
In The Supreme Court of the United States

M.W.,

Applicant,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES, N.G., AND O.A.,

Respondents.

On Application for Stay of the Order
Issued by the Superior Court of California,
County of Los Angeles

**BRIEF OF *AMICUS CURIAE* THE
AMERICAN CENTER FOR LAW AND JUSTICE
IN SUPPORT OF APPLICANT'S EMERGENCY APPLICATION
FOR STAY**

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INTEREST OF AMICUS¹

The American Center for Law and Justice (“ACLJ”) is an organization dedicated to the defense of constitutional liberties secured by law, including religious liberty, parental rights, and the sanctity of human life. ACLJ attorneys have appeared before this Court as counsel for parties, *e.g.*, *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Locke v. Davey*, 540 U.S. 712 (2004); *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263 (1993); *Trump v. Anderson*, 601 U.S. 100 (2024), and as amicus, *e.g.*, *Carson v. Makin*, 596 U.S. 767 (2022); *Mahmoud v. Taylor*, 606 U.S. 522 (2025); *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022); *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 607 U.S. ___, 146 S. Ct. 1114 (2026). The ACLJ is dedicated to combating the injustice of denying human rights to unborn children and has filed as amicus in previous abortion-related cases in this Court. As an organization dedicated to parental rights and the protection of children, including the unborn and those with medical issues, the proper resolution of this application is of substantial concern to the ACLJ.

SUMMARY OF ARGUMENT

California cannot turn an objection to judicial power into the source of that power. Yet that is the premise of the judgment challenged here: M.W. contested jurisdiction, and the court treated her effort to explain why it lacked jurisdiction as

¹ No counsel for any party authored this brief in whole or in part. No such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity aside from the ACLJ, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

consent to its exercise. Appl. 6-7, 17-20. A procedure for preserving a constitutional defense cannot fairly become the means of forfeiting it.

The stakes are not abstract. After learning of Baby G.'s heart condition, the parties who commissioned his birth demanded an abortion. M.W. bravely refused. The California court later entered a parentage judgment that is now being invoked to exclude her from the proceedings concerning the child she carried and delivered. Appl. 3-9; Emergency Suppl. Br. 1-2 (Sept. 14, 2026).

While California law chooses to favor commercial surrogacy, it may not give that policy a jurisdictional exemption. The question for the Court here is narrow, yet consequential: Can California treat a limited appearance to *contest* personal jurisdiction as *consent* to personal jurisdiction in violation of the Due Process Clause of the Fourteenth Amendment? No, of course not. A court cannot manufacture consent from conduct that state law protects as a means of contesting jurisdiction. California expressly preserves jurisdictional objections at ex parte hearings and through motions to quash. Cal. Civ. Proc. Code §§ 418.10, 418.11. A violation of the Due Process Clause of the Fourteenth Amendment occurs when a court offers that protection and then treats its invocation as surrender.

The Court need not decide ultimate parentage, prescribe treatment, or settle commercial surrogacy law to grant M.W.'s requested relief. Instead, it should decide whether the California judgment may remain operative given its unconstitutional jurisdictional foundation. The Court should issue an immediate administrative stay to preserve the child's life, the status quo, and this Court's jurisdiction.

ARGUMENT

This case concerns a question of federal constitutional law: when may a State—within the bounds of due process—declare that a litigant has waived the right to contest personal jurisdiction? *See Brookhart v. Janis*, 384 U.S. 1, 4 (1966) (“The question of a waiver of a federally guaranteed constitutional right is, of course, a federal question controlled by federal law. There is a presumption against the waiver of constitutional rights, . . . and, for a waiver to be effective, it must be clearly established that there was ‘an intentional relinquishment or abandonment of a known right or privilege.’”) (internal citations omitted).

Although this Court recently recognized that the issue of consent to personal jurisdiction is “a very old question,” *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122, 128 (2023), it has never squarely addressed *when* the Due Process Clause limits a State’s power to deem a litigant to have consented to jurisdiction even though the litigant has taken every step available to her to contest personal jurisdiction. Instead, “[t]o date, our personal jurisdiction cases have never found a Due Process Clause problem sounding in federalism when an out-of-state defendant submits to suit in the forum State.” *Id.* at 144 (Gorsuch, J.). Here, though, this case presents the scenario in which a “defendant who appear[ed] ‘specially’ to contest jurisdiction,” *lost* her defense instead of preserving it. *Id.* at 145.

