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COURT OF APPEALS

STATE OF NEW YORK

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LALAND,

Appellant,

-against-

NO. 76

BOOKHART,

Respondent.

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20 Eagle Street  
Albany, New York  
September 13, 2022

Before:

ACTING CHIEF JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE SHIRLEY TROUTMAN

Appearances:

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Christian C. Amis  
Official Court Transcriber



1           ACTING CHIEF JUDGE CANNATARO: Our next appeal is  
2           number 76, Laland v. Bookhart.

3           MS. GOTTLIEB: Good afternoon. Christine  
4           Gottlieb, NYU School of Law, Family Defense Clinic, for the  
5           appellant, Mr. Davlin Laland.

6           Your Honor, I would request two minutes for  
7           rebuttal.

8           ACTING CHIEF JUDGE CANNATARO: You have two  
9           minutes.

10          MS. GOTTLIEB: Thank you.

11          We are asking this court to join the growing  
12          chorus of high state courts that have held that the  
13          Interstate Compact on the Placement Of Children does not  
14          apply to parents. The misunderstanding that it does has  
15          inflicted inordinate harm on children and families. The  
16          plain language of the compact states that it applies for  
17          placements in foster care and for potential adoption.

18          JUDGE RIVERA: And what's the source of that,  
19          what you're calling a misunderstanding and those  
20          regulations? Why has it taken that turn?

21          MS. GOTTLIEB: I've given that a lot of thought,  
22          Your Honor. It - - - what is clear is that the association  
23          of administrators, forty years after the compact was  
24          drafted, and after New York codified it, forty years later,  
25          the administrators expanded the scope of what was under



1 their authority well beyond what the statute allowed. And  
2 once they did that, departments in some jurisdictions and  
3 courts in some jurisdictions went with that regulation.

4 I do not believe there's any doubt that if the  
5 families that we're impacting were not the marginalized  
6 low-income families of color that it is that there would  
7 have been stronger pushback immediately against that  
8 blatant misreading of the statute.

9 JUDGE GARCIA: Well, not all courts have agreed  
10 with you, right. I think Delaware didn't, and Delaware  
11 came up with something that says, where the non - - - where  
12 the fitness of the noncustodial parent is not in doubt, and  
13 no contributing - - - continuing supervision will be  
14 necessary, the regulations authorize the court to hold the  
15 compact inapplicable, right. Which, I think, actually  
16 mirrors an earlier version of the reg that wasn't adopted.  
17 What about a rule like that?

18 MS. GOTTLIEB: Your Honor is correct. Delaware  
19 is the one high state court that has found that the compact  
20 applies. Seven high state courts have held that it clearly  
21 does not.

22 JUDGE GARCIA: In limited circumstances.

23 MS. GOTTLIEB: Your Honor, there's nothing in the  
24 plain language that allows limited circumstances. There's  
25 nothing in the legislative history that suggests that it



1 applies in limited circumstances. And applying it contrary  
2 to its plain language is incompatible with New York's  
3 Family Court Act, which actually allows for an inquiry into  
4 the noncustodial parent were there evidence of unfitness.

5 JUDGE TROUTMAN: So if you utilize New York's  
6 Family Court Act, can you get the same information that is  
7 sought by using the ICPC?

8 MS. GOTTLIEB: You can get a great deal of  
9 information, Your Honor. What you can't get is that  
10 receiving state's opinion - - - a low level administrator's  
11 opinion on what's best for the child. But of course, that  
12 isn't the standard under New York law.

13 So what New York family courts can receive - - -  
14 and the First Department made clear in Matter of Emmanuel  
15 B. that there are many sources of information.

16 So the caseworker interviews the parent; they  
17 interview the children. They can ask for a courtesy home  
18 study from the other state. If a courtesy home study is  
19 not available, they can get a private home study that can  
20 be retained or through a nonprofit agency. They can get  
21 information from the parent's employers, their landlord,  
22 their service providers - - -

23 JUDGE TROUTMAN: So is it your argument that by  
24 utilizing those other sources, they can satisfy the  
25 requirement of rendering, ultimately, a decision in the



1 best interest of the child?

