Clerk Chancery 53360

Please file this evidence that Judge Potter Refused to accept when proffered. Just as he has refused to let me make Proffers at the final divorce trial.

Wesley Smith

Wesley C. Smith
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

WESLEY C. SMITH Plaintiff	)	
v.	)	CASE NO: _____
CHERI SMITH; IGOR BAKHIR; LORETTA VARDY, and RONALD FAHY, Individually and as attorneys at law acting under the color of the law of the State of Virginia; LON FARRIS, LEROY MILLETTE JR., ROSSIE ALSTON JR., WILLIAM HAMBLEN, and RICHARD POTTER, Individually and in their official capacity as Prince William Circuit Court Judges; PRINCE WILLIAM CIRCUIT COURT; H. LEE CHITWOOD Individually and in his official capacity as Pulaski JD&R Court Judge;	)	
Jointly and Severally Defendants	)	

#1 - VERIFIED COMPLAINT

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

INTRODUCTION

1. This is a civil rights action, seeking equitable relief, declaratory relief, nominal damages and other relief to prevent and/or redress the deprivation under color of Virginia law of Plaintiff's rights, privileges and immunities under the United States and Virginia Constitutions. Defendants have actually deprived and are continuing to deprive the Plaintiff of his constitutional rights.

2. Plaintiff seeks a declaration that Defendants deprived him of his clearly established constitutional rights guaranteed by the First, Seventh, Eighth, Ninth, Thirteenth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, a permanent injunction

enjoining Defendants from preventing Plaintiff from exercising his lawful and constitutional rights, and a judgment awarding nominal, compensatory, and punitive damages for the harm caused by Defendants and for Defendants' reckless, wanton, intentional, and outrageous conduct.

3. This civil rights action challenges the constitutionality of the Commonwealth of Virginia's statutory scheme for allocation of parental responsibilities, rights, obligations, and parenting time, however the most serious harm in this case was cased by the Defendants intentionally failing to follow even the flawed Virginia statutory scheme.

4. This action is brought to obtain a declaratory judgment that the challenged statutes, both facially and in especially in their gender biased application, violate well-recognized rights, including the right to Equal Protection, the right to Due Process of law, and the Right to the care, custody, control, companionship of one's offspring embodied in the fundamental liberty interest in family, which rights are found in and secured by the Fourteenth Amendment of the United States Constitution and by Art. I, Sections. 1, 9, 11, 15 and 17 of the Virginia Constitution.

5. Plaintiff also seeks preliminary and permanent injunctive relief to prevent the Defendants, and persons acting in concert with them, from enforcing the challenged statutes in a manner inconsistent with the constitutional rights of the Plaintiff.

6. Plaintiff further seeks preliminary and permanent injunctive relief in declaring the "court orders" of the Defendants null and void due to lack of jurisdiction and/or vacate said "orders" due to lack of Due Process.

7. The Plaintiff is not asking the federal court to rule on the merits of the underlying divorce and custody case but rather asking the court to vacate the state court ruling due to lack of jurisdiction, and lack of due process, and violations of the U.S. Constitution.

JURISDICTION AND VENUE

8. This action arises under the Constitution and laws of the United States, particularly the First, Seventh, Eighth, Ninth, Thirteenth, and Fourteenth Amendments to the United States Constitution. The jurisdiction of this Court, therefore, is invoked under 28 U.S.C. § 1331.

9. This is also an action under the Federal Civil Rights Act of 1871, Title 42 U.S. Code § 1983, § 1985, and § 1986, to redress the actual and threatened deprivation, under color of state law, of rights, privileges and immunities secured to Plaintiff by the Constitution of the United States, and redressable pursuant to Bivens v. Six Unknown Narcotics Agents 403 U.S. 388 (1971).

10. The jurisdiction of this Court, therefore, is invoked under 28 U.S.C. § 1343, pursuant to which this Court may grant: a) damages for the violation of Plaintiff's the First, Seventh, Eighth, Ninth, Thirteenth, and Fourteenth Amendment rights; b) equitable relief; c) permanent injunctive relief against any unlawful interference in parental rights; and d) reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988, and 28 U.S.C. § 2412.

11. This is also a case of actual controversy where Plaintiff seeks a declaration of his rights under the Constitution of the United States. Under 28 U.S.C. § 2201 and § 2202, this Court may declare the rights of the Plaintiff and grant further necessary and proper relief based thereon, including preliminary and permanent injunctive relief, pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

12. This Court has jurisdiction to hear and grant Plaintiff's prayer for expedited consideration of the claims herein under 28 U.S.C. §1657.

