

The Honorable Representative

RE: WILL A SPECIAL SESSION OF THE LEGISLATURE BE REQUIRED IN 2016 WHEN THE TEXAS FAMILY CODE IS DECLARED UNCONSTITUTIONAL BY A FEDERAL DISTRICT COURT

The constitutionality of the Texas Family Code is being challenged in a federal district court. The district court issued scheduling orders on January 6, 2016. Plaintiffs filed their summary judgment brief on February 22nd and the State Attorney General had until March 25th to file their response. They failed to respond in any way on the merits of the case. April 15th is the final deadline for all reply briefs. Any time after April 15th, the federal district court may rule on the merits of Plaintiffs' claims. A win for Plaintiffs on any of the ten claims will mean big changes for family law in Texas. Several of the claims are of significant breadth that a win by Plaintiffs would invalidate significant portions of the family code.

The Plaintiffs in this case are Ronald B Palmer and Sherry L Palmer, a husband and wife team who have dedicated themselves to ending the unconstitutional policies and practices employed in family law not only in Texas but in all fifty states. The suit is based in part on the constitutional arguments in their book *NOT In the Child's Best Interest* but includes arguments that go well beyond that initial exposé. While the Palmers focus primarily on legal and constitutional challenges to state statutes they are supported by thousands of politically organized parents who are angry at having their children stolen from them by a State that sees their children as State property. These parents are a growing political force who will be heard.

The Palmers' federal suit (4:15-CV-657 Sherman Division) seeks declaratory judgments and injunctions against specific state district court judges, the Attorney General, and the State of Texas. It specifically targets those statutes comprising Suits Affecting the Parent-Child Relationship and is made up of the following ten specific paraphrased complaints:

1. The Fourteenth Amendment limits the authority of state court judges at any level to infringe the fundamental rights of fit parents or their children without due process of law and/or equal protection of the laws even in suits affecting the parent-child relationship and parties have a right to raise federal constitutional questions at the [state] District Court and that these rights are sufficiently well-established to support 42 U.S.C. 1983 action or a 42 U.S.C. 1985 action for conspiracy.
2. Parental rights are individual rights attaching to each parent individually irrespective of the marital status of the parents or of changes in the marital status of the parents and fit parents may not be treated differently from other fit parents based on their marital status without fact-specific compelling state justification and this right is sufficiently well-established to support 42 U.S.C. 1983 action or a 42 U.S.C. 1985 action for conspiracy.
3. Parents and their children share a First Amendment free association right to have and maintain an intimate and expressive familial relationship, to live together as a family, and to teach, learn, and share moral, religious, and civic values between each other free from unwarranted government interference into the family relationship and this right is sufficiently well-established to support 42 U.S.C. 1983 action or a 42 U.S.C. 1985

conspiracy action. Further, termination of parental rights is not the minimum degree of state interference with the family association right required for constitutional protections to attach and it is unreasonable for any state judge to presume that it is. The State of Texas may not infringe or unduly burden the right of family association between individual parent and child without strict scrutiny due process protection for that protected family relationship and the communications between parent and child. Further, requiring a parent to pay a third party for the care of a child implicates 1st Amendment rights of parent and child in that it may limit the quantity and depth of expression within the parent-child relationship.

4. Parents and their children are protected from possession orders that create a meaningful interference with their possessory interest of a child and with a child's possessory interest to be in the possession of each fit parent by the Fourth Amendment's restrictions on unreasonable seizures. Further, possession orders that deprive a parent of equal time with a child implicate 1st Amendment protections in that it reduces the quantity and depth of communications within the parent-child relationship.
5. Parents and their children are protected from unreasonable searches by the Fourth Amendment and the state's assertion of the best interest of a child does not justify an exploratory search even in suits affecting the parent-child relationship and this right is sufficiently well-established to support 42 U.S.C. 1983 action or a 42 U.S.C. 1985 action for conspiracy. Further, this complaint seeks a declaratory judgement that Tex. Fam. Code § 107.051 is unconstitutional on its face as authorizing an exploratory search. Further, this complaint seeks a declaratory judgment that a broad best interest inquiry into the best interests of a child in the SAPCR context is an impermissible "exploratory search" into the private protected family relationship designed to explore for and collect evidence for the purpose of deprivation of fundamental rights.
6. The Fourteenth Amendment prohibits state court judges from making best interest determinations for a child in the face of objections by either fit parent even in suits affecting the parent-child relationship except where the court has shown a compelling state interest and a necessity to act, where statutes that authorize action are narrowly tailored, and where the action taken is the least restrictive means possible to achieve the state's legitimate purpose and that this right is sufficiently well-established to support 42 U.S.C. 1983 action and a 42 U.S.C. 1985 conspiracy action.
7. The Fourteenth Amendment prohibits state court judges from limiting the fundamental rights of parents or child, even in suits affecting the parent-child relationship, without providing an evidentiary hearing where the parent has been properly served with written charges or where a parent can assert their legal and constitutional rights and their child's legal and constitutional rights in a hearing designed to balance all private interests involved against the asserted need for state action to infringe those rights and where the state bears the burden of proof and that this right is sufficiently well-established to support 42 U.S.C. 1983 action or a 42 U.S.C. 1985 conspiracy action.

