17-6836

No.

ORIGINAL

# In the Supreme Court of the United States



BRADLEY B. MILLER, PETITIONER

*v.*

VIRGINIA TALLEY DUNN, RESPONDENT

*ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

This case presents issues related to abuse of discretion and constitutional violations on the part of Dallas County, Texas Judge Andrea Plumlee, other officers of the 330th Family District Court, and respondent Virginia Talley Dunn; as well as the ability of American citizens to invoke federal protection from such state-court abuse under Title 28, U.S. Code § 1443.

1) Whether a racial litmus test for Title 28, U.S. Code Section 1443 removals is unconstitutional.

2) Whether Local Rule 26.1 ("Computing Time") of the United States Court of Appeals for the Fifth Circuit is unconstitutional.

3) Whether the Texas Family Court system is unconstitutional.

4) Whether the "Best Interest of the Child" standard, promulgated in the Texas Family Code, is unconstitutionally vague.

5) Whether judges have immunity from civil liability and criminal prosecution for criminal or tortious acts committed in a judicial capacity, and whether such immunity is unconstitutional.

6) Whether judges, lawyers, and parties are committing conspiracy under 18 U.S.C. § 241 by proposing and signing orders that violate the constitutional rights of American citizens. And whether judges and lawyers are violating 18 U.S.C. § 242, 18 U.S.C. § 2381, or other federal laws or statutes, by the same acts.

## LIST OF PARTIES

Petitioner (Removal Petitioner / Appellant in prior federal appeal):

Bradley B. Miller

Respondent (Removal Respondent / Appellee in prior federal appeal):

Virginia Talley Dunn

Other Parties (Parties in prior federal appeal):

The State of Texas
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Office of the Attorney General
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## JURISDICTION

The decision of The Court of Appeals for the Fifth Circuit was entered on August 17, 2017. App. A. (That court deemed Miller's petition for *en banc* rehearing as being "out of time" on September 8, 2017, though Miller had mailed it timely on August 31, 2017.) The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**Article I § 1** of the United States Constitution provides:

> "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

**Article III §§ 1, 2** of the United States Constitution provide, in relevant part:

"The judicial power of the United States, shall be vested in one Supreme Court.... The judicial power shall extend to all cases, in law and equity, rising under this Constitution, [and] the laws of the United States..."

**Article VI § 2** of the United States Constitution provides:

"This Constitution, and the laws of the United States...shall be the supreme law of the land; and the judges in every state shall be bound thereby...."

**The First Amendment** to the United States Constitution provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

**The Eighth Amendment** to the United States Constitution provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

**The Fourteenth Amendment** to the United States Constitution, § 1, provides, in relevant part:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

**Title 18 U.S.C. § 241** provides, in relevant part:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any

right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.... They shall be fined under this title or imprisoned not more than ten years, or both..."

**Title 18 U.S.C. § 242** provides, in relevant part:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State...to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section... shall be fined under this title or imprisoned not more than ten years, or both..."

**Title 42 U.S.C. § 1981** provides, in relevant part:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

**Title 42 U.S.C. § 1983** provides, in relevant part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State...subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law..."

**Title 18 U.S.C. § 1513** provides, in relevant part:

> "(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.
>
> (f) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy."

**Title 18 U.S.C. § 2381** provides:

> "Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than $10,000; and shall be incapable of holding any office under the United States."

## STATEMENT

Respondent Virginia Talley Dunn sued Petitioner Miller in April 2015 in state court for child custody modification. No grounds were ever cited for filing this action. Dunn requested and was granted injunctions against Miller, including prior restraint upon Miller's speech and movement. (See United States Supreme Court case # 16-9012, *Miller v. Plumlee*, which is still pending.) After a year and a half of similar rulings, Miller filed a motion to recuse state court judge Andrea Plumlee, which was denied on October 18, 2016. The same day, upon trial, the state court issued a ruling from the bench stripping certain child custody rights from Miller, and assigning them to Dunn, in disparate treatment over Appellant Miller's perfectly equal rights—despite the fact that both are legally fit parents. App. E. The state court judge also levied $25,000 in attorney's fees against Miller—despite the fact that Dunn had filed the suit, and without grounds—and Judge Plumlee also imposed a $15,000 appeal bond against Miller. *Id.*

Additionally, since 2013, the state court and Dunn's state attorney have repeatedly violated Miller with improper actions and assorted mayhem—including the requesting and granting of several gag orders.

Just after the state court issued the allegedly-unconstitutional ruling at trial on October 18, 2016, Miller first learned ("first ascertained") of his statutory right to remove said state case into federal court, and so did then timely file his removal petition with the district court at 8:27 a.m. on November 17, 2016.