2 MS. GOTTLIEB: Your Honor, they can fulfill the  
3 mandate of the Family Court Act, which is that the family  
4 court judge here in New York assess whether that parent is  
5 suitable. No family court is going to send a child if they  
6 do not believe that that home is suitable.

7 And I will note that there's a right to a stay  
8 and interim appellant review if anyone disagrees with that  
9 family court's determination. And very importantly, the  
10 family court, under 1017, can hold a hearing to assess the  
11 information.

12 And the problem with the compact is there is no  
13 hearing - - -

14 JUDGE TROUTMAN: Right. If the - - - once they  
15 determine in the compact in the negative way, the family's  
16 stuck with that decision?

17 MS. GOTTLIEB: That's correct, Your Honor. There  
18 are months and months, if you're lucky, sometimes a year  
19 that your waiting. And then the New York family court's  
20 hands are tied. They are not allowed, at that point, if  
21 the compact is applied, to hold the hearing and assess the  
22 information.

23 JUDGE GARCIA: If they can't get the information  
24 that they need, is that a factor in determining it's not  
25 suitable to send the child out of state?



1 MS. GOTTLIEB: Your Honor, the courts have not  
2 yet determined the meets and bounds of what's suitable, but  
3 it's clear that the Court can consider any and all  
4 information.

5 JUDGE GARCIA: But what about the lack of  
6 information? Can they consider a lack of information.  
7 Look, under the compact, we can get this, but we can't  
8 order it, and we think there might be some involvement by  
9 social services needed in the destination state, and we  
10 can't order that - - - like, we can't do that, so that  
11 makes our suitability determination go unsuitable.

12 MS. GOTTLIEB: So I think the concern about a  
13 lack of information would be addressed in a couple of ways.  
14 So one is at the 1017 hearing. The hearing held pursuant  
15 to the Family Court Act Section 1017. As with all family  
16 court hearings, the parent's failure to testify could lead  
17 to a negative inference.

18 JUDGE GARCIA: But what about an inability to  
19 check? They come in and they testify, but now I have no  
20 ability to check on what the circumstances are in the other  
21 state.

22 MS. GOTTLIEB: Your Honor, there are many sources  
23 of that information. We need not rely on the other county.  
24 So in private custody disputes around the state, of course,  
25 New York state courts get plenty of information, even when



1 they're sending a child in a private custody suit across  
2 state lines.

3           Again, you can retain a private home study. You  
4 can get a nonprofit home study. And importantly, 1017  
5 allows the Family Court Act to make orders against that  
6 parent. They have to submit to the jurisdiction of the  
7 court. And the Family Court Act, where the legislature, I  
8 think, really gave this serious consideration, they've  
9 amended 1017 five times in this century, indicating that  
10 they wanted to expand the rights of these noncustodial  
11 parents - - -

12           ACTING CHIEF JUDGE CANNATARO: I just - - -  
13 excuse me. I just want to confirm something you said. In  
14 a regular Article 6 custody dispute, one of the options  
15 available to the court in assessing the suitability, let's  
16 say it's an out-of-state parent, would be to do some sort  
17 of home study, either private, or you could even ask the  
18 local social services agency to go to the home as a matter  
19 of curtesy. That's what you've argued so far, right?

20           MS. GOTTLIEB: Correct.

21           ACTING CHIEF JUDGE CANNATARO: And your position  
22 is, under 1017, all those options are still available  
23 without recourse to the ICPC?

24           MS. GOTTLIEB: All of those and more, Your Honor.  
25 That's correct.



1           ACTING CHIEF JUDGE CANNATARO: So we don't have  
2 to hold that the ICPC is mandatory or even discretionarily  
3 available because there's another way to do exactly the  
4 same thing. Is that your argument?

5           MS. GOTTLIEB: There's a way to get as much and  
6 more information, Your Honor, where it's - - - where the  
7 family court's hands aren't tied and we're not delegating  
8 those decisions to these low-level bureaucrats; that's  
9 correct.

10           And you know, I understand that amici, the New  
11 York City Administration for Children Services has invited  
12 this court to grant discretion. But ACS itself  
13 acknowledges there's nothing in the plain language of the  
14 statute or the legislative history that - - - that  
15 contemplates applying it to parents.

