

## Know and Demand Your Constitutional Right to Parent

**F**undamental or 'constitutional' rights are those enumerated in the Bill of Rights and the further Amendments as well as a host of other rights that have been raised to that level by Supreme Court case law. According to the 'Supremacy Clause', what the Supreme Court states through case law is the law of the land and necessarily overrides all lower jurisdictional laws – including state laws – if there is a conflict. We'll see below that your parental right is in fact a constitutional right. All such fundamental rights are accorded a special status in judicial review so no one can be easily deprived of any one of them.

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 [a] fair process." *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997). It also includes a substantive component to the process 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, 301302 (1993).

The level of scrutiny required for state actions that infringe upon fundamental rights is "strict scrutiny", which requires the state to show that the infringement serves a "compelling state interest" and that there is no constitutionally less offensive way for the state to satisfy this compelling interest.

There are few issues on which the U.S. Supreme Court has spoken so consistently as that of parental rights as a fundamental constitutional right, and the right of the parent to determine what the best interest of the child will be. In

1923 the Court asserted that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923).

Rinaldo Del Gallo, a member of the Fatherhood Coalition nicely emphasizes in the next six paragraphs how parental rights overshadows the 'best interest of the child standard' so often used in custody determinations:

In the 1923 case of *Meyers v. Nebraska* supra, the Supreme Court struck down a law that forbid children from learning certain foreign languages. This was NOT done because learning these foreign languages was in "the child's best interest," but because the right to parent one's child as they wish was fundamental.

In the 1925 case of *Pierce v. Society of Sisters* 268 U.S. 510, the Supreme Court struck down a law demanding

that children attend public schools. This was done not because going to a private parochial school was in "the child's best interest," but because the right to parent one's child was fundamental. The decision rested on the "liberty of parents and guardians to direct the upbringing and education of their children."

In the 1942 case of *Skinner v. Oklahoma*, the Supreme Court struck down an Oklahoma statute that demanded compulsory sterilization of persons convicted three times of felonies. This was struck down NOT because of "the child's best interest," but because "marriage and procreation are fundamental to the very existence and survival of the race." It was noted that the right to parent "touches a sensitive and important area of human rights."

In the 1977 case of *Moore v. East Cleveland*, the Supreme Court struck down a state law that impaired the abil-

(Turn to **Right to Parent** on page 2)

### Fatherhood Coalition kids enjoy Shriner's Circus





## Right to Parent

(Continued from page 1)

ity of extended family members to reside together, such as an aunt and nephew. The law was struck down not because residing together was in the best interest of the child, but because the right to family life was fundamental.

In the 1978 case of *Quillon v Walcott*, the Supreme Court ruled: "If a state were to attempt to force the breakup of a natural family, over the objection of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest," the Due Process Clause would clearly be violated.

All of these cases involve the right of the parents versus third parties. In 2000, the United States Supreme Court ruled in *Troxel v. Granville* 530 U.S. 2000, that grandparent visitation cannot be imposed without a showing of great prejudice to the child. The court also ruled that the "best interest of the child" standard did not do enough to safeguard the fundamental parenting right. Noted the Troxel court, "The liberty interest at issue in this case – 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."

Continued the Troxel court, "In light of this extensive precedent, it 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." [end Del Gallo comments.]

*Parham v. J.R. et al* 442 U.S. 584 (1979) declares that the 'best interest of the child' resides in the fit parent – not in the state: "Our jurisprudence historically has reflected Western Civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion

that a child is "the mere creature of the State" and, on the contrary, asserted that parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations." *Pierce v. Society of Sisters*, 268 U.S. 510,525(1925). See also *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). Surely, this includes the "high duty" to recognize symptoms of illness and to seek medical advice.

The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interest of their children. W. Blackston, Commentaries \*447; J. Kent, Commentaries on American Law \*190.

As the Court declared in Troxel: [S]o long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.