Some of this Court’s older precedents suggest that once a State labels conduct as “consent,” the constitutional inquiry ends. *See York v. Texas*, 137 U.S. 15, 20 (1890) (“The state has full power over remedies and procedure in its own courts, and can

make any order it pleases in respect thereto, provided that substance of right is secured without unreasonable burden to parties and litigants.”). Indeed, the Court has gone so far as to indicate that the conduct giving rise to purported consent need not even be “voluntary.” *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 704-05 (1982) (“In sum, the requirement of personal jurisdiction may be intentionally waived . . . but this is not the only way in which the personal jurisdiction of the court may arise. The actions of the defendant may amount to a legal submission to the jurisdiction of the court, whether voluntary or not. The expression of legal rights is often subject to certain procedural rules: the failure to follow those rules may well result in a curtailment of the rights.”). But the classic statutory-consent cases still involved affirmative conduct that the law treated as submission. *Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 94 (1917), emphasized that “the defendant’s voluntary act,” agreeing to jurisdiction by authorizing service through an in-state official, was sufficient to render it open to be sued. *Id.* at 96. That is a far cry from treating a litigant’s statutory effort to avoid jurisdiction as intentional submission to it; this Court’s precedent never blessed such a move. But *Mallory* demonstrates that the Court has not addressed the issue of what happens when a litigant follows the rules and still has her rights curtailed. If a State may simply declare “consent” whenever it wishes, then the Constitution’s jurisdictional safeguards cease to function as meaningful restraints on state power.

In this Court's precedents, statutes or procedural rules expressly informed litigants in advance of which actions would constitute consent to the court's jurisdiction. This case is fundamentally different and invites this Court's review. California law expressly permits a defendant to appear for the purpose of contesting jurisdiction without thereby consenting to it. California's statutes expressly distinguish contesting jurisdiction from accepting it. Section 418.11 provides that appearing at a hearing where *ex parte* relief is sought is not a general appearance and does not waive the right to move under section 418.10. Section 418.10(a)(1) authorizes a motion to quash for lack of personal jurisdiction; subsection (a)(2) authorizes a forum objection. Subsection (d) protects a motion under that section from being treated as a general appearance. Those protections matter especially when a nonresident must respond to an expedited application before ordinary proceedings can unfold. Applicant did exactly what the statute authorizes. Through counsel, she specially appeared, challenged the court's jurisdiction and forum, and refrained from litigating the merits. At the court's insistence, counsel provided background concerning the underlying dispute. She later submitted a brief directed to jurisdiction and forum, attaching materials from the Alaska litigation to support those objections. She then filed a formal motion to quash and renewed her objections at the next hearing. Appl. 6-7. Yet, the Superior Court held that her submissions, including their length, amounted to a general appearance. Appl. 7, 17-18. Page count does not answer the constitutional question. A special appearance to contest jurisdiction and forum, regardless of page length, cannot be converted into a general appearance.

That reasoning turns due process on its head. The question is no longer whether a State may define, in advance, what conduct amounts to consent. The question is whether a State may transform a litigant's express objection to jurisdiction into a waiver of that objection. If due process permits that result, then *Mallory's* brief examination of whether Norfolk Southern “*really* submitted to the proceedings in Pennsylvania” is meaningless. *Mallory*, 600 U.S. at 144. Consent ceases to be a voluntary relinquishment of constitutional protection and instead becomes whatever a state court chooses to label as consent.

This case necessitates that this Court determine whether the Superior Court erred in “assert[ing] coercive power over the defendant.” *Mallory*, 600 U.S. at 164 (Barrett, J., dissenting), and whether the Superior Court's finding of personal jurisdiction violates the “Due Process Clause, which guards a defendant's right to resist the judicial authority of a sovereign to which it has an insufficient tie.” *Id.*

A State cannot hold out a procedure for protecting a federal right and then turn that procedure into a trap for the litigant who invokes it. That is the kind of “bait and switch” that is forbidden. *Reich v. Collins*, 513 U.S. 106, 110-11 (1994). The Due Process Clause cannot tolerate a rule under which a defendant loses the right to contest jurisdiction by exercising the very procedure state law provides for raising that challenge.

