IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

WESLEY C. SMITH Plaintiff	)	
v.	)	Case No: 7:07-CV-00117
CHERI SMITH, et als Defendants	)	

#6 - REPLY TO ISSUES ADDRESSED AT HEARING

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The First Amendment is often inconvenient. But that is beside the point. Inconvenience does not absolve the government of its obligation to tolerate speech. - Justice Anthony Kennedy

INTRODUCTION

1. The Plaintiff, Wesley C. Smith is filing this reply to the issues addressed in the hearing on the motions to dismiss heard May 15, 2007.

PROCEDURAL HISTORY

2. Cheri Smith filed for a PPO on false grounds in Sept 2002. It was dismissed in Oct 2002 in JD&R and expunged in 2003 by the Circuit Court.

3. She then filed for and was awarded temp custody in Oct 2002. The Plaintiff got significant visitation and even got the court to order our handicapped son removed from professional day care and placed back in my care for daycare on top of visitation. The Plaintiff even got back joint legal custody. The parties were still living together.

4. In June 2003 Cheri Smith moved out of the home and filed for Divorce two weeks later

5. The next month the JD&R court issued its final order granting the mother sole custody with significant visitation for the father. Since the order did not address the mothers "uncontrollable rage" the father appealed to the Circuit Court hoping it would take some action to protect our son.

6. The custody appeal was chancery No 53810 and was scheduled for a hearing on Sep 11th 2003. On Sept 10th the very day before, Judge Potter held a hearing on the mother's motion, **in the divorce case** Chancery 53360 (not the custody appeal), about selling the house. In a surprise to everyone there he said he would not hold the hearing in the custody appeal case but would simply award custody at that hearing. His surprise ruling deprived both parties of the ability to present evidence or call witnesses.

7. No order was ever entered merging the two cases.

8. The surprise ruling in the wrong case raises may jurisdiction issues. Since custody had been ruled on by JD&R, a divorce case in Circuit Court did not have jurisdiction to award custody. Since it was never merged with the custody appeal, it didn't aquire jurisdiction by that approach. Given the hearing was conducted without notice that is a Due Process violation that would deny it jurisdiction. But to make things worse, Mr. Smith was the Defendant in the Divorce Case and Cheri Smith never served him with process, thus depriving the court of subject matter jurisdiction to hear the divorce case.

9. So thanks to Judge Potter "saving time" by not allowing us to come back for the scheduled custody hearing in the other case. We ended up with a divorce case that had no subject matter jurisdiction, making rulings on custody that it had no authority to do even it it had subject matter jurisdiction over divorce, and no hearings or orders taking place in the custody appeal which would have had jurisdiction.

10. In Aug 2004 Judge Farris held and ex parte hearing restricting the fathers first amendment rights, the order was entered in Sept 2004. The father did not comply with all the first amendment restrictions and the mother asked the court to enforce it.

11. The order restricting First Amendment rights was never appealed, but if it had it would have been rejected as not being a final appealable order just as the visitation appeal was.

12. In Dec 2005 Loretta Vardy filed a false motion to suspend visitation one week after the mother wrote our son would be "crushed" if the father missed just one visitation period.

13. On Jan 3rd 2006 Judge Alston in a hearing he described as "ex parte" suspended visitation until a Jan 18th hearing at which he knew the GAL would not be able to attend and that he did not hear himself. He made no finding of harm or danger to our son.

14. Judge Millette handled the hearing on Jan 18th and refused to let the father present evidence of the false statements in the motion. Judge Millette stated that he was not going to let me accuse an officer of the court of lying, and threatened me with jail for attempting to present evidence that Loretta Vardy had in fact lied to the court. Judge Millette refused to review the merits of the motion but simply stated that Judge Alston had already ruled on that (then what in the world was this hearing for?). Judge Millette entered an order that he had already typed up stating visitation was to be suspended. He made no finding of harm or danger to our son.

15. I filed a motion to reconsider and Judge Alston denied it stating there was no excuse for not presenting my case to Judge Millette. Apparently Judge Alston doesn't consider threat of jail an excuse.

16. Visitation was suspended with the court refusing my motions to reinstate visitation. Judge Potter even denied to reinstate visitation.

17. During the time visitation was suspended my son became depressed, the mother took him to a psychologist and he was diagnosed with depression. Proving correct her statement that he would be crushed.

18. I was still allowed weekly phone calls to my son.

19. I tried to appeal the orders suspending visitation but the appeals court refused, as they were not final orders.

20. 17 months after visitation was suspended Judge Potter held the final divorce trial in May 2006. My son attended the hearing at a witness. My son insisted on being allowed to see me and give me a hug. I was allowed to have lunch with him during a break in the trial and to keep him overnight between the two days of trial, without any court order being entered.

21. Visitation was resumed in the Final Divorce Decree

22. The Final Divorce Decree was appealed and was dismissed due to a rule violation; a motion to reconsider had been filed but not ruled on yet.

23. In April 2007 the court granted my motion to increase visitation with no objection from either the mother or the GAL.

TO GET ATTENTION OR WIN

24. I made the statement that I was not too optimistic of winning the case - especially damages against the judges. The Defendant's have attempted to twist this into saying I'm trying to make a political statement or get attention instead of having a valid case. That position is utterly false.

25. [No offense intended to Judge Conrad, I know almost nothing about him and was favorably impressed with him at the hearing, asking intelligent questions putting him well above the typical Virginia judge] however I am smart enough to recognize that with a judge judging other judges, it's not an entirely fair process and that typically the courts have refused to hold judges accountable even if they legally should have been. [Kind of like trying to convince me to use Microsoft Windows instead of Mac OS X, you can make a valid argument, but the odds of getting me to swap is pretty much the same as getting a federal court to hold state judges accountable for damages];

26. Ideally someone who was not a judge, not an attorney, and not a member of any bar association, would hear this case, as there will be unavoidable bias. With that type of connection in any other situation a judge should recuse himself, however this is an issue that applies to ALL

judges so that would be no help at all, and we have no alternate way to resolve the case so we must go ahead in spite of unavoidable professional bias.

27. My recognizing that problem in no way means that I do not have valid claims against the judges, including for damages. I indeed think I have such a case and think the all the relief I requested should be granted. However as I am well aware of by now **"should be granted"** is an entirely different concept from **"will be granted".**

28. I don't spend endless hours reading legal books looking for case citations to just make a political statement but rather I'm looking to see if I have a valid case, then finding that I do, I've put it into court to see if the court agrees with me. Far from just making a political statement, I fully expect to review the reasons for any adverse ruling and for any reasoning that doesn't make sense to me I plan to appeal.

29. I'll repeat my statement again that the above comments imply no disrespect of Judge Conrad. So far the only things I know about him are good, and I was both surprised and pleased to see him ask questions that showed an interest in the case. Still having a judge rule on judges is very much like having a football fan play referee for his favorite team. He may try to be impartial but that's very difficult to achieve on an issue that affects us personally. I'm sure I would also have a difficult time being impartial if the situation was reversed and I got to pass judgment on state judges.

30. It is true however my main motivation for the lawsuit is not an attempt to get rich quick. While I think I have a valid case for damages, and considering the harm inflicted that they should be large, my greatest interest in this case is to attempt to try and push the Virginia court system to start paying more attention to the constitution so other parents and children don't have to endure the ordeal that these Judges put my son and myself through. It has truly been "cruel and unusual" punishment that no parent or child should have to endure, not even less than perfect parents.

JURISCICTION

31. Mr. Ingold and Mr. Tatel objected to Jurisdiction on various grounds, including if the

Western District was proper, Younger Doctrine, Rooker-Feldman doctrine, etc.

32. Younger and Rooker-Feldman are not lack of jurisdiction but are more accurately described

as abstention - that is a refusal to exercise jurisdiction.

"If jurisdiction does not exist, one never reaches the question of whether to abstain. U.S. v. Will, 449 U.S. 200, 216, 101, S. Ct. 471, 66 L.Ed. 2d 392, 406 (1980)

Abstention is generally not favored in actions brought under this 42 uscs 1983 Bergman v stein (1975, SD NY) 404 F Supp 287

There is limited exception to doctrine of abstention where challenge is made to local law on ground that it impinges on fundamental civil liberties protected by Fourteenth Amendment. Embassy Pictures Corp. V Hudson (1964, WD Tenn) 226 F Supp 421

Abstention is available in civil cases **only** where stat's proceedings implicate overriding state interests and provide **adequate opportunity to raise constitutional challenges**; interest of state in administering its lease laws without federal interference is not of sufficient magnitude to persuade court to invoke abstention. Stewart v Hunt (1984, ED NC) 598 F Supp 1342.

Abstention is rarely proper when fundamental constitutional rights, particularly First Amendment rights, are involved. Fernwood Books & Video, Inc. v Jackson (1984, SD Miss) 601 F Supp 1093.

Comity did not require federal District Court to abstain from entertaining action brought under 42 uscs 1983 by civil rights groups and others for purpose of enjoining enforcement of state court order enjoining boycott and awarding damages against civil rights groups. Henry v First Nat. Bank (1979, CA5 Miss) 595 F2d 291, 100 S Ct 1020

In civil rights action under 42 uscs 1983 28 uscs 2283 does not bar federal injunction against enforcement of state court judgment. Gresham Park Community Organization v Howell (1981, CA5 Ga) 652 F2d 1227

33. This court not only has jurisdiction but has an obligation to exercise that jurisdiction:

Existence of jurisdiction implied duty to exercise it, and that its exercise might be onerous did not militate against that implication Second Employers' Liability cases (1912) 223 US 1, 56 L Ed 327, 32 S Ct 169.

Where jurisdiction of court is invoked on grounds which, if true, spell out existence of federal jurisdiction, cause must be entertained for purpose of fully determining merits either by way of motion or, by trial. Dry Creek Lodge, Inc. v United States (1975, CA10 Wyo) 515 F2d 926, 20 FR Serv 2d 940

It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that **it must take jurisdiction if it should**. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. **We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given**. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid; but we cannot avoid them. All we can do is, to exercise our best judgment, and conscientiously to perform our duty. In doing this, on the present occasion, we find this tribunal invested with appellate jurisdiction in all cases arising under the constitution and laws of the United States. We find no exception to this grant, and we cannot insert one. Cohen v. Virginia, 19 U.S. 264, 404 (1821)

JURISCICTION - Western District

34. This issue was merely mentioned and not really argued by the Defendant's. As stated in the complaint "Venue is proper in the Western District of Virginia pursuant to 28 U.S.C. 1391(b), because the Plaintiff's rights were violated in this district and at least one defendant resides in this district."

35. This is one of the few issues that Mr. Smith did get a (free) legal opinion on and was told by an attorney that he should file in the western district because that is where his rights were violated. Yes much of the paperwork that caused the deprivation of rights took place in the eastern district, the paperwork isn't the problem but rather that Mr. Smith was prevented from exercising his constitutional rights in the western district.

36. 28 U.S.C. 1391(b) states "A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where **any** defendant resides, if all defendants reside in the same State," Given that Defendant Chitwood resides in the western district then that is sufficient to make jurisdiction in the western district of Virginia proper.

37. It should be also noted that the actions taken by Defendant Chitwood also took place in the Western District. He is guilty of the same type of Due Process violations as the other "judges"

although in a less hostile manner (got to give him credit for that). On Feb 22, 2007 Mr. Chitwood stated that he was going to uphold the order to withhold without making a ruling as to if the circuit court order it was valid or not. Whether or not the circuit court order is valid or void determines if Mr. Chitwood had any jurisdiction or not. That is not a step he can skip. Enforcing a void order is illegal and is a cause of action against Mr. Chitwood.

Where evidence sought to be submitted at trial concerns very process by which administrative board rendered its findings and decision, refusal to consider such evidence by trial court uppon review of that decision constitutes denial of due process. Mediate v Indianapolis (1980, Ind App) 407 NE2d 1194

38. The Plaintiff could have chosen either the Eastern or Western Districts, but given he can't hire an attorney to represent him, clearly the Western District is the most convenient for him as he will have to personally attend court. Given the other parties are represented by attorney's the choice of district will have little impact on them.

