No. ________

In The
Supreme Court of the United States

JANET K. ADKINS,

Petitioner,

v.

JAMES S. ADKINS,

Respondent.

On Petition For A Writ Of Certiorari To The Michigan Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), established that the ability to have or not have a child is a fundamental right, and protected under the continuum of liberty. *Equally protected is the fundamental right to be a family*, and this is also a continuum of liberty. The twilight zone questions become:

1. How do Family Law Court systems throughout the United States and specifically the Family Law Court of Michigan come to be the only courts that are exempt from various provisions of the continuum of liberty, as well as significant portions of the United States Federal Constitution?

2. Whether Family Law Court systems throughout the United States and specifically the Family Law Court of Michigan have the unfettered right to cause disparate treatment, by failing to uphold United States Federal Constitutional laws, prescribed within *Roe v. Wade*, applicable to the Fourteenth Amendment.

PARTIES TO THE PROCEEDING

The Petitioner is Janet Kay Adkins. The Respondent is James Scott Adkins.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Janet Kay Adkins respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Michigan.

OPINIONS BELOW

The Supreme Court of Michigan's unreported order denying reconsideration, *Adkins v. Adkins* (unpublished, Michigan 2015), is reproduced at (Pet.App.20). The Supreme Court of Michigan's unreported order denying review of the Court of Appeal's decision, *Adkins v. Adkins* (unpublished, Michigan 2015), is reproduced at (Pet.App.1-2). The unreported summary administrative dismissal orders for lack of jurisdiction of the Michigan Court of Appeals, *Adkins v. Adkins*, No. 326742 (unpublished, Michigan Ct. App. 2015) are reproduced at (Pet.App.3-5).

JURISDICTION

The Supreme Court of Michigan denied Mother's application for leave to appeal on July 28, 2015. Mother filed a motion for reconsideration, which was denied on September 9, 2015. Mother invokes this Court's jurisdiction under 28 U.S.C. §1257.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution amendment V

[N]or shall any person . . . be deprived of life, liberty, or property, without due process of law. . . .

U.S. Constitution amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

U.S. Constitution amendment XIV, §1

The Due Process and Equal Protection Clauses of the U.S. Constitution provide in relevant part:

No state shall . . . 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.

Temporary Emergency Jurisdiction UCCJEA §204(3) codified in Michigan as MCL §722.1204

> If there is a previous child-custody determination that is entitled to be enforced under this act or if a child-custody proceeding has been commenced in a court of a state having jurisdiction under 201 to 203, an order issued by a court of this state under this section *must specify in the order a period of time that the court considers adequate to allow the person seeking an order to obtain an order from the state* having jurisdiction under sections 201 to 203. The order issued in this state remains in effect until an order is obtained from the other state *within the period specified or the period expires*. [emphasis added]

STATEMENT OF THE CASE

A. The Facts and Trial

Petitioner, Janet Adkins (hereafter, Mother), and Respondent, James Adkins (hereafter, Father), were divorced November 4, 2011 by Consent Judgment of Divorce (JOD) and the case has remained disposed since that time. The parties have two minor children, MMA (dob 1/21/1998) and NJA (dob 7/3/2000) and were granted joint legal/physical custody of the children pursuant to the JOD with equally shared parenting time and an alternating holiday schedule.

With no prior parenting time/custody issues, Father, without warning, moved the trial court to grant Father sole custody restricting Mother to supervised parenting time based on *unreported, uninvestigated* child abuse/neglect allegations against Mother and her ex-boyfriend. These allegations were never raised with Mother, the police, or the child welfare agency (CPS).

The trial court heard Father's motion on August 27, 2014, at a brief motion call hearing, took no sworn testimony, proffered no evidence, and changed the custodial environment by verbally ordering Mother's parenting time to "weekends only" (Pet.App.13-16) and, via an Order of Reference (alternative dispute resolution) (Pet.App.17-19), deputized a Friend of the Court (FOC) Family Counselor to investigate Father's abuse/neglect allegations. Mother's attorney objected because there were other statutory alternatives available rather than disrupting the sixteen-year custodial environment with Mother.

On September 11, 2014, Mother made a report to CPS who then cleared Mother of Father's baseless allegations on September 25, 2014, which was communicated to the deputized FOC Counselor. Father's motion was required to be dismissed on that day. Instead, at a brief motion call hearing November 5, 2014, the trial court judge verbally adopted the deputized counselor's recommendation without exercising her own independent judgment as to the best interests of the children and without the recommendation remaining statutorily confidential between the

parties. The trial court ruled without proffering evidence or Mother's having: an attorney, proper notice, or opportunity to be heard. Mother objected to the delegation of judicial authority, Due Process issues, and lack of evidence but was found in direct contempt for this calm, professional, self-advocacy and remanded to jail for 3 days (Pet.App.8-9).

On November 7, 2014, the written orders were entered with the Clerk of the Court with due process violations and no "substitute procedural safeguards" which Mother raised in her appeals to the appellate courts (Pet.App.6-7). Because of this unlawful, non-expiring temporary order, Mother has been prevented from seeing her children since November 2, 2014.

B. Appellate Decisions

Early October 2014, Mother filed judicial and attorney grievances that were denied on grounds it was a question of law for the Michigan appellate courts yet, those appeals were denied as well.

On October 6, 2014, Mother's attorney filed a Claim of Appeal from the September 17, 2014 temporary order (subsequent to the August 27, 2014 court appearance). Only nine days later, on October 15, 2014, this appeal was *sua sponte* summarily administratively dismissed for lack of jurisdiction *before* the trial court case file was transferred to the Michigan Court of Appeals and *before* the time to file a docketing statement or brief had tolled (Pet.App.12).

On April 2, 2015, Mother filed a claim of appeal with affidavit regarding timeliness from the November 7, 2014 order. Mother filed her brief on April 7, 2015. Mother argued that the trial court erred in changing custody (1) without proper notice and opportunity to be heard; (2) without holding an evidentiary hearing; (3) without making findings of fact with respect to the children's established custodial environment and the statutory best interest factors; and (4) without making a finding of harm that parenting time with Mother would endanger the children.

On April 16, 2015, without filing an appearance, the opposing attorney filed a sworn affidavit countering Mother's affidavit regarding the timeliness of her appeal. Mother responded on April 19, 2015 with a verified motion to strike the attorney's perjured affidavit corroborated by two sworn affidavits from outside parties as well as courtroom surveillance video.

Only five days later, on April 21, 2015, without first answering the timeliness question and without Father making an appearance, the Michigan Court of Appeals *sua sponte* administratively dismissed Mother's claim of appeal for lack of jurisdiction because "the temporary order regarding parenting time and child support does not qualify as an order affecting custody." (Pet.App.4-5.)

On April 27, 2015, Mother filed a motion for immediate reconsideration and motion for peremptory reversal because the administrative dismissal violated

stare decisis and Father had concurred that this matter involved the custody of children. Yet, Mother's motions were summarily denied on May 12, 2015. (Pet.App.3.)

On June 19, 2015, Mother applied for leave to appeal with the Supreme Court of Michigan. Mother questioned whether the Michigan Court of Appeals erred when it misinterpreted U.S. & State Constitutions, Michigan statutes, as well as caselaw and summarily dismissed appellant's claim of appeal, brief, motion for reconsideration, and emergency motion for peremptory reversal claiming lack of jurisdiction because the post-judgment temporary order regarding parenting time does not qualify as an order affecting the custody of a minor under MCR 7.202(6)(a)(iii). Mother argued, *inter alia*, the COA (1) did not uphold Due Process and Equal Protection, (2) did not conduct a statutory interpretation of the UCCJEA, Child Custody Act or Child Protection statutes, (3) did not adhere to *stare decisis*, (4) did not faithfully honor the threshold "presumption of constitutionality," (5) acquiesced with the trial court judge legislating from the bench and, (6) acquiesced with the trial court judge acting outside the scope of her authority. Father made no appearance and did not file an answer, yet, Mother was summarily denied leave to appeal on July 28, 2015. (Pet.App.1-2.)

