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

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

#8 - REPLY TO SUPPLEMENTAL MEMORANDUM

A pdf copy of this document is available at: http://www.liamsdad.org/court/civilrights

> "It will be an evil day for American Liberty if the theory of a government outside supreme law finds lodgement in our constitutional jurisprudence. No higher duty rests upon this Court than to exert its full authority to prevent all violations of the principles of the Constitution." Downs v. Bidwell, 182 U.S. 244 (1901)
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> Congress, I think, concluded that the evils of allowing intentional, knowing deprivations of civil rights to go unredressed far out weighed the speculative inhibiting effects which might attend an inquiry into a judicial deprivation of civil rights." at 567 SANTIAGO V. CITY OF PHILADELPHIA, 435 F.Supp. 136
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> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws when he receives an injury." Chief Justice Marshall 1 Cranch 137 at 163 (1803).
>
> Justice consists not in being neutral between right and wrong, but in finding out the right and upholding it, wherever found, against the wrong. Theodore Roosevelt (1858 - 1919)

1. This is in reply to the June 1st 2007 Supplemental Memorandum filed by James Ingold. It is based on the assumption that the court will consider all the facts claimed by the Plaintiff in all court documents not just the original complaint -- see #7 Motion To Amend If Needed.

2. The Plaintiff incorporates by reference all statements in #6 - REPLY TO ISSUES ADDRESSED AT HEARING. Hopefully it won't be necessary to cut/past the 55 pages here.

3. The Defendants' Memorandum submitted by James Ingold is an attempt to nullify the 14th Amendment and also to nullify the Bill Of Rights. Mr. Ingold seeks this court to sanction the state

of Virginia in violating the Constitutional rights of its citizens. Mr. Ingold is asking to this court to open the floodgates for any Virginia Judge to deprive any citizen of any Constitutional Right.

4. Mr. Ingold is asking this court to eviscerate the purposes of the Fourteenth Amendment. It says quite a lot about the sad condition of Virginia Courts that Mr. Ingold is arguing that the Defendants and the State are immune for their misconduct rather than arguing that the Defendants were making a good-faith effort to comply with the Constitution (which we all know was not the case). Mr. Ingold claims the Defendants were acting as judges in their judicial capacity without even one sentence denying the Plaintiffs claims that the state court never acquired jurisdiction due to procedural errors, that the gross misconduct of the Defendants would have caused the court to lose jurisdiction if it ever had acquired it. Indeed Mr. Ingold's only real argument, although couched in various manners, is that Virginia Judges are a Nobility class that can do not have to follow the constitution and can't be held accountable for their misconduct even when they act without authority.

5. Its almost as if Mr. Ingold has never read the Constitution where it states it is the Supreme Law Of The Land, that there is no nobility allowed in this country, and that States MUST grant its citizens Equal Protection, Due Process, etc. Perhaps he has also never heard of the Revolutionary War where our forefathers overthrew sovereign rule and sovereign immunity.

6. I told my sister once that many Virginia Judges act if they are above the law. My sister's response was that perhaps the Judges are members of the Mafia. Mr. Ingold seems to share her view that Virginia Judges are a lawless mob that is not required to follow the Supreme Law of the land.

> "When those that are solemnly charged with upholding the law ignore the law; then there is no law; there is only lawlessness." - Colonel Dan
>
> When the biggest threat to a person's property, liberty, or life comes from the legal system set on plunder, you have a better chance of maintaining any of the three without it.

7. Mr. Ingold seeks to turn the Bill Of Rights and 14th Amendment into Rights without a remedy, but As the old saying goes, "A right without remedy is no right at all." No one truly has a legal right unless a court is willing to protect it. Mr. Ingold is asking nothing less than for this court to refuse to enforce the Constitutional Rights afforded the Plaintiff and in effect destroys those rights for all citizens of Virginia.

> "Constitutional 'rights' would be of little value if they could be indirectly denied." Gomillion v. Lightfoot, 364 U.S. 155 (1966), cited also in Smith v. Allwright, 321 U.S. 649.644

8. It is embarrassing and terrifying that Mr. Ingold, a representative of the Attorney General Of Virginia, is asking this Court to allow Virginia Judge to violate the Constitutional Rights of its Citizens with impunity, instead of arguing that the Defendants did not violate the Constitution. In short Mr. Ingold is asking this Court to declare that the Evil Day For American Liberty has arrived.

> "**It will be an evil day for American Liberty if the theory of a government outside supreme law finds lodgement in our constitutional jurisprudence. No higher duty rests upon this Court than to exert its full authority to prevent all violations of the principles of the Constitution**." Downs v. Bidwell, 182 U.S. 244 (1901)

9. The real question that will determine the outcome of this case is will this Court due its duty to exert its authority to prevent violations of the principles of the Constitution, or have the Federal Courts become as corrupt as the Virginia Courts. Will this Court take action or let Virginia's Judges continue to act as a lawless mob?

> I agree with the statement of Justice Kennedy that "... The law makes a promise. The promise is neutrality. If that promise is broken, the law ceases to exist. **All that's left is the dictate of a tyrant, or a mob**." ~Quoted in Dababnah v. West Virginia Bd. Of Medicine, 47 F.Supp.2d 734, 749 (S.D.W.Va. 1999)

Sufficient Facts

10. Mr. Ingold argues that I have not alleged sufficient facts to allow the case to go forward. That is clearly incorrect. I have alleged various violations of my constitutional rights and have included specific actions and dates upon which the violations occurred. Including but not limited to:

a. Right To Notice - Judge Potter Sep 10th 2003, Judge Alston Jan 3rd 2005
b. Right To Be Heard - Judge Farris Aug 2004, Judge Alston Jan 3rd 2005, Judge Millette Jan 18th 2005
c. Right to face accusers - Judge Farris Aug 2004, Judge Alston Jan 3rd 2005, Judge Millette Jan 18th 2005, Judge Potter May 22&23, 2006.
d. Right To Due Process
e. Right To Freedom Of Speech
f. Right To Jury Trial

11. Judge Alston himself wrote in the court order, dated Jan 26th 2005, that he held an "Ex Parte" hearing. This court must accept Judge Alston's statement that he held an "Ex Parte" hearing on Jan 3rd 2005. He took this action in direct violation of § vscr-6:3-3(7). Further Judge Alston never informed the Plaintiff "of the substance of the Ex Parte communication" at the Ex Parte hearing on Jan 3rd 2005.

> Ex Parte conferences, hearings or Orders denying parental rights or personal liberties are unconstitutional, cannot be enforced, **can be set aside in federal court, and can be the basis of suits for money damages**. RANKIN V. HOWARD, 633 F.2d 844 (1980); GEISINGER V. VOSE, 352 F.Supp. 104 (1972)

12. It is a fact that Judge Millette threatened a pro se litigant with jail for attempting to prove that the opposing party made false statements to the court (see affidavit of courtroom observer). Judge Millette refused to let me present evidence, threatened me with jail for attempting to present

a defense, and stated **he was not going to rule on the merits of the motion** but simply continue that which occurred at the illegal Ex Parte hearing. An affidavit of an observer has also been filed with this court. Accepting the above facts, this court can come to no other legal conclusion that Judge Millette violated various Constitutional Rights at that Jan 18th 2005 hearing.