13. Venue is proper in the Western District of Virginia pursuant to 28 U.S.C. 1391(b), because the Plaintiff's rights were violated in this district and at least one defendant resides in this district.

PARTIES

14. The Plaintiff, Wesley C. Smith, is a natural person currently residing in Pulaski County, Virginia and did during the relevant period also reside in Midland County, Michigan and Prince William County, Virginia.

15. Cheri Smith and Igor Bakhir are natural persons believed to reside in McLean VA.

16. Loretta Vardy and Ronald Fahy are attorneys practicing in Prince William County Virginia.

17. Defendant H. Lee Chitwood is a Judge in the Pulaski JD&R Court, 45 Third Street, N.W. Suite 103, Pulaski, VA 24301

18. Defendants Lon Farris, Leroy Millette Jr., Rossie Alston Jr., William Hamblen, and Richard Potter are Judges of the Prince William County Circuit Court, 9311 Lee Avenue, Manassas, VA 20110.

19. The above Judges have taken an oath to "…support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia…". These Defendants in their official capacity are responsible for enforcing the laws of the Commonwealth of Virginia. Per state laws and judicial canons, each Defendant is required to not only refrain from depriving citizens of constitutionally protected civil rights but to report and refer for discipline any judge or attorney who violates civil rights, laws, or judicial canons. The home addresses of these Defendants are not known.

20. Defendant Prince William County Circuit Court is an municipal; entity organized and existing under the laws of the Commonwealth of Virginia, to enforce the laws and protect the constitutional rights of the citizens of Virginia, and employed several of the above-mentioned Defendants and should be responsible for the training, discipline, and supervision of said Defendants. It is located at 9311 Lee Avenue, Manassas, VA 20110.

CIVIL RIGHTS LAWS

21. 42 U.S.C. § 1983 states, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . .

22. 42 U.S.C. § 1985, Conspiracy to interfere with civil rights, states, in pertinent part:

> If two or more persons in any State or Territory conspire … for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; … in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators

23. These Civil Rights laws were passed to combat the problem of the KKK preventing African Americans from exercising their civil rights. Sadly Virginia instead of stamping out judicial corruption and discrimination has instead simply switched from judicially abusing African Americans to abusing divorced fathers as a class, respecting their Civil Rights no more than a KKK judge respected the rights of African Americans.

24. In practice, fathers in Virginia are stripped off all their rights afforded by both the U.S. and Virginia Constitutions as soon as their wife decides to initiate legal action against them. The gender biased is so entrenched that attorneys consulted advise fathers that they can't win sole custody or equal custody no matter what the facts of the case are.

Count 1
Violation Of Plaintiff's Right To Free Speech

25. The Defendants conspired to deprive the Plaintiff of his Right to Free Speech as guaranteed by the First Amendment to the U.S. Constitution and by Article I, Section 12 of the Constitution of Virginia.

26. The Defendants caused court orders issued prohibiting the Plaintiff from exercising his Right to Free Speech and refused to vacate the orders in spite of the Plaintiff filing multiple motions asking to have the orders reversed/vacated. The Plaintiff provided cited not only the Constitutions but also case rulings indicating that no court could issue a prior restraint on free speech in an equity case.

27. The attitude of the Judges and other Defendants is indicated by the statement of one judge that "yes the order is unconstitutional but I'll still put you in jail if you don't follow it".

28. It is believed that part of the motivation by the Defendants to attempt to prevent the Plaintiff from exercising his free speech is that the Plaintiff was posting information to his website exposing the illegal misconduct of the judges and attorneys. That is they wished to violate his Civil Rights and didn't want him telling anyone about it.

Count 2
Violation Of Plaintiff's Right To A Jury Trial

29. The Plaintiff has a Right to a Jury Trial as guaranteed by both the Seventh Amendment of the U.S. Constitution and Article I Section 11 of the Virginia Constitution. The amount in controversy was well over the $20 U.S. Constitution limit and 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.

30. The Plaintiff filed multiple motions demanding a Jury Trial citing both constitutions and yet was denied a jury trial.

Count 3
Infliction Of Cruel & Unusual Punishment

31. The Eighth Amendment to the U.S. Constitution and the Article I Section 9 of the Virginia Constitution both prohibit Cruel and Unusual Punishment.

32. Short of the Death Penalty or physical torture it's hard to imagine any punishment more cruel than depriving a loving parent of contact with their young children.

33. The Defendants conspired to and did prevent the Defendant from seeing his son for 18 months as a punishment for the Plaintiff exercising his Free Speech Rights and his pursing his wife's adultery as a ground for divorce - clearly a grossly cruel punishment for the Plaintiff's legal acts.