On July 30, 2015, Mother filed an Emergency (24 Hour) Motion for Reconsideration in light of the fact that the Michigan Supreme Court was about to commence a two-month recess which was denied

on September 9, 2015 without an explanation. (Pet.App.20.) After data mining the Supreme Court of Michigan's online database going back to July 1, 1996, Mother found there to be fifty-five appeals-as-matter-of-right involving children that had eventually reached the Supreme Court of Michigan. Mother's appeal was the *only* one that did not receive a multi-page opinion from either the Michigan Court of Appeals or the Supreme Court of Michigan. Mother's motion centered on the following case which had nearly the same boiler plate administrative dismissal for lack of jurisdiction:

See In Re Ryan, Minors, MI S.Ct. #150657 (May 2014):

> "The claim of appeal is DISMISSED for lack of jurisdiction because the order of the circuit court is not appealable as a matter of right. MCR 7.203(A); MCR 3.993(A). An appeal from an order of the circuit court that is not a final judgment appealable by right must come by application for leave to appeal under MCR 7.205. MCR 7.203(B)(1); MCR 3.993(B)."

The Supreme Court of Michigan remanded that case back to the Michigan Court of Appeals on May 2, 2014:

> " . . . On remand, the Court of Appeals shall either reinstate the children's claim of appeal or explain why the children do not have an

appeal of right, pursuant to MCR 3.993(A)(1), from the trial court's September 27, 2013 order of disposition."

REASONS FOR GRANTING PETITION

I. FAMILY LAW COURT SYSTEMS THROUGHOUT THE UNITED STATES AND SPECIFICALLY THE FAMILY LAW COURT OF MICHIGAN HAVE COME TO BE THE ONLY COURTS THAT ARE EXEMPT FROM VARIOUS PROVISIONS OF THE CONTINUUM OF LIBERTY, AS WELL AS SIGNIFICANT PORTIONS OF THE UNITED STATES FEDERAL CONSTITUTION.

"Over the past hundred years, a consensus has emerged recognizing a parent's ability to raise his or her child as a fundamental, sacrosanct right protected by the Constitution. Federal courts have repeatedly rejected the *parens patriae* summary mode of decision making and have instead held that the U.S. Constitution requires the state to introduce proof of parental unfitness prior to the temporary or permanent deprivation of that right from a parent.

In this [*parens patriae*] system, the state's paternalism trumped all other interests. The state, acting upon the assumption that its powers superseded all authority conferred by birth on natural parents, granted

> itself the immediate right to determine the child's best interests without deference to the parent's wishes. Appeals by parents based on the core concepts underlying due process – notice and a meaningful opportunity to be heard – were largely rejected, which signified that the parent's role in the decision-making process was, at best, marginal.[1] Assertions of a parental right to custody based on fitness were ignored and instead yielded to the state's subjective determination of what was best for "its" child. The summary transfer of decision-making authority from parents to juvenile court judges in order to "save" children represented the core of the *parens patriae* approach to child welfare." [*See* Sankaran, Vivek. "Parens Patriae Run Amuck: The Child Welfare System's Disregard for the Constitutional Rights of Non-Offending Parents." Temp. L. Rev. 82, no. 1 (2009):55-87.]

Only in the Family Law Court systems throughout the United States and specifically the Family Law Court of Michigan (hereafter, Family Court), do litigants walk into the courthouse and enter a time warp that takes them back more than 200 years ago when the Constitution did not exist. Rather than

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[1] *See, e.g., Farnham v. Pierce*, 6 N.E. 830, 831-832 (Mass. 1886) (explaining that notice and trial are unnecessary in the child commitment proceedings); *State ex rel. Jones v. West*, 201 S.W. 743, 744 (Tenn. 1918) (recognizing that state has ultimate power to serve child's best interest).

serving litigants by protecting their rights and interpreting the law, as charged by the Constitution, Family Court acts as a dictatorship with goals and objectives of its own, often in conflict with parents' and children's rights. Family Court has all the power and when their power and our rights conflict, we lose, which is repugnant to the Constitution. "We the People" created the government to serve us, not the other way around. If you observe Family Court today, it would be difficult for an outsider to determine that "We the People" don't exist to serve Family Court. The culture of Family Court has become so relaxed that written laws aren't followed and procedural due process requirements are ignored, so the *parens patriae* summary mode of decision making from a century ago is alive and well allowing Family Court to, on a whim, outright destroy the unfortunate unfree souls of "post-judgment" parents and children. Judges feel utterly secure in knowing that they will suffer no negative repercussion for their actions.

> *As Mr. Justice Harlan once wrote:*
>
> *"[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This "**liberty**" is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom*

> *from all substantial arbitrary impositions and purposeless restraints . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment. . . ." Poe v. Ullman, 367 U.S. 497, 543 (opinion dissenting from dismissal of appeal) (citations omitted).* [emphasis added.]

With no safety ("substitute procedural safeguards," *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976)) and no liberty (familial rights free from government intrusion), many "post-judgment" parents and children of today are found to be receiving the same injustice as the slaves living in the same land as the Founders of the Constitution. Slaves were not only denied liberty, their enslavement certainly gave them no reason to feel secure and so the continuum of liberty did not apply to them. The Founders erected boundaries to limit liberty to those of their own kind in order to reap material wealth from others (slaves) deserving neither liberty nor security. In the current landscape of Family Court, the judicial system has erected boundaries to oppress "post-judgment" parents and children in order for those in the legal community, service providers, and adverse parties to reap material wealth. Finding the right balance between liberty and safety is a centuries-old pursuit of civilized peoples but "post-judgment" parents and children who have systemically been denied both liberty and safety find themselves removed from the

continuum of liberty and in a daily struggle to correct this fatal flaw in our judicial system.

There are several examples of the legal community being caught reaping material wealth in recent years at the expense of oppressed litigants. In Pennsylvania, there was a "kids for cash" scheme in which a Judge was getting kick-backs from a juvenile detention facility in hearings that lasted only two minutes. In Illinois, the FBI carried out a sting operation which found that Judges and Attorneys were involved in rigging murder cases. In the case at bar, Mother has been sentenced to therapeutic visits with her children at a service provider owned and operated by the spouse of the Family Counselor Supervisor that oversaw the issuance of the custody recommendation in this case, giving the impression of partiality and possible *ex parte* information exchange with the trial court. Since history shows that money can drive a corrupt legal community to make deplorable decisions, it is imperative that the judiciary improves public confidence in Family Court by showing fairness, impartiality, and the dispensing of speedy decisions in accordance with the written law and the continuum of liberty.

In the case at bar, the safety, protection, or harm of the children was mentioned *fourteen* times by the trial court and Mother was berated when she requested proof of her unfitness prior to the familial intrusion and deprivation of parental rights. The trial court usurped CPS authority and mentioned the need

to protect the children when there has been no criminal investigation or charges against the ex-boyfriend or Mother. Mother was not adjudicated as unfit and even the opposing attorney confirmed CPS would not be petitioning the trial court. The trial court's summary transfer of the children from Mother to Father was done without deference to the U.S. Constitution and without invoking a child custody or child protection proceeding. The case at bar presents an ideal vehicle to resolve this conflict. Determining the unconstitutionality of this *parens patriae* system is dispositive to the outcome of this case and, unlike many family court disputes, the material facts are uncontested. *Fit* parents should have prevailed in all of the states that have embraced this system. Given the typicality of the post-judgment allegations, a clear resolution will help guide the state courts across the country that are divided over the meaning and application of the Child Abuse Prevention and Treatment Act (CAPTA) and Parental Kidnapping Prevention Act (PKPA) to the recurring fact pattern presented in this case. Since the trial court improperly exercised its *parens patriae* power, Mother asks this Court to make a finding that non-expiring temporary orders are unconstitutional and the JOD be enforced so her children are returned to her care, custody, and control. The family's fundamental right to the continuum of liberty was ignored and instead surrendered to the trial court's subjective determination of what was best for "its" children.