After Miller filed his removal petition, state court judge Andrea Plumlee signed—**entirely without jurisdiction**—a (void) trial order recording her custody modification ruling. App. E. Dunn's attorney, Patricia Rochelle, though served with the removal documents just before the state-court hearing, presented the order to Judge Plumlee anyway. Before walking into the 330th courtroom, Rochelle told Miller, "I'll tell Judge Plumlee you think you have removed the case." Rochelle's office emailed Miller the signed order later that day. App. E, F. (Though signed, this illegitimate final order was never entered.)

Of many federal torts within the state court process, some were highlighted in example of claims in Miller's petition for removal, which same petition directly challenged the entire State of Texas Family Court system for clearly unconstitutional deprivations of child custody rights from their natural parents on a routine basis.

On November 18, 2016—only one day after Miller filed his removal petition—the district court issued an opinion and order denying jurisdiction and remanding the case back to state court. App. B.

On December 16, 2016, Miller filed a motion to reconsider, citing numerous constitutional issues in his case. Miller concurrently filed a motion to disqualify, citing Judge Sam Lindsay's improper haste in remanding the case, and again pointing to clear state court constitutional violations that had apparently been ignored.

The district court issued an order denying Miller's motion to reconsider on December 22, 2016, again denying any jurisdiction. App. C. Miller then filed his Notice of Appeal on December 27, 2016, and the case moved to the Court of Appeals for the Fifth Circuit.

Eight months of briefing ensued. On August 17, 2017, the Fifth Circuit issued its ruling dismissing Miller's appeal on the grounds that the district court lacked jurisdiction under Section 1443 because the statute's language is "limited to those rights grounded in racial equality." App. A at 2. The Fifth Circuit ruling also falsely stated that Miller had made "no such" claims of racial discrimination. *Id.*, App. I.

Miller then filed a petition for *en banc* rehearing, mailing it to the Fifth Circuit via USPS 2-day Priority Mail on August 31, 2017—i.e. timely according to FRAP 26 and FRAP 40(a)(1). App G. Miller also concurrently filed a Motion to Disqualify and a motion to compel the state court to retain all case records, including hearing recordings. App. H. On September 8, 2017, The Fifth Circuit clerk issued a notice that the rehearing petition and motions had been submitted "out of time" and would thus not be filed. App. D. Miller immediately called the Fifth Circuit and was told by the clerk that Fifth Circuit Local Rule 26.1 required petitions for rehearing to be received by the court on or before the due date, and not just sent by that date. Miller immediately filed a motion to file his petition for rehearing out of time; the Fifth Circuit clerk also denied that motion on September 15, 2017.

Miller has proceeded *pro se* in this litigation since mid-2015, after having been forced to spend more than $320,000 in legal fees since the state court case began in 2013, bankrupting him and causing severe financial harm to his elderly parents. He also spends more than 90 percent of his time on his legal work—a direct result of the conduct of the state court, and now the federal district and appellate courts.

## REASONS FOR GRANTING THE PETITION

In short: Will any court in America uphold the Constitution?

Petitioner Miller posed the same basic question to this Court in case # 16-9012 (still pending), and the answer was a resounding "No." Since that filing, Miller has also traversed the federal court system in the instant appeal, without relief, and is *still* under a blatantly unconstitutional gag order, among other state-court judicial atrocities. Two federal courts have ruled that he does not qualify for federal relief under Section 1443 because, in essence, he is white. Thus there is no remedy for the rampant abuses that are carried out daily in America's Family Court system, or in any state court. This case presents an opportunity for this Court to restore the Constitution to its intended place of preeminence—or, alternately, to confirm that our corrupt court system is indeed the sworn enemy of the American people.

### I. Any racial litmus test for federal removal under Title 28, U.S. Code § 1443 is unconstitutional.

#### A. The Constitution requires Equal Protection for all.

The Fourteenth Amendment to the United States Constitution guarantees all citizens "the equal protection of the laws." 14th Amd. § 1.

Title 28, U.S.C. § 1443 is no exception—because the Fourteenth Amendment also prohibits the creation of "any law which shall abridge the privileges or immunities of citizens of the United States." *Id.* Therefore, any interpretation of Section 1443 that restricts its application on racial grounds (as the Fifth Circuit's ruling does) is not only linguistically incomprehensible, but also repugnant to the Constitution.

Beyond the Constitution, this guarantee of equal rights under the law is further codified in federal statute: "All persons within the jurisdiction of the United States shall have the same right...to the full and equal benefit of all laws...". 42 U.S. Code § 1981. This statute is in complete concord with the Fourteenth Amendment. In fact, the text of 42 U.S. Code § 1981 specifically forbids unequal application of the law on racial grounds. This Court, in fact, rejected race-based restrictions on 42 U.S.C. § 1981, ruling that "the statute explicitly applies to '*all* persons.'" See *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273 at 286-289 (1976); App. G at 5-10. Surely Section 1443 is no different.

The language of Section 1443 is likewise clear. The statute allows removal from state to federal court of civil actions...

> "(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;
>
> (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law." 28 U.S.C. § 1443.