34. It should also be noted that the punishment also violates the Equal Protection Clauses as mothers can commit felonies be in prison and the state still allows them contact with their children.

Count 4
Violation of Protected Common Law Rights

35. The Ninth Amendment to the U.S. Constitution and Article I Section 17 of the Virginia Constitution protect the Common Law Rights of the people.

36. At the time the Constitutions were written Fathers were recognized as having a Common Law Right to the custody, care, control, and companionship of his children. Thus no state or federal law can legally deprive a Father of his Common Law Right the custody, care, control, and companionship of his children.

37. The government of the United States has declared, through its instrumentality the Supreme Court, that a parent's right to the custody, care, control, companionship and nurture of his or her child is a fundamental right, recognized by that Court as an element of the liberty interest in

family. Protection of such liberty interest inures to parents who are citizens of the United States and of the State wherein they reside. The right to bear and raise one's own children without government interference is, indeed, one of the most fundamental of all individual rights and at least for fathers is a Common Law Right protected by the Ninth Amendment.

38. The right to raise one's own children is at least as fundamental as the right to life itself or any other liberty interest, and is entitled to at least as great a level of protection from governmental interference. The Supreme Court has ruled that a state must have a compelling interest in order to interfere with protected rights and then must do so to the minimum extent necessary.

39. The Defendants have conspired and have deprived the Plaintiff of his right to the custody, care, control, and companionship of his son.

40. After over one year of illegally and unconstitutionally restricting the Plaintiff in his constitutionally protected rights as a parent, the conspirators engaged in even a more blatant and harmful act depriving the Plaintiff of any visitation with his son for 18 moths. This despite the fact that all parties agreed the Plaintiff was not a threat to his son, could properly care for his son, and that his son desired to spend time with him, and that in such a situation both the policy, statutes, and case law of Virginia require the Court to provide frequent visitation as deemed in the bests interests of the child.

Except under unusual circumstances, a child's best interests are served by maintaining close ties between him and his non-custodial parent. Eichelberger v. Eichelberger, 2 Va. App. 409, 412, 345 S.E.2d 10, 12 (1986)." Id. at 596-97, 405 S.E.2d at 442.

Count 5
Violation of Thirteenth Amendment

41. The Thirteenth Amendment to the U.S. Constitution prohibits slavery and involuntary servitude, except as a punishment for crime.

42. The Plaintiff has been sentenced to involuntary servitude to Defendant Cheri Smith without being convicted of a crime. The Plaintiff has been sentenced to indefinitely make monthly payments to Cheri Smith as part of Federal and State Welfare programs and is subject to jail, seizure of assets, loss of drivers license, and other coercive actions, most of which without any court hearing first - that is a presumption of guilty.

Count 6
Violation of Equal Protection and Due Process

43. The Fourteenth Amendment to the U.S. Constitution and Article I Section 1 and Section 11 of the Virginia Constitution guarantee Equal Protection and Due Process.

44. The Defendants conspired and did deprive the Plaintiff of Due Process and Equal Protection.

45. In Virginia, according the state itself, custody is awarded to women 96% of the time indicating a clear bias towards women and thus a gross violation of Equal Protection. It is also a violation of state law § 20-124.2 witch states in awarding custody cases "As between the parents, there shall be no presumption or inference of law in favor of either."

46. In this environment where women are awarded custody 96% of the time, Judge Potter is recognized by attorneys as being especially anti-father. He and the other Defendant judges have actively engaged in denying the Plaintiff Due Process by:

a. Proceeding with the case in spite of lack of service of process on the Plaintiff
b. Issuing orders without subject matter or personal jurisdiction
c. Issuing orders contrary to Constitution and VA laws.
d. Depriving the Plaintiff of visitation with no claim or finding of harm to the child.
e. Illegally quashing subpoenas in order to hide adultery by Cheri Smith.
f. Refusing to compel discovery, refusing to impose sanctions for refusal to comply.

g. Allowing Cheri Smith to plead the 5th when unwarranted (no realistic possibility of prosecution).

h. Repeatedly ruling in favor of the mother in spite of statue and case law that indicate the ruling should favor the father.

i. Enforcing Court rules against the pro se father and refusing to enforce the same rules against the mother who has an attorney.

j. Holding hearings without adequate notice to the Plaintiff.

k. Granting a Divorce on grounds contrary to accepted case precedence in VA.

l. Refusing to grant a divorce on grounds of adultery by Cheri Smith in spite of photos and other evidence to support it and Cheri Smith admitting to committing adultery under oath.

m. Holding Ex Parte Hearings

n. Refusing to state any compelling state interest to justify in interfering with the Plaintiff's Constitutionally protected rights.

o. Refusing to limit interference in Plaintiff's Constitutionally protected rights to the minimum necessary to meet a compelling state interest.

p. Allowing hearsay testimony.

q. Refusing to allow the Plaintiff to make Proffers for appeal.

r. Refusing to allow the Plaintiff to record hearings.