JURISCICTION - Diversity / Federal Question - 28 U.S.C. § 1331

39. The issue was raised that there is no diversity of citizenship in this case. That does not affect jurisdiction as the complaint stated "The jurisdiction of this Court, therefore, is invoked under 28 U.S.C. § 1331" which states "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States"

Diverse citizenship was not essential to exercise of federal question jurisdiction. Ames v Kansas (1884) 111 US 449, 28 L Ed 482, 4 S Ct 437

Where cause of action is asserted under 42 USCS 1983 **neither diversity of citizenship nor amount in controversy is prerequisite** to jurisdiction of federal distric court. Bottone v Lindsley (1948, CA10 Colo) 170 F2d 705; Campise v Hamilton (1974 SD Tex) 382 F Supp 172

... District Court does have jurisdiction under 28 USCS 1331 to review **due process** claims and claims of **noncompliance** with statutory directives or applicable regulations. Virginia ex rel. Commissioner, **Virginia** Dept. Of Highways & Transp. v Marshall (1979, CA4 Va) 599 F2d 588.

40. This case is a civil action arising under the Constitution and laws of the United States thus diversity is not required. The issues raised are civil rights violations, due process violations,

freedom of speech violations, constitutional parental rights, and even the mother welfare/"child support" issue is based on Federal laws - Title 42 subchapter IV part D.

In federal question cases under 28 USCS 1331 where complaint is so drawn as to seek recovery directly under Constitution or laws of United States, federal court must entertain suit, except where federal question clearly appears to be immaterial and made solely for purpose of obtaining jurisdiction, or where such claim is wholly insubstantial and frivolus. Southpark Square, Ltd. v Jackson (1977, Ca4 Miss) 565 F2d 338, reh den (CA5 Miss).... cert den
Complaint may allege violations of rights arising under federal law sufficient for court to assume jurisdiction, but at the same time **fail to state a cognizable claim; if this is case, court shall take jurisdiction to decide merits** so long as issues are not frivolous on face. Chesepeake Bay Village, Inc. v Costle (1980, DC Md) 502 F Supp 213.

Jurisdiction of Federal court to entertain action as one arising under constitution and laws of united states is not defeated by possibility that complaint may fail to state cause of action on which relief may be granted Bell v Hood (1946) 327 US 678, 90 L Ed 939, 66 S Ct 773, 13 ALR2d 383

41. Clearly this is a case involving a Federal Question.

JURISCICTION - 28 U.S.C. § 1343

42. Mr. Smith also invoked jurisdiction via 28 U.S.C. § 1343. The Defendant's have largely ignored this issue. They only argued insufficient facts to prove a conspiracy, which even if true would not prevent jurisdiction.

43. The Defendant's totally ignored the other provisions of 28 U.S.C. § 1343. While Mr. Smith did allege a conspiracy by the Defendant's he **did not limit his claim of jurisdiction** via 28 U.S.C. § 1343(1). Mr. Smith has alleged conduct that also qualifies for jurisdiction via 28 U.S.C. § 1343(2) and 28 U.S.C. § 1343(3).

§ 1343. Civil rights and elective franchise
a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
(2) To recover damages from any person who **fails to prevent or to aid in preventing any wrongs** mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
(3) To redress the deprivation, under color of any **State law**, statute, ordinance, regulation, **custom** or usage, of **any right, privilege or immunity** secured by the Constitution of the United States or

by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

44. Note that § 1343(2) does not require active participation in a conspiracy but rather only failure to prevent or aid in preventing the deprivation.

45. § 1343(3) doesn't even mention a conspiracy or the conspiracy statute. It sets a much lower threshold. A deprivation to have occurred and even allows the cause to be simply state law or "custom". Certainly it is custom in Virginia to deprive fathers of their constitutional rights. According to a study conducted by the Joint Legislative Audit And Review Commission Of The Virginia General Assembly Interim Report: Child Support Enforcement (http://jlarc.state.va.us/Reports/Rpt248.pdf) 96% of custodial parents in Virginia are female vs. 4% for male, indicating severe gender bias and unequal protection in the state courts.

46. Clearly, even if the Plaintiff ultimately fails to prove a conspiracy § 1343 still provides jurisdiction to hear the case.

JURISCICTION - Exhaustion / State Court

47. The Defendant's claim that I must "exhaust" state judicial remedies prior to going to federal court. That is against case law, even specifically for a similar case:

Father's 42 uscs 1983 lawsuit alleging that county sheriff deputies committed constitutional torts by wrongfully depriving him of custody of his minor child is **not subject to dismissal** on ground that plaintiff has various remedies open under state and uniform custody law, since plaintiff is relying on liberty interest to custody of his child, and not merely arguing that certain procedural protections were not afforded him, or that de was deprived of "property" interest. Elam v Montgomery County (1983, SD ohio) 573 F Supp 797

if remedy is available under civil rights act (42 uscs 1983) plaintiff need not first seek redress in state forum. Preiser v Rodriguez (1973) 411 US 475, 93 S Ct 1827

Civil rights action in federal court under 42 uscs 1983 is free of requirement that state judicial or administrative remedies must first be exhausted. Ellis v Dyson (1975) 421 US 426, 95 S Ct 1691

Assertion in federal court of federal claim under civil rights act (42 uscs 1983), giving right of action against person who, under color of state law, custom, or usage, subjects another to deprivation of any rights, privileges, or immunities secured by federal constitution, need not await

attempt to vindicate same claim in state court. McNeese v Board of Education (1963) 373 US 668, 83 S Ct 1433.

individuals seeking relief under civil rights act (42 uscs 1983) need not present their federal constitutional claims in state court before coming to federal forum. Zablocki v Redhail (1978) 434 US 374, 98 S Ct 673

Claimant under 42 uscs 1983 does not have to exhaust state judicial remedies before pursing his federal cause of action. Scott v Vandiver (1973, CA4 SC) 476 F2d 238; Conover v Montemuro (1972, CA3 Pa) 477 F2d 1073

48. There is no **practical** state remedy. As the most egregious deprivations were caused by "orders" in the state court that are **no longer in force** therefore **not appealable**. The January 2--5 orders suspending visitation, and the Sept 2004 order restricting free speech, were all "interlocutory" (temporary) orders and thus the Virginia Court Of Appeals claimed it didn't have jurisdiction to hear the appeal. Not only were those three orders temporary but also they have been replaced with a final "order" (Final Divorce Decree) and no longer considered to be in effect.

49. The only potential remedy in state court would be to file a civil rights case in state court. Sure I could file and ask Judge Potter to rule himself guilty but what are the odds of that happening? Even if he recuses himself and has a friend/coworker, who is guilty of the committing the same crimes (to other victims), handle the case, the odds of a fair hearing is still incredibly low.

This legislative history makes evident that Congress clearly conceived that it was altering the relationship between the States and the Nation with respect to the protection of federally created rights; **it was concerned that state instrumentalities could not protect those rights**; it realized that **state officers might, in fact, be antipathetic to the vindication of those rights**; and it believed that **these failings extended to the state courts**. MITCHUM v. FOSTER, 407 U.S. 225 (1972)

50. The state judicial system is corrupt and gender biased. Any action in state court is nothing less than asking the guilty to pass judgment on themselves and their cohorts. The situation in Virginia's courts bears a striking similarity as to the condition of southern courts that necessitated passing Civil Rights legislation in the first place.

“It is clear from the legislative debates surrounding passage of 1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment "against State action, . . . whether that action be executive, legislative, or **judicial**." Ex parte Virginia, 100 U.S. 339, 346 (emphasis supplied). Proponents of the legislation noted that **state courts were being used to harass and injure individuals**, either because the state courts were powerless to stop deprivations or **were in league with those who were bent upon abrogation of federally protected rights**.

As Representative Lowe stated, **the "records of the [state] tribunals are searched in vain for evidence of effective redress** [of federally secured rights] . . . . The case has arisen . . . when the Federal Government must resort to its own agencies to carry its own authority into execution. **Hence this bill throws open the doors of the United States courts to those whose rights under the Constitution are denied or impaired."** Cong. Globe, 42d Cong., 1st Sess., 374-376 (1871). This view was echoed by Senator Osborn: "**If the State courts had proven themselves competent to suppress the local disorders**, [407 U.S. 225, 241] or to maintain law and order, we should not have been called upon to legislate . . . . **We are driven by existing facts to provide for the several states in the South what they have been unable to fully provide for themselves; i. e., the full and complete administration of justice in the courts**. And the courts with reference to which we legislate must be the United States courts." Id., at 653. And Representative Perry concluded: "Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices . . . . [A]ll the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared detection. **Among the most dangerous things an injured party can do is to appeal to justice**." Id., at App. 78. 31” MITCHUM v. FOSTER, 407 U.S. 225 (1972)

51. As noted above by the U.S. Supreme Court the purpose of the Civil Rights Act was to provide a federal remedy to enforce civil rights when states including state courts were unwilling or unable to do so. In light of the purpose of the Act the Defendant’s argument about relying on a mythical state court remedy is absurd - nothing more than “Let them eat cake” in legaleaze.

52. Courts have consistently ruled that exhaustion is not required:

Barring only exceptional circumstances or explicitly statutory requirements, resort to federal court could be had **without first exhausting judicial remedies of state courts**. Lane v Wilson (1939) 307 US 268, 83 L Ed 1281, 59 S Ct 872.

Since federal remedy under Civil Rights Act is supplementary to any remedy that may exist under state law**, it is not necessary to seek state remedy before invoking federal one**. Carr v Thompson (1974, WD NY) 384 F Supp 544.

Litigant who has properly invoked jurisdiction of federal district court **cannot be compelled to accept instead a state court's determination of his claims**; this would be contrary to principle that when federal court is properly appealed to in a case over which it has by law jurisdiction, it is

duty of court to take such jurisdiction. England v Lousiana State Bd. Of Medical Examiners (1964) 375 US 411, 11 L Ed 2d 440, 84 S Ct 461.....

Person asserting cause of action based on violation of rights secured by Constitution of United States **need not resort to state forum**, since 28 USCS 1331 provides federal court jurisdiction. Holladay v Roberts (1977, ND Miss) 425 F Supp 61

Relief under 42 USCS 1983 may not be defeated because relief was not first sought under a state law which provided a remedy. It has been held that it is no answer that the state has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal remedy is involved. McNeese v Board of Education, 373 US 668, 10 L Ed 2d 622, 83 S Ct 1433.... Monroe v Pape

JURISCICTION - Younger

53. The Defendant's have asked the court to abstain from exercising its jurisdiction based on the Younger doctrine (Younger v. Harris). Apparently the point of the Younger Doctrine is to keep Federal Courts from interfering with ongoing state court trials.

Younger abstention doctrine does not apply to 42 uscs 1983 action brought to restrain state judiciary from conducting private tort litigation in a way that allegedly threatens to violate plaintiff's constitutional rights. Miofsky v Superior Court of California (1983, CA9 Cal) 703 F2d 332

54. Younger does not apply to the major violations of free speech and suspended visitation were caused by "temporary" court orders that **are no longer in force an not appealable**. Thus by no stretch of imagination could this Federal case be considered interference with them.

> Courts have also held that, since a void order **is not a final order**, but is in effect no order at all, **it cannot even be appealed**. Courts have held that a void decision is not in essence a decision at all, and never becomes final. Consistent with this holding, in 1991, the U.S. Supreme Court stated that, "Since such jurisdictional defect deprives not only the initial court but also the appellate court of its power over the case or controversy, to permit the appellate court to ignore it. …[Would be an] unlawful action by the appellate court itself." Freytag v. Commissioner, 501 U.S. 868 (1991); Miller, supra. Following the same principle, it would be an unlawful action for a court to rely on an order issued by a judge who did not have subject-matter jurisdiction and therefore the order he issued was Void ab initio.

55. Younger also does not apply because all the claimed “orders” including the Final Divorce Decree are in fact null & void and unenforceable. If Mr. Smith is correct then there are no orders to interfere with and no ongoing case to interfere with. See *Catz v. Chalker* 142 F.3d 279

56. The Defendant’s want to apply Younger in a Motion to Dismiss but that is putting the cart before the horse. The Plaintiff has made the claim that the circuit court NEVER had jurisdiction (and would have lost jurisdiction due to misconduct), which would mean no court orders and no court case to apply Younger to. Before Younger could be applied this court would need to hear evidence and rule on the merits of the argument that there was a lack of jurisdiction that caused the orders to be null and void.

