

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

DEANDRE ARNOLD, TRACI)	
HALE JR,)	
)	
Plaintiffs,)	CIVIL ACTION NO.
)	
v.)	2023CV385289
)	
)	
STATE OF GEORGIA,)	
)	
Defendant.)	

PRELIMINARY STATEMENT

1. This is a constitutional challenge to Georgia’s presumptive and best interest of the child statutes (“Georgia’s statutory scheme”). Georgia has abandoned a practice that long protected the right to the services and custody of child(ren) in custody disputes between two parents by clear and convincing evidence.¹ The current law and the application of Georgia’s statutory scheme do not constitutionally protect the fundamental custodial rights nor property rights of parents in their child(ren) which has been the resultant of continued and ongoing court ordered subordination and the arbitrary infringement of rights by the states unnecessary exercise of *parens patriae* against the child’s best interest. Plaintiffs bring this action invoking Georgia’s constitutional protections to their interests and their rights to property, privacy, custody, and to direct the religious upbringing of their children including the same under the U.S. Constitution and substantial due process. Plaintiffs seek declaratory injunctive relief, O.C.G.A. § 9-4-1, *et seq.*, as well as a permanent injunction O.C.G.A. § 9-5-1, *et seq.*

¹ “But if through misconduct or other circumstances it appears that the case is *exceptional*, [only then] *parens patriae* must protect the helpless... This was said in a case involving a controversy over the custody of a child between its parents.” *Chapin v Cummings*, 191 Ga. 408 (Ga. 1940)

2. The Georgia legislature enacted Georgia House Bill 369 Amending Section 3 of Chapter 9 of Title 19 of the Official Code of Georgia attached hereto as Ex. A. (“Statutory best interest standard”). Section 3 provides, “there shall be **no presumption** in favor of any particular form of custody, nor in favor of either parent.” O.C.G.A. § 19-9-3(a)(1). It further provides that, “The judge hearing the issue of custody shall make a determination of custody of a child and such matter shall not be decided by a jury... The duty of the judge in all such cases shall be to exercise its discretion to look to and determine solely **what is for the best interest of the child.**” O.C.G.A. § 19-9-3(a)(2).” (Georgia House Bill 369)² O.C.G.A. § 19-7-22(d)(1) also provides the best interest of the child shall apply in legitimation disputes.
3. Plaintiff’s challenge Georgia House Bill 369 Amending Section 3 of Chapter 9 of Title 19 of the Official Code of Georgia O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2) (“Georgia’s statutory scheme”) and O.C.G.A. § 19-7-22(d)(1), facially and as applied contending the current law violates the substantial due process rights of parents by lacking of a favorable presumption and the appropriate burden of proof – clear and convincing evidence – which results in an unnecessary and arbitrary exercise of *parens patriae* in custody disputes between parents, infringing on the rights and interests of Georgian’s absent the least restrictive means.
4. Georgia’s parents, fathers and mothers alike have all been affected by the current usage of Georgia’s statutory scheme by its current and continuing application of such a scheme applied solely in contested child *custody* disputes between two parents.
5. With respect to Fathers however, a recent study done by Custody X Change, a parenting plan software for separated parents, found that Georgia father’s get less than 24% of parenting time with their child. Georgia shockingly ranked no 46 out of 50 states. *Id.*³

² Georgia House Bill 369 follows the statutory annotated code of 1933 (74-107).

³ <https://www.custodyxchange.com/topics/research/dads-custody-time-2018.php>.

6. In any event, any parent with less parenting time with his child is substantially more times than as minimally often the *non*-custodial parent – the parent who has lost their rights to *physical* custody including have had their right to the services of their children removed.
7. A substantial body of empirical research examined the implications of a father’s absence on a child’s well-being. Georgia psychologists have found that young boys who are deprived of their fathers often turn to other juveniles with comparable developments and engage in villainous dissent to a civilized society in a subconscious cry for help and most often turn to street gangs.⁴ Additional studies have shown that greater exposure to father absence was strongly associated with an elevated risk for early sexual activity and adolescent pregnancy.⁵
8. With respect to both parents, mental health professions has stated that Georgia’s statutory scheme as it stands, pits both mothers and fathers against eachother which results in an immeasurable amount of harm done to the family unit and that, “*Non*custodial parents and children are forced to disconnect with one another for their own *emotional* well-being.”⁶
9. The current application of Georgia’s statutory scheme results in two occurrences that by operation enhances these harms, (1) it does not protect the parent’s fundamental liberties and interests deriving from the law of nature in their right to the custody and services of their child(ren) at the outset and (2) removes parents’ *physical* custody acting under *parens patriae* on the one hand – in the interest of protecting a child from *harm* – while taking away a

⁴ “The absence of a father in a child’s life may also increase the odds of his or her associating with delinquent peers.” Laurence Steinberg, FALL 1987: *Familial Factors in Delinquency: A Developmental Perspective.*; “A high percentage of gang members come from Father-absent homes” (Davidson, 1990)

⁵ “Daughters are less likely to engage in risky sexual behavior when they have consistent contact, and a sense of closeness, with their dads.” Green, B., Davis, C., Clark., T., Quinn, C., & Cryer-Coupet, Q. (2014), *Father Involvement, dating violence, and sexual risk behaviors among a national sample of adolescent females.* <http://jiv.sagepub.com/>

⁶ Dr. Spirit Clanton testifying 12/16/2020. https://youtu.be/PPkGBpWNFRo?si=sGaxu8jW4g_RH3VR

favorable presumption in parents and the need to show by clear and convincing evidence that harm was present before *parens patriae* removes that parents *physical* custody in the other.

10. The stripping of parents *physical* custody under Georgia's statutory scheme in this manner results in the bulk of these parents parenting schedules being less than 96 hours a month or every other weekend *visitation* with their child(ren) – simply by operation of the current laws that offers no substantial due process protections to their Parental Power.
11. Georgia's current statutory scheme as it stands is simply a blank page offering no protection in custody disputes *between* two contesting parents with the best interest of the child merely scribbled thereon by the children suffering from this scheme in silence.
12. Thus, House Bill 369 infringes upon Georgians' fundamental interests and liberty in their right to (a) liberty, property, privacy, familial and associational rights, and the right to direct the religious upbringing of their children guaranteed by the Georgia Constitution and XXIX (inherit rights); and their First, Ninth and Fourteenth Amendment rights to the same and in violation of substantial due process and Plaintiff's bring their challenges for those purposes.

JURISDICTION AND VENUE

13. This action arises under the authority vested in this Court by virtue of O.C.G.A. §§ 9-4-2, 9-4-3, 9-5-1, and the Georgia Constitution. Venue is proper in this Court under O.C.G.A. § 9-10-30.
14. As to Plaintiffs' claim for declaratory and injunctive relief under the Declaratory Judgments Act, Georgia's sovereign immunity has been waived under Article I Section II Paragraph V of the Georgia Constitution. That provision waives sovereign immunity "for actions in the superior court seeking declaratory relief from acts of the state... in violation of the laws of the Constitution of this state or the Constitution of the United States."

15. Article I, Section II, Paragraph V of the Georgia Constitution likewise waives sovereign immunity with respect to Plaintiffs' claim for permanent injunctive relief under O.C.G.A. § 9-5-1 et seq. That provision waives sovereign immunity for claims for permanent injunctions "after awarding declaratory relief." Article I, Section II, Paragraph V.

PLAINTIFFS

16. Plaintiff, Deandre Arnold, ("Arnold") is a Georgia state citizen and the Father of a young child T.A. Arnold filed for legitimation and *custody* of his child in the Sixth District Judicial Circuit in Pinellas County State of Florida. Plaintiff Arnold and his child's mother came to an agreement in mediation which resulted in a joint *physical* custodial arrangement. That mediated agreement was ratified and ordered in the Sixth Judicial Circuit in and for Pinellas County Florida and was later domesticated in the Gwinnett County Superior court in the State of Georgia. On October 7th, 2021, a final order was entered modifying that custody agreement. The modified final order now entitles Arnold solely to visitation *privileges* and has thus, stripped Arnold of all of his Parental Power. Plaintiff Arnold has thus been impacted by the current law and the application of Georgia's statutory scheme in a custody action which modified his custodial *agreement* in violation of his fundamental liberties and natural rights as a Father. Arnold now seeks to determine his future rights, statuses and legal relations based on risks of taking future undirected action incident to his Fundamental and natural rights by declaration and a permanent injunction.
17. Traci Hale Jr., ("Hale Jr.") is a state citizen of Georgia and the Father of a young child I.H. Plaintiff Hale Jr. has neither legitimated his child nor filed an action seeking court ordered *physical* primary or joint *physical* custody of I.H.. However, he has established a relationship with his child, held himself out to be the father, singed his child's birth

certificate and has developed a significant bond and contributed to the maintenance and necessities of his child while in his custody. Plaintiff Hale Jr., bring this action on behalf of himself and all others similarly situated to him and seeks a declaration based on a future risk of taking future undirected action incident to his Parental Power – the right to the custody and services of his child.

