Cause No.: 16-41192

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ASHLEY B. WOMACK,	)	Civil appeal from the United
	)	States District Court for the
Plaintiff-Appellee,	)	Eastern District of Texas,
	)	Sherman Division
v.	)	
	)	USDC No. 4:15-CV-601
RUSTIN P. WRIGHT,	)	
	)	Chief Judge Ron Clark, presiding
Defendant-Appellant.	)	Magistrate Don Bush, assigned

BRIEF OF APPELLANT

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Pro Se Removal Petitioner

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ASHLEY B. WOMACK, Plaintiff-Appellee, v. RUSTIN P. WRIGHT, Defendant-Appellant.	)))))))))	Civil appeal from the United States District Court for the Eastern District of Texas, Sherman Division USDC No. 4:15-CV-601 Chief Judge Ron Clark, presiding Magistrate Don Bush, assigned

Certificate of Interested Persons

The undersigned party of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. Such persons include:

Appellant, Rustin Wright (myself), of Frisco, Texas.

Appellee, Ashley Womack, of Weatherford, Texas.

Counsel for Appellee, Jennifer Gibo, Esq., of Paris, Texas.

Law firm of Appellee's counsel, Law Office of Jennifer Gibo, of Paris, Texas.

Any and/or all judicial officers of Lamar County, Texas, individually.

The County of Lamar, Texas.

The State of Texas.

Every licensed attorney practicing family law within the State of Texas.

Every law firm engaged in any family law cases within the State of Texas.

Every one of the 254 counties and county governments in the State of Texas.

Every judicial officer involved in family law cases within the State of Texas.

The twenty-seven million (27M) citizens residing within the State of Texas.

Every state taxpayer residing within the State of Texas.

Every federal taxpayer residing within the State of Texas.

The federal Title IV-D bureaucracy and system within the State of Texas.

Chief Judge Ron Clark of the Eastern District of Texas, individually.

The Eastern District of Texas federal court entity, corporately.

The United States of America, and/or the United States Federal Government.

Kenneth Paxton, Texas Attorney General.

Loretta Lynch, United States Attorney General.

_____

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Recommendation on Oral Argument

Appellant Rustin Wright suggests that the issues presented could be, and may be, fully determined upon true examination of the record on appeal, and that oral argument might not benefit the panel. The parties' positions are clear and the record is fairly uncomplicated. *See* Federal Rule of Appellate Procedure 34(a)(3).

Nevertheless, the Court may wish to hold oral argument, considering that this action, made and prosecuted on behalf of the 27 million citizens of the State of Texas, against the State of Texas for those various claims, and involving quite an arrayed spectrum of directly interested persons, as well as many public and private entity types (*see the above Certificate of Interested Persons*), has extremely broad and significant implications in the administration, interpretation, and application of the law, raises truly massive civil rights issues, and is of utmost paramount interest to the public at large, and society as a whole, with very tremendous repercussions being inherent to the posterity of any interlocutory or final decisions made herein.

With all the above considered, this Appellant recommends the Court schedule and hold Oral Argument with respect to further development of the myriad of legal issues and legal applications in play herein, and because this Appellant is sensitive to the Court's preference in executing oral arguments with learned counsel in said verbal discussions, this Appellant therefore now will confirm no objections to the Court appointing any attorney in its bar for the limited purposes of Oral Argument.

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BRIEF OF APPELLANT

Jurisdictional Statement

This is an appeal timely filed on August 19, 2016 from the July 31, 2016 final judgment of the district court in a civil case disposing of all the parties' claims, including multiple claims of serious civil rights violations and due process violations arising under the Constitution, laws, and/or treaties of the United States.

The original jurisdiction and power of the district court was invoked over this cause of action for removal pursuant to, but not limited to, at least the following

statutory authorities: 28 USC § 1443, 28 USC § 1446(b), 28 USC § 1331, 28 USC § 1367, and 42 USC § 1983.

Moreover, the district court is an Article III court with the express authority to hear and adjudicate any questions arising under the Constitution, Laws, and Treaties of the United States, including but not limited to the Bill of Rights and the Eleventh Amendment, the original Thirteenth Amendment, and also Fourteenth Amendment to the United States Constitution, the International Covenant on Civil and Political Rights, as well as the Universal Declaration of Human Rights, with Reservations. See also the Article VI Supremacy Clause of the United States Constitution, as lawfully amended (hereinafter, "Federal Constitution").

Venue within the district court was uniquely and therefore solely proper, as a removal under the special civil rights removal procedures of 28 USC § 1443, over claims of state court and state actor violations of such federal rights and federal laws perpetrated within Lamar County, Texas, along with related supplemental federal tort claims raised under 42 USC § 1983 and similar federal authorities.

Jurisdiction of this Honorable Court to review the district court's disposition, denial and dismissal of the same civil rights and due process violations claims arising under the Constitution, laws, or treaties of the United States is therefore then both statutorily and equitably invoked pursuant to the authorities vested in, and also provided for, under at least, but not limited to, 28 USC § 1291 and 28

USC § 1447, as well as under various provisions of the Federal Constitution itself, any applications under the All Writs Act, 28 USC § 1651, and/or any and all other relevant legal and/or equitable doctrines of law considered applicable herein.

Issues Presented for Review

1. Whether the State of Texas must surpass pre-deprivation due process hurdles before it may then remove parental custodial rights of and to their natural children.

2. Whether state family courts are barred from involvement in Title IV-D child support matters of their own given counties due to pecuniary conflicts of interests.

3. Whether causes of action over federal torts are established as perfectly proper federal subject matter jurisdiction even if regarding state domestic relations cases.

4. Whether a removal under 28 USC § 1443 is timely filed within thirty days of the aggrieved litigant first ascertaining the existence of his or her right to remove.

5. Whether civil rights removal via Section 1443 is quite different from all other removal types in the substantive and procedural respects, even mutually exclusive.

6. Whether racial litmus tests may be used by federal courts to arbitrarily deny otherwise equal access rights to federal court jurisdiction over equal rights issues.

7. Whether federal courts may entertain abstention doctrines to defy clear and unambiguous statutory language that expressly authorizes state case intervention.

8. Whether the Local Rule CV-81 promulgated by the Eastern District of Texas is unconstitutional for failing to properly allow removals filed under Section 1443.

Statement of the Case

The state court issued a standard child custody order in March of 2006 granting Appellee Ashley primary child custody rights in disparate treatment over Appellant Rustin's perfectly equal rights, yet both are legally fit parents. ROA, *passim*.

Additionally for the last several years, the state court and Ashley's state attorney have repeatedly violated Rustin with improper actions and assorted mayhem. *Id*.

Just after the state court issued yet another allegedly-unconstitutional order on August 20, 2015, Rustin 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 on September 3, 2015. ROA.009-026.