57. Even if the orders were deemed not to be void. Younger would still not prevent this court from issuing injunctions and declaratory relief. The Defendant has argued that 28 U.S.C. 2283 prevents this court from issuing an injunction related to a state court case but that incorrect because it contains an exception, "except as expressly authorized by Act of Congress.", and the U.S. Supreme Court has ruled that 42 U.S.C. 1983 is an express authorization by Congress to issue an injunction:

Title 42 U.S.C. 1983, which authorizes a suit in equity to redress the deprivation under color of state law "of any rights, privileges, or immunities secured by the Constitution . . .," is within that exception of the federal anti-injunction statute, 28 U.S.C. 2283, that provides that a federal court may not enjoin state court proceedings "except as expressly authorized by Act of Congress." MITCHUM v. FOSTER, 407 U.S. 225 (1972)

“In Younger, this Court emphatically reaffirmed "the fundamental policy against federal interference with state criminal prosecutions." … however, the Court clearly left room for federal injunctive intervention in a pending state court prosecution in certain exceptional circumstances - where irreparable injury is "both great and immediate," 401 U.S., at 46 , where the state law is "`flagrantly and patently violative of express constitutional prohibitions,'" 401 U.S., at 53 , or where there is a showing of "bad faith, harassment, or . . . other unusual circumstances that would call for equitable relief." 401 U.S., at 54” - MITCHUM v. FOSTER, 407 U.S. 225 (1972)

58. The Defendant’s here did act in bad faith, the state law is blatantly unconstitutional and the misconduct by the Defendants is causing great irreparable injury to both Mr. Smith and his

handicapped son. Parental rights are covered by the liberty interests of the First Amendment and deprivations of that constitute irreparable injury. Thus Younger is no bar to an injunction to stop further injury to both the parent/child relationship or Mr. Smiths right to Freedom Of Speech:

"Loss of First Amendment Freedoms, for **even minimal periods of time**, unquestionably constitutes irreparable injury. - Elrod v. Burns, 427 U.S. 347; 6 S. Ct. 2673; 49 L. Ed. 2d (1976)

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).

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).

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." Troxel v. Granville, 530 U.S. 57, 65 (2000)

59. Also Younger does not apply given that there are no vital state interests at stake, the Defendant's has not specified any important state interests, and the proceedings have ended.

Though we have extended Younger abstention to the civil context, we have never applied the notions of comity so critical to Younger's "Our Federalism" **when no state proceeding was pending nor any assertion of important state interests made**. Ankenbrandt v. Richards (91-367), 504 U.S. 689 (1992)

JURISCICTION - Rooker-Feldman

60. The Defendant's have also asked the court to abstain from exercising jurisdiction based on the Rooker-Feldman Doctrine.

61. As Mr. Smith is not asking this court to review or modify any court ruling, Rooker-Feldman has no application to this case. The closest the Plaintiff comes to approaching review of a court order is his request to recognize an order as null and void. The Plaintiff is only asking for the court to state recognition that the order is already null and void. The Plaintiff is not asking the court to vacate or void it, or to make any change at all in the status of the order, **but rather to simply**

declare what the status of the order is. The court must declare the status of the "order" before it could apply Rooker-Feldman, as if the Plaintiff is correct there is no order to apply Rooker-Feldman to.

62. Or another way to look at it, the Plaintiff is asking the court to determine which court order is valid. Both the JD&R courts issued custody orders granting the mother sole custody. The Plaintiff is asking the court which of the two is enforceable because the state courts, including court of appeals have refused to answer that question. If the Circuit Court order is already void then the JD&R order is the current valid custody order. If the Circuit Court order is not already void then it is the current valid custody order. I am asking no more than the court rule on the merits of jurisdiction to decide between the two.

63. Or to put it yet another way the Plaintiff has requested the court to rule if there is a court order from the Prince William County Circuit Court. If there is not any order obviously Rooker-Feldmand can't apply to this case. If the "order" is void, it's the same, as it never existed, if it never existed, it certainly can't be the cause to abstain from exercising jurisdiction.

Since **a void order has no legal force or effect** there can be no time limit within which to challenge the order or judgment. Further since the order has no legal force or effect, it can be repeatedly challenged, since no judge has the lawful authority to make a void order valid. Bates v. Board of Education, Allendale Community Consolidated School District No. 17, 136 Ill.2d 260, 267 (1990) (a court "cannot confer jurisdiction where none existed and cannot make a void proceeding valid."); People ex rel. Gowdy v. Baltimore & Ohio R.R. Co., 385 Ill. 86, 92, 52 N.E.2d 255 (1943).

The Supreme Court has also noted that [t]he distinction between an action of the court that is void ab initio rather than merely voidable is that the former involves the underlying authority of a court to act on a matter whereas the latter involves actions taken by a court which are in error. An order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it, or if the mode of procedure used by the court was one that the court could "not lawfully adopt." The lack of jurisdiction to enter an order under any of these circumstances renders the order a **complete nullity and it may be "impeached directly or collaterally by all persons, anywhere, at any time, or in any manner.**" Singh v. Mooney, 261 Va. 48, 51-52, 541 S.E.2d 549, 551 (2001) (citations omitted) (emphasis added).

We have held that the judgments purporting to wipe out and destroy the contingent remainders were absolutely void, showing on the face of the record (the facts stated in the pleadings and found in the decree) that the court had no authority, power or jurisdiction to render such judgments because the facts stated conclusively showed that the plaintiffs therein had no cause of action for such judgments and had no right thereto whatever. Therefore these judgments could not bind anyone or protect anyone. This is entirely different from cancellation or recision for fraud or failure to comply with procedural requirements which would only make a judgment voidable. A judgment void on the face of the record "may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. * * * **It has no legal or binding force or efficacy for any purpose or at any place. * * * It may be attacked by a person adversely affected by it, in any proceeding, direct or collateral and at any time. * * * situation is the same as it would be if there were no judgment."** (30A Am.Jur. 198, Sec. 45, also p. 780, Sec. 863; 49 C.J.S. 794, Sec. 401; American Law Institute Restatement of judgments, Sec. 11; Noyes v. Stewart, 361 Mo. 475, 235 S.W.2d 333; Davison v. Arne, 348 Mo. 790, 155 S.W.2d 155; Rhodus v. Geatley, 347 Mo. 397, 147 S.W.2d 631; Guhman v. Grothe, 346 Mo. 427, 142 S.W.2d 1; Truesdale v. St. Louis Public Service Co., 341 Mo 402, 107 S.W.2d 778, 112 A.L.R. 135; Gray v. Clement, 296 Mo. 497, 246 S.W. 940; Charles v. White, 214 Mo. 187, 112 S.W. 545; Jewett v. Boardman, 181 Mo. 647, 81 S.W. 186.

64. The Plaintiff has requested the same recognition of a void order as the plaintiff did in Catz,

where a Federal Appeals court ruled that Rooker-Feldman did not apply.

> Our disagreement with the district court comes down to the question of whether Catz's action is a "core" domestic relations case, seeking a declaration of marital or parental status, or a constitutional claim in which it is incidental that the underlying dispute involves a divorce. We conclude that the case is best described as the latter. True, the remedy Catz seeks -- a declaration that the Pima County divorce decree is void as a violation of due process -- would seem to "directly impact the marriage status and rights between the husband Plaintiff and his wife." On the other hand, **if the divorce judgment were unconstitutionally obtained, it should be regarded as a nullity**, see Phoenix Metals Corp. v. Roth, 284 P.2d 645, 648 (Ariz. 1955), and **any decree so stating would change nothing at all**. Further, the declaration Catz seeks would not itself address the merits, or ultimately dispose, of Chalker's divorce petition; she would be free to relitigate her marital status in state court. Finally, Catz is **not asking the district court to involve itself in the sort of questions attendant to domestic relations** that are assumed to be within the special expertise of the state courts -- for instance, the merits of a divorce action; what custody determination would be in the best interest of a child; what would constitute an equitable division of property; and the like. Instead, Catz **asks the court to examine whether certain judicial proceedings, which happened to involve a divorce, comported with the federal constitutional guarantee of due process. This is a sphere in which the federal courts may claim an expertise at least equal to that of the state courts**. *Catz v. Chalker*, 142 F.3d 279, 281 (6th Cir. 1998)

65. The Defendant objected to the use of Catz case simply due to it being in a different circuit, as if a correct ruling or reasoning could be ignored simply because it didn't occur in the 4th Circuit. I have found a 4th Circuit case , although not as similar factually or in relief requested as Catz:

"If he is not challenging the state-court decision, the *Rooker-Feldman* doctrine does not apply. *See, e.g.*, *Washington v. Wilmore*, 407 F.3d 274, 280 (4th Cir. 2005) (holding, post-*Exxon*, that the *Rooker*-Feldman doctrine did not apply because "[the plaintiff's] claim of injury rests not on the state court judgment itself, but rather on the alleged violation of his constitutional rights [by the defendant]")." MOZAFAR H. DAVANI v VIRGINIA DEPARTMENT OF TRANSPORTATION; UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, No. 05-1432

"Davani lost before the Virginia circuit court and then filed a suit in the federal district court raising similar claims to those he presented in the state proceedings.**7** In his federal complaint, Davani did not allege that the state decision caused him injury; rather, he alleged that Appellees discriminated against him in violation of federal and state law. Davani's federal claims do not challenge the state decision and are therefore "independent" from that decision. *Exxon*, 125 S. Ct. at 1527. As the Second Circuit put it well in *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77 (2d Cir. 2005):" MOZAFAR H. DAVANI v VIRGINIA DEPARTMENT OF TRANSPORTATION; UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, No. 05-1432 - Davani, 434 F.3d at 719

66. The Defendant also claims the issues are "inextricably intertwined" but according to the Fourth Circuit that is not an additional test for applying Rooker-Feldman:

Under *Exxon*, then, *Feldman*'s "inextricably intertwined" language does not create an additional legal test for determining when claims challenging a state-court decision are barred, but merely states a conclusion: if the state court loser seeks redress in the federal district court for the injury caused by the state-court decision, his federal claim is, by definition, "inextricably intertwined" with the state-court decision, and is therefore outside of the jurisdiction of the federal district court. *See Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 86-87 (2d Cir. 2005) ("[D]escribing a federal claim as 'inextricably intertwined' with a state-court judgment only states a conclusion. *Rooker-Feldman* bars a federal claim, whether or not raised in state court, that asserts injury based on a state judgment and seeks review and reversal of that judgment; such a claim is 'inextricably intertwined' with the state judgment."); Davani, 434 F.3d at 719

67. The purpose of the Rooker-Feldman doctrine is to prevent a party who loses in state court from appealing that decision to the lower federal courts. Given that the Free Speech and suspended visitation orders are no longer considered current or enforceable by the Prince William County

Circuit Court, obviously the Plaintiff is not seeking to have them appealed or reversed. Thus Rooker-Feldmand does not apply.

JURISCICTION - Domestic Relations

68. The Domestic Relations Exception is another reason Federal Courts give for abstaining from hearing a case. Again this does not apply to this case. The U.S. Supreme Court defined the exception as:

…the domestic relations exception encompasses only cases involving the issuance of a divorce, alimony, or child custody decree, we necessarily find that the Court of Appeals erred by affirming the District Court's invocation of this exception. This lawsuit in no way seeks such a decree; Ankenbrandt v. Richards (91-367), 504 U.S. 689 (1992)

69. As the Plaintiff has been very clear he is not asking for a divorce , is not asking for alimony, nor asking for the court to issue a custody decree, the domestic relations exception does not apply.

Parent who is wrongfully deprived of physical custody of children without due process has cause of action under 42 USCS 1983; **domestic relations exception to federal diversity jurisdiction over custody dispute is inapplicable**. Hooks v Hooks (1985, CA6 Tenn) 771 F2d 935

JURISCICTION - Misc

70. The Defendant's have tried using scare tactics claiming that allowing this case to go forward would "open the flood gates" for other "domestic relations" cases for people who didn't like the state court rulings.