13. The argument that the facts are insufficient is inappropriate in a motion to dismiss. The Plaintiff has a right to a Jury Trial and has made such a demand in writing. The facts of the case, as to whether they constitute civil rights violations is **for a Jury to decide, not a Judge**. Especially in a case against judges where the presiding official in this case carries the same title and similar position as the Defendants, and may be viewed as having a personal stake in the outcome, it would be best to have the Jury rule on the claim that the facts are insufficient.

14. Clearly the Plaintiff has presented sufficient facts to demonstrate this is not a frivolous case. To dismiss based on insufficiency of facts **would be to deprive the Plaintiff of his right to a jury trial**.

Equal Protection Claim

15. Mr. Ingold claims that I have failed to claim I am a member of a class that would entitle me to protection. That is clearly false as on page 38 of #6 - REPLY TO ISSUES ADDRESSED AT HEARING there is an entire section entitled: EQUAL PROTECTION - Protected Class.

16. That section spells out that gender-based discrimination, as occurred in this case, has been recognized in Federal courts as "invidiously discriminatory animus". The Plaintiff also submitted evidence of state statistics showing clear gender bias, as well as facts that judges made statements indicating gender bias, such as when Judge Potter said, "I gave you more visitation than I give most **fathers**".

> In Novotny , we relied on Congress' characterization of classifications based on gender as inherently invidious and upon the immutable nature of gender to conclude that women, as a class, were entitled to the protection of section 1985(3): [S]ex, like race and national

origin, is an immutable characteristic determined by the accident of birth .. .and the sex characteristic frequently bears no relation to ability to perform or contribute to society. Thus, to deprive members of a class founded on gender of equal protection or equal privileges and immunities without any justification is to act in an irrational and odious manner hence, with an invidiously discriminatory animus. 584 F.2d at 1243. Lake v Arnold, UNITED STATES COURT OF APPEALS, No. 96-3412
http://laws.findlaw.com/3rd/971575p.html

To withstand constitutional challenge under the equal protection clause of the Fourteenth Amendment, **classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives**. Craig v Boren (1976) 429 US 190, 50 L Ed 2d 397, 97 S Ct 451.

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

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

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

17. The gender-based discrimination does not serve important governmental objectives.

gender-based discriminations must serve important governmental objectives, and the discriminatory means employed must be substantially related to achievement of those objectives. Wengler v Druggists Mut. Ins. Co. (1980, US) 64 L Ed 2d 107, 100 S Ct 1540

A state statutory scheme which imposes alimony obligations on husbands but not wives violates the equal protection clause of the Fourteenth Amendment of the United States Constitution; to withstand scrutiny under the equal protection clause, classification by gender must serve important governmental objectives and must be substantially related to achievement of those objectives, and a statutory scheme may not be upheld on the basis of the state's preference for an allocation of family responsibility under which the wife plays merely a submissive dependent role. Childs v Childs (1979, 2d Dept) 69 Ad2d 406, 419 NYS2d 533, cert den and app dismd (US) 64 L Ed 2d 253, 100 S Ct 1824.

Abstention - Domestic Relations

18. Mr. Ingold argues that this court should abstain from exercising jurisdiction for various reasons, however the reasons he cites simply do not apply to this case. His claims are so far off the mark as to possibly be a bad faith attempt to distract the court from the real issues of this case.

> Abstention is generally not favored in actions brought under this 42 USCS 1983 Bergman v stein (1975, SD NY) 404 F Supp 287
>
> Abstention is rarely proper when fundamental constitutional rights, particularly First Amendment rights, are involved. Fernwood Books & Video, Inc. v Jackson (1984, SD Miss) 601 F Supp 1093.

19. Courts have ruled that a parent deprived of custody without due process not only has a cause of action but that the domestic relations exception does not apply.

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

20. Even the case he cites supports my case and not his. The U.S. Supreme Court has ruled that the domestic relations exception applies **ONLY** to "…**cases involving the issuance of a divorce, alimony, or child custody decree**,.... This lawsuit in no way seeks such a decree"; Ankenbrandt v. Richards (91-367), 504 U.S. 689 (1992) Mr. Ingold is asking this court to violate the Supreme Court ruling above, as it made clear that as long as the Federal Court was not issuing a divorce or custody decree the Domestic Relations Exception does not apply.

21. As in Ankenbrandt I have not asked this court to issue (or vacate) a divorce, alimony, or child custody decree, thus the domestic relations exception does not apply. Indeed I've attempted to copy/paste my complaint from similar cases that have made it past the Federal Appeals courts.

22. I have not asked the court to grant a divorce or to vacate the divorce degree. Rather I have asked the court to rule if that order is void or valid. Asking the court to rule as to the status of the decree is entirely different from asking the court to issue a divorce or custody degree. Should the court agree that the Final Divorce Decree is void, that does not change the legal status of my

divorce at all. The Final Divorce Decree is either void or not before this court makes its ruling, the status will be the same after this court makes its ruling. See *Catz v. Chalker*

23. Mr. Ingold objects to my asking to have the Judges "grant him additional parenting time and enjoin the Judges from applying law that prohibits him from exercising custody of his son". That is still not asking this court to issue a custody order and thus still not covered by the Domestic Relations Exception. Given that Parental Rights are Constitutionally protected, and it is well settled that the state may only interfere with a constitutional right to the least restrictive means necessary, the request is nothing more than asking this court to force the state judges to follow the Least Restrictive requirement. That is a valid request no matter what constitutional right is at stake, it makes no difference if its freedom of speech or custody. Perhaps I could have worded it differently but asking for the state judges to apply the Lest Restrictive approach or to take remedial actions to compensate for past illegal deprivations, is appropriate and not barred by the Domestic Relations exception, as it does not make a custody order, does not modify a custody order and still leaves the state judges with the task of determining what the terms of the custody order should be.

24. Mr. Ingold, does not point out any error with the Appeals Court ruling in *Catz v. Chalker* but rather simply asks this court not to apply it due to it being a 6th Circuit case. While the court may not be bound to follow the Catz ruling, it would be inappropriate to fail to follow it unless a flaw is found in the argument the Appeals Court gave for reversing the District Court's abstention due to Domestic Relations Exception:

> Our disagreement with the district court comes down to the question of whether Catz's action is a "core" domestic relations case, seeking a declaration of marital or parental status, or a constitutional claim in which it is incidental that the underlying dispute involves a divorce. We conclude that the case is best described as the latter. True, the remedy Catz seeks -- a declaration that the Pima County divorce decree is void as a violation of due process -- would seem to "directly impact the marriage status and rights between the husband Plaintiff and his wife." On the other hand, **if the divorce judgment were unconstitutionally obtained, it**

> **should be regarded as a nullity**, see Phoenix Metals Corp. v. Roth, 284 P.2d 645, 648 (Ariz. 1955), and **any decree so stating would change nothing at all**. Further, the declaration Catz seeks would not itself address the merits, or ultimately dispose, of Chalker's divorce petition; she would be free to relitigate her marital status in state court. Finally, Catz is **not asking the district court to involve itself in the sort of questions attendant to domestic relations** that are assumed to be within the special expertise of the state courts -- for instance, the merits of a divorce action; what custody determination would be in the best interest of a child; what would constitute an equitable division of property; and the like. Instead, Catz **asks the court to examine whether certain judicial proceedings, which happened to involve a divorce, comported with the federal constitutional guarantee of due process. This is a sphere in which the federal courts may claim an expertise at least equal to that of the state courts**. *Catz v. Chalker*, 142 F.3d 279, 281 (6th Cir. 1998)

Abstention - Younger

> "The counsel for the State of Virginia have, in support of this motion, urged many arguments of great weight against the application of the act of Congress to such a case as this; but those arguments go to the construction of the constitution, or of the law, or of both; and seem, therefore, rather calculated to sustain their cause upon its merits, than to prove a failure of jurisdiction in the Court."

