

No. 26-5351

IN THE SUPREME COURT OF THE UNITED STATES

JEFFREY FRANCIS BARRY,
Petitioner,

v.

AMY KATHLEEN SCHWENDER,
Respondent.

*On Petition for Writ of Certiorari to the
Supreme Court of Maryland*

REPLY BRIEF OF THE PETITIONER

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RULE 33.2 COMPLIANCE

Pursuant to Supreme Court Rule 33.2, I hereby certify that this Reply Brief is submitted on 8.5 by 11-inch paper and does not exceed the 15-page limit established for documents prepared under this rule. The main body of this document (excluding the cover, tables, certificate, and appendix) contains approximately 2,862 words.

PRELIMINARY STATEMENT

The Fourteenth Amendment's Due Process Clause does not rely on the subjective empathy of opposing counsel, nor does it require the Judiciary to personally experience a tragedy to recognize a constitutional violation.

Denied a fair trial, and left with no avenue for relief absent vacatur of the tainted judgments below, Petitioner seeks the constitutional floor. Gaining this understanding on the premise of baseline, rebuttable presumption of equal shared parenting is the paramount question of this petition. Without it, the fundamental liberty of a parent and child is reduced to an absurdity: a sacred bond can be permanently severed by the unchecked, standardless discretion of local magistrates operating behind an archaic veil of administrative authority, weighted under the stigma and reality that a loss of custody brings.

Rather than engage with this constitutional crisis, Respondent's Brief in Opposition attempts to shrink it into a localized administrative dispute. By fundamentally rewriting Petitioner's Questions Presented to inject manufactured accusations of procedural untimeliness, Respondent attempts deliberate obfuscation.

Petitioner did not sleep on his rights and timely filed the initial petition to the Supreme Court of Maryland and aggressively exhausted his state remedies. A state cannot manufacture a structural defect, weaponize its own administrative delays or lenience as it sees fit to force a procedural technicality, or protect a party from the same, and then in ruling, re-frame the resulting deprivation of liberty as a mere jurisdictional defect.

Furthermore, Respondent wholly failed to address the core constitutional questions: (2 & 3) whether the Fourteenth Amendment demands a rebuttable presumption of equal shared custody under established precedent, and (1) whether a trial court can maintain jurisdiction when compromised by a 13-year courthouse insider working within the administrative apparatus controlling case flow and venue.

I. The Fourteenth Amendment and the Family Law Divide

The history of the Fourteenth Amendment is the history of systematically dismantling state frameworks that treat human beings as property or assign fundamental rights based on a hierarchy of citizenship. It was the constitutional hammer that broke the chains of slavery and dismantled coverture. Yet, a profound and unconstitutional divide remains in family law. By refusing to recognize a constitutionally mandated rebuttable presumption of equal shared parenting, many states revert to treating the minor child as a chattel prize to be awarded, and the father as a second-class petitioner.

This Court laid the constitutional foundation in *Troxel v. Granville*, 530 U.S. 57, 65 (2000), declaring that parental liberty is "perhaps the oldest of the fundamental liberty interests recognized by this Court."

Troxel established that so long as a parent is fit, "there will normally be no reason for the State to inject itself into the private realm of the family." Establishing a rebuttable presumption of equal shared custody merely enforces *Troxel*'s logical mandate. Recent federal jurisprudence, such as the Fourth Circuit's ongoing reckoning with fundamental parental rights in *Mahmoud v. Taylor*, underscores that the state cannot arbitrarily override a fit parent's child-rearing authority. If a fit parent is constitutionally presumed to act in the best interests of their child, it is a constitutional contradiction to strip a fit father of equal time without first requiring the state to overcome that presumption under *stare decisis*.

Respondent dismisses this as a "domestic relations" matter best left to state discretion, ignoring the reality that the absence of a constitutional floor disproportionately impacts men and marginalized groups of various means who cannot afford high-priced legal representation to combat entrenched institutional insiders.

II. Structural Abdication and the *Rippo* Duty

Respondent urges this Court to view the trial court's actions as routine, discretionary fact-finding. To opposing counsel the Solomonic court is a triumph of standardless administration. But natural law demands mathematical rigor and the visceral understanding of a father whose child is on the altar.

Alienated for a calendar year, Petitioner endured agonizing deprivation. Rather than destructively seeking to cut off custody from the child's mother, Petitioner begged the state to divide the child's living time rather than conceptually bisect the child as a rebuttable baseline. Instead, the conflicted court weaponized that forced separation into a new "status quo."

