No. 23-

In The
Supreme Court of the United States

CODY CRAIG,

Petitioner,

v.

EMMA SOLORZANO,

Respondent.

On Petition for a Writ of Certiorari to the Maine Supreme Judicial Court

PETITION FOR WRIT OF CERTIORARI

STEPHEN C. SMITH
Counsel of Record
CARL E. WOOCK
STEVE SMITH TRIAL LAWYERS
191 Water Street
Augusta, Maine 04330
(207) 622-3711
Info@MaineTrialLaw.com

Counsel for Petitioner

QUESTION PRESENTED

I. Does a court decision limiting parental rights, based upon express disapproval of the parent's "troubling" religious views, violate of the free exercise clause of the First Amendment of the Constitution of the United States?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner is Cody Craig, the defendant-appellant below. Respondent is Emma Solorzano, plaintiff-appellee below. Petitioner is not a corporation.

LIST OF ALL PROCEEDINGS

- Supreme Judicial Court of Maine, No. Mem 23-55, Law Court Docket No. Lin-22-354, *Solorzano v. Craig,* memorandum of decision entered April 27, 2023.

- State of Maine District Court, Wiscasset Docket No. FM-21-174, *Solorzano v. Craig*, final judgment entered October 6, 2022.

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OPINIONS BELOW

The Maine Supreme Judicial Court issued a memorandum of decision affirming the divorce judgment on April 27, 2023. The district court issued its divorce judgment on October 6, 2022.

STATEMENT OF JURISDICTION

The Maine Supreme Judicial Court issued its memorandum of decision on April 27, 2023. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment guarantees religious freedom by providing: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. The religion clauses of the First Amendment of the United States of America are applicable to the individual states via incorporation through the due process clause of the Fourteenth Amendment. *See Cantwell v. Conn.*, 310 U.S. 296, 303-4 (1940); *see also Everson v. Bd. of Educ.*, 330 U.S. 1, 8 (1947).

STATEMENT OF THE CASE

Petitioner Cody Craig appeals from an allocation of parental rights that expressly, and disdainfully, references and weighs Mr. Craig's religious beliefs as a key basis for extremely limited contact with his daughter, "K." The Maine Supreme Judicial Court saw nothing wrong with this prejudiced outcome, issuing a cursory Memorandum of Decision affirming the judgment. However, the openly prejudicial divorce judgment violated the free exercise principles derived from the First Amendment of the United States Constitution, and for that reason, should be vacated and remanded for a new trial before an impartial factfinder.

In the course of a contested divorce hearing, Mr. Craig's faith was subject to considerable inquiry and testimony. In brief, Mr. Craig expressed certain views about the roles of men in women in a marriage. Those views might be called 'traditional' by some, perhaps 'outdated' by others. When the court issued its eventual divorce judgment, the judge expressed contempt for Mr. Craig's views, saying the court "cannot abide" his "troubling" opinions about gender roles. The order goes on to afford Mr. Craig precious little contact with his young daughter, while sole parental rights and responsibilities were allocated to Respondent, Emma Solorzano.

That judgment raises an important question about whether, in allocating parental rights under state statute, can a court consider a parent's unenlightened or suboptimal religious views in imposing severe limitations on parental rights? The answer to this question, under the facts presented in this case,

has to be: no. An individual's right to engage in the free exercise of religion includes protection from punitive state action based upon religious beliefs in parental rights matters. A divorce court's ugly foray into criticizing religious beliefs is a departure from constitutionally-mandated neutrality toward religious views that violates longstanding First Amendment jurisprudence.

STATEMENT OF FACTS

Mr. Craig and Ms. Solorzano were married on December 26, 2018. During this marriage, they became parents to a young daughter, "K," who was born on January 18, 2021. The parties later sought a divorce. A final hearing on Ms. Solorzano's divorce complaint occurred on September 19, 2022, at Wiscasset District Court, in Maine. The District Court issued its Divorce Judgment (the "Judgment") on October 6, 2022. App. 4a-14a.

