Case Law And Conclusions For Fathers Rights

This file contains nearly 300 case laws relevant to Fathers Rights, divorce, custody, child support and division of assets divide into several categories.

State laws vary under the "Domestic Relations Exception" giving states the jurisdiction over divorce law. However, certain constitutional rights will override these as no state can make any law that takes away Constitutional Rights of its citizens. This work is the compilation of many people's work over many years. Some is state specific and some is federal and Supreme Court law.

Many people believe that family courts act unconstitutionally and ignore the law in favor of various biases. Many people believe lawyers will not challenge judges for the benefit of their clients because they must appear regularly in front of these judges. Many people believe that the legal costs created by divorce attorneys are mostly unnecessary in the divorce industry and that it is this profit driven motive that encourages great conflict which harms children for life. You can find a list of the top 85 things lawyers and judges do not want you to know at:

1. The rights of parents to the care, custody and nurture of their children is of such character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and such right is a fundamental right protected by this amendment (First) and Amendments 5, 9, and 14. Doe v. Irwin, 441 F Supp 1247; U.S. D.C. of Michigan, (1985).

2. The several states has no greater power to restrain individual freedoms protected by the First Amendment than does the Congress of the United States. Wallace v. Jaffree, 105 S Ct 2479; 472 US 38, (1985). The First Amendment has been found to include the right to religion and to raise one's children as one sees fit.

3. Loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. Though First Amendment rights are not absolute, they may be curtailed only by interests of vital importance, the burden of proving which rests on their government. Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976).

4. Law and court procedures that are "fair on their faces" but administered "with an evil eye or a heavy hand" was discriminatory and violates the equal protection clause of the Fourteenth Amendment. Yick Wo v. Hopkins, 118 US 356, (1886). Therefore any denial of parental rights based only on sex is discriminatory.

5. Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life; if anything, persons faced with forced dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. Santosky v. Kramer, 102 S Ct 1388; 455 US 745, (1982). . Parental rights may not be terminated without "clear and convincing evidence."SANTOSKY V. KRAMER, 102 S.Ct. 1388 [1982]

6. The liberty interest of the family encompasses an interest in retaining custody of one's children and, thus, a state may not interfere with a parent's custodial rights absent due process protections. Langton v. Maloney, 527 F Supp 538, D.C. Conn. (1981).

7. Parent's right to custody of child is a right encompassed within protection of this amendment which may not be interfered with under guise of protecting public interest by legislative action which is arbitrary or without reasonable relation to some purpose within competency of state to effect. Reynold v. Baby Fold, Inc., 369 NE 2d 858; 68 Ill 2d 419, appeal dismissed 98 S Ct 1598, 435 US 963, IL, (1977).

8. Parent's interest in custody of their children is a liberty interest which has received considerable constitutional protection; a parent who is deprived of custody of his or her child, even though temporarily, suffers thereby grievous loss and such loss deserves extensive due process protection. In the Interest of Cooper, 621 P 2d 437; 5 Kansas App Div 2d 584, (1980).

9. The Due Process Clause of the Fourteenth Amendment requires that severance in the parent-child relationship caused by the state occur only with rigorous protections for individual liberty interests at stake. Bell v. City of Milwaukee, 746 F 2d 1205; US Ct App 7th Cir WI, (1984). Hence any ex-parte hearing or lack of due process would not warrant termination of parental rights.

10. Father enjoys the right to associate with his children which is guaranteed by this amendment (First) as incorporated in Amendment 14, or which is embodied in the concept of "liberty" as that word is used in the Due Process Clause of the 14th Amendment and Equal Protection Clause of the 14th Amendment. Mabra v. Schmidt, 356 F Supp 620; DC, WI (1973).

11. If custodial Mother has boyfriend living with her, state can change custody to Father. JARRETT V. JARRETT, 101 S.Ct. 329 Visitation [parenting time] is a constitutionally protected right which can be protected in federal court, even if Father is in prison. MABRA V. SCHMIDT, 356 F. Supp. 6204. Custody can be awarded to Father of girls of "tender years" if Mother commits perjury, and is otherwise immoral. BEABER V. BEABER, 322 NE 2d 910

12. Mother cannot take child out of state if that prevents "meaningful" relationship between Father and child. WEISS V. WEISS, 436 NYS 2d 862, 52 NY 2d 170 [1981] See also: DAGHIR V. DAGHIR, 82 AD 2d 191 [NY 1981]; MUNFORD V. SHAW, 84 A.D. 2d 810, 444 NYS 2d 137 [1981]; SIPOS V. SIPOS, 73 AD 2d 1055, 425 NYS 2d 414 [1980]; PRIEBE V. PRIEBE, 81 AD2d 746, 438, NYS 2d 413 [1981]; STRAHL V. STRAHL, 66 AD 2d 571, 414 NYS 2d 184 [1979]; O'SHEA V. BRENNAN, 88 Misc.2d 233, 387 NYS 2d 212 [1976]; WARD V. WARD, 150 CA 2d 438, 309 P.2d 965 [Calif. 1957]; MARRIAGE OF SMITH, 290 Or.567, 624 P.2d 114 [Oregon 1981]; MEIER AND MEIER, 286 Or. 437, 595 P.2d 474 [1979], 47 Or. App. 110, 613 P.2d 763 [Oregon 1980]; All of these cases deal with preventing the custodial Mother from taking the child out of the jurisdiction.

13. The United States Supreme Court noted that a parent's right to "the companionship, care, custody and management of his or her children" is an interest "far more precious" than any property right. May v. Anderson, 345 US 528, 533; 73 S Ct 840,843, (1952).

14. A parent's right to care and companionship of his or her children are so fundamental, as to be guaranteed protection under the First, Ninth, and Fourteenth Amendments of the United States Constitution. In re: J.S. and C.,324 A 2d 90; supra 129 NJ Super, at 489.

15. The Court stressed, "the parent-child relationship is an important interest that undeniably Warrants deference and, absent a powerful countervailing interest, protection." A parent's interest in the companionship, care, custody and management of his or her children rises to a constitutionally secured right, given the centrality of family life as the focus for personal meaning and responsibility. Stanley v. Illinois, 405 US 645, 651; 92 S Ct 1208,(1972).

16. Parent's rights have been recognized as being "essential to the orderly pursuit of happiness by free man." Meyer v. Nebraska, 262 or 426 US 390; 43 S Ct 625, (1923).

17. The U.S. Supreme Court implied that "a(once) married father who is separated or divorced from a mother and is no longer living with his child" could not constitutionally be treated differently from a currently married father living with his child. Quilloin v. Walcott, 98 S Ct 549; 434 US 246, 255-56, (1978).

18. The U.S. Court of Appeals for the 9th Circuit (California) held that the parent-child relationship is a constitutionally protected liberty interest. (See; Declaration of Independence --life, liberty and the pursuit of happiness and the 14th Amendment of the United States Constitution -- No state can deprive any person of life, liberty or property without due process of law nor deny any person the equal protection of the laws.) Kelson v. Springfield, 767 F 2d 651; US Ct App 9th Cir, (1985).

19. The parent-child relationship is a liberty interest protected by the Due Process Clause of the 14th Amendment. Bell v. City of Milwaukee, 746 f 2d 1205, 1242-45; US Ct App 7th Cir WI, (1985).

20. No bond is more precious and none should be more zealously protected by the law as the bond between parent and child." Carson v. Elrod, 411 F Supp 645, 649; DC E.D. VA (1976).

21. A parent's right to the preservation of his relationship with his child derives from the fact that the parent's achievement of a rich and rewarding life is likely to depend significantly on his ability to participate in the rearing of his children. A child's corresponding right to protection from interference in the relationship derives from the psychic importance to him of being raised by a loving, responsible, reliable adult. Franz v. U.S., 707 F 2d 582, 595-599; US Ct App (1983).

22. A parent's right to the custody of his or her children is an element of "liberty" guaranteed by the 5th Amendment and the 14th Amendment of the United States Constitution. Matter of Gentry, 369 NW 2d 889, MI App Div (1983).

23. Reality of private biases and possible injury they might inflict were impermissible considerations under the Equal Protection Clause of the 14th Amendment. Palmore v. Sidoti, 104 S Ct 1879; 466 US 429.

24. Legislative classifications which distributes benefits and burdens on the basis of gender carry the inherent risk of reinforcing stereotypes about the proper place of women and their need for

special protection; thus, even statutes purportedly designed to compensate for and ameliorate the effects of past discrimination against women must be carefully tailored. the state cannot be permitted to classify on the basis of sex. Orr v. Orr, 99 S Ct 1102; 4340 US 268 (1979).

25. The United States Supreme Court held that the "old notion" that "generally it is the man's primary responsibility to provide a home and its essentials" can no longer justify a statute that discriminates on the basis of gender. No longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas. Stanton v. Stanton, 421 US 7, 10; 95 S Ct 1373, 1376, (1975).

26. Judges must maintain a high standard of judicial performance with particular emphasis upon conducting litigation with scrupulous fairness and impartiality. 28 USCA § 2411; Pfizer v. Lord, 456 F 2d 532; cert denied 92 S Ct 2411; US Ct App MN, (1972).

27. State Judges, as well as federal, have the responsibility to respect and protect persons from violations of federal constitutional rights. Gross v. State of Illinois, 312 F 2d 257; (1963).

28. The Constitution also protects "the individual interest in avoiding disclosure of personal matters." Federal Courts (and State Courts), under Griswold can protect, under the "life, liberty and pursuit of happiness" phrase of the Declaration of Independence, the right of a man to enjoy the mutual care, company, love and affection of his children, and this cannot be taken away from him without due process of law. There is a family right to privacy which the state cannot invade or it becomes actionable for civil rights damages. Griswold v. Connecticut, 381 US 479, (1965).

29. The right of a parent not to be deprived of parental rights without a showing of fitness, abandonment or substantial neglect is so fundamental and basic as to rank among the rights contained in this Amendment (Ninth) and Utah's Constitution, Article 1 § 1. In re U.P., 648 P 2d 1364;Utah, (1982).

30. The rights of parents to parent-child relationships are recognized and upheld. Fantony v. Fantony, 122 A 2d 593, (1956); Brennan v. Brennan, 454 A 2d 901, (1982).

31. Children must be returned to home state before child support payments are continued. FEUER V. FEUER, 376 NYS 2d 546 [1975]

32. Custody can be changed if wife is "disrespectful" of "visitation" order. MURASKIN V. MURASKIN 283 NW 2d 140 [N. Dakota 1979]

33. Wife held in contempt for denial of visitation; new judge should not suspend contempt order. PETERSON V. PETERSON, 530 P.2d 821 [Utah 1974]

34. Wife can be held in contempt if visitation is denied ENTWISTLE V. ENTWISTLE, 402 NYS 2d 213 [1978]

35. State's power to legislate, adjudicate and administer all aspects of family law, including determinations of custodial; and visitation rights, is subject to scrutiny by federal judiciary within reach of due process and/or equal protection clauses of 14th Amendment. In U.S. Supreme Court case Marshall v. Marshall US (No. 04-1544) 392 F. 3d 1118, the court affirmed that the U.S.