71. Such an argument totally misses the point of this case. This case is not about being happy with the order or not, it is about due process violations including lack of service of process and illegal ex parte hearings. Its about violations of Equal Protection. It is not about the contents of the final order. Indeed the Plaintiff has not asked the court to change the terms of the final order, only to clarify if it is an order or not. If it is an order this court does not have authority to modify it, and if it is not an order there is no need or even possibility that it could be modified.

72. It is doubtful that there would be a flood of other plaintiffs who also were not served with process to start the case or who were victims of illegal ex parte hearings. Even in the unlikely event that was the case, that would only be a short term problem because as soon as state judges saw that the federal courts would take the case they would start making sure defendants were served with process and stop holding ex parte hearings, thus eliminating the justification for other cases to be heard in federal court.

73. In fact the opposite result would be expected. If this court allows the case to go forward and imposes any sanctions on the judges for their misconduct, Virginia judges would take note and start following procedures more carefully resulting in less cases that have valid claims to not just federal court but less cases with claims to appeal to the Virginia Court Of Appeals. The real problem with a flood of suits is when each and every case handled by the judges has gross due process errors because they are used to not having to follow the rules.

74. The Defendant's also argue against it on the grounds of "parallel tracks". Given the Virginia Court of Appeals has refused to hear the case it's hard to see where they come up with "parallel tracks" but even if they do that is no bar to jurisdiction.

A court should not abstain from exercising its jurisdiction based merely on the presence of parallel state and federal suits. See, e.g., Green v. City of Tucson, 255 F.3d 1086, 1097-99 (9th Cir. 2001).

In deciding whether to exercise jurisdiction or abstain when there are parallel state court proceedings, federal courts unflagging obligation is particularly weighty when those seeking hearing in federal court are asserting right to relief under 42 USCS 1983; in such instances the balance is **heavily weighted in favor of the experience of such jurisdiction**. Signad, Inc. v Sugar Land (1985, Ca5 Tex) 753 F2d 1338, 106 S Ct 75

While federal courts are normally reluctant to interfere with state court proceedings, in special circumstances such action is authorized by 42 USCS 1983 notwithstanding 28 uscs 2283 comity considerations need not dissuade federal court from acting where **state court's proceedings will not afford due process of law.** New Haven Tenants' Representative Council, Inc. v Housing Authority of New Haven (1975, DC Conn) 390 F Supp 831

75. Abstaining due to state proceedings (that will resolve nothing) will just delay this case not end it, as when the state proceedings end doing nothing, we end up back here in federal court. Nobody expects the state court of appeals to actually rule on the merits of the case or the constitutionality of Virginia's laws, so if this court abstains now, it will just have to take up the case again when the motion for rehearing is finally denied.

Federal District Court which declines to exercise jurisdiction over 42 uscs 1983 claim on ground of comity based on pending state court proceeding involving same issues should nonetheless **retain jurisdiction to allow federal forum in which to address any federal claim that remains unrederessed upon termination of state proceeding and to seek relief that is not available in state proceeding**. Crane v Fauver (1985, CA3 NJ) 762 F2d 325

JURISCICTION - Sue Court

76. The Defendant's have argued that I can't sue the Prince William Circuit Court because it is not a person. That is correct per 1983 but doesn't prevent suit on other grounds such as 28 USCS 1331 which I did claim in the complaint.

Person requirements of 42 USCS 1983 do not apply to 28 USCS 1331, and hence political subdivisions can be sued where jurisdiction is based on latter section. Gray v Union County Intermediate Education Dist. (1975, CA9 Or) 520 F2d 803;

Court has jurisdiction under 28 USCS 1331 of cause of action based directly on Fourteenth Amendment against government agency not subject to suit under 42 USCS 1983 and 28 USCS 1343. Hupart v Board Of Higher Education (1976, SD NY) 420 F Supp 1087

Fact that no statutory language or legislative history indicates any Congressional intent to impose 42 USCS 1983 restrictions on federal question jurisdiction leads to conclusion that 28 USCS 1331 provides jurisdictional basis for action against municipality for violations of fourteenth amendment. Fox v Castle (1977, MD Pa) 441 F Supp 411.

77. There must be a way to sue a court as I keep finding case citations of people suing courts and some even win.

78. I did find a U.S. Supreme Court case that says Prince William County itself can be sued but the County Court is a more accurate description of what is responsible. Yes the court didn't make the errors, but court staff was responsible for a environment hostile to fathers (anti-mail

propaganda, brochures, and insulting computer password), denied equal protection by preventing me from bring recording equipment into the courthouse while allowing opposing counsel to do so.

Suits against counties and municipal corporations of state were maintainable in district court, without state's consent, where other requisite jurisdictional elements existed. United States v **Prince William County** (1934, DC Va) 9 F Supp 219, affd (CA4 Va) 79 F2d 1007, cert den 297 US 714, 80 L Ed 1000, 56 S Ct 590

79. Court staff is aware that the state judges are biased against fathers and violating their rights yet do nothing to stop them from continuing their illegal actions. What could a court do to stop it? Easy, I found one instance where the court issued a "no trespass" order to a corrupt judge and refused to let him inside the courthouse to hold hearings. So yes, the court itself could have and should have taken action to stop the injustice it knew was happening in its building. The state may employee the judges but the court had the ability to intervene and did not.

Constitutional Deprivation

80. The Defendant's argue that I have "not articulated a constitutional deprivation". Apparently the Defendant's don't recognize Due Process, Freedom Of Speech, and Parental Rights, as Constitutional rights.

81. I have alleged various due process violations, including Judge Alston holding an ex parte hearing to suspend visitation in January 2005. Indeed Judge Alston himself in an order described it as "ex parte". That was a clear and blatant Due Process violation that was documented by Judge Alston himself. I was denied the ability to present my case, to confront my accusers, etc.

82. I have also alleged that Judge Millette refused to let me present evidence, threatened me with jail for claiming that Loretta Vardy lied to the court. I have also claimed that Judge Millette did not give me opportunity to cross-examine, or confront my accusers. Again violation of basic Due Process. See the affidavit by Ron Jagannathan to confirm Judge Millette threatened me with jail for attempting to prove the that Loretta Vardy had made false statements to the court.

83. I have also claimed I've been denied my constitutional rights as a parent. The Defendant's don't seem to recognize parental rights as constitutional rights in spite of may rulings by the U.S. Supreme Court to that effect. Indeed the Supreme Court has referred to parental rights as "the oldest fundamental liberty interest recognized by this court." It really is inconceivable that any state judge or attorney general, attempting to fulfill their oath of office to uphold the constitution would not be aware that parental rights are fundamental constitutionally protected rights.

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.**" Troxel v. Granville, 530 U.S. 57, 65 (2000)

procreation, together with marriage and marital privacy are fundamental civil rights protected by the due process and equal protection clauses of the Fourteenth Amendment. Re Johnson, 45 NC App 649, 263 SE2d 805

84. The deprivation of parental rights has cause irreparable harm to both the Plaintiff and his son. Neither my son or myself will be the same again after being illegally separated for 17 months. No court is able to make up for that lost time together. No court can restore the missed activities; the missed hugs and kisses, the missed bedtime stories, the missed comfort from association.

85. My son suffered depression as a direct result. He was diagnosed with depression and I have the official medial records to prove that. When visitation was restored my son was clingy as a result of the deprivation, he insisted on sleeping with me instead of sleeping in his own bed as he had done previous to being deprived of his father.

86. Defendant's Alston and Millette depriving a handicapped child of access to his father is nothing less than Child Abuse for which there is no excuse and should be no immunity.

87. The Defendant's claim I haven't articulated a "liberty interest". See above that the U.S. Supreme Court would recognize that I have indeed articulated a fundamental liberty interest.

88. I have also claimed that Judge Farris issued in Sept 2004 an order restricting my Free Speech Rights, and that Judge Potter has refused to vacate/reverse the order and he has entered orders restricting my Free Speech Rights (although to a lesser degree than Judge Farris).

"Loss of First Amendment Freedoms, for **even minimal periods of time**, unquestionably constitutes **irreparable injury**. - Elrod v. Burns, 427 U.S. 347; 6 S. Ct. 2673; 49 L. Ed. 2d (1976)

89. Judge Farris even went so far as to have me served with a copy of his order by a man with a gun. Making a very intimidating process of giving me a copy of the order, when court orders were generally just mailed to me. Judge Farris followed this up by telling me that "yes the order is unconstitutional but I'll still put you in jail if you don't follow it".

90. While I did continue to post information on my Website (hosted outside the United States), the orders limiting my First Amendment right to free speech did cause me to limit some of my free speech in other areas (and to be more careful what I posted on my website). For example where I had previously exercised my right to speech personally in public (passing out flyers, putting text on t-shirts), the threat of jail did cause me to limit my speech in forums where the police could arrest me for violating the order. That is to say the order did manage to get me to stop many of my valid expressions of free speech even if it did not manage to get me to completely stop my speech via website located outside the United States.

91. It is my believe that the 17 months of suspended visitation was due to the Judge's wanting to punish me for violating the order restricting my free speech, but not having the balls to do that directly. This is supported by the fact that when visitation was restored that no corrective action was required, no parenting class, no supervised visitation, no restriction on taking my son out of state, not even a court order was entered before I was allowed to spend time with him again overnight. Clearly there was no concern over my parenting ability; the reason for the suspended

visitation is best attributed to the judges wanting to punish me for something they didn't dare enforce directly.

92. The Plaintiff was never held in contempt for violating the order. A contempt proceeding would have been the proper way to deal with any alleged violations. Indeed Loretta Vardy & Cheri Smith made multiple requests for a Rule To Show Cause. However instead of that approach the judges chose to suspend visitation, which was grossly inappropriate.

93. Its bad enough that judges who swore an oath to uphold the constitution would punish me so severely for exercising my first amendment rights but to have equally punished an innocent mentally retarded 7 year old child is shocking behavior that can't be tolerated. Judges who would do that to a child such as my son should not only be removed from the bench but jailed as well.

Insufficient Facts Alleged

94. The Defendant's claim I have not alleged insufficient facts. This is one of the few of their claims that have any merit. As a pro se litigant with no experience in court I misunderstood the rules and thought there was a page limit on the complaint that prevented me from including many facts. So yes, the complaint itself is short of details of the fact of the case.

95. I have filed a separate document containing additional facts of the case. Those should be considered along with the complaint. If the court feels the facts need to contained in the actual complaint document, then given the misunderstanding that led to the facts not being in the complaint, the Plaintiff would request permission to amend the complaint to correct the problem. The case should be ruled in the merits not dismissed or reduced due to the plaintiff's lack of legal expertise in federal court.

Virginia & Federal Statutes Unconstitutional

96. I have asked the court to declare Virginia and federal (Title 42 subchapter IV part D) statutes about custody and "child support" unconstitutional, both facially and especially as applied.

97. Kind of makes it hard to keep a Domestic Relations Exception with congress passing domestic relation laws…. (Title 42 subchapter IV part D)

98. The Defendant's made an issue of my statement that if the judges followed the state laws ignoring gender that I would have been awarded sole custody, but they skip right over my next statement that **even if I had been awarded sole custody Virginia's statutes would still be unconstitutional**. Depriving the mother of her rights would be no less unconstitutional than denying me my rights - even if I was happier with the outcome it would still be wrong.

99. The state has no authority to deny fit parent's constitutional rights to be a parent to their child. No matter which parent the state chooses to deprive of rights, its still wrong. Even in the case of the mother in question, who has some issues impairing her parenting ability, the state must limit its involvement to the minimum necessary if any intervention is needed. Sole custody is almost always going to be an unconstitutional ruling outside of a criminal proceeding.

100. Strict scrutiny is required when reviewing the Virginia laws as Parental Rights are a "fundamental" constitutional right, and also in practice the laws discriminate against a class "fathers" without reasonable justification.

101. The Virginia statutes show no recognition that Parental Rights are protected by the U.S. Constitution and instead appear give state judges unlimited ability to interfere in those rights. In other words the Virginia laws are not "narrowly tailored".

102. When Constitutional Rights are at issue the Supreme Court has required the use of the Least "Restrictive Means Test". Virginia's statutes not only fail this test but more appropriately can be described as "Most Restrictive Means", in that the statutes encourage judges to support one parent's rights while totally denying the other parent's rights.