Of many federal torts within the state court process, some were highlighted in example of claims in Rustin's instant petition for removal, *id*., 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, *id*., *cf.* also the corresponding FRAP 44 Notice filed and entered herein on October 4, 2016, plus the matching Clerk's Certified Question Letter.

On October 2, 2015, Rustin filed his Verified Complaint and Summonses – later wrongfully *stricken* by the district court magistrate along with several other items on October 19, 2015, ROA.287-289, without any merits whatsoever, due to the magistrate's misunderstanding of distinguished substantive and procedural aspects

of civil rights removal – but filing of said Verified Complaint is further proven, and with file-stamped version available. ROA.283-286.

Ashley attempted to file a motion to remand on October 2, 2015. See dockets and record, *passim*. Rustin filed his responses to said motion to remand on October 5, 2015, with motion to strike the same. ROA.250-266. After correcting deficiency, Ashley's refiled motion to remand on October 6, 2015. ROA.267-279.

The district court magistrate issued report and recommendations on January 22, 2016. ROA.293-299. Rustin filed his objections to the same on February 8, 2016, ROA.301-309, with separate formal constitutional challenges, to 28 USC § 1443, ROA.310-313, and to Eastern District of Texas Local Rule CV-81, ROA.314-317.

On June 1, 2016, the district court approved the recommendation to remand. ROA.321-324. Rustin timely filed for reconsideration on July 5, 2016, ROA.325-351, which was denied, ROA.352-353, triggering notice of appeal. ROA.354-355.

This appeal ensued, consuming great lengths of efforts and time dealing with the district court on issues of making proper corrections to numerous errors within the Record as transmitted (albeit fixes often refused). See dockets and record, *passim*.

Summary of the Argument

The Supreme Court, the Federal Constitution, and established case law demand certain due process procedures before a State may take away the child custody of a natural parent. When a state court takes away the child custody of a parent without

first finding in proper manner clear and convincing evidence of serious parental unfitness, that fundamental error clearly violates said parent's due process and civil rights. Indeed, the Supreme Court has confirmed on more than occasion that such situations create a valid federally-cognizable claim. The State of Texas, vis-à-vis its system of domestic relations courts, simply may not "award" or "grant" custody of children betwixt equally-fit natural parents – each of which already has custody.

Because the Title IV-D child support system, as clearly codified by Texas law, distributes financial shares of that revenue stream to county judges, county clerks and county prosecutors either directly and/or via their own corresponding budgets, these pecuniary conflicts of interests prohibit involvement by such local benefitting officers and local court systems from any Title IV-D matters of that given County.

It is beyond any reasonable dispute that causes of action regarding federal torts are perfectly proper federal subject matter jurisdiction, even when involving state domestic relations cases. Indeed, every significant issue under (former) "state law" domestic relations matters is established as cognizable within the federal courts.

Timely filing of removal under 28 USC § 1443 merely means filing within thirty days of the aggrieved litigant first ascertaining the existence of the right to remove, which can certainly be any time (even years) after the case was originally started.

The rarer civil rights removal via 28 USC § 1443 is quite different from all other removal types in the substantive and procedural respects, even mutually exclusive.

The "racial inequality" litmus test often used by federal courts to arbitrarily deny equal rights and equal access to federal relief to white people via removal under 28 USC § 1443 is utter nonsense, easily slammed in several ways as unconstitutional.

Clearly, abstention doctrines do not apply whatsoever to actions filed upon clear and unambiguous statutory language expressly authorizing state case intervention.

Lastly, Local Rule CV-81, as promulgated by the Eastern District of Texas, is unconstitutional for failing to properly allow removals filed under 28 USC § 1443.

Argument - I

The State of Texas must surpass pre-deprivation "serious parental unfitness" due process hurdles, and that 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 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 (1952). 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*, 527 U.S. 1069 (1999), 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 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 interest" and "the liberty interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interest recognized by this Court." Logically, these forms of fundamental 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 in divorce-and-similar-with-kids 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., <u>not</u> 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 more correctly described as fully flagrant discrimination and fraud by typically allowing just one parent to continue retaining her/his pre-existing child custody rights, but in fact 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) in order to falsely reclassify that same unsuspecting parent into a so-called "noncustodial" parent, (c) in order to begin generating all sort of financial windstreams.

In short, the State of Texas family court system is wildly unconstitutional, even massively so, with 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 betwixt two competing parents, and it is incumbent on this Court to strike down the same facially repugnant mess.

Argument - II

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 interests 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 TFC § 231.0011(c).

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

TFC § 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 S.B. No. 1139, for various details and figures thereupon.

As such, Texan family court judges have direct pecuniary interests as to 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 whatever, 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 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 Texan family court judges may also include attempted enforcement of an alleged child support arrearage matter within the same county case aligned and interplexed 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.

In short, the State of Texas family court system is wildly unconstitutional, even massively so, with 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 betwixt 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.

Argument - III

Causes of action over federal torts are well established as perfectly proper federal subject matter jurisdiction even if regarding state domestic relations cases.

Filed at the district court with initial case opening, this undersigned Appellant's Memorandum of Law Clarifying Established Federal Jurisdiction (ROA.223-229) is incorporated by reference the same as if it had been set fully forth herein (H.I.), clearly demonstrating that every significant issue of (formerly) "state law" matters within domestic relations actions, such as validity of divorce itself, validity of child custody determinations, validity of child support amounts and/or orders, and other familiar topics, are *already established* as cognizable issues in federal courts. *Id*.

Ankenbrandt v. Richards, 504 U.S. 689 (1992) is the seminal Supreme Court case upon the entire so-called "domestic relations exception" issue and jurisdiction. *Ankenbrandt* actually ruled in favor of and for *retaining* the full federal jurisdiction over the "domestic relations matters" of a state court case filed in that given lower federal court, ***not declining*** jurisdiction. In *Ankenbrandt*, the petitioner-mother sought to bring a federal tort action against respondents for the abuse of her children based on diversity-of-citizenship. The district court in *Ankenbrandt* dismissed that tort action based upon the domestic relations exception to federal jurisdiction. But, the Supreme Court instead held that the domestic relations exception applies only to the power of the sister federal courts to issue divorce,

alimony/support, or child custody decrees, and reversed the district court's abstention, compelling it to proceed forward with exercising valid jurisdiction. *Ankenbrandt* actually was discussing all of those "cherry picked" quotes so often wrongfully cited by attorneys and judges in the context of domestic relations and jurisdiction, i.e., the Supreme Court was discussing those wrongfully cited quotes as their own "cases since Barber" and so the Supreme Court actually ruled, in fact:

> "An examination of Article III, Barber itself, and our cases since Barber makes clear that the Constitution does not exclude domestic relations cases from the jurisdiction otherwise granted by statute to the federal courts." (emphasis added) *Ankenbrandt*, 504 U.S. at 700.