25. Again, Mr. Ingold is putting the cart before the horse. He is again asking that this court abstain from hearing the case based on state court proceedings without first making the ruling as to whether there are state court proceedings or not.

26. The Plaintiff has clearly and repeatedly stated that the state court acted without jurisdiction. This issue must be addressed BEFORE the Younger abstention doctrine could be applied. If the Plaintiff's claims are found to be valid then it is as if the Circuit Court proceedings never took place, and the orders never issued, so obviously this court can't abstain to keep from interfering in something that never took place.

> A judgment **absolutely void upon its face** may be attacked anywhere, directly or collaterally, whenever it presents itself, either by parties or strangers. **It is simply a nullity, and can be neither the basis nor evidence of any right whatever.** … (citations). Nagel v. P&M Distributors Inc. (1969) 273 Cal.App.2d 176, 180; 78 Cal.Rptr 65. [App. J-18; App. M-48].

27. It should be noted that on June 6th 2007, 5 days after Mr. Ingold filed his Memorandum, the Virginia Court Of Appeals denied the motion for rehearing, thus dismissing the appeal **without ruling on the merits of the case**.

28. Although the appeal was largely off topic anyway as this case is seeking redress for deprivation of constitutional rights that occurred in the past, and the only thing an appeal could have done is to change the Final Divorce Decree, it could not have given relief for past deprivations. Custody terms are always modifiable and are never final in a strict since. In fact the state court has already changed some of the terms of the custody specified in the Final Divorce Decree. This case is about the illegal procedure used by the state court not the terms of the Final Divorce Decree.

29. The Younger Abstention Doctrine should not be applied to civil rights cases. While respecting state court proceedings may be appropriate under other circumstances, when it comes to enforcing the 14th Amendment, Congress has express power to not only interfere but also to negate any and all state laws and proceedings. Thus a Civil Rights Action may appropriately go forward in spite of any impact on state court proceedings:

> Under the Fourteenth Amendment, it has the power to counteract and **render nugatory all state laws and proceedings** which have the effect of abridging any of the privileges or immunities of citizens of the United States, to deprive them of life, liberty, or property without due process of law, or to deny to any of them the equal protection of the laws (Anderson v St Paul, 226 Minn 186, 32 NW2d 538)

30. Younger does not apply given that there are no vital state interests at stake, the Defendants' have not specified any important state interests.

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

31. Given that the state courts have refused to rule on the merits of the case, Mr. Ingold's argument that "State remedies are available to address the allegations in plaintiff's pleading" is totally false. With the appeal dismissed the only avenue available in state courts is a Civil Rights action, that is, to file this same complaint in the state court. But it is well settled that I have the option of filing civil rights actions in federal rather than state court.

> Father's 42 USCS 1983 lawsuit alleging that county sheriff deputies committed constitutional torts by **wrongfully depriving him of custody of his minor child is not subject to dismissal on ground that plaintiff has various remedies open under state and uniform custody law, since plaintiff is relying on liberty interest to custody of his child, and not merely arguing that certain procedural protections were not afforded him, or that he was deprived of "property" interest.** Elam v Montgomery County (1983, SD Ohio) 573 F Supp 797
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> While federal courts are normally reluctant to interfere with state court proceedings, in special circumstances such action is authorized by 42 USCS 1983 notwithstanding 28 USCS 2283 comity considerations need not dissuade federal court from acting where **state court's proceedings will not afford due process of law.** New Haven Tenants' Representative Council, Inc. v Housing Authority of New Haven (1975, DC Conn) 390 F Supp 831
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> If remedy is available under civil rights act (42 USCS 1983) **plaintiff need not first seek redress in state forum**. Preiser v Rodriguez (1973) 411 US 475, 93 S Ct 1827
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> Individuals seeking relief under civil rights act (42 USCS 1983) **need not present their federal constitutional claims in state court before coming to federal forum**. Zablocki v Redhail (1978) 434 US 374, 98 S Ct 673
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> Relief under 42 USCS 1983 may not be defeated because relief was not first sought under a state law which provided a remedy. It has been held that it is no answer that the state has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal remedy is involved. McNeese v Board of Education, 373 US 668, 10 L Ed 2d 622, 83 S Ct 1433....
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> Younger abstention doctrine does not apply to 42 USCS 1983 action brought to restrain state judiciary from conducting private tort litigation in a way that allegedly threatens to violate plaintiff's constitutional rights. Miofsky v Superior Court of California (1983, CA9 Cal) 703 F2d 332

No Eleventh Amendment Immunity

32. Mr. Ingold also argues that this court can't hear the case due to 11th amendment state immunity. This is also a flawed argument. I haven't sued the state but rather the judges, both individually and in their roles as judges. Obviously the 11th amendment does not apply to them individually. Following Ex parte Young, courts no longer interpreted the Eleventh Amendment as a bar to suits against state officials to enjoin conduct that violated federal law. See Edelman v. Jordan, 415 U.S. 651, 664 (1974) (explaining that under Ex parte Young, a government official was not immune from a federal suit alleging a constitutional violation).

33. For "constitutional torts," 42 U.S.C. § 1983 allows state officials to be sued in their individual or official capacities, a principle which was demonstrated again in Brandon v. Holt, 469 U.S. 464 (1984)

34. Although a state always may waive its immunity by specifically consenting to suit in federal court, the Court in Parden v. Terminal Railway of Alabama State Docks Department 377 U.S. 184 (1964) further limited Eleventh Amendment immunity by inferring an implied or constructive waiver of immunity [See Kinports, supra note 18, at 798-801] in the absence of an expressed waiver. See Parden, 377 U.S. at 193.

35. In Parden, citizens of the state of Alabama successfully sued a state-owned railroad under the Federal Employees Liability Act ("FELA") for injuries sustained while employed by the railroad. The Parden majority held that Congress enacted FELA under its broad commerce power to hold **every** common carrier liable in damages for injuries suffered by its employees. The Court believed that Congress' reference to "every" common carrier indicated that it never intended to exempt state-owned railroads from liability. The Court assumed that, **in the absence of an express provision to the contrary, a state was just as liable** to its employees as a privately-owned company. To find otherwise, the majority reasoned, would **result in the creation of a "right without a remedy."** See Parden, 377 U.S. at 190 The Court thereby created the implied or

constructive waiver doctrine for situations in which a state entered into activities subject to federal regulation and federal jurisdiction. See Parden, 377 U.S. at 196 ("But when a State leaves the sphere that is exclusively its own and enters into activities subject to congressional regulation, it subjects itself to that regulation as fully as if it were a private person or corporation.").