16           And there's - - - the compact is essentially a  
17 contract among the states. And individual states - - -

18           JUDGE RIVERA: So then your argument is really  
19 about the text and the history, and I understand the point  
20 about the history. The fact that the family court has  
21 other ways - - - other access to the information, or some  
22 of the information, and other ways, maybe is of interest,  
23 but it doesn't - - - if I'm not - - - misunderstanding, you  
24 have to tell me - - - or if I'm misunderstanding, you have  
25 to tell me - - - doesn't control here because what matters



1 is just the text and the purpose of the compact at the time  
2 that New York entered this compact.

3 MS. GOTTLIEB: Correct, Your Honor. The text  
4 rules, and everything in the history supports the text.  
5 And everything in New York statutory scheme supports the  
6 text. But I do understand that any court is going to want  
7 to be assured that there is sufficient information, and  
8 that's why we addressed that concerned.

9 JUDGE RIVERA: Thank you.

10 ACTING CHIEF JUDGE CANNATARO: Thank you,  
11 Counsel.

12 MR. BERNET: Good afternoon. I'm James Bernet,  
13 assistant county attorney appearing for Dennis Cohen, the  
14 Suffolk County County Attorney.

15 I do agree with counsel using Family Court Act  
16 1017 as an analysis because it does mirror, basically, the  
17 instruction purpose of the ICPC. The due process rights of  
18 a nonrespondent, out-of-state parent are covered in Family  
19 Court Act 1035, which says that these nonrespondent  
20 parents, whether in-state or out-of-state, have the right  
21 to notice, they have a right to appear at every stage of  
22 the proceeding, they have a right to seek custody.

23 Those rights obviously have been met. I know  
24 there's some argument in the briefs that due process was  
25 not met, but due process was met and that the appellant did



1 have notice and did apply for custody.

2 The 1017 analysis, as counsel states, the court  
3 is directed to order the local DSS to do an investigation,  
4 report back to court, and the court has to make a decision.

5 In this case, I do think counsel overstates the  
6 amount of information that a judge in family court can get  
7 about a nonrespondent - - -

8 JUDGE RIVERA: Can give us an example of what  
9 will be available under the compact that a judge couldn't  
10 get under the Family Court Act?

11 MR. BERNET: I think the information the Court  
12 can get under the compact is the same that the Court can  
13 get under an in-house - - - an in-state, nonrespondent  
14 parent because the local DSS office is going to go and  
15 investigate that parent, going to do the criminal  
16 background check, they're going to do the neglect history,  
17 they're going to see their home, if it's inappropriate,  
18 whether they're living with inappropriate people, or  
19 whatever the obstacles are to uniting a child with a  
20 parent, whether it's a respondent or not.

21 Parents don't have, under the Family Court Act,  
22 the right to have the custody. They have the right to seek  
23 custody, which was granted in this case. If the respondent  
24 - - - or excuse me - - - the appellant in this case had the  
25 ability to do private home study, et cetera, that would be



1 done. But these things are expensive. A lot of times in  
2 family court the parties aren't going to have access to  
3 resources that they would through the supreme court divorce  
4 action or a custody action. So I do think the only avenue  
5 that a family court judge has to obtain the kind of  
6 information it would get on in-state or in-county  
7 nonrespondent parent isn't going to be through the ICPC.

8 So - - - I'm sorry - - -

9 JUDGE RIVERA: So does that if - - - I'm just  
10 going to assume exactly what you said. I'll work from  
11 there. They can - - - they can dispute it. That if there  
12 was funding to do then you wouldn't have to go to compact?

13 MR. BERNET: You - - -

14 JUDGE RIVERA: Is it that it's costly and that's  
15 really the obstacle?

16 MR. BERNET: I would agree. The purpose here - -  
17 - I mean, the ICPC does have a different function, which  
18 the states are agreeing that they are protecting  
19 themselves, so it's not solely the best interest of the  
20 child analysis.

21 This is similar to the Indian Child Welfare Act,  
22 where because of the mistreatment of certain tribes in  
23 other states, here in New York a tribe can just take  
24 jurisdiction over a neglect case, regardless of any kind of  
25 analysis, whether they have the means to prosecute it or if



1 the child's best interest would actually be served. But  
2 there's no analysis whatsoever. There's no decision. If  
3 that child is eligible for membership in the tribe, we're  
4 giving the tribes that right.