103. If the government enacts a law that restricts a fundamental personal liberty, it must employ the least restrictive measures possible to achieve its goal. This test applies even when the government has a legitimate purpose in adopting the particular law.

104. The Virginia statutes violate the overbreadth doctrine in that they allow/encourage judges to restrict parental rights MUCH more than actually necessary to achieve any compelling state interest. Indeed it's not clear that there are any compelling state interests at all. I've repeatedly asked for the court to specify what the compelling state interest is and so far have received no answer.

105. The Virginia statutes are also too vague to be enforceable. They do not set an objective standard for application, but instead, a variable standard related not to the public interest but to the persons involved. See Columbus v Kasper (1989, Franklin Co 61 Ohio App 3d 776, 573 NE2d 1163

106. The Virginia statutes fail to give a person of ordinary intelligence fair notice of what conduct must be or must be avoided in order to retain his parental rights.

It is a fundamental requirement of due process that a criminal statute must be stated in terms which are reasonably definite so that a person of ordinary intelligence will know what the law prohibits or commands; this concept insures that the defendant will receive adequate warning of what the law requires so that he may act lawfully, and it serves to prevent arbitrary and discriminatory enforcement by requiring boundaries sufficiently distinct for police, judges and juries to fairly administer the law. People v Cruz (1979) 48 NY2d 419, 423 NYS2d 625, 399 NE2d 513

107. For example if we assume (and that's a HUGE assumption) that Virginia's laws are followed by the judges, then the statutes don't provide me with any information on any actions I can take to avoid losing my parental rights. No matter how good a parent I am, no matter how good my parenting skills are, no matter how close my relationship to my son, the laws still allow a judge to deprive me of all my parental rights if it simply finds the other parent as better.

108. The result is that a loving fit parent such as myself that has a close relationship to my child, that was equally involved in caring for the child from birth can and does receive exactly the same visitation as a parent that wasn't involved in raising the child, doesn't have a close relationship with the child.

109. The law while depriving fit loving parents of their parental rights also does provide sole custody to highly questionable parents. I've met mothers who had sole custody who were drug addicts, living in a half-way house. One mother with custody just got out of prison after two years.

110. **The Virginia laws don't set any standard for personal parental fitness but rather comparison**. So a parent that may be stripped of all rights if married to parent A would receive sole custody if married to parent B instead. The question is not is the parent good enough or fit, but rather is the parent better than the opposing one. Such a standard makes it impossible for a parent to take any action to preserve his constitutional parental rights.

111. According to Virginia laws about the only action a father can take to attempt to keep his parental rights is to choose to have a child with a mother who is completely and totally unfit to be a parent. In other words the only action a Virginia Father can take to protect his rights is to choose an unfit woman to be the mother of his child. Clearly this is not a desirable strategy, its not in the "bests interests of the child". The state should reward a father for choosing a fit mother not punish him for it.

112. The "standards" set in Virginia law § 20-124.3 are so vague and subject to personal bias as to be useless. Even two honest judges could come to exactly the opposite result applying this standard. Indeed item "10. Such other factors as the court deems necessary and proper to the determination" pretty much means the judge can use whatever criteria he desires.

113. The Defendant's have argued that the statute is necessary in that it gives the judges "flexibility" to craft a solution tailored to the specific situation. Sounds nice but that isn't what happens. Instead of crafting a custody arrangement to the specific situation the courts have preprinted standard visitation orders, such as every other weekend and one mid week overnight visitation. The court issues the same visitation order even if the father ranges from inferior to fantastic. The visitation is usually identical. This is amply demonstrated that even in this case where the child was handicapped, definitely a unique situation, Judge Potter just handed over the same visitation order that he would give for a non-handicapped child. Given the judges are not tailoring their rulings based on the specific case, no flexibility in the law is needed.

114. Handing out "standard" visitation/custody orders in widely varying circumstances, after tremendously expensive trials, pretty much makes the courts guilty of fraud, encouraging parents to spend all this money to influence and outcome that won't be influenced.

115. The standard is the "Best interests of the child". That sounds good in a warm and fuzzy way but clearly is unconstitutional. Parents have been ruled as having a constitutional right to raise their children. There are no Supreme Court rulings that children have constitutional rights to the best parent, indeed children are largely considered not to have constitutional rights but rather have their rights protected thru their parents.

116. "Best Interests Of The Child" cannot be a rational constitutional standard. If what is best for children is allowed to override constitutional rights of parents, then it would be quite possible to say that since children of white parents do better in school, get sent to prison less often, that its in the best interests of children that the courts take away the rights of black parents and award their children to white parents. Obviously such a proposal is repugnant to the constitution and common sense. It is no less repugnant or volative of common sense, if we replace "white" and "black" with "female" and "male" which is how this law is applied.

117. The “Best Interests” standard is also directly contrary to the actual best interests of children. The best interest of children is served by ensuring they retain access to both parents and that the parents cooperate to raise them. This standard does the opposite; it encourages sole custody, which encourages both parents to fight in court, to point out each other’s flaws, to spend money on attorneys instead of the children.

118. If the situation was changed to respect parents’ constitutional rights, many of the evils of custody battles could be avoided. There would be no reward for throwing mud at the other parent as that wouldn’t justify any deviation for equal custody for most cases and even when it did, it would be a minimal deviation not a win/lose situation.

119. The state has no business determining what the “best interests” of the child are. Determining what is best for children is the proper role of parents. The state should not intrude on that role unless the parents are unfit. As long as neither parent has been deemed unfit the court should not be making any value judgments about parenting and limit its involvement to helping the parents work out the details of equal parenting WITHOUT ruling on the merits of what each parent wants. That is to say any dispute should be resolved without making a determination about what is “best” for a child. Taking turns, drawing straws, etc would be appropriate solutions.

120. Virginia’s statutes are also unconstitutional because they treat married an unmarried fathers differently. Virginia courts don’t get involved in “best interests” of the child for married couples even if the couples don’t agree, fight etc, as long as the child is sufficiently cared for as to avoid CPS or criminal action. That should not change because a couple gets divorced.

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 Q56, (1978).

121. The Virginia statutes are also unconstitutional in that they punish one parent for the actions of the other. Before my wife slept around Virginia did not get involved in my parental rights, didn't ask questions, didn't impose limitations. Then due to actions by the mother, actions that were illegal, actions that were a violation of our marriage contract, the state decided to punish me for her actions, for her choice to end the marriage. **Clearly its wrong for the state to deprive one person of a basic fundamental right based on the actions of another person.**

122. Even the process of going thru a custody hearing violates constitutional rights in that it violates the right to privacy. Every little aspect of a person's life is exposed to public review, and recorded in public records.

123. As noted previously Virginia's statutes are especially unconstitutional as applied. With females getting custody 96% of the time compared to 4% for men. There is certainly no basis to support that other than gender bias by the courts.

124. The only constitutional solution would be one that recognized the rights of both parents and one that did not allow the court to provide anything other than equal custody for fit parents. That would also solve the privacy issue, in that there would be no reason to discuss personal issues in court. If both parents were not deemed unfit the court could just skip the blame game part and move on to helping the parents structure an equal custody order.

125. While not the main issue of my complaint, the so called "child support" laws should also be declared unconstitutional as not only are they unconstitutional but they provide much of the incentive for both mothers and judges to violate the parental rights of fathers.

126. Neither the state nor federal laws (Title 42 subchapter IV part D) mandate any specific dollar value that parents must spend on their children for married parents. The state does require parents to support their children (I agree with that) but does not get involved in how the parents do that as long as the child is not neglected. Yet once parents get divorced suddenly both the state and

federal government demand specific dollar amounts transferred from the non-custodial parent to the custodial parent. This is major interference in the right of a parent to choose how to provide for and care for their child - and unconstitutional as married vs divorced is not a classification that justifies the state involvement.

127. Worse yet is that neither the state nor federal "child support" laws require the money to actually be spent on the child. With 96% of the money going to mothers, this amounts to nothing less than mother welfare for financially secure mothers. In this case the mother's household income is about $150,000/year. There is no concern at all for our son not being provided for financially.

128. The laws don't account for any support provided directly to the child. For example when my son is with me and I pay for his food, clothing, entertainment, I am not allowed to send less in "child support". This results in the situation that I am forced to spend less on my son then I otherwise would because the money has to be sent to the mother leaving me less to spend on him directly.

129. Another impact of this pay the mother without accounting for direct contributions is that fathers that are poor will be encouraged/forced to not spend time with their child because they can't afford to. For example in July when I get to spend 3 weeks with my son the state requires me to pay the same amount about $860 to the mother, which means I have to pay $860 PLUS the actual cost of caring for and entertaining my son for 3 weeks.

130. The state law pretends the mother must contribute money to care for the child too, but that is a clear Equal Protection violation, as while the state calculates the mothers payment, the state neither requires her to actually make any payment, nor does it verify that she spends the money on the child, while at the same time it does verify and demand the father make the payment or it will

send him to jail. So while a mother can choose to spend less with no action taken by the state, if the father does the same thing he gets major harassment by the state.

131. The "child support" system transfers **Billions** of dollars from fathers to mothers. Imagine if the system was transferring Billions of dollars from blacks to whites. Would this court let it stand?

132. The "Child Support" system interferes with other constitutional rights. Prior to my wife sleeping around. The state took no interest in my profession or income other than to tax my income. I could choose to work at a high paying job, a low paying job, or no job (as long as my child wasn't neglected). However after my wife decided to violate our marriage contract, suddenly the state is placing limitations on my employment. It feels free to impute an income that I can only hope to achieve in a specific field. That impairs my previous right to choose any employment I desired including volunteer work. Again the state involvement in my life shouldn't be based on the actions of the mother.

133. "Child Support" impairs the Plaintiffs pursuit of happiness. Like most good parents, I enjoy giving my son things. I like to travel with him, buy him gifts etc. Its one of the pleasures of parenting, especially for such a sweet boy who expresses such joy at a fun activity or present. Spending money on my son is enjoyable for me. Sending money to the mother is not enjoyable, it deprives me of seeing my son enjoy what I've provided for him.

134. If "child support" was really about supporting children. Then the non-custodial parent would have the same ability to spend "child support" funds on the child when he had visitation as the custodial parent does when the child is with her. It makes no sense that "child support" payments can be used to pay for travel expenses for the child when he is with the mother but not when he is with the father. That leads to situation such as the child can afford to fly when with the mother but is required to travel by car when with the father. The focus of "child support" is clearly to provide the mother with money not to provide the child with money.

135. It should be noted that the "child support" amounts have no relationship to the amount of money actually needed to support a child. Just my "share" of the support mandated by Virginia law is more than the amount we spend on our son when married - and that is without considering the mother's mandated portion. If the amounts are fair why does Virginia not provide similar dollar amounts for children in foster care?

136. The current "child support" system was designed to reimburse the state for money paid out in welfare benefits. It has no realistic application to situations such as this where the state has not paid any welfare benefits.

137. The standard of the state requiring parents to support their children but not getting involved in how the parents do that should continue after the parents divorce just as it did prior to divorce. Anything else violates the Equal Protection Clause.

138. Note in that in 2002 the Georgia the "Child Support" system has been declared unconstitutional in GEORGIA DEPARTMENT OF HUMAN RESOURCES v MICHELLE L. SWEAT

139. The Defendant's claimed the Thirteenth Amendment didn't apply as it only applied to slavery. That is a pretty silly argument as it states "Neither slavery nor involuntary servitude…" If it meant only slavery why the words "involuntary servitude". For that argument to have any merit at all would mean that at the end of the civil war when the salves were emancipated that Virginia could have told them they were free but by the way you have to provide X amount of dollars every month to your old master. Work whatever job you want, live where you want, but you must provide him that amount of money or we will put you in jail. Does anyone think such a system would not violate the 13th amendment?

140. Involuntary Servitude is a pretty accurate description of "Child Support". It may not require a father to work a specific job, but by using imputed rather than actual income it does restrict

fathers to working a specific class of jobs. In my case that would be computer programming jobs. It might as well say that in the order as that is the only hope I'd have of making enough money to pay "support" and support myself. By restricting the type of job it also restricts where I can live. Computer jobs aren't available in rural areas where I want to live. This starts to interfere with many of my other fundamental rights. Some of us don't feel sitting in DC traffic jams as "pursuit of happiness".