36. The situation here is the same as in Parden, if Eleventh Amendment Immunity is allowed then all Ten of the Amendments in the Bill of Rights and Fourteenth Amendment become "right without a remedy". To apply 11th Amendment immunity to 14th amendment violations is totally absurd that would have one and only one meaning: That the Federal Courts refused to recognize or enforce the 14th Amendment. The 14th Amendment applies only to states, to exempt states due to the 11th, means it applies to nobody. Courts are not allowed to assume Congress meant to pass a meaningless Constitutional Amendment.

37. As in Parden, the state of Virginia left its protected sphere when it denied the Plaintiff of his rights to due process, to protected parental rights, etc. When the Defendants chose to violate the 14th Amendment they left the sphere that was protected by the 11th Amendment and thus have no protection by it. The state only has authority to act in compliance with the U.S. Constitution, when the state acts in violation of the Constitution it acts without authority, has engaged in an act of treason, and acts without protection of the 11th Amendment. Acts of treason cannot be protected by the 11th Amendment.

> "**immunity does not extend to a person who acts for the state, but [who] acts unconstitutionally**, because the state is powerless to authorize the person to act in violation of the Constitution." Althouse, Tapping the State Court Resource, 44 Vand. L. Rev. 953, 973 (1991).
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> "**The language and purpose of the civil rights acts, are inconsistent with the application of common law notions of official immunity**. . . " JACOBSEN V. HENNE, 335 F.2d 129, 133 (U.S. Ct. App. 2nd Circ. - 1966) Also see" ANDERSON V. NOSSER, 428 F.2d 183 (U.S. Ct. App. 5th Circ. - 1971)
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> **State immunity defenses may not be asserted** in response to federal civil rights claims.

Wilson v Jackson (1986) 66 Md App 744, 505 A2d 913

The U.S. Supreme Court, in Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case **stripped of his official or representative character** and is subjected in his person to the consequences of his individual conduct. **The State has no power to impart to him any immunity** from responsibility to the supreme authority of the United States."

If a judge does not fully comply with the Constitution, then his orders are void, In re Sawyer, 124 U.S. 200 (1888), he/she **is without jurisdiction, and he/she has engaged in an act or acts of treason.**

38. In Fitzpatrick v. Bitzer 427 U.S. 445 (1976), the Court recognized Congress' power under Section 5 of the Fourteenth Amendment to abrogate state immunity when enforcing substantive provisions of the amendment. See id. at 456 ("Congress may, in determining what is 'appropriate legislation' for the purposes of the Fourteenth Amendment, provide for private suits against States or state officials which are constitutionally impermissible in other contexts.");

39. Its questionable whether suing the judges constitutes suing the state:

State law providing for payment by state of judgment for civil rights violation against state official in individual capacity does not bar suit against individual in individual capacity. Barger v Kansas (1985, DC Kan) 620 F Supp 1432

A civil rights suit against state officials is not a suit against the state, however, if full relief can be obtained from the defendant officials without requiring the state to take any affirmative action Board of Supervisors v Ludley (CA5 La) 252 F2d 372, cert den 358 US 819, 3 L Ed 2d 61, 79 S Ct 31 and cert den 358 US 820, 3 L Ed 2d 61, 79 S Ct 32.

The determination of whether a suit in federal court against state officers is a suit against the state rests with the federal court, and state action in amending its constitution to make school officials special agencies of the state and to provide that the state withholds consent to suits against it through suits against such officials is **ineffective to prevent the bringing of such suits in federal court**. Board of Supervisors v Ludley

40. Mr. Ingold simply claims 11th amendment immunity for their official actions without making any argument to contradict my claims that they acted without authority, thus without official status or immunity. He also failed to address the cases I cited:

11th Amendment immunity does not prevent an action in federal court against a state official for *ultra vires* actions beyond the scope of statutory authority, or pursuant to authority deemed to be unconstitutional. Pennhurst, supra, 465 U.S. at 101-102, n. 11; Scham v. District Courts, 967 F. Supp 230, 232-233 (S.D.Tex. 1997).

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

11th Amendment does not bar suit against state officials in their individual capacities, even if arising from their official acts, Hafer v. Melo, 502 U.S. 21, 30-31 (1991), unless the claim will "run to the state treasury" under state law. Reyes v. Sazan, 168 F.3d 158, 162-163

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

The U.S. Supreme Court, in Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case **stripped of his official or representative character** and is subjected in his person to the consequences of his individual conduct. **The State has no power to impart to him any immunity** from responsibility to the supreme authority of the United States." [Emphasis supplied in original].

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

State law cannot provide immunity from suit for Federal civil rights violations. State law providing immunity from suit for child abuse investigators has no application to suits under § 1983. Wallis v. Spencer, (9th Cir. 1999)

Public officials, including judges, were not immune from suit for preventive relief under public accommodations provisions of civil rights act of 1964 (42 USCS 2000a et seq.) where intimidation, threats, and coercion had been used to prevent Negroes from exercising their rights thereunder. United States v Clark (DC Ala) 249 F Supp 720.

41. Plaintiff has claimed that the Defendant Judges denied him Equal Protection by allowing attorneys to record hearings while denying his request to record hearings even after he indicated his ADD and that the ADA requires the judges to make 'reasonable accommodations". Congress has specifically revoked 11th amendment immunity for violations such as this. See 42 USCS 12202.

> 42 USC 12202 - A **State shall not be immune under the eleventh amendment** to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (Including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

42. Mr. Ingold fails to even address the issue of Virginia waiving its immunity by accepting Federal funds for its "Child Support Enforcement". Virginia has been accepting millions of dollars in Federal Funding then using that money for gender based discrimination - by its own account 96% to 4%. Keeping in mind that the Nazi's statistics for concentration camps were only 90% Jewish to 10% other, those are pretty damning statistics.

43. Federal Courts have often found that acceptance of Federal funding constitutes a waiver of 11th amendment immunity. See See Stanley v. Litscher, 213 F. 3d 340, Litman v. George Mason University, 186 F. 3d 544 (4th Cir. 1999), cert. den. 120 S.Ct. 1220 (2000), Sandoval v. Hagan, 197 F. 3d 484, Bradley v. Arkansas Department of Education, 189 F. 3d 745, Bell Telephone Co. v. WorldCom Technologies, Inc., 179 F. 3d 566

44. In reasserting his 11th amendment claim, Mr. Ingold made no response at all to my argument that the Fourteenth Amendment is controlling and that the Eleventh Amendment may not be applied when it conflicts with the 14th amendment.

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

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

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

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

47. The U.S. Supreme Court has recognized the 14th Amendment as limiting every state power. Which would include its power to be immune from lawsuit.