District Court “have been abusing the domestic relations exception” and must take jurisdiction when civil

36. The United States Supreme Court has recognized that matters involving marriage, procreation, and the parent-child relationship are among those fundamental interests protected by the Constitution. The decision in Roe v. Wade, 410 US 113; 93 S Ct 705; 35 L Ed 2d 147, (1973), was described by the Supreme Court as founded on the "Constitutional underpinning of ... a recognition that the "liberty" protected by the Due Process Clause of the 14th Amendment…The non-custodial divorced parent has no way to implement the constitutionally protected right to maintain a parental relationship with his child except through visitation. To acknowledge the protected status of the relationship as the majority does, and yet deny protection under Title 42 USC § 1983, to visitation is to negate the right completely. Wise v. Bravo, 666 F 2d 1328, (1981).

37. Although court may acquire subject matter jurisdiction over children to modify custody through UCCJA, it must show independent personal jurisdiction [significant contacts] over out of state Father before it can order him to pay child support. KULKO V. SUPERIOR COURT, 436 US 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 [1978]; noted in 1979 Detroit Coll. L.Rev. 159, 65 Va. L.Rev. 175 [1979] ; 1978 Wash. U.L.Q. 797. Kulko is based upon INTERNATIONAL SHOE V. WASHINGTON, 326 US 310, 66 S.Ct. 154, 90 L.Ed 95 [1945] and HANSON V. DENCKLA, 357 US 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 [1958]

38. Custody can be changed if visitation denied. ENTWISTLE V. ENTWISTLE, 402 NYS 2d 213

39. Process service in family matters must provide due process protection. GRASZ V. GRASZ, 608 SW 2d 356 [TX 1980]

40. Judge's dismissal for no cause is reversible. FOMAN V. DAVIS, 371 US 178 [1962]

41. Non lawyers can assist or represent litigants in court. JOHNSON V. AVERY, 89 S.Ct. 747

42. Members of group who are competent non lawyers can assist other members of group achieve the goals of the group in court without being charged with "unauthorized practice of law" BROTHERHOOD OF RAILWAY TRAINMEN V. VIRGINIA , 377 US 1; NAACP V. BUTTON, 371 US 415 [1962]; SIERRA CLUB V. NORTON, 92 S.Ct. 1561; UNITED MINE WORKERS V. GIBBS, 383 US 715; FARETTA V. CALIFORNIA, 422 US 806

43. Pro Se [Without a Lawyer, representing self] pleadings are to be conside red without technicality; pro se litigants pleadings are not to be held to the same high standards of perfection as lawyers. HAINES V. KERNER, 92 S.Ct. 594; JENKINS V. MCKEITHEN, 395 US 411, 421 [1969]; PICKING V. PENNA. RWY. CO. 151 F.2d 240; PUCKETT V. COX, 456 F.2d 233

44. Federal judges can set aside or overturn state courts to preserve constitutional rights. MITCHUM V. FOSTER, 407 US 225 [1972] Title 28 US Code sec. 2284

45. Each state maintains the right to regulate it's citizens, including the regulation of family matters. However, an important caveat exists where all United States citizens rights are protected under

the United States Constitution. And pursuant to Article VI, also known as the supremacy clause, state judges must uphold federal law, which "shall be the supreme law of the land".

46. Under state & federal law parents are presumed to be suitable and fit parents. Parents, implicitly presumed to be suitable and fit, protect their child(ren)'s welfare. Conclusion: Suitable and fit parents act in their child(ren)'s best interests.

47. The State of Massachusetts assumes an obligation, its "parens patriae" interest, where the parent(s) are unsuitable (unfit, unwilling, or unable to protect their minor child(ren)'s welfare) and where no other suitable individual is available.

48. The State of Massachusetts must have a compelling legal reason to protect the welfare of children where a parent is available for the care, custody, and control of their minor child(ren). The claim of one parent against another can not be taken as sufficient reason to deny one parent legal custody, physical custody and visitation, especially where there is a major financial incentive to get child support.

49. The State of Massachusetts does not have a right to improperly intrude on a parent-child relationship without a compelling reason.

50. However, where parent(s) are legally presumed to act in their child(ren)'s best interests/welfare, the State of Massachusetts has no compelling reason to intrude into the private realm of the family or into the associational relationship between each parent and child. (implicating the fourteenth, ninth, and first amendments.)

51. Conclusion: Without a compelling reason for state intervention, each autonomous parent-child relationship remains intact. At this point, the State of Massachusetts has no legal basis to intervene; that is, the State of Massachusetts has no compelling reason to inject itself into either parent-child relationship. The welfare/best interests of the child(ren) are protected. Reno v. Flores, 507 U.S. 292 (1993). And it is also at this juncture that the State of Massachusetts maintains no legal basis to interfere with pre-existing parental rights.

52. The State of Massachusetts has no legal basis to implicate any parental right where the child(ren)'s welfare is implicitly protected. Therefore the welfare of the child(ren) has not been proven to be in jeopardy. Conclusion: Both parents must retain their respective right to legal and physical custody of their child(ren) barring proven unfitness, or danger to the children.

53. However, let's go back to the current reality that exists in every divorce with children. State authority asserting that the best interests of the child(ren) is paramount to parental rights.

54. The State of Massachusetts opines that it maintains an obligation to protect the welfare of its minor citizens and therefore state intervention is rationally related to the best interests of the child(ren).

55. State judicial decisions/court orders evidence the truth about what actually occurs as a pattern and practice in family courts throughout the nation. Citation here for requirement that even when parent is shown to be unfit in some way the state may only interfere in the least possible way.

56. The recurring pattern of acting in the child(ren)'s best interests occurs by intentionally ignoring parental rights. In fact today Massachusetts parents lose custody of their children simply by one person saying the word “fear” to a judge to take advantage of domestic violence laws and restraining orders. This is clearly unconstitutional and has created a situation where there are huge financial incentives for both the parent and the state to force one parent out of the lives of the children. Statistics show that about 40% of mothers do not value the contribution of fathers in the upbringing of the children.

57. This pattern and practice inverts the supremacy clause (Art. VI of the U.S. Constitution) by upholding state law (allegedly protecting children's interests) over federal law, i.e., compliance with U.S. Constitution, where a federal right (the fundamental liberty right to custody) is implicated.

58. The State of Massachusetts believes that the least intrusive means, founded in the child(ren)'s best interests, is to physically remove one legally-suitable, but arbitrarily-denied parent from substantive contact with his or her child(ren).

59. The State of Massachusetts expressly condones that what is "best" for child(ren) is to minimize their relationship with the "non-custodial" parent. However, it has been shown by many scientific studies over the life of children of divorce that stability of a single home is far less important than having exposure to both parents. Dr. Warren Farrell has concluded that in almost all cases that equal time with both parents is far superior for children. It seems clear that Massachusetts is actually doing what is in the worst interests of children in most cases.

60. The current system has become driven by money of one parent for child support, which greatly exceeds the actual cost of raising a child. It is also clear that many parents wish to inflict pain on their ex-spouse by denying the child(ren) access to the other parent. Given the $140 million in federal annual child support enforcement monies the state also now has a conflict of interest.

61. Upon designation, custodial and non-custodial parents are no longer similarly situated. Non-custodial is an assignment that carried with it a seemingly automatic loss of fundamental constitutional right to parent your children in favor of the custodial parent. It carries with it financial penalties which have been almost arbitrarily created and not shown to be valid and where the other parent is not required to contribute an equal amount, or for that matter any amount. Non-custodial also carries with it the stigma that this person is somehow a lesser parent and to make it impossible to have consistency or even a rational basis in most cases where both parents are fit.

62. The State of Massachusetts legislature provides a statutory entitlement for non-custodial parents to "visit" with their child and this token stipend is the State of Massachusetts's least intrusive method of encouraging a healthy parent-child relationship and maximizing quality familial involvement!

63. When a state court implicates (infringes, denies, deprives) a parental right (temporarily or permanently), the State of Massachusetts absolutely intrudes upon the parent-child relationship by implicating each parent's fundamental liberty right to custody of their minor child(ren).

64. The very idea that the state could even make this evaluation and decision is in fact absurd, as parenting is a complex and subjective process which is completely dependent on the child and decisions that the parents make about lifestyle, religion, morals and many other factors. These decisions are personal, subjective and only within the rights of the parent(s). It has also been shown that the child(ren) are easily alienated from one parent by spending so much more time with the other parent. This is clearly irreparably damaging to both the children and the alienated parent. Conclusion: State law impermissibly intrudes upon and implicates fundamental parental rights.

65. The only way the State of Massachusetts can rebut the presumption that fit parents are legally presumed to protect their child(ren)'s best interests is with a "compelling" reason.

66. A compelling reason requires the State of Massachusetts to step in (intervene) where the welfare of its minor citizens is in jeopardy. If the State of Massachusetts does step in, then it is at this point that state rights intersect with federal rights [and federal rights require mandatory federal/constitutional protections]. And pursuant to Article VI of the U.S. Constitution, the supremacy clause requires that "the judges in every state shall be bound (by the Constitution and the laws of the United States)."

67. Either parent can sue for interference with parental rights. STRODE V. GLEASON, 510 P.2d 250 [1973]; Prosser: HANDMANUAL OF THE LAW OF TORTS [West Publ. 1955] page 682; CARRIERI V. BUSH, 419 P.2d 132 [1966] SWEARINGEN V. VIK, 322 P.2d 876 [1958] LANKFORD V. TOMBARI, 213 P.2d 627, 19 ARL 2d 462 [1950]; 7 F.L.R. 2071 RESTATEMENT OF TORTS section 700A MARSHALL V. WILSON, 616 SW 2d 934

Federal Rights

68. Parental rights are fundamental rights protected under federal/constitutional law. The USSC plurality decision in Troxel v. Granville, 530 U.S. 57 (2000) evinces that all nine justices agree that parental rights are fundamental rights.

69. Fundamental rights are possessed by the individual, not the married couple. Fundamental rights are also called substantive rights or natural rights.

70. Any contract, including marriage must have “consideration” to be enforceable. In divorce the contract between wife and husband is being broken and the courts may need to mediate the division of assets, but children are not assets and the state can not interfere by allocating the children without a high standard of proof that one parent is unfit. Therefore the only truly constitutional solution for the parents, and in fact now also proven best for children scientifically, is an equal amount of time spent with both parents.

71. The creation of artificial (lawyer or government created) financial incentives for parents to fight for custody is deeply damaging to children and family bonds and to society in general. Not only

are both parental relationships hurt but the children are also clearly hurt by the lack of relationship and model of behavior for the children. In fact it is clear that this will create a repeating cycle, as children raised in sole-custody homes are 93% more likely to divorce later in life.

Jurisdiction

72. The Declaration of Independence clearly declared that the Founding Fathers rejected any notion of a humanistic government. A "meta-government" was created under the Constitution that was based on the immutable laws of God, not mutable whims of man. The state is charged with defending the laws of Nature's God (see the Preamble), not instituting what government officials consider fairer.