Nowhere in the language of this statute appears any mention of race, or racial restrictions on its enforcement. Further, in a case on the contemporaneous Title 18, U.S. Code § 241, the U.S. Supreme Court ruled that § 241 unequivocally included the full scope of rights protected by the Fourteenth Amendment:

> "...its language embraces all of the rights and privileges secured to citizens by all of the Constitution and all of the laws of the United States." *United States v. Price*, 383 U.S. 787 at 800 (1966).

Any attempt to so limit Section 1443 represents a grotesque fraud upon the court, and a clear violation of the Fourteenth Amendment.

The U.S. Supreme Court has also repeatedly ruled that the language of laws must be taken at face value—that is, a law means exactly what it says, and nothing else:

> "We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v.*

> *Germain*, 503 U.S. 249 at 253-54 (1992), citing *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241-242 (1989); *United States v. Goldenberg*, 168 U.S. 95, 102-103 (1897); *Oneale v. Thornton*, 6 Cranch 53, 68 (1810).

The same ruling disfavored the examination of legislative history in an effort to determine the meaning of a statute. *Germain* at 253-54. That reasoning is sound, as is it easy to see the absurdities that would arise otherwise. For example, the First Amendment was passed in 1791, when slavery existed, and was decades from being eradicated. If we applied a historically-based racial litmus test to the First Amendment, it would follow that free speech is only guaranteed for whites, since the history of the First Amendment plainly shows that it did not apply to other races when it was ratified. Such a proposition is patently ludicrous, whether it applies to the Constitution, or to 28 U.S.C. § 1443.

Recently, the Supreme Court has ruled that antiquated notions of inequality cannot now be enshrined in our laws. In a case involving unequal treatment by gender, the justices held:

> "Those disparate criteria, we hold, cannot withstand inspection under a Constitution that requires the Government to respect the equal dignity and stature of its male and female citizens." *Sessions, Attorney General v. Morales-Santana*, 582 U.S. ____ (2017), Slip Op. at 23.

Surely the same constitutional principle applies to statutory discrimination by race. Equal protection is not subject to such limits; under the Fourteenth Amendment, the laws apply equally to everyone, regardless of race or gender.

### B. *Georgia*, *Johnson*, and *City of Greenwood* erred in their imposition of racial restrictions on Section 1443.

The courts must not blindly follow the opinions of an erred triplet of ancient Supreme Court cases a half-century ago (*Georgia*, *Johnson*, and *City of Greenwood*), as every single case law cited on "civil rights" removal actions and "racial inequality" issues traces back to these three cases.

First, *Georgia v. Rachel*, 384 U.S. 780 (1966), *City of Greenwood v. Peacock*, 384 U.S. 808 (1966), and *Johnson v. Mississippi*, 421 U.S. 213 (1975) are the three United States Supreme Court cases upon this exact subject of "racial removal" under Section 1443. In order to fully understand this matter, one must compare the two "sister" cases of *Georgia* and *City of Greenwood*, with and against the later *Johnson*.

The decisions in *Georgia* and *City of Greenwood* arrived together in 1966, but were partially contradictory to each other, because even the

Supreme Court frequently errs; so in 1975, *Johnson* became the haphazardly-constructed "clarification" to the self-contradiction of *Georgia* and *City of Greenwood*. Indeed, the past ten-year average of statistics confirms that the United States Supreme Court annually receives roughly 8000 total petitions for certiorari (both paid petitions and IFP petitions combined), of which roughly 80, or about one percent (1%) are granted for review. According to the (biased) Congressional Research Service, *Supreme Court Decisions Overruled by Subsequent Decision (1992)*, in the years 1946–1992, the U.S. Supreme Court reversed itself in about one hundred and thirty (130) cases, which equates to overruling itself three (3) times annually, because even the Supreme Court makes errant rulings, just as the district court and court of appeals did in the instant case.

Likewise, the very existence of appellate courts (state and federal) is solely based on the fact that the trial court judges *get it wrong all the time*, and the further existence of consistently high caseloads in the appellate courts is proof-positive conclusive evidence of the absolute fact that trial court judges *get it wrong all the time*. The exact same thing is plainly true of supreme courts and their caseloads, because even the

appellate judges (state and federal), especially being overloaded, also in the same human manner routinely *get it wrong all the time.*

Second, neither *Georgia*, *City of Greenwood*, nor *Johnson* ever redefined "civil rights" in any way, shape or form, but only addressed that particular sub-topic of civil rights (racial inequality) in that era in time, due to the importance of settling the matter in light of national civil unrest.

Third, to the extent that either *Georgia*, *City of Greenwood*, or *Johnson* was ever construed to limit the all-encompassing term of "civil rights" access under § 1443 to only the single sub-topic of racial discrimination, the same is and must be patently and directly unconstitutional on its face.