A. Due Process (5th Amendment/14th Amendment)

In any other proceeding that has the ability to take away property rights or liberty interests by the Government, from both citizens and non-citizens, there is the ability to have counsel appointed. In family law matters, this right to appointment of counsel does not exist for the parents nor are courts providing "substitute procedural safeguards," which contravenes this Court's ruling in *Turner v. Rogers*, 564 U.S. ___, 131 S.Ct. 2507 (2011), and which often adversely impacts the financially weaker parent; it is highly likely to have a disparate impact on women.

Mother was deprived of counsel during the course of what should have been an adversarial evidentiary hearing conducted in advance of a court order imposing out-of-home custody. "[I]t is the [party's] interest in personal freedom . . . which triggers the right to appointed counsel. . . ." *Lassiter v. Department of Social Services Durham County, N.C.*, 452 U.S. 18, 25 (1981). "[A] fundamental requisite of due process of law is the opportunity to be heard . . . [and] [t]he right to be heard would be . . . of little avail if it did not comprehend the right to be heard by counsel." *Goldberg v. Kelly*, 397 U.S. 254, 267, 270 (1970). "Since the State has an urgent interest in the welfare of the child, it shares the parent's interest in an accurate and just decision." *Lassiter*, 452 U.S. at 27. "If as our adversary system presupposes, accurate and just results are most likely to be obtained through the equal contest of opposed interests, the

State's interest in the child's welfare may perhaps best be served by a hearing in which both the parent and the State acting for the child are represented by counsel, without whom the contest of interests may become wholesomely unequal." *Id*. at 28.

Allowing Mother to obtain counsel and continuing the November 5, 2014 hearing another day to allow counsel to confer with Mother and become familiar with the critical documents upon which the hearing is based would result in an "equal contest of oppos[ing] interests." *Id*. at 28. This is fundamental due process. "A parent's interest in the accuracy and justice in the decision . . . is . . . a commanding one." *Id*. at 27.

B. Jury Of Our Peers (7th Amendment)

The constitution grants the people the right to a jury trial, for an amount in controversy. What could be a greater amount in controversy than the liberty continuum involved with family law matters? In a child protection proceeding, if respondents do not accept formal court jurisdiction by a plea of admission or no contest, and if the petitioner does not wish to withdraw the petition, the petitioner must prove that the facts alleged in the petition are true and that they rise to the level of legal neglect/abuse. If legal neglect/abuse is proven at trial, the court may adjudicate the matter by formally asserting its authority and making the child a temporary ward of the court.

The Michigan Juvenile Code expressly provides for the right to a jury trial in this adjudication phase.

C. Results Of Decisions Have Limited Appealability (5th Amendment)

Family Court decisions have the irony of both being able to be completely wrong regarding the decision, but also have the inability to be appealed unless the judge applied the wrong law; the right law applied incorrectly is not subject to a challenge.

The Equal Protection Clause commands States give all parents an expedited appellate remedy for protection from unlawful familial intrusion. Further frustrating parents, Michigan employs a practice of disparate treatment by administratively, summarily dismissing some appeals made as-a-matter-of-right because the order is temporary. Arkansas does not allow temporary orders to be appealed-as-matter-of-right.[2] Other states allow an appeal-as-matter-of-right from a temporary order.[3] Still other states

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[2] *See Gilbert v. Moore*, 364 Ark. 127, 216 S.W.3d 583 (2005) (holding if there has been no hearing on the merits or taking of proofs a temporary order can't be appealed).

[3] *See E.D. v. Madison Cnty. Dep't of Human Res.*, 68 So.3d 163, 167 (Ala. Civ. App. 2010) (holding an order sufficiently final for the purpose of appeal when it addressed "the disposition of the child pursuant to the juvenile court's finding of dependency," among other things). *See Montenegro v. Diaz*, 109 Cal.Rptr.2d 575, 26 Cal.4th 249, 27 P.3d 289 (2001) (holding if there is a post-judgment hearing these orders would be appealable as a matter of right).

differentiate *pendente lite* orders subject to interlocutory appeals.[4] Arizona tries to prevent confusion with the pleading title and statutorily defines, a "Petition" as an "initial pleading that commences" either a family law case or a post-decree matter. A "Motion" is a written request made after a petition is filed. Thus, a party would properly file a "Petition for Modification of Custody" and a "Motion for Temporary Orders."[5] The states that don't allow an expedited appeal as-matter-of-right from a post-judgment temporary order that affects child custody, are unconstitutionally obstructing justice and causing irreparable harm and unnecessary delay for millions of "post-judgment" parents and children who are suffering from familial intrusion because of non-expiring temporary orders.

D. Children Protected From Unwarranted Removal From Their Homes (4th Amendment)

The Fourth Amendment also protects children from removal from their homes absent exigent circumstances. The right of privacy emanating from *Griswold v. Connecticut*, 381 U.S. 479 (1965), came from the concept of a penumbra of rights giving rise to the right of privacy. "An official's prior willingness

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[4] *See Lester v. Lennane*, 84 Cal.App.4th 536, 559 (2000) (temporary custody order is interlocutory and "made *pendente lite* with the intent that it will be superseded by an award of custody after trial").

[5] Hon. Norman J. Davis, "A Reference Guide to the New Family Court Rules."

to leave the children in their home militates against a finding of exigency. . . ." (*Rogers v. County of San Joaquin*, 487 F.3d 1288, 1294-1295 (9th Cir. 2007)). "Moreover, [officials] cannot seize children suspected of being abused or neglected unless reasonable avenues of investigation are first pursued, particularly where it is not clear that a crime has been – or will be – committed." (*Wallis v Spencer*, 202 F.3d 1126, 1138 fn.8 (9th Cir. 2000) [*citing Sevigny v. Dicksey*, 846 F.2d 953, 957 (4th Cir. 1988) [child abuse investigator had duty to investigate information that would have clarified matters prior to separating children from their parents].) "A due-process violation occurs when a state-required breakup of a natural family is founded solely on a "best interests" analysis that is not supported by the requisite proof of parental unfitness." *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

"Ordinarily, the right to present evidence is basic to a fair hearing. . . ." *Wolff v. McDonnell*, 418 U.S. 539, 566 (1974). "[T]he Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982). This Court has "frequently emphasized that the right to confront and cross-examine witnesses is a fundamental aspect of procedural due process." *Jenkins v. McKeithen*, 395 U.S. 411, 428 (1969) (references omitted). It is a central element of due process that a party has the "right to be confronted with all adverse evidence to cross-examine witnesses." *Nevels v. Hanlon*, 656 F.2d 372, 376 (8th Cir. 1981). *Ex parte* communications between Father's Attorney and the judge, whether in

the form of undisclosed affidavits and reports or oral communications, violate this fundamental right. *Id*.

The Due Process Clause requires a judge to base a decision solely on the evidence presented during a hearing. "[T]he decision maker's [action] . . . must rest solely on the legal rules and evidence adduced at the hearing." *Goldberg*, 397 U.S. at 271. "To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on . . . though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law." *Id*. (internal citation omitted).

In the case at bar, the trial court stated on-the-record, "Cause if half of this is true" and "I don't know if the things that they are alleging are true. But what I'm saying is, if 30 percent of them, 40 percent of them, if a couple of these things are true, you are allowing this guy around your kids, is a failure to protect your children." The Father did not prove the facts and yet the children were removed as if Mother was adjudicated. The utter disembowelment of the Fourth Amendment has taken place, where Due Process has taken a Third World turn; this is one of the fixes that needs to take place, so that no other parent has to deal with a ruling where no verified evidence was proffered, no establishment of jurisdiction, no trial, no plea admissions, no sworn testimony and no findings of fact result in Family Court decisions.