8. Tex. Fam. Code § 154.001 is unconstitutional on its face and as generally applied as it provides unrestrained discretion to a trial court judge to deprive a parent of property rights without appropriate 4th Amendment protections and creates a class of parent subject to quasi-criminal and criminal sanctions without appropriate procedural safeguards or even the minimum requirement of an evidentiary deprivation hearing.
9. The public policy of Texas that allows a state court judge to infringe, limit, or unduly burden fundamental rights of parent or child based solely on a state judge's determination of a child's best interest is unconstitutional; there is a constitutional presumption that parents are fit and that fit parents act in the best interests of their children; the public policy of Texas which authorizes a state judge to deny this parental presumption in a modification proceeding is unconstitutional; Tex. Fam. Code § 153.001(a)(1) impermissibly shifts the burden of proof onto fit parents and contravenes the parental presumption and is unconstitutional; Tex. Fam. Code § 153.002 places state policy above the constitutional rights of parent and child and is unconstitutional; Tex. Fam. Code § 153.072 and the Tex. Fam. Code generally fail to provide sufficient procedural protection for fundamental rights and is unconstitutional; the public policy of Texas that provides for strict scrutiny protections of fundamental rights in termination proceedings but not in SAPCR proceedings is unconstitutional; while the state may set minimum generally applicable health, safety, and welfare standards for children, a state policy that mandate a "best interest" standard which compels fit parents to battle over who is the better parent and punishes the perceived lesser fit parent with infringement of fundamental rights is unconstitutional; and § 153.002 denies parents the opportunity for a fair hearing on their constitutional rights before an impartial judge.
10. The public policy of the State of Texas which allows a state court judge to infringe the speech, expression, and family association rights of fit parents and their children based on Tex. Fam. Codes § 153.002, § 153.072, § 156.001, § 156.101, and 154.001 is overbroad and unconstitutional as it chills the exercise of protected 1st Amendment rights of parent, of child, and of the legal community without a legitimate state interest, in a manner that is more drastic than necessary to achieve any legitimate state interest, and while failing to protect children from harm. Tex. Fam. Codes § 153.002, § 153.072, § 156.001, § 156.101, and 154.001 are unconstitutionally overbroad. Further, § 153.001(a)(1) is unconstitutionally vague.

Unless the federal court rules that family law is beyond the reach of federal constitutional review, significant portions of the Texas Family Code are in serious danger of being ruled unconstitutional. The most recent Supreme Court opinion on gay marriage makes any such ruling by the district court extremely unlikely as the Supreme Court has made abundantly clear that the State's authority over matters of family law are well within the reach of federal constitutional review.

Win or lose, the Palmers have shown a path to federal constitutional review of state family law issues. They have identified numerous strong constitutional arguments against state action that some federal judge somewhere will agree with. U.S. Supreme Court and Fifth Circuit precedent in this area is

strongly in favor of the Palmers' arguments and against the state. There are thousands of parents eager to follow this path and challenge state actions in this area. We are only the first wave.

The Legislature is well aware that it is unconstitutional to discriminate against a parent or a child based on the marital status of the child's parents. No less than three statutes contain language to this effect in their titles. However, the entire premise of the Texas Family Code is that it is proper for the State to discriminate against parents and their children if the parents are not married or if the parents seek to divorce. In these cases children and their parents are treated as second-class citizens deprived of the basic fundamental rights of married parents and their children.