Count 7
Perjury And Obstruction Of Justice

47. Igor Bakhir has committed perjury in his deposition.

48. Igor Bakhir, Ronald Fahy and Loretta Vardy have refused to comply with subpoenas for documents, refused to comply with witness subpoenas.

49. All the Defendants worked together to obstruct justice in this case by various means.

Count 8
Virginia's Statues About Custody Are Unconstitutional Facially And As Applied

50. Virginia has various state laws regarding custody and visitation of a child, all relying on the "best interests of the child" standard (see VA § 20-124.2). VA§ 20-124.3 lists 10 vague and very subjective factors to determine "the best interests of the child". While in theory the laws may sound reasonable, but since the laws replace the constitutionally protected rights of the parents with the non-constitutional "best interests of the child", the laws are facially unconstitutional and violate the 14th amendment as the laws encourage one parent or the other be denied equal protection and violate the 9th amendment which protects the Common Law rights of fathers. Combined with the so called "child support" Title 42 Subchapter IV-D laws these have the effect of reducing one parent to the status of indentured servant in violation of the 13th amendment.

51. The state laws are unconstitutionally overbroad on their face, and overbroad and discriminatory as construed and applied.

52. According to a study conducted by the Joint Legislative Audit And Review Commission Of The Virginia General Assembly Interim Report: Child Support Enforcement (http://jlarc.state.va.us/Reports/Rpt248.pdf) 96% of custodial parents in Virginia are female vs. 4% for male, indicating severe gender bias and unequal protection in the state courts. This documents a custom of Virginia courts to violate the 14th amendment requirement of equal protection, and a direct violation of Virginia law § 20-124.2 that states, "As between the parents, there shall be no presumption or inference of law in favor of either."

53. As shown above with females having custody 96% of the time its clear the above laws in practice are not just unconstitutional but totally ignored by the judiciary as even the flawed state the laws do not support such an unequal outcome. The judges in Virginia have replaced the

unconstitutionally vague and subjective factors in § 20-124.3 with a single factor - that of gender while completely ignoring the requirement in VA § 20-124.2 of "As between the parents, there shall be no presumption or inference of law in favor of either."

54. The common practice is to apply the laws with little to no consideration of the actual bests interests of the child but instead the Virginia courts typically use the "best interests of the mother" standard, depriving fathers of their constitutional rights as parents and depriving children of a close relationship to both parents.

PRAYER FOR RELIEF

WHEREFORE, for all of the reasons set forth above, the Plaintiff demands:

1. Enter a judgment and decree declaring that the Defendants' actions were unconstitutional and illegal;
2. A preliminary and permanent injunction requiring that the Defendants grant to Plaintiff additional parenting time to compensate him for time denied him illegally;
3. A preliminary and permanent injunction enjoining Defendants, their successors in office, their agents, employees and all persons in active concert or participation with them, or any of them, from applying or enforcing or attempting to apply any ordinance, law or policy prohibiting Plaintiff from exercising his protected rights to Free Speech, Due Process, Equal Protection, Jury Trials, custody and care of his son, and the right to be free from involuntary servitude;
4. A preliminary and permanent injunction enjoining Defendants, and persons acting in concert with them, from enforcing the challenged statutes in a manner inconsistent with the constitutional rights of the Plaintiff.
5. Award Plaintiff compensatory damages in an amount to be determined at trial;

6. Declare that all orders in case Chancery 53360 are null and void for lack of jurisdiction;
7. Declare Virginia's statutory scheme for allocation of parental responsibilities and rights and parenting time as unconstitutional both as written and as applied;
8. Issue declaratory relief as this Court deems appropriate just;
9. Expedited consideration of the claims herein under 28 U.S.C. §1657;
10. That this action be tried by jury;
11. The cost of this action, including all out of pocket expenses and reasonable attorney fees;
12. Such other and further relief as may be just and equitable.

Respectfully Submitted,
Wesley C. Smith

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VERIFICATION OF COMPLAINT

I, Wesley C. Smith, a citizen of the United States, and a resident of Pulaski County Virginia, hereby declare under penalty of perjury pursuant to 28 U.S.C 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 12th day of March, 2007

_____
Wesley C. Smith