The following is a brief timeline of key events related to the parties' marriage and eventual divorce. The couple met in high school in 2017. App. 5a. Mr. Craig enlisted in the military after high school. After marrying Ms. Solorzano on December 26, 2018, Mr. Craig resumed basic training and an Air Force apprenticeship in Texas. App. 5a. When he finished training, he was deployed to Germany. App. 5a. Ms. Solorzano remained in Maine from their wedding day until around August 2019, when she moved to Germany. App. 5a. She lived with Mr. Craig's parents prior to moving to Germany. App. 5a. Ms. Solorzano returned to Maine from Germany in October 2020. Ms. Solorzano was approximately six months pregnant at the time. She gave birth to K. in Maine. App.

5a. Ms. Solorzano wanted Mr. Craig to be with her when she gave birth. Just before K. was born, Mr. Craig had been deployed to the United Arab Emirates, and he obtained early release to be present for the birth of his daughter. Mr. Craig returned to Germany to finish his tour, and returned to Maine is mid-May 2021. After initially filing, then withdrawing, a first divorce complaint in May 2021, Ms. Solorzano filed for divorce in December 2021.

In the limited amount of time that the parties lived together, most of that cohabitation occurred in Germany. Ms. Solorzano became "severely depressed" in Germany. Her mother testified: "when she was there in Germany, she didn't have friends. Cody was her only real interaction as far as social, you – you know, having another human that you connect with. So she was very isolated in Germany." Ms. Solorzano testified that she lost weight. She claimed she weighed "about 80 pounds" while in Germany. See App. 6a. It is unclear what she weighed before leaving for Germany. Ms. Solorzano attributed her alleged weight loss to "[S]tress. I was just under constant stress."

Ms. Solorzano did not work while in Germany. She did not learn how to speak German. At the hearing, Ms. Solorzano claimed that Mr. Craig "doesn't think [women] should be teaching in any positions of power. . . . They should not be working." Ms. Solorzano did not testify that she was prohibited from working. In fact, Mr. Craig testified: "I offered for [Ms. Solorzano] to get a job the entire time we were – we were in – in Germany. We had two cars when we were there. Emma had the opportunity to get jobs on base

and chose not to take those opportunities, and I respected that because she didn't want to."

Ms. Solorzano testified that sometimes, during "conversation," Mr. Craig would "pin [her] arms down" or "hold [her] down" if she tried to leave the room. She claimed that he told her "that he could be hitting me, that he should be hitting me, but because we live in a society where that's labeled as domestic abuse, he could not do that…" See App. 6a. Mr. Craig testified that he threatened to hit her only "after she hit [him]" while she was "flailing mad," but that he "never hit her once." Mr. Craig testified that he "never" assaulted or physically harmed his wife. He testified that "she actively hit me on many occasions."

Ms. Solorzano also made claims about Mr. Craig's treatment of his daughter, K., claiming that he tried to cover her mouth when she cried. See App. 7a-8a. No one else witnessed Mr. Craig trying to allegedly asphyxiate his own daughter. Mr. Craig clarified that when K. was teething, "I would grab her mouth and stick my finger into the back and rub her gums. That is actually what Emma told me I should do." He denied the vague accusations of trying to cover K.'s mouth to cause her harm. An employee from Home Counselors, Inc., testified that during the supervised visits with K., Mr. Craig would "rub her gums if it seemed to bother her" during K.'s teething phase. The employee testified that Mr. Craig was "always very affectionate, holding her, cuddling her, telling [her] it would be okay, kissing her on the forehead." Mr. Craig's mother testified that, during the time after K. was born that the parties lived at their house, Mr. Craig prepared K.'s bottle "every morning" while Ms. Solorzano slept in.