I. A Special Appearance is Not Consent.

Personal jurisdiction protects an individual liberty interest and is waivable. *Insurance Corp. of Ireland*, 456 U.S. at 702-05. Courts routinely treat failure to “raise

a defense of lack of personal jurisdiction at the appropriate time” as having “conferred personal jurisdiction on the court by consent.” *Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (11th Cir. 1990) (citing *Harris Corp. v. Nat’l Iranian Radio & Television*, 691 F.2d 1344, 1353 (11th Cir. 1982)). That rule is at least coherent—a defendant who sits silent, answers on the merits, or waits too long to assert the defense has “consented” to proceed in that forum. Waiver follows from the failure to object.

What has occurred here, however, is not coherent. Applicant objected, carefully and repeatedly, to the lower court’s jurisdiction. Appl. 6-7. A party should not be forced to waive its objection at the price of asserting it. In California, the special appearance and motion to quash still exist for that reason. It allows a nonresident to assert that the court has no power over her without thereby conferring that very power. If failing to raise the defense, expressly consenting, and objecting to jurisdiction by asserting the defense through a special appearance all produce the same result—consent to jurisdiction—then the defense is not a defense. It is a trap. Due process does not support that non-choice. A court that treats the objection as submission has not found consent. It has forced it.

That is what has occurred here. Applicant “exercise[d] great diligence in challenging personal jurisdiction,” and was still found by the lower court to have “consented” to its jurisdiction. *Rates Tech., Inc. v. Nortel Networks Corp.*, 399 F.3d 1302, 1307 (Fed. Cir. 2005) (quoting 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1391 (3d ed. 2004)) (“Rule 12(h)(1) ‘advises a litigant

to exercise great diligence in challenging personal jurisdiction, venue or service of process.”).

California state law allows “special appearances” to challenge personal jurisdiction via motions to quash. Cal. Civ. Proc. Code § 418.10(a)(1), (d); *Stancil v. Super. Ct.*, 485 P.3d 446, 452, 456 (Cal. 2021) (“the motion to quash remains a limited procedural tool appropriate where the court lacks personal jurisdiction because the statutory requirements for service of process are not fulfilled or the summons is defective.”); *see also id.* at 456 (“Motions to quash service of summons provide defendants with an important tool to quickly challenge personal jurisdiction without waiving the right to defend on the merits or risking entry of default.”). That law is coherent only if the challenge itself is not a submission. Otherwise, the statute invites the defendant to object, and the court issues an erroneous determination that the objection *was* the consent.

Indeed, “[b]efore the Legislature enacted the statutory provisions governing motions to quash service of summons, litigants had to specially appear and carefully limit their personal jurisdiction challenges, or risk making a general appearance.” *Id.* at 451. Thus, “[t]he purpose of this legislative action was to correct inadequacies in the law obstructing litigants from raising jurisdictional objections early in litigation.” *Id.*

Here, the Superior Court’s decision subverts the purpose of California’s legislation. Applicant specially appeared with her motion to quash. She invoked a forum-selection clause that required litigation in Alaska. She contested service. She

did not ask the court to decide parentage or anything else that assumed the court's power over her. The court then held, on its own initiative, that the documents filed in support of the objection transformed the special appearance into a general one, merely because of their length. Appl. 6-7. The more completely she demonstrated that the court lacked power, the more completely she was held to have given it power. That is not waiver or consent. It is a penalty for making the record the objection required.

Due process does not work that way. The Due Process Clause works to provide predictability, giving potential defendants "some minimum assurance as to where that conduct will and will not render them liable to suit." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). That predictability would disappear if a defendant could forfeit a personal jurisdiction objection simply by properly asserting it. Personal jurisdiction is not a right lost by the act of claiming it. A court may not treat a special appearance as "consent" merely because the defendant presented the objection in full while scrupulously avoiding the merits. That is not a choice to consent. It is the act the law requires to preserve the challenge. Calling it "consent" affixes a label after the fact.