II. FAMILY LAW COURT SYSTEMS THROUGHOUT THE UNITED STATES AND SPECIFICALLY THE FAMILY LAW COURT OF MICHIGAN SHOULD NOT HAVE THE UNFETTERED RIGHT TO CAUSE DISPARATE TREATMENT BY FAILING TO UPHOLD FEDERAL CONSTITUTIONAL LAWS PRESCRIBED WITHIN *ROE V. WADE*, APPLICABLE TO THE FOURTEENTH AMENDMENT.

Within *Roe v. Wade*, Concurrence STEWART, J., Concurring Opinion he stated,

> In 1963 this Court, in *Ferguson v. Skrupa*, 372 U.S. 726, purported to sound the death knell for the doctrine of substantive due process, a doctrine under which many state laws had in the past been held to violate the Fourteenth Amendment. As Mr. Justice Black's opinion for the Court in *Skrupa* put it: "We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws."
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> "In a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed." *Board of Regents v. Roth*, 408 U.S. 564, 572. The Constitution . . . mentions . . . "liberty" protected by the Due Process Clause of the Fourteenth Amendment covers more than those freedoms explicitly named in the Bill of Rights. *See Schware v. Board of Bar Examiners*, 353

U.S. 232, 238-239; *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535; *Meyer v. Nebraska*, 262 U.S. 390, 399-400. *Cf. Shapiro v. Thompson*, 394 U.S. 618, 629-630; *United States v. Guest*, 383 U.S. 745, 757-758; *Carrington v. Rash*, 380 U.S. 89, 96; *Aptheker v. Secretary of State*, 378 U.S. 500, 505; *Kent v. Dulles*, 357 U.S. 116, 127; *Bolling v. Sharpe*, 347 U.S. 497, 499-500; *Truax v. Raich*, 239 U.S. 33, 41. [p.169].

In the words of Mr. Justice Frankfurter,

> "Great concepts like . . . " liberty " . . . were purposely left to gather meaning from experience. For they relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged." *National Mutual Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 646 (dissenting opinion).

Within the State of Michigan, State of New York, State of Utah, State of Pennsylvania, and the State of California a premise within these Family Law Courts exists a common pattern and practice by causing disparate treatment during Child Custody determinations by not upholding the Federal Constitutional laws applicable to the Fourteenth Amendment. This disparate treatment causes gender discrimination amongst women who chose not to terminate their pregnancies, as prescribed within *Roe v. Wade*. Restating Stewart, J., concurring opinion in part within *Roe v. Wade*, he stated, "the question

then becomes whether the state's interest advanced to justify this abridgement can survive the 'particular careful scrutiny' that the Fourteenth Amendment here requires." Consequently, when a State has granted an *ex parte* Motion or Order to terminate a woman's right for parenting time with her own child, the *ex parte* Motion or Order denies the woman access to her child(ren), because the States interfered with the woman's ability to exercise her traditional and constitutional parental rights and protections guaranteed within the Fourteenth Amendment.

The States, as mentioned within this case, are not able to "survive the particular careful scrutiny" prescribed within the Fourteenth Amendment, when an *ex parte* Motion or Order, undermines the constitutionality of the Fourteenth Amendment. A Family Law State Court may "NOT" undermine or modify the Fourteenth Amendment without a "change to the Constitution, which requires a referendum supported by a majority of voters in a majority of states." The States in this particular case, are required to uphold the Federal Constitutional law applicable to the Fourteenth Amendment and when just cause is "NOT" present, the States in this case may not abridge the woman's liberty, as guaranteed within the Fourteenth Amendment pursuant to *Roe v. Wade*. In the case at bar, the state has essentially terminated the Mother's right to be a Mother.

A State's unwillingness to uphold the liberty continuum undermines the Federal Constitution, applicable to the Fourteenth Amendment, by denying

a woman access to her child(ren) as a result of physical visitation, telephonic communication, and/or written forms of communication (letters, birthday cards, Christmas cards, etc.) and nullifies an *ex parte* Motion or Order. Since states are recipients of Federal funds, they are not shielded from the Eleventh Amendment, as such, the States have waived their sovereign immunity by receiving Federal Funds and in doing so, agree to abide by Federal laws, which include not causing disparate discriminatory practices prescribed within Title VI of the Civil Rights Act of 1964.

Counsel, on behalf of parents in all States applicable to this case, and all parents throughout the United States, asks the Supreme Court to order temporary visits with their children, grant review of the States' decisions and overturn those decisions that interfered within the parental rights prescribed within the Fourteenth Amendment.

III. NONFEDERAL GROUNDS INADEQUATE TO ABSTAIN.

The Supreme Court of Michigan, a court of last resort, has denied review of an important federal question in a way that conflicts with relevant decisions of their own court as well as this Court and the intermediate appellate state court wrongfully administratively summarily dismissed Mother's appeal as-matter-of-right. Mother's appeals were based upon federal grounds, namely the "parental liberty interest,"

due process, and equal protection of the Fourteenth Amendment, and the right of familial privacy inherent in the U.S. Constitution. Nonfederal grounds are inadequate to support the state court abstention. The Supreme Court of Michigan gave no reason for refraining from an analysis of the federal constitutional grounds and is quoted as saying, "Thus, if the Court of Appeals' interpretation permits trial courts to exercise their jurisdiction in a manner that impermissibly interferes with a parent's constitutional right to direct the care and custody of his or her child, as Laird argues, we are duty-bound to reject it."[6] A federal question was presented; the disposition of that question was necessary to the determination of the case; the federal question was not decided and no judgment has been rendered. It is the responsibility of this Court to determine for itself the answer to the question of whether the state court abstention is based upon a nonfederal ground and whether a nonfederal ground is adequate to support the state court's abstention. *See Black v. Cutter Laboratories*, 351 U.S. 292, 298 (1956). The answer to both questions must be "no."

[6] *In Re Sanders*, 495 Mich. 394, 852 N.W.2d 524 (2014). The Michigan COA order gave a one-sentence denial, "The Court further orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented."

IV. THIS COURT MANDATES FAIR PROCEDURES.

The decision below violates this Court's long line of precedents, that fundamental parental rights include the rights of "post-judgment" parents to the care, custody, and management of their children without government intrusion. The importance of the family and the "essential," "basic," and "precious" right of parents to raise their children are well-established in United States Supreme Court jurisprudence.[7] This right is not easily relinquished. "The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."[8] Therefore, to satisfy Constitutional Due Process standards, the state "must provide the parents with fundamentally fair procedures."[9] In the case at bar, there was no custody dispute or child protection action, so the trial court improperly exercised its *parens patriae* power. Mother asks this Court to make a finding that non-expiring temporary orders

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[7] *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); quoting *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042 (1923); *Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942); and *Mary v. Anderson*, 345 U.S. 528, 533, 73 S.Ct. 840, 97 L.Ed. 1221 (1953).

[8] *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).

[9] *Id.* at 753-754.

are unconstitutional and the JOD be enforced so her children are returned to her care, custody, and control.

V. TRIAL COURT JUDGES SHOULD NOT BE ACTING AS POLICY-MAKERS.

DEFINITIONS

"One-parent" doctrine as used in this petition, means the "near-universal" belief that only *one* parent be adjudicated as unfit before courts can interfere with their parental rights and subject *both parents* to dispositional orders.

"Two-parent" doctrine as used in this petition, *stare decisis* and *In Re Sanders*, 495 Mich. 394, 852 N.W.2d 524 (2014), requires *both* parents to be adjudicated as unfit before courts can interfere with their parental rights and subject them to dispositional orders.

"No-parent" unwritten policy as used in this petition follows the culture of the court that even if "*no-parent*" is adjudicated as unfit the court can interfere with their parental rights and subject them to dispositional orders simply if they are the "home state."

The trial court judge allowed *unreported, uninvestigated* child abuse allegations to kick-off prolonged litigation under the guise of a closed divorce case in which the trial court judge is following her own unconstitutional, dreamt-up "no-parent" policy instead of the written law and the U.S. Constitution.