Ms. Solorzano claimed that she lacked personal autonomy in the marital union. Ms. Solorzano stated that she "had no control over [her] life," that she "had no choice in things that I could wear, even when I was pregnant." Ms. Solorzano testified that her husband's view of marriage "wasn't [one of] equality." This subject matter relates to the substantial testimony at the hearing focused on Mr. Craig's religious beliefs.

Mr. Craig himself testified that his belief, as it relates to the relationship between husband and wife, was taught by his religion, and "specifically, there are rules between men and women," whereby men "are to love their wives," and women are to "submit to their husbands." See App. 6a. He expressed these views to Ms. Solorzano during their marriage. At one point, he sent a text message to Ms. Solorzano, describing his particular view about wives and women: "The ones that are good submit to both God and their husbands fully." See App. 6a. When asked to explain the message, Mr. Craig testified: "if you look at scripture, it's literally what it says." Mr. Craig also conveyed to Ms. Solorzano his opinion that: "[Women] submit to hierarchy. Every good woman ever has submitted to their husband, and/or to God. There's no in between." See App. 6a. Mr. Craig testified that it was truly what he believed: "I did believe that . . . at the time. And that's why it's written there." When asked if he thought someone would find these views "disturbing," Mr. Craig said:

> Not if they're a Christian and they knew the context. Once again, it's – it's written in there, and if you look at the context, it's not demeaning. No one would say

> that the – the Virgin Mary was demeaned by her station. In fact, she's recognized as the – the greatest saint in our church, is a woman. So the concept that the – that the role is demeaning is act – actually very laughable, in my opinion.

When pressed upon the origins of his beliefs about the relationship between men and women, Mr. Craig testified: "I mean, yeah, it's my religion." Mr. Craig testified that his association with his church is "very important to [him] today."

From the testimony and evidentiary record, the trial court made specific factual and legal findings about the parties. The court found, that "Not long after their marriage . . . Defendant's behaviors became more controlling, berating and physical. Plaintiff explained it as Defendant having control over her life and her body; she had no say in anything or choices in her beliefs or what she could wear; could not go to her church; and had no vehicle or access to money." App. 5a. Although Mr. Craig was often away from the home in Germany, and Ms. Solorzano lived for months in the United States while Mr. Craig worked abroad, the Maine District Court deduced that Mr. Craig exercised "continued and overwhelming control over [Ms. Solorzano]" during their marriage. App. 7a.

Expanding on that apparent concern over control and inequality, the court found the following:

> Defendant's perception of Plaintiff's role in their marriage is nothing less than troubling. In his own words, Plaintiff is good only if she submits to both God and

> Defendant, suggesting that "there's no in between." Defendant believes in a hierarchy in the parties' marriage, where the Defendant [sic] has a lesser status than Defendant and insistent [sic] that she be dependent on him to be considered good or godly. The Court finds that this has caused severe isolation for the Plaintiff. Plaintiff's mother testified that at one time prior to the marriage, Plaintiff was "assertive and well spoken, fierce but bold, tiny but mighty." After her marriage to Defendant, there was a tremendous change in her demeanor over time. Often family would witness a soft childlike voice when talking to Defendant. She also lost a lot of weight. Upon her return from Germany, she weighed 80 pounds. At present, she weighs 106 pounds. Defendant has called Plaintiff a sociopath and hard to control. The Defendant explains that this hierarchy is his belief as a Greek Orthodox. The Court recognizes and respects Defendant's right to his own religious beliefs. The Court will not, however, allow Defendant's controlling and abusive behaviors to be hidden behind the mask of faith. It is Defendant's behavior, not his belief, that this Court cannot abide. Such behaviors support the Court's finding of Defendant's continued and overwhelming control over Plaintiff.

App. 6a-7a.