Fourth, all three—*Georgia*, *City of Greenwood*, and *Johnson*—were removals of state **criminal** cases, with the Supreme Court discussing aspects of state *criminal* law and *criminal* procedure, and are largely inapplicable to removals of state **civil** cases such as herein. Indeed, some of the "prongs" announced dicta within this triplet of cases can ***only*** occur within a ***criminal*** case... yet the language and terms of Section 1443 are quite clear in providing removal of both types, i.e.,

including removals of ***civil*** cases; hence any assertion that *Georgia*, *City of Greenwood*, and *Johnson* are actually valid in limiting ***civil*** access to Section 1443 falls absurdly flat on its unconstitutional face, for no ruling can ever simply wipe away one-half of the applicability of § 1443 *without ever even once mentioning it.*

Fifth, regardless of any and all of the above, some of the named petitioners within the triplet of *Georgia*, *City of Greenwood* and *Johnson* cases were actually **white/Caucasian** citizens, hence again highlighting the abject absurdity of any federal court's racial litmus test of access to Section 1443.

Sixth, after a proper and comprehensive understanding of removal is achieved, it is clear that the right of valid removal was *never* about any particular "civil right" whatsoever; rather, the core germane aspect is *only* whether the case implicates/exposes a situation "where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court." *City of Greenwood*, 384 U.S. at 828, 86 S.Ct. at 1812. Under this examination, the routine situation of Texas family courts herein is IDENTICAL to

the routine dilemma facing African-Americans since the passage of the Fourteenth Amendment, who were still deprived of their guaranteed "civil rights" even one hundred years later. By the 1960s "civil rights era" of the above triplet of Supreme Court cases, African-Americans enjoyed equal fundamental rights on paper, but not in the practiced reality of their lives, due to a myriad of state statutory schemes that were directly offensive on their faces to said constitutional rights ("equal rights", "equal protection of law", etc.) by still arbitrarily and capriciously denying those same fundamental rights enjoyed only in theory, and only on paper.

The situation of Texas family courts is EXACTLY the same, directly on-point. All natural parents in America are constitutionally guaranteed to be protected from state government infringement or deprivation of their natural parenting rights to legal and physical custody, control, management and care of their own natural children. This is beyond dispute. There are literally thousands and thousands of federal trial court cases with rulings in favor of natural parents against wayward state action in removing child custody from their parents without the required Due Process steps, that is to say, the Due Process

prerequisites of ***first*** finding parents *seriously* unfit (allegations of very serious child abuse and/or very serious child neglect—letting Johnny drink too much soda on Thursday night doesn't cut it—we're talking about *serious* abuse or neglect here), and that any such finding by state action can only be valid under **clear and convincing** evidence, and that only done under the full range of established Due Process protections, including a jury if requested.

In other words, the enormously overwhelming totality of federal case law makes it uniformly crystal clear: State governments may **not** even begin to question the pre-existing, fully vested, natural (*and also superior-to-the-state*) parental rights of custody to their own natural children, not ever even begin to question it, let alone invade, impinge or deprive those fundamental rights, unless and until the state would first —first—conclusively prove very serious parental unfitness.

Texas family courts use the "preponderance" evidentiary standard in regards to what amounts to an effective termination of parental rights routinely against one of the two natural parents in **all** such domestic relations cases; but that is clearly unconstitutional, as such evidence **must** be only of the "clear and convincing" evidentiary

standard. In other words, **every** such Texas Family Court case is flatly unconstitutional, so this is a massive civil rights issue.

This case ALSO implicates/exposes a situation "*where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court*", City of Greenwood, 384 U.S. at 828, 86 S.Ct. at 1812, because no matter what, the automatic result of every such Texas Family Court case involving custody of children between adversarial parents will ***always*** be an unconstitutional deprivation of one parent's superior natural rights based upon the wrong evidentiary standard; ***always*** be violations of individual Due Process and other constitutional rights; ***always*** be gender discrimination; and ***always*** be violations of equal rights, equal protection of the laws, etc., every time Texas family courts use the void-for-vagueness "best interest" preponderance standard to alter pre-existing custodial rights between those very same two and otherwise equal natural parents.

In other words, the situation of African-Americans in the 1960s and the situation of at least tens of millions of American citizen natural

parents in state "family courts" today is EXACTLY IDENTICAL to the core germane aspect required for a valid removal, because the fundamental rights of millions of American citizen parents are being routinely abrogated in clear, direct violations of well-established federal Due Process and other constitutional rights; and that routine abrogation, that routine false deprivation, that routine infringement or even total removal of fundamental rights, is ***always*** an "inevitably" foregone conclusion, due to the very existence of the state's flagrantly unconstitutional statutory scheme that will automatically, arbitrarily and capriciously cause rights to "*be denied by the very act of* [conducting such facially repugnant state actions]." *Id.*

In other words again, if the "minority population" of African-Americans in the 1960s had any valid right of removal because their fundamental civil rights were facially violated by repugnant state laws, then there can no reasonable dispute that a roughly estimated fifty million American citizen parents (one parent of each of fifty million American pairs of such parents getting shafted each and every time) have a crystal clear right of removal that is *equally* valid in fact and reality. Race is legally immaterial; only the rights violation matters.

