

No. 26-369

IN THE
Supreme Court of the United States

JOHN TORSTEN LOOP,
Petitioner,

v.

WASHINGTON, ET AL.,
Respondents.

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

**BRIEF OF AMICUS CURIAE
THOMAS MORE SOCIETY
IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

This amicus brief addresses the second of the questions presented by the Petition For Writ of Certiorari:

Whether the Fourteenth Amendment permits a State to delegate adjudication substantially affecting a fit parent's fundamental liberty interest to a private arbitrator without the procedural safeguards constitutionally required before the State may interfere with the parent-child relationship.

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INTEREST OF AMICUS CURIAE¹

Amicus Curiae, the Thomas More Society (“TMS”), is a not-for-profit, national public interest law firm based in Chicago, Illinois. It is dedicated to restoring respect in law for human life, family, and religious liberty. One aspect of TMS' mission involves seeking to defend the constitutional rights of fit parents to make decisions regarding the care and upbringing of their children.

SUMMARY OF THE ARGUMENT

Because of the profound impact an arbitrator's decisions may have on the rights of parents to make decisions regarding the care and upbringing of their children, this Court should accept this case to address the second issue raised by Petitioner. As this case illustrates, arbitration decisions may result in the *de facto* termination of the parent-child relationship and consequent deprivation of parental rights. This Court should provide guidance regarding the constitutional limitations on the arbitration of matters that may implicate the loss of substantive due process rights, including the process necessary to protect the rights of fit parents who agree, or who may be required, to submit issues of child custody to arbitration that may result, as in this case, in restrictions so onerous they result in a *de facto* loss of parental rights.

¹ Per Rule 37.2, amicus provided 10 days advance notice of this brief to all parties. Per Rule 37.6, counsel affirms that no counsel for any party authored any portion of this brief and that nobody other than amicus or counsel made a monetary contribution to fund this brief.

ARGUMENT

This Court Should Grant Certiorari To Address The Safeguards Necessary To The Protection Of Parental Rights In The Context Of The Delegation Of Decisions Relating To Child Care And Custody To Arbitrators. Such Decisions Can Profoundly Impact The Parent-Child Relationship Even To The Point, As In This Case, Of Effectively Terminating The Parental Rights Of A Parent.

Petitioner represents, that he did not receive notice that, in the context of the arbitration of his and his former wife's dissolution proceedings, "that the elimination or severe restriction of his relationship with his child, or the imposition of restrictions functionally equivalent to the loss of his parental relationship, would be at issue, nor was such relief requested in any pleading, motion, or submission to the arbitrator." (Pet., p. 3). And, "[t]he resulting multi-year restraining order, which ended his ability to maintain a relationship with his child, was neither reasonably anticipated nor within the scope of the issues submitted for arbitration." *Id.*

"[T]he interest of parents in the care, custody, and control of their children" is "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). *See also, Stanley v. Illinois*, 405 U.S. 645, 651 (1972). Correspondingly, this Court has also consistently

made clear that the Constitution requires procedural safeguards to protect the rights of parents.

For example, in *Santosky v. Kramer*, 455 U.S. 745, 747 (1982), this Court found that a New York law allowing the State to terminate parental rights based only on a "fair preponderance of the evidence" that a child was "permanently neglected", was unconstitutional. The Court held that the Due Process Clause of the Fourteenth Amendment demands satisfaction of the heightened clear and convincing standard of proof as a prerequisite to severing the rights of parents to their child. In doing so, the Court recognized:

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

Id. at 754.

The Court further explained, “the minimum requirements [of procedural due process] being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.” *Santosky*, 455 U.S. at 755.

Parents are constitutionally entitled to have the express or de facto termination of their parental rights adjudicated by judges and not by arbitrators under the guise of resolving child care and custody issues. At bare minimum, parents are entitled to advance notice that arbitration may result in the restriction of their relationships with their children tantamount to the termination of their parental rights.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition at least as to the second question presented.

Respectfully submitted,

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