141. Another absurdity of so called "child support" is that when a divorced father remarries and has another child, the state law allows/requires DCSE to withhold up to 60% of his take home pay to give to the custodial mother, yet only allows a 5% reduction if he is supporting another child of an intact marriage. That's 60% pay for a child who has been fought over in court vs 5% to a child who has not. Clearly its not about supporting children, its rather a kickback to mothers from attorneys and judges for paying the high legal bills to deprive the father of his parental rights.

First Amendment Claim

142. On August 17th, 2004 Judge Farris held and Ex Parte hearing, held while Mr. Smith was out of state during his court ordered two-week uninterrupted visitation period. Judge Farris refused Mr. Smith's request for a continuance. Judge Farris ruled to grant Cheri Smith & Loretta Vardy's motion for free speech restrictions.

143. The actions by Cheri Smith & Loretta Vardy in asking for a restriction of my Free Speech Rights combined with Judge Farris granting the motion in an Ex Parte hearing constitutes a conspiracy to deprive me of Equal Protection of my First Amendment Right to free speech.

144. Judge Farris entered the "order" on Sep 23rd 2004 stating:

The Defendant shall cease and desist from any and all conduct outside of the proceedings of this court by which he publicly displays or promulgates, or causes to be publicly displayed or promulgated, whether by speech, print (including but not limited to printing on T-shirts or other items of clothing, electronic mail, or on the internet), television, radio or flyers or otherwise, negative or disrespectful or denigrating statements about Mrs. Smith and *or* allegations that Mrs.

Smith has abused or is presently abusing [redacted] Smith.

The Defendant is prohibited from saying, printing or otherwise publicly displaying or promulgating any negative, disrespectful or denigrating statements about Mrs. Smith or allegations that Mrs. Smith abused or abuses [redacted] Smith to [redacted] Smith, in the presence or hearing of [redacted] Smith.

The Defendant shall remove or cause to be removed any negative, disrespectful, derogatory or denigrating statements about Mrs. Smith and any allegations that Mrs. Smith has abused or abuses [redacted] Smith, which Defendant has heretofore publicly displayed, promulgated, or caused to be publicly displayed or promulgated, whether by speech, print (including but not limited to printing on T-shirts or other items of clothing, electronic mail, or on the internet) or otherwise.

The Defendant is prohibited from entering upon the property of SAIC, Inc., Mrs. Smith's employer.

145. Judge Farris had the order served to Mr. Smith by an armed gunman with the intent to scare Mr. Smith into giving up his First Amendment rights and comply with this obviously illegal order. Note the typical procedure was just to mail Mr. Smith a copy of orders.

146. Mr. Farris followed this up at another hearing, believed to be Nov 3rd 2004 by stating that yes the order was unconstitutional but that he would still send Mr. Smith to jail if he did not follow the order.

147. While I did continue to post information on my Website (hosted outside the United States), the orders limiting my First Amendment right to free speech did cause me to limit some of my free speech in other areas (and to be more careful what I posted on my website). For example where I had previously exercised my right to speech personally in public (passing out flyers, putting text on t-shirts), the threat of jail did cause me to limit my speech in forums where the police could arrest me for violating the order. That is to say the order did manage to get me to stop many of my valid expressions of free speech even if it did not manage to get me to completely stop my speech via website located outside the United States.

148. I did not appeal the order. The court of appeals had turned down my previous appeal due to the order being interlocutory and it would appear the same reasoning would be applied to this order.

149. Cheri Smith & Loretta Vardy filed multiple motions asking to have me held in contempt for violating the order. No Rule To Show Cause was ever issued for this (or anything else against me). However it is my belief that when the court suspended visitation in Jan 2005 it did so as a punishment for continuing to post on my website.

150. I filed multiple motions asking for the court to vacate/reverse this order and cited multiple cases to show that restricting free speech in a divorce case is inappropriate. The court (Judge Potter) denied all my motions.

"'a court of equity will not enjoin the commission of a threatened libel or slander' [because] an action for damages will ordinarily provide a complete remedy" (quoting Moore v. City Dry Cleaners & Laundry, Inc., 41 So. 2d 865, 873 (Fla. 1949))); see also Alberti v. Cruise, 383 F.2d 268, 272 (4th Cir. 1967) (noting that, "[g]enerally[,] an injunction will not issue to restrain torts, such as defamation or harassment, against the person," because "[t]here is usually an adequate remedy at law which may be pursued").

151. Prior restraint orders are clearly and consistently ruled illegal even in much more extreme cases such as SHAWN S. SUGGS v. ANDREW O. HAMILTON from the Washington state Supreme Court July 8, 2004.

Prior restraints carry a heavy presumption of unconstitutionality. Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S. Ct. 631, 9 L. Ed. 2d 584 (1963). In Near v. Minnesota ex rel. Olson, 283 U.S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931) the United States Supreme Court declared that prior restraints are permissible only in exceptional cases such as war, obscenity, and "incitements to acts of violence and the overthrow by force of orderly government." 283 U.S. at 716.

"Loss of First Amendment Freedoms, for **even minimal periods of time**, unquestionably constitutes **irreparable injury**. - Elrod v. Burns, 427 U.S. 347; 6 S. Ct. 2673; 49 L. Ed. 2d (1976)

152. Judges Alston, Potter, Hamblin, were all in a position to correct the illegal deprivation but all failed to do so even though the Plaintiff filed motions asking them to do so. See 28 USCS § 1343(2)

153. This order was interlocutory and is no longer in effect. Although Judge Potter did issue other more mild restrictions in the Final Divorce Decree. Again these are pretty vague and leave much question as to what is prohibited and what is not. For example if my son asks to visit me and I say "yes if your mother lets you " is that discussing "issues of custody or visitation in the presence of the child"?

The parties are not to discuss the issues of custody, child support or the visitation in the presence of any child.

The parties are not to say or do anything that will demean the other party in the eyes of child or in any way diminish the respect the child has for any parent.

EQUAL PROTECTION - Protected Class

154. The Defendant's have argued that the Plaintiff is not a member of a protected class. However the Plaintiff is a member of the class of male parents, who suffer from a class-based invidiously discriminatory animus in Virginia Courts in today's society.

In Novotny , we relied on Congress' characterization of classifications based on gender as inherently invidious and upon the immutable nature of gender to conclude that women, as a class, were entitled to the protection of section 1985(3): [S]ex, like race and national origin, is an immutable characteristic determined by the accident of birth .. .and the sex characteristic frequently bears no relation to ability to perform or contribute to society. Thus, to deprive members of a class founded on gender of equal protection or equal privileges and immunities without any justification is to act in an irrational and odious manner hence, with an invidiously discriminatory animus. 584 F.2d at 1243. Lake v Arnold, UNITED STATES COURT OF APPEALS, No. 96-3412 **http://laws.findlaw.com/3rd/971575p.html**

gender-based discriminations must serve important governmental objectives, and the discriminatory means employed must be substantially related to acheivement of those objectives. Wengler v Druggists Mut. Ins. Co. (1980, US) 64 L Ed 2d 107, 100 S Ct 1540
A state statutory scheme which imoses alimony obligations on husbands but not wives violates the equal protection clause of the Fourteenth Amendment of the united states constitution; to withstand scruity under the equal protection clause, classification by gender must serve important governmental objectives and must be substantially related to achievement of those objectives, and **a statutory scheme may not be upheld on the basis of the state's preference for an allocation of family responsibility** under which the wife plays merely a submissive dependent role. Childs v Childs (1979, 2d Dept) 69 Ad2d 406, 419 NYS2d 533, cert den and app dismd (US) 64 L Ed 2d 253, 100 S Ct 1824.

To withstand constitutional challenge under the equal protection clause of the Fourteenth

Amendment, classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives. Craig v Boren (1976) 429 US 190, 50 L Ed 2d 397, 97 S Ct 451.

42 USCS 1985 is not limited to cases involving racial discrimination. Krieger v Republic Van Lines, Inc. (1977, SD Tex) 435 F Supp 335, 15 BNA FEP Cas 392, 15 CCH EPD par 8026

42 USCS 1985 is not limited to racial discrimination but includes any class-based, invidiously discriminatory animus. Founding Chruch of Scientology, Inc. v Director, FBI (1978, DC Dist Col) 459 Supp 748, 26 FR Serv 2d 933, ... 98 L Ed 2d 150, 108 S Ct 199

42 USCS 1985(3) does not require that targets of conspiracy be members of particular racial group, and it is agreement vel non among alleged conspirators to single particular group or class for discriminatory interference with constitutional rights that defines class for purposes of $1985(3) Hobson v Wilson (1982 DC Dist Col) 556 F Supp 1157

155. Given the state admits to allocating custody and child support by the ration of 96% to 4% it is clear that it is discriminating based on gender. The lost of parental rights is a fundamental liberty interest and the state allows up to 65% of the father's take home pay to be taken for "child support". Clearly those are both substantial burdens -- proof of which comes with the increased suicide rate among fathers deprived of their rights. It is a burden many are not able to bear.

In order to make out a disparate impact warranting further scrutiny of a federal statutory classification under the equal protection analysis of the due process clause of the Fifth Amendment, it is necessary to show that the class which is purportedly discriminated against suffers significant deprivation of a benefit or imposition of a substantial burden. Califano v Boles (1979, US) 61 L Ed 2d 541, 99 S Ct 2767

CONSPIRACY - Requirements / Proof

156. The Defendant's have argued that the Plaintiff needs to be able to state specifics of how the Defendant's reached agreement, as if the Plaintiff had been invited to their planning sessions. Such a claim is well above that actually required. It is allowed to prove conspiracy with only circumstantial evidence.

In order prove existence of civil conspiracy, plaintiff is **not required to provide direct evidence of agreement between conspirators**, and **circumstantial evidence may provide adequate proof of conspiracy;** plaintiff seeking redress under 42 USCS 1985 for civil conspiracy need not prove that each participant in conspiracy knew exact limits of illegal plan or identity of all participants

therein, and express agreement among all conspirators in not necessary element of civil conspiracy. Hampton v Hanrahan (1979, CA7 Ill) 600 F2d 600

157. Statistical evidence is sufficient to show practice of discrimination. The Plaintiff has shown a 96% to 4% disparity.

Proof of gross statistical disparity may itself constitute prima facie case of intentional pattern and practice discrimination. Pennsylvania v International Union of Operating Engineers (1978, ED Pa) 469 F Supp 329

158. The facts required must only show "invidiously discriminatory animus" - see above that the court has ruled that Congress' characterization of classifications based on gender as inherently invidious

Specific intent need not be alleged in a suit under 42 USCS $1985 (3); facts pleaded must merely show an "invidiously discriminatory animus" behind the conspirators' action. Azar v Conley (1972, CA6 Ohio) 456 F2d 1382, 15 FR Srv 2d 1179

Sex discrimination comes within scope of class-based animuses covered by $1985(3) Dudosh v Allentown (1985, ED Pa) 629 F Supp 849,

In action under 42 USCS 1985, allegation that invidiously discriminatory animus was motivating force behind disparate life insurance policy terms offered to women was sufficient to survide motion to dismiss for failure to state claim. Life Ins. Co. v Reichardt (1979, CA9 Cal) 591 F2d 49

159. Given that the physical attributes of the Plaintiff as a member of the class are obvious just by looking the conspirators would have no need to discuss this particular case but have just a tacit agreement to deprive Equal Protection to all similar members of the class.

Conspiracy in context of 42 USCS 1985(3) means that co-conspirators must have agreed, at least tacitly, to commit acts which will deprive plaintiff of equal protection of law. Santiago v Philadelphia (1977, ED Pa) 435 F Supp 136

160. If a party has potential to stop illegal activity and fails to do so, then that party has impliedly conspired. So instead of the unrealistically high bar the Defendant’s claim for proof, the only thing that need be shown is that the parties had the ability to stop the illegal deprivations of his constitutional rights and failed to do so. Clearly any judge asked to deprive the Plaintiff of his rights had the ability to not grant the order, and after his rights were deprived, the judge had the ability to

reverse or vacate the order. The fact that the judges did not do is proof they conspired. The same goes for Loretta Vardy & Cheri Smith, they could have entered an agreed order with the Plaintiff to either prevent or correct the illegal orders and they chose not to do so.