Mr. Craig appealed the Judgment to the Maine Supreme Judicial Court. Maine's highest appellate court, with no substantive analysis, concluded that:

> The [trial] court did not, as Craig contends, commit obvious error, in violation of the Free Exercise Clause of the First Amendment to the United States Constitution, by allocating parental rights and responsibilities in a way that will ensure that the child is safe from the danger posed not by Craig's religious beliefs but by his controlling and abusive behavior.

App. 1a. There is no further analysis or any application of heightened scrutiny to the contents of the Judgment. App. 1a-2a.

Reasons to Grant the Petition

I. The Maine Supreme Judicial Court's memorandum of decision sanctions religious discrimination in allocating parental rights and responsibilities.

This Petition seeks to reinforce the First Amendment's guarantee of religious freedom, in circumstances where Mr. Craig's religious beliefs have been used to justify a considerable curtailment of his fundamental liberty interests in seeing, and raising, his daughter. The Maine Supreme Judicial Court ignored the U.S. Constitution's prohibitions on using the power of the courts to punish a person based on unconventional—even just unexcitingly traditional—religious views. The Constitution, however, should protect Mr. Craig's religious rights, and his parental rights, and this Court should, respectfully, grant the petition for certiorari.

A. The First Amendment prohibits adverse state action because of a parent's religious beliefs in allocating parental rights and responsibilities.

The First Amendment protections from state governmental action include individual protection from those who operate within the state courts. In 1930, early in the days of incorporation, this Court held that, "The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government." *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 680 (1930). The Maine Supreme Judicial Court has acknowledged this

principle as well, as expressed in *Osier v. Osier*, 410 A.2d 1027 (Me. 1980):

> When . . . it appears to the divorce court that an appropriate determination of custody will involve inquiry into the consequences of the religious practices of one of the parents, the court must be alert to the impact that its order concerning care and custody may have on that parent's fundamental rights under the due process clause of the fourteenth amendment to the United States Constitution and the religious freedom clause of the Maine Constitution (art. I, § 3).

Osier, 410 A.2d at 1030. Yet those principles were ignored in this case, by both the divorce court and the terse memorandum of decision offered by the Maine Supreme Judicial Court.

Throughout the country, state courts have noted the constitutional implications of family law or child custody decisions in which a party's faith colored the trial court's outcome. The Kansas Supreme Court upheld a district court's refusal to consider either parent's religious beliefs in determining custody of a child, stating:

> A court also may not weigh the merit of one parent's religious belief or lack of belief against the other's. Nothing in law school or practice in any setting qualifies a judge for this task, and any judicial effort to tackle it is far too likely to lead to the substantial impairment of the free

> exercise of religion our federal and state constitutional provisions were designed to avoid.

Harrison v. Tauheed, 256 P. 3d 851, 864 (Kan. 2011) (citation omitted). Other courts echo this sentiment, reflecting standards that are proactively wary of intermingling a parent's religious beliefs with court-determined deservingness to rear a child. *See, e.g., Waites v. Waites,* 567 S.W.2d 326, 333 (Mo. 1978) ("We hold that no judicial officer may determine child custody based on approval or disapproval of the beliefs, doctrine, or tenets of the religion of either parent or their interpretation thereof."); *see also Zummo v. Zummo*, 394 Pa. Superior Ct. 30, 39-40, 574 A.2d 1130 (Pa. 1990) ("[A]s courts may not divine truth or falsity in matters of religious doctrine, custom, or belief, courts may not give weight or consideration to such factors in resolving legal disputes in civil courts.") In short, as a state actor bound to uphold the Constitution, a judge's decision in a parental rights determination cannot violate an individual's free exercise of religion.

What constitutes a constitutional violation of the free exercise of religion is not self-explanatory. Claiming an infringement on free exercise alone does not give rise to constitutional relief, as neutral government acts that in some way infringe religious practice are not, by virtue of an incidental impact on the religious person, inherently unconstitutional. *See Employment Div., Ore. Dept. of Human Res. v. Smith*, 494 U.S. 872, 879 (1990) ("[T]he right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes [or prescribes]

conduct that his religion prescribes [or proscribes].' [Citation omitted.]"); *see also Wisconsin v. Yoder*, 406 U.S. 205, 233-34 (1972) ("[T]he 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.").