Father has denied Mother all phone contact with the children despite the JOD requiring telephonic communications and has disallowed Mother to be involved in the medical and educational decisions for her children. Father, with the help of the Michigan Tribunal, has virtually and illegally terminated Mother's parental rights without Mother being found *unfit*. "Termination of parental rights is the death sentence to a parent-child relationship." *Citing In Re Coast*, 561 A.2d 762, 778 (Pa. 1989) (Tamilia, J., concurring).

It is a common practice across this country for trial court judges, post-judgment, to change initial custody orders on a whim in favor of an "unfriendly" parent's pleadings alone, rather than reporting child neglect/abuse allegations to child welfare agencies for *proper* investigation or holding evidentiary hearings. There should be zero "post-judgment" *fit* parents and children affected by this *parens patriae* summary decision making, for even one family being destroyed is one too many and is repugnant to our U.S. Constitution.

In *Sanders*, the justices unanimously agreed, "the state cannot remove a child from a parent's custody or otherwise interfere with a parent's parental rights unless a court first finds that the parent is unfit" and "all parents are entitled to due process in the child protective context, with the presumption of fitness and the burden of proof to the contrary resting on the state." As these quotations clearly state, the proof comes from the State, not an ex-spouse or an

adversarial party. *Wisconsin v. Yoder* held that the state may intervene when the parent threatens harm to a child. *Yoder* did not hold that the state must prove a threat of harm to a child before it could intervene. 406 U.S. 205 at 233-234 (1972). In post-judgment domestic relations cases, the adverse party initiates the intervention. Initiation is taken by persons in relationship with, and presumed to be acting in, the best interests of the minor child but the objecting parent has a relationship and is presumed to be acting in the best interests of the minor child as well and should be on equal footing as the movant. The state does not initiate these actions as they did in *Yoder* and *Prince v. Massachusetts*, 321 U.S. 158, 170-171 (1944). The right to raise one's children without state intrusion is not to be taken away and the children given to an adverse party simply because the adverse party files a lawsuit invoking the coercive power of the state to impose a different view of the children's "best interests." *See Roe v. Wade*; *Pierce v. Society of Sisters*; *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). Family Court is the only court not bound by the Constitution such that the state can remove a sacrosanct right without evidentiary proof. This issue has not been squarely before this Court. No definite boundary has been drawn but should be drawn under the facts of this case because, unlike many family court disputes, they are uncontested, the record is strong, the issues are clearly presented, and the Michigan tribunal had ample opportunity to address these issues but deferred them to this Court.

VI. EQUAL PROTECTION COMMANDS ADDRESSING THE WELFARE OF OUR CHILDREN AND PRESERVING THE "POST-JUDGMENT" FAMILY IN THE FUTURE.

Only 47% of American children reach age 17 in an "intact" married family. Patrick F. Fagan and Nicholas Zill, "The Second Annual Index of Family Belonging and Rejection" (Washington, D.C.: Marriage and Religion Research Institute, 17 November 2011). The Center for Disease Control ceased gathering data in 1988 but a conservative estimate is that at least 1,000,000 *additional* children per year are affected by divorce and that number is at least *doubled* per year if you add the number of children governed by a custody order but whose biological parents never married. This leaves millions of "post-judgment" children under the age of 17 that are at risk of being unconstitutionally denied access to a *fit* parent which has been found to cause psychological harm.

The *Troxel* panel recognized, "The demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household. While many children may have two married parents and grandparents who visit regularly, many other children are raised in single-parent households." The fact that this Mother is a divorced mother, and not acting on behalf of what is sometimes called an "intact" family, should not lessen her ability to assert the family's right. "The legal status of families has

never been regarded as controlling."[10] Indeed, granting children in an "intact" family the right to have their parents make childrearing decisions, while denying that right to children whose biological parents are not living together, raises constitutional issues[11] and such a distinction can't be supported by sociological or other policy considerations:

> A child's need for continuity requires the state to recognize that a new family has been established the moment it has determined who shall be custodial parent. The new family deserves, therefore, to be as free of state intervention as any other "intact" family.[12]

The Trial Court's dreamt-up "no-parent" policy violates the Constitution's Equal Protection Clause in that it discriminates and creates a special class of "post-judgment parents and children" because other parents and children that have not been subjected to litigation in Family Courts don't have to worry about this unchecked "backdoor" tactic via a closed court case for intrusion with their constitutionally protected parent-child relationship Liberty. The large class of "post-judgment parents and children" currently live in daily fear that their Constitutionally-protected

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[10] *Smith v. Organization of Foster Families*, 431 U.S. 816, 845, n.53 (1977), *citing Stanley v. Illinois*, 405 U.S. at 651; *see also Moore v. City of East Cleveland*, 431 U.S. 494, 501-502 (1977).

[11] *See Gomez v. Perez*, 409 U.S. 535 (1973).

[12] Goldstein, Solnit and Freud, *The Best Interests of the Child* (rev. ed. 1996).

rights can be violated or terminated by Family Court at any time, for any reason. Family legal status and parent marital/financial status is becoming the determinative factors in child removal due to *unreported, uninvestigated, unsubstantiated* child abuse/neglect allegations cloaked as a post-judgment custody modification which is repugnant to the U.S. Constitution. In the case at bar, since there was no custody dispute or child protection action, the trial court improperly exercised *parens patriae* power and Mother asks this Court to make a finding that non-expiring temporary orders are unconstitutional and the JOD be enforced so her children are returned to her care, custody, and control.

VII. INTERSTATE AND INTRASTATE COURTS DISAGREE.

A. Federal Law Mandates Reporting, Due Process, And Mistreatment/Abuse Finding

CAPTA requires states to pass their own mandatory reporting provisions in order to receive federal funding. In *Yates v. Mansfield Bd. of Edn.*, 102 Ohio St.3d 205, 2004 Ohio 2491, 808 N.E.2d 861 (2004), the Supreme Court of Ohio explained "the primary purpose of reporting is to facilitate the protection of abused and neglected children rather than to punish those who maltreat them." In the case at bar, Father's allegations are certainly suspect of being used to punish the *fit* Mother when countless mandated reporters fail to report and instead use the allegations simply

to bolster the Father's position and remove the children from the Mother.

The SCAO contacted the nine States that define Judges as mandated reporters[13] and sent out this directive to Michigan judges, "SCAO learned that most judges in those states report if proof of the child abuse or neglect is substantiated during the hearing. When the child abuse or neglect cannot be substantiated, judges in those states often don't report." In the case at bar, the trial court contradicts itself by not reporting because the allegations weren't substantiated, but still acts on the allegations by removing the children.

The PKPA, as a federal law, preempts any state's enacted statutes whenever the two are inconsistent. The PKPA requires, that, before a court can decide any custody matter, *reasonable notice* and *opportunity to be heard* must be given to all contestants *See* 28 U.S.C. § 1738A(e). [emphasis added.] Drafters of the PKPA made a conscious effort to make the Act unambiguous when it came to protecting children from abuse:

> "The PKPA's definition of emergency jurisdiction does not use the term "neglect." It defines an emergency as "mistreatment or abuse." Therefore "neglect" has been eliminated as a

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[13] Judges are mandated reporters in Arkansas, Connecticut, Florida, New Jersey, New Mexico, South Carolina, Tennessee, West Virginia and Wyoming.

> basis for the assumption of temporary emergency jurisdiction. Neglect is so elastic a concept that it could justify taking emergency jurisdiction in a wide variety of cases. Under the PKPA, if a State exercised temporary emergency jurisdiction based on a finding that the child was neglected without a finding of mistreatment or abuse, the order would not be entitled to federal enforcement in other States."[14]

Yet, in practice, "home states" are ignoring lawful custody orders and instead enforcing unlawful, non-expiring, temporary orders that don't conform to these PKPA requirements. In the case at bar, the non-expiring "temporary" emergency orders are clearly not supported by "a finding of abuse," *notice*, or *opportunity to be heard* as required by the PKPA and thus would not be entitled to federal enforcement in other states so the "home state" should not be enforcing the orders either. Mother asks this Court to make a finding that non-expiring temporary orders are unconstitutional and the JOD be enforced so her children are returned to her care, custody, and control.

