubt that systemic injustice perpetrated by the courts themselves is unacceptable, yet family courts across the United States are routinely engaging in sex bias, often causing women to endure worse legal treatment than men. This case presents an important opportunity for the Court to address the insidious problem of sex bias in family courts.

Sex bias is a form of discrimination, which is defined as "the process by which a member, or members, of a socially defined group is, or are, treated differently (especially unfairly) because of their membership in that group." Kreiger, N., *Discrimination and Heath Inequalities*, 44 Int'l J. Health Servs, no.4, 643-710, 650 (2014), citing, Jary, D. & Jary, J., *Collins Dictionary of Sociology* (2d ed. 1995). It involves not only "socially derived beliefs" but also "patterns of dominance and oppression, viewed as expressions of a struggle for power and privilege." Kreiger, N., *Embodying Inequality: A Review of Concepts, Measures, and Methods for Studying Health Consequences of Discrimination*, 29 Int'l J. Health Servs no.2, 295-

352 (1999) (citations omitted). When an individual or group suffers discriminatory harm, they suffer injury to their dignity, autonomy, and humanity. See Jackson, V., *Constitutional Dialogue and Human Dignity: States and Transnational Constitutional Discourse*, 65 Mont. L.Rev. 15-40 (2004).

Although individuals are responsible for most discriminatory acts and bias offenses, discrimination can also occur through institutional actions, as when discriminatory laws and policies are created by state entities, such as lawmakers and the courts. Kreiger, *Discrimination and Health Inequities*, supra at 648-50. The state, including the courts, "can enforce, enable, or condone discrimination, or, alternatively, it can outlaw discrimination and seek to redress its effects." Id. at 650. As judges play a vital role in ensuring respect for the law and public confidence in the courts, they should be especially careful to avoid even the appearance of bias. Bam, D., *Making Appearances Matter: Recusal and the Appearance of Bias*, BYU L. Rev. 943, 968 (2011), yet a wealth of research demonstrates pervasive and widespread bias against women in family courts.

A recent ten-year, national study of more than 4,000 family court cases found pervasive gender bias in custody decisions. When mothers reported child abuse by the fathers and fathers responded by accusing mothers of alienating them from their children, the mothers were more likely to lose custody, but when fathers reported child abuse by mothers and mothers responded by accusing fathers of alienating them from their children, the fathers were not more likely to lose custody. Meier, J., *U.S. Child Custody Outcomes in Cases Involving Parental*

Alienation and Abuse Allegations: What do the Data Show?, 42 J. Soc. Welfare and Family Law, no.1, 92-105 (2020).

Numerous other studies and scholars have identified gender bias in family courts. Bemiller, M., *When Battered Mothers Lose Custody: A Qualitative Study of Abuse at Home and in the Courts*, 5 J. Child Custody, 228-55 (2008) (finding gender bias against mothers in family court); Berg, R., *Parental Alienation Analysis, Domestic Violence, and Gender Bias in Minnesota Courts*, 29 Law & Ineq. 5, 24-25 (2011) (finding gender bias against mothers in family court); Dragiewicz, M., *Gender Bias in the Courts: Implications for Battered Mothers and Their Children.* In Hannah, M. & Goldstein, B. (Eds.) *Domestic Violence, Abuse, and Child Custody: Legal Strategies and Policy Issues*, 5:1-5:18. (2010) (finding gender bias in custody decisions); Meier, J. & Dickson, S., *Mapping Gender, Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation*, 35 Minnesota Journal of Law and Inequality, no.2, 311-34 (2017); Chesler, P., *Mothers on Trial: The Battle for Children and Custody.* (2d ed. 1986) (In 82% of disputed custody cases fathers achieved sole custody despite the fact that only 13% had been involved in childcare activities prior to divorce); Meier, J., *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions,* A.U. J. Gender, Soc. Pol. & the Law, 11:2, 657-731, 662, Appendix, (2003) (36 of 38 trial courts awarded joint or sole custody to alleged *and adjudicated* male batterers); Neustein, A., & Lesher, M., *From Madness to Mutiny - Why Mothers are Running from Family Court and What Can Be Done About It,* Northeastern