Any attempt, therefore, by the district court and court of appeals to avoid jurisdiction based upon any notion of a racial litmus test for access to the public statutory authority of Section 1443 must be flatly unconstitutional on its face; and the same goes for all such case law.

## II. Fifth Circuit Local Rule 26.1 ("Computing Time") is unconstitutional.

The United States Court of Appeals for the Fifth Circuit has an idiosyncratic rule that exempts petitions for rehearing from the usual filing deadlines and time computations stipulated in FRAP 26 and 40(a)(1). Fifth Circuit Local Rule 26.1 ("Computing Time") states, in part:

> "Except for briefs and record excerpts, all other papers, including petitions for rehearing, are not timely unless the clerk actually receives them within the time fixed for filing." 5th CIR. LR 26.1 ("COMPUTING TIME"); App. J.

Miller filed paper documents by mail in the instant Fifth Circuit case—as do almost all pro se parties. Attorneys, however, file court documents electronically. In fact, the Fifth Circuit *requires* attorneys to file electronically. 5th CIR. LR 25.2.3. Thus, because electronic filing occurs instantaneously, parties represented by attorneys have a distinct time advantage over paper filers when submitting a petition for

rehearing. (In this case, Miller's petition reached the court five days after he mailed it.) In practice, this difference in filing requirements favors litigants who can afford an attorney over indigent parties—a clear violation of the Fourteenth Amendment guarantee of Equal Protection. In Miller's case, his petition for rehearing was rejected by the Fifth Circuit clerk because it was deemed "out of time," so it never even reached the judges—a clear violation of his Fourteenth Amendment right to Due Process. His *Motion to Disqualify* was similarly rejected, so the court never considered the conflicts of interest of the judges on his panel. App. H. Thus Miller's access to justice was obstructed.

Further, a review of the local rules for all of the twelve United States circuit courts of appeals reveals that **none of the other courts of appeals have imposed this rule**—the Fifth Circuit is the only one. Thus litigants in the Fifth Circuit will receive unequal treatment under the law with regard to filing-time requirements—a further violation of the Fourteenth Amendment. This Fifth Circuit discrepancy represents an outrageous abuse of judicial discretion, and it cannot be allowed to remain in place.

## III. The Texas Family Court system is unconstitutional.

### A. The State of Texas must surpass pre-deprivation "serious parental unfitness" Due Process hurdles, and by clear and convincing evidence, before it may then, and only then, remove the custodial rights of any parent to his or her own natural child.

There is no standard of review applicable here. It is simply a matter-of-fact examination of whether the United States Supreme Court has ruled that states must perform certain federal Due Process procedures before taking away a parent's custody of his or her natural child. There is no question that this answer is affirmative.

A parent's right to raise a child is a constitutionally protected liberty interest. This is well-established constitutional law. The United States Supreme Court long ago noted that every 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 U.S. 528, 533; 97 L. Ed. 1221; 73 S.Ct. 840, 843 (1953). In *Lassiter v. Department of Social Services*, 452 U.S. 18, 27; 68 L. Ed. 2d 640; 120 S.Ct. 2153, 2159-60 (1981), the Court stressed that the parent-child relationship "is an important interest that 'undeniably warrants deference, and absent a powerful countervailing interest,

protection.'" Quoting *Stanley v. Illinois*, 405 U.S. 645, 651; 31 L. Ed 2d 551; 92 S.Ct. 1208 (1972).

A parent whose time with a child has been limited to the typical four-days-per-month visitation clearly has had his or her rights to raise that child severely restricted. In *Troxel v. Granville*, Justice O'Connor, speaking for the Court stated,

> "The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of the law.' We have long recognized that the Fourteenth Amendment's Due Process Clause, like its Fifth Amendment counterpart, 'guarantees more than fair process.' The Clause includes a substantive component that 'provides heightened protection against governmental interference with certain fundamental rights and liberty interests.'" *Troxel v. Granville*, 53 U.S. 57 at 65 (2000) [*citations omitted*].

The *Troxel* opinion continues:

> "The liberty interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Id.*

Logically, these forms of fundamental parental rights violations are inherently a federal question.

Throughout the last century, the Supreme Court has solidly held that the fundamental right to privacy protects citizens against unwarranted governmental intrusion into such intimate family matters

as procreation, child rearing, marriage, and contraceptive choice. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 926-927 (1992).

In no uncertain terms, the Supreme Court held that a fit parent may not be denied equal legal and physical custody of a minor child, without a finding by clear and convincing evidence of parental unfitness and substantial harm to the child, when it ruled in *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment."

Indeed, the United States Supreme Court has ruled even further binding stare decisis upon the state courts: Fit parents are implicitly presumed to "act in the best interests of their children." *Parham v. J.R.*, 442 U.S. 584, 602 (1979).