73. America was settled by men who came to this new land to escape the arbitrary bonds of civil and equitable systems that were often no more than the will of despotic tyrants. The Federalist Papers attempted to reassure the reader that rights were paramount in a Constitutional Republic. Equity was seen as a dangerous tool of government based on experiences under English law. In fact the Declaration of Independence states that a major reason for the creation of the United States was the arbitrary and bias decisions of kings and lack of a jury trial.

74. The Common Law is the actualization of the Natural Law: the laws of God, which are enumerated in the Declaration of Independence, the Federal Constitution, and the state Constitution.

75. It is a violation of law to replace at law decisions (e.g., Natural and Common Law) with equity; to do so violates concise rules of law and the basic principles of our state Constitution and those of our Republican form of government.

76. Kent's Commentaries on American Law, Vol. II, Twelfth Edition, Pages 113 - 116, clearly show that divorce was not an equity decision. It is a fact that most colonies did not provide for judicial action to terminate a marriage contract or decide custody because of the simple and absolute Natural Law rules.

77. The legislature in Massachusetts and the executive branch had to be petitioned for a divorce. It was not until 1785 (Statutes 1785, Chapter 69) in Massachusetts that the State Supreme Court was given EXCLUSIVE jurisdiction over divorce and custody cases. In 1855 (Statutes 1855, Chapter 56) the state provided for a trial by a jury in divorce cases. It is important to note that it was not until 1877 that the SJC was given equity jurisdiction and the right to a trial by jury was repealed. In 1889, Superior Court was given jurisdiction (Statutes 1889, Chapter 332). And in 1922, Probate Court was given jurisdiction (Acts 1922, Chapter 542).

78. THERFORE, CUSTODY AND DIVORCE IN MASSACHUSETTS HAD FULL AND COMPLETE REMEDY AT LAW AT AND AROUND THE SIGNING OF BOTH THE STATE AND FEDERAL CONSTITUTIONS AND FOR MANY YEARS THEREAFTER. Equity cannot act when there is full and complete remedy at law and the government cannot convert those things that had been done AT LAW at the signing of the Constitution into equity.

79. Commonwealth v. Briggs, 33 Mass. 203 (1834), clearly shows that child custody was not an action in equity. Briggs clearly shows that the action was Natural/Common Law, not equity.

80. Various American judges, when implementing the "Tender Years" doctrine, committed frauds upon the court in failing to distinguish the English equity jurisdiction of Chancery courts and the use of Common and Natural Law in custody determinations.

81. Since the SJC clearly decided custody cases at law, then custody cases must be decided at law today. Trials by jury are required over rights of property.

82. The United States government in establishing its own legal system adopted "that suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate, and complete remedy may be had at law.", Judiciary Act of 1789 "an architectonic act still in force."

83. The Constitution and Common/Natural Law never ever gave permission to any of our governments to take jurisdiction over marriage, our families, or our children. A marriage license is not government permission to marry; the marriage contract existed long before our government.

84. Justice Scalia noted in Troxel v. Granville 530 U.S. 57, "… that the State has no power to interfere with parents' authority over the rearing of their children, I do not believe that the power which the Constitution confers upon me as a judge entitles me to deny legal effect to laws that (in my view) infringe upon what is (in my view) that unenumerated right."

85. Blackstone described the Laws of Nature and of Nature's God in a chapter in his Commentaries entitled, Section The Second, "Of the Nature of Laws in General." (Available online at http://www.constitution.org/tb/tb-1102.htm). Interestingly:

    a. "Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. And consequently, as man depends absolutely upon his Maker for everything, it is necessary that he should, in all points, conform to his Maker's will. This will of his Maker is called the law of nature. This law of nature, being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the holy scriptures. These precepts, when revealed, are found upon comparison to be really a part of the original law of nature, as they tend in all their consequences to man's felicity [happiness]. Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these."

86. Thomas Hobbes, “Leviathan; The Matter, Form and Power of a Commonwealth Ecclesiastical and Civil”, 1651, Chapter 22: Of systems subject political and private: "father and the master being before the institution of commonweals absolute sovereigns in their own families"

87. The points being that man-made rules were not supposed to usurp the Natural Law (also know as God’s Will) and the Father held ‘title’ to his children. Custody was one such area that initially allowed no government or human interpretation or interference.

88. The only Common Law method available today, barring bringing back the Natural Law Maxims regarding Custody, is a trial by jury because of the dispute over a right of property.

89. The practice of the "presumption" of the Massachusetts Family and Probate Trial Court’s own powers, absent proper procedure, substance and law, and the practice and policy of "law by ignorance” is outrageous. A "wrong", though committed a thousand times, is still "wrong." Amos v. Mosley, 74 Fla. 555, 77 So. 619.

90. The claim of the State is that of "Civil Law", and yet these proceedings ultimately lead to potential criminal complaints as witnessed in this instant case. The Defendant is neither informed of the potential severity of the "civil" proceeding, nor informed of any "rights". Under the guise of "civil law", "civil court rules" and "civil procedure", the Petitioner's foundational constitutional rights under a criminal context are profoundly abrogated. In practice, even those minimal rights commonly afforded in civil law are profusely ignored through "default" administrative procedural fraud, a practice and policy of defying due process.

91. The "ultimate potential" of incarceration exists at the onset of the "civil" proceeding, and is a deprivation of the Defendant’s Civil liberties. The venue, ab initio, rightfully exists in a Criminal Court. Absent a proper venue, the "civil" court has no jurisdiction, and any "order" or "judgment" is lawfully thereof a Void Judgment.

92. The claim of Venue in a Civil Court is a substantial deprivation of the Defendant’s guaranteed constitutional Rights under mandated Federal Law. Rule making or legislation may not abrogate these rights. The Defendant further avers that factually it is part of an unlawful scheme for the State to receive funding under the Federal Title IV-D and TANF programs. Dupont v. Dupont, Sup. 32 Ded Ch. 413; 85 A 2d 724. Harris v. McRae, 448 US 297 (1980) (USSC+). United States v. Moreland 258 US42=33, 42 S. Ct. 368, 66 L.Ed. 700 (1922). McCullen v. Massachusetts, 27 US 620, 630.

93. The non-custodial parent designation is an artificial, discriminatory unlawful and irreparably harms the designee and his children. The NCP designation is vacated.

94. According to M.G.L.A. c. 208 (1990 & Supp. 2001), the Court has jurisdiction over the parties and the subject matter. The court’s jurisdiction is null and void as custody matters are matters of common law and not equity law.

95. While the statutes of the State may clearly “assign” matters of family and children to the “civil” trial court, such an “assignment” does neither confer nor confirm an actual subject matter

jurisdiction over any given matter, especially where it regards the ownership and custody of a parent's children.

96. The State, under the guise of "property" and "equity" division in a divorce, "assigns" itself authority of the children. In fact, the State is performing an "In Parens Patriae" action, which is profoundly protected, as is well substantiated by Federal Stare Decisis.

97. The burden is on the State, not the citizen, to prove its case. The Petitioner does not question the authority of the state in "its interest to protect its children", but argues that its Procedural and Substantive Fraud in obtaining its proper authority is profoundly Unconstitutional.

98. The deprivation of rights regarding ones own children is fundamental to our constitutional form of government and must stand the "strict scrutiny" test. Regardless of State statute, which may suggest contrary actions, those rights are profoundly protected, and any State statute, which "by-passes" those rights, fails in its constitutional Mandate – substantive and procedural due process.

99. Claims of "the children's best interest" are noticeably protected by stare decisis, fall under the equal "strict scrutiny," and are limited to of "a showing of endangerment of the child." Further, claims of "public interest", also noticeably protected by stare decisis, are not sufficient to overcome Petitioner's Personal Natural Rights.

100. Court appointed GAL must be paid for by the state MA 215 Massachusetts General Law, Chapter 215: Section 56A Section 56A of chapter 215 reads, "Any judge of a probate court may appoint a guardian ad litem to investigate the facts of any proceeding pending in said court relating to or involving questions as to the care, custody or maintenance of minor children and as to any matter involving domestic relations except those for the investigation of which provision is made by section sixteen of chapter two hundred and eight.

101. The state did not provide for a trial by jury before and at the signing of the Constitution because it was a Natural Law right being enforced. Natural law per Blackstone and Locke is the Divine Will or God's will. The state could not interfere with God's will and this is the genesis of the no trial rule. If the state was implementing God's Divine Law, per Commonwealth v. Briggs and De Manneville v. De Manneville, and no longer feels bound to God's absolute laws, it does not now have the right to exclude trial by jury over a right of property.

102. Natural law per Paine, Locke, Pufendorf, et al is the divine will revealed and is a necessary condition of a peaceful society; whereas positive law is the arbitrary will of the government. It is the former this state and nation was founded on and the latter the founding fathers found repugnant. The distinction between Equity and Common Law was a contention between the Federalists and Anti-Federalists. Their writings debated the tyranny inherent in equity and debated if it had a place in society. The conversion from Common Law to equity was seen as a road to tyranny.

103. "It is a guiding rule in equity that, in such a case, it will not interpose where there is a plain, adequate, and complete remedy at law. This rule at an early date was crystallized into statute form by the 16th section of the judiciary act [1 Stat. at L. 82, chap. 20] (Rev. Stat. 723, U. S. Comp. Stat. 1901, p. 583), which, if it has no other effect, emphasizes the rule and presses it upon the

attention of courts. It is so well settled and has so often been acted upon that no authority need be cited in its support, though it must not be forgotten that the legal remedy must be as complete, practicable, and efficient as that which equity could afford. Walla Walla v. Walla Walla Water Co. 172 U.S. 1, 11, 43 S. L. ed. 341, 346, 19 Sup. Ct. Rep. 77.", BOISE ARTESIAN HOT & COLD WATER CO. v. BOISE CITY, 213 U.S. 276 (1909)

104. Attorney can be sued for malpractice under consumer protection laws. DEBAKEY V. STAGG, 605 SW 2d 631 [1980]

105. Damages in federal civil rights suits need not exceed $10,000 HAGUE V. CIO, 307 US 496.

106. But claim under $10,000 is cause of dismissal of diversity of citizenship action in federal court. DELOACH V. WOODLEY, 405 F2d 496 [1969].

107. Spouses can sue each other while still married for torts, intentional and unintentional. BLUNS V. CAUDLE, 560 SW 2d 925 [TX 1978]

108. In Massachusetts, the common law rule of; interspousal immunity was abolished in LEWIS v. LEWIS, 370 Mass. 619, 629 630, 351 N.E.2d 526 [1976].

109. Interspousal immunity is also inapplicable to claims of fraudulent conveyance, fraud, breach of fiduciary duty as trustee of property held in trust for wife. GARRITY v. GARRITY, 399 Mass. 367, 371 372, 504 N.E.2d 617, 620 [1987].