> **Every** state power is limited by the inhibitions of the Fourteenth Amendment - Southern R. Co. v Virginia, 290 US 190, 78 L Ed 260, 54 S Ct 148

48. Mr. Ingold would have this court accept that the Civil Rights Act does not apply to States or Judges. He would have this court nullify not only the Civil Rights Act but also the 14th Amendment. All the arguments that he puts forth are old ones that existed prior to the creation of the 14th Amendment and enactment of the Civil Rights Laws. One must conclude that Congress intended the 14th Amendment to apply to both states and judges and that his arguments are futile. I'll repeat this as he seems to have completely missed the point stated by the U.S. Supreme Court:

> In a fairly early case, the Supreme Court stated that the Thirteenth and **Fourteenth Amendments were intended to be what they really are, limitations of the power of the states and enlargements of the power of Congress**. They are, to some extent, declaratory

of rights, and although in the form of prohibitions, they imply immunities, such as may be protected by congressional legislation. Strauder v West Virginia, 100 US 303, 25 L Ed 664

"We should, of course, not protect a member of the judiciary "who is in fact **guilty of using his powers to vent his spleen upon others**, or for any other personal motive not connected with the public good." at 564 ". . .the judge who knowingly turns a trial into a "Kangaroo" court? Or one who intentionally flouts the Constitution in order to obtain conviction? **Congress, I think, concluded that the evils of allowing intentional, knowing deprivations of civil rights to go unredressed far out weighed the speculative inhibiting effects which might attend an inquiry into a judicial deprivation of civil rights**." at 567 SANTIAGO V. CITY OF PHILADELPHIA, 435 F.Supp. 136

49. Mr. Ingold then goes on to argue that the state is not a person and thus can't be sued in a Civil Rights Action. Again, he fails to recognize that I have invoked jurisdiction and made claims not only under 1983 that has the "person" requirement but also under provisions such as 28 USCS 1331 that does not have the "person" requirement.

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

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

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

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

Judicial And Sovereign Immunity

50. Incorporate by reference statements from the Judicial Immunity section (page 46) of #6 - REPLY TO ISSUES ADDRESSED AT HEARING

51. Mr. Ingold also claims Judicial and Sovereign immunity applies to this case. His argument has several fatal flaws; first there is no such thing as Sovereign Immunity. Sovereign Immunity came from being a representative of the King. With the Revolutionary War this country deposed the Sovereign and thus Sovereign Immunity. While many Virginia judges act as if they were Sovereigns, it is the People of the United States who are sovereign, not the judges, not the states, not the federal government. If there is Sovereign Immunity it would apply to the Plaintiff who had his Constitutional immunities violated, not the Defendant Judges who unlawfully deprived him of his rights.

> "There is no such thing as a power of inherent sovereignty in the government of the United States... **In this country, sovereignty resides in the people,** and Congress can exercise power, which they have, by their Constitution, entrusted to it. All else is withheld." Juliard v. Greeman, 110 U.S. 421 (1884)

52. Second Judicial Immunity only applies to Judges who were acting with jurisdiction and within their authority. The Plaintiff has claimed they acted without jurisdiction and in excess of their authority. The Plaintiff has even claimed that at least one judge admitted to making and attempting to enforce an unconstitutional order. Thus if the Plaintiff is correct Judicial Immunity cannot apply. This court can't dismiss based on Judicial Immunity without first allowing a jury to rule on the facts that demonstrate the judges acted without jurisdiction.

> A judge may be held liable under the statutes for an act done clearly in excess of his jurisdiction, and known by the judge to be such - Johnson v MacCoy (CA9 Cal) 278 F2d

> "Second, **a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction**.[29] Mireles v. Waco, 502 US 9, 116 L Ed 2d 9, 14, 112 S Ct 286 (US 1991)

53. Mr. Ingold claims "Plaintiff has not alleged acts that deprive the Judges of judicial immunity." This is clearly false.

> "It is deeply distressing that the Department of Justice, whose mission is to protect the constitutional liberties of the people of the United States, should even appear to be seeking to subvert them by extreme and dubious legal argument." United States v. Chadwick, 433 U.S. I at 16 (1976)

54. The Plaintiff has claimed he was never served with Process to start the court case (was not provided a copy of the Bill Of Complaint and Subpoena In Chancery). Such an omission deprived the Circuit Court of subject matter jurisdiction. Plaintiff has also claimed Due Process violations which denied him his right to present evidence and witnesses, which would have deprived the court of jurisdiction. It is well settled that a judge acting without jurisdiction does not have judicial immunity.

> If the law at that time was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to "know" that the law forbade conduct not previously identified as unlawful. ... If the law was clearly established, **the immunity defense ordinarily should fail.**" Harlow et al v Fitzgerald, 457 U.S. 800, 818 (1981)
>
> State immunity defenses may not be asserted in response to federal civil rights claims. Wilson v Jackson (1986) 66 Md App 744, 505 A2d 913
>
> A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts. Davis v. Burris, 51 Ariz. 220, 75 P.2d 689 (1938)
>
> "Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction." iper v. Pearson, 2 Gray 120, cited in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872)
>
> The U.S. Supreme Court stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case **stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct**. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974)
>
> When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction requisites **he may be held civilly liable for abuse of process** even though his act involved a decision made in good faith, that he had jurisdiction. U.S. Fidelity & Guaranty Co. (State use of), 217 Miss. 576, 64 So. 2d 697
>
> When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost. Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326

55. The purpose of Judicial Immunity is to help the Judiciary fulfill its duty, it is not intended to help the judiciary violate the constitutional rights of the people and should not be applied in such cases. The goal of an independent judiciary has some merit but carried too far does more harm than good.

> "The constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please. It should be remembered, as an axiom of eternal truth in politics, that **whatever power in any government is independent, is absolute also; in theory only, at first, while the spirit of the people is up, but in practice, as fast as that relaxes. Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law**." - Thomas Jefferson, letter to Judge Spencer Roane, September 6, 1819.
>
> "**Power tends to corrupt, and absolute power corrupts absolutely**." - Lord Acton, in a letter to Bishop Mandell Creighton, 1887.

56. Historically Judges have not been immune from Civil Rights lawsuits. Making Judges immune perverts the Constitution, making it hard to tell the difference between Judiciary and Mafia. The irony is unmistakable: **those who are the guardians of the Constitution are themselves privileged to violate it with corrupt impunity**. The judiciary in effect is wielding a judge-made rule of law to limit a constitutional right, turning the idea of constitutional supremacy on its head.

> 'The doctrine of judicial immunity from federal civil rights suits dates only from the 1967 Supreme Court decision in Pierson v. Ray, 386 U.S. 547 (1967), which found a Mississippi justice of the peace immune from a civil rights suit when he tried to enforce illegal segregation laws. Until this time, several courts had concluded that Congress never intended to immunize state-court judges from federal civil rights suits. See, for example, McShane v. Moldovan, 172 F.2d 1016 (6th Cir. 1949). 2435 U.S. 349 (1978)
>
> I answer it is **better to invade the judicial power of the States than permit it to invade, strike down, and destroy the civil rights of citizens**, A judicial power perverted to such uses should be speedily invaded. ... And if an officer shall intentionally deprive a citizen of a right, knowing him to be entitled to it, then he is guilty of a willful wrong which deserves punishment." " Congressional Globe, 39th Cong., 1st sess. 1680 (1866) (presidential veto message to Congress). at 1837 (remarks of Rep. Lawrence).
>
> "Our own experience is fully consistent with the common law's rejection of a rule of judicial immunity. We never have had a rule of absolute judicial immunity. At least seven circuits have indicated affirmatively that there is no immunity... to prevent irreparable injury to a citizen's constitutional rights..."

"Subsequent interpretations of the Civil Rights Act by this Court acknowledge Congress' intent to reach unconstitutional actions by all state and federal actors, including judges... The Fourteenth Amendment prohibits a state [federal] from denying any person [citizen] within its jurisdiction the equal protection under the laws. Since a State [or federal] acts only by its legislative, executive or judicial authorities, the constitutional provisions must be addressed to those authorities, including state and federal judges..."