The actual holding of *Ankenbrandt* is directly contrary to the district court's attempt to abstain from exercising valid jurisdiction herein. Indeed, although also about diversity jurisdiction (which is wholly inapplicable herein), and although it also had nothing to do with removals, whatsoever, *Ankenbrandt* is very instructive herein, and even commanding to this Court's duty to exercise jurisdiction and proceed with granting the required relief. The case in *Ankenbrandt* is very similar to the case at bar. Like the district court's remand order herein, the district court in *Ankenbrandt* dismissed that tort action based upon the domestic relations exception to federal jurisdiction. But the Supreme Court reversed and compelled jurisdiction.

Furthermore, the case in *Ankenbrandt* was merely a common law tort action, additionally burdened by diversity hurdles, and yet the Supreme Court reversed abstention and commanded the district court to exercise jurisdiction and proceed onward with the entire full-blown lawsuit, while this case is not merely a common law tort action, it has no diversity hurdle, whatsoever, and moreover – even thrice moreover – this case is filed under statutorily-provided jurisdiction, the instant removal at bar is a narrowly limited action in scope, and the interests are not only well established constitutional rights, they include two of the three most important federal constitutional rights in our nation (Liberty, Property), absolutely entitled to full due process protections, hence the holding in *Ankenbrandt* is actually infinitely more applicable here, commanding relief in this Appellant's favor.

Lloyd v. Loeffler, 694 F.2d 489 (7th Cir. 1982) is an instructive case herein. *Lloyd* was over a cause of action in tort (again, merely a common law tort action, without statutory jurisdiction, unlike this removal, which already has statutory jurisdiction provided), and *Lloyd* was filed originally in the federal district court, against defendants who unlawfully interfered with custody of a parent entitled to such custody. The district court presumed subject matter jurisdiction, including the additional hurdle of diversity jurisdiction, and the Seventh Circuit not only backed that up, but denied attempts to invoke any abstention doctrines, and affirmed the district court's exercise of subject matter jurisdiction, by its ruling, which included

over $95,000 in initial damages, plus $2000/month until the child was returned, and expressly affirming the following language by the district court:

> "This action does not fall within the domestic relations exception to diversity jurisdiction. The action is one in tort and does not seek any adjustment of family status or declaration of rights among family matters. See Wasserman v. Wasserman, 671 F.2d 832 (4th Cir. 1982); Erspan v. Badgett, 647 F.2d 550, 553 n. 1 (5th Cir. 1981)." Conclusions of Law, conclusion #2, Lloyd v. Loeffler, 539 F.Supp. 998 (E.D. Wisc. 1982).

Jones v. Brennan, 465 F.3d 304 (7th Cir. 2006) is also instructive. The plaintiff in *Jones* claimed that the defendants had conspired to deprive her of property without due process of law within the state court proceedings, which is materially identical to the situation herein, exacerbated by a possible further attempt to also deprive this undersigned Appellant of his liberty without due process of law. In *Jones*, just like herein, the district court had dismissed that *pro se* plaintiff's case by trying to use an abstention doctrine (Rooker-Feldman), but again, just like in *Ankenbrandt* and herein, none of the abstention doctrines were actually applicable, and so the Seventh Circuit reversed and remanded, ordering the district court to proceed with the *pro se* plaintiff's § 1983 suit. The Seventh Circuit even went further, ruling that the probate exception, just like the domestic relations exception, was also inapplicable as any bar to federal jurisdiction.

Indeed, this Appellant would have been (and is…) perfectly within his federal rights to bring a federal court tort action for civil damages over the past several years' worth of total interference with the court-ordered visitation rights he was supposed to have with his child, because such federal tort actions have been very well established for decades. *See*, e.g., both *Lloyd* and *Wasserman*, supra, as well as *McIntyre v. McIntyre*, 771 F.2d 1316 (9th Cir. 1985); *Hooks v. Hooks*, 771 F.2d 935 (6th Cir. 1985); *DiRuggiero v. Rodgers*, 743 F.2d 1009 (3rd Cir. 1984); *Bennett v. Bennett*, 682 F.2d 1039 (D.C. Cir. 1982); *Raftery v. Scott*, 756 F.2d 335 (4th Cir. 1985); and, etc., ad infinitum.

Any frivolous attempt by the district court to avoid jurisdiction over federal tort claims brought by Appellant (let alone the removal action itself), simply because the issues were intertwined with a state domestic relations case, are abhorrently not in compliance with well established federal jurisprudence, as has been repeatedly confirmed by the Supreme Court, as well as by the sister Circuit Courts of Appeal.

Argument - IV

Removal under 28 USC § 1443 is timely filed within thirty days of the aggrieved litigant first ascertaining the existence of his or her right to remove.

Likewise, any attempt by the district court to avoid jurisdiction by wrongfully treating a removal under Section 1443 as if a removal under the other general types (required within thirty days of the original state court case opening) is flatly erred.

Indeed, it bears repeating that Section 1443 *cannot* be filed unless the state court *did* have valid subject matter jurisdiction and *cannot* be filed until **after** the state court process first – as a prerequisite – violates some established federal right(s).

The relevant portion of 28 USC § 1446(b) is restated here:

> "If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable."

The actual trigger of removal right under 28 USC § 1446(b) above is a two-fold combination, as (1) by "after receipt" [through any method] of [any formatted documentary information item], together with (2) the basic discovery of the existence of Section 1443 removal itself, so that an ascertainment of the ability to remove then suddenly becomes realized, i.e., when there is "first ascertained" by the aggrieved litigant the combination of a qualifying item, triggering removal.

The general types of removal are not widely known, and the much rarer form of removal under Section 1443 cannot be expected to be of any general knowledge to either professionally licensed attorneys, let alone known to any common citizen of the *pro se* general public, hence valid Section 1443 removal timeliness hinges only upon the party receiving a triggering item during first realizing the right to remove.

As long as the party files the given petition for removal within thirty (30) days of that personal combination (trigger item received, learning of civil rights removal under Section 1443), then the party is within the timeliness of 28 USC § 1446(b).

Any attempt by the district court to "find" untimely removal filing is flatly erred.

Argument - V

Civil rights removal via Section 1443 is quite different from all other removal types in substantive and procedural respects, often even as mutually exclusive.

Filed at the district court with initial case opening, this undersigned Appellant's Notice Distinguishing Between the Two Basic Types of Removal (ROA.214-222) is incorporated by reference the same as if it had been set fully forth herein (H.I.), clearly demonstrating that virtually every major substantive and procedural aspect of civil rights removal under Section 1443 is wholly distinguished, and often fully opposite in nature and usage, than all other seven (7) types of general removal. *Id*.

Unlike all removals filed under Section 1441 and those other six (6) types of general removal, removal under Section 1443 involves no questions about original subject matter jurisdiction, federalism, or comity, whatsoever, but is a statutory enforcement and intervention action of right, regarding and for prosecutions of the alleged federal rights violations by and within the processes of the existing state court case. Indeed, the very existence of having valid, prior and ongoing state subject matter jurisdiction is a clear statutory prerequisite to § 1443 removal – not

ever as any hindrance or hurdle, in any way, shape or form. Rephrasing, the *original* subject matter jurisdiction issues raised via *the originally filed complaint* within the instant state court case are wholly irrelevant to Section 1443 removal.