Invidious Gender Discrimination

110. Invidious gender discrimination is needed for conspiracy actions under the first clause of 42 U.S.C. sec. 1985(3). Approximately 85% to 90% custody decisions are sole maternal custody. This is Gender Bias in PRACTICE. Such discrimination is not legal or in the best interest of children.

111. A child has an equal right to be raised by the Father, and must be awarded to the Father if he is the better parent, or Mother is not interested. STANLEY V. ILLINOIS, 405 US 645 [1972]

112. Segregation in courtrooms is unlawful and may not be enforced through contempt citations for disobedience or through other means. Treatment of parties to or witnesses in judicial actions based on their race is impermissible. Jail inmates have a right not to be segregated by race unless there is some overriding necessity arising out of the process of keeping order.

113. The US Supreme Court asserted in the now famous “VMI” case, United States v. Virginia, 116 S. Ct. 2264 (1996), that gender-based matters at both the state and federal level, must meet a level of “heightened scrutiny” and without solidly compelling state interests are unacceptable. In the following excerpt, all references to the female gender have been replaced with the male gender. And since this is a decision with its locus in gender-equality, this replacement is as valid as the original language or the “VMI” decision is utter hypocrisy. Opinion held;

114. Neither federal nor state government acts compatibly with equal protection when a law or official policy denies to [men or fathers], simply because they are [men or fathers], full citizenship

stature-equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities. To meet the burden of justification, a State must show ``at least that the [challenged] classification serves `important governmental objectives and that the discriminatory means employed' are `substantially related to the achievement of those objectives.'"

115. Benign justifications proffered in defense of categorical exclusions, however, must describe actual state purposes, not rationalizations for actions in fact differently grounded…Further, states must demonstrate an "exceedingly persuasive justification" (United States v. Virginia at 2274-75, 2286) for why such discrimination continues IN PRACTICE when the statutes are facially neutral. Since "our Nation has had a long and unfortunate history of sex discrimination," (Frontiero v. Richardson, 411 U.S. 677, 684 (1973)) isn't it time to drive a final stake through the heart of this history in "family" law?

116. The practices in "family" law seize upon a group – men and fathers - who have historically suffered discrimination in family relations, and rely on the relics of this past discrimination under the tender years doctrine, reclassified as "the best interests of the child," as a justification for heaping on additional family destructive disadvantages (adapted and modified from footnote 22, Frontiero, 411 U.S. 677, 688). There can be absolutely no doubt that father absence is destructive to children, yet family courts, and family lawyers perpetuate this cycle every day by the thousands across America.

117. Some of the matters that might call fitness into question would include; false claims of domestic violence, false claims of child abuse, and false claims of child sexual abuse which are OVERWHELMINGLY alleged in divorce actions by mothers to destroy the father and seize all family assets as well as the children; or, alternatively, VERIFIED claims of the foregoing – as opposed to simply adjudicated claims without tangible evidence. There does not even need to be a threat, tangible or otherwise, only the claim of fear…

118. The "old notion" that "No longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas". Stanton v. Stanton, 421 US 7, 10 (1975). After all, the Court has also noted that "a (once) married father who is separated or divorced from a mother and is no longer living with his child" could not constitutionally be treated differently from a currently married father living with his child. Quilloin v. Walcott, 434 US 246, 255-256 (1978).

119. Even Laws and court procedures that are "fair on their faces" but administered "with an evil eye or a heavy hand" are discriminatory and violate the equal protection clause of the Fourteenth Amendment. Yick Wo v. Hopkins, 118 US 356 (1886). This principle is so fundamental to our system of justice (i.e. the "rule of law"), that as it approaches 125 years old, it still stands as not only un-overturned, but uncontroversial case law.

Best Interests Of The Child

120. In Wisconsin v. Yoder the Court took up a challenge to Wisconsin's compulsory education laws and found that even when claiming a purpose of benefiting the child, the state must demonstrate

convincing evidence that its intended policy will actually bring about its professed goal. Wisconsin v. Yoder 406 U.S. 205, 221 & 232-33 (1972).

121. The "compelling state interest" in child custody matters finds its nexus between the "best interests of the child" doctrine and strict scrutiny. Infringing upon fundamental rights [constitutionally protected parental rights] dictates that the state show the infringement serves a "compelling state interest" with no constitutionally satisfactory alternative to meet that interest. Santosky v. Kramer, 455 US 745 (1982); and (from a quote at 766,767):

122. Santosky is clearly about the termination of parental rights, but the "standard family court order" of being an every other weekend visitor may be just as traumatic and potentially even greater. In less than equal custody, a parent's relationship with their child(ren) is forcibly ripped away from them and then they are forced to pay for the destruction of their rights. The non-custodial parent's regular influence in shaping the child's development is virtually eradicated. The Santosky Court also noted:

123. Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life; if anything, persons faced with forced dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into ongoing family affairs.

124. The Santosky Court explains the risks in terminating parental rights. Yet, in reality, when one parent is relegated to a weekend visitor, their constitutional rights in the "care, custody, management and companionship" of their child(ren) have been substantially eliminated, and without question, infringed upon.

125. In law the clarity, singularity, and sharpness of absolutes make for simple "yes" or "no" judgments. There is no argument, there is no fight, and there is no money to be made by this for the "family" lawyers. Yet ideas and principles of absolutes are anathema to a system of "rule by men" who spout their hatred, with derisions and "scorn" for such ideas of absolutes, branding them as "intolerance." The realm of "family" law is generally opposed to any real standard that might have accountability and has widely embraced the "best interests of the child".

Rights of Property/Custody

126. The Pilgrims came to America fleeing the repressive techniques of the Star Chamber and Privy Council under the Tudors. Both of these were courts of equity. These were know as some of the most corrupt courts in English history, in part because equity lends itself to corruption, which was a strong concern of the Anti-Federalists.

127. From "Juvenile Justice System: Law and Process" , Butterworth-Heinemann, 2001: "For the most part, Puritans gave us law that defined child, parent, and state power relationships. That was the patriarchal rule of the father with children considered to be the property of the parents." And "If children became wards of the state, they legally became state property, and the state had a sacred obligation to promote and enforce the work ethic."

128. Cases like Purinton have taken great pains to overcome the right of property before the state could act in the "Best Interest". Some cases are a gross misrepresentation of Purinton and other cases cite where the parent's right of property first had to be overcome and the state had to show ownership of the child before the state could assert the subordinate doctrine of Parens Patriae.

129. Within the right of property is the concept of "ownership". Both Lockean social compact and natural law states that you own yourself and you own your labor; i.e., you and your labor are rights of property. If the state owns you, there can be no social compact; if someone owns you, you are a slave and hence you cannot participate in the social contract. If someone owns your labor, you are a peon.

130. Under this philosophy, parents 'own' their children since children do not have the right to exercise their own free will in all matters.

131. Ownership, per A. M. Honore's essay on "Ownership", Oxford Essays in Jurisprudence 1961, 1967, identifies many of the 'sticks' from the ownership 'bundle'. The most important and common stick in all cases of ownership is the use of "Free Will". Parents, in exorcising their own Free Will, have the right to direct the actions and disposition of their children; e.g., choice of religious upbringing, food, housing, et al.

132. If the state uses its Free Will in determining the "Best Interest" of children, then the state owns the children. If the state's Free Will prevails in determining the amount of 'support' needed for a child, the state owns the child (and creates a peon). If the state's Free Will determines when the child is emancipated, the state owns the child. If the state derives a profit from its decisions over the child, it owns the child.

133. In Purinton v. Jamrock, the state had to show that the mother no longer had claim to property rights of the child. The state had to claim the title of the custody of the child in order for the state to make the "Best Interest" determination.

134. Regarding children as a "right of property" and natural law right of married fathers to superior title to the custody of their children, see at least Commonwealth v. Briggs, 33 Mass. (16 Pick.) 203, Purinton v. Jamrock, 195 Mass. 187; 80 N.E. 802, In re Campbell, 130 Cal. 380; 62 P. 613; 1900 Cal., Booth v. Booth, (1945) 69 Cal. App. 2d 496, 159 P.2d 93, People V. Olmstead, 27 Barb. 9; Henson v. Walts, 40 Ind. 170; Cole v. Cole, 23 Iowa, 433; Johnson v. Terry, 34 Conn. 259; McBride v. McBride, 1 Bush, 15; State v. Stigall, 22 N.J. L 286; Verser v. Ford, 37 Ark. 27; Miller v. Wallace, 71 Ga 479; Rex v. Greenhill, 6 Nev & M. 244; 4 Ad. & E. 624; Hakewill's Case, 22 Eng. L. & Eq. 395, 1 Bla Conn. 452; the Etna, 1 Ware, 462, 465, 2 Story's Eq., secs. 1343-1350; 2 Kent's Com. 193; 1 Bl. Com. 453; Jenness v. Emerson, 15 N. H. 486; Huntoon v. Hazelton, 20 N. H. 389, May v. Anderson, 345 U.S. 528; 73 S. Ct. 840; 97 L. Ed. 1221; (1953), Winter v. Director of The Department of Public Welfare of Baltimore City, 217 Md. 391; 143 A.2d 81; 1958 Md., State v. Richardson, 40 NH 272,, Goshkarian vs. Fairfield County Temporary Home, 110 Conn. 463; 148 A. 379; 1930 Conn., DeMannevill v. DeManneville (1804), Rex v. Demanneville, 102 Eng Rep 1054 (KB 1804).

135. Parents held title to the custody of their children in 1760 (the date Thomas Jefferson said our laws diverged from English laws), 1776 (the Declaration of Independence), 1780 (the signing of the state Constitution), and 1789 (the signing of the Federal Constitution). Children were, per the Common Law, a right of property, see Purinton v. Jamrock, 195 Mass. 187; 80 N.E. 802; (1907). The rights that existed at the signing of the Constitution remain rights today; hence children are a right of property today.

136. Rights of property include at least:

a. Jury Trial – Federal and state

b. Prohibitions against unlawful takings – Federal and State (as far back as the Massachusetts Body of Liberties)

c. Cannot be held in servitude over property – Common Law

d. Right of Reciprocals – Common Law

e. Equity only in those things previously under Equity venue – State law

137. Custody is the legal basis for care and control of the child. Definitions: legal custody is the decision-making right; physical custody is the companionship (relationship) right

138. Defining the legal basis of "what a parental right consists of" is critical to successful understanding of the fundamental right itself and must be consistently and uniformly used throughout the United States.

139. The improper use of current phrases and terminology is detrimental to a consensus understanding. These include shared parenting, which has no legal definition, and divided or joint custody, which is subject to judicial interpretation.

140. Without a strict legal definition, current terminology is vague and inconclusive, but more importantly, subject to arbitrary interpretation by a state judge. Statutory (court) use of vague terminology further confuses and muddles litigation resulting in eroded family relationships.

141. The standard for a “compelling state interest” while applying “strict scrutiny” dictates equal physical and legal custody to both natural parents if fitness is not in controversy.

142. The only custodial determination for two fit parents is equal custody. This survives “strict scrutiny,” does not violate Equal Protection or Due Process, is in the “best interests of the child,” and is constitutionally sound.