University Press (2005) (documenting numerous cases where abusive fathers are favored in custody disputes); Polikoff, N.D., *Why Are Mothers Losing: A Brief Analysis of Criteria Used in Child Custody Determinations*, 14 WOMEN'S RTS. L. REP. 175-84 (1992) (finding that judges evidence a strong "paternal preference" in contested custody cases); Stahly, G. B., *Protective Mothers in Child Custody Disputes: A Study of Judicial Abuse,* In *Disorder in the Courts: Mothers and Their Allies Take on the Family Law System*: A Collection of Essays (2004) (finding that prior to divorce, 94% of non-abusive mothers were the primary caretaker and 87% had custody at the time of separation, however, when the father was alleged to have abused his child, only 27% of mothers won custody; 97% of mothers reported that court personnel ignored or minimized reports of abuse and that they were punished for trying to protect their children. Most mothers lost custody in ex parte proceedings where they were not notified or present and where no court reporter was present. 65% reported that they were threatened with sanctions if they "talked publicly" about the case. Eleven percent of the abused children attempted suicide); Suchanek, J. & Stahly, G.B., *The Relationship Between Domestic Violence and Paternal Custody in Divorce*, Ann. Meeting W. Psychol. Ass'n (1991) (in family court cases where violence against the mother was alleged, usually in support of a restraining order, fathers were twice as likely to seek sole physical and legal custody of the children and just as likely to win); Schafran, L. & Wikler, N., *Gender Fairness in the Courts: Actions in the New Millennium*, National Judicial Education Program (2007), https://www.legalmomentum.org/sites.default/

files/reports/gender-fairness-in-courts-millenium.pdf; Sloteetal, K., *Battered Mothers Speak Out: Participatory Human Rights Documentation as a Model for Research and Activism in the United States*, 11 Violence Against Women, 1367, 1368–69 (2005); Mindthoff, A., et al., *How Social Science Can Help Us Understand Why Family Courts May Discount Women's Testimony in Intimate Partner Violence Cases*, 53 Family Law Quarterly, No. 3, Fall 2019.

In addition to scholars identifying widespread sex bias in family courts, many states have conducted their own research and have identified pervasive sex bias in courts. See Danforth, G. & Welling, B., *Achieving Equal Justice for Women and Men in the California Courts*, JUDICIAL COUNCIL OF CALIFORNIA ADVISORY COMMITTEE ON GENDER BIAS IN THE COURTS (1996), http://www.courtinfo.ca.gov/programs/access/ documents/f-report.pdf (negative stereotypes about women encourage judges to disbelieve women's allegations of child sexual abuse; gender bias problems are particularly acute in family courts, and most problematic when sexual abuse of children is alleged in custody or visitation proceedings. The report specifically noted "one striking example is the tendency to doubt the credibility of women who make these allegations, and to characterize them as hysterical or vindictive even when medical evidence corroborates a claim of child abuse."); *Report of the Florida Supreme Court Gender Bias Study Commission Executive Summary* (March1990), www.flcourts.org/sct/sctdocs/bin/ bias.pdf, (noting that "Contrary to public perception, men are quite successful in obtaining residential custody of their

children when they actually seek it"); Willson, T., Domestic Violence in Maryland: More From the Gender Bias Report, Citing *Report of the Maryland Special Joint Committee on Gender Bias in the Court (1989)* (finding that "too often judges and court employees deny [women's] experiences, accuse the victim of lying, trivialize the cases, blame the victim for getting beaten, and badger the victim for not leaving the batterer ... batterers try to manipulate victims to affect the judicial process. This manipulation of the court process includes batterers and other abusers who misuse the court system in regards to divorce, custody, visitation, and child support as well as domestic violence"); Massachusetts Supreme Judicial Court, *Gender Bias Study of the Court System in Massachusetts,* 24 New Eng. L. Rev. 745 (1990) (finding that despite the pervasive belief that mothers are favored in custody disputes, "[f]athers who actively seek custody obtain either primary or joint physical custody over 70% of the time." Id. at 824-25. The study also found that "mothers are held to a higher standard than fathers and that interests of fathers are given more weight than the interests of mothers and children." Id; *Final Report of the State Bar of Michigan Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession* (January 23, 1998) (of the judges responding to the question about whether they consider violence or threatened violence when making custody and visitation decisions, only a little more than half of the judges (58%) indicated that they always considered it. Eleven percent said that they never considered it. In addition, several women said that custody of the children was given to the batterer, sometimes by an *ex parte* order. In one instance it was reported that an abusive

husband was awarded custody because he had a "stable income"); *Report of the Minnesota Supreme Court Task Force on Gender Fairness in the Courts* (1989), ***Reprinted: 15 Wm. Mitchell L. Rev. 829 (1989);*** *The First Year Report of the New Jersey Supreme Court Task Force on Women in the Courts* (1984), *Reprinted: Wikler, N. & Schafran, L., 9 Women's Rights L. Rep. 129 (1986); Learning from the New Jersey Supreme Court Task Force on Women in the Courts: Evaluation, Recommendations and Implications for Other States (1989),* Reprinted: 12 Women's Rights L. Rep. 313 (1991); *Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System* (2003).

As ample research demonstrates widespread and pervasive sex bias in family courts, this Court should seize the opportunity to review this case and issue a ruling recognizing the problem and providing guidance to all judges so they can effectively avoid bias against women in all legal controversies.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition.

Respectfully submitted,

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