DEFENDANTS

18. Defendant Brian Kemp is the Governor of the State of Georgia. He is in charge and control of the executive branch of the State of Georgia and acts as its Governor *officially*. Defendant Kemp is sued in his official capacity as Governor of the State of Georgia.

THE GEORGIA AND UNITED STATES CONSTITUTION

A. The Georgia Constitution

19. The Georgia Constitution provides that “the paramount of duty of government is the protection of person and property.” GA Const. Art. I Sec. I Par. II.
20. The Georgia Constitution also provides for inherit rights, “The enumeration of rights herein contained as a part of this Constitution shall not be construed to deny to the people any inherent rights which they may have hitherto enjoyed.” GA Const. Art I Sec. I Par. XXIX.
21. Georgia’s sovereign immunity has been waived under Article I Section II Paragraph V of the Georgia Constitution for the purposes of this declaration and for permanent injunctive relief under O.C.G.A. § 9-4-1 et seq and O.C.G.A. § 9-5-1 et seq.

B. The United States Constitution

22. The United States Constitution offers protection to Plaintiffs’ First, Ninth, and Fourteenth Amendment rights and Substantial due process protections.

PARENTS NATURAL RIGHTS TO THEIR CHILDREN

A. Parents Right to the Custody & services of their minor children (“Parental Power”)

23. It is necessary to “[L]ook to the history of the times... the state of things existing when the constitution was framed and adopted in order to ascertain the prior law, the mischief, and the remedy.” *Kolker v. State*, 391 SE 2d 391 – Ga: Supreme Court (1990)
24. Many years ago, “[A]t common law, a father had the **absolute** proprietary right to the custody of his legitimate minor children.” *Albright v. Albright*, 437 So.2d 1003 (Miss. 1983)
25. The right to the custody of his child included the right to the services and proceeds of his child’s labor, also known as **Parental Power**. *Thompson v. Georgia Railway & Power Co.*, 163 Ga. 598 (1927)
26. The right to the services of his children were known as the labor of his child(ren) for his own use and also his child(ren)’s wages if they worked for another.⁷
27. A child’s labor today could be construed to be chores around the household, accounting for the family or assistance around the farm – far from what legal historians have concluded as to regard children *as* property, to be treated as chattel.⁸
28. A Father’s right to the services and labor of his child was and remains a property right and has resulted in damages being sued upon in prior Georgia cases.⁹
29. These rights (Parental Power) arise from the laws of Nature inherited in all men and given to him by the author of his being – a natural right deriving from the laws and rights of nature that preexisted any government erected for the protection of those rights.¹⁰

⁷ <https://www.law.berkeley.edu/our-faculty/faculty-sites/mary-ann-mason/books/from-fathers-property-to-childrens-rights-a-history-of-child-custody-preview/>

⁸ *Id.*

⁹ Damaged sustained by Father for loss of services of minor child is damage to a property right.” *Brainbridge Power Co. v. Ivey*, 33 Ga. App. 586, 144 D.E. 825 (1928)

¹⁰ See *Chapin v Cummings*, 191 Ga. 408 (Ga. 1940) (“The *rights of nature* are not to be lightly overridden on the one hand nor is the welfare of the child to be disregarded on the other.”)

30. However, after many years and following the application of the Tender years doctrine in multiple jurisdictions respecting the equal protection rights of mothers, both parents are now entitled to the custody and services of their children. “[T]he child shall be under the **control** of **[both] parents**, “who are entitled to his services and the proceeds of his labor.” *Ireland Elec. Corp. v. Georgia Hwy. Express, Inc.*, 166 Ga. App. 150, 303 S.E.2d 497 (1983)
31. Georgia now recognizes this property right – the right to the services and proceeds of a child’s labor – as entitled to both parents. O.C.G.A. § 19-7-22(d)(1).
32. Both parents Parental Power is now known as “[T]he right to the custody and control of one’s child... a "fiercely guarded right... that should be infringed upon only under the most compelling circumstances.”” *Clark v Wade*, 544 SE 2d 99 – Ga: Supreme Court (2001)
33. Both parents property right to the services of their children and the rights to the custody of their children and their interests in those rights are all at stake in Georgia’s family court *custody* proceedings between two contesting parents under Georgia’s statutory scheme.

B. The Adjudication of Parental Power in Custody Disputes Between Two Parents Under Georgia’s Statutory Scheme

34. It was said in a custody dispute involving two contesting parents that Parental Power is only to be infringed upon under what has been called *exceptional* circumstances.¹¹
35. Since 1909, it has been said that “Unless parental power has been lost or relinquished, a parent is entitled to the value of the services of their minor child.”¹²
36. It was well known under what was called a **parental rights standard** that “[A] parent could lose *parental power* in one of these ways: voluntary contract, consent to adoption,

¹¹ “But if through misconduct or other circumstances it appears that the case is *exceptional*, [only then] *parens patriae* must protect the helpless... This was said in a case involving a controversy over the custody of a child between its parents.” *Chapin v Cummings*, 191 Ga. 408 (Ga. 1940)

¹² *See Royal v Grant*, 5 Ga. App 643, 63 S.E. 708 (1909)

failure to provide necessities or abandonment, consent to the child’s receiving the proceeds of his labor, consent to the child’s marriage, cruel treatment, or rearing the child under immoral influences. Clark v. Wade, 544 SE 2d 99 – Ga: Supreme Court (2001)

37. The Georgia Supreme Court in *Clark* stated however that strict adherence to the **parental rights standard** resulted in unjust decisions that purportedly ignored the health and welfare of the child and Georgia courts abandoned the parental rights standard and adopted a second doctrine in which parents could lose Parental Power **only** in *exceptional circumstances*.¹³
38. The court acknowledged that “[W]e interpret the best interest of the child standard in the parent-third party custody statute to mean that the third party must prove by clear and convincing evidence that the child will suffer physical or emotional harm if custody were awarded to the biological parent.” *Id.*
39. This was mostly to show that “[P]arental custody would harm the child **in order to rebut the statutory presumption in favor of the parent.**” *Id.*
40. However, while it is a general rule that parents have a prima facie right to custody as *against* grandparents, “[A]s between parents **neither** has a prima facie right to custody of a minor child.” Also see Rawdin v. Conner, 81 SE 2d 461 – GA: Supreme Court (1954)
41. Under Georgia’s presumptive and best interest of the child statutes, neither parent has a presumption in favor of custody. O.C.G.A. § 19-9-3(a)(1).

¹³ “For example, this Court reversed an award of custody to a stepfather with whom the child had lived and ruled instead that the biological father was entitled to custody after the mother’s death, despite his having provided no financial support or sought any visitation with his daughter in the seven years since his divorce from the mother. Our decision was based in part on the well-settled legal principle that a parents failure to support a minor child was not a failure to provide necessities or abandonment as will amount to a relinquishment of the right of the parent to parental custody and control... **adherence to the parental rights doctrine has led child custody cases in to the thickets of the technicalities of contract law** and away from the more relevant question of what is best for the child.” Clark v Wade, 544 SE 2d 99 – GA: Supreme Court (2001)

“[B]ecause of the harshness of the **parental rights standard**, this Court adopted a second standard by which a parent could lose custody in exceptional circumstances.” *Id.*

42. Under Georgia’s presumptive and best interest of the child statutes, the court is to decide the custody of children in the best interest of the child – without clear and convincing evidence and without a presumption in favor of any parent.

43. Both parents property right to the services of their children and the rights to the custody of their children and their interests in those rights are at risk to be adjudicated and are adjudicated in Georgia’s family courts without a favorable presumption and without clear and convincing evidence in custody disputes involving two contesting parents.¹⁴

C. When Parental Power loss

44. A custody award, judgement, order or decree in Georgia’s family courts that results in the removal of *physical* custody of one parent results in a loss of Parental Power in that Parent.¹⁵

45. Although a parent is entitled to file an action seeking custody when custody is removed from that parent, that parent cannot demand the custody or services of their child when an order or decree has solely entitled one parent to the physical custody of the child.¹⁶

46. It has been said that “Whatever deprives the parent of the right to the custody and services of the child, without fault on his part, **relieves him from the duty to support the child.**” *Thompson v. Georgia Railway & Power Co., 163 Ga. 598 (1927)*

47. This was said out of respect for the laws of nature and because, “The right to the custody and the earnings of [a] minor children **are reciprocal**...and that whatever deprives the parent of the right to the custody and services of the child, without fault on his part, relieves him from the duty to support the child.” *Hooten v. Hooten, 168 Ga. 86 (1929)*

¹⁴ In was interpreted in *Clark v Wade* that absent a presumption in favor of custody then there was no need to adjudicate parents rights with clear and convincing evidence based on the absent a favorable presumption.

¹⁵ This Parent is often called the Non-custodial parent or parent with visitation.