The implication of this is that to be constitutionally sound, a state custody law must contain a strong presumption of joint legal and physical custody of minor children upon the divorce of the parents.

Lastly, *Santosky v. Kramer* 455 U.S. 745 (1982) emphasizes that in order to restrict a fundamental right to parent to any extent, requires a showing of clear and convincing evidence that serious harm will come to the child.

[The complete history of the Court's rulings on the nature of parental rights includes: *Pierce v. Society of Sisters*, 268 U.S. 510, 534535 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Stanley v. 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); *Parham v. J. R.*, 442 U.S. 584, 602 (1979); and *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).]

The state's Family court, by assigning the status of 'noncustodial' parent (generally upon fathers), artificially creates a class to support custodial parents who then raise children. However compelling a states' interest in assuring the wellbeing of children may seem to be, forcing such a classification and duties on any fit parent is not only constitutionally offensive but bypasses the equal rights that both parents have to raise their children. Therefore, determination of custody (physical and legal) must receive the strict scrutiny guaranteed by the Due Process Clause of the Fourteenth Amendment. This is true regardless of whether the interference with the right is permanent or temporary. The Court has held that the 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, (1976)]. And any impairment of one or the other parent's right can only be sustained under clear and convincing evidence that serious harm would result to the child.

Also according to the 'equal protection clause' of the 14th Amendment, two fit parents under a divorce or separation must necessarily sustain all of their fundamental rights to the extent that the other does. This results with respect to 'right to parent' in a presumption of equal partition of time parenting their child. So during one's parenting time, the parent can control all the minor and major decisions about the child which parenting implies, i.e. education, religion, medical, etc, as well as the typical day to day decisions.

With regard to all the other rights of individuals, e.g. income, property acquisition, etc, those rights remain unaltered. This would mean that one parent must not be required by the state to pay any fraction of his income to the other parent.

(Turn to **Right to Parent** on page 3)



## Right to Parent

(Continued from page 2)

With the assurance to each parent that their equal parental rights will not be infringed in divorce or paternity actions as long as he (or she) is fit, and that one parent will not be financially destroyed at the financial advantage of the other, far fewer 'strategic disagreements and miscommunications will occur; in fact fewer divorces will probably result.

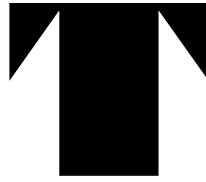
Of course, if both parents wish, they may contractually agree with each other to share or partition the care of their child as they see fit, and such an agreement should not be subject to state interference other than to enforce it. Why? Because they, together and alone, as parents, embody the best interest of their children. Likewise, if the parents cannot come to terms on sharing their parenting duties, then an 'equal default' partitioning should be mandated by the court to best preserve the fundamental rights of both parents.

### WHAT YOU SHOULD DEMAND

If you and the other parent cannot come to an acceptable shared parenting agreement, you need to demand the only constitutional alternative:

- Equal rights be applied in divorce and paternity to guarantee every person their full constitutional right to parent and participate freely in society.
- Divorce agreements between informed parents should be contracts in violation by courts.
- If the parents don't agree at all, then a direct equal partitioning of time with child (perhaps alternate weeks) will be ordered, with the child raised in the town where the family resided and attend local public school, and each parent's church during his custodial time. Each parent will care for and maintain his child as a single parent and thereby be guaranteed his constitutional freedom.
- Every father must be informed immediately of the birth of his child and his full rights to parent must be af-

## Status on Shared Parenting Bills



here are three bills in the State Legislature: Senate Bill 813, House Bill 3879 and House Bill 2546. Rinaldo

Del Gallo has analyzed these three bills and believes that House Bill 2546 is the only one that effectively guarantees equal custody. The others too easily allow the judge discretion to maintain the status quo. House Bill 2546 reads:

"To ensure minor children of frequent and continuing contact and a meaningful relationship with both parents after the parents have separated and divorced, it becomes necessary to encourage parents to share in the rights and responsibilities of child care and rearing. Primary considerations in awarding custody shall be given to both parents jointly in order to secure the best interest of the children by providing continuation of parent-child relationships. It is therefore the presumption of the courts that in most cases shared custody should be considered paramount to ensure the happiness and welfare of the children. In all separation and divorce proceedings involving minor children, it shall be a presumption of the court that both parents have an inalienable right to share temporary and final legal as well as physical custody of the children unless one or both parents (1) are proven to be unfit to such an extent and in such a manner as to cause immediate physical or emotional danger or damage to the children (2) abandon the children, or (3) voluntarily relinquish custody. . . . The chil-

forded to him *or* criminal kidnapping charges should ensue and damage awards assigned – because denying a parent the right to parent their child should be a criminal offense.

Refuse to be deterred in your demands by your lawyer, your GAL, the judge, and all the other members of the Divorce and Domestic Violence industry that thrive at your expense by trying to deny you your equal right to parent –

dren shall also have the right to reside and spend an equal amount of time with each parent, provided this sharing arrangement does not interfere nor disrupt the school term. If equal time is neither practical nor possible, the right of one parent to a minimum guaranteed amount of time per year with the children shall be established and protected by the courts."

Del Gallo rightly points out that a problem in the wording of this legislation is that the right to equal time is given solely as the child's right, not the parents. Such a phrase conflicts with constitutional prerogatives of the parent. This part should be changed. This bill is still in committee but due out on the 4th Friday of June.

### OPPOSITION TO SHARED PARENTING

It should be noted that Shared Parenting bills have been submitted for almost 30 years although none have become law. That's because there is more money in keeping the law unconstitutionally one-sided as it is now... and more money as time has gone on and the divorce and domestic violence industry has grown.

If any of these bills gets out of committee, there will be massive opposition from the most powerful, moneyed, and influential special interest groups that have dominated divorce and domestic violence legislation more and more over these last 30 years.

Keep your letters in support of shared parenting coming to your legislator, but realize that massive demonstrations and civil disobedience will be the only way to force the constitutional divorce bills

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## Debunk the Four Arguments Against Shared Parenting

**R**inaldo Del Gallo, an officer of the Berkshire chapter of The Fatherhood Coalition in a 'letter to the editor' of the *Berkshire Eagle* rebutted the four arguments that are so often used against the circumstance of Shared Physical and Legal Custody of Children after a divorce or paternity suit. It's instructive to review these four arguments so that you can be ready to rebut them too. I'll only paraphrase parts of Del Gallo's rebuttal here, since I wish to broaden the argument.

A few orienting facts are appropriate. First, there are two types of custody: legal and physical. Each of these can be shared or given fully to one parent. The parent who has full physical custody is considered the custodial parent, the other – the noncustodial parent. Second, the noncustodial parent is obliged under law to pay money weekly to the custodial parent for whatever use she chooses. This money is euphemistically called 'child support' – but 'child extortion' is a more appropriate term. The level of child support payments leaves most noncustodial fathers indigent or nearly so. Third, the visitation schedule of noncustodial parents is generally alternate weekends and perhaps one three-hour meeting during the week. This 'visitation' predicament undermines the parenting status of the noncustodial and generally reduces him to little more than an 'uncle' in a couple of years at best. Alienation of the noncustodial parent from the children to varying degrees is effectuated by the custodial parent to undermine any future possibility of a change in physical custody – for the obvious above disadvantages that it affords. With that said, The four standard arguments are:

1. Sole physical custody should go to the primary caretaker. (Since that generally is the mother, she should get physical custody.)

2. Children need a stable environment and therefore should not spend equal time with both parents. Somehow the child 'ping-ponging' back and forth is not in the 'best interests of the child' – the supposed standard to determine custody.