Rephrasing, removals under Section 1441 and that kin seek to **divest** a state court from exercising original jurisdiction, but Section 1443 removals **never** seek to divest a state court from exercising original subject matter jurisdiction, since that has no bearing upon Section 1443 removal.

While all "fresh" removals filed under § 1441 and that kin should retain the same "fresh" *case styling pattern* as in that brand new state court case, § 1443 removals are not triggered unless and until a given state court – maybe months or years later, or never – violates a litigant's federal rights, triggering the adversarial nature of the *case styling reverse*, because of then later invoking this statutory enforcement action of right, via petitioning under § 1443 for due relief, in the same way as when any litigant petitions the review authority of the U.S. Supreme Court, as *petitioner*, and the court being reviewed and all adverse parties therein are called the *respondents*, pursuant to U.S. Supreme Court Rule 12.6 and because of that same adversarial review nature.

In this triggered statutory enforcement action, the litigant complaining under § 1443 is the petitioner-plaintiff party type, and all other parties are the respondent-defendant party types, i.e., this undersigned *petitioner* who did invoke statutory

enforcement action of right, Rustin Wright, is the petitioner-plaintiff party type, while the *responding* party of the instant state court case herein is the respondent-defendant party type herein, i.e., Ashley Womack.

Section 1443 removal is merely the "procedural" action, over violations of federal rights by state courts and state actors and/or others, in direct like and kind to a "civil damages" action under 42 USC § 1983 and various other statutory authorities, over violations of federal rights by state courts and state actors and/or others, in direct like and kind to "criminal prosecution" actions under 28 USC §§ 241 and 242, over violations of federal rights by state courts and state actors and/or others. 28 USC § 1443, 42 USC § 1983/etc., and 28 USC §§ 241-242 are the same thing, each solely concerned in the prosecution of alleged violations of established federal rights, *not original jurisdiction or subject matter of any given state court*, as that is all wholly irrelevant to whether or not violations of rights occurred.

Further unlike all other seven types which seek **permanent** removal, removal under Section 1443 is **temporary** by definition. It is, by its very definition and nature and function, only a temporary "injunction"-slash-"removal" of the state case, and not a permanent removal, as is done under all of the other general types of removal for seeking correction of *original subject matter* belonging within the federal courts, in the first place, from the very get-go on Day One. All the other seven (7) types of removal seek to "vindicate" that the whatever subject matter

involved in a brand new case, as being just filed "improperly" in a state court somewhere, is a particular subject matter type that originally belongs only within the federal court system. But, the whatever type of original subject matter of a state court case is utterly irrelevant to removal under Section 1443, because 1443 cares nothing about the original subject matter *itself*, nor who or what the parties are in any way, shape, or form, but Section 1443 only cares about the state court case process itself, and ***what kinds of federal rights violations*** that the state court process itself has wrongfully perpetrated, hence again why the *petitioner* seeking or "petitioning" for relief in the federal court via removal under 1443 is not the "plaintiff" or the "defendant" within the new federal court removal case "styling" itself, *regardless* of party position labels within the given state court case.

Within the instant case, the troubling difficulty of the district court to understand this fundamental concept difference with Section 1443 removal party positions and nature, being normally **opposite** to the party labels and case styling within the state court action, seems to be the primary reason why the district court got it all wrong, i.e., because district courts see Section 1441 removals and are used to those various substantive and procedural aspects, but they are not used to seeing or handling the much rarer Section 1443 removals yet, so the biggest mistake of all is in simply the gross misunderstanding and mistreating of Section 1443 cases as if they were filed under the "normal" removal statutes, i.e., Section 1441 and the other six (6) types).

Argument - VI

Racial litmus tests may not be used by federal courts to arbitrarily deny otherwise equal access rights to federal court jurisdiction over equal rights issues.

"Civil rights" are not limited under federal law to simply and solely "racial" issues. "Civil rights" encompass an entire morass of topics – any of which fit and can also trigger Section 1443 removal, which statutory language says absolutely nothing about skin color requirement, nor about any particular "civil rights" that numerously exist under American federal law.

Google defines "civil rights" directly itself, simply as "the rights of citizens to political and social freedom and equality." The U.S. Department of Justice Civil Rights Division is the institution within the federal government responsible for enforcing federal statutes prohibiting discrimination on the basis of **race, sex, disability, religion, and national origin**. The Division was established on December 9, 1957, by order of Attorney General William P. Rogers, after the Civil Rights Act of 1957 (which was *prior* to the post-1964-era "civil rights" *single sub-topic* of racial inequality) created the office of Assistant Attorney General for Civil Rights, who has since then headed the division. The head of the Civil Rights Division is an Assistant Attorney General for Civil Rights (AAG-CR) appointed by the President of the United States. The current Acting AAG-CR is Vanita Gupta. The Division enforces the Civil Rights Acts of 1957, 1960, 1964, and 1968, the

Voting Rights Act of 1965, as amended through 2006, the Equal Credit Opportunity Act of 1974, the Americans with Disabilities Act of 1990, the National Voter Registration Act of 1993, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the Voting Accessibility for the Elderly and Handicapped Act of 1984, the Civil Rights of Institutionalized Persons Act of 1980, which authorizes the Attorney General to seek relief for persons confined in public institutions where conditions exist that deprive residents of their constitutional rights, the Freedom of Access to Clinic Entrances Act of 1994, the Police Misconduct Provision of the Violent Crime Control and Law Enforcement Act of 1994, and Section 102 of the Immigration Reform and Control Act of 1986 (IRCA), as amended, which prohibits discrimination on the basis of national origin and citizenship status, and also investigates documented abuse and retaliation under the Immigration and Nationality Act of 1952. In addition, the Division prosecutes actions under several criminal civil rights statutes which were designed to preserve personal liberties and safety. Indeed, the Division's own website homepage (*see* https://www.justice.gov/crt) clearly states, right now, presently, today: "The Civil Rights Division of the Department of Justice, created in 1957 by the enactment of the Civil Rights Act of 1957, works to uphold the **civil and constitutional rights** of **all** Americans, particularly some of the most vulnerable

members of our society. The Division enforces federal statutes prohibiting discrimination on the basis of race, color, **sex**, disability, religion, **familial status** and national origin." As natural parents who have been cheated in and by the state court process (discriminated against unfairly betwixt our sexes), the federal government confirms we have "civil rights" claim herein, and since this is all about the proper nature and interest of that *familial status*, the federal government itself further confirms that these matters are, in fact, "civil rights" issues as well, i.e., yet another proper "civil rights" claim herein. The DOJ's Office of Justice Programs furthers "civil rights" to include age, sexual orientation, and gender identity. *See* http://ojp.gov/about/offices/ocr.htm

See also the HHS Office of Civil Rights for yet more examples of "civil rights" recognized by the federal government, and this list goes on and on and on with yet various other federal units.