5 Similarly, the states have - - - I assume there  
6 was a negotiation process and a bargained-for agreement,  
7 and the federal government was involved, but they agreed to  
8 these terms, which does include expressly an element to  
9 protect their own state interests, not just serve the best  
10 interests of the child. So that is a function of - - -

11 JUDGE RIVERA: Yeah. But it begs the question of  
12 their state interest depending on what scenario. Right?  
13 The argument is that that doesn't apply - - -

14 MR. BERNET: The child - - -

15 JUDGE RIVERA: - - - but if it's an out-of-state  
16 noncustodial parent, it applies to foster care and other  
17 kinds - - - a boarding house, that kind of thing. It  
18 doesn't apply to this situation.

19 So I'm not disagreeing with you. You're  
20 absolutely right. Of course, yes, that's one of the  
21 purposes. The question is whether or not this  
22 interpretation is in furtherance of the first.

23 MR. BERNET: I would argue that it is mandatory  
24 the ICPC be applied. I don't think there's even an option,  
25 really, for discretion because that's not within the four



1 corners. It's either applies or it doesn't apply. And if  
2 it doesn't apply, the family court is not going to have a  
3 lot of information or it's going to rely solely on the  
4 information provided by the petitioner in the V docket  
5 petition.

6 ACTING CHIEF JUDGE CANNATARO: But going by - - -  
7 going by the language of the compact, it does apply, but it  
8 applies for adoption - - - adoptive and foster placements.  
9 That strongly suggests that there's a different weighing of  
10 the interests involved when you're talking about a parent.

11 MR. BERNET: That does skip over - - - and I do  
12 realize we're talking about a different competing interest.  
13 You have, obviously, the parent's rights to seek custody,  
14 the parent's rights to raise their child.

15 In this particular case, this scenario we have  
16 here, this was a parent who had never met the child. The  
17 child was born outside of this parent. This parent was  
18 never a custodial parent. There had been a child support  
19 action. I don't know if that affected the motivation.

20 JUDGE RIVERA: Still a parent.

21 MR. BERNET: Doesn't make any difference. I  
22 agree. Still a parent.

23 JUDGE RIVERA: That might be the reason why he  
24 doesn't get custody. It's not a reason why you have to go  
25 to another state to find out the conditions.



1 MR. BERNET: But that's really the only way the  
2 family court judge is going to get an independent analysis.  
3 Otherwise, you're relying on what that noncustodial parent  
4 - - -

5 JUDGE RIVERA: So then the First Department is  
6 wrong in this analysis when they've said, you have all  
7 these other means by which you can get this kind of  
8 information?

9 MR. BERNET: I've been in family court for twenty  
10 years, and I do not see that kind of information coming in  
11 on these neglect cases.

12 I do think when you have well-heeled parents and  
13 supreme court action, they had lots of professionals - - -

14 JUDGE TROUTMAN: So biological - - -

15 JUDGE RIVERA: So isn't that then - - - at the  
16 end of the day, getting back to an earlier point, that this  
17 turns on finances, not on the text and the purpose.

18 MR. BERNET: I do think that - - -

19 JUDGE RIVERA: It's a cost-cutting measure.

20 MR. BERNET: - - - I do think if the family court  
21 had some means - - - but it's going to be similar to the  
22 interstate compact. If you're talking about somehow the  
23 court going to that local DSS out of state and getting  
24 information, which county is suggesting whether it's  
25 privately funded or publicly funded, it's still going to be



1 the same - - -

2 JUDGE RIVERA: But what about her argument that  
3 it - - - yes - - - yes, I get what you're saying with that.  
4 But what about her argument that at least then you have a  
5 hearing at the court. There will be a judicial - - - a New  
6 York judge's decision eventually on the issue, whereas - -  
7 -

8 MR. BERNET: Well, the - - -

9 JUDGE RIVERA: - - - out of state, it's just, as  
10 she termed it, an administrator's going to make that  
11 decision.