"We conclude that judicial immunity is not a bar to relief against a judicial officer acting in her [his] judicial capacity." Pulliam v. Allen, 466 U.S. 522 (1984); 104 S. Ct. 1781, 1980, 1981, and 1985

57. Clearly, Mr. Ingold's idea that judges may act with impunity is repugnant to the Constitution and needs refinement to bring it into conformance with the Constitution.

"The Supreme Court has made it clear that the doctrine of **immunity should not be applied broadly and indiscriminately, but should be invoked only to the extent necessary to effect its purpose.** Gregory v. Thompson, 500 F.2d 59, 63-64 (9th Cir. 1974) We also must look beyond the status of the party seeking immunity and consider the nature of the conduct for which immunity is sought." C.M. Clark Insurance Agency, Inc. v. Maxwell, 156 U.S.App.D.C. 240, 479 F.2d 1223, 1227 (1973); McCray v. Maryland, 456 F.2d 1, 3-4 (4th Cir. 1972); Carter v. Carlson, 144 U.S.App.D.C. 388, 447 F.2d 358, 362 (1971), 409 U.S. 418, 93 S.Ct. 602, 34 L.Ed.2d 613 (1973); Dodd v. Spokane County, 393 F.2d 330, 335 (9th Cir. 1968); Robichaud v. Ronan, 351 F.2d 533, 537 (9th Cir. 1965); Corsican Productions v. Pitchess, 338 F.2d 441, 444 (9th Cir. 1965); cf. Johnson v. Alldredge, 488 F.2d 820, 824 (3d Cir. 1973); Hampton v. City of Chicago, 484 F.2d 602, 608 (7th Cir. 1973), cert. denied, 415 U.S. 917, 94 S.Ct. 1413, 39 L.Ed.2d 471 (1974).

"...Once again, it was the nature of the function performed, not the identity of the actor who performed it, that informed our immunity analysis." Forrester v. White, 484 US 219, 98 L Ed 2d 555,566, 108 S Ct 538 (US 1988)

When courts have spoken of immunity for acts within the jurisdiction of a judge, they have declared that the doctrine insulates judges from civil liability 'for acts committed within their judicial jurisdiction,' or 'for acts within [their] judicial rule,' Pierson v. Ray 386 U.S. at 554, 87 S.Ct. at 1218 or for 'their judicial acts.' Bradley v. Fisher. 80 U.S. (13 Wall.) at 351 Thus **judicial immunity does not automatically attach to all categories of conduct in which a judge may properly engage, but only to those acts that are of a judicial nature.**

"What constitutes conduct falling within that range must, in large part, be determined by looking at the purpose underlying the doctrine of judicial immunity. **Official immunity, after all, 'is not a badge or emolument of exalted office, but an expression of a policy designed to aid in the effective functioning of government.'** Barr v. Matteo. 360 U.S. 564, 572-573, 79 S.Ct. 1335, 1340, 3 L.Ed.2d 1434 (1959) " Gregory v. Thompson, 500 F.2d 59, 61 (9th Cir. 1974)

58. The Supreme Court has indicated reluctance to broaden judicial immunity outside the narrow scope in which it applies.

> "Absolute immunity, however, is 'strong medicine, justified only when the danger of [officials' being] deflect[ed from the effective performance of their duties] is very great.'[40] (Posner, J., dissenting). 792 F2d, at 660

> "The Court of Appeals correctly recognized that the necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him." Stump v. Sparkman, 435 US 349, 55 L Ed 2d 331, 98 S Ct 1099, p.338-339 (1978)

> "**No man [or woman] in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity**. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it." Butz v. Economou, 98 S. Ct. 2894 (1978); United States v. Lee, 106 U.S. at 220, 1 S. Ct. at 261 (1882)

> In Ex parte Virginia, 100 U.S. 339, the Court held that a judge who excluded Negroes from juries could be held liable under the Act of March 1, 1875 (18 Stat. 335), one of the Civil Rights Acts. The Court assumed that the judge was merely performing a ministerial function. But it went on to state that the **judge would be liable under the statute even if his actions were judicial**. **It is one thing to say that the common-law doctrine of judicial immunity is a defense to a common-law cause of action. But it is quite another to say that the common-law immunity rule is a defense to liability which Congress has imposed upon "any officer or other person,"** as in Ex parte Virginia, or upon "every person" as in these cases. Justice Douglas, dissenting, Pierson v. Ray, 386 U.S. 547 (1967)

59. The effect of a too broadly applied Judicial Immunity is lawlessness and Anarchy - not exactly the goal envisioned in the creation of Judicial Immunity.

> "Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." Olmstad v. United States, (1928) 277 U.S. 438

> "The danger that high federal officials will disregard constitutional rights in their zeal to protect the national security is sufficiently real to counsel against affording such officials an absolute immunity." Mitchell v Forsyth, 472 U.S. 511(1985)

Conspiracy Claim

60. Mr. Ingold states that I haven't adequately alleged a conspiracy claim and insists I demonstrate overt acts. His claim is wrong on both points. I have adequately alleged a conspiracy and have stated

overt acts in spite of overt acts not being required. The statute allows for conspiracy for negligence when one is in a position to prevent/stop deprivation of rights. Certainly the defendant judges were in a position to stop the deprivations imposed by the others with just a stroke of their pen yet failed to do so. Such inaction is sufficient to hold them as a member of a conspiracy and liable for all damages.

> In order prove existence of civil conspiracy, plaintiff is **not required to provide direct evidence of agreement between conspirators**, and **circumstantial evidence may provide adequate proof of conspiracy;** plaintiff seeking redress under 42 USCS 1985 for civil conspiracy need not prove that each participant in conspiracy knew exact limits of illegal plan or identity of all participants therein, and express agreement among all conspirators in not necessary element of civil conspiracy. Hampton v Hanrahan (1979, CA7 Ill) 600 F2d 600
>
> Essential element of conspiracy claim is existence of agreement between 2 or more persons to commit illegal act; plaintiff **need not show that such agreement was express**, but conspiracy may be **implied from circumstances**; showing of conspiracy must often be met by circumstantial evidence inasmuch as **conspirators rarely formulate their plans in ways susceptible to be proved by direct evidence**; pleading requirements under 1985 required at least minimum factual support of existence of conspiracy. Hunt v Weatherbee (1986, DC Mass) 626 F Supp 1097
>
> Second most important element of cause of action under 42 USCS 1985(3), after intent, is proof of conspiracy; **if party has potential to stop illegal activity but fails to act to do so, then that party may be said to have impliedly conspired in such illegalities.** Dickerson v United States Steel Corp. (1977, ED Pa) 439 F Supp 55, 15 BNA FEP Cas 752 15 CCH EPD par 7823, 23 FR Serv 2d 1429
>
> ... proof of agreement itself, as distinct from comprehensible injury, can derive from evidence of act done by conspirators, whether or not act caused injury that would be actionable under $1985(3) Hobson v Wilson (182, DC Dis Col) 556 F Supp 1157
>
> 'The contention that a conspiracy existed which deprived the petitioner of rights guaranteed by federal law makes each member of the conspiracy potentially liable for the effects of that deprivation. **Liability arises from membership in the conspiracy and from traditional notions that a conspirator is vicariously liable for the acts of his co-conspirators.** Liability does not arise solely because of the individual's own conduct. Some personal conduct may serve as evidence of membership in the conspiracy, but the individual's actions do not always serve as the exclusive basis for liability. Slavin v. Curry, 574 F.2d 1256, 1263 (5th Cir.1978), **In stating that the county could be held liable not only for the sheriff's participation in the conspiracy, but could be held directly or vicariously liable as well for the actions of his alleged coconspirator,** we carefully distinguish this premise for vicarious liability from that prohibited by Monell, in which 'the sole nexus between the employer and the tort is the fact of the employer-employee relationship.' Monell, 436 U.S. at 693, 98 S.Ct. at 2037