Second most important element of cause of action under 42 USCS 1985(3), after intent, is proof of conspiracy; **if party has potential to stop illegal activity but fails to act to do so, then that party may be said to have impliedly conspired in such illegalities.** Dickerson v United States Steel Corp. (1977, ED Pa) 439 F Supp 55, 15 BNA FEP Cas 752 15 CCH EPD par 7823, 23 FR Serv 2d 1429

... proof of agreement itself, as distinct from comprehensible injury, can derive from evidence of act done by conspirators, whether or not act caused injury that would be actionable under $1985(3) Hobson v Wilson (182, DC Dis Col) 556 F Supp 1157

161. The Judges in this case had reached a prior agreement with Loretta Vardy & Cheri Smith to deprive the Plaintiff of Equal Protection of his constitutional rights. This may have only been a tacit agreement but it was understood by the parties to have been the case. In several instances the Judge already had the order typed up even before hearing the evidence or testimony, clearly indicating the decision was reached in advance of the hearing. This happened both with Judge Millette in Jan 2005 and with Judge Potter in May 2006. It is beyond reasonable expectation that after a two day hearing Judge Potter picked up a typed document and started reading the order within seconds of the last witness finishing. Clearly the orders were made in advance of the hearing.

Judge's private, prior agreement to decide in favor of one party is not judicial act, and proof of agreement may form basis of liability in action under 42 USCS 1985 whether or not judge is immune from liability for subsequent judicial acts. Rankin v Howard (1980, CA9 Ariz) 633 F2d 844, cert den 451 US 939, 68 L Ed 2d 326, 101 S Ct 2020

Allegations of threats or violence are not required in cases brought pursuant to 42 uscs 1985(3); such allegations are no more than overt acts in furtherance of conspiracy rather than elements of discriminatory animus. Byrd v International Brotherhood of Electrical Workers (1974, DC Md) 375 F Supp 545

162. I also consider Judge Potters refusal to let me make proffers in May 2006 and April 2007 as evidence of his participation in a conspiracy to deny me Equal Protection of my rights, as the objective seems to have been to deny me the ability to appeal his orders. A judge does not have

discretion to refuse to accept proffers. Doing so was not a judicial act but rather an act of a personal nature to impair an appeal. Judge Potter was quite clear stating, "I'm not going to let you make a proffer".

163. In the April 2007 hearing he refused my multiple request to proffer a document so immediately after the hearing I went to the clerks office and filed the document with a note that Judge Potter had refused to let me proffer it for the appeals court. The document in question was a copy of the Federal complaint against him. It appears Judge Potter was attempting to hide the lawsuit rather than recuse himself.

164. In a judicial system that awards custody in a gender biased manner 96% to 4% Judge Potter has a wide reputation as being even more gender biased than the 'typical' Circuit Court judge. Given his reputation, an attorney such as Loretta Vardy would not have any need to actually discuss the conspiracy with him but just go along with his known custom of depriving Fathers of Equal Protection.

165. At one hearing Judge Potter told me not to complain because he "gave you more visitation than I give most fathers". That statement confirms his reputation as being biased against fathers and that its his standard practice not to provide fathers with much visitation.

166. More evidence of Judge Potter's involvement in the conspiracy was at the very first hearing in Sept 2003, the hearing was about the house and there was a hearing scheduled, **in a different case**, and he stated that he would just award custody now to save time. Thus it was clear he simply intended to award custody based on gender and deny fathers due process and the right to present evidence.

167. Note that 1985 does not require state involvement.

Clause (2) of 42 USCS 1985 is directed against the conspiracies of private persons to interfere with rights secured by the fourteenth amendment, other constitutional rights, and the post-civil war statutes specifically securing fourteenth amendment rights; therefore, it is unnecessary to the

maintenance of an action thereunder to allege or show any state action or involvement by any state official. Mullarkey v Borglum (1970, SD NY) 323 F Supp 1218.

42 USCS 1985(3) creates cause of action whenever individual has been injured due to conspiracy motivated by invidious discrimination which as resulted in deprivation of rights secured by constitution or federal statutes. Santiago v Philadelphia (1977, Ed Pa) 435 F Supp 136

42 USCS 1985(3) reaches private as well as governmental conspiracies, but where complaint does not involve allegation of racial discrimination but rather involves right protected under fourteenth amendment there must be allegation of state action Abbott v More Business Forms Inc. (1977, DC NH) 439 F Supp 643

ACTION AGAINST ATTORNEYS

168. Judge Conrad inquired as to the cause of action against the attorneys.

169. Both attorneys here are guilty of malpractice, especially Ronald Fahy, who was supposed to represent our son but didn't even bother to attend the two most important hearings the Jan 18th 2005 hearing on suspending visitation as well as not attending most of the final divorce/custody trial.

170. Mr. Fahy did not present any evidence, did call any witnesses, and was not even present when our son testified in court. It's hard to imagine how any attorney could have done less to represent the interests of our son. He is clearly guilty of malpractice.

171. The state has set standards for GAL's - STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN.

http://www.courts.state.va.us/gal/gal_standards_children_080403.html

172. Ronald Fahy's conduct not only fails to meet those standards but is exactly described by what the standards state a GAL must NOT do. - "not merely defer to or endorse the positions of other parties".

173. "The GAL should never engage in ex parte communications with the court", yet Mr. Fahy did just that by participating in the ex parte hearings. Mr. Fahy never advised Mr. Smith as to what was said at those hearings.

174. Mr. Fahy has stated he is unable to understand most of the speech of our son. The standards, item A, state that communication difficulties "do not abrogate the responsibility to meet face-to-face with the child" and that the guardian should "rely more heavily on observation" and to conduct meetings at the child's home and other locations to observe the surroundings and his interactions well as to interview the child's caretaker. Mr. Fahy has not followed this requirement, he never observed our son with his father at his home, nor did Mr. Fahy even discuss any issues with the father after about Sep 2004.

175. The standards require a GAL to "B. Conduct and independent investigation in order to ascertain the facts of the case". he guidelines call for the Guardian to interview parties, review records, file motions and to independently evaluate all allegations of child abuse or neglect, of risk to the childs safety or welfare, including but not limited to physical abuse, mental abuse, lack of supervision, etc. Mr. Fahy did not make any credible attempt at performing most of these functions.

176. Mr. Fahy didn't even bother to get a copy of the medical records from our son's visit to the psychologist. Mr. Fahy did indicate he was aware of the visits but did not bring them to the attention of the court nor get the record to use as evidence. It is believed he did not present this evidence to the court because it would have helped the father's case and hurt the mothers case.

177. Ronald Fahy billed for his services but completely failed to present a case on behalf of our son. This is not an issue of not agreeing with his case; Mr. Fahy simply failed to present a case to the court.

178. Loretta Vardy is guilty of making several fraudulent statements to the court. Including those she knew to be false due to her being an eyewitness to the incident. Such as her client calling the police to interfere with the father spending time with his son per the court order. Loretta Vardy actually came

to our house to intervene. Mr. Smith submitted to the court photo's of Loretta Vardy there with the police, thus when she said her client complied, she was knowingly making a false statement.

179. Loretta also made false statements in her Dec 2005 motion to suspend visitation. She made claims of repeated phone calls to Mr. Smith that was disproved with phone records. She claimed that her client was unaware of Mr. Smith moving, yet Mr. Smith had filed a motion on the topic and a hearing was held at which Loretta Vardy attended. Mr. Smith had also exchange e-mail on the topic with the mother even asking her if she wanted items when he was packing to leave. This instance she was clearly in a conspiracy with Judge Alston, as Judge Alston heard Mr. Smiths motion in December about moving thus he knew himself that Loretta Vardy and Cheri Smith were aware of the pending move so he was personally aware that their statements were false without needing Mr. Smith to tell him that.

180. Loretta Vardy also filed multiple motions asking for the court to deprive Mr. Smith of his constitutional rights. Such as the motion to restrict his free speech and the motion to suspend visitation. Filing this type of motion is enough to create liability:

Attorney who takes action on behalf of client that attorney knows or reasonably should know will violate clearly established constitutional or statutory rights of another may be held liable for damages. Stevens v Rifkin (1984, ND Cal) 608 F Supp 710

181. It is believed that Loretta Vardy and Ronald Fahy had repeated meetings where they discussed depriving Mr. Smith of his rights. In fact at one hearing that Loretta Vardy did not attend Ronald Fahy made a statement about Loretta Vardy supposedly not receiving the motion on a certain date, indicating that he kept in close contact with her.

ACTION AGAINST PRIVATE CITIZENS

182. The Defendant's have argued that 1983 doesn't apply to private citizens. This view ignores case law and also ignores the fact that 1983 is not the only claim being made 1985 and 1986 doe not

require “color of state law” but even under 1983 the fact that the private citizens acted in concert with state officials is sufficient to apply 1983

The due process clause of the Fourteenth Amendment to the United States Constitution protects a property interest only from deprivation by state action; private use of state-sanctioned private remedies or procedures does not rise to the level of state action, b**ut when private parties make use of state procedures with the overt, significant assistance of state officials, state action may be found.** Fulsa Professional Collection Servides, Inc. v Pope (1988, US) 99 L Ed 2d 565, 108 S Ct 1340.

No "state action" involvement need be alleged or proven for recovery under clause (3) of $1985(3) whether there exists a constitutional source of congressional power to reach the private conspiracy alleged in the complaint. McNally v Pulitzer Pub. Co. (1976, CA8 Mo) 532 F2d 69, cert den 429 US 855, 50 L Ed 2d 131, 97 S Ct

Claim against private persons conspiring to deprive person of Fourteenth Amendment right to be free from gender discrimination states cause of action under $1985(3). Stathos v Bowden (1981, DC Mass) 514 F Supp 1288, 30 BNA FEP Cas 1852, 26 CCH EPD par 31957, affd

42 USCS 1985(3) creates cause of action whenever individual has been injured due to conspiracy motivated by invidious discrimination which as resulted in deprivation of rights secured by constitution or federal statutes. Santiago v Philadelphia (1977, Ed Pa) 435 F Supp 136

JUDICAL IMMUNITY

Power is the great evil with which we are contending. We have divided power between three branches of government and erected checks and balances to prevent abuse of power. However, where is the check on the power of the judiciary? If we fail to check the power of the judiciary, I predict that we will eventually live under judicial tyranny.

- Patrick Henry

183. Patrick Henry, a Virginia attorney, was absolutely correct about the problems of not putting a check on the judiciary. He accurately predicted the situation that exists now where Virginia’s citizens are now subject to judicial tyranny, without any realistic remedy in state or federal courts. The cause of this problem is judicial immunity applied too broadly. The correction is to narrow it. The question is are the federal courts going to narrow it a little, or leave it to the general public to narrow it a lot or just abolish it altogether.

184. The way many Virginia judges conduct their duties makes one long for the good old days of trial by fire or by dunking. Just like a stopped clock is right twice a day, a procedure for deciding cases without considering the merits is more likely to result in the correct result than the system we have today where judges can with impunity thwart justice and deny constitutional rights.

185. Just as the Salem Witch Hunt trials continued right up until the time someone important was accused (the governors wife) the fastest way to solve Virginia's crisis is to allow me to take these judges to trial. Defendant Judge Millette is on the state Judicial Review Inquiry Committee. I'm sure that if he gets sued and has to pay damages he will see the light in using his position to correct judicial misconduct rather than cover it up, as is the present practice.

186. The Defendant's claim the judges have "absolute judicial immunity". There is in fact no such thing as "absolute judicial immunity". Judges do not have immunity for non-judicial acts, nor can the state grant them immunity for unconstitutional acts. Also interestingly even a judge that had judicial immunity can be held liable for damages due to being liable as part of the conspiracy, where all participants are equally liable for the acts of the others -- that is even if he has immunity for his judicial acts he does not have immunity from the acts of others if he participates in the conspiracy - which can be done by simply failing to prevent or rectify the deprivation of rights.