This, "do as I say, not as I do," attitude does not bode well for parents that expect Equal Protection

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[14] *See* National Conference of Commissioner on Uniform State Laws, Uniform Child Custody Jurisdiction and Enforcement Act (1997) (November 20, 1998) (final draft, with prefatory notes and comments) p. 33.

and Due Process if they have a custody determination with an interstate or international element. U.S. Family Courts are not setting a good example for the Hague Convention Countries by violating its citizens' human rights with total disregard for written laws, the U.S. Constitution, and lawful custody determinations. A Spanish court refused a child's return on the basis of violating human rights and freedoms where it determined a fleeing mother would be deprived of due process in the courts of the child's habitual residence. *In Re S*., Auto de 21 abril de 1997, Audiencia Provincial Barcelona, Sección 1a.

B. Finite Temporary Orders Are Mandated

One of the primary purposes for the UCCJEA §204 was to *close the "non-expiring temporary emergency order" loophole* that "unfriendly" parents were exploiting to permanently interfere with a "left-behind" parent's custodial and parental rights:

> "The revisions of the jurisdictional aspects of the UCCJA eliminate the inconsistent state interpretations and can be summarized as follows:
>
> 2. Clarification of emergency jurisdiction. There are several problems with the current emergency jurisdiction provision of the UCCJA §3(a)(3). First, the language of the UCCJA does not specify that emergency jurisdiction may be exercised only to protect the child on a temporary basis until the court with appropriate jurisdiction issues a

> permanent order." [*See* National Conference of Commissioner on Uniform State Laws, Uniform Child Custody Jurisdiction and Enforcement Act (1997) (November 20, 1998) (final draft, with prefatory notes and comments)]

Prior to the UCCJEA, "unfriendly" parents were "forum shopping" by crossing state lines to obtain temporary emergency orders that had no expiration. The new UCCJEA, as enacted by all states, closed this "loophole" by requiring all temporary emergency orders to have an expiration date. In practice, "home state" judges often use non-expiring "temporary" orders to prolong the conclusion of post-judgment motions.[15] The courts have made it easier for "unfriendly" parents because there is no need to flee with the children across state lines if they can find a judge that issues infinite dispositional-type orders on a whim. The Office on Violence Against Women 2014 Biennial Report to Congress states, "through 'paper abuse,'[16] offenders can exert coercive control long after victims terminate the abusive relationship. Victims with children are particularly vulnerable to this type

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[15] MCR 3.210(C)(1) provides that: "when the custody of a minor is contested, a hearing on the matter must be held within 56 days."

[16] The authors define "paper abuse" as "a range of behaviors such as filing frivolous lawsuits, making false reports of child abuse, and taking other legal actions as a means of exerting power, forcing contact, and financially burdening their ex-partners."

of abuse because offenders routinely use the courts to challenge custody, child support, and visitation arrangements (S. Miller & Smolter, 2011)." This practice is successful because a victimized parent has no easy, *expedited* state or federal appealability.

VIII. WHAT DOES THE FUTURE HOLD?

This unconstitutional parental intrusion by Family Courts in this country is causing financial ruin and emotional distress for "post-judgment" parents and children that ultimately have a negative effect on the government fiscal and administrative interest. This case is a good example of the floodgate that has been opened by allowing "unfriendly" parents to petition the courts to change the initial custody determination based on *unreported, uninvestigated* child abuse/neglect allegations giving "unfriendly" parents another bite at the custody apple. Not only does this cause unending litigation but it puts undue pressure on our court systems and the U.S. economy and usurps the state child welfare agency's sole investigative authority.

Present interpretation variation throughout the U.S. and the lack of guidance from both Congress and this Court has created obstacles for "post-judgment" parents to perform their parental role in the lives of their children and their ability to move on after a divorce. These inconsistencies and ambiguities have created particular hardships for the children and "left behind" parent. Although the courtroom is not the ideal forum to resolve family disputes, victimized

litigants are given no opportunity to settle disputes out-of-court and have no choice but to go to court because of the judge's unfettered coercive power that is dished out with little to no oversight or accountability from appellate courts or ramifications for unconstitutional orders or judicial code violations.

IX. WHAT REVIEW WILL PROVIDE.

Because of the breadth of the practice of removing children from parents who have not first been adjudicated and found to be *unfit*, this Court will be able to provide significant guidance to the fifty states. Any decision by this Court will have far reaching effects and will be respected by the states. Review of the constitutionality of non-expiring temporary custody orders and the dreamt up "no-parent" policy will provide this Court with the broadest opportunity to look at this complex and emotional family issue that it may ever have in reviewing post-judgment domestic relations issues.

The absence of "substitute procedural safeguards" removes "post-judgment" parents and children from the continuum of liberty and results in unending litigation under a closed divorce/domestic relations case via illegal dispositional-type orders and subsequent psychological harm, chaos, confusion, uncertainty, upheaval, and financial ruin. Legislators intended for these "substitute procedural safeguards" to come together cohesively to create a clear legal framework so that citizens are protected from false

neglect/abuse allegations and protracted litigation by adverse parties especially as children are involved and the custodial environment is at stake.

If the protection of the "core element" of our civilization, the family, is paramount, then ought not *fit* parents be able to maintain contact with their own child(ren) and there is a presumption that a *fit* parent has the "best interest of the child" in mind? Doesn't the "unfriendly" parent who has participated or even created and tested these relationships have a responsibility to maintain and foster this contact with the other *fit* parent? Aren't families in this approach being preserved?

CONCLUSION

> Several decisions of this Court make clear that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. *Loving v. Virginia*, 388 U.S. 1, 12; *Griswold v. Connecticut*, supra; *Pierce v. Society of Sisters*, supra; *Meyer v. Nebraska*, supra. *See also Prince v. Massachusetts*, 321 U.S. 158, 166; *Skinner v. Oklahoma*, 316 U.S. 535, 541. As recently as last Term, in *Eisenstadt v. Baird*, 405 U.S. 438, 453, we recognized the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person [p.170] as the decision whether to bear or beget a child.

> That right necessarily includes the right of a woman to decide whether or not to terminate her pregnancy . . . *Abele v. Markle*, 351 F.Supp. 224, 227 (Conn.1972).
>
> Clearly, therefore, the Court today is correct in holding that the right asserted by Jane Roe is embraced within the personal liberty protected by the Due Process Clause of the Fourteenth Amendment . . . [Concurrence STEWART, J., Concurring Opinion 410 U.S. 113, *Roe v. Wade* (No. 70-18)].

The problem is that the U.S. Family Court system can act as a black hole where the presumption of innocence is a fairy tale, make-believe laws rule the land and successful appeals are a unicorn, creating a safe haven for "unfriendly" parents and Family Court dictators to reap material wealth and any unfortunate family that enters its boundaries risks finding themselves at a point of no return until the children age out of the system.

The abuse of *parens patriae* power in this and countless similar cases has disrupted the lives of children, their parents, extended families, and others affected by unlawful post-judgment orders. The decisions below send a chilling message to any parent wishing to divorce. Because cases affected by CAPTA and PKPA come up through the state family court system, this Court is the only federal court in a position to interpret these federal statutes and provide much-needed clarity in an area of law where the need for clear rules is paramount.

If a parent and in this particular case, a grieved woman, has not surrendered or terminated all their rights to their children in the manner provided by law prior to an *ex parte* motion or Order, filed in any court, is not a flight risk or deemed a danger to her child(ren), and is capable of responsibility for her child(ren), then parenting time and custody is paramount for the best interest of the child. How can we expect U.S. Family Courts to ever resolve more complicated child custody issues if it can't resolve this very straightforward case, where one parent is *fit* but on unequal footing with the other parent who is withholding the children above the *fit* parent who wants to care for them? Where a trial court judge issues a two-sentence non-expiring order ripping the children from a *fit* Mother without having any evidence or holding anything that resembled an evidentiary hearing?