¹⁶ “There can be no doubt but that the awarding of the custody of the child to the [Mother], in the decree of divorce, deprived the [Father] of his right to her services. **He could not command her services** while the plaintiff was entitled to her custody.” *Husband v Husband, 67 Ind. 583 (1879) Supreme Court of Indiana*

48. Even Georgia's own statutes recognize the loss of parental power in custody disputes. As O.C.G.A. § 19-7-1(a) reads that, "In the event that a court has awarded *custody* of the child to one parent, **only the parent who has custody of the child is entitled to the child's services** and the proceeds of the child's labor."
49. When **Parental Power** has been lost (right to the *physical* custody and services), without fault of the parent, but under Georgia's unconstitutional statutory scheme, a parent cannot demand the custody and services of their child(ren) when another is entitled to *physical* custody and that parent is relieved from the duty to support their child(ren).
50. This **Parental Power** derives from the law of nature and according to the Supreme court is thus, "[A] fiercely guarded right... that should be infringed upon only under the most *compelling circumstances.*" Clark v. Wade, 544 SE 2d 99 – Ga: Supreme Court (2001)

GEORGIA'S STATUTORY SCHEME AND CHALLENGED STATUTES

D. Georgia's Statutory Best Interest of the Child Standard and its Presumptive Statues

51. Georgia's legislature enacted Georgia House Bill 369 Amending Section 3 of Chapter 9 of Title 19 of the Official Code of Georgia attached hereto as Ex. A. ("Statutory best interest standard").
52. Section 3 provides, "**there shall be no presumption** in favor of any particular form of custody, nor in favor of either parent." O.C.G.A. § 19-9-3(a)(1).
53. It further provides that, "The judge hearing the issue of custody shall make a determination of custody of a child and such matter shall not be decided by a jury... The duty of the judge in all such cases shall be to exercise its discretion to look to and determine solely **what is for the best interest of the child.**" O.C.G.A. § 19-9-3(a)(2)." (Georgia House Bill 369)

54. O.C.G.A. § 19-7-22(b) provides that, “Upon the presentation and the filing of a legitimation petition... the court may issue an order declaring the biological father’s relationship with the child to be legitimate, provided that such order is in the best interests of the child.”
55. In all cases in which these statutes are to be heard in custody disputes between mothers and fathers, no presumption exist in favor of any parent and the judge is to decide solely what is in the child’s best interest in making a custody determination.
56. In all cases which concern a Father’s legitimation of a child after birth, no presumption exist in favor of the Father in legitimating his child and the judge may legitimate a Father’s child, provided that such legitimation is also in the child’s best interests.

FACTUAL ALLEGATIONS

E. Plaintiff Deandre Arnold on behalf of himself

57. On November 25th, 2016, Plaintiff Deandre Arnold (“Arnold”) petitioned for *custody* of his minor child T.A., 2 years of age at such time, in the Sixth Judicial Circuit in and for Pinellas County, Florida.
58. On or around August of 2017, a mediated agreement between Arnold and his child’s mother was ratified in the Sixth Judicial Circuit and the court Order reads Arnold is to have secondary *physical* custody of T.A. and his child’s mother, primary *physical* custody of T.A.
59. Plaintiff Arnold’s Florida mediated custody agreement (“Fla Custody Order”) stated that he was entitled to the physical placement with his child, with split birthdays, summer, and holiday parenting time with his child’s mother having the remainder of the time.
60. Plaintiff Arnold and his child’s mother also had equal say in their right to direct their child’s religious upbringing – joint *legal* custody as to all future issues.

61. On December 13th, 2017, a final hearing was held telephonically on Plaintiff Arnold's petition and a Final Order was entered incorporating said mediated agreement ("Fla Custody Order") into a Final Order and a support order ("Fla Support Order").
62. Both parties were residents of the State of Georgia at such time at said Final hearing.
63. On October 29th, 2018, Arnold filed an action to domesticate the custody order in the State of Georgia.
64. The domestication of the custody order was duly confirmed on November 18, 2018, in the Gwinnett County Superior Court, case no. 18-A-09344 -1.
65. As to Florida support order, on September 24th, 2019, the Department of Human Services, Division of Child Support Services ("Department") filed an action to register and enforce the out-of-state FLA child support order in the Henry County Superior Court.
66. On October 10th, 2019, Plaintiff was served with notice of registration and summons in that action.
67. On October 15th, 2019, Plaintiff filed an appearance, *specially*, and specifically stating therein said appearance filing "that on November 18th, 2020, **in the above-entitled court** at the hour of 8:30 am... Deandre Arnold... can be heard."
68. Although providing a time, place and date to be heard, the Henry County Superior court, did not schedule the matter for hearing nor gave notice to any of the parties of the date, time and place of the hearing ***in the Henry County Superior Court***.
69. On the face of the record in the Henry County Superior court, no hearing was scheduled and there was no notice of hearing filed in the court by the registering tribunal or otherwise.
70. The only hearing "scheduled" was by the Department on November 18th, 2019, which hearing took place within the Division of Child Support Services local McDonough Office.

71. A subsequent hearing however took place on the same date in the Henry County Superior Court without the court giving any notice to Plaintiff Arnold of the time place and date of said hearing in the Henry County Superior court and without his presence in said court.
72. On November 18th, 2019, without Plaintiff Arnold in appearance in said court, the Henry County Superior court, judge Brian Amero presiding, entered an order entitled “Order Recognizing the Out-of-State Child Support Order that is controlling for enforcement & Order of enforcement.”
73. The support order was confirmed as controlling and recognized in the State of Georgia.
74. The enforcement and registered order, which was confirmed as controlling on November 18th, 2019, was entered without Arnold’s appearance. The order states that the “tribunal that issued the controlling order is the only tribunal that has **continuing exclusive jurisdiction.**”
75. As to Arnold’s child custody arrangement, no action would be filed *affecting* the physical *custody* of Plaintiff’s minor child until October 7th, 2021, in the Henry County Superior Court by and through an action filed by Arnold’s child’s mother seeking to relocate.
76. On March 15th, 2021, Arnold’s child’s mother filed a modification of child custody action in the Henry County Superior Court, SUCV-2021-0700, judge Brian Amero presiding seeking to relocate across state lines with the parties minor child, age 5 at the time.
77. Neither of the parties filed a Petition for modification of child support in the case nor requested such a modification or any prayer for relief in such case.
78. At the time of the filing of this modification of child custody action, both parties had court ordered *physical* “custody” of their minor child.
79. Notwithstanding the prior mediated agreement (Fla Custody Order), Plaintiff Arnold exercised the majority of the custody of his minor child from March of 2020 up until June of

2023, however excluding November of 2020 when the Plaintiff's child's mother exercised her thanksgiving Holiday time with the parties minor child.

80. On July 21st, 2021, a final hearing was held, and a temporary order was entered purporting to give Arnold *visitation* although the temporary order too specified that Arnold retained "secondary *physical custody*" of his minor child.
81. Nonetheless, on October 7th, 2021, a Final Order was entered, and *physical custody* was stripped from Plaintiff Arnold and replaced with visitation privileges with his minor child.
82. In that court's Final Order it is stated that the reasoning for removing *physical custody* from Arnold was "In the best interest of the child... O.C.G.A. § 19-9-3(a)(2)-(3)."
83. The October 7th, 2021, Final Order resulted in a substantial loss of prior parenting time between Plaintiff and his child causing a downward of only three days a month dependent upon and consistent with the times providing for a three-day weekend in his child's school calendar across state lines.
84. In addition, the October 7th, 2021 Final Order gave Plaintiff's child's mother final say so as it relates to joint *legal custody*. The Final Order reads that if Plaintiff Arnold and his child's mother disagree on their child's religious upbringing, that his child's mother had the final say so as to that issue including as to medical and extracurricular activities.
85. The Final Order also incorporated a child support addendum, purporting to modify child support, although no petition to modify child support was filed by any of the parties.
86. Written therein said Child Support Addendum, it states that "This addendum includes findings of fact and conclusions of law made by the Court, **during or following a hearing**, in compliance with O.C.G.A. § 19-6-15."

87. The Child Support Addendum purported to be based on finding of facts and conclusions of law made by the court during or following Plaintiff's modification of child custody proceeding.
88. Said modification of child support order ("Child Support Addendum") was entered the same day (October 7th, 2021) the custody of Arnold's minor child was removed under Georgia's statutory best interest of the child and its presumptive schemes.
89. Plaintiff Arnold appealed said Final Order entered in said case to the Georgia Court of Appeals on April 26th, 2022, who affirmed all final orders entered in said case.
90. Plaintiff then filed a Writ of Certiorari in the Georgia Supreme Court to reverse said Final Order, who denied Plaintiff's Certiorari on August 21st, 2023.
91. Plaintiff has thus had his right to the custody and services of his child (Parental Power) removed under Georgia's presumptive and best interest of the child statutes.
92. Plaintiff has also had a child support *order* entered in the State of Georgia *after* his Parental Power was removed in a custody case under Georgia's statutory scheme.
93. Plaintiff is, purportedly, subject to the October 7th, 2021, support order *as modified* and subject to the child custody order *as modified* and the enforcement of those orders under the threat of contempt and physical restraint for his failure to comply.
94. Prior to the removal of Plaintiff's *physical* custody and the substantial loss of his parenting time, his minor child shared nearly equivalent *physical* custody with Plaintiff and her mother and was joyful in such custodial arrangement.
95. Since the removal of Plaintiff Arnold's *physical* custody and the substantial loss of parenting time, he has witnessed that his child only initiates contact with him whenever she is aware that their parenting time is approaching and avoids contact when it is not.