An abundance of case law supports the conclusion that all natural parents have a fundamental liberty interest in the custody of their children. See *Hollingsworth v. Hill*, 110 F.3d 733, 739 (10th Cir. 1997) (in a Section 1983 suit brought by a mother whose children were removed from her custody without prior notice, the mother had "a

constitutionally protected liberty interest [in the custody of her children] which could not be deprived without due process"); *Jordan v. Jackson*, 15 F.3d 333, 342 (4th Cir. 1994) (in a Section 1983 suit brought by parents whose son was removed from their custody without prior notice, the court found that there "are few rights more fundamental in and to our society than those of parents to retain custody over and care for their children, and to rear their children as they deem appropriate"); *Weller v. Dep't. of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990) (in a Section 1983 suit brought by a father whose children were removed from his custody without prior notice, the father "clearly [had] a protectible liberty interest in the care and custody of his children"); *Robison v. Via*, 821 F.2d 913, 921 (2d Cir. 1987) (in a Section 1983 suit brought by a mother whose children were removed from her custody without prior notice, "it was clearly established that a parent's interest in the custody of his or her children was a constitutionally protected interest of which he or she could not be deprived without due process"); *Hooks v. Hooks*, 771 F.2d 935, 941 (6th Cir. 1985) (in a Section 1983 suit brought by a mother whose children were removed from her custody without prior notice, the court found that it is "well-

settled that parents have a liberty interest in the custody of their children"); *Lossman v. Pekarske*, 707 F.2d 288, 290 (7th Cir. 1983) (in a Section 1983 suit brought by a father whose children were removed from his custody without prior notice, the father "unquestionably" had a liberty interest in the custody of his children); *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977) (in a Section 1983 suit by a mother whose children were removed from her custody without prior notice, the court found a liberty interest in "the most essential and basic aspect of familial privacy, the right of the family to stay together without the coercive interference of the awesome power of the state").

There are no magical differences between the average natural parent who has never been involved with any court at all, versus the exact same pre-existing, full legal and physical child custodial rights enjoyed and retained by any given natural parent sued by child protection services (TX = "DFPS") for termination of parental rights, or again the same and exactly equal, pre-existing, full legal and physical child custodial rights enjoyed and retained by any given parent sued for divorce-and-similar-with-kids in Family Court. Both of the two latter situations are exactly the same, with state action necessarily alleging,

whether expressly revealed or not, that the targeted (generally "respondent" or "defendant") parent party is somehow too seriously unfit to continue his or her pre-existing, well-established, superior child custodial rights in full force; yet of course that requires the state to first prove "unfitness" by clear and convincing evidence under full Due Process procedures, including that parent's right to invoke trial by jury in defense upon the same.

Within divorce and similar proceedings, it is an utter fallacy, an outright unconstitutional fraud, and a legal nullity, for any state court to attempt to pretend to "grant" or "award" any form of custody ("legal" and/or "physical") of any child to either and/or both natural parents of that child, since *they* ***both*** *already have* child custody rights fully vested into each and both of them, long prior to ever entering into any state court action. The given state court in any such similar proceeding (*i.e., not discussing post-deprivation actions in the realm of child protective services actions, which are quite different in their origination and purposes as between the state and the given parent or parents*) cannot falsely and fraudulently pretend to ostensibly "award" or "grant" something *it does not have* (child custody) to someone *who already has it*

(child custody) *fully*; or engage in flagrant discrimination and fraud by typically allowing just one parent to continue retaining her/his pre-existing child custody rights, while removing the other parent's exact same and also pre-existing child custody rights, without so much as even bothering to inform that other parent that all such rights are constitutionally-protected rights that cannot be simply taken away without first going through full Due Process—i.e., perpetrating all manner of unlawful administrative end-runs, by repugnant statutes, against constitutional rights, to (a) defraud the unsuspecting parent of his/her superior rights without even telling them that is what is actually going on, (b) falsely reclassify that same unsuspecting parent into a so-called "noncustodial" parent, and (c) begin generating all sorts of financial windfalls—which fraudulently benefit judges and courts.

In short, the State of Texas Family Court system is wildly unconstitutional, even massively so, in perpetrating routine, daily frauds upon the basic constitutional and Due Process rights of approximately one-half of all the natural parents involved within domestic relations cases over child custody between two competing

parents; and it is incumbent on this Court to strike down the same facially repugnant mess.

### B. Any infringement of the custodial rights over a minor requires the clear and convincing evidentiary standard.

It is well established that any impact upon the custodial rights over a minor requires the clear and convincing evidentiary standard. No court or unit or actor or agent of the State of Texas may ever attempt to alter any child custodial rights between any parties (public and/or private) upon any mere preponderance standard but must always use the clear and convincing evidentiary standard to do any such thing. Any court's use of the preponderance of the evidence standard in custody decisions is a constitutional violation.