In conclusion, this Court may wish to consider Summary Reversal, because of the upheaval Family Law Courts throughout the United States, and in particularly the State of Michigan Family Law Court, have systematically induced in neglecting their roles to uphold Federal Laws applicable to the Federal U.S. Constitution. A custody determination was established on November 4, 2011 and the two "new" families created that day deserve to be free from governmental intrusion.

WHEREFORE, counsel prays on behalf of the Mother in this case and all parents throughout the United States, with the purpose of nullifying all *ex*

parte motions or Orders, due to the Family Law courts throughout the United States and in particular the State of Michigan Family Law Court's inability to advance their interests to justify abridgement of the continuum of liberty and their inability to "survive the 'particularly careful scrutiny' that the Fourteenth Amendment here requires." *Roe v. Wade* (concurring opinion) (citations omitted).

Respectfully submitted,

JEFFREY D. MOFFATT
Counsel of Record
LAW OFFICES OF JEFFREY MOFFATT
43625 N. Sierra Hwy., Suite A
Lancaster, CA 93534
(661) 945-6121
Jeffrey@
lawofficesofjeffreymoffatt.com
jeffreymbajd@hotmail.com

Order **Michigan Supreme Court**
Lansing, Michigan

July 28, 2015

Robert P. Young, Jr.,
Chief Justice

151804 & (54)

Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

JAMES S. ADKINS,

Plaintiff-Appellee,

v

JANET K. ADKINS,

Defendant-Appellant. /

SC: 151804
COA: 326742
Oakland CC:
2011-781633-DM

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the April 21, 2015 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

[SEAL]

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 28, 2015 /s/ Larry S. Royster

Clerk

Court of Appeals, State of Michigan

ORDER

James S Adkins v Janet K Adkins		William B. Murphy Presiding Judge
Docket No.	326742	Peter D. O'Connell
LC No.	2011-781633-DM	Donald S. Owens Judges

The Court orders that the motion for immediate consideration is GRANTED.

Further, the Court orders that the motion for reconsideration is DENIED.

The Court also orders that the motion for peremptory reversal is dismissed in light of the fact that this Court lacks jurisdiction over this claim of appeal.

/s/ William B. Murphy

[SEAL] A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 12 2015
Date

/s/ Jerome W. Zimmer Jr.
Chief Clerk

Court of Appeals, State of Michigan

ORDER

James S Adkins v
Janet K Adkins

Docket No. **326742**

LC No. **2011-781633-DM**

Michael J. Talbot, Chief Judge, acting under MCR 7.203(F)(1), orders:

The claim of appeal is DISMISSED for lack of jurisdiction because the order appealed from, the November 5, 2014 temporary order, entered into the trial court register of actions on November 7, 2014, is not a final order as defined in MCR 7.202(6). MCR 7.203(A)(1). The temporary order regarding parenting time and child support does not qualify as an order affecting the custody of a minor under MCR 7.202(6)(a)(iii).

Appellant's motion to strike the Affidavit of Todd M. Weiss is dismissed in light of the fact that this Court lacks jurisdiction over this appeal.

/s/ Michael J. Talbot

[SEAL] A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

APR 21 2015 /s/ Jerome W. Zimmer Jr.

Date Chief Clerk

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

James S. Adkins
Plaintiff,

-v-

Janet K. Adkins
Defendant.

Case No. 11-781633-DM
HONORABLE MARY ELLEN BRENNAN

[RECEIVED FOR FILING
OAKLAND COUNTY CLERK
2014 NOV-7 AM 10:15
By: /s/ [Illegible]
DEPUTY COUNTY CLERK]

Temporary
ORDER/RE: MOTION

At a session of said Court, held in the City of Pontiac, Oakland County, Michigan, this 5th day of November, 2014.

Present: **HONORABLE MARY ELLEN BRENNAN**
Family Court Judge

This matter having come before the Court on (Plaintiff/Defendant):

James S. Adkins 's, Motion for Adopt Friend of the
Name State nature of motion

Court Recommendation and hold child support in Abeyance
and the Court being advised in the premises;

IT IS HEREBY ORDERED that the motion is:

☐ Granted

☐ Denied

☐ Granted in part, as explained in the comment below.

Comment: The Defendant shall have Theraptic Parenting Time at Impact Counseling, other parenting time suspended until further order of the Court. Planning child support held in Abeyance.

/s/ Hon. Mary Ellen Brennan
HON. MARY ELLEN BRENNAN,
Family Court Judge

APPROVED AS TO SUBSTANCE AND FORM

/s/ Todd M. Weiss

I-99 (46561)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Adkins, James Plaintiff,	Case No. 11-781633-DM **HONORABLE MARY ELLEN BRENNAN**
-v-	
Adkins, Janet Defendant.	[RECEIVED FOR FILING OAKLAND COUNTY CLERK 2014 NOV-7 AM 10:17 By: /s/ [Illegible] DEPUTY COUNTY CLERK]

ORDER/RE: MOTION

At a session of said Court, held in the City of Pontiac, Oakland County, Michigan, this 5th day of November, 2014.

Present: **HONORABLE MARY ELLEN BRENNAN Family Court Judge**

This matter having come before the Court on (Plaintiff/Defendant):

________________'s, Motion for ____________________
Name State nature of motion

____
and the Court being advised in the premises;

IT IS HEREBY ORDERED that the motion is:

☐ Granted

☐ Denied

☐ Granted in part, as explained in the comment below.

Comment: Defendant Janet Adkins is fond to be in Contempt of Court.
Defendant shall serve three days in the Oakland County Jail

/s/ Hon. Mary Ellen Brennan
HON. MARY ELLEN BRENNAN,
Family Court Judge

NOTICE
THIS ORDER CONTAINS A DATE SET BY THE COURT. YOU WILL NOT RECEIVE FURTHER NOTICE OF THIS DATE.
JUDGES [Illegible]

APPROVED AS TO SUBSTANCE AND FORM

I-99 (46561)

STATE OF MICHIGAN
IN THE OAKLAND COUNTY CIRCUIT COURT
Family Law Division

JAMES S. ADKINS,
Plaintiff,
vs.
JANET K. ADKINS,
Defendant.
______________________/

TODD M. WEISS (P37546)
Attorney for Plaintiff
4489 W. Walton Rd.
Waterford, MI 48329
248/674-4647

James Fraser (P57297)
FRASER LEGAL, PC
Attorney for Defendant
220 E Huron St, Suite 415
Ann Arbor, MI 48104
(734) 369-6448
______________________/

[RECEIVED FOR FILING
OAKLAND COUNTY CLERK
2014 NOV-7 AM 10:16
By: /s/ [Illegible]
DEPUTY COUNTY CLERK]

ORDER PERMITTING WITHDRAWAL OF COUNSEL FOR DEFENDANT

At a session of said Court held in the Courthouse in the City of Pontiac, County of Oakland, State of Michigan, on NOV 05 2014.

PRESENT: HONORABLE **Mary Ellen Brennan**
CIRCUIT COURT JUDGE

This matter is before the Court on the Motion of Defendant's Counsel, and the Court having heard oral argument on the Motion, and the Court being fully advised as to the premises:

IT IS HEREBY ORDERED that counsel of record for Defendant, FRASER LEGAL, PC, is permitted to withdraw on the entry of this order and on mailing a copy of this order to Defendant. Subsequent service on Defendant in this matter may be made on Defendant at the following address: 13338 Springfield Way, Hartland, Michigan 48353.