96. The removal of Plaintiff's physical custody and the loss of his prior substantial parenting time has caused substantial emotional harm to his child who has shown severe emotional detriment by constantly expressing, questioning and showing dissent and resentment to the current custodial arrangement following the abrupt modification of the prior custodial arrangement under Georgia's statutory scheme.
97. Plaintiff has thus had his custody (Parental Power) removed, *without fault on his part*, but under Georgia's unconstitutional statutory scheme.
98. Arnold now faces uncertainty and a risk as to his future conduct with regard to the payment of support *as modified* under the October 7th, 2021 Final Order & failure to do so.
99. Plaintiff's child's mother has stated that she will file a contempt action against the Plaintiff if he fails to comply to the October 7th, 2021 Support Order as modified.
100. Plaintiff has an intent, has intended and intends to disregard a void October 7th, 2021 support order as modified, because the support order was rendered in child custody proceedings that removed the *physical* custody and services of his child without fault on his part but by & through the fault of an unconstitutional state statute in violation of his rights and – *[W]hatever* deprives the parent of the right to the custody and services of the child, *without fault on his part*, **relieves him from the duty to support the child.**" *Thompson v. Georgia Railway & Power Co., 163 Ga. 598 (1927)*
101. However, if Plaintiff Arnold does not pay support under the support order *as modified* – absent a petition to modify – he faces a future risk of contempt and physical restraint by his child's mother and the Department of Human Services for a failure to comply to said order.
102. As such, there is a need to declare that all enforcement and his future payment of court ordered payments or failure to do so under threat of contempt and physical restraint under

the October 7th, 2021 support order as modified violate his rights to privacy and to be let alone in violation of his rights because he has been constitutionally deprived of the custody and services (Parental Power) of his child, *without fault on his part*, but in violation of his substantial due process rights by the unconstitutional application of Georgia's current statutory scheme within his custody proceeding, facially and as applied to Plaintiff.

103. Plaintiff Arnold also faces uncertainty and a future risk with regard to his future conduct concerning his legal status and the future exchange of his child and his failure to do so according to the October 7th, 2021, Final Order which modified his Fla Custody Order.

104. Plaintiff has an intent, has intended and intends to disregard the void October 7th, 2021 Final Order removing the *physical* custody of his child including all prior Georgia orders *affecting the physical* custody of his child (Parental Power) because his parental power was removed in child custody proceedings under Georgia's current statutory scheme that violated his substantial due process protections of his natural rights – his fundamental liberties.

105. However, if Plaintiff does not adhere or comply to any of the provisions as prescribed in the October 7th, 2021 parenting plan arrangement, the Mother has stated that she will file a contempt action against the Plaintiff and he faces a risk of contempt and/or incarceration.

106. As such, there is a need to declare the Plaintiff's status and the future exchange of his child and failure to do so under the October 7th, 2021 order as modified, violate his property, custody rights, rights to privacy and his associational and familial rights because he has been constitutionally deprived of the *physical* custody of his child in violation of his substantial due process protections by the unconstitutional application of Georgia's current statutory scheme within his child custody proceeding, facially and as applied to Plaintiff.

107. In other words, Plaintiff Arnold faces uncertainty and a risk as to his future conduct with regard to exercising his rights consistent with his original status in which he was entitled to the *physical* custody of his child prior to the removal of his *physical* custody including his exchanging of his child solely consistent with his Fla Custody Order.
108. Plaintiff Arnold further faces uncertainty with regard to his future conduct concerning his inferior status as to his right to direct the religious upbringing of his child(ren) and his failure to comply or adhere to that status according to the October 7th, 2021 Final Order.
109. Plaintiff has an intent, has intended and intends to disregard the void October 7th, 2021 Final Order diminishing his right to direct the religious upbringing of his child because his equal *status* as to that right was removed in Georgia child custody proceedings under Georgia's current statutory scheme in violation of his substantial due process protections of his natural rights – his fundamental liberties.
110. However, if Plaintiff does not adhere or comply to any of the provisions as prescribed in the October 7th, 2021, parenting plan arrangement, the Mother has stated that she will file a contempt action against the Plaintiff for his failure to comply.
111. As such, there is a need to declare Plaintiffs status with regard to his right to direct the religious upbringing of his child and failure to adhere to his inferior status diminishing his rights under the October 7th, 2021 order as modified, violates or diminishes his right to control and direct the religious upbringing of his child because he has been constitutionally deprived of the right to control and direct his child's religious upbringing in violation of his substantial due process protections by the unconstitutional application of Georgia's current statutory scheme within his child custody proceeding, facially and as applied to Plaintiff.

112. Plaintiff Arnold also faces uncertainty and risk with regard to his future conduct concerning the accrual or the removal of his rights to the custody and services of their child(ren) under the October 7th, 2021, Final Order.
113. Plaintiff has an intent, has intended and intends to disregard the void October 7th, 2021 Final Order removing his Parental Power because his Parental Power was removed in Georgia child custody proceedings, without fault of his own, but under Georgia's current statutory scheme in violation of the substantial due process protections of his natural rights – his fundamental liberties.
114. However, because these rights have accrued it affects Plaintiff's right to challenge the constitutionality of Georgia's presumptive and best interest of the child statutes in violation of his First Amendment rights to access to the court because the rights he seeks to adjudicate have been removed or accrued, however under the very application of a Georgia statutory scheme he seeks to challenge in this action.
115. As such, there is need to declare the constitutionality of Georgia's statutory scheme and whether they infringe upon the Plaintiff Arnold's First Amendment rights to access to the court *as applied*, because it deprives him of the chance to pursue a nonfrivolous or arguable underlying claim and there is other remedy that may be awarded as recompense because his Parental Power has been removed in violation of his substantial due process protections interfering with his right of privacy by the unconstitutional application of Georgia's current statutory scheme which resulted in an accrual of those rights and his appeal from the October 7th, 2021 Final Order in Georgia's Appellate and Supreme Court were all denied.

F. Plaintiff Traci Hale Jr and all other's similarly situated

116. Plaintiff Hale Jr. brings this action on behalf of himself and all others similarly situated.

117. Plaintiff Hale Jr. is the Father of a 3 year old child with the initials I.H..
118. Plaintiff Hale Jr. was present at I.H.'s birth.
119. After I.H.'s birth, Hale Jr. and I.H.'s mother both signed I.H.'s birth certificate.
120. I.H. and Hale Jr. has since I.H.'s birth developed and established a close relationship with one another and significant familial and emotional bonds.
121. Since I.H.'s birth, Plaintiff Hale Jr. has spent significant overnights with his child.
122. Plaintiff Hale Jr. while having *physical* control of his child has contributed to his child's maintenance and necessities.
123. Plaintiff Hale Jr. and I.H. has since her birth too developed a significant relationship with Traci Hale Jr.'s immediate side of the family – i.e., Traci Hale Jr.'s mother – I.H.'s grandmother, Hale Jr.'s sister – I.H.'s aunt and each of her cousins on said side of the family.
124. Plaintiff Hale Jr. and I.H. has since I.H.'s birth developed significant emotional attachments and a father-child bond and love for one another.
125. Traci Hale Jr., however, has not legitimated his child in Georgia's family courts and has not filed an action seeking court ordered physical custody of I.H. in any of Georgia's superior courts or any other court.
126. Plaintiff Hale Jr., while developing significant bonds for his child has exercised erratic and inconsistent custody and control of his minor child.
127. This erratic custody and control of I.H. is based on Plaintiff Hale. Jr.'s demand for the custody of I.H. from his child's mother who has on multiple occasions objected and refused to surrender the custody of I.H. to Plaintiff Hale. Jr..

128. I.H.'s mother has also not sought or filed an action in any of Georgia's superior courts or any other court seeking to establish *physical* custodial rights for Plaintiff Hale Jr. in order for Plaintiff Hale Jr. to exercise *physical* custody over his child.
129. I.H.'s mother has also not sought or filed an action in any of Georgia's superior courts or any other court seeking to establish visitation privileges in order for Plaintiff Hale Jr. to exercise visitation privileges over his child.
130. Since I.H.'s birth, Plaintiff Hale Jr., has not once refused to exercise *physical* custody over his child by any demand of I.H.'s Mother.
131. Plaintiff Hale Jr., however, has demanded the custody of I.H. over the objections of I.H.'s Mother who has refused to do so consistently and persistently since I.H.'s birth, without any justification in such refusal.
132. Plaintiff Hale Jr. has done no acts of harm to his child emotionally or physically following his child's birth.
133. Because of these obstacles, Plaintiff Hale Jr. has an intent, has intended, intends to and desires to file an action **to legitimate and seek the court ordered *physical* custody** of his child, however he has been *chilled* from doing so based on his fear, and reasonable fear that his rights to the custody & services (Parental Power) will not be constitutionally protected in Georgia's superior courts as a parent who has does not yet have a court ordered custody.
134. This fear arises from a study done by Custody X Change, a parenting plan software for separated parents, that found that Georgia father's only get about 23.5% of custody time – ranking no. 46 out the 50 states in the U.S. in a study to determine which Fathers receive the most time with their child(ren).