3. Children should not be exposed to parental conflict. (Arguments about what's best is supposedly injurious to the child. Inability to communicate is the court's euphemism for the father not agreeing with what the mother wants.)

4. Shared Parenting is unworkable because it is not practical given the distance parents live apart from each other. (This is like saying it's unworkable because it is unworkable. How and why did the parents move so far away from each other? And which parent made it unworkable?)

Del Gallo points out that arguments 1 and 2 are rebutted, among other studies, by a published study in *Journal of Family Psychology* by Dr. Robert Bauserman who concludes "Children in joint (shared physical) custody arrangements had less behavioral and emotional problems, had higher self-esteem, better family relations and school performance than children in sole custody arrangements." "In fact, all these children were as well adjusted as intact family children on the same measure", said Bauserman, "probably because joint (shared physical) custody provides the child with an opportunity to have ongoing contact with both parents." It is also absurd that living in two homes makes an unstable environment for the child; it actually reinforces how many more of his relatives can love and care for him.

In essence, mom (alone) has veto power over shared parenting because all she has to do is ensure that "the parents can't get along."

Points 3 and 4 are rebutted by the very fact that not having a default of shared parenting strategically forces the poten-

tial custodial parent to create conflict and unworkable circumstances so 'she' can claim the reward of full physical custody of the child by default under present law since the inability to communicate and/or agree (with the mother!) is often the standard by which judges dismiss the father's claim for shared parenting. This standard is in turn driven by the 'best interest of the child' doctrine which recognizes conflict as being inherently bad for the children.

There are firm constitutional rights that prevent the state from taking away your right to parent your child that the state is doing under present state divorce laws. The fact that there are two fit parents does not necessarily allow that one of these parents should be divorced from his children and lose other fundamental rights. The state must accommodate both parents with their full constitutional rights. Therefore, some default of shared physical and legal custody is constitutionally necessary. The 'best interest of the child' is not the prevailing constitutional standard.

To make 'best interest of the child' arguments such as above without first demanding your constitutional right to shared custody unwittingly validates the states divorce law authority to determine what custody or lack thereof a fit father should have. It reduces the father to only one participant in the state's (meaning the special interests groups in control) determination of the best 'social engineering' of child development. Rinaldo Del Gallo is well aware of the constitutional rights that all parents have and the transgressions of these rights of fathers that Family Court judges commit; but newspaper 'sound bites' simply don't allow the full argument to be made. He knows that the 'best interest of the child' standard is infinitely flexible and allows the judge complete discretion to abrogate the father's right to parent and restrict many more of his fundamental rights to his property, income and his self-

(Turn to **Four Arguments** on page 6)



# A Father's Rights Manifesto

**T**he path to equality for fathers and their children in Massachusetts will not be achieved by merely educating the politicians and the courts about the benefits of shared parenting. The courts and the politicians have already been massively educated – by our enemies, and with our (taxpayer) money no less!

The fathers rights movement must seek to put itself inside the minds of our enemies (the courts and all their Domestic Violence/child support/Guardian Ad Litem/DSS/social-services sub-regimes) and influence their very thought processes, to wit:

The court must begin to perceive itself as being in a *state of siege*.

Let them pretend that fathers are *not* being systematically persecuted by clinging to their mantra that they act only to protect "the best interests of the child."

Let them read – and believe, if they wish – Sen. Cheryl Jacques' legislative committee report on GALs, and let them believe that the problem with the GAL system is that they do not properly take into account domestic violence (perpetrated by fathers, of course) when making custody and visitation court recommendations.

Let them receive agents of another branch of government into their houses and believe that it is perfectly Constitutional to receive payments from an arm of the Executive branch, and that this does not constitute a breach of Separation of Powers and that it does not set up almost a mandate to make fathers non-custodial parents simply because they are overwhelmingly the parent with the higher income and will therefore generate the highest income to the courts.

Let them attend seminars about the need to address this growing army of so-called "pro se" litigants, and pretend that there is no gender component to

this growing trend.