One of the most prestigious, venerable, respected, and well established law schools within the entire nation, Cornell University Law School, reminds that "civil rights" encompass many issues:

> civil rights: an overview
>
> A civil right is an enforceable right or privilege, which if interfered with by another gives rise to an action for injury. **Examples of civil rights are freedom of speech, press, and assembly; the right to vote; freedom from involuntary servitude; and the right to equality in public places.** Discrimination occurs when the civil rights of an individual are denied or interfered with because of their membership in a

particular group or class. Various jurisdictions have enacted statutes to prevent discrimination based on a person's **race, sex, religion, age, previous condition of servitude, physical limitation, national origin, and in some instances sexual orientation.**

The most important ***expansions of civil rights*** in the United States occurred as a result of the enactment of the Thirteenth and Fourteenth Amendments of the U.S. Constitution. The Thirteenth Amendment abolished slavery throughout the United States. See U.S. Const. amend. XIII. In response to the Thirteenth Amendment, various states enacted "black codes" that were intended to limit the civil rights of the newly free slaves. In 1868 the Fourteenth Amendment countered these "black codes" by stating that no state "shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States... [or] deprive any person of life, liberty, or property without due process of law, [or] deny to any person within its jurisdiction the equal protection of the laws." See U.S. Const. amend. XIV. Section Five of the Fourteenth Amendment gave Congress the power by section five of the Fourteenth Amendment to pass any laws needed to enforce the Amendment.

During the reconstruction era that followed, Congress enacted numerous civil rights statutes. Many of these are still in force today and protect individuals from discrimination and from the deprivation of their **civil rights**. Section 1981 of Title 42 (Equal Rights Under the Law) protects individuals from discrimination based on race in making and enforcing contracts, participating in lawsuits, and giving evidence. See 42 U.S.C. § 1981. Other statutes, derived from acts of the reconstruction era, that protect against discrimination include: Civil Action for Deprivation of Rights (See 42 U.S.C. § 1983); Conspiracies to Interfere With Civil Rights (See 42 U.S.C. § 1985); Conspiracy Against Rights of Citizens (See 18 U.S.C. § 241); Deprivation of Rights Under Color of Law, (See 18 U.S.C. § 242); The Jurisdictional Statue for Civil Rights Cases (See 28 U.S.C. § 1443); and Peonage Abolished (See 42 U.S.C. § 1994).

The most prominent civil rights legislation since reconstruction is the Civil Rights Act of 1964. Decisions of the Supreme Court at the time limited Congressional enforcement of the 14th Amendment to state, rather than individual, action. (Since 1964 the Supreme Court has expanded the reach of the 14th Amendment in some situations to individuals discriminating on their own). Therefore, in order to reach the actions of individuals, Congress, using its power to regulate interstate commerce, enacted the Civil Rights Act

> of 1964 under Title 42, Chapter 21 of the United States Code. Discrimination based on "race, color, religion, or national origin" in public establishments that have a connection to interstate commerce or are supported by the state is prohibited. See 42 U.S.C. § 2000a. Public establishments include places of public accommodation (e.g., hotels, motels, and trailer parks), restaurants, gas stations, bars, taverns, and places of entertainment in general. The Civil Rights Act of 1964 and subsequent legislation also declared a strong legislative policy against discrimination in public schools and colleges which aided in desegregation. Title VI of the Civil Rights Act prohibits discrimination in federally funded programs. Title VII of the Civil Rights Act prohibits employment discrimination where the employer is engaged in interstate commerce. Congress has passed numerous other laws dealing with employment discrimination. See Employment Discrimination.
> The judiciary, most notably the Supreme Court, plays a crucial role in interpreting the extent of the civil rights, as a single Supreme Court ruling can alter the recognition of a right throughout the nation. Supreme Court decisions can also affect the manner in which Congress enacts civil rights legislation, an occurrence that occurred with the Civil Rights Act of 1964. The federal courts have been crucial in mandating and supervising school desegregation programs and other programs established to rectify state or local discrimination.
> **In addition to federal guarantees, state constitutions, statutes and municipal ordinances provide further protection of civil rights. See, e.g., New York's Civil Rights Law.**
> Numerous international agreements and declarations recognize human rights. The United States has signed some of these agreements, including the International Covenant on **Civil** and Political **Rights.**
> (emphases added)

See https://www.law.cornell.edu/wex/civil_rights (snapshot Nov. 14th, 2016).

The entire sub-topic of racial (skin color) "civil rights" is exactly and only that – just one of many different "civil rights" that are each and every one fully amenable under Section 1443 on their individual own, as long as: (1) one or more triggering items received has occurred; and, (2) removal is then affected timely.

Indeed, even the federal courts – themselves – have confirmed that "civil rights" include a whole lot more issues than the mere single racial sub-topic. For one quick example, the Supreme Court itself, see *Roberts v. United States District Court*, 339 U.S. 844, 846, 70 S.Ct. 954, 94 L.Ed. 1326 (1950), solidly confirmed that *citizenship* is another "civil right" well established.

Clearly one may **not** try to assert, by logical extension of clearly erred reasoning in the plethora of currently-existing Section 1443 removal case law, that simply because Chapter 21 of Title 42 of the United States Code is expressly named "Civil Rights" that *those* "civil rights" statutes, i.e., 42 USC §§ 1981 through 2000h-6, *are no longer available to any* ***white*** *person?* Or not only that monstrosity of illogical nonsense, but that all such "civil rights" statutes are now ***only*** to be accessible to African-Americans, to *the further exclusion* of all Asian-Americans, and also depriving all Native Americans, all Latino-Hispanics, all Alaskan Natives, all Hawaiian Natives, all other Pacific Islanders, all European Americans, all Middle Eastern Americans, and so forth, each above different "racial" group as already identified by the federal government (U.S. Census)?

And what about that other Census racial group identified, the "Multiracial Americans" (two or more racial groups within the person)? How would one propose – under current plethora of **erred** 1443 removal case law – to differentiate *which* race such a person is, for nonsensical extension of current case law? Even

further, although Section 1443 cares nothing for what the original state court subject matter is or was, in a removal filed under Section 1443 by one of two natural parents in a biracial union, to *which* of those two parents would one now be proposing to deny equal access of the law?

Directly related, would we be laughably proposing to allow ***only*** African-American parents to access Section 1443, but ***not*** parents who are any of the other federally-recognized races, to which this Court would do well to also remember that African-Americans are not now, nor have they ever been, the actual racial "minority" in this nation, but Asians were, and then other racial/ethnic groups have each taken their respective turns being, the true "minority" in America?