187. This is one area that a new precedent needs to be set. The practice of giving judges too broad immunity effectively nullifies the supremacy clause, which no court has the authority to do, not even the U.S. Supreme Court has that authority. Yes protecting judges from frivolous lawsuits does have a beneficial effect on the judicial system. However to stop there misses the corresponding fact that granting too broad immunity causes significantly more harm to the judicial system as it encourages judges to violate the constitution, thus destroying public confidence in the justice system. Given the present state of corruption in the Virginia "justice" system, the current implementation is tilted way to heavily towards immunity.

188. Having an "independent judiciary" is a good goal in moderation, having a judiciary that is independent from the constitution is not the goal but at the moment that is what is achieved in Virginia.

189. With no realistic check on judges who willfully or ignorantly violate the constitution the Virginia courts make a mockery of justice, and are really only one step removed from anarchy. Any juror aware of how judges typically behave in Virginia must return a 'not guilty' verdict no matter what evidence is presented, because judge have a track record of denying rights and violating procedure in order to get the ruling they desire. Corrupt judges such as these destroy any public confidence in the justice system.

190. The real question is not if judges in Virginia are going to continue to enjoy their unconstitutional immunity but rather if it is going to be judges that craft reasonable restrictions to that immunity or if it is going to be up to the general public to craft whatever restrictions to immunity it sees fit. Trust me, if the general public has to do it the result is going to be MUCH closer to NO judicial immunity than it would be if the Federal courts reign them in a bit themselves.

191. Jail For Judges is one attempt by the public to rein in this unconstitutional class of nobility that rules over us without following the constitution. They have already got a constitutional amendment on one state ballet and unless judges take corrective action on their own, it is pretty much inevitable at some point constitutional amendments will be passed and judges will be held accountable to a grand jury of the general public with no immunity and precious few defenses to excuse their behavior.

192. The Judiciary in Virginia is out of control just as it was before the American Revolution, the question is are the Federal Courts going to help correct the problem in an orderly manner or leave it up to people like me to pass constitutional amendments to punish judges as we see fit. I think an orderly approach is better but the idea of being able to give judges a taste of their own medicine sounds good too.

193. Jail For Judges, or reasonable restrictions on judicial immunity that is the real question.

194. In this case the judges did not have subject matter jurisdiction thus they were not acting in a judicial capacity. Since they weren't acting in a judicial capacity they have no claim on judicial immunity.

Judge's private, prior agreement to decide in favor of one party is not judicial act, and proof of agreement may form basis of liability in action under 42 USCS 1985 whether or not judge is immune from liability for subsequent judicial acts. Rankin v Howard (1980, CA9 Ariz) 633 F2d 844, cert den 451 US 939, 68 L Ed 2d 326, 101 S Ct 2020

195. Without jurisdiction there can be no judicial immunity. Hence the Judicial Immunity argument is no warranted by existing law and is a frivolous argument.

> Void judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and **forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree**. Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. Klugh v. U.S., D.C.S.C., 610 F.Supp. 892, 901
>
> A void judgment is one that has bee procured by extrinsic or collateral fraud, or entered by court that did not have jurisdiction over subject matter or the parties, Rook v. Rook, 353 S.E. 2d 756 (Va. 1987).
>
> When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, **judicial immunity is lost**. *Rankin v. Howard,* (1980) 633 F.2d 844, cert den. *Zeller v. Rankin,* 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.
>
> If a judge does not fully comply with the Constitution, then his orders are void, In re Sawyer, 124 U.S. 200 (1888), he/she **is without jurisdiction, and he/she has engaged in an act or acts of treason.**
>
> "We should, of course, not protect a member of the judiciary "who is in fact **guilty of using his powers to vent his spleen upon others**, or for any other personal motive not connected with the public good." at 564 ". . .the judge who knowingly turns a trial into a "Kangaroo" court? Or one who intentionally flouts the Constitution in order to obtain conviction? **Congress, I think, concluded that the evils of allowing intentional, knowing deprivations of civil rights to go unredressed far out weighed the speculative inhibiting effects which might attend an inquiry into a judicial**

deprivation of civil rights." at 567 SANTIAGO V. CITY OF PHILADELPHIA, 435 F.Supp. 136

"When a judge acts intentionally and knowingly to deprive a person of his constitutional rights, he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudice." PIERSON V. RAY, 386 U.S. 547 at 567 (1967)

"There was no judicial immunity to civil actions for equitable relief under Civil Rights Act of 1871. 42 U.S.C.A. 1983 Shore v. Howard. 414 F.Supp. 379

"We should, of course, not protect a member of the judiciary "who is in fact guilty of using his power to vent his spleen upon others, or for any other personal motive not connected with the public good." GREGOIRE V. BIDDLE, 177 F.2d 579, 581.

Immunity is defeated if the official took the complained of action with malicious intention to cause a deprivation of rights, or the official violated clearly established statutory or constitutional rights of which a reasonable person would have known. McCord v. Maggio, (5th Cir. 1991)

When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction **requisites he may be held civilly liable** for abuse of process even though his act involved a decision made in good faith, that he had jurisdiction. *State use of Little v. U.S.Fidelity & Guaranty Co.,* 217 Miss. 576, 64 So. 2d 697.

"It is not a judicial function for judge to commit intentional tort, even though tort occurs in courthouse." YATES V. VILLAGE OF HOFFMAN ESTATES, ILLINOIS, 209 F.Supp. 757

"**The language and purpose of the civil rights acts, are inconsistent with the application of common law notions of official immunity**. . . " JACOBSEN V. HENNE, 335 F.2d 129, 133 (U.S. Ct. App. 2nd Circ. - 1966) Also see" ANDERSON V. NOSSER, 428 F.2d 183 (U.S. Ct. App. 5th Circ. - 1971)

Immunity fosters neglect and breeds irresponsibility, while liability promotes care and caution, which caution and care is owed by the government to its people." RABON V. ROWEN MEMORIAL HOSP., INC, 269 NSI. 13, 152 S.E.2d 485, 493 (1967)

But an act done in complete absence of all jurisdiction cannot be a judicial act. Piper v. Pearson, id., 2 Gray 120. It is no more than the act of a private citizen, pretending to have judicial power which does not exist at all. In such circumstances, **to grant absolute judicial immunity is contrary to the public policy expectation that there shall be a Rule of Law.**

The U.S. Supreme Court, in Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case **stripped of his official or representative character** and is subjected in

his person to the consequences of his individual conduct. **The State has no power to impart to him any immunity** from responsibility to the supreme authority of the United States." [Emphasis supplied in original].

Qualified Immunity

196. Qualified Immunity applies only to individual acts done in their individual capacity. A state official is not allowed to assert Qualified Immunity for intentional illegal or unconstitutional acts. As this case revolves around the illegal and unconstitutional actions of the justices Qualified Immunity does not apply.

> **State law cannot provide immunity from suit for Federal civil rights violations**. State law providing immunity from suit for child abuse investigators has no application to suits under § 1983. Wallis v. Spencer, (9th Cir. 1999)
>
> The U.S. Supreme Court, in *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. **The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."**
>
> If the law was clearly established at the time the action occurred, a police officer is not entitled to assert the defense of qualified immunity base on good faith since a reasonably competent public official should know the law governing his or her conduct. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)
>
> Public officials cannot raise qualified immunity defense to 42 USCS 1985(3). Burrell v Board of Trustees of Ga. Military College (1992, CA11 Ga) 970 F2d 785

11th Amendment Immunity

197. A state can not authorize its officers to violate federal law

> **11th Amendment immunity does not prevent an action in federal court against a state official** for *ultra vires* actions beyond the scope of statutory authority, or pursuant to authority deemed to be unconstitutional. Pennhurst, supra, 465 U.S. at 101-102, n. 11; Scham v. District Courts, 967 F. Supp 230, 232-233 (S.D.Tex. 1997).
>
> **11th Amendment does not bar suit against state officials in their individual capacities, even if arising from their official acts**, Hafer v. Melo, 502 U.S. 21, 30-31 (1991), unless the claim will "run to the state treasury" under state law. Reyes v. Sazan, 168 F.3d 158, 162-163

> "**Government immunity violates the common law maxim that everyone shall have remedy for an injury done to his person or property**." FIREMAN'S INS/ CO. OF NEWARK, N.J. V. WASHBURN COUNTY, 2 Wis.2d 214, 85 N.W.2d 840 (1957)

198. The Fourteenth Amendment clearly was intended to force the states to provide Equal Protection. Allowing the states to have 11th Amendment immunity in a case of 14th Amendment violations pretty much nullifies the Fourteenth Amendment. This is incorrect, given that the Fourteen Amendment was passed later, **under the well-understood rule that the last expression of the will of the lawmaker prevails over an earlier one, the 14th amendment should prevail over the 11th amendment**. That is to say the 14th Amendment is controlling not the 11th. Thus the 11th Amendment should be no bar whatsoever to 14th amendment claims.

> If there is any conflict between the provisions of the Constitution and an amendment, the amendment must control, under the well-understood rule that the last expression of the will of the lawmaker prevails over an earlier one. Schick v United States, 195 US 65, 49 L Ed 99, 24 S Ct 826

199. The Fourteenth Amendment grants congress the authority to pass laws to enforce it. Since the 14th is controlling over the 11th and Civil Rights legislation was enacted to enforce the 14th amendment, the Civil Rights Statutes must also take precedence over the 11th Amendment. Thus the 11th Amendment should have no application to a 1983, 1985, 1986 suit against the state.

> Under the Fourteenth Amendment, [congress] has the power to counteract and render nugatory all state laws and proceedings which have the effect of abridging any of the privileges or immunities of citizens of the United States, to deprive them of life, liberty, or property without due process of law, or to deny to any of them the equal protection of the laws Anderson v St Paul, 226 Minn 186, 32 NW2d 538 In a fairly early case, the Supreme Court stated that the Thirteenth and **Fourteenth Amendments were intended to be what they really are, limitations of the power of the states and enlargements of the power of Congress**. They are, to some extent, declaratory of rights, and although in the form of prohibitions, they imply immunities, such as may be protected by congressional legislation. Strauder v West Virginia, 100 US 303, 25 L Ed 664

RELIEF REQUESTED

200. The question did come up at the hearing about what relief I'm requesting. Apparently I wasn't clear in my complaint… no surprise I don't have a good understanding of the legal terms. I'll try again without using legal terms and see if that makes my position clear and leave it up to the court to decide which terms to use if any relief is granted.

201. For the Circuit Court I'd like some statement requiring the court to stop providing gender biased propaganda in the clerks offices, to stop using gender in computer passwords and to allow pro se parties the same access to the building with phones & recording devices that they grant attorneys.

202. I'd like the court to order the Judges Alston, Millette, and Potter to issue an apology, in person, to my son for the 17 missed months of visitation.

203. I'd like the court to declare that Virginia's custody laws are unconstitutional as written, and unconstitutional as applied. Further I'd like the court to state that parental rights are protected constitutional rights just like the U.S. Supreme court stated, and that the state must consider that in enacting new laws that interfere only to the minimum necessary.

204. For the other parties I think money damages, are appropriate for having deprived me of my civil rights - including due process rights, parental rights, equal protection, and especially for the loss of visitation for 17 months and for several years of restricting my right to free speech.

205. I think the judges should have to pay my legal expenses that I spent on the case that they did not have jurisdiction of - I saw a note that a federal court did rule that it could make state judges pay attorney fees.

206. I'd like the court to state the orders in case Chancery 53360 were void for lack of jurisdiction.

207. I'd like the court to declare that both the Federal and Virginia laws for "child support" are unconstitutional and that the state must not regulate support from divorce parents any differently than it does for married parents.

208. I'd like the court to order that the Defendant Judges and any others who take their place, must follow the U.S. Constitution in future hearings/cases. That is something they have sworn an oath to do now but they aren't doing it. Some remedy needs to be put in place so they next time the blatantly violate the constitution the parent can have them punished in short order.

209. For the court to develop a new precedent to deal with judicial immunity and state immunity, to make the U.S. Constitution the actual supreme law of the land in Virginia and force both the judges and state to recognize 14th amendment rights. The current approach, in practice, nullifies the 14th amendment. The federal courts should craft this instead of having the general public do it via amendment.

Respectfully Submitted,
Wesley C. Smith

May 25th, 2007

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CERTIFICATE OF SERVICE

I hereby certify that I have mailed copies of the foregoing to the following parties/counsel on May 25th 2007:

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Wesley C. Smith