However, even if a state action is facially neutral, the government "cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practice." *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S.Ct. 1719, 1731 (2018). The demand of neutrality is rigorous. The Free Exercise Clause "bars even 'subtle departures from neutrality on matters of religion.'" *Id.* (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 534 (1993)). Even a conceivably neutral application of the law may give rise to a free exercise violation if the application of the law has motivations revealing religious hostility. In *Masterpiece Cakeshop*, a Christian baker was deemed by a state commission to have violated a state anti-discrimination law when he refused to bake a cake for a same-sex wedding. Although the state commission argued that it acted neutrally, this Court highlighted what it considered comments hostile to the Christian baker's religious beliefs, noting:

> At several points during its meeting [on the bakeshop's case], [the state] commissioners endorsed the view that religious beliefs cannot legitimately be carried into the public sphere or commercial

> domain, implying that religious beliefs and persons are less than fully welcome in Colorado's business community. One commissioner suggested that Phillips can believe "what he wants to believe," but cannot act on his religious beliefs "if he decides to do business in the state." Tr. 23.

Masterpiece Cakeshop, Ltd., 138 S.Ct. 1719, 1729 (2018). Rote assurances of neutrality by state actors do not insulate the state from legitimate claims of unconstitutional infringement on religious views. Relying on evidence suggesting religious animus as a factor in the state commission's adverse actions against the baker, this Court held that the state action violated the Free Exercise Clause. *Id.* at 1732 (finding that the baker "was entitled to a neutral decisionmaker who would give full and fair consideration" to his religious views). And, even while articulating a heightened scrutiny test to comply with constitutional restrictions, Maine's highest court warned trial courts against wading into constitutional quagmires when allocating parental rights, instructing divorce courts to "make a preliminary determination of the child's best interest, *without giving any consideration to either parent's religious practices*, in order to ascertain which of them is the preferred custodial parent." *Osier*, 410 A.2d at 1029 (emphasis in original).

There need not be any explicit prevention of religious practice for a governmental action to raise constitutional concerns. Even subtle incursions against religious practice may compel constitutional relief, as the Free Exercise Clause "protects against 'indirect coercion or penalties on the free exercise of religion,

not just outright prohibitions.'" *Carson v. Makin*, 596 U.S. __, 142 S.Ct. 1987, 1996 (2022) (*quoting Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 450 (1998)). Thus, while legitimately neutral state actions that incidentally infringe on religious practice may survive a constitutional challenge, ostensibly neutral state actions harboring ill-will toward a religious individual—even if not a glaring infringement on religious practice—should be struck down.

The elevated station of religious beliefs in our constitutional scheme appears to hold particular sanctity in the realm of familial relations. Even as this Court barred states from certain discriminatory restrictions in the realm of same-sex marriage, the Court reiterated the duty of governmental actors to maintain respect for those retaining sincerely held faith in conflict with increasingly popular notions of legal equality. In *Obergefell v. Hodges*, 576 U.S. 644 (2015), the Court wrote: "[I]t must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned." *Obergefell v. Hodges*, 576 U.S. 644, at 679 (2015). The Court went on to state: "The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered." *Id.*, at 679-680. Even as our society adopts increasingly modern, even secular views of marriage, the Supreme Court has acknowledged, and expressly condoned, a respect for views that remain moored to religious tradition.