135. Plaintiff Hale Jr.'s fear also arises from the fact that multiple Fathers have expressed to him a disdain and dissent to Georgia's family courts treatment of Fathers in child custody cases involving their child's mothers.
136. These Fathers have stated to Plaintiff Hale Jr. that Georgia's superior courts are not only bias to Fathers and favorable to Mothers but do not protect Father's rights to the custody of their child(ren) and that he is more than likely to, if he files an action seeking the *custody* of his child, to receive every other weekend visitation his child in lieu of joint *custody* of I.H..
137. These facts have manifested a fear in Plaintiff Hale Jr. that the same would occur to him and that he would become a statistic as shown in Custody X Changes parenting plan study – a father with less than 24% of parenting time with his child.
138. Plaintiff Hale Jr. now has a real fear that if he files an action to legitimate his child including seek court ordered physical custody of his child that it would result in the removal of his right to *physical* custody and a minimum amount of parenting time with his child.
139. Plaintiff Hale Jr. also holds a fear that he would be immediately subject to the entry of a child support order immediately after the removal of his *physical* custody, without fault on his part.
140. Plaintiff Hale Jr. has contributed Custody X change's parenting plan study in Georgia and his correspondence with multiple Fathers who expressed a dissent to Georgia's treatment of fathers, to the failure of Georgia's current statutory scheme to include a favorable presumption in custody disputes between parents and the failure to provide for clear and convincing evidence before his *physical* custody (Parental Power) is removed.
141. Plaintiff Hale Jr. asserts that the adjudication of his rights is necessary to relieve him from his fear and risk and *chilled* risk of taking future undirected action incident to his rights

to the services and custody of his children by declaring the constitutionality of Georgia's best interest of the child statute before his natural rights accrue or are removed under Georgia's current statutory scheme in violation of his substantial due process rights.

142. In other words, Plaintiff Hale Jr. suffers from the risk of taking future undirected action incident to his rights to the services and custody of his child because of his fear, and the reasonable fear, and risk that GA's current statutory scheme as it stands would not protect his substantial due process rights in a custody dispute involving himself and his child's Mother and there is a need to declare the constitutionality of Georgia's statutory scheme.

COPY OF PROCEEDINGS PROVIDED TO GEORGIA ATTORNEY GENERAL

143. Plaintiffs certify that a copy of these proceedings and foregoing Complaint will be served upon the Attorney General pursuant to O.C.G.A. § 9-4-7(c), including a filed stamp copy.

COUNT I – DECLARATORY JUDGMENT

144. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraph 1 through 142 inclusive.

145. This court has the power to declare the constitutionality of Georgia statutes pursuant to Article I Section II Paragraph V of the Georgia Constitution.

146. There is an actual, present and justiciable controversy between Plaintiffs and the State of Georgia regarding whether Georgia's presumptive and best interest of the child statutes, House Bill 369 Amending Section 3 of Chapter 9 of Title 19 of the Official Code of Georgia, O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2) ("Georgia's statutory scheme") attached hereto as Ex. A is void *ab initio*; and whether O.C.G.A. § 19-7-22(d)(1) is void *ab initio*; and whether Georgia's statutory scheme and O.C.G.A. § 19-7-22(d)(1) infringes on the (a) liberty, property, custody, privacy, religious upbringing, associational and familial rights and

interests in Plaintiff's child(ren) guaranteed by the Georgia Constitution and XXIX (inherit rights); and their First, Ninth and Fourteenth Amendment rights to the same and substantial due process protections.

147. Georgia law has significantly changed since the reconstruction of custody laws to provide for the equal protection of mothers, however, in doing so, left behind a significant protection which now impacts the rights of mothers and fathers including their children across the State of Georgia by the state's utilization of *parens patriae* removing *physical* custody from parents in the interests of children and to protect a child from harm, however, doing so under Georgia's statutory scheme between parents absent a favorable presumption in either parent and without a finding of harm and clear and convincing evidence in violation of their substantial due process protections in their natural rights, their fundamental liberties and their interests.
148. Although Georgia's parents are entitled to the right to the custody and services of their children, the parent who loses custody of his/her child(ren) also loses a property right in his/her child(ren) – the right to their services. See O.C.G.A. § 19-7-1(a).
149. These losses occur in circumstances less than *exceptional* in custody disputes between two contesting parents, or in other words without clear and convincing evidence under Georgia's statutory scheme in O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2).
150. As a result, Georgia's statutory scheme deprives parents from the *physical* custody of their child(ren) and their services by its disregard of both parents natural rights in custody disputes between parents in order that *parens patriae* arbitrarily act without a finding of harm in the purported best interest of the child.

151. The removal of *physical* custody from one parent and the award of custody to the other parent results in a substantial loss of parenting time and/or inequitable parenting time with that of the parent awarded custody and more than likely in all cases every other weekend visitation to the parent whose Parental Power or *physical* custody is removed.
152. Georgia's statutory scheme does not further any legitimate state interest, rather, causes an exercise of dictatorship amongst parents and an insertion of despotism in a potential joint *physical* custodial arrangement following Georgia's departure of its *parens patriae* hand in an area of family privacy, arbitrarily and unconstitutionally, against the child's best interest.
153. Georgia's statutory scheme harms Georgia's children by causing a loss of substantial parenting time with the parent who has lost *physical* custody – doing so under *parens patriae* on the one hand – in the interest of protecting a child and from harm – while taking away the parents protection of their children in the other in order to show that harm is absent *before* state interference or *parens patriae* authorizes a removing of their *physical* custody.
154. This statutory scheme is precisely what *Chapins* lesson warned against when it was said that “[T]he rights of nature are not to be lightly overridden on the one hand nor is the welfare of the child to be disregarded on the other.” *Chapin v Cummings, 191 Ga. 408 Supreme Court of Georgia (1940)*¹⁷
155. This scheme does no more than set the stage for one parent to act as the warden of their child(ren) with all of the Parental Power, while the other parent holds no more than mere visitation privileges to visit his child(ren) often for a minimum amount of time of no more

¹⁷ Also, **Clear and convincing evidence** was required before a parent could be removed from his child's custody by the *Chapin* court also stating that “[B]ut if through misconduct or other circumstances it appears that the case is **exceptional**, [only then] *parens patriae* must protect the helpless... This was said in a case involving a controversy over the custody of a child between its parents.” *Chapin v Cummings, 191 Ga. 408 (Ga. 1940)*

than 96 hours a month – although having lost the *custody* of their child(ren) through no fault of their own – but under Georgia’s unconstitutional statutory scheme.

156. While this stage is set, the curtains are pulled back to child support awards under separate statutes that more times often go to parents who has retained custody of their children following the custody dispute, while the parent with the less amount of time with his/her child – or who has lost *physical* custody – is forced to pay under threat of contempt and physical restraint although losing custody through no fault of his own, but under Georgia’s current statutory scheme in violation of his substantial due process protections.

157. Georgia’s supreme court has stated long ago that “[W]hatever deprives the parent of the right to the custody and services of the child, *without fault on his part*, relieves him from the duty to support the child.” Thompson v. Georgia Railway & Power Co., 163 Ga. 598 (1927)

158. This was not interpreted as merely relieving parents of their duty to support their children as to permit an outright abandonment of one’s *moral* and *legal* responsibilities and duties, but said in its respect for the rights of nature and, understanding the reciprocating obligation in a parent’s duty to support their child(ren) was based on that parent having the actual *physical* custody and services of their child(ren). See Id.

159. Thus, because Plaintiff Arnold has lost the custody and services of his child and Plaintiff Hale Jr. and all mothers and fathers similarly situated face a risk in losing *physical* custody by fault of Georgia’s current unconstitutional statutory scheme, they have suffered or will suffer tremendous injury as a result and that injury will continue and will be repeated in the future and there is a need to guide and protect the Plaintiffs’ from uncertainty and insecurity with regard to the propriety of their future acts or conduct properly incident to their alleged rights which if taken without direction might reasonably jeopardize their interests.