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

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

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

> Specific intent need not be alleged in a suit under 42 USCS $1985 (3); facts pleaded must merely show an "invidiously discriminatory animus" behind the conspirators' action. Azar v Conley (1972, CA6 Ohio) 456 F2d 1382, 15 FR Srv 2d 1179
>
> Sex discrimination comes within scope of class-based animuses covered by $1985(3) Dudosh v Allentown (1985, ED Pa) 629 F Supp 849,
>
> In action under 42 USCS 1985, allegation that invidiously discriminatory animus was motivating force behind disparate life insurance policy terms offered to women was sufficient to survive motion to dismiss for failure to state claim. Life Ins. Co. v Reichardt (1979, CA9 Cal) 591 F2d 49

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

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

64. The Judges in this case had reached a prior agreement with Loretta Vardy & Cheri Smith to deprive the Plaintiff of Equal Protection of his constitutional rights.

65. Rather than just copy/paste the whole section, I'll incorporate by reference the CONSPIRACY - Requirements / Proof section starting on page 29 of #6 - REPLY TO ISSUES ADDRESSED AT

HEARING. **Note the section on the judges having a prior agreement as to the outcome of the case.**

66. Mr. Ingold argues against 'overt acts' however the Plaintiff has alleged the Judges denied him due process, prevented him from presenting evidence or witnesses, prevented him from attending hearings, issued orders in excess of their authority, even admitting an order was unconstitutional then threatening the Plaintiff with jail for not following it - its hard to imagine how more overt actions of the defendant's could be.

Due Process Claim

67. Mr. Ingold makes the absurd claim that I haven't alleged facts for a Due Process claim. Has he even bothered to read the documents I filed with the court? Its hard to imagine any attorney in good faith arguing that the following are not significant due process violations:

a. Proceeding without service of process

b. Holding an Ex Parte hearing

c. Threatening the Plaintiff with Jail for trying to prove the opposing party lied.

d. Preventing the Plaintiff from presenting evidence

e. Preventing the Plaintiff from confronting his accusers.

> Right to full and fair hearing granted by due process clause encompasses individual's right to be aware of and refute evidence against merits of his case; Re Application of Eisenberg (1981, CA5 Fla) 654 F2d 1107
>
> very notion of hearing, under due process clause of Fourteenth Amendment, however informal, connotes that decision maker will listen to arguments of both sides before basic decision on evidence and legal rules adduced at hearing. Billington v Underwood (1980, CA5 Ga) 613 F2d 91

68. I have even provided the dates on which such Due Process Violations occurred. If Mr. Ingold is disputing that they occurred that would have to wait until trial, at this point the court must assume my

facts are correct and that the judges did intentionally and repeatedly take actions to prevent me from presenting my case in court.

69. By the case Mr. Ingold cited his view seems to be that the only requirement is an "opportunity to be heard". That is just totally absurd. The Plaintiff has stated facts of being deprived an "opportunity to be heard" and certainly that is not the only requirement of Due Process. Being heard without some requirement that the judge actually consider the argument or be impartial turns the "opportunity to be heard" into nothing more than a sham. Indeed case rulings bear that out, there is expectation of an impartial judge and that the ruling will actually be based on the evidence not the bias of the judge. That is to say 'fairness' is a requirement. So I'll see his 1979 case and raise with 1980 case:

> The due process clause of the Fifth Amendment entitles a person to an **impartial and disinterested** tribunal in both civil and criminal cases, and such **requirement of neutrality** in adjudicative proceedings safeguards the two central concerns of procedural due process - **the prevention of unjustified or mistaken deprivations** and the promotion of participation and dialogue by affected individuals in the decision-making process; the neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law, while at the same time preserving **both the appearance and reality of fairness**, generating the feelings, that justice has been done, by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that t**he arbiter is not predisposed to find against him**. Marshall v Jerrico, Inc. (1980, US) 64 L Ed 182, 100 S Ct 1610
>
> Decisional precedents in defining the due process elements at which liberty is at stake, in civil as well as criminal, proceedings, have established that the **right of confrontation, the right of cross-examination** and the right to present a defense are fundamental to fair procedure and hence constitute due process. Re B. (1978) 94 Misc 2d 919, 405 NYS2d 977.
>
> In proceedings where a person's property or liberty interest is at stake due process entitles him to notice and an opportunity to be heard as a matter of right. The person whose interest is at stake must be fully apprised of the nature of the charges against him, the evidence to be considered and the witnesses against him who must testify under oath and be subject to cross-examination. He has a right to a hearing before an unprejudiced and impartial official and to findings supported by some competent evidence having probative value. Ronayne v Lombard (1977) 92 Misc 2d 538, 400 NYS2d 693

> Right to full and fair hearing granted by due process clause encompasses individual's right to be aware of and refute evidence against merits of his case; Re Application of Eisenberg (1981, CA5 Fla) 654 F2d 1107

70. Mr. Ingold is apparently stating that I had the opportunity to present a defense at the Jan 18th 2005 hearing with Judge Millette. That is completely false but even if we assume it to be true it still does not allow for dismissal of the Due Process claim against Judge Alston for the Jan 3rd 2005 Ex Parte hearing. Mr. Ingold has not made any claim that it was impractical or unduly burdensome for me to have been provided a chance to present my case PRIOR to visitation be suspended.

> In order to obtain dismissal of claim of intentional deprivation of property without due process on ground that post deprivation hearing provides all process that is due, burden is on defendant to establish that predeprivation hearing is impractical or unduly burdensome. Keniston v Roberts (1983, CA9 Cal) 717 F2d 1295)

71. Mr. Ingold fails to recognize that Due Process in some situations requires not an opportunity to be heard prior to state interference but rather that the state not interfere at all. Parental Rights for fit parents should be one of these rights protected from interference.

> Under the line of United States Supreme Court cases which has interpreted the guarantees of due process of law in the Federal Constitution's Fifth and Fourteenth Amendments to include a substantive component which **forbids the government to infringe certain "fundamental: liberty interests at all, no matter what process is provided**, unless the infringement is tailored to serve a compelling state interest-such substantive due process analysis must begin with a careful analysis of the asserted right, for the doctrine of judicial self-restraint requires the Supreme Court to exercise the utmost care whenever the court is asked to break new ground. Reno v Flores (1993, US) 123 L ed 2d 1, 113 S Ct 1439
>
> The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects a property interest only from deprivation by state action; private use of state-sanctioned private remedies or procedures does not rise to the level of state action, b**ut when private parties make use of state procedures with the overt, significant assistance of state officials, state action may be found.** Fulsa Professional Collection Services, Inc. v Pope (1988, US) 99 L Ed 2d 565, 108 S Ct 1340.