Parental rights do not come from state authority. They are natural rights arising from the fundamental nature of the relationship. As such they are protected by the 1st Amendment and the entire wealth of 1st Amendment precedent. Parents have these rights when they enter into SAPCR. In fact the very presumption of SAPCR is that to be challenged with SAPCR one must be in possession of these rights. Yet the state purports to "grant" these rights in SAPCR as if they never existed. The State simply may not grant what a parent and child already possess. What really happens in a SAPCR is that the State uses the marital status of the parents as an excuse to deprive one of the parents of equal parental rights and to deprive the child of equal rights to both fit parents.

"The Best Interest of the Child" is being exposed as the greatest socialist scam of all time. It is being exposed as a presumption that our children belong to the state and that the state gets to decide what is best for our children. While conservatives may well go along with punishing single or divorced parents out of misplaced religious fervor, conservatives do not go along with the idea that the children of married parents belong to the State. Where the state cannot single out single or divorced parents for punishment by the state, it must create a policy that treats all fit parents equally. The current scam, regardless of its misleading language, clearly does not.

Much of this was shared with the Juvenile Justice and Family Law Issues Committee last year when the committee was accepting public comment on a bill proposed by Representative Pena, HB2363. Angry parents overwhelmed the committee in support of Representative Pena's bill. Mr. Palmer spoke before the committee in support of the bill and explaining the unconstitutionality of the current family code. Both of the Palmers' books were shared with each member of the committee at that hearing. Representative Pena's bill was a very small step in the direction away from socialism and towards constitutional compliance and yet it was summarily killed by the efforts of Representative Riddle among others. Apparently, the committee believes the State family code is immune from constitutional review so that the state doesn't have to comply. That belief is being put to the test as we speak.

Representative Riddle became the focus of a deep and powerful parental anger and as a result she recently failed to secure her party's nomination to run for office this year. This parental anger is becoming more focused, more organized, and more powerful every day. It is part of the broader anger directed at the establishment nationwide resulting in massive disarray in the two major parties. Stealing children from fit parents creates tremendous anger. Those who would use state power to steal our children are being exposed as such for the public to decide. Those who support socialism in family law are being exposed as socialists for the public to decide.

For those representatives who would like to see more constitutional compliance but are afraid of the impact to children, we address that in Chapter 18 of our book, *NOT In the Child's Best Interest*. We are happy to share that book with each and every Texas Representative in electronic format upon request. Much additional information can be found on our website www.FixFamilyCourts.com. You may also contact us through our contact page on our website at www.fixfamilycourts.com.

For those representatives who would like to move forward but are uncertain of what that might look like legally, we offer our book *The 28th Amendment: Protecting Parent-Child Bonds*. This book is a proposed federal constitutional amendment that is being pursued nationally in case our efforts in federal court fail. This book lists the protections we seek and explains the purpose of each of the specific protections. The language of the amendment could easily be adjusted for inclusion in the Texas Constitution or as preamble for the Texas Family Code. We are happy to share that book with each and every Texas Representative in electronic format upon request.

We are living through a time of great political upheaval and public anger. The establishment has created, either through action or inaction, an incredible degree of unfocused anger in our society. The only thing this anger has in common is a belief that the establishment is failing us in a massive way. There is little in this world that arouses the anger and passion of a person as powerfully as the stealing of one's children. The attempt by the State of Texas to steal our children has stoked a bonfire of passion in us that will not be extinguished until state power to steal children from fit parents is forever eradicated. The lie that it is the other parent doing the damage has been exposed. It is state power legislated by you and exercised by a state judge that is the focus of our anger. Without this misuse of power, the other parent could not have done much damage at all.

If you are looking for a way to tap into this anger to do good in a powerful and meaningful way in the world, then you couldn't ask for a better avenue than protecting the rights of parents and children from a state machine that has run amuck. The time for this issue is now. Parents will no longer sit idly by while you steal their children.

We are giving angry parents the constitutional arguments that will win. We are showing angry parents the path into federal courts. We are teaching winning language to the activist groups. We are helping these groups craft legislative proposals. States throughout the U.S. are using the Palmers' arguments to propose bills like Colorado's Parent's Bill of Rights, HB16-1110, to protect fundamental parental rights to the care, custody, and control of their child equally. The Wall Street Journal reports that at least 20 states have proposed shared parenting bills.