### C. State Family Court judges are barred from any involvement in Title IV-D child support matters of their own given respective counties due to the pecuniary conflicts of interest to such county officers within the Title IV-D system.

Every court and judicial officer within each given different Texas county is absolutely precluded by law from origination of child support orders regarding its own county cases, in the first place, and is further precluded by law from any enforcement of child support orders

regarding its own county cases, since no judge may hear or address any matters in which the judge has either a direct or indirect pecuniary interest—and that also includes having a business and/or other working relationship with beneficiaries to such pecuniary interests, i.e., other court officers.

In 1975, the federal government determined that the best way to help women and children move from public assistance to self-sufficiency was to help them collect child support from the fathers. To ensure that states followed through with this idea, a state's receipt of welfare funding (under Title IV-A of the Social Security Act) was tied to its creation and operation of a child support enforcement program (under Title IV-D of the Social Security Act; hence the name "IV-D".) [S. REP. NO. 1356, 93d Cong., 2nd Sess. (1974)]; until 1985, this responsibility was shared by district and county attorneys and the Texas Department of Public Welfare. In 1985, the function was transferred to the Office of the Attorney General (OAG); nationwide, the child support program is governed almost exclusively by federal regulations. Title IV-D, 42 U.S.C. §651, et seq., spells out in great detail the standards state programs must meet to qualify for funding; the Texas OAG has

contracted with counties to provide IV-D services for all divorce cases in the county, usually handled through the local domestic relations office. The district judges in those counties have enacted a local rule declaring that all divorce decrees entered after a certain date will be treated as IV-D cases. The parties may opt out of this referral; see TEX. FAM. CODE § 231.0011(c).

The parties herein did **not** opt out.

TEX. FAM. CODE § 231.101, et seq., authorizes counties to enter into various agreements regarding Title IV-D services, and under a complicated formula, establishes various portions of the Title IV-D financial collections stream to be paid out in various percentages to the given county itself, the clerk of the county, the prosecutor of the county, and the judges of the county, whether by direct apportionment into their own salaries, budgets and/or otherwise. See also, enacted Texas S.B. No. 1139, for various details and figures thereupon.

As such, Texas Family Court judges have direct pecuniary interests in the collection ("enforcement") of their own child support orders, the same going for every judge of each given different county likewise; hence the Rules preclude any judge in each respective county

from—at least—presiding over any such child support matters whatsoever, if not also completely precluding such judge from that entire given case.

To disqualify a judge, typically the said interest should be direct and pecuniary. "[T]he interest which disqualifies a judge is that interest, however small, which rests upon a direct pecuniary or personal interest ***in the result of the case*** presented to the judge or court." Cameron v. Greenhill, 582 SW2d 775, 776 (Tex. 1979) (emphasis added). In Nalle v. City of Austin, 22 SW 668 (Tex. 1893), the Texas Supreme Court determined that the district judge who presided over the suit was indeed disqualified because he lived in and paid taxes to the City of Austin. The suit was brought by a property owner to enjoin collection of taxes and to cancel $900,000 in bonds already issued. The injunction effectively prevented the tax levy. The Supreme Court said every property holder not only has an interest but a direct pecuniary interest in the result. By living in and paying taxes in Austin, the judge was disqualified.

A judge who is a stockholder in a corporation is disqualified from hearing a case in which that corporation is a party – Pahl v. Whitt, 304

SW2d 250 (Tex. App. – El Paso 1957, no writ history).

The employment of the judge's wife by the defendant corporation was a direct pecuniary interest amounting to disqualification – *Gulf Maritime Warehouse v. Towers*, 858 SW2d 556 (Tex. App. – Beaumont 1993, denied).

A trial judge's entry in the lawsuit by filing an answer and seeking attorney fees against the party filing a recusal motion created a direct pecuniary interest sufficient to disqualify – *Blanchard v. Krueger*, 916 SW2d 15 (Tex. App. – Houston [1st Dist.] 1995, no writ history).

A trial judge whose pay was tied to the conviction rate in a drug impact court had a pecuniary interest and was disqualified – *Sanchez v. State*, 926 SW2d 391 (Tex. App. – El Paso 1996, Ref.).

Because Texas Family Court judges may also include attempted enforcement of an alleged child support arrearage matter within the same county case aligned and interwoven with their own Title IV-D financial interests, the judges of each given Texas county are clearly *precluded by law* from either originating and/or hearing in the future any child support matter intertwined with its own county domestic cases.

Again, the State of Texas Family Court system is wildly unconstitutional, even massively so, in perpetrating routine, daily frauds upon the basic constitutional and Due Process rights of approximately one-half of all the natural parents involved within domestic relations cases over child custody between two competing parents, and it is incumbent on this Court to strike down the same facially repugnant mess by declaring an appropriate injunction against the State of Texas, its Family Court system leaders, and/or the corresponding judicial officers, forbidding such further conflicts of interest and/or other entanglements, and making the same permanent.