72. Mr. Ingold also denies my Right To a Jury Trial. The right to a jury trial in the U.S. Constitution should apply to the state via the 14th amendment, but additionally the Virginia

Constitution explicitly grants Plaintiff the right to a jury trial. The Virginia Constitution of 1971, ARTICLE I, Bill of Rights, Section 11 states:

> **Jury Trial in civil cases**
> That in controversies respecting property, and in suits between man and man, **trial by jury is preferable to any other, and ought to be held sacred**. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

73. As shown above the Virginia Constitution grants a right to a jury trial in a civil case. It makes no exception for cases that are cash cows for the Virginia Bar association. Mr. Ingold is correct that the Virginia Judiciary commonly ignores this Right but that does not mean the Plaintiff does not have the Right to a jury trial, but rather that Virginia Judges are failing their duty to hold trial by jury sacred as required by the Virginia Constitution.

74. It should also be noted that while jury trial for divorce/custody is not common in Virginia it is allowed on occasion and state laws § 8.01-336(E) and § 18.2-336(E) allow it.

Injunctive Or Declaratory Relief

75. Mr. Ingold argues against the Plaintiffs request for prospective Relief to keep the Defendants from taking actions to deprive him of his rights in the future. However he bases his argument only on 1983 and fails to mention the other statutes used in the complaint and it is well settled that this court may issue injunctions or declarations.

> In civil rights action under 42 USCS 1983, 28 USCS 2283 does not bar federal injunction against enforcement of state court judgment. Gresham Park Community Organization v Howell (1981, CA5 Ga) 652 F2d 1227
>
> Comity did not require federal District Court to abstain from entertaining action brought under 42 USCS 1983 by civil rights groups and others for purpose of enjoining enforcement of state court order enjoining boycott and awarding damages against civil rights groups. Henry v First Nat. Bank (1979, CA5 Miss) 595 F2d 291, 100 S Ct 1020

76. Mr. Ingold claims that Judge Farris' order of September 23, 2004 is not a gag order but rather "aimed at keeping plaintiff from defaming the opposing litigant". Its not clear why he makes this

argument as it doesn't matter what the intention of Judge Farris was he simply did not have the authority to restrict the Plaintiff's First Amendment Right to free speech. Courts have consistently ruled that in an equity case Judges do not have any authority to restrict free speech.

77. Mr. Ingold's analysis is faulty in that the Order prohibits the Plaintiff from making certain statements about his wife; the order makes no distinction between true statements or false statements. **True statements that reflected negatively on his wife were prohibited even though they were not defamatory**. Indeed the main topic Judge Farris attempted to prevent the Plaintiff from discussing was adultery by his wife, which she later admitted to under oath. Thus making it clear that Judge Farris' order prohibited the Plaintiff from engaging in protected free speech.

78. The order may not have specifically prohibited the Plaintiff from talking about the judges but the actions of the judges were *inextricably inter-twined* with the negative conduct of the mother, making it virtually impossible to talk about the misconduct of the judges without mentioning the mother in a manner that could be ruled in violation of the order. It should also be noted that another father has had court orders entered that specifically mentioned my discussing judges on my website and ordering the father to have the comments removed from my website. Indeed the father was kept in jail until he disavowed posting the info on my website and agreed to request I remove the information about Judge Ney. While Judge Farris may have been more subtle than Judge Ney, the Judges Of Virginia certainly do issue orders with the intent to prohibit public discussion of their actions.

79. If my wife felt my statements were false she had a proper legal recourse of a lawsuit for slander/defamation. Prior Restraints on Free Speech are deemed unconstitutional without exceptional circumstances. Judge Farris should have known this, as well as the other judges who refused to vacate the order. If they were too incompetent to know that, the Plaintiff was kind enough to spell it out in simple English and even provide multiple case citations.

80. As much as Mr. Ingold tries to cover up for Judge Farris' illegal order, Judge Farris himself described it as 'unconstitutional' and yet said he would put the Plaintiff in jail if he didn't follow it.

81. The Plaintiff has a cause of action even if the illegal order was not completely effective in stopping him from exercising his first amendment rights.

> Threat by public official to citizen to withhold monies due and owing should legal proceeding on independent matter be instituted by citizen burdened or chilled constitutional right of access to courts and **constituted cause of action under 42 USCS 1983 notwithstanding fact threat was not actually effective**. Silver v Cormier (1976, CA10 Colo) 529 F2d 161
>
> District Courts have subject matter jurisdiction over suits brought under 42 USCS 1983 even when state action allegedly violating plaintiff's federally protected rights takes form of state court proceedings. Miofsky v Superior Court of California (1983, CA9 Cal) 703 F2d 332

82. Mr. Ingold denies that there is any 'actual controversy' to justify declaratory relief. Again Mr. Ingold is attempting to deceive. The state courts will continue to issue various orders changing terms of custody/visitation for at least the next decade and barring injunctive or declaratory relief these orders will also contain unconstitutional prior restraints on free speech, as that is standard practice in Virginia. Different from the order by Judge Farris, its standard practice for custody orders to prohibit fathers from making certain statements to their children. While Judge Farris' order may no longer be in effect the Final Divorce Decree still limits the Free Speech of the Plaintiff (although to a smaller extent).

83. So contrary to what Mr. Ingold states, the issues of violation of free speech and parental rights will be an issue of actual controversy for at least another decade. It is not unreasonable for the Plaintiff to ask or for this court to order, that the state judges follow the constitution when they address these issues in the future.

84. Loss Of First Amendment Rights constitutes irreparable injuries. This court should take steps to prevent the state courts from causing more injury in the future. At trial the Plaintiff will demonstrate that it is common practice in Virginia Courts to deny father's Right To Free Speech and without this court taking action further illegal prior restraint of of the Plaintiff's free speech is expected.

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

85. Parental Rights are at least equal to if not more important than First Amendment Rights.

> **The rights of parents to the care, custody and nurture of their children is of such character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and such right is a fundamental right protected by this amendment (First) and Amendments 5, 9, and 14**. Doe v. Irwin, 441 F Supp 1247; U.S. D.C. of Michigan, (1985).
>
> A parent's right to the companionship, care, custody and management of his or her children is an interest "far more precious" than any property right. May v. Anderson, 345 US 528, 533; 73 S Ct 840, 843, (1952).
>
> The "liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps **the oldest of the fundamental liberty interests recognized by this Court**." Troxel v. Granville, 530 U.S. 57, 65 (2000)

86. Again Mr. Ingold argues that the judges were performing judicial acts, but that is once again the basis of the case is that the Judges were not engaged in judicial acts within their jurisdiction but rather engaged personal actions done without jurisdiction.

Conclusion

WHEREFORE as the Plaintiff has shown that reasons for dismissal are not valid, that the judges were not acting within their jurisdiction, that extending judicial immunity to cover their actions harms administration of justice and destroys the constitution as the supreme law of the land, the Plaintiff requests that the court deny the motion to dismiss.

Respectfully Submitted,

Wesley C. Smith

June 11th, 2007

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