And *Mallory* does not license the result here. There, the corporation registered to do business under a statutory scheme that made the jurisdictional consequence clear and explicit. 600 U.S. at 134-36; *id.* at 148 (Jackson, J., concurring) . Pennsylvania's statute told out-of-state corporations in advance that registration to do business would constitute consent to personal jurisdiction. *Id.* at 127, 134-36. The

Court relied on that statutory notice and the corporation’s affirmative choice to register despite the jurisdictional consequence. And the plurality explained that “a variety of ‘actions of the defendant’” may amount to “legal submission to the jurisdiction of a court,” *id.* at 146 (quoting *Insurance Corp. of Ireland*, 456 U.S. at 704-05), including legal arrangements reflecting express or implied consent, *id.* at 136 n.5. But that principle presupposes an affirmative act the law treats as submission. It does not permit a court to convert the act of objecting to jurisdiction—through procedures California law says preserve the objection—into consent to jurisdiction. California’s statutes communicate the opposite consequence for the protected procedures at issue here: the appearance does not surrender the objection. Indeed, the *Mallory* plurality explained that a defendant appearing specially to contest jurisdiction preserves the defense. *Id.* at 145 (opinion of Gorsuch, J.). The distinction cannot disappear because the objection requires explanation.

Nor did *Fuld* settle the question against M.W. That case upheld a federal jurisdictional statute under the Fifth Amendment, emphasizing the Federal Government’s distinct sovereign authority and the defendant terrorist organizations’ conduct bearing a meaningful relationship to the United States. *Fuld v. PLO*, 606 U.S. 1, 13-16, 18-23 (2025). The Court expressly declined to decide whether the statute independently satisfied its consent precedents. *Id.* at 23. (“Since we hold that the statute ties the assertion of jurisdiction to predicate conduct that in and of itself bears a meaningful relationship to the United States, we need not further consider the matter through the lens of consent.”).

The lower court's ruling is unworkable. A jurisdictional objection is not a one-line notice. Counsel must appear, must attach the contract, the proof of bad service, the forum clause, and the affidavits showing the absence of contacts. If those attachments convert the appearance, the only safe objection is an empty one—and an empty one will be denied as unsupported. Say too little and lose the motion. Say enough and lose the objection by “consent.” Due process does not put a litigant to that choice.

This Court's recent consent decisions do not require a different result. Those cases involved statutes that told a defendant, in advance, that certain conduct would be treated as consent, or a defendant who failed to properly and timely assert the defense. This case involves a court treating the jurisdictional objection itself as consent. A legislature may attach conditions to the privilege of doing business in a State. A trial court may not rewrite a special appearance because it needs a hook for power. The two situations are not the same. This Court should say so.

The question is presented cleanly. Applicant contested jurisdiction from the start. She did not litigate the merits. Service was defective. Appl. 1, 5. No other ground supports California's assertion of power. The statutory overlay that divided the Court in the recent consent cases is not present. What remains is the due process question in its simplest form: whether a State may treat a special appearance as a general one because the objector attached the documents that made the objection intelligible. Appl. 7.

The cost of leaving the question unanswered is significant. Here the recast “consent” produced a parentage judgment. That judgment has already been given effect in another State, and at its core affects the life of a newborn. A doctrine that converts an objection into power for a court to intervene whenever it sees fit is dangerous enough when the stakes are money. It is intolerable when the stakes are the very life of a child and whether the woman who carried him is a legal stranger.

This Court must restore meaning to the word “consent” before lower courts empty the word of content. Personal jurisdiction was not designed as a trap for the party who contests it most carefully. If that is what it has become, the court that set the trap will not correct it.

The Superior Court needed a basis for power and found one in the act of denying power. That is not consent. This Court should stay the judgment that rests on that fiction, and it should take the case to hold that the Due Process Clause still requires consent to mean consent.

II. The Jurisdictional Fiction May Be Used to Dispose of a Child Who Had No Voice in the California Proceeding.

Although the Court need not reach this question to resolve this application, the ACLJ would like to emphasize the humanity of Baby G., who is at the heart of this matter.