### D. The Texas Family Code's "best interest of the child" standard is unconstitutionally vague.

The Texas Family Code holds that "the best interest of the child" is the "primary consideration" in all custody decisions, including custody modifications. TFC §§ 153.001, 153.002, 156.101. What this phrase means is open to interpretation. It can be used—and in the instant state court case, *has* been used—to justify literally any ruling or order, no matter how abusive, unconstitutional, or even criminal. The phrase is patently nonspecific. Vague ordinances are deemed an unconstitutional violation of Due Process. *Coates v. Cincinnati,* 402

U.S. 611 (1971). This prohibition against vague ordinances under *Coates* must also apply to the "best interest of the child" standard. Such a nebulous code is impermissible under the Fourteenth Amendment, and it must be abolished—along with any court's ability to interfere in the parent-child relationship without a legitimate finding of serious unfitness.

## IV. Judicial immunity is unconstitutional.

The United States Constitution is clear in its delineation of powers. Article I, § 1 of the Constitution grants legislative powers solely to Congress. Article III gives the power of enforcing the laws to the Supreme Court. Article VI, § 2 designates the Constitution itself as "the supreme law of the land," to which "the judges in every state shall be bound...". The language is unequivocal: the judicial branch serves the Constitution. Nowhere in the Constitution are judges themselves exempted from the laws they are sworn to uphold. Nor can judges create laws that would create such an exemption, because legislation is the domain of Congress.

For the first two centuries of our country's existence, that rational framework held. This Court observed: "No state legislator or executive

or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper v. Aaron*, 358 U.S. 1 at 18 (1958). As recently as 1974, this Court also noted: "*Ex parte Young* teaches 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.'" *Scheuer v. Rhodes*, 416 at 237 U.S. 232 (1974), quoting *Ex parte Young*, 209 U.S. 123 at 159-60 (1908).

All government officials, including judges, were rightfully deemed accountable to the Constitution. Then something went terribly wrong. *Stump v. Sparkman* gave judges blanket immunity for acts committed while on the bench, even if they were malicious. *Stump v. Sparkman*, 435 U.S. 349 (1978). The decision in *Mireles v. Waco* doubled down on this errant path, extending immunity from suit to judges who commit even criminal acts, as long as they were done in an official capacity. *Mireles v. Waco*, 502 U.S. 9 (1991). Make no mistake: these decisions are an abdication of The Supreme Court's judicial responsibility to the Constitution, and an abrogation of the Constitution itself.

The United States Code contains laws specifically forbidding the kind of behavior that has occurred in the 330th Family District Court. 18 U.S.C. § 241 prohibits two or more people from conspiring against the exercise of any person's constitutional rights. The state court judges, in repeatedly signing patently unconstitutional orders presented by Dunn and her attorneys, and by making rulings that violated Miller's rights, did just that.

18 U.S.C. § 242 forbids depriving anyone of his rights under color of law. Again, the state court judges, as well as Dunn's attorneys, used their position as officers of the court—and the pretense of legitimate hearings in a court of law—to deprive petitioner Miller of his rights. 42 U.S.C. § 1983 holds anyone who commits such an act civilly liable.

18 U.S.C. § 1513 outlaws retaliation in response to providing information to a law enforcement officer regarding the commission of a federal offense. Miller cited violations of both 18 U.S.C. § 241 and 18 U.S.C. § 242 in his mandamus petition to The Supreme Court of Texas. The implicated state court judge, Andrea Plumlee, then responded by, as mentioned, levying a $25,000 attorney's fees judgment against him, imposing an outrageous $15,000 appeal bond, and by stripping him of

even more of his parental rights. App. E. This was a clear example of judicial retaliation. And this act also violated the Eighth Amendment prohibition of "excessive fines," as well as Miller's Due Process rights.

The *Cooper* ruling's use of the word "war" is instructive. *Cooper* at 18. 18 U.S.C. § 2381 provides severe penalties for "Whoever, owing allegiance to the United States, levies war against them..." and declares them "guilty of treason." Government officials, who have sworn an oath to the United States Constitution, and who then wage war against it by seeking to undermine its authority, are, by legal definition, **traitors**. Judges who seek to exempt themselves from the laws of the land, when the Constitution does not grant that them power, are undoubtedly traitors. And they should be prosecuted as such.

The Constitution dictates that no citizen should have immunity from criminal prosecution or civil liability. Fundamentally, such an exception violates the Fourteenth Amendment rights to Due Process and Equal Protection. In practice, it beckons people with criminal psychology to join the judiciary, where they know that they can abuse others with impunity, and where they perversely twist the court into a tool of abuse. There is no question that the root cause of the corruption

in the instant case—and in every court in the country—is the fact that judges know they will never be held accountable for abuse. Judicial immunity is antithetical to the Constitution, and it must be abolished.

The time has come for this Court to put an end to state court corruption and abuse, and to extend federal protections to all citizens.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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