Moreover, Congress is not constitutionally allowed to enact any laws that favor or disfavor any class of citizens over any other class of citizens, hence all the decades of fuss over the one single sub-topic of "civil rights" regarding skin color of African-Americans under Section 1443 is simply the result of overdue efforts **to ensure flat equality** under the law between **all** citizens (*regardless* of skin color, not *because* of skin color…), and nothing more at essence, because if Congress unconstitutionally intended that removals under Section 1443 were to *only* be available to the African-American race, then that kind of constitutionally repugnant-on-its-face law would raise, at least, all of the above quandary of additional serious dilemma issues, and many more. Further, Congress has already

considered ("legislative intent") and enacted the **only** four (4) specific types of state cases that are precluded from removal. *See*, 28 USC § 1445, which was *also* duly pre-advised to the district court within the instant Notice of Petition; and Verified Petition for Warrant of Removal. ROA.009-026. Let no court frivolously waste time even discussing something that is so misguided, so barbaric, so patently erred, so unconstitutionally repugnant, so ridiculously illogical and so very facially absurd, as falsely pretending that Section 1443 removal is ***only*** available to African-Americans, who have *never* been the actual "minority" in this nation, ever.

And let us likewise not frivolously waste debate on statutory construction, plain meaning, or etc., for the statutory language of Section 1443 is absolutely clear and unambiguous as to "civil rights" being the term used by Congress.

"[I]n interpreting a statute a court should always turn to one cardinal canon before all others. . . . [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 112 S. Ct. 1146, 1149 (1992). Indeed, "when the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" 503 U.S. 249, 254. When writing statutes, the legislature intends to use ordinary English words in their ordinary senses. The United States Supreme Court discussed the plain meaning rule in *Caminetti v. United States*, 242 U.S. 470 (1917), reasoning "[i]t is elementary that the meaning of a statute must, in the first

instance, be sought in the language in which the act is framed, and if that is plain... the sole function of the courts is to enforce it according to its terms." And if a statute's language is plain and clear, the Supreme Court further warned that "the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Id*.

Nor should any party ever try any self-serving attempt by falsely alleging under any principles of *stare decisis* that this Court must blindly follow the opinions of an erred triplet of ancient Supreme Court cases over 50 years 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 actual triplet of United States Supreme Court cases upon this exact combo subject of "racial removal" under the special Section 1443. In order to actually understand this full 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 gets it wrong all the time…, 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 gets it wrong all the time.... Yet, any simple and easy Google search more clearly reveals that the United States Supreme Court has directly "overruled", directly "overturned", directly "abrogated", directly "disapproved" and such like terms, and via similar actions ruled *sub silentio*, in reversing literally at least hundreds and hundreds of its own case rulings, if not actually well over a thousand times done so, during its relatively mere 227 year history, and all of that does *not* even include the fact that at least ten times (10X) that often, rulings from the sister Circuit Courts of Appeal also effectively overturn the holdings of yet another opinion by the Supreme Court, but who also lets that appeal stand by declining certiorari of the given case. So, the net effective actual result is, in fact, that out of only roughly 80 case rulings issued by the Supreme Court (only now that high, in the most recent modern era, but progressively less and less in each decade back), some 15-20% of those holdings

are overturned, year after year, because even the Supreme Court gets it wrong all the time, just like the instant district court herein got it wrong this time.

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 that 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 under any racial litmus test, the same is and must be patently and directly unconstitutional on its clearly repugnant 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 is 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 ridiculously 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 quickly mopping the floor with the entire absurdity of any federal court's racial litmus test of access to Section 1443.

Sixth, also notwithstanding any and all of the above, the federal statutory right of removal came into being with the Judiciary Act of 1789, and those various rights of removal, at that time, most certainly did not include *any* "Negro slaves" being allowed to remove *any* state court case into federal court because of their race / skin color, obviously…, hence the point is that presumably *every* removal action ever filed between 1789 and Reconstruction Era (post Civil War), *every* single one of them during that entire three-quarters-plus of our nation's first century, were always filed by *white* citizens, and by *white* citizens only… hence again the entire absurdity of *any* Section 1443 racial litmus access test…

Seventh, after a proper and comprehensive understanding of removal is achieved, one finally realizes that the right of valid removal was *never* about any particular "civil right" whatsoever, but 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 be 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 the African-Americans since written passage of the 14th Amendment yet still long without their guaranteed "civil rights" for another 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 practiced reality of their lives, due to myriads 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, 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 plethora of established due process, including jury if requested.

Of all these thousands and thousands of uniform federal decisions across the nation, each and every one of the sister federal Circuit Courts of Appeal have agreed and confirmed with their own several hundred or so similar cases, and then again with dozens of the same victories in the Supreme Court. Indeed, this topic is likely THE most "well settled" issue in all of American federal jurisprudence history, if you count by sheer number of cases.

In other words, the enormously overwhelming totality of federal case law makes 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, and we're talking about a massive civil rights situation…

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 be 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 betwixt 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 constitutional rights, ***always*** gender discrimination, and ***always*** violations of equal rights, equal protection of the laws, and 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 constitutional rights, and that routine abrogation, that routine false deprivation, that routine impingement 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 *much more* valid in fact and reality.

Let us not be confused or misled, for it is well known and established that the doctrine of *stare decisis* does not prevent reexamining and, if need be, overruling prior decisions. "It is . . . a fundamental jurisprudential policy that prior applicable

precedent usually must be followed even though the case, if considered anew, might be decided differently by the current justices. This policy . . . 'is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e., that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law.'" *Moradi-Shalal v. Fireman's Fund Ins. Companies*, (1988) 46 Cal.3d 287, 296. Accordingly, a party urging overruling precedent faces a rightly onerous task, the difficulty of which is roughly proportional to a number of factors, including the age of the precedent, the nature and extent of public and private reliance on it, and its consistency or inconsistency with other related rules of law.

Stare decisis is Latin for "to stand by that which is decided." It means, essentially, to abide or adhere to decided cases. It is a general maxim that when a point has been settled by decision, it forms a precedent which is not afterwards to be departed from. The doctrine of *stare decisis* is **not** always to be relied upon, however, for the courts find it necessary to overrule cases at times, either which had been hastily decided, or are contrary to principle. Many hundreds of such overruled cases may be found in the American and English books of reports of decisions (Because why, again? Sadly, many judges *get it wrong* all too often…).

Indeed, if it were not for the simple fact that courts do, from time to time, apply better understanding to the law, and overrule previous precedent cases that are

discovered not quite as what should have been after all, then no rulings would have ever been changed, and our entire system of law would have never developed to the point it is today, or where it will be tomorrow.

The holdings of many case laws upon Section 1443 absurdly use an unlawful racial litmus test to statutory access. Yet, we clearly see that this is simply not true, at all, and although it would normally be considered the established route, stare decisis gives way to intelligent development of the law, in all matters where prudence and reasoning flows through wisdom to arrive at new understanding.