143. [As adapted from a Joint Custody brief from an unknown California attorney] There is logically only one possible distribution of custody between two parents that is the least restrictive, and that is an award dividing custody equally between the parents. Any other custodial award determination will immediately impair one parent’s fundamental right in an amount greater than what would otherwise exist in an equal custody award.

144. This is not to say that an award, one parent received an extra day of the year, would necessarily be unreasonable and therefore violate due process. Nor would it would not violate due process to award custody unequally where a parent is determined to be unfit for specific reasons relating to the health, safety, and well being of the child(ren). But where both parents are reasonably fit custodians, and both assert their full fundamental rights to custody in court, the only determination that does not violate due process is equal custody.

145. Despite this obvious logic, neither the state, nor the court, acknowledges what should be an obvious conclusion of law. Rather, it is routine in custody determinations, where both parents assert their fundamental rights, for the court to ignore the parent's rights entirely and instead concentrate only on the state's interest in the child. A citation on what is truly best for the child was noted in the New Jersey Court decision stating:

a. "The greatest benefit a court can bestow upon children is to insure that they shall not only retain the love of both parents but shall at all times and constantly be deeply imbued with love and respect for both parents." Smith v. Smith, 205 A.2d 83 (New Jersey, 1964)

Child Support

146. The State's Income Based child support statutes impermissibly infringe the Privacy Interest right under the 14th Amendment of the Federal Constitution and his First Amendment rights which included all right to decisions inside the home including child rearing decisions. Child "Support" removes all rights of fatherhood for independent self-determination protected by the U.S. Constitution. How much money a parent spends for the care and maintenance of their child is a parenting decision and is a constitutionally guaranteed right. The State government under Common and Natural Law is not permitted to intrude upon this fundamental right without proof of demonstrable harm to the child.

147. Ironically, the State "presumes" this authority to award custody of the children to the custodial parent under the guise that the mother is "the better parent" (absent any proper hearing to so determine), but then turns around and admits the custodial parent is incapable of caring for the children without the fiscal transfer of wealth from the non-custodial parent. Not only does the State take the Petitioner's property (his income) without any proper demonstration of due process, but then openly enjoins the mother to pursue fraud for her own fiscal gain.

148. Corrective or punitive child support can only be ordered by the State/Court by showing a profound positive disqualification or some wrong-doing, which "shocks the conscience" of the community, and invokes the doctrine of parens patriae. Parens patriae may only be asserted "reluctantly", as a "last resort" and to "save the child." The State has cogently, and knowingly, with premeditation, removed all rights to individual self-determination in this matter, which is a god-given, fundamental right as a Father.

149. The State mandates that a divorced parent must be forced to spend an egregious percentage of their income on his or her children; but the State does not, and cannot, mandate that a married parent, living in a "single family unit", spend a percentage of his income for his child. More importantly, the challenged statutes are enforced against the parent without the State ever

determining if any harm has befallen the children related to the parent's spending for them. The State lacks the constitutional authority to mandate spending for a child based on income, rather than adhering to the law which requires a child be supported only for the necessaries.

150. The State asserts that the Petitioner "must pay" a sum of money to support his children, gives the money to the mother, but makes no equal assumption or requirement of the mother to either spend that confiscated money on the children, or to pay an equivalent sum herself on those children. Equal treatment under the law is wholly absent.

151. Alimony and wife's lawyers fees are civil debts, not enforceable by contempt procedures, since the Constitution did away with debtor's prison. DAVIS V. BROUGHTON, 382 SW 2d 219.

152. If, the state finds it has the rights to the children of this marriage, based on the 'parens patriae' doctrine of ownership, then the actual cost of the children should be equally paid by both parties since the prenuptial agreement required both parties to generate financial support.

153. Whichever statute that provides greater protection to the Respondent, prevails. These Massachusetts and federal statutes guarantee protection from having "imputed income" orders. Furthermore, these statutes provide protection of his/her rights to be free from unlawful child support or any kind of garnishment.

154. That, child support is a civil matter and there is no probable cause to seek or issue body attachment, bench warrant, or arrest in child support matters because it is a civil matter. The use of such instruments (body attachment, bench warrants, arrests, etc) presumably is a method to "streamline" arresting people for child support and circumventing the Fourth Amendment to the United States Constitution, and is used as a debt-collecting tool using unlawful arrests and imprisonment to collect a debt or perceived debt.

155. The arrest of non-custodial parents in which men make up significant majority of the "arrestees", is "gender profiling", "gender biased discrimination" and a "gender biased hate crime" in that it violates the Equal Protection Clause of the Fourteenth Amendment. A man, pursuant to the Equal Protection Clause of the Constitution of the United States, cannot be arrested in a civil matter, as a woman is not. "Probable cause" to arrest requires a showing that both a crime has been, or is being committed, and that the person sought to be arrested committed the offense, U.S. Constitution, Amendment the Fourth.

156. Therefore, seeking of body attachment, bench warrant, or arrest by the Petitioner, and/or issuing of the same by the court, in this civil case would be against the law and the Constitution. Under U.S. v. Rylander ignorance of the order or the inability to comply with the [child support] order, to pay, would be a complete defense to any contempt sanction, violation of a court order or violation of litigant's rights.

157. If a person is arrested on less than probable cause, the United States Supreme Court has long recognized that the aggrieved party has a cause of action under 42 U.S.C. §1983 for violation of Fourth Amendment rights. Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213 (1967). Harlow v. Fitzgerald 457 U.S. 800, 818 (there can be no objective reasonableness where officials violate clearly established constitutional rights such as:

a. U.S. Constitution, Fourth Amendment (including Warrants Clause),

b. U.S. Constitution, Fifth Amendment (Due Process and Equal Protection),

c. U.S. Ninth Amendment (Rights to Privacy and Liberty),

d. U.S. Fourteenth Amendment (Due Process and Equal Protection).

158. The Supreme Court ruled in Malley v. Briggs, 475 U.S. 335, 344 (1986), that the mere fact that a judge or magistrate issues an arrest warrant does not automatically insulate the officer from liability for an unconstitutional arrest. "Only where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable...will the shield of immunity be lost". Malley at 344-45.

159. As can be ascertained, a body attachment is a debt-collecting tool using unlawful arrests and unlawful imprisonment for debt to collect a debt. Hence, it is illegal and unconstitutional, hence, rendering the issuing authority of such an order in violation of the law and the Constitution, stripping him of his jurisdiction, and, therefore, his judicial immunity. Furthermore, it would also render the Plaintiff (and her attorney) liable to prosecution under federal (and state) statutes.

160. Per federal law, see Marbury v. Madison, 5 U.S. 137 (1803), the state must provide remedy for each and every violation of a right. Multiple rights have been taken by the state, for its enrichment, without providing remedy but instead imposing punishments.

161. The United States Supreme Court mandates that constitutional (strict) scrutiny is the heightened level **Constitutional Scrutiny** of scrutiny applicable to the implication of fundamental rights secured by the U.S. Constitution. Gender discrimination in state custody determinations is not at issue where a lesser standard of review (intermediate scrutiny) would be applicable.

162. Substantive due process is defined as the procedural requirements due when a fundamental right is implicated. Judges' refusal to consider evidence and psychologist reports denies due process right to "meaningful hearing." ARMSTRONG V. MANGO, 380 US 545, 552; 85 S.Ct.1187 [1965]

163. Laws and Court procedures "fair on their faces" but administered "with an evil eye and a heavy hand" [discriminatorily] are unconstitutional. YICK WO V. HOPKINS, 118 S.Ct. 356 [1886]

164. Federal Courts can rule on federal claims [constitutional questions] involved in state divorce cases and award money damages for federal torts or in diversity of citizenship cases involving intentional infliction of emotional distress by denial of parental rights, "visitation", as long as the Federal Court is not asked to modify custodial status. LLOYD V. LOEFFLER, 518 F.Supp 720 [custodial Father won $95,000 against parental kid-napping wife]; FENSLAGE V. DAWKINS, 629 F.2d 1107 [$130,000 damages for parental kidnapping] KAJTAZI V. KAJTAZI, 488 F.Supp 15 [1976]; SPINDEL V. SPINDEL, 283 F.Supp. 797 [1969]; HOWARD V. KUNEN, USDC Mass CA No. 73 3813 G, 12/3/73 [unreported]; SCHWAB V. HUTSON, USDC, S.Dist. MI, 11/70 [unreported]; LORBEER V. THOMPSON, USDC Colorado [1981]; DENMAN V.

VENEY, DENMAN V. WERTZ; Right to jury trial in Contempt; BLOOM V. ILLINOIS, 88 S.Ct. 1477; DUNCAN V. LOUISIANA, 88 S.Ct. 1444

165. Contempt of Court is quasi criminal, merits all constitutional protections: EX PARTE DAVIS, 344 SW 2d 925 [1976]; Excessive fine on Contempt: COOPER V. C. 375 NE 2d 925 [IL 1978]; Payment of support tied to visitation:; BARELA V. BARELA, 579 P.2d 1253 [1978 NM]; CARPENTER V. CARPENTER, 220 Va.299 [1979]; COOPER V. COOPER, 375 NE 2d 925 [Ill. 1978]; FEUER V. FEUER, 50 A.2d 772 [NY 1975]; NEWTON V. NEWTON, 202 Va. 515 [1961]; PETERSON V. PETERSON, 530 P.2d 821 [Utah 1974]; SORBELLO V. COOK, 403 NY Supp. 2d 434 [1978]; Child Support; ANDERSON V. ANDERSON, 503 SW 2d 124 [1973]; ONDRUSEK V. ONDRUSEK, 561 SW 2d 236, 237 [1978; support paid by Mother to custodial Father]; SMITH V. SMITH, 626 P.2d 342 [1981]; SILVIA V. SILVIA, 400 NE 2d 1330 [1980 Mass.]

166. Fundamental, substantive, and/or natural rights are legally differentiated from civil rights because civil rights are rights created under law. One could clarify fundamental rights as pre-existing "inherent" rights and civil rights as government-created rights.

167. Where a federal right is implicated, the State of Massachusetts must provide the accused a process that is constitutionally compliant with the U.S. Constitution and mandatory under federal law. Goldberg v. Kelly, 397 U.S. 254 (1970) addresses the importance of certain property rights (where liberty rights are deemed far more important than property rights).

168. The State of Massachusetts must provide an explicit process due the accused to prove that the Defendant's children are being harmed. This set of procedures is commonly known as due process.

169. Due process is a mandatory set of procedures required by the U.S. Constitution entitling citizens whose fundamental rights are implicated to consistent and fair treatment.

170. Mandatory fair procedures include at a very minimum:

a. Express notice of the accusation.

b. A pre-deprivation hearing.

c. The right to confront witnesses.

d. An evidentiary standard that is constitutionally compliant.

e. And the least restrictive means to obtain a satisfactory solution

Conclusion: Where a fundamental right is implicated, the State of Massachusetts must provide expressly written mandatory due process procedures and use the least restrictive means of intrusion to achieve an optimal outcome.