Critically interpreted, King Solomon's famous threat to bisect the infant was not divine wisdom, but a risky substitute for rigorous evidentiary procedure. By relying on

a psychological gambit to establish motherhood, assuming the rightful parent would yield custody to save the child, the court completely bypassed actual fact-finding. Conversely, the woman dramatically begging for the child's life could simply be a theatrical liar, while the true biological mother was paralyzed into silence by the horrific threat, or by a collaboration of guards.

Maryland failed to properly interpret *Rippo v. Baker*, 580 U.S. 285 (2017), which explicitly rejects the requirement to prove subjective bias. *Rippo* requires recusal when, objectively speaking, the probability of actual bias is constitutionally intolerable. This standard is easily met when a magistrate evaluates the daughter of a 13-year courthouse insider sharing the very building and administrative apparatus handling case flow.

In a startling misrepresentation, Respondent claims the trial judge's acknowledgment of his familiarity with the insider "cannot be found anywhere in the record" (BIO at 11). The official transcripts prove otherwise. The judge explicitly admitted, "...the Plaintiff, Miss Schwender's mother works here. I have had limited contact with her while she has been here" (Jan. 30, 2025 Tr. at 7:10–12).

The court also unambiguously acknowledged the severe appearance of impropriety this creates: "...Miss Schwender who is Miss Barry's mother who is an employee of the court and let me say, it is entirely reasonable for any healthy person to wonder given the fact that Miss Schwender has worked here, whether he or she is getting a fair shake in the litigation" (Jan. 10, 2022 Tr. at 48:23–49:3).

Respondent attempts to downplay this structural defect as mere "incidental workplace proximity" (BIO at 10), ignoring the deep administrative entanglement of this venue. The conflict extends far beyond the maternal grandmother's employment. Opposing counsel, Hunter Gallagher, clerked alongside Respondent's mother during the 2022 final judgment of this exact case before entering his appearance as private

attorney. This web includes Nicole Rush, who served as a judicial assistant alongside Respondent's mother before becoming Respondent's first attorney. Even the court reporter shared a provable work overlap. When the magistrate, court reporter, administrative staff, and both opposing counsel share direct, overlapping employment histories with the grandmother during this litigation, the "probability of actual bias" under *Rippo* is absolute.

This structural conflict infected the entire administrative apparatus, rendering the venue inherently improper and resulting in absolute institutional capture. Assigning Judge Cavanaugh, who appointed Judge Truffer, possessed a direct nexus with Respondent's mother, granting a 13-year employee unrestricted access to essentially "judge shop" within her own workplace.

When presented with this unconstitutional taint, the state had an affirmative duty to transfer venue to a neutral jurisdiction. Instead, the administrative apparatus deliberately stalled proceedings to manufacture a weaponized "status quo" through extreme delay, initially assigning the matter to retiring Judge Cox, Respondent's mother's direct former superior. This was not discretionary docket management; it was the active orchestration of a fundamental rights deprivation by a captured institution insulating its own personnel over the Fourteenth Amendment.

Despite acknowledging this appearance of bias, the court subjected Petitioner to punitive sanctions based on unsubstantiated accusations: "There have been threats against court personnel and others, which have required Mr. Barry to be escorted in the courthouse any time he is present. And that includes some of the judges here" (Jan. 10, 2022 Tr. at 49:13–16). Offering zero proof, the court shielded the insider while Petitioner faced Sheriff escorts.

Respondent relies on the state's *Braxton v. Faber* test to argue Petitioner failed to "set forth facts" preserving the bias claim. This fundamentally ignores the federal

Futility Doctrine. A *pro se* litigant cannot set forth facts when the judge proactively strikes all evidentiary exhibits proving bias ("I am going to strike all of the exhibits that have been filed. They simply don't have anything to do with the claim of bias against me. So with that, that will conclude that issue... Then it has no merit," Nov. 24, 2021 Tr. at 77:10–17), silences objections ("It matters not," Jan. 30, 2025 Tr. at 3:17–21).

The state cannot deploy judicial hostility to suppress a constitutional objection, then argue Petitioner 'waived' the very claim he was forbidden from making. Structural impartiality under *Rippo* is a non-delegable judicial duty, not a waivable procedural trap.

III. The Mathematics of Deprivation

Maryland's refusal to establish a 50/50 baseline relegates Petitioner to a staggering disparity of approximately 83 nights a year with his son, who lives full-time in the home of the maternal grandmother, a state-sponsored substitution of parentage. When Respondent testified she reduced night shifts and could "live off child support" (Jan. 30, 2025 Tr. at 149:4–13), the trial court attempts to reframe this voluntary curtailment of employment as an affirmative benefit, insulating its worker while penalizing the fit father stating it "*permits her to be home more frequently... and thus could not possibly be a detriment to OJB*" (Jan. 30, 2025 Tr. at 149:4-13).