Indeed, both the U.S. Supreme Court and the sister Circuit Courts have clarified themselves in full opposition to any misperceptions about application of stare decisis. In the United States, which uses a common law system in its state courts and to a lesser extent in its federal courts, the Ninth Circuit Court of Appeals has explained it thusly:

> "*Stare decisis* is the policy of the court to stand by precedent; the term is but an abbreviation of *stare decisis et quieta non movere* — "to stand by and adhere to decisions and not disturb what is settled." Consider the word "decisis." The word means, literally and legally, the decision. Nor is the doctrine *stare dictis*; it is not "to stand by or keep to what was said." Nor is the doctrine *stare rationibus decidendi* — "to keep to the *rationes decidendi* of past cases." Rather, under the doctrine of *stare decisis* a case is important only for what it decides — for the "what," **not for the "why," and not for the "how."** Insofar as precedent is concerned, *stare decisis* is important only for the decision, for the detailed legal consequence following a detailed set of facts." (emphasis added)
>
> United States Internal Revenue Serv. v. Osborne (In re Osborne), 76 F.3d 306, 96-1 U.S. Tax Cas. (CCH) paragr. 50, 185 (9th Cir. 1996).

In other words, *stare decisis* applies to the holding of a case, rather than to *obiter dicta* ("things said by the way"). As the United States Supreme Court has put it: "dicta may be followed if sufficiently persuasive but are not binding." *Central Green Co. v. United States*, 531 U.S. 425 (2001), quoting *Humphrey's Executor v. United States*, 295 U.S. 602, 627 (1935).

And, exactly as we have herein, the United States Supreme Court reminds us that the principle of *stare decisis* is **most** flexible in constitutional cases:

> "Stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right. ... But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. ... This is strikingly true of cases under the due process clause."
> *Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406–407, 410 (1932)*

The Supreme Court has further explained:

> "[W]hen convinced of former error, this Court has never felt constrained to follow precedent. In constitutional questions, where correction depends upon amendment, and not upon legislative action, this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions."
> *Smith v. Allwright, 321 U.S. 649, 665 (1944)*

Accordingly, in this case of manifest constitutional infirmity, stare decisis simply does not bind the Court, and all higher guidance (stare decisis itself) is to actually correct the injustice exposed.

Moreover, blindly following *stare decisis*, without applying a reasonable and relevant consideration to a matter, especially a stark and clear constitutional matter

such as indisputably unlawful racial discrimination being manifested by obviously erred precedent and misapplication of law actually against fundamental rights, is such a rule that cannot be blindly followed without also violating every federal judges' oath. Every federal judge takes the following oath:

> "I _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."
> *See, 28 USC § 453.*

The oath does **not** say, "I will follow all interpretations of law established by higher courts," or anything of the sort. The oath is written as it is, because a judge's duty is to the Constitution, *not* to the Supreme Court. Any other rule attempts to place the Supreme Court *above* the Constitution. While the Supreme Court does *interpret* the Constitution, it has no authority to *change* the Constitution. If a judge believes that precedent changed rather than interpreted the Constitution, that judge has a duty to follow the Constitution, rather than the Supreme Court. That higher duty arises from a solemn oath, taken in the even higher (highest) name of God.

The Supreme Court has explained when precedent **should** be abandoned: "when governing decisions are unworkable or are badly reasoned, this Court has never felt constrained to follow precedent." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991), quoting *Smith v. Allwright*, 321 U.S. 649, 665 (1944). Obviously, improperly

using § 1443 and various removal case law, *to actually commit arbitrary and capricious racial discrimination and/or reverse discrimination on a truly nationwide scale*, and not only that, but *to actually deny ALL other civil rights in the name of wholly unconstitutional selective enforcement of just one single solitary sub-topic of civil rights*, is beyond any doubt, whatsoever, as certainly "unworkable and badly reasoned", and therefore most clearly must be corrected, not only herein, but in every Circuit, and by the Supreme Court, which is exactly also what the consistent and binding case law from the Supreme Court has ruled.

Any attempt by the district court in avoiding 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.

Argument - VII

Federal courts may not entertain abstention doctrines to defy clear and unambiguous statutory language that expressly authorizes state case intervention.

Abstention or avoidance doctrines *might* arguably come into a valid application regarding attempted removal of an initial 30-day state court case under *Section 1441* or those *other* six (6) types of general removal, which is the whole point of discussing comity and federalism principles amongst *those* types of removal, i.e., whether or not to "intervene" into a given state court matter, but all such abstention and avoidance doctrines are simply never applicable to any Section 1443 removal.

This is the fundamental distinguishing aspect of Section 1443 removals: that the whole point of Section 1443 actually and expressly IS ***to directly intervene within a state court matter***, and thereby to allow and process the claims of federal rights violations committed within/by the state court, with a keen eye to the particular state statutory schemes being complained of (and regardless of other issues or not).

In other words, no federal court could ***ever*** invoke any doctrine to "abstain" or "avoid" intervention into a state court matter within a Section 1443 removal action, because, simply put, no federal court can ever decide to go directly against the very and sole purpose of Section 1443, i.e., you cannot abstain/avoid intervention, at all, because § 1443 expressly provides intervention, i.e., federal courts simply cannot 'abstain' from or 'avoid' the most basic requirement of § 1443.

The primal purpose of Section 1443 is expressly to intervene into a state court matter. The very purpose, nature, and intent is to directly intervene, so that alleged "automatic violations of federal rights" by the statute or statutory scheme raised in question, and the corresponding evidence of direct state court application, can be further explored and litigated via the additional federal removal case development.

Already within federal cases, the various abstention doctrines (e.g., *Younger*, *Burford*, *Thibodaux*, *Rooker-Feldman*, *Pullman*, DRE, *Colorado River*, and etc.) **rarely if ever apply** (because usage of abstention is very well established as "the exception, not the rule"). And, in Section 1443 removals, they <u>never</u> apply, ever.

Argument - VIII

Local Rule CV-81 promulgated by the Eastern District of Texas is unconstitutional for failing to properly allow removals filed under special Section 1443.

The mere existence of Local Rule CV-81 appears to be conclusive proof in that the district courts of the Eastern District of Texas seem completely unfamiliar with removals filed under rarer Section 1443. *Cf*. to Argument V issues, *supra* at 23-26.

By its very terms, Local Rule CV-81 automatically induces their local district clerks to maintain the lower state court case styling and those corresponding state court party labels, plus expect the entire state court record to be submitted with removal, and so forth and so on, precisely because those are all proper and reasonable and correct... for removals filed within the initial 30-day period under Section 1441 and those other six (6) types of general removal.

However, these terms of Local Rule CV-81 do *not necessarily* apply to civil rights removals filed under Section 1443, and indeed, because of the (improper) "defendant" statutory availability language of Section 1443 – witness the very same type of case foundational breakdown seen herein – such terms of Local Rule CV-81 will typically cause the *opposite* results of how the normal case intake process for a Section 1443 removal should be handled.