12 MR. BERNET: If you are going to apply the ICPC,  
13 the term says it's - - - it has, actually, punishment  
14 involved if you send a child that's been refused by the  
15 receiving state.

16 JUDGE TROUTMAN: So your argument is that the  
17 biological parents are to be treated the same as adoptive  
18 and fosters?

19 MR. BERNET: In terms of doing any kind of  
20 background check, that's pretty much what the Family Court  
21 Act - - -

22 JUDGE TROUTMAN: As - - - with respect to the  
23 mandatory requirement of the application of the ICPC?

24 MR. BERNET: I do think it's - - - I appreciate  
25 the reasonableness of saying it might be discretionary



1 because it does sort of balance the interest of the parent  
2 and the child. It does cut out the fact that the ICPC  
3 doesn't use the word maybe anywhere in the four corners,  
4 and this a bargain for agreement between the states, so I  
5 really don't know that - - - I mean, obviously, the court  
6 can define those terms any way that it feels is appropriate  
7 in the best interests in resolving the issues, but I - - -  
8 I would think that, given the way the statute is set up,  
9 and that 1017, like I said, doesn't give parents a right to  
10 seek custody. It give the parents a right to be noticed -  
11 - - excuse me - - - gives parents the right to seek custody  
12 but not to have custody, which is the same thing that's  
13 being applied when you do the ICPC. These out-of-state  
14 parents have the right to be noticed. They have the right  
15 to seek custody - - -

16 JUDGE TROUTMAN: So there are no constitutional -  
17 - -

18 MR. BERNET: - - - and then local DSS - - -

19 JUDGE TROUTMAN: - - - so there are no  
20 constitutional implication with respect to biological  
21 parents by applying this compact?

22 MR. BERNET: If there were, it would have already  
23 been addressed in the 1017 appeals because it's the same -  
24 - - it's really the same structure, the ICPC and the 1017,  
25 other than states have given themselves, by agreement, the



1 right that it is the final. It wouldn't be this hearing  
2 element that is a final - - -

3 JUDGE SINGAS: Can you speak to practically the  
4 delay issue raised by your adversary? Can you tell us,  
5 these cases, under the compact, versus custody proceedings  
6 under Family Court Act, what kind of time period are we  
7 talking about?

8 MR. BERNET: An ICPC generally takes about one to  
9 three months, in my experience. I've been in family court  
10 for about twenty years. I've seen several of them. About  
11 one to three months, depending upon how fast the receiving  
12 state acts, the local DSS - - - because everything has to  
13 go through the - - - the capitals. Everything has to go  
14 through all the - - - whatever the capital the receiving  
15 state is. So there is a time of delay element. And  
16 ideally, that would be the part that would be remedied if  
17 we were going to expedite the ICPC process somehow.

18 I know you can't eliminate the capitals, but just  
19 somehow to increase the speed of communication because the  
20 home studies themselves don't actually take that long. I  
21 know the - - - when the local DSS does a background check  
22 on a nonrespondent parent, they can check the neglect  
23 registry very quickly. The police department usually  
24 responds within a week.

25 ACTING CHIEF JUDGE CANNATARO: What happens if



1 it's a courtesy request, not an ICPC request, with respect  
2 to the question Judge Singas was asking? What's the delay  
3 inherent in that type of request?

4 MR. BERNET: I've seen those flatly denied by  
5 other jurisdictions, so we have no control whatsoever, and  
6 there's no way to ensure that even happens. We can always  
7 make the request, but the local DSS isn't under any kind of  
8 obligation. And if their caseload is full or whatever  
9 their situation is - - - Suffolk County, for instance, I  
10 don't know if you're aware, but it's currently under a  
11 cyberattack, and I don't know how they're going to be able  
12 to comply with any kind of ICPC requests by the states at  
13 this point. They can't access their servers. Hopefully,  
14 that will be resolved quickly.

