

No. _____

In The
Supreme Court of the United States

H.M.S., J.C.S., and M.R.S., minor children, individually, by their biological father,
next friend, and natural guardian, Joseph Very Sherman, and Joseph V. Sherman,
individually, father of H.M.S., J.C.S., and M.R.S., minor children

Applicants,

v.

Louis R. Lerner,

Respondent.

On Application for Extension of Time to Chief Justice of the United States John G.
Roberts, Jr.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

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To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the Fourth Circuit Court of Appeals and encompassing states including Virginia: pursuant to Supreme Court Rule 13.5, Petitioners, H.M.S., J.C.S., and M.R.S., minor children, individually, by their biological father, next friend, and natural guardian, Joseph Very Sherman, and Joseph V. Sherman, individually, as father of H.M.S., J.C.S., and M.R.S., minor children, respectfully request an extension of 60 days to file their Petition for a Writ of Certiorari in this Court up to and including July 11, 2025.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *In re: H.M.S., J.C.S., M.R.S., individually by their biological father, next friend, and natural guardian Joseph V. Sherman, et al.*, Supreme Court of Virginia No. 240632 (Feb. 12, 2025) (attached as Exhibit 1). Judgment was entered on February 12, 2025. The current deadline within which to file a Petition for Writ of Certiorari is May 13, 2025. This application for an extension of time is filed more than ten days in advance of that date.

JURISDICTION

This case arises under the First Amendment, Fifth Amendment, and the Fourteenth Amendment to the United States Constitution. The Petitioners allege that this Court, in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 142 S. Ct. 2228 213 L. Ed. 2d 545 (2022), did not dispose of the fundamental liberty interests of a fit parent to the care, custody, and control of his or her natural child. The

Petitioners further allege that, absent exigent circumstances, a fit parent's fundamental right to the care, custody, and control of his or her children and the children's corollary rights to associate with their biological fit parent require a pre-deprivation hearing before indefinite infringement of those rights. The Supreme Court of Virginia ruled that a post-deprivation remedy, specifically a hearing at an unknown time, satisfies due process of law for the indefinite infringement on the fundamental liberty interests of a fit parent and his children. This Court has jurisdiction over the decision of the Supreme Court of Virginia pursuant to 28 U.S.C. § 1257.

REASONS FOR EXTENSION OF TIME

Good cause exists for the requested extension. The minor child of Petitioners' counsel of record, Jeremy P. Hopkins, recently suffered a major medical event, which is ongoing and has required continued medical care at various institutions. This situation has resulted in counsel having to be out of the office unexpectedly for prolonged periods over the last several weeks. This situation has necessitated the request for an extension of time. This is the Petitioners' first request for an extension of time.

CONCLUSION

For the foregoing reasons, Petitioners request that this Court grant an extension of 60 days, up to and including July 11, 2025, within which to file a Petition for a Writ of Certiorari.

DATED: April 28, 2025

Respectfully submitted,

/s/ *Jeremy P. Hopkins*

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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 12th day of February, 2025.

IN RE: H.M.S., MINOR CHILD INDIVIDUALLY,
BY THEIR BIOLOGICAL FATHER, NEXT FRIEND,
AND NATURAL GUARDIAN, JOSEPH VERY SHERMAN, ET AL., PETITIONERS

Record No. 240632

UPON A PETITION FOR A WRIT OF MANDAMUS

Upon consideration of the petition for a writ of mandamus filed July 19, 2024, the respondent's motion to dismiss, and the petitioners' reply, the Court is of the opinion that the motion should be granted and the petition should be dismissed.

Joseph Sherman, on his own behalf and in the names of his minor children, H.M.S, J.C.S., and M.R.S. (collectively, "petitioners"), seeks a writ of mandamus against Judge Designate Louis R. Lerner, the judge presiding over Sherman's divorce and child custody proceedings.

Petitioners first ask this Court to vacate the orders Judge Lerner entered as a result of hearings on May 16, 2024 and June 10, 2024.

The Court holds that the writ of mandamus does not lie. "'Mandamus is an extraordinary remedy employed to compel a public official to perform a purely ministerial duty imposed upon him by law.'" *In re: Horan*, 271 Va. 258, 258 (2006) (quoting *Richlands Med. Ass'n v. Commonwealth*, 230 Va. 384, 386 (1985)). Mandamus does not lie to undo completed acts. *In re: Commonwealth*, 278 Va. 1, 9-10 (2009). Instead, mandamus' purpose is to compel a public official to act in conformity with a prescribed duty and it is not available "to revise or correct action, however erroneous it may have been." *Bd. of Supervisors v. Combs*, 160 Va. 487, 498 (1933). Petitioners seek to undo what a circuit court judge, in the exercise of his judgment and discretion, has done, and for this the writ does not lie. *Id.*

Petitioners next ask this Court to compel Judge Lerner to hold an evidentiary hearing regarding custody and visitation for the three minor petitioners in accordance with Code §§ 20-124.2(A) and (B); allow each parent to present evidence at the hearing; make a child custody adjudication upon consideration of all the facts, including any evidence and constitutional challenges Sherman submits; and make findings of fact and conclusions of law on

the record to allow for appellate review.