171. Neither parent is provided with due process of law, i.e., in some states there is no pre-deprivation hearing. Stanley v. Illinois, 405 U.S. 645 (1972).

172. No statutory scheme contains a constitutionally compliant evidentiary standard. "Clear and convincing" evidence (of parental unsuitability) is the highest evidentiary standard in civil law that meets constitutional scrutiny pursuant to Santosky v. Kramer, 455 U.S. 745 (1982).

173. Statutes expressly written which diminish parents' fundamental rights, are not constitutionally compliant, and therefore do not meet strict scrutiny under federal law. Conclusion: Where both parents' rights are diminished under state law, there is no set of circumstances that a constitutional outcome can ever be achieved.

174. Substantive equal protection: similarly situated parents must be treated similarly (fundamental rights strand of equal protection under the fourteenth amendment.)

175. State implication of a fundamental right resulting in the arbitrary classification of parents into suspect classes (non-custodial and custodial) is subject to constitutional review.

176. Whenever government action seriously burdens fundamental rights and interests, heightened scrutiny of the procedures is warranted.

177. Where a state law impinges upon a fundamental right secured by the U.S. Constitution it is presumptively unconstitutional. Harris v. Mcrae, 448 U.S. 297 (1980); Zablocki v. Redhail, 434 U.S. 374 (1978).Conclusion: where a statutory classification significantly interferes with the exercise of a fundamental right, constitutional scrutiny of state procedures is required.

178. Under the Supremacy Clause appears in Article VI of the Constitution of the United States, everyone must follow federal law in the face of conflicting state law. It has long been established that "a state statute is void to the extent that it actually conflicts with a valid federal statute" and that a conflict will be found either where compliance with both federal and state law is impossible or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Similarly, we have held that "otherwise valid state laws or court orders cannot stand in the way of a federal court's remedial scheme if the action is essential to enforce the scheme." Stone v. City and County of San Francisco, 968 F.2d 850, 862.

179. Any state judge that acts contrary to the United States Constitution violates the Supremacy Clause and acts in treason. The U.S. Supreme Court has stated "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

180. In Common Law, where the judge is presented with superior law, he has no discretion in the matter but must act upon that higher precedence of law. Any failure to do so is an act as a "minister of his own prejudice" and not "acting in his capacity" for the state. Thereof, he may be held for civil and criminal liabilities. If a judge does not fully comply with the Constitution, then his orders are void, In re Sawyer, 124 U.S. 200 (1888), "he is without jurisdiction, and has engaged in an act or acts of treason."

181. Please judicially note: "Fundamental Rights do not hang by a tenuous thread of a layman's knowledge of the niceties of law. It is sufficient if it appears that he is attempting to assert his

constitutional privilege. The plea, rather than the form in which it is asserted ..." U.S. v St. Pierre, Supra, 128 F 2d

182. "The law will protect an individual who, in the prosecution of a right does everything, which the law requires him to do, but fail to obtain his right by the misconduct or neglect of a public officer." Lyle v Arkansas, 9 Howe, 314, 13 L. Ed. 153.

183. "Where rights are secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them. Miranda v. Arizona, 380 US 426 (1966).

184. The rights of parents to the care, custody and nurture of their children is of such character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and such right is a fundamental right protected by this amendment (First) and Amendments 5, 9, and 14. Doe v. Irwin, 441 F Supp 1247; U.S. D.C. of Michigan, (1985).

185. The several states has no greater power to restrain individual freedoms protected by the First Amendment than does the Congress of the United States. Wallace v. Jaffree, 105 S Ct 2479; 472 US 38, (1985).

186. Loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. Though First Amendment rights are not absolute, they may be curtailed only by interests of vital importance, the burden of proving which rests on their government. Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976).

187. Law and court procedures that are "fair on their faces" but administered "with an evil eye or a heavy hand" was discriminatory and violates the equal protection clause of the Fourteenth Amendment. Yick Wo v. Hopkins, 118 US 356, (1886).

188. Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life; if anything, persons faced with forced dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. Santosky v. Kramer, 102 S Ct 1388; 455 US 745, (1982).

189. Parents have a fundamental constitutionally protected interest in continuity of legal bond with their children. Matter of Delaney, 617 P 2d 886, Oklahoma (1980).

190. The liberty interest of the family encompasses an interest in retaining custody of one's children and, thus, a state may not interfere with a parent's custodial rights absent due process protections. Langton v. Maloney, 527 F Supp 538, D.C. Conn. (1981).

191. Parent's right to custody of child is a right encompassed within protection of this amendment that may not be interfered with under guise of protecting public interest by legislative action that is arbitrary or without reasonable relation to some purpose within competency of state to effect. Reynold v. Baby Fold, Inc., 369 NE 2d 858; 68 Ill 2d 419, appeal dismissed 98 S Ct 1598, 435 US 963, IL, (1977).

192. Parent's interest in custody of her children is a liberty interest which has received considerable constitutional protection; a parent who is deprived of custody of his or her child, even though temporarily, suffers thereby grievous loss and such loss deserves extensive due process protection. In the Interest of Cooper, 621 P 2d 437; 5 Kansas App Div 2d 584, (1980).

193. The Due Process Clause of the Fourteenth Amendment requires that severance in the parent-child relationship caused by the state occur only with rigorous protections for individual liberty interests at stake. Bell v. City of Milwaukee, 746 F 2d 1205; US Ct App 7th Cir WI, (1984). Father enjoys the right to associate with his children which is guaranteed by this amendment (First) as incorporated in Amendment 14. Mabra v. Schmidt, 356 F Supp 620; DC, WI (1973).

194. The United States Supreme Court noted that a parent's right to "the companionship, care, custody and management of his or her children" is an interest "far more precious" than any property right. May v. Anderson, 345 US 528, 533; 73 S Ct 840,843, (1952).

195. A parent's right to care and companionship of his or her children are so fundamental, as to be guaranteed protection under the First, Ninth, and Fourteenth Amendments of the United States Constitution. In re: J.S. and C., 324 A 2d 90; supra 129 NJ Super, at 489.

196. The Court stressed, "the parent-child relationship is an important interest that undeniably Warrants deference and, absent a powerful countervailing interest, protection." A parent's interest in the companionship, care, custody and management of his or her children rises to a constitutionally secured right, given the centrality of family life as the focus for personal meaning and responsibility. Stanley v. Illinois, 405 US 645, 651; 92 S Ct 1208,(1972).

197. Parent's rights have been recognized as being "essential to the orderly pursuit of happiness by free man." Meyer v. Nebraska, 262 or 426 US 390 <check cite>; 43 S Ct 625, (1923).

198. The U.S. Court of Appeals for the 9th Circuit (California) held that the parent-child relationship is a constitutionally protected liberty interest. (See; Declaration of Independence --life, liberty and the pursuit of happiness and the 14th Amendment of the United States Constitution -- No state can deprive any person of life, liberty or property without due process of law nor deny any person the equal protection of the laws.) Kelson v. Springfield, 767 F 2d 651; US Ct App 9th Cir, (1985).

199. The parent-child relationship is a liberty interest protected by the Due Process Clause of the 14th Amendment. Bell v. City of Milwaukee, 746 f 2d 1205, 1242-45; US Ct App 7th Cir WI, (1985).

200. No bond is more precious and none should be more zealously protected by the law as the bond between parent and child." Carson v. Elrod, 411 F Supp 645, 649; DC E.D. VA (1976).

201. A parent's right to the custody of his or her children is an element of "liberty" guaranteed by the 5th Amendment and the 14th Amendment of the United States Constitution. Matter of Gentry, 369 NW 2d 889, MI App Div (1983).

202. Judges must maintain a high standard of judicial performance with particular emphasis upon conducting litigation with scrupulous fairness and impartiality. 28 USCA § 2411; Pfizer v. Lord, 456 F 2d 532; cert denied 92 S Ct 2411; US Ct App MN, (1972).

203. State Judges, as well as federal, have the responsibility to respect and protect persons from violations of federal constitutional rights. Gross v. State of Illinois, 312 F 2d 257; (1963).

204. Similarly, "the best interest of the child" is not the legal standard that governs parents' or guardians' exercise of their custody: so long as certain minimum requirements of the child is met, the interest of the child may be subordinated to the interest of other children, or indeed even to the interests of the parents or guardians themselves. "The best interest of the child" is likewise not an absolute and exclusive constitutional criterion for the government's exercise of the custodial responsibilities that it undertakes, which must be reconciled with many other responsibilities.

205. The state must show adverse impact upon the child before restricting a parent from the family dynamic or physical custody. It is apparent that the parent-child relationship of a married parent is protected by the equal protection and due process clauses of the Constitution. In 1978, the Supreme Court clearly indicated that only the relationships of those parents who from the time of conception of the child, never establish custody and who fail to support or visit their child(ren) are unprotected by the equal protection and due process clauses of the Constitution. Quilloin v. Walcott, 434 U.S. 246, 255 (1978).

206. Clearly, divorced parents enjoy the same rights and obligations to their children as if still married. The state through its family law courts, can impair a parent-child relationship through issuance of a limited visitation order, however, it must make a determination that it has a compelling interest in doing so. Trial courts must, as a matter of constitutional law, fashion orders which will maximize the time children spend with each parent unless the court determines that there are compelling justifications for not maximizing time with each parent.

207. Maximizing time with each parent is the only constitutional manner by which a parent is able to maintain a meaningful parent-child relationship after divorce. While geographic distance, school schedules and the like must be factored into the custody and visitation calculus, trial courts faced with a custody and visitation decision must accord appropriate constitutional respect to maintain a healthy parent child relationship by granting each parent as much time as possible with the child under the circumstances of each case.

208. The federal Due Process and Equal Protection rights extend to both parents equally, for example, in adoption proceedings. In Caban v. Mohammed, 441 U.S. 380, (1979) the Supreme Court found that a biological father who had for two years, but no longer, lived with his children and their mother was denied equal protection of the law under a New York statute which permitted the mother, but not the father, to veto an adoption. In Lehr v. Robinson (1983) 463 U.S. 248, the Supreme Court held that 'When an unwed father demonstrates a full commitment to the responsibilities of parenthood by 'com[ing] forward to participate in the rearing of his child,' Caban, [citations omitted], his interest in personal contact with his child acquires substantial protection under the Due Process Clause." (Id. at 261-262)

209. The courts have clearly held that the degree of protection afforded parental rights does not depend upon the relationship between the mother and the father. In every circumstance under which a parental right to physical custody may be terminated in which the courts have spoken on the standard of proof to be applied, the holding has been that the proof must be by clear and convincing evidence. In those cases where joint physical custody is not ordered in a divorce setting, the parent without custody has been deprived of physical custody, just as in any other setting. The identity of the person who has custody of the child is irrelevant to the requisite proof required to deprive one parent of physical custody.