160. In accordance with O.C.G.A. § 9-4-2, Plaintiffs' ask this Court to declare that;

- (1) All enforcement and future payment of court ordered payments or failure to do so under threat of contempt and physical restraint under the October 7th, 2021 support order *as modified* violate Plaintiff Arnold's rights to privacy in violation of his rights because he has been constitutionally deprived of the custody and services (Parental Power) of his child, *without fault on his part*, but in violation of his substantial due process rights by the unconstitutional application of Georgia's current statutory scheme within his *custody* proceeding, facially and as applied;
- (2) Plaintiff's status and the future exchange of his child and failure to do so under the October 7th, 2021 order as modified, violate Plaintiff Arnold's property and custody rights, rights to privacy and his associational and familial rights because he has been constitutionally deprived of the custody & services of his child in violation of his substantial due process protections by the unconstitutional application of Georgia's current statutory scheme within his child custody proceeding, facially and as applied;
- (3) Plaintiffs status with regard to his right to direct the religious upbringing of his child and failure to adhere to his inferior status diminishing his rights under the October 7th, 2021 order violates or diminishes his right to control and direct the religious upbringing of his child because he has been constitutionally deprived of the right to control and direct his child's religious upbringing in violation of his substantial due process protections by the unconstitutional application of

Georgia's current statutory scheme within his child custody proceeding, facially and as applied;

- (4) The constitutionality of Georgia's statutory scheme infringes upon Plaintiff Arnold's First Amendment rights to access to the court as applied and facially, because it deprives him of the chance to pursue a nonfrivolous or arguable underlying claim and there is other remedy that may be awarded as recompense because his Parental Power has been removed in violation of his substantial due process protections interfering with his right of privacy by the unconstitutional application of Georgia's current statutory scheme which resulted in an accrual of those rights;
- (5) (As to Plaintiff Traci Hale Jr., ("Hale Jr."), the only Plaintiff in this action who challenges two Georgia statutes on behalf of himself and all others similarly situated to him); To declare the constitutionality of Georgia's Statutory Scheme and O.C.G.A. 19-7-22(d)(1) before his natural rights accrue or are removed and based on his fear and reasonable fear and *chilled* future risk that affects his first amendment interests that his rights will be removed under Georgia's current statutory scheme in violation of his substantial due process protections;
- (6) Georgia House Bill 369 Amending Section 3 of Chapter 9 of Title 19 of the Official Code of Georgia, O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2) ("Georgia's statutory scheme") attached hereto as Ex. A is void *ab initio* facially and as applied to Plaintiff Arnold; and as to Plaintiff Hale Jr., and all those similarly situated to him, declare both O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2) ("Georgia's statutory scheme") attached hereto as Ex. A. and O.C.G.A. § 19-7-22(d)(1)

unconstitutional on its face and as applied to Plaintiff Hale Jr. & all other's similarly situated him.

161. Because Georgia's statutory presumption and best interest of the child standard in O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2) exercised by Georgia's superior courts permits state intrusions on the fundamental rights of Plaintiffs' absent a favorable presumption, a finding of harm and clear and convincing evidence – substantial protection – it burdens & infringes on the (a) liberty, property, privacy, religious upbringing and custody in their child(ren) guaranteed by the Georgia Constitution and XXIX (inherit rights); and their First, Ninth and Fourteenth Amendment rights to the same in violation of substantial due process.

162. In accordance with O.C.G.A. § 9-4-3, Plaintiffs further ask this Court to enter a permanent injunction, after awarding declaratory relief, and enjoin further enforcement of O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2) (“Georgia’s statutory scheme”) O.C.G.A. § 19-7-22(d)(1).

COUNT II PERMANENT INJUNCTION

163. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 162 inclusive.

164. An injunction is necessary to prevent irreparable harm not only to Georgia's parents but to America's children, “the hope of the future, the seed corn of the nation”.

165. Such an injunction is necessary to prevent said irreparable harm through the utilization, operation and application of O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2) (“Georgia’s statutory scheme”) and O.C.G.A. § 19-7-22(d)(1) by Georgia's judicial officers in custody disputes between two contesting parents, which unconstitutionally infringe on their *interests* in their rights to liberty, property, privacy, custody, the religious upbringing of their children and

associational and familial rights guaranteed by the Georgia constitution and XXIX (inherit rights) and the First, Ninth, Fourteenth Amendments to the same and substantial due process under the United States Constitution.

166. An injunction is also necessary to prevent irreparable harm to Plaintiff Arnold through the enforcement of child custody and child support orders rendered under O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2) (“Georgia’s statutory scheme”) which too unconstitutionally infringe on Plaintiff’s *interests* in his rights privacy – including liberty, custody, property, the religious upbringing of their children and associational and familial rights guaranteed by the Georgia constitution and XXIX (inherit rights) and the First, Ninth, Fourteenth Amendments to the same and substantial due process under the U.S. Constitution.

167. While Plaintiffs’ suffer and will continue to suffer irreparable harm without an injunction, an injunction will not cause the State irreparable harm because the injunction will simply prevent the State from the utilization, operation and application of unconstitutional laws enforcement and prevent the entry of unconstitutional court orders or court decrees.

168. Because O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2) (“Georgia’s statutory scheme”) and O.C.G.A. § 19-7-22(d) does not include a presumption in favor of either parent that would encourage clear and convincing evidence to rebut any presumption of legitimation and custody in favor of both parents in order for a parent defending their custodial interests and physical custody to show the states exercise of *parens patriae* is or was unnecessary at the outset, Plaintiff’s have a substantial likelihood of success on the merits because in doing so, Georgia’s statutory scheme violates the substantial due process protections of Plaintiff’s absent the least restrictive means by disregarding the natural rights of parents.

169. Moreover, the public interest is furthered because a permanent injunction will further this states public policy by assuring “that minor children have frequent and continuing contact with parents” absent unconstitutional state intrusion through the unnecessary and arbitrary exercise of this state’s *parens patriae* which does no more than harm children.

170. Accordingly, **immediately after declaratory relief has been entered**, all Plaintiff’s seeks a permanent injunction enjoining the State of Georgia; its judicial officers, officers, agents, servants, employees, agencies, departments, representatives, attorneys, including all district attorneys in the State of Georgia and their contractors; and anyone acting on behalf of, in active participation with, or in concert with the State, from applying or utilizing O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2) and O.C.G.A. § 19-7-22(d)(1) in child custody disputes *between* two contesting parents.

171. **Immediately after declaratory relief has been entered**, Plaintiff Arnold seeks a permanent injunction enjoining the State of Georgia; its judicial officers, officers, agents, servants, employees, agencies, departments, representatives, attorneys, including all district attorneys in the State of Georgia and their contractors; and anyone acting on behalf of, in active participation with, or in concert with the State from enforcing the October 7th, 2021 custody and support order *as modified*.




WHEREFORE, Plaintiffs respectfully request that the Court;

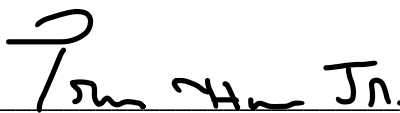
- (1) Declare House Bill 369 Amending Section 3 of Chapter 9 of Title 19 of the Official Code of Georgia, O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2) (“Georgia’s statutory scheme”) attached hereto as Ex. A is void *ab initio*; and O.C.G.A. § 19-7-22(d)(1) void *ab initio*;
- (2) Enter a declaration as more fully stated in Paragraph 160 of this complaint;

- (3) After declaratory relief has been entered, enter a permanent injunction prohibiting the State of Georgia; its judicial officers, officers, agents, servants, employees, agencies, departments, representatives, attorneys, including all district attorneys in the State of Georgia and their contractors; and anyone acting on behalf of, in active participation with, or in concert with the State, prohibiting the application, entry and utilization of O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2) and O.C.G.A. § 19-7-22(d)(1) in all child custody disputes *between* two parents;
- (4) After declaratory relief has been entered, enter a permanent injunction enjoining the State of Georgia, its judicial officers, officers, agents, servants, employees, agencies, departments, representatives, attorneys, including all district attorneys in the State of Georgia and their contractors; and anyone acting on behalf of, in active participation with, or in concert with the State from enforcing the 10/7/2021 Final order *as modified*;
- (5) Award Plaintiffs cost and fees under O.C.G.A. § 9-15-14; and
- (6) Grant Plaintiff's any such other, further relief the Court deems just and proper.

Submitted this 5th day of September 2023

/s/ 

Plaintiff
Mr. Deandre Arnold
Mailing: 7577 Rutgers Cir.
Fairburn Georgia 30213
Email: Dresmailbox@gmail.com
Telephone: 470-514-3097

/s/ 

Plaintiff
460 Hays Mill Rd. Apt. J9
Carrollton Ga 30117
Email: TraciHaleJr0012@proton.me
Telephone: 770-712-9030


Pro Se Plaintiffs

VERIFICATION OF COMPLAINT

My name is Deandre Arnold, I am over the age of 21 years old and otherwise competent to give this affidavit and testify to its contents. I further state under penalty of perjury under the laws of the United States *including* the State of Georgia, that paragraphs 57 through paragraphs 115 relating to the facts alleged as to Plaintiff Deandre Arnold are true and correct to the best of my knowledge and belief based on the information currently available to me.

28 U.S.C. § 1746, 18 U.S.C. § 1621

Declared this 5th, day of September 2023

/s/  _____

Plaintiff

Mr. Deandre Arnold

Mailing: 7577 Rutgers Cir.

Fairburn Georgia 30213

Email: Dresmailbox@gmail.com

Telephone: 470-514-3097

Pro Se Plaintiff

VERIFICATION OF COMPLAINT

My name is Traci Hale Jr., I am over the age of 21 years old and otherwise competent to give this affidavit and testify to its contents. I further state under penalty of perjury under the laws of the United States *including* the State of Georgia, that paragraphs 116 through paragraphs 142 relating to the facts alleged as to Plaintiff Traci Hale Jr. are true and correct to the best of my knowledge and belief based on the information currently available to me.

28 U.S.C. § 1746, 18 U.S.C. § 1621

Declared this 5th, day of September 2023

/s/ Traci Hale Jr.