Let them preach to themselves, using their Judicial Training Institute and various other "Institutes" to train them about domestic violence, who in turn hire all the feminist Domestic Violence organizations (which we are forced to support with our tax dollars) such as EMERGE and Jane Doe to do the training.

Let them read *Boston Globe* stories that pretend that the problem in the courts is *not* driven by the persecution of fathers and their grassroots, bootstrap efforts to represent themselves vigilante-style because they have learned the hard way that the family court system is their enemy and that their best hope lies in learning the law themselves and taking charge of their own cases.

Let them pretend that it is instead higher case loads, pro se litigants, budget cuts, and political struggles between Finneran and the Supreme Judicial Court, etc, etc.

Let them believe and say whatever the hell they want – *but make sure that eventually the truth of their predicament becomes undeniable to them* – that fathers in Massachusetts flat-out reject all their nonsense about protecting the interests of children, because the facts speak for themselves:

When a mother and a father walk into court, who walks out in physical possession of the children?

When a mother and a father walk into court, who walks out with a court order empowering the state to automatically give them a third or more of the other parent's income?

When a mother and a father walk into court, who walks out with a court order severely restricting their civil liberties, including the right to speak (let alone be with) their own flesh-and-blood children?

When a mother and a father walk into court, who walks out in handcuffs led by a bailiff?

When a mother and a father walk into court, who walks out with the stench and accusation of possibly being the sickest of all human beings: someone who rapes their own children?

No, thank you. We don't buy that all these things happen overwhelmingly to fathers and practically never to mothers purely by coincidence. And furthermore, we won't even bother to educate you. We instead, purely and simply, REJECT YOU and any and all moral authority you claim to have.

Consider yourself in a *state of siege*.

We will be inside your courtrooms, better prepared and able to represent ourselves and hold YOUR feet to the fire than we could ever be if we instead chose to pay thousands of dollars to any old attorney.

We will file so much litigation to demand justice for ourselves and our children that we will bring you to your knees.

We will be outside your courtrooms with placards and bullhorns and marching feet.

We will seek an ever-increasing amount of publicity in the media.

We will educate politicians that father's rights is not an issue that they can ignore.

We will *not* play by your rules. We will not seek accommodation with you. You are our enemy, and you must be purged. You must be replaced by people who have not been subjected to decades of feminist drivel and psychobabble indoctrination.

We demand you evict all your battered women's advocates and so-called "victim-witnesses" within your halls that are an affront to the fundamental principles of equal protection and the presumption of innocence.

We demand you divest yourself of your arrangement with the DOR, which belong to another branch of government.

(Turn to **Manifesto** on page 6)



# Manifesto

(Continued from page 5)

We demand an end to your use of feminist-indoctrinated GALS and all other psychiatrists and psychologists.

We will not cooperate with court-appointed psychiatrists, social workers, GALS, and other witchdoctors that have successfully deluded the courts into accepting them as practitioners of a real science. Psychiatry is not science, and has no forensic value.

We will not rest until the unholy marriage of feminist jurisprudence and psychology is a bad memory.

We demand the rule of law that holds the rights to one's children to be a "fundamental liberty interest." This right should only be restricted when there is provable harm to the child in question, as determined under the standard of at least clear and convincing evidence.

When the courts realize and accept that they are in a true state of siege, only then will we begin to see real change.

It won't happen through education, it will happen through political force. We must wield that power and take this War on Fatherhood to them.

# Four Arguments

(Continued from page 4)  
determination.

We believe that fathers should first and foremost demand their constitutional right to parent, and the state's authority should be used to ensure the father's full, equal access to his children. All other



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- |  |                                    |
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Call or visit the web site  
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for all meeting details.

# YES!

## I want to help end the discrimination against divorced and single fathers!

NAME \_\_\_\_\_ PHONE \_\_\_\_\_

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