This weaponizes time. The record reflects the exact extortion Petitioner faced: "Daddy, you better pay Mommy so you can see me" (June 16, 2021 Tr. at 91:13–14). Routine requests for winter vacations were met with hostility, while blended households prove equal shared parenting successfully resolves daily challenges where time-exchange makes sense to all parties as being equal.

IV. The Child's Due Process and the Evidentiary Blindfold

Restricting a fit father violates both parental liberty and the child's independent due process right to companionship. Maryland's two-step modification framework operates as an evidentiary blindfold. When Petitioner sought to present evidence of his son's well-being, the court blocked him:

"THE COURT: The first standard is you must demonstrate that there is a material change in circumstances... And then and only then do we get into the circumstance of finding what is in the best interests of OJB. ... Understand I'm not at that point yet. I have to find there has been a material change of circumstances. That is the issue. And what do you have to show that?"

When Petitioner pleaded, *"... Unless I can continue on to what his best interests are,"* the Court replied, *"Not at this point"* (Jan. 30, 2025 Tr. at 19:1–6; 51:6–9; 91:1–4).

The court even suppressed the parties' amicable 50/50 settlement agreement: *"I did have marked as the Defendant's Exhibit Number 24 the settlement agreement that was referred to and was not admitted..."* (Jan. 10, 2022 Tr. at 3:11–13).

Fact-finding was thoroughly one-sided. When court-appointed expert Dr. Seibert concluded Petitioner was sane and not a threat, the judge discarded it: *"I am not obligated as a finder of fact to accept any testimony..."* (Jan. 10, 2022 Tr. at 50:11–25).

Yet, despite Respondent admitting severe depression (*"I became incredibly depressed,"* Jan. 10, 2022 Tr. at 31:24–32:8) and the child suffering emotional trauma, the court refused to evaluate the insider's household (*"I'm going to deny that now,"* Jan. 30, 2025 Tr. at 12:21).

The court weaponized the antagonism to block child testimony (*"decline to interview OJB,"* Jan. 30, 2025 Tr. at 11:13–12:2) while routinely using Family Law chambers to babysit that same child (*"babysat in the Family Law chambers by the*

Head Administrative Judge's assistant," Jan. 30, 2025 Tr. at 61:19–24; 68:20–22). Under *Mathews v. Eldridge*, this framework guarantees a 100% risk of erroneous deprivation.

V. State Rules Cannot Insulate Administrative Entrapment

Respondent attempts to leverage a localized procedural deadline under Maryland Rule 8-302 to permanently insulate a structural constitutional defect from this Court's review under 28 U.S.C. § 1257. However, under *Lee v. Kemna*, 534 U.S. 362 (2002), the exorbitant application of a state rule renders it inadequate to bar federal jurisdiction. Petitioner's timeline delay was the direct result of administrative entrapment in a venue controlled by the insider's employer, and navigating a labyrinth of procedural exhaustion and documentation requirements. A constitutional difference exists between absolute 'jurisdictional' rules and mere 'claim-processing' rules that states weaponize at their convenience, a distinction the Petitioner prays this Court will recognize.

Furthermore, procedural enforcement was flagrantly arbitrary. When Petitioner struggled with discovery, the court ordered sanctions under threat of adverse presumption: "I am going to order that you pay an amount of \$325... If that is not reproduced... I'm going to presume that the information... would be unfavorable" (June 16, 2021 Tr. at 14:8–13; 19:14–18), later converting it to a \$2,500 judgment (Jan. 10, 2022 Tr. at 65:20–66:2).

Though the trial judge promised symmetrical enforcement ("I can promise you I will enforce things in exactly the same way," June 16, 2021 Tr. at 17:24–18:4), he never did.

When Respondent missed a default deadline in December 2024, opposing counsel filed a falsely backdated Certificate of Service ("December 8th" instead of "January 8th").

When Petitioner exposed this, the trial judge actively testified for the lawyer: "It seems pretty obvious to me during the changeover from 2024 to 2025 that this was a simple error and without any prejudice" (Jan. 30, 2025 Tr. at 16:20–24). When Petitioner pointed out a month rollover isn't a new year typo ("this a month rollover... said instead December '24," Jan. 30, 2025 Tr. at 16:25–17:4), the trial judge silenced him ("Sir, please don't speak over me... I'm going to deny the motion," Jan. 30, 2025 Tr. at 17:5–14). Meanwhile, counsel spent trial time cross-examining Petitioner on Nintendo video game systems (Jan. 10, 2022 Tr. at 85–88).