Plaintiff

460 Hays Mill Rd. Apt. J9

Carrollton Ga 30117

Email: TraciHaleJr0012@proton.me

Telephone: 770-712-9030

Pro Se Plaintiff

EXHIBIT A

House Bill 369

Amending Section 3 of Chapter 9 of Title 19 of the Official Code of Georgia,
O.C.G.A. §§ 19-9-3(a)(1), 19-9-3(a)(2).

(“Georgia’s statutory scheme”)

House Bill 369

By: Representatives Rice of the 51st, Lindsey of the 54th, Ehrhart of the 36th, Manning of the 32nd, Butler of the 18th, and others

A BILL TO BE ENTITLED
AN ACT

1 To provide for legislative findings; to amend Article 2 of Chapter 6 of Title 5 and Chapter
2 9 of Title 19 of the Official Code of Georgia Annotated, relating to appellate practice and
3 child custody proceedings, respectively, so as to provide for changes in child custody
4 proceedings; to provide for direct appeals in all domestic relations cases; to provide for a
5 parenting plan in child custody cases and the procedure therefor; to provide factors in
6 determining the best interests of the child; to provide for written findings of fact in child
7 custody proceedings; to remove the right of a 14 year old to select a custodial parent; to
8 provide for attorney's fees and expenses of litigation in child custody proceedings; to provide
9 for binding arbitration; to amend Code Section 19-7-22 of the Official Code of Georgia
10 Annotated, relating to petition for legitimation of child, so as to correct a cross-reference; to
11 provide for related matters; to provide for an effective date and applicability; to repeal
12 conflicting laws; and for other purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

15 The General Assembly of Georgia declares that it is the policy of this state to assure that
16 minor children have frequent and continuing contact with parents who have shown the ability
17 to act in the best interests of their children and to encourage parents to share in the rights and
18 responsibilities of rearing their children after the parents have separated or dissolved their
19 marriage.

20 **SECTION 2.**

21 Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to
22 appellate practice, is amended by revising subsection (a) of Code Section 5-6-34, relating to
23 judgments and rulings deemed directly appealable, as follows:

24 "(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the
25 following judgments and rulings of the superior courts, the constitutional city courts, and

1 such other courts or tribunals from which appeals are authorized by the Constitution and
2 laws of this state:

3 (1) All final judgments, that is to say, where the case is no longer pending in the court
4 below, except as provided in Code Section 5-6-35;

5 (2) All judgments involving applications for discharge in bail trover and contempt cases;

6 (3) All judgments or orders directing that an accounting be had;

7 (4) All judgments or orders granting or refusing applications for receivers or for
8 interlocutory or final injunctions;

9 (5) All judgments or orders granting or refusing applications for attachment against
10 fraudulent debtors;

11 (6) Any ruling on a motion which would be dispositive if granted with respect to a
12 defense that the action is barred by Code Section 16-11-184;

13 (7) All judgments or orders granting or refusing to grant mandamus or any other
14 extraordinary remedy, except with respect to temporary restraining orders;

15 (8) All judgments or orders refusing applications for dissolution of corporations created
16 by the superior courts;

17 (9) All judgments or orders sustaining motions to dismiss a caveat to the probate of a
18 will; ~~and~~

19 (10) All judgments or orders entered pursuant to subsection (c) of Code Section
20 17-10-6.2; and

21 (11) All judgments or orders in divorce, alimony, child custody, and other domestic
22 relations cases including, but not limited to, granting or refusing a divorce or temporary
23 or permanent alimony, awarding or refusing to change child custody, or holding or
24 declining to hold persons in contempt of such alimony or child custody judgment or
25 orders."

26 SECTION 3.

27 Said article is further amended by revising subsection (a) of Code Section 5-6-35, relating
28 to cases requiring application for appeal, as follows:

29 "(a) Appeals in the following cases shall be taken as provided in this Code section:

30 (1) Appeals from decisions of the superior courts reviewing decisions of the State Board
31 of Workers' Compensation, the State Board of Education, auditors, state and local
32 administrative agencies, and lower courts by certiorari or de novo proceedings; provided,
33 however, that this provision shall not apply to decisions of the Public Service
34 Commission and probate courts and to cases involving ad valorem taxes and
35 condemnations;

1 ~~(2) Appeals from judgments or orders in divorce, alimony, child custody, and other~~
 2 ~~domestic relations cases including, but not limited to, granting or refusing a divorce or~~
 3 ~~temporary or permanent alimony, awarding or refusing to change child custody, or~~
 4 ~~holding or declining to hold persons in contempt of such alimony or child custody~~
 5 ~~judgment or orders;~~

6 ~~(3)~~ Appeals from cases involving distress or dispossessory warrants in which the only
 7 issue to be resolved is the amount of rent due and such amount is \$2,500.00 or less;

8 ~~(4)~~(3) Appeals from cases involving garnishment or attachment, except as provided in
 9 paragraph (5) of subsection (a) of Code Section 5-6-34;

10 ~~(5)~~(4) Appeals from orders revoking probation;

11 ~~(6)~~(5) Appeals in all actions for damages in which the judgment is \$10,000.00 or less;

12 ~~(7)~~(6) Appeals, when separate from an original appeal, from the denial of an
 13 extraordinary motion for new trial;

14 ~~(8)~~(7) Appeals from orders under subsection (d) of Code Section 9-11-60 denying a
 15 motion to set aside a judgment or under subsection (e) of Code Section 9-11-60 denying
 16 relief upon a complaint in equity to set aside a judgment;

17 ~~(9)~~(8) Appeals from orders granting or denying temporary restraining orders;

18 ~~(10)~~(9) Appeals from awards of attorney's fees or expenses of litigation under Code
 19 Section 9-15-14; and

20 ~~(11)~~(10) Appeals from decisions of the state courts reviewing decisions of the magistrate
 21 courts by de novo proceedings so long as the subject matter is not otherwise subject to
 22 a right of direct appeal."

23 SECTION 4.

24 Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to child custody
 25 proceedings, is amended by revising in its entirety Article 1, relating to general provisions,
 26 as follows:

27 "ARTICLE 1

28 19-9-1.

29 ~~(a)(1) In all cases in which a divorce is granted, the party not in default shall be entitled~~
 30 ~~to the custody of the minor children of the marriage. However, in all cases in which a~~
 31 ~~divorce is granted, an application for divorce is pending, or a change in custody of a~~
 32 ~~minor child is sought, the court, in the exercise of a sound discretion, may look into all~~
 33 ~~the circumstances of the parties, including improvement of the health of a party seeking~~
 34 ~~a change in custody provisions, and, after hearing both parties, may make a different~~

1 ~~disposition of the children, placing them, if necessary, in possession of guardians~~
2 ~~appointed by the judge of the probate court.~~

3 ~~(2) In addition to other factors that a court may consider in a proceeding in which the~~
4 ~~custody of a child or visitation by a parent is at issue and in which the court has made a~~
5 ~~finding of family violence:~~

6 ~~(A) The court shall consider as primary the safety and well-being of the child and of~~
7 ~~the parent who is the victim of family violence;~~

8 ~~(B) The court shall consider the perpetrator's history of causing physical harm, bodily~~
9 ~~injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to~~
10 ~~another person;~~

11 ~~(C) If a parent is absent or relocates because of an act of domestic violence by the other~~
12 ~~parent, such absence or relocation for a reasonable period of time in the circumstances~~
13 ~~shall not be deemed an abandonment of the child or children for the purposes of~~
14 ~~custody determination; and~~

15 ~~(D) The court shall not refuse to consider relevant or otherwise admissible evidence~~
16 ~~of acts of family violence merely because there has been no previous finding of family~~
17 ~~violence. The court may, in addition to other appropriate actions, order supervised~~
18 ~~visitation pursuant to Code Section 19-9-7.~~

19 ~~(3)(A) In all cases in which the child has reached the age of 14 years, the child shall~~
20 ~~have the right to select the parent with whom he or she desires to live. The child's~~
21 ~~selection shall be controlling, unless the parent so selected is determined not to be a fit~~
22 ~~and proper person to have the custody of the child.~~

23 ~~(B) In all cases in which the child has reached the age of at least 11 but not 14 years,~~
24 ~~the court shall consider the desires, if any, and educational needs of the child in~~
25 ~~determining which parent shall have custody. The court shall have complete discretion~~
26 ~~in making this determination, and the child's desires are not controlling. The court~~
27 ~~shall further have broad discretion as to how the child's desires are to be considered,~~
28 ~~including through the report of a guardian ad litem. The best interest of the child~~
29 ~~standard shall be controlling.~~

30 ~~(C) The desire of a child who has reached the age of 11 years but not 14 years shall~~
31 ~~not, in and of itself, constitute a material change of conditions or circumstances in any~~
32 ~~action seeking a modification or change in the custody of that child.~~

33 ~~(D) The court may issue an order granting temporary custody to the selected parent for~~
34 ~~a trial period not to exceed six months regarding the custody of a child who has reached~~
35 ~~the age of at least 11 years where the judge hearing the case determines such a~~
36 ~~temporary order is appropriate.~~