15 JUDGE SINGAS: Now, what about Regulation 3?  
16 What's your position on that?

17 MR. BERNET: Regulation 3 does, as Judge was  
18 saying, specifically refer to foster care situations. I do  
19 know that In the Matter D.L.P.s, Your Honors and the Court  
20 of Appeals, as the Court, I'm sure, is aware, Social  
21 Services Law 34-b, which DLP refers to, addresses  
22 termination of parental right. The county having custody  
23 of a child may or must file a determination after a certain  
24 period of time without discretion. But the issue is  
25 whether that applies to foster care. The language of 34-b



1 say it applies to children in certified foster care, but  
2 the Court of Appeals expanded that to include direct  
3 placement cases because they said it would not be fair to  
4 those children in direct placement to not give them the  
5 same opportunities for permanency, such as adoption, the  
6 determination action filed by the county would provide.

7 Similarly, the definition in Section 3 about the  
8 definition of foster care is limited because ICPCs can also  
9 apply in direct placement cases if the child's with a  
10 relative here locally in a neglect action, and there's not  
11 a state parent who wants to apply, the court would still  
12 order or could order the ICPC to find out what that  
13 background information is and not just rely of self-  
14 reporting with the out-of-state parent.

15 There are red flags raised if the child is  
16 removed, they decided at some point, these two parents,  
17 that this was the parent that's going to have custody, and  
18 this is the parent that's alleged or found to have  
19 neglected or abused that child. It does raise a red flag.

20 ACTING CHIEF JUDGE CANNATARO: Thank you,  
21 Counsel.

22 MR. BERNET: Sorry. Thank you.

23 MS. GOTTLIEB: We appreciate that the Department  
24 acknowledges that in the four corners the ICPC either  
25 applies or it doesn't apply. There's simply no basis in



1 the language for discretion.

2 We must disagree that due process is provided.  
3 Notice isn't all that's required for due process. It's the  
4 opportunity to be heard. That's what Mr. Laland and these  
5 noncustodial parents don't have. They don't have the  
6 opportunity to be heard at a hearing by the family court  
7 who has the authority to make the decision. It's a  
8 nonreviewable decision. And as the amicus and our brief  
9 indicate, they're denied for all kinds of reasons that New  
10 York would never keep a parent and a child separate - - -

11 JUDGE GARCIA: Counsel, one of the things I think  
12 you're hearing up here, and I speak for myself, you're - -  
13 - I understand your textual argument. I've read the other  
14 cases that go that way on the compact, but the concern is  
15 for the child, right, who is going into another  
16 jurisdiction, now without this tool for gathering  
17 information available to the judge. And if you look at  
18 McCombs, which is cited many time and its various briefs,  
19 the facts in the McCombs are terrible. And McCombs is a  
20 special duty case. They sent the child to Philadelphia  
21 under supervision. It's - - - the child is abused to the  
22 extent that it suffers permanent brain injuries, right. So  
23 that's a very good encapsulation of the risk, right, that  
24 we're seeing here.

25 And one of the things that strikes me as we talk



1 about finances and fairness to the parent is to the child,  
2 if practically speaking, there's no ability to do this,  
3 because of funding or whatever, for a child whose family  
4 doesn't independently have the resources. Isn't the burden  
5 of that rule falling particularly hard on the children of  
6 the families that you are asking us to protect?

7 MS. GOTTLIEB: Your Honor, this court has said  
8 time and again that the child's interest in almost all  
9 cases is to be with the parent and we're harming them if we  
10 unnecessarily put them in foster care. And we're not  
11 putting them at risk because the department's  
12 characterization of the information available is simply not  
13 accurate. To say that you can't do these other home  
14 studies - - - counsel said he had never seen private home  
15 studies. I have certainly seen private home studies done.  
16 They can be done by a nonprofit. The family court can  
17 direct children's services to pay for a home study, which  
18 of course would be far less of taxpayer money than the ten  
19 years that we're now paying for foster care for Adrianna.

20 And I also want to push back, Your Honor, the  
21 idea that these are typically done in one to three months.  
22 I've never seen one done in one to three months. And more  
23 importantly, the amicus brief from the lawyers who  
24 represent these children everyday indicates that it's  
25 undisputed in the literature that they take far too long



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and we're just unnecessarily keeping children and families  
apart.

ACTING CHIEF JUDGE CANNATARO: Thank you.

MS. GOTTLIEB: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Christian C. Amis, certify that the foregoing transcript of proceedings in the Court of Appeals of Laland v. Bookhart, No. 76 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: \_\_\_\_\_

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Date: September 25, 2022