The Court holds mandamus does not lie because petitioners fail to demonstrate Judge Lerner has denied the requested relief. *See Gleaves v. Terry*, 93 Va. 491, 496 (1896) (“until it is shown that the right” sought to be enforced has been denied, mandamus “should not issue”); *Wise v. Bigger*, 79 Va. 269, 276 (1884) (citing with approval the proposition that “it must . . . in all cases, clearly appear that the officer against whom the jurisdiction by mandamus is invoked, is actually in default in the performance of some act which the law specially enjoins as a duty resulting from his office”) (internal quotation marks omitted).

The record, including the transcript of the pendente lite hearing, demonstrates that, immediately after announcing his pendente lite custody and visitation ruling, Judge Lerner scheduled an evidentiary hearing to address those issues on a final basis. Although Sherman requested a continuance and thus the matter has not yet been heard, the record does not indicate Judge Lerner has refused to hear and decide the issues of custody and visitation or that he will not consider evidence from both parties when fashioning a final custody and visitation award. Accordingly, mandamus does not lie to compel the requested relief. *See James L. High, A Treatise on Extraordinary Legal Remedies*, § 12, at 14 (3d ed. 1896) (mandamus is “never granted in anticipation of a supposed omission of duty, however strong the presumption may be that the persons whom it is sought to coerce by the writ will refuse to perform their duty when the proper time arrives”); 2 T.C. Spelling, *A Treatise on Injunctions and Extraordinary Remedies*, § 1385, at 1196 (1901) (“A relator is not entitled to the writ unless he can show a legal duty then due at the hands of the respondent; and until that time arrives when the duty should be performed, no threats or predetermination not to perform it can take the place of such default.”).

Moreover, to the extent petitioners ask this Court to allow Sherman to present certain evidence or argument during a future custody and visitation hearing, mandamus does not lie to control the course of judicial proceedings or to fix and prescribe the judgment to be rendered. *See Page v. Clopton*, 71 Va. (30 Gratt.) 415 (1878) (mandamus may lie to compel a court to hear a case within its jurisdiction but does not lie to impose a decision on the court); *see also Fleenor v. Dorton*, 187 Va. 659, 664 (1948) (explaining mandamus could only compel a registrar to provide a citizen with the statutorily required opportunity and means to prepare and submit an

application to register to vote but it could not control the registrar's determination of whether a citizen should be enrolled as a voter because that determination required the exercise of legally granted discretion); *Richardson v. Farrar*, 88 Va. 760, 775 (1892) ("If the duty is unperformed, and it be judicial in its character, the mandate will be to the judge, directing him to exercise his judicial discretion or judgment, without any direction as to the manner in which it shall be done.").

Finally, petitioners ask this Court to enjoin Judge Lerner from considering any other matters in the divorce proceedings until he adjudicates the issues of custody and visitation.

The Court holds mandamus does not lie. Mandamus "is not a preventive remedy; its purpose and object is to command performance, not desistance." *Bd. of Supervisors v. Combs*, 160 Va. 487, 498 (1933); *see also Bd. of Supervisors v. Heatwole*, 214 Va. 210, 212-15 (1973) ("Mandamus should be reserved to discharge its principal purpose, i.e., to enforce a clearly established right and to enforce a corresponding imperative duty created or imposed by law." (quoting *Stroobants v. Highway Comm.*, 209 Va. 275, 278 (1968))). Thus, mandamus "is exercised for the purpose of stimulating rather than of restraining [] action." James L. High, A Treatise on Extraordinary Legal Remedies, § 32, at 32 (1874). While the function of an injunction is "to restrain motion and enforce inaction," the function of mandamus is "to set in motion and compel action." *Id.* at § 6, 10. Petitioners seek to use the writ of mandamus to prevent the respondent from taking future action. For this the writ will not lie.

Upon further consideration whereof, Judge Lerner's motion to dismiss for failure to comply with Code § 8.01-644 and Rule 5:7(b)(2) and petitioners' motion for default judgment are denied.

Accordingly, the petition is dismissed.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By:



Deputy Clerk