210. The impact these judicial decisions have on the lives of all concerned cannot be overestimated. Childhood passes rapidly and it quickly becomes too late to unring the bell. Expanded visitation or joint custody may seem unimportant, but only to those who have never experienced the hollow time of forced separation. " No human bond is of greater strength than that of parent and child" Michelle W. v. Ronald W., 39 Cal. 3d354 (1985). Seton Hall Professor Holly Robinson has spelled out this argument in detail:

211. Cases clearly establish a zone of privacy around the parent-child relationship, which only can be invaded by the state when the state possesses a sufficiently compelling reason to do so. As a result, when the marital breakdown occurs, both parents are entitled to constitutional protection of their right to continue to direct the upbringing of their children through the exercise of custody. Adequate protection of this parental right requires that parents be awarded joint custody [or expansive visitation]...unless a compelling state interest directs otherwise. H.L. Robinson, "Joint Custody: constitutional Imperatives", 54 Cinn. L. Rev. 27, 40-41 (1985) (footnotes omitted). See also, Ellen Cancakos "Joint Custody as a Fundamental Right". Arizona Law Review, Vol. 23, No. 2 (Tucson, Az: University of Arizona Law College), Tuscon, 95721. See also, Cynthia A. McNeely: "Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court", 25 Fla. St. U.L. Rev. 335, 342+ (1998)

212. This proposition that the parent-child relationship in a traditional custody and visitation dispute commands constitutional respect is admittedly lacking a long life of specific case authority approving it. This lack of specific case authority is not fatal to the proposition's vitality. At least one federal court has found that the paucity of cases recognizing the constitutional sanctity in the past. That court further held that the historical absence of a strong tradition should not result in denial of the constitutional protection for such relationships as they become increasingly prevalent. See Franz v. United States, supra.

213. To further underscore the need for courts to consider the constitutional protections which attach in family law matters, one need only look to recent civil rights decisions. In Smith v. City of Fontana, 818 f. 2d 1411 (9th Cir. 1987), the court of appeals held that in a civil rights action under 42 U.S.C. section 1983 where police had killed a detainee, the children had a cognizable liberty interest under the due process clause.

214. The analysis of the court included a finding that " a parent has a constitutionally protected liberty interest in the companionship and society of his or her child. Id. at 1418, citing Kelson v. City of Springfield, 767 F. 2d 651 (9th Cir. 1985). In Smith the court stated " We now hold that this

constitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their relationships with their parents." Id.

215. A failure to accord appropriate constitutional respect to the parent-child relationship between the parties herein and the minor child by failing to award joint custody or substantial parental contact would be error. We respectfully request that this Court fashion a court order that will maximize the available time the minor will spend with each parent.

216. Justice O'Connor, writing for the majority, affirmed the lower court. She began her analysis by noting "The liberty interest…of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by the Court." Troxel v. Granville 530 U.S. at 65

217. In Troxel, the court considered how the liberty interests of a parent might be affected by a Washington statute that allowed "'any person' to petition a superior court for visitation rights 'at any time' and authorize[d] that court to grant such visitation rights whenever 'visitation may serve the best interest of the child.'" Id. at 60. In invalidating the statute, the court again recognized "the fundamental right of parents to make decisions concerning the care, custody, and control of their children" and determined that the "decisional framework employed by the superior court directly contravened the traditional presumption that a fit parent will act in the best interest of his or her child." Id. at 69.

218. That in a divorce action, a fit parent may not be denied equal legal and physical custody of a minor child without a finding by clear and convincing evidence of parental unfitness and substantial harm to the child. (see also Santosky v. Kramer (1982).

219. Ex Parte conferences, hearings or Orders denying parental rights or personal liberties are unconstitutional, cannot be enforced, can be set aside in federal court, and can be the basis of suits for money damages. RANKIN V. HOWARD, 633 F.2d 844 [1980]; GEISINGER V. VOSE, 352 F.Supp. 104 [1972]

220. In the 1920's, the Court asserted that the right of parents to raise and educate their children was a "fundamental" type of "liberty" protected by the Due Process Clause. Meyer v. Nebraska, 262 U.S. 390 (1923) and Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925). In Griswold v. Connecticut, 381 U.S. 479, 502 (1965), Justice White in his concurring opinion offered "this Court has had occasion to articulate that the liberty entitled to protection under the Fourteenth Amendment includes the right "to marry, establish a home and bring up children," and "the liberty . . . to direct the upbringing and education of children," and that these are among "the basic civil rights of man." Justice White then added; These decisions affirm that there is a "realm of family life which the state cannot enter" without substantial justification. Prince v. Massachusetts, 321 U.S. 158, 166.

221. Recently (on June 5, 2000), after nearly 100 year of consistent support for parental rights, the Court stated: "The liberty interest at issue…the interest of parents in the care, custody, and control of their children--is perhaps the oldest of the fundamental liberty interests recognized by this Court… [I]t cannot now be doubted that the Due Process Clause of the Fourteenth

Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." Troxel v. Granville, 530 US 2000 (99-138)

222. (Justice Souter) We have long recognized that a parent's interests in the nurture, upbringing, companionship, care, and custody of children are generally protected by the Due Process Clause of the Fourteenth Amendment. See, e.g., Meyer v. Nebraska,262 U. S. 390, 399, 401 (1923); Pierce v. Society of Sisters, 268 U. S. 510, 535 (1925); Stanleyv. Illinois, 405 U. S. 645, 651 (1972); Wisconsin v.Yoder, 406 U. S. 205, 232 (1972); Quilloin v. Walcott, 434 U. S. 246, 255 (1978); Parhamv. J. R., 442 U. S. 584, 602 (1979); Santosky v. Kramer, 455 U. S. 745, 753 (1982); Washington v. Glucksberg, 521 U. S. 702, 720 (1997). As we first acknowledged in Meyer, the right of parents to "bring up children," 262 U. S., at 399, and "to control the education of their own" is protected by the Constitution, id., at 401. See also Glucksberg, supra, at 761.

223. Justice Souter then opens the very next paragraph indicating the constitutionality of parental rights are a "settled principle". In fact, it is a well-established principle of constitutional law that custody of one's minor children is a fundamental right. Santosky v. Kramer, 455 U.S. 745 (1982), Stanley v. Illinois, 405 U.S. 645 (1972).

224. Without dispute the Troxel case is UNANIMOUS in its establishment that parental rights are constitutionally protected rights. Even the dissenting judges, not agreeing with the remedy, recognized that parental rights are constitutional Rights. From the dissents in Troxel:

a. (Justice Scalia) …[A] right of parents to direct the upbringing of their children is among the "unalienable Rights" with which the Declaration of Independence proclaims "all Men ... are endowed by their Creator." …[T]hat right is also among the "othe[r] [rights] retained by the people" which the Ninth Amendment says the Constitution's enumeration of rights "shall not be construed to deny or disparage."

b. (Justice Kennedy) I acknowledge … visitation cases may arise where [considering appropriate protection by the state] the best interests of the child standard would give insufficient protection to the parent's constitutional right to raise the child without undue intervention by the state…

225. [T]here is a beginning point that commands general, perhaps unanimous, agreement in our separate opinions: As our case law has developed, the [parent] has a constitutional right to determine, without undue interference by the state, how best to raise, nurture, and educate the child. The parental right stems from the liberty protected by the Due Process Clause of the Fourteenth Amendment. See, e.g., Meyer v. Nebraska, 262 U. S. 390, 399, 401 (1923); Pierce v. Society of Sisters, 268 U. S. 510, 534-535 (1925); Prince v. Massachusetts, 321 U. S. 158, 166 (1944); Stanley v. Illinois, 405 U. S. 645, 651-652 (1972); Wisconsin v. Yoder, 406 U. S. 205, 232-233 (1972); Santosky v. Kramer, 455 U. S. 745, 753-754 (1982).

226. Implications for recognizing the fundamental constitutional rights that ALL parents possess, not only mothers, but fathers too, demands that the deprivation of "the fundamental right of parents to make decisions concerning the care, custody, and control" of their children constitutes a

significant interference with," (citations omitted) the exercise of a fundamental constitutional right. Deprivation of fundamental liberty rights "for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 96 S.Ct. 2673; 427 U.S. 347, 373 (1976). (Note Justice Kennedy's Troxel remarks on page 2 about parental rights under the First Amendment, the Amendment at issue in Elrod.)

227. This legislative body has a burden to society to weigh the studies and information demonstrating the devastating affects of father absence on children (a matter worthy of judicial notice) and then consider, as noted above, the ramifications of effectively removing fathers from their children. After all, there is now so much data and information about father absence that in custody matters, continued maternal preferences rise to the Due Process legal bar. The "[r]eality of private biases and possible injury they might inflict [are] impermissible considerations under the Equal Protection Clause of the 14th Amendment." Palmore v. Sidoti, 104 S Ct 1879; 466 US 429.

228. Certainly, worth noting in Troxel, are Justices Souter and Thomas concurring commentary. They implicate a potential willingness to address, adjudicate, and possibly clarify the "free-ranging best-interests-of-the-child standard" (Souter's characterization of this "standard").

229. Also, particularly worth noting, both Justices Scalia and Kennedy clearly recognized the constitutional protections of parental rights. Though they do not agree it appears Justice Scalia noted that part of the problem is the indeterminacy of "standards" in custody cases suggesting that many definitions, such as parent would have to be crafted and he would "throw it back to the legislature" to define standards and terms. Herein implicating the "standard" is a problem.

230. Further, in Justice Kennedy's dissent, he elaborated that if upon remand or reconsideration of the Troxel case, if there were still problems with the decision regarding parental rights, consideration of that and other issues at the US Supreme Court might be warranted, then went on to state:

231. These [issues] include ... the protection the Constitution gives parents against state-ordered visitation but also the extent to which federal rules for facial challenges to statutes control in state courts. These matters, however, should await some further case…

232. It must be recognized, of course, that a domestic relations proceeding in and of itself can constitute state intervention that is so disruptive of the parent-child relationship that the constitutional right of a [parent] to make certain basic determinations for the child's welfare becomes implicated. The best interests of the child standard has at times been criticized as indeterminate, leading to unpredictable results. See, e.g., American Law Institute, Principles of the Law of Family Dissolution 2, and n. 2 (Tentative Draft No. 3, Mar. 20, 1998).

233. More specific guidance should await a case in which a State's highest court has considered all of the facts in the course of elaborating the protection afforded to parents by the laws of the State and by the Constitution itself.

234. Parental Rights must be afforded "strict scrutiny" or a heightened scrutiny so stringent as to be utterly indistinguishable from "strict scrutiny".

235. The Fourteenth Amendment prohibits the state from depriving any person of "life, liberty, or property without due process of law." The Court has long recognized that the Due Process Clause "guarantees more than fair process." Washington v. Glucksberg, 521 U.S. 702, 719 (1997). It also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." Id., at 720; see also Reno v. Flores, 507 U.S. 292, 301-302 (1993).