We have attempted to share this with you. We are more than happy to explain the issues with the current code and show how it could be constitutionally compliant while saving the State money. Either way, the probability of a special session being called in 2016 is high and you may want to ensure that you are aware of the issues at stake before that occurs.

Fail to properly follow the constitution in new legislation and we will help the next parents challenge that new language in federal court and publicize the attempt to deceive.

While we are unquestionably angry and seek to eradicate unrestrained judicial power in SAPCR, we are also professionals who are happy to work with those who seek to set things right. We have deep and profound constitutional expertise in this area unmatched by any attorney or group of attorneys who

have ever publically discussed these issues. We have submitted many of our constitutional arguments to writing in our books and our brief. No attorney yet has shown any of them to be wrong.

While you may prefer to defer to state judges and their opinions on the exercise of their own power, that would be a mistake. One only need look to the State Court's record on abortion, sodomy, gay marriage and countless other major federal constitutional questions that they have gotten very wrong. The opinions expressed by state appellate courts in Texas regarding constitutional rights in SAPCR are as twisted a collection of legal logic as you will ever find. It all rests on the federally disproven presumption that constitutional protections can be ignored or avoided when the state claims to be protecting children. The Fifth Circuit has been very clear in this area as have other federal appellate courts.

The only reason these injustices have been allowed to go on as long as they have is that Texas uses incredibly crafty and misleading language in its statutes designed to single out parents and children by marital status, that the path into federal courts on family law issues is very difficult, and that attorneys make far too much easy money in the current system conspiring with judges to steal children from fit parents. Parents are getting wise to the fact that this is a 50 billion dollar a year industry, as cited by the Huffington Post, that steals children from fit parents and enriches the state and the attorneys who do nothing to protect the rights of their clients. It is perpetrated under the lie that the state is protecting our children because legally children are protected when they are with their fit parents and are protected by the decisions of those fit parents.

This last is why we specifically call out the federal conspiracy statutes in our complaints. We have seen too many attorneys conspire with judges behind closed doors to foreclose federal questions being voiced at trial in SAPCR. We have heard too many attorneys admit to violating their fiduciary duty to their clients by asserting their own opinions of the child's best interest over their client's interests. Compliance with this conspiracy is enforced with the unlimited best interest power the Legislature has granted to district court judges that can easily be used to punish any noncompliant attorney. If the federal court rules in our favor, such conspiracies will be clearly actionable by civil suit in federal court for financial damages. This should incent more attorneys to stop making backroom deals contrary to their client's rights and to make serious constitutional challenges on behalf of their clients to future SAPCR statutes that may not be constitutionally compliant.

Fundamental change to the way Texas legislates family law is mandatory. The days of the Texas Family Code being shielded and protected from constitutional review in federal courts is past. The idea that fundamental rights of any sort are subject to no more protection than the mere opinion of a state judge is laughably absurd. The idea that the State can determine how much money a parent has to spend on their child beyond providing the basic necessities is straight up socialism and violates parental decision making rights. The idea that the State can grant a fit natural parent rights to their children is an absurd concept on its face. The idea that parental rights in any way depend upon the marital status of the parents has been shown to be unconstitutional. Therefore, Texas can no longer discriminate against single and divorced parents by denying them protection of their rights equal to that of fit married parents.

Federal appellate courts have clearly spelled out how the state can constitutionally protect children from real harm. Nothing we propose, interferes with that ability in any way. The simple fact is that you best protect children by strongly protecting the rights of the child's fit parents, both of them.

Regardless of your personal moral beliefs regarding single or divorced parents, if you truly want to protect children then you have to protect the rights of these parents equally to the rights of married parents. The current system unnecessarily destroys families and the stability in the parent-child relationship that children depend upon. It destroys the ability of parent-child relationships to recover and grow post-divorce. It forever alters the nature of the parent-child relationship doing great harm to children throughout their adult lives. You cannot stop divorce by punishing our children. That has clearly been proven and it is far past time for this punitive system to end.

You have it in your power, during this upcoming special session, to give children two equal fit parents in their lives. You have it in your power to give children the benefit that comes along with two fit parents actively engaged in parenting them. You have it in your power to finally actually protect children instead of just punishing their parents for choices you disapprove of. The choice is yours but rest assured, the federal courts will be reviewing your choices.

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