Finally, as a relevant tangent, areas of personal belief and outward actions informed by belief often are often intertwined. The expression of religious views that are contrary to salient political norms may be protected by the dovetailing doctrines of free speech and free exercise of religion. This dual relationship has been well-established since *West Virginia State Board of Education v. Barnette,* 319 U.S. 624 (1943). In January 1942, on the heels of America's forced entrance into World War II, the West Virginia Board of Education resolved to require schoolchildren to salute the flag each morning, and further resolved that refusal to do so would result in discipline, including expulsion. *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 626-29 (1943). School-aged Jehovah's Witnesses refused to participate and were expelled from schools. *Id*. at 630. The Court's opinion protecting the refusal to salute the flag turned not on the religious motives of the petitioners, since some nonreligious actors also objected to the practice, and so the Court found the board resolution unconstitutional under free speech grounds specifically. *Id.* at 642. Either way, whether an act is inspired by "intellect" or "spirit," the decision makes clear: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *Id.*

Judicial actors on the district courts of Maine must follow the First Amendment and afford due process to individuals subject to its decisions on parental rights. The First Amendment compels neutrality on matters of religious belief, and hostility toward religious beliefs—even in the form of subtle deviations from neutrality toward religion—constitute impermissible violations of the First Amendment. And—of

course—using an individual's religious beliefs as criteria negatively affecting parental rights is anathema to an individual's constitutionally protected Free Exercise of religion if those beliefs pose no harm to the child.

B. The Maine District Court expressly considered the substance of Mr. Craig's religious beliefs in its Judgment and in the adverse allocation of parental rights.

It is clear that the Maine District Court veered into taboo considerations about the parties' religious views in allocating parental rights. Just as the final hearing conspicuously solicited testimony about Mr. Craig's religious views, the District Court's Judgment conspicuously invokes the issue of Mr. Craig's beliefs in the substance of the written order. The inescapable conclusion is that, yes, Mr. Craig's religious beliefs animate the outcome of the parental rights decision.

On the second page of the opinion, the trial court examined the substance of Mr. Craig's religious views. The leading sentence of the key paragraph defines the principal subject of the court's concern, as follows: "Defendant's *perception* of Plaintiff's role in their marriage is nothing less than *troubling*." App. 6a (emphasis added). The court carries on about Mr. Craig's personal perceptions and religious beliefs, stating: "Defendant *believes* in a hierarchy in the parties' marriage, where the Defendant [sic] has a lesser status than Defendant and insistent [sic] that she be dependent on him to be *considered* good or *godly*." App. 6a (emphasis added). The court states that it

"finds that *this*"—"this" necessarily being Mr. Craig's "perceptions" or "beliefs," as no other viable subject is identified in the preceding lines—"has *caused* severe isolation for the Plaintiff." App. 6a (emphasis added). The court goes on to state that Mr. Craig's faith-derived beliefs caused Ms. Solorzano to become depressed and lose weight while living abroad. App. 6a. This—that is, the Maine District Court's causal finding—resonates with improper considerations of religious faith, as the court suggests that the beliefs themselves are de facto abusive. While the district court judge may personally believe that Mr. Craig's beliefs about domestic relations are unenlightened, the decision demonstrates telling hostility to Mr. Craig's faith, and attributes to those unwelcome views a certain power over Ms. Solorzano's physical wellbeing.

The Maine District Court asserted that this ruling was made on neutral terms. As a rhetorical fig leaf, the court stated that it "recognizes and respects Defendant's *right* to his own religious beliefs." App. 7a (emphasis added). Bracing itself for an allegation of bias, the District Court added:

> The Court will not, however, allow Defendant's controlling and abusive behaviors to be hidden behind the mask of faith. It is Defendant's behavior, not his belief, that this Court cannot abide. Such behaviors support the Court's finding of Defendant's continued and overwhelming control over Plaintiff.

