

No. 26-369

In the
Supreme Court of the United States

JOHN TORSTEN LOOP,
Petitioner,

v.

WASHINGTON, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF *AMICUS CURIAE*
SUTHERLAND INSTITUTE IN
SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS*¹

Amicus Sutherland Institute is a Utah nonprofit, nonpartisan public policy organization with a mission to promote the constitutional values of faith, family, and freedom. Sutherland promotes the constitutional right to the free exercise of religion and related rights, including appropriate state deference to parental responsibility.

This case raises a matter of great importance: the procedural safeguards that ensure fit parents can influence their children's upbringing without interference.

SUMMARY OF THE ARGUMENT

This petition presents a stark scenario: without notice or an evidentiary hearing, and as a result of private arbitration, a father is separated from his child. This scenario raises serious constitutional issues. This Court has consistently recognized parents' fundamental right to direct the upbringing of their children, which includes a right to custody.

These decisions have focused on parental fitness.

¹ Pursuant to Supreme Court Rule 37.2, counsel for amicus notified all known parties of intention to file a brief of amicus curiae in this case on October 6, 2026. In accordance with Supreme Court Rule 37, this brief was not authored by counsel for any party in this action. No party or person not related to amicus made any kind of monetary contribution to the preparation or submission of this brief. All funding for this brief came from the amicus.

The Court has consistently held that the State can appropriately interfere with the parental relationship only when a parent is unfit. Here, the petition alleges the proceedings necessary to establish such unfitness are missing. Thus, this case provides an important opportunity for this Court to make clear that a misapplication of jurisdictional principles should not undercut established constitutional guarantees.

ARGUMENT

The questions raised in this petition implicate important constitutional issues of parental authority.

This Court has repeatedly recognized, in a variety of contexts, that parents have a “fundamental constitutional right to make decisions concerning the rearing of” their children. *Troxel v. Granville*, 530 U.S. 57, 70 (2000) (plurality opinion).² A concurring opinion in that case specifically invoked parents’ interest in the *custody* of their children. *Id.* at 77 (Souter, J., concurring). Earlier decisions repeatedly noted that parents have a right to parents’ interests

² See, e.g., *Meyer v. Nebraska*, 262 U. S. 390, 400 (1923); *Prince v. Massachusetts*, 321 U. S. 158, 166 (1944); *Ginsberg v. New York*, 390 U.S. 629, 639 (1968); *Wisconsin v. Yoder*, 406 U. S. 205, 213 (1972); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978); *Parham v. J. R.*, 442 U.S. 584, 602 (1979); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996); *Espinoza v. Montana Dept. of Revenue*, 591 U. S. 464, 486 (2020); *Mahmoud v. Taylor*, 606 U.S. 522, 546 (2025).

in the “custody” and “care” of their children. See *Prince v. Massachusetts*, 321 U. S. 158, 166 (1944); *Stanley v. Illinois*, 405 U. S. 645, 651 (1972); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

Here, petitioner alleges that this right and, by extension, his ability to influence his child’s upbringing was essentially extinguished without the procedural safeguards that are intended to protect this constitutionally protected relationship. This claim implicates “long-established precedent” that prioritizes parents’ “primary authority with respect” to their children’s upbringing. *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026).

Of course, this Court has recognized that the state has a legitimate role in protecting children, including from parents where necessary. Thus, there are circumstances in which a parent may be denied custody.

This Court, however, has noted the constitutional problems that would occur were a government “to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children’s best interest.” *Quilloin v. Walcott*, 434 US 246, 255 (1978) (quoting *Smith v. Organization of Foster Families*, 431 U. S. 816, 862-863 (1977) (Stewart, J., concurring)). That same principle should govern a situation where one parent alleges he was excluded from the life of his child without a showing of unfitness or the procedural safeguards like notice or

an evidentiary hearing.

The question of fitness has been central to this Court’s decisions regarding parents. See Michael Farris, *Rethinking Parental Rights: It’s Time to Move to Procedural Due Process* 18 Liberty University Law Review 909, 940-943 (2024). In the educational context, the Court specified that its decisions were premised on the fact that the parental choices at issue did not harm their children. *Meyer v. Nebraska*, 262 US 390, 400, 403 (1923) (learning German is not “harmful” or “injurious”); *Pierce v. Society of Sisters*, 268 US 510, 534 (1925) (private schools are not “unfit” or “harmful”); *Wisconsin v. Yoder*, 406 US 205, 233-234 (1972) (“the power of the parent, even when linked to a free exercise claim, may be subject to limitation . . . if it appears that parental decisions will jeopardize the health or safety of the child”). This was true in the context of health care decision making as well. *Parham v. J.R.*, 442 US 584, 604 (1979) (“we conclude that our precedents permit the parents to retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse”).

The Court’s decisions on termination of parental rights also turned on questions of fitness. *Lassiter v. Department of Social Services*, 451 U.S. 18, 21 (1981) (allegation of neglect and abandonment); *Santosky v. Kramer*, 455 US 745, 748 (1982) (“permanent neglect”); *M.L.B. v. S.L.J.*, 519 U.S. 102, 108 (1996) (neglect); *Stanley v. Illinois*, 405 U.S. 645, 647, 650 (1972) (“unfitness”); *Armstrong v. Manzo*, 380 U.S. 545, 547 (1965) (nonsupport); *Quilloin v. Walcott*, 434

U.S. 246, 248 (1978) (“unfit parent”); *Lehr v. Robertson*, 463 U.S. 248, 252 (1983) (nonsupport).

In this case, however, the State is alleged to have outsourced to private arbitration the decision to separate a child from a parent without clear notice that the proceeding could result in this outcome and without a finding of unfitness based on an evidentiary hearing. Such a decision would be clearly inconsistent with established constitutional principles and deserves review by this Court.

CONCLUSION

Amicus respectfully urges this Court to grant the petition.

Respectfully submitted,

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