/s/ Mary Ellen Brennan
Hon. Mary Ellen Brennan
CIRCUIT COURT JUDGE

Drafted by:

James Fraser (P57297)
FRASER LEGAL, PC
Attorney for Defendant
220 E Huron St, Suite 415
Ann Arbor, MI 48104
(734) 369-6448

Court of Appeals, State of Michigan

ORDER

James S Adkins v
Janet K Adkins

Docket No. **323965**

LC No. **2011-781633-DM**

David H. Sawyer, Chief Judge Pro Tem, acting under MCR 7.203(F)(1), orders:

The claim of appeal is DISMISSED for lack of jurisdiction because the September 17, 2014, order appealed from is not a final order as defined in MCR 7.202(6). MCR 7.203(A)(1). This postjudgment order regarding parenting time cannot be considered an order affecting the custody of a minor under MCR 7.202(6)(a)(iii). At this time, appellant may seek to appeal the September 17, 2014, order only by filing a delayed application for leave to appeal under MCR 7.205(G).

/s/ David H. Sawyer

[SEAL] A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

OCT 15 2014
Date

/s/ Jerome W. Zimmer Jr.
Chief Clerk

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF OAKLAND FAMILY DIVISION

JAMES S. ADKINS

Plaintiff,

-vs-

JANET K. ADKINS,

Defendant /

TODD M. WEISS (P37546)
Attorney for Plaintiff
4489 W. Walton Boulevard
Waterford, Michigan 48329
(248) 674-4647

James Fraser (P57297)
FRASER LEGAL, PC
Attorney for Defendant
220 E. Huron Street, Suite 415
Ann Arbor, Michigan 48104
(734) 369-6448 /

ORDER REGARDING PLAINTIFF'S VERIFIED MOTION FOR CHANGE OF CUSTODY, SUPERVISED PARENTING TIME, ORDER PROHIBITING DEFENDANT'S BOYFRIEND FROM HAVING ANY CONTACT WITH THE MINOR CHILDREN AND MISCELLANEOUS RELIEF

[RECEIVED FOR FILING
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2014 SEP 17 AM 9:39
By: /s/ [Illegible]
DEPUTY COUNTY CLERK]

At a session of said Court held in the Courthouse in the City of Pontiac, County of Oakland, State of Michigan, on SEP 16, 2014

PRESENT: HONORABLE Brennan, JUDGE

This matter having been brought before the Court upon the Plaintiff's Verified Motion for Change of Custody, Supervised Parenting Time, Order Prohibiting Defendant's Boyfriend from Having Any Contact with the Minor Children and Miscellaneous Relief, the parties having met with the Friend of the Court Referee and Family Counselor and having proceeded to oral argument before the Court, and the Court being fully advised as to the premises:

IT IS HEREBY ORDERED AND ADJUDGED that parenting time shall be temporarily amended to reflect that Plaintiff/Father shall exercise parenting time every Sunday evening at 6:00 p.m. until the conclusion of school on Fridays. The Defendant/

Mother shall exercise parenting time every weekend from after school on Friday until 6:00 p.m. on Sunday excluding holidays which shall continue as previously provided for in the *Consent Judgment of Divorce*.

IT IS FURTHER ORDERED AND ADJUDGED that the Oakland County Friend of the Court Family Counselor shall conduct an immediate investigation and prepare a written recommendation relative to the Plaintiff/Father's *Verified Motion for Change of Custody, Supervised Parenting Time, Order Prohibiting Defendant's Boyfriend from Having Any Contact with the Minor Children and Miscellaneous Relief*. Said report shall be provided to the attorneys of record upon completion.

IT IS FURTHER ORDERED AND ADJUDGED that neither party shall discuss the contents or nature of the pending motion with the parties' minor children or in the presence of the parties' minor children.

IT IS FURTHER ORDERED AND ADJUDGED that Defendant/Mother's former boyfriend, Steven Sjostrom, shall not have any contact, directly or indirectly, with the parties' minor children.

IT IS FURTHER ORDERED AND ADJUDGED that neither party shall entertain on an overnight basis a person for which they have a romantic interest while the children are in their care and custody.

IT IS FURTHER ORDERED AND ADJUDGED that all other terms and conditions as contained in the Consent Judgment of Divorce, which have not been specifically modified by the terms and conditions contained herein, shall remain in full force and effect.

/s/ **Mary Ellen Brennan**

Approved as to form:
Notice of entry waived:

/s/ Todd M. Weiss
TODD M. WEISS (P37546)
Attorney for Plaintiff

/s/ James Fraser
JAMES FRASER (P57297)
Attorney for Defendant

OAKLAND
COUNTY 11-781633-DM
[BAR CODE]
JUDGE MARY ELLEN BRENNAN
ADKINS, JAMES V. ADKINS, JANET

[RECEIVED FOR FILING
OAKLAND COUNTY CLERK
2014 SEP-3 AM 11:02
By: /s/ [Illegible]
DEPUTY COUNTY CLERK]

STATE OF MICHIGAN 6TH JUDICIAL CIRCUIT FAMILY DIVISION	ORDER OF REFERENCE TO FOC FAMILY COUNSELING UNIT FOR CUSTODY/ PARENTING RECOMMENDATION

Court address: 1200 North Telegraph Road, Pontiac, MI 48341

Plaintiff's name JAMES ADKINS	v.	Defendant's name(s) JANET K. ADKINS
Plaintiff's attorney, bar no. address & telephone no. TODD M. WEISS P37546 4489 W. WALTON BLVD WATERFORD MI 48329		Defendant's attorney, bar no., address & telephone no. JAMES FRASER (P57297) 222 E. HURON, SUITE 415 ANN ARBOR, MI 48104 734-369-6448

Date of Session: 8/27/14 Family Division
Judge: ____________ P____
MARY ELLEN BRENNAN

IT IS ORDERED THAT:

1. This case is referred to the Friend of the Court for a recommendation regarding:

   [X] Child Custody [X] Parenting time [ ] Change of Domicile

2. [ ] The recommendation shall be issued within **45 days** of this order.

   [ ] The recommendation shall be issued within ___ **days** of this order

3. The following information must be completed in its entirety: (Please type or print)

Plaintiff's Name: JAMES ADKINS

Address: 1830 COPPERBELL
Number Street Apt.

COMMERCE MI 48390
City State Zip

Telephone: Home ________________

Work/Cell 248-739-0967

Defendant's Name: JANET K. ADKINS

Address: 13338 SPRINGFIELD WAY
Number Street Apt.

HARTLAND MI 48353
City State Zip

Telephone: Home ________________

Work/Cell 248-739-0970

4. Does either party have a Personal Protection Order against the other party? [ ] yes [X] no

5. **A PARTY MUST SCHEDULE A HEARING BEFORE THE COURT WITHIN 21 DAYS OF SUBMISSION OF THE FRIEND OF THE COURT'S RECOMMENDATION, OR THE ORIGINAL MOTION/PETITION WILL BE DISMISSED.**

NAMES OF MINOR CHILDREN	DATE OF BIRTH
[M.]	[Redacted] [16]
[N.]	[Redacted] [14]

8/27/14 /s/ Mary Ellen Brennan
Date Family Division Judge

/s/ Todd M. Weiss
Plaintiff/Plaintiff's Counsel

/s/ James Fraser
Defendant/Defendant's Counsel JAMES FRASER

If this case has been referred to the FOC for a recommendation regarding custody or parenting time, you must submit a completed questionnaire to the FOC Family Counselor. The questionnaire is available at the FOC office or on the following web site: http://www.co.oakland.mi.us/foc/form_application/attorney.html

FOC 8

ORDER	**Michigan Supreme Court** **Lansing, Michigan**
September 9, 2015	Robert P. Young, Jr., Chief Justice
151804(61)(62)	Stephen J. Markman
	Mary Beth Kelly Brian K. Zahara Bridget M. McCormack David F. Viviano Richard H. Bernstein, Justices

JAMES S. ADKINS Plaintiff-Appellee, v. JANET K. ADKINS Defendant-Appellant. /	SC: 151804 COA: 326742 Oakland CC: 2011-781633-DM

On order of the Court, the motion for immediate consideration is GRANTED. The motion for reconsideration of this Court's July 28, 2015 order is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

[SEAL]

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 9, 2015 /s/ Larry S. Royster
Clerk