App. 7a. This disclaimer does not rehabilitate the Judgment. A state actor's assertion of neutrality does

not mask impermissible hostility toward religion. In *Masterpiece Cakeshop*, this Court highlighted what it considered governmental comments hostile to the Christian accused of illegal discrimination, in which the factfinders "impl[ied] that religious beliefs and persons are less than fully welcome in Colorado's business community" and suggested that a person "can believe 'what he wants to believe,' but cannot act on his religious beliefs "if he decides to do business in the state."' *Masterpiece Cakeshop*, 138 S. Ct. 1719, 1729 (2018). This Court's disapproval of that disingenuous belief/action distinction is reasonably grounded in the acknowledgement that religious belief drives religiously-motivated acts, such as in the act of refusing to bake a cake for a customer. So might belief and action be intertwined in the act of managing a family's financial accounts, or the act of opining about a wife's domestic role, or the act of encouraging a family member to dress modestly pursuant to faith and custom, and on and on.

Here, the Maine District Court's Judgment was unashamed in its criticism of Mr. Craig's patriarchal views of marriage, and the court supplied a nexus between those subjectively unsavory views and some unspecified behaviors that caused Ms. Solorzano's unhappy feelings. The Maine District Court did not parse where belief ends and action begins, but gestures at its appreciation of the distinction. The expressed concerns about Mr. Craig's "perceptions" and "beliefs" makes the Maine District Court's attempted distinction dubious. And a court's irregular exploration of Mr. Craig's religiosity compels an appropriate level of judicial review.

C. The trial court's decision should have been subject to strict scrutiny analysis on appeal.

A parent's right to religious freedom in the realm of parental rights is not absolute. *See Yoder*, 406 U.S. at 233-34 (1972) ("[T]he 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."); *see also Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944) ("It is firmly established that '[t]he right to practice religion freely does not include liberty to expose . . . the child . . . to ill health or death.'"). Thus, it is not *im*permissible, on its face, to consider a parent's religious views in the context of parental rights decisions.

In balancing parental liberty interests with the welfare of the child, a standard of heightened scrutiny applies to state actions wherein parental rights are curtailed. *See, e.g., Pierce v. Society of Sisters*, 268 U. S. 510, 534-535 (1925). The Parental right and liberty interest "is perhaps the oldest of the fundamental liberty interests . . . ." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). And parental rights endure even if a parent is not, by whatever definition, an optimal parent: "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…" *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Pursuant to those standards, in Maine at least, "only the most exceptional circumstances or risks to a child's welfare allow the state to intrude upon a parent's fundamental right to the care and

control of his or her child." *Adoption of Isabelle T.*, 2017 ME 220, ¶ 7, 175 A.3d 639.

Even under Maine's own case law, weighing religious views in parental custody matters is an especially careful exercise, with specific guardrails in place to ensure constitutional compliance. When a state actor interferes with the fundamental right to parent, the reviewing court "must evaluate that interference with strict scrutiny—the highest level of scrutiny—which requires that the State's action be narrowly tailored to serve a compelling state interest." *See e.g., Pitts v. Moore*, 2014 ME 59, ¶ 12, 90 A.3d 1169. The Maine Supreme Judicial Court, consistent with the jurisprudence from federal courts applying the First Amendment of the U.S. Constitution, set forth a "two-stage analysis designed to protect [a parent's religious] rights against unwarranted infringement" in these very matters. *Osier*, 410 A.2d at 1030. First, "the court must make a threshold factual determination that the child's temporal well- being is immediately and substantially endangered by the religious practice in question." *Id.* If that threshold determination is made, the court "must engage in a deliberate and articulated balancing of the conflicting interests involved" and to "adopt a means of protecting the best interests of the child that makes the least possible intrusion upon the constitutionally protected interests of the parent." *Id.* In carrying out that analysis, "the trial court should make, on the basis of record evidence, specific findings of fact concerning its evaluation of all relevant considerations bearing upon its ultimate custody order." *Id.*

This Court need not review the case with an eye on Maine precedent—*Osier* is referenced here as being

a state-specific conception of appropriate strict scrutiny analysis, which the Maine Supreme Judicial Court created in part based on this Court's own caselaw pertaining to the First Amendment in these or comparable circumstances. But it is troubling to see precedent openly ignored by the trial court and the appellate courts when the subject party is deemed to have disfavored views. The trial court failed to follow the law, and then the Maine Supreme Judicial Court failed to cast even a slightly critical eye on the trial court's ruling. This is unsettling, and this Court's involvement is necessary to uphold religious rights that are increasingly ignored by Maine courts.