The state cannot sanction a *pro se* father while excusing perjury for an insider. This Court has long held that state procedural rules cannot be used as impenetrable moats to nullify the supremacy of the Fourteenth Amendment. As established in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), a local procedural hurdle is inadequate to bar federal review when its application is arbitrarily enforced to shield state action from constitutional scrutiny. If this Court permits Maryland to use a same-day cured timeline defect to insulate a documented *Rippo* violation, it will provide a dangerous roadmap for all fifty states to evade federal civil rights oversight.

Just as this Court recently affirmed in *Cruz v. Arizona*, 598 U.S. 17 (2023), that a novel and exorbitant application of a state procedural rule cannot block federal review, Maryland's arbitrary enforcement of the Rule 8-302 timeline, rigidly locking out a *pro se* father while simultaneously excusing backdated, perjured deadlines for a courthouse connected insider, is an inadequate state ground designed solely to insulate a constitutional violation.

VI. A Cowed Civil Right

When the Framers designed the architecture of American liberty, they did not intend for the state to act as a modern-day Solomon wielding unbridled discretion. Even utilizing segmented judicial tracks or a jury of peers cannot absolve a foundational due

process violation where a baseline, rebuttable presumption of equal custody has never been established. Respondent's position merely proves how profoundly states have misunderstood the constitutional mandates of *Troxel* and *Rippo*.

This Court possesses the ultimate constitutional authority to ensure state courts respect supreme federal rights. As established in *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 233–234 (1969), a state cannot deploy an arbitrary procedural forfeiture or a localized stopwatch to avoid answering to the Fourteenth Amendment. Now is the time for this Court to establish the necessary jurisprudence under *Rippo* and *Troxel*, dismantling the administrative labyrinth and restoring constitutional guardianship over fundamental parental liberty.

VII. *Stare Decisis* and Rebuttable Presumptions

Respondent's bold assertion that a 50/50 custody presumption already exists should logically yield the swiftest resolution in this Court's history. If true, there is no dispute. Instead, counsel's claim is a deliberate obfuscation designed to mask the severity of what is arguably the longest-running civil rights crisis currently evading this Court's jurisprudence.

The doctrine of *stare decisis* does not anchor state courts to standardless judicial fiat; it binds them to the structural protections of the Fourteenth Amendment. This Court's holding in *Troxel v. Granville* established a substantive constitutional baseline recognizing that fit parents possess a fundamental liberty interest in the care, custody, and control of their children. To permit state courts to dilute *Troxel* through standardless "best interests" balancing while insulating structural bias under the guise of judicial discretion violates the foundational hierarchy of constitutional precedent.

A rebuttable 50/50 shared custody presumption is not a novel judicial creation requiring legislative enactment; it is the logical, required application of *stare decisis* to fundamental parental rights. Under the principles of *stare decisis*, when a substantive

constitutional baseline is established, subordinate state procedures cannot be weaponized as impenetrable moats to evade it.

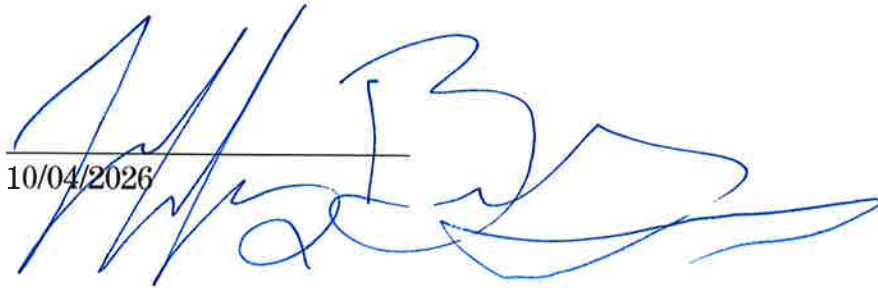
State courts across the country are dangerously fractured in their application of *Troxel*, with some jurisdictions adopting equal parenting baselines while others cling to unconstitutional, standardless discretion, even at amendment. Granting this petition would reaffirm that *stare decisis* demands national uniformity in the protection of fundamental familial liberty, and would finally resolve the confusion over a constitutional baseline for child custody.

VIII. CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, Jeffrey Francis Barry, *Pro Se*

10/04/2026

A large, stylized handwritten signature in blue ink, likely belonging to Jeffrey Francis Barry, is written over a horizontal line. The signature is fluid and cursive, with a prominent 'J' and 'B'.