When the Superior Court entered its parentage judgment, Baby G. was still in utero. The Commissioning Parties had already demanded a late-term abortion.

Applicant refused. The court then decided, on a theory of imputed consent, who would hold exclusive legal authority over that child.

This Court has long understood that the unborn child is not a legal nullity. *Gonzales v. Carhart*, 550 U.S. 124, 157-60 (2007), upheld a prohibition on a particular method of killing a living fetus in part because the government may “use its voice and its regulatory authority to show its profound respect for the life within the woman.” Federal law treats an “unborn child” as a “member of the species homo sapiens, at any stage of development, who is carried in the womb.” Unborn Victims of Violence Act of 2004, 18 U.S.C. § 1841(d). Dozens of States do the same in fetal-homicide statutes. As the ACLJ has previously explained to this Court, it is profoundly unsettling to the many areas of law that treat unborn children as human beings to reason as if the unborn child were something other than a human being simply because a particular clause of the Fourteenth Amendment has not yet been held to confer the full status of “person.” Brief for ACLJ et al. as Amici Curiae at 2, *Box v. Planned Parenthood of Ind. & Ky.*, 139 S. Ct. 1780 (2019) (No. 18-483).

An assumption underlying the parties’ dispute over the parentage of Baby G. is that he was, legally speaking, property and the subject of a contract, advancing the premise and legal assumption that embryos and fetuses are *property* of their parent-progenitors and something that can be *owned* and governed by contract. Such an assumption runs afoul of “the Thirteenth Amendment [which] removes all human beings from the category of property.” *McQueen v. Gadberry*, 507 S.W.3d 127, 158 (Mo. Ct. App. 2016) (Dowd, J., dissenting). It could require courts to treat embryos

and fetuses as *children*, ensuring their right to life as persons and deciding custody based on the best interests of the child. *Cf., Roe v. Wade*, 410 U.S. 113, 156-57 (1973) (“If this suggestion of personhood is established, . . . the fetus’ right to life would then be guaranteed specifically by the [Fourteenth] Amendment. The appellant conceded as much on reargument.”). Other case law corroborates this point. As the Tennessee Supreme Court stressed, the “fundamental” question lurking behind any embryo-related dispute is whether they “should be considered ‘persons’ or ‘property’ in the contemplation of the law.” *Davis v. Davis*, 842 S.W.2d 588, 594 (Tenn. 1992); *see also LePage v. Ctr. for Reprod. Med., P.C.*, 408 So. 3d 678 (Al. 2024).

The child here was not an abstraction at twenty weeks, and he is not an abstraction now. He was the human being whose destruction the contract purported to authorize and whose parentage California purported to assign. Due process analysis that treats him as a silent predicate of a private bargain is not faithful to this Court’s precedents, or to the body of law that already recognizes him as a human life. *See Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 246-48 (2022).

III. The Equities Require a Stay.

The stay inquiry considers four factors, the first two of which “are the most critical”: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009).

As discussed in detail, *supra*, Applicant has made a strong showing that she is likely to succeed on the merits of her claim. Likewise, Applicant will be irreparably injured absent a stay. Applicant has been shut out of information and decision-making concerning the child she carried and delivered. The Commissioning Parties opposed an order requiring medically indicated life-sustaining care. The application recites that the child may be removed from the Texas hospital for hospice as early as mid-September.

This Court has stayed a parentage judgment, *V.L. v. E.L.*, 577 U.S. 1046 (2016), and has protected a parent's right to participate in decisions regarding children's health, *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam). The same logic applies with greater force where one side of the caption previously sought the child's death and the judgment under review is the product of a jurisdictional fiction.

A stay does not award custody. It prevents a void decree from being used, in the coming days, to leave a living child without the only advocate who has consistently sought his life. Delay in enjoying the fruits of such a decree is not irreparable injury to the Commissioning Parties. *Nken*, 556 U.S. at 435. The public interest is not served by enforcing a parentage judgment obtained in violation of Due Process, particularly where the judgment is being deployed to control whether a child lives.

CONCLUSION

This Court should grant the application for an administrative stay and stay pending petition for certiorari.

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