Based on the foregoing, the Maine Supreme Court should have applied strict scrutiny analysis in reviewing the District Court's Judgment.

D. The District Court's order would not have survived strict scrutiny if appropriately applied.

Applying the appropriate standard of review would have, and should have, yielded an outcome favoring Mr. Craig's requested relief—which is simply for a fair arbitrator to determine his parental rights vis a vis his daughter.

As a straightforward matter, the district court Judgement does not appropriately tie Mr. Craig's religious beliefs to K.'s future wellbeing under Mr. Craig's care. While the lower court devoted an impassioned paragraph characterizing Mr. Craig's "troubling" beliefs which led to his "overwhelming control over [Ms. Solorzano]," the impact of those beliefs is only

discussed in regard to Ms. Solorzano. App. 6a. Without further elucidating how patriarchal theology might specifically affect K.'s wellbeing, the District Court passingly asserts that Mr. Craig's "controlling behaviors . . . raise further concerns regarding [K's] safety." App. 7a. Absent from the Judgment is any "threshold factual determination that the child's temporal well-being is immediately and substantially endangered by the parent's religious practice." *Osier*, 410 A.2d at 1030 (emphasis added). Nor is there any "deliberate and articulated balancing of the conflicting interests involved." *Id.* The District Court does not attempt to supply any reasoning finding that might survive heightened scrutiny.

Mr. Craig's religious views were disparaged, implied to pose a threat to K., but not found to be a particularly urgent or severe risk to K.'s welfare. The Judgment does not engage in analysis that explains how the harsh limitations to Mr. Craig's visitation and parental rights are narrowly tailored actions that protect the child's welfare. Despite these deficiencies in the Judgment, the Maine Supreme Court ignored the unconstitutional analysis and stamped its approval on the decision. But the District Court's hostility toward Mr. Craig's religious views does not bear any logical relation to a compelling state interest that would keep a father at such a distance from his daughter. The Judgment, as an unconstitutional punishment premised upon disapproval over conservative religious views, should be vacated and remanded for a new trial, with a new factfinder.

CONCLUSION

The District Court's Judgment betrays an alarming hostility toward Mr. Craig's religious beliefs. Mr. Craig's beliefs may not be shared by individual members of this Court or the attorneys who advocate before this Court; but that hostility denied Mr. Craig the constitutional right to have his parental rights determined by a neutral factfinder. The trial court may well believe that its decision advances the legitimate aims of a society that is bending toward a more just future, but that motive is not to be lauded in this context. As was observed by Justice William Brennan, Jr.:

> We are not an assimilative, homogeneous society, but a facilitative, pluralistic one, in which we must be willing to abide someone else's unfamiliar or even repellent practice because the same tolerant impulse protects our own idiosyncrasies. Even if we can agree, therefore, that "family" and "parenthood" are part of the good life, it is absurd to assume that we can agree on the content of those terms and destructive to pretend that we do. In a community such as ours, "liberty" must include the freedom not to conform.

Michael H. v. Gerald D., 491 U.S. 110, 141 (dissenting opinion of J. Brennan) (1989). Our constitutions protect Mr. Craig's religious views from state-ordered progressivism, and even state-ordered milquetoast conformity. With that in mind, it should take more than unpopular religious beliefs to keep a father from his daughter.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Stephen C. Smith, Esq.
Counsel of Record
Carl E. Woock, Esq.
STEVE SMITH TRIAL LAWYERS
191 Water Street
Augusta, Maine 04330
(207) 622-3711
Info@MaineTrialLaw.com

Counsel for Petitioner

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