236. Any denial of Due Process must be tested by the "totality of the facts" because a lack of Due Process may "constitute a denial of fundamental fairness, shocking to the universal sense of justice…" Malloy v. Hogan, 378 U.S. 1, 26 (1964) (quoting from Betts v. Brady, 316 U.S. 455, 461-462 (1942) where it was noted that any violation of any of the first Nine Amendments to the Constitution could also constitute a violation of Due Process). "[T]he court must be vigilant to scrutinize the attendant facts with an eye to detect and a hand to prevent violations of the Constitution by circuitous and indirect methods. Constitutional provisions for the security of person and property are to be liberally construed, and 'it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.' Boyd v. United States, 116 U.S. 616, 635 , 6 S. Ct. 524, 535 (29 L. Ed. 746); Gouled v. United States, 255 U. S. 304, 41 S. Ct. 261, supra." (as cited from Byars v. U.S., 273 US 28, 32).

237. It is further established that any law impinging on an individual's fundamental rights is subject to strict scrutiny (San Antonio School District v. Rodriguez, 411 U.S. 1 (1973). "In order to withstand strict scrutiny, the law must advance a compelling state interest by the least restrictive means available." Bernal v. Fainter, 467 U.S. 216 (1984). And by fiat, any judge interpreting, presiding, or sitting in judgment of any custody case under the law must apply this same standard. Justice Stevens in Troxel comments on the appropriate standard of review stating:

238. "The opinions of the plurality, Justice Kennedy, and Justice Souter recognize such a [parental constitutional] right, but curiously none of them articulates the appropriate standard of review. I would apply strict scrutiny to infringements of fundamental rights."

239. Heightened scrutiny is the court's rule, not the exception. "In determining which rights are fundamental, Judges are not left at large to decide cases in light of their personal and private notions[;]… it cannot be said that a Judge's responsibility to determine whether a right is basic and fundamental in this sense vests him with unrestricted personal discretion. Griswold at 493 w/FN7 (A case dealing with marriage relationship privacy). The same court noted "there is a "realm of family life which the state cannot enter without substantial justification". (quoting Prince v. Massachusetts, 321 U.S. 158, 166).

240. In Stanley v. Illinois, 405 US 645, 651 (1972), the court indicated that the State must demonstrate a "powerful countervailing interest" stressing that "he parent-child relationship is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection." A parent's interest in the companionship, care, custody and management of his or her children rises to a constitutionally secured right, given the centrality of family life as the focus for personal meaning and responsibility."

241. Conclusion: Given the long history of cases by the Supreme Court it can no longer be doubted that the child's best interest must be weighed with a parent's fundamental liberty interest in parenting their child without undue interference by the state. If the state even had a jurisdiction because a parent surrendered it, a Custody order must bear sufficient respect for the constitutional protections inherent in the parent-child relationship.

242. The court must state under what jurisdiction it is making each decision on each issue. If the Natural Law or Natural Law based (Lockean) social compact is no longer the rule of law, the court must answer how this impacts the state Constitution and if these acts are constitutional. In most states, the mother gets a deduction from her income when figuring child support. That means if you each earn $50,000, her support obligation is based on $30,000 or $20,000 less, insuring that you are the one with the greater income, and therefore you have to pay her. It's not child support, but a communistic "transfer of wealth" scheme.

243. There is significant case law that clearly supports the legal theory that: custody and support were reciprocal concepts - i.e., if you provided support, you had custody, or if you had custody you had the requirement to provide support. If you don't have custody, your responsibility to pay support has been legally extinguished. To divorce the two concepts creates a punishment. Obligation without the right was in fact the punishment for abuse, neglect or abandonment.

244. This reciprocal parent to child relationship is a legal right that is superior to the enumerated constitutional Rights (i.e., and as ruled by the USSC, which must be afforded at least all of the due process protections that "regular" - i.e., the "lesser", actually - listed constitutional rights are given; and can not be taken away by any government official (including a state judge), agency, or etc., unless - and not until - the parent in question has been - first - been already proven (and, then only by "clear and convincing" evidence, too...) to be an "unfit parent".

245. Therefore, the state's or judge's act of taking away the (Orwellian "newspeak" and fictional title – "non-custodial") parent's previously-existing child custody was done unlawfully, i.e., unconstitutionally, and that judgment is null and void as unlawful against the U.S. Constitution, at least under the 1st, 4th, 5th, 8th, 9th, 10th, and 14th Amendments, and arguably also under various sections of the Preamble to the U.S. Constitution, to include liberty and property interests. It is not an award but a deprivation of rights.

246. Liberty is a State of being and cannot be embodied in the law. Lawful and artful words only serve to place a fence around liberty, to bind it, to chain it, to alter its form into something other than liberty. Parenting has been accorded a special class of "rights" or "parental rights" that rise to the level of "fundamental liberty".

247. At that point of tension between equal liberty interests, lies the embodiment of equity and justice. That "Equal Justice under the law" demands that where two fit parents interests in "the companionship, care, custody and management of … children" collide, equality is the rule rather than the exception.

248. Imposing itself upon individual liberty, our Founding Fathers saw fit to constrain the "state". During the constitutional debates, much history was discussed, the history of governments, of

political systems, of people's nature and motives, and of power. A power that history taught them must be limited.

249. The caretaker of those liberty interests is the Constitution. In the absence of propagation, any antagonism is patently unconstitutional, and under the Supremacy Clause of the US Constitution, states must avoid this antagonism. In the case of two fit parents, the only constitutionally sound decision is equality of parenting, equality under the law, and "natural law" equality in the physical relationship.

250. When dealing with marriage, the early court declared "[w]e deal with a right of privacy older than the Bill of Rights - older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions." Griswold v. Connecticut, 381 U.S. 479, 486 (1965).

251. The inquiry is whether a right involved "is of such a character that it cannot be denied without violating those `fundamental principles of liberty and justice which lie at the base of all our civil and political institutions' . . . ." Powell v. Alabama, 287 U.S. 45, 67. Parenting is a special and unique kind of right with certain characteristics that our Founding Fathers described as "natural law". Certainly any "[l]aws abridging the natural right of the citizen should be restrained by rigorous constructions within their narrowest limits." Thomas Jefferson to L. McPherson, 1813.

252. If you are a mother, you can almost be absolutely assured that your consequences for shredding this social contract will be some division of the marital assets, possibly taking the home and car if you are willing to allege (often falsely) that you have been somehow abused, some form of personal support, "child" support, and the children to reign control over your ex by using them as pawns and tools. We no longer have a "no-fault" divorce system, we have a feminist propagandized "male-fault" system where all women are victims, and all men are considered child abusers, wife-beaters, rapists, and child molesters.

253. There are shrill detractors of equal parenting parading extreme examples, in a propaganda-like attempt, insisting these exceptions are the norm. For example, accepting feminist groups views on matters of a presumption of equal custody, the party line is that all men are abusers, evil, rapists, and only want custody of the children to abuse them (references available on request). Instead, they push the "poisoned fruit" of father-absence and male-hatred down the collective throat of our culture.

254. Under simple equity rules, if two people have the same constitutional interest in a piece of property, it is divided equally. Yet in a custody case, where the constitutional interest is "far more precious than… property rights" (May v. Anderson), courts routinely hamper.

255. The constitutional rights of a parent are violated in an unconstitutional preference in making a "sole custody determination." After all, "[i]t is well settled that, quite apart from the guarantee of equal protection, if a law "impinges upon a fundamental right explicitly or implicitly secured by

the Constitution [it] is presumptively unconstitutional." Harris v. McRae, 448 US 297, 312 (1980). “No-fault divorce” is the feminist and lawyer lingo for “automatic men-at-fault-divorce.”

256. Where similarly situated parents must be treated similarly, suitable and fit parents must be treated similarly.

257. Without a finding of parental unsuitability (unfit, unwilling, or unable) by clear & convincing evidence, both parents must be treated similarly. The "best interests of the child" standard of review is not a constitutionally compliant evidentiary standard when addressing parental rights between suitable and fit parents.

258. The "best interests of a child" can be addressed only after a finding of parental unsuitability by clear & convincing evidence.

259. However, where both parents are suitable, the State of Massachusetts has no legal basis under state or federal law to even make a custody determination.

260. Where the State of Massachusetts has no legal basis to implicate a fundamental parental right, both parents maintain their inherent pre-existing right to legal custody of their child(ren).

261. Because both parents maintain autonomy in their respective parental rights, both parents must be treated similarly as to physical custody (companionship time).

262. Since the child(ren) cannot be cut in half, the constitutionally compliant solution and the least intrusive remedy is a presumption of equality.

263. The presumption of equality is rebuttable, however this presumptive "starting point" in a divorce with children eliminates the power struggle for control by equalizing both parental interests. The presumptive "starting point" also takes the wind-out-of-the- sails of the litigants (and their attorneys) by eliminating leverage through equalization.

264. The child(ren)'s best interests are enhanced by maintaining a substantive relationship with both parents: A presumption of equality also enhances extended family participation with children of divorce, i.e., grandparents, who have a vested emotional interest, but no legal recourse, to develop a relationship with their grandchildren. Additionally, the child(ren)'s welfare/best interests would be enhanced by increased Accessibility to their extended family. The best parent is both parents!

265. “ There is simply no doubt that all other things being equal, children are going to have a much better chance in life with two caring parents. You can see it in every study that asks that question.”- Former Vice-President Al Gore

266. The financial incentives and conflicts of interest for lawyers to encourage custody battles in divorce is apparent. This is damaging to all parties involved and creates no value whatsoever. The adversarial system is wrong for divorce. Overload, caused by lawyers, drives injustice and harm. It has evolved into a soulless money machine and many lawyers admit freely that other lawyers intentionally cause problems in divorce to drive up legal fees. In fact if this ever happens, and we know it does, it is morally and ethically revolting and clears grounds for disbarment.

According to some attorneys this is done by over half of attorneys today implying that 75% of divorce actions (since two lawyers are involved) are fraudulent.

267. The incentives that drive the divorce industry have become perverse at the individual level. A mission which should be to "help families" has become "make money" for most and avoid overwhelming work for others (i.e. judges). Lawyers want the work judges should be doing, like finding facts. The result is a system which is destructive, not constructive.

268. Court decisions are working toward the desired result of involving both parents in a child's upbringing following divorce. Due to the difficulty of proving outrageous conduct and severe emotional distress in tort claims against an unreasonable X-Spouse, the current trend suggests that bringing an action for interference with visitation will provide a remedy to the problems involved in these situations. Specific Case Law Re: tortuous interference with visitation and parental rights:

A. Sheltra v. Smith, 392 A.2. 431 (Vt. 1978)

B. Raftery v. Scott, 756 F. 2d 335 (4th Cir. 1985)

C. Kajtazi v. Kajtazi, 488 F. Supp. 15 (E.D.N.Y. 1978)

D. Ruffalo v. United States, 590 F. Supp. 706 (W.D. Mo.1984)

E. Ruffalo v. Civiletti, 539 F. Supp. 949 (W.D. Mo. 1982)

F. Wise v. Bravo, 666 F. 2d 1328 (10th Cir. 1982)

G. Hall v. Hall-Stradley, Denver (Colo. Dist. Ct.) No. 84-CV-2865, 11/26/88 (as reported in Fam. L. Rep. (BNA), January 6, 1987, Vol. 13, No. 9)