This is ***exactly*** what has happened herein. The district court was apparently disoriented due to the unfamiliar and very distinguishing aspects of these rarer civil

rights removal actions, i.e., their own clerks blindly following Local Rule CV-81, which caused mismatch of true party positions and labels within and upon the federal district court case docket, versus the proper case styling and party positions as used upon the case intake paperwork package, and which all combined with the district court being unfamiliar and confused, mistakenly digressing into erred handling of this Section 1443 removal as if it were under Section 1441.

Accordingly, this Court should instruct, either directly and/or via the 5th Circuit Executive, that the Eastern District of Texas revise or replace the same Local Rule CV-81 to include provisions proper for including these rarer form of civil rights removals filed under Section 1443 as per the above issues discussed.

Conclusion and Prayer for Relief

"Parents have a fundamental right to the custody of their children, and the deprivation of that right effects a cognizable injury. See *Santosky v. Kramer*, 455 U.S. 745, 758-59, 102 S. Ct. 1388, 1397, 71 L. Ed. 2d 599 (1982)." *Troxel v. Granville*, 530 U.S. 57, 68-69, 147 L. Ed. 2d 49, 120 S. Ct. 2054 (2000).

Again, the [unlawful] deprivation of a natural parent's child custody by state court action DOES effect a fully cognizable injury within the federal courts, i.e., within the instant district court, and also within this Court, *and so on that ground alone*, this Appellant has already "well pled" a fully cognizable action herein.

Indeed, even a case with only pleaded state law claims may nevertheless arise under federal law "where the vindication of a right under state law necessarily turn[s] on some construction of federal law." *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 9 (1983); *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 312 (2005) (holding that removal was appropriate where state court claims "necessarily raise a federal issue [that is] actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities"); See also *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 690 (2006) (holding that a case arises under federal law if a well-pleaded complaint establishes that the plaintiff's right to relief necessarily depends on the resolution of a substantial question of federal law).

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 direct pecuniary conflicts of interests to such county officers within the Texas Title IV-D system.

The guaranteed automatic results of Texas family court cases betwixt adversarial natural parents in either a divorce or similar legal action involving status of minor children of those parents will ***always*** include unconstitutional violations of parental rights and due process, violations of equal rights and such similar fundamentals, and also ***always*** violate rights and due process within the related Title IV-D aspect.

When a state statutory scheme is challenged via removal under Section 1443 as always causing any automatic violations of rights by the mere application of state law itself, then the removal is precisely valid and authorized by the Supreme Court under *City of Greenwood*, 384 U.S. at 828, 86 S.Ct. at 1812. Such a removal like this one must be allowed, at least into discovery phase for opportunity of evidence presented to confirm and/or otherwise support all allegations of unconstitutionality.

Section 1443 removal is and must be available for vindications of all existing "civil rights" as per the statutory language itself, far more than just for any remaining racial inequality issues still possibly out there somewhere.

Abstention doctrines simply do not and cannot apply to removals filed under the prosecutorial authority of Section 1443, which statute's sole express purpose is precisely to intervene into a state court process and therewith to actually determine the validity of any allegedly routine state practice in violations of federal rights.

All plethora of extraneous state law matters are utterly irrelevant herein, and there are two and only two core federal issues involved – daily unilateral deprivation of constitutionally protected child custody rights without ANY due process whatsoever, and routinely unconstitutional Title IV-D child support orders being unlawfully made, executed and enforced in all manner of direct conflicts of interest – and these sole two raised federal constitutional issues are involving the entire State of Texas at large, and are not even focused upon this undersigned

Appellant's own personal case, *per se* (except for the small set of personal federal torts raised herein that are also clearly allowed into federal jurisdiction), but merely as the properly evidenced legal standing with which to bring said constitutional challenges in the federal courts, i.e., said Section 1443 removal. The fact that this Appellant is ALSO being violated by the exact same unconstitutional statutory and related pattern and practice schemes, simply because the instant state court matter is what it is, is only relevant at this point in relation to establishing legal standing.

Summarizing again, a natural parent's complaints and challenges regarding due process violations of the constitutional right to his or her own child custody is well established as fully cognizable claims within the federal courts, as are also all of the attendant federal torts themselves involved therein and herein.

The U.S. Supreme Court has expressly provided that constitutional claims over validity of state child custody proceedings are fully cognizable actions valid within the federal judiciary, hence has expressly ruled in this Appellant's favor herein.

The U.S. Supreme Court has also always maintained "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them" by Congress. See, *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 813 (1976), which is a seminal case that this Court is clearly very well familiar with upon jurisdictional duties, and, indeed, the Supreme Court has "often acknowledged that federal courts have a strict duty to exercise the jurisdiction that

is conferred upon them by Congress." *Quackenbush v. Allstate Insurance Company*, 517 U.S. 706, 716 (1996) (emphasis added). This constitutional due process liberty interest case, a removal filed under express statutory authority, that is precisely on point for the congressional target of the enacted statute, with its own statutorily-provided jurisdiction, is a prime example of that very "unflagging obligation" in duty. Indeed, there could hardly be any case so directly on point.

The district court was clearly erred, across the board, in every faulty position it took to remand the instant Section 1443 removal case. The removal was/is valid.

This Court should now reverse the district court's order of remand, and also give it reasonable and appropriate guidance for further proceedings into these matters.

WHEREFORE, the undersigned Appellant, Rustin Wright, formally requests this Court properly dispose of this matter by declaring injunction against the State of Texas further using its family court system to impinge into private parent-child relationships without first removing such child custody rights via established due process, for the same fundamental lack of due process also declaring that Appellant Rustin and Appellee Ashley must be declared with mutual and fully equal child custody status between them both, further declaring injunction against the State of Texas domestic relations courts from making, executing or enforcing Title IV-D orders of any custody cases within each their own respective counties, after

compelling said declaratory justice required to then remand any remaining state law matters back to the state court for further proceedings not inconsistent with this Court's such declaratory relief to be granted, for costs, and your Appellant then also further moves and prays for all other relief true and just within these premises.

Respectfully submitted,

_____

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CERTIFICATE OF SERVICE

I hereby certify that, on this _14th_ day of November, 2016, a true and complete copy of the foregoing *Brief of Appellant*, by depositing same via first-class United States mail, postage prepaid, has been duly served on:

(last-known counsel for Appellee)
Jennifer M. Gibo, #24032343
Law Office of Jennifer Gibo
109 1st Street SE
Paris, TX 75460

and, that I further certify that, on this same _14th_ day of November, 2016, the requisite number of true and complete copies of the foregoing *Brief of Appellant*, by depositing said copies via "overnight" or similar express and tracked first-class United States mail or equivalent carrier, postage prepaid, has been duly served on:

Lyle W. Cayce, Clerk
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Dated: _____