~~(b) In any case in which a judgment awarding the custody of a minor has been entered, on the motion of any party or on the motion of the court, that portion of the judgment effecting visitation rights between the parties and their minor children may be subject to review and modification or alteration without the necessity of any showing of a change in any material conditions and circumstances of either party or the minor, provided that the review and modification or alteration shall not be had more often than once in each two-year period following the date of entry of the judgment. However, this subsection shall not limit or restrict the power of the court to enter a judgment relating to the custody of a minor in any new proceeding based upon a showing of a change in any material conditions or circumstances of a party or the minor.~~

~~(c)(1) In any case in which a judgment awarding the custody of a minor has been entered, the court entering such judgment shall retain jurisdiction of the case for the purpose of ordering the custodial parent to notify the court of any changes in the residence of the child.~~

~~(2) In any case in which visitation rights have been provided to the noncustodial parent and the court orders that the custodial parent provide notice of a change in address of the place for pickup and delivery of the child for visitation, the custodial parent shall notify the noncustodial parent, in writing, of any change in such address. Such written notification shall provide a street address or other description of the new location for pickup and delivery so that the noncustodial parent may exercise such parent's visitation rights.~~

~~(3) Except where otherwise provided by court order, in any case under this subsection in which a parent changes his or her residence, he or she must give notification of such change to the other parent and, if the parent changing residence is the custodial parent, to any other person granted visitation rights under this title or a court order. Such notification shall be given at least 30 days prior to the anticipated change of residence and shall include the full address of the new residence.~~

~~(d) In the event of any conflict between this Code section and Article 3 of this chapter, Article 3 shall apply.~~

(a) In all cases in which the custody of any minor child is at issue between the parents, each parent shall prepare a parenting plan or the parties may jointly submit a parenting plan. It shall be in the judge's discretion as to when a party shall be required to submit a parenting plan to the judge. A parenting plan shall be required for permanent custody and modification actions and in the judge's discretion may be required for temporary hearings. The final decree in any legal action involving the custody of a minor child, including modification actions, shall incorporate a permanent parenting plan.

(b) A parenting plan shall include, but not be limited to:

1 (1) Where and when a child will be in each parent's physical care, designating where the
2 child will spend each day of the year;

3 (2) How holidays, birthdays, vacations, school breaks, and other special occasions will
4 be spent with each parent including the time of day that each event will begin and end;

5 (3) Transportation arrangements including how the child will be exchanged between the
6 parents, the location of the exchange, how the transportation costs will be paid, and any
7 other matter relating to the child spending time with each parent;

8 (4) Whether supervision will be needed for any parenting time and, if so, the particulars
9 of the supervision;

10 (5) A recognition that the child's needs will change and grow as the child matures and
11 demonstrating that the parents are making an effort to develop a plan that takes this issue
12 into account so that future modifications to the parenting plan are minimized;

13 (6) An allocation of decision-making authority to one or both of the parents with regard
14 to the child's education, health, extracurricular activities, and religious upbringing, and
15 if the parents agree the matters should be jointly decided, how to resolve a situation in
16 which the parents disagree on resolution;

17 (7) A recognition that a parent with physical custody may make day-to-day decisions and
18 emergency decisions while the child is residing with such parent;

19 (8) A recognition that a close and continuing parent-child relationship and continuity in
20 the child's life may be in the child's best interest; and

21 (9) What, if any, limitations will exist while one parent has physical custody of the child
22 in terms of the other parent contacting the child and the other parent's right to access
23 education, health, extracurricular activity, and religious information regarding the child.

24 (c) If the parties cannot reach agreement on a permanent parenting plan, each party shall
25 file and serve a proposed parenting plan on or before the date set by the judge. Failure to
26 comply with filing a parenting plan may result in the judge adopting the plan of the
27 opposing party if the judge finds such plan to be in the best interests of the child.

28 19-9-1.1.

29 In all proceedings under this article, it shall be expressly permissible for the parents of a
30 minor child to agree to binding arbitration on the issue of child custody and matters relative
31 to visitation and a parenting plan. The parents may select their arbiter and decide which
32 issues will be resolved in binding arbitration. The arbiter's decisions shall be incorporated
33 into a final decree awarding child custody unless the judge makes specific written factual
34 findings that under the circumstances of the parents and the child the arbiter's award would
35 not be in the best interests of the child. In its judgment, the judge may supplement the
36 arbiter's decision on issues not covered by the binding arbitration.

1 19-9-2.

2 Upon the death of either parent, the survivor is entitled to custody of the child; provided,
3 however, that the ~~court~~ judge, upon petition, may exercise discretion as to the custody of
4 the child, looking solely to the child's best interest and welfare.

5 19-9-3.

6 (a)(1) In all cases in which the custody of any minor child ~~or children~~ is at issue between
7 the parents, there shall be no prima-facie right to the custody of the child ~~or children~~ in
8 the father or mother. There shall be no presumption in favor of any particular form of
9 custody, legal or physical, nor in favor of either parent. Joint custody may be considered
10 as an alternative form of custody by the judge and the judge at any temporary or
11 permanent hearing may grant sole custody, joint custody, joint legal custody, or joint
12 physical custody as appropriate.

13 (2) The ~~court~~ judge hearing the issue of custody, ~~in exercise of its sound discretion,~~ shall
14 make a determination of custody of a child and such matter shall not be decided by a jury.
15 The judge may take into consideration all the circumstances of the case, including the
16 improvement of the health of the party seeking a change in custody provisions, in
17 determining to whom custody of the child ~~or children~~ should be awarded. The duty of
18 the ~~court~~ judge in all such cases shall be to exercise its discretion to look to and determine
19 solely what is for the best interest of the child ~~or children~~ and what will best promote
20 ~~their~~ the child's welfare and happiness and to make its his or her award accordingly.

21 (3) In determining the best interests of the child, the judge may consider any relevant
22 factor including, but not limited to:

23 (A) The love, affection, bonding, and emotional ties existing between each parent and
24 the child;

25 (B) The capacity and disposition of each parent to give the child love, affection, and
26 guidance and to continue the education and rearing of the child;

27 (C) Each parent's knowledge and familiarity of the child and the child's needs;

28 (D) The capacity and disposition of each parent to provide the child with food,
29 clothing, medical care, day-to-day needs, and other necessary basic care, with
30 consideration made for the potential payment of child support by the other parent;

31 (E) The home environment of each parent considering the promotion of nurturance and
32 safety of the child rather than superficial or material factors;

33 (F) The importance of continuity in the child's life and the length of time the child has
34 lived in a stable, satisfactory environment and the desirability of maintaining
35 continuity;

1 (G) The stability of the family unit of each of the parents and the presence or absence
 2 of each parent's support systems within the community to benefit the child;

3 (H) The mental and physical health of each parent;

4 (I) Each parent's involvement, or lack thereof, in the child's education, social, and
 5 extracurricular activities;

6 (J) Each parent's employment schedule and the related flexibility or limitations, if any,
 7 of a parent to care for the child;

8 (K) The home, school, and community record and history of the child, as well as any
 9 health or educational special needs of the child;

10 (L) Each parent's past performance and relative abilities for future performance of
 11 parenting responsibilities;

12 (M) The willingness and ability of each of the parents to facilitate and encourage a
 13 close and continuing parent-child relationship between the child and the other parent,
 14 consistent with the best interest of the child;

15 (N) Any recommendation by a court appointed custody evaluator or guardian ad litem;

16 (O) Any evidence of domestic violence or sexual, mental, or physical child abuse or
 17 criminal history of either parent; and

18 (P) Any evidence of substance abuse by either parent.

19 (4) In addition to other factors that a court judge may consider in a proceeding in which
 20 the custody of a child or visitation by a parent is at issue and in which the court judge has
 21 made a finding of family violence:

22 (A) The court judge shall consider as primary the safety and well-being of the child
 23 and of the parent who is the victim of family violence;

24 (B) The court judge shall consider the perpetrator's history of causing physical harm,
 25 bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or
 26 assault to another person;

27 (C) If a parent is absent or relocates because of an act of domestic violence by the other
 28 parent, such absence or relocation for a reasonable period of time in the circumstances
 29 shall not be deemed an abandonment of the child ~~or children~~ for the purposes of
 30 custody determination; and

31 (D) The court judge shall not refuse to consider relevant or otherwise admissible
 32 evidence of acts of family violence merely because there has been no previous finding
 33 of family violence. The court judge may, in addition to other appropriate actions, order
 34 supervised visitation pursuant to Code Section 19-9-7.

35 ~~(4) In all custody cases in which the child has reached the age of 14 years, the child shall~~
 36 ~~have the right to select the parent with whom he or she desires to live. The child's~~

1 ~~selection shall be controlling unless the parent so selected is determined not to be a fit and~~
2 ~~proper person to have the custody of the child.~~

3 ~~(4.1)(5) In all custody cases in which the child has reached the age of at least 11 but not~~
4 ~~14 years, the court judge shall consider the desires and educational needs of the child in~~
5 ~~determining which parent shall have custody. The child's selection shall not be~~
6 ~~controlling. The best interests of the child standard shall apply. The judge shall have~~
7 ~~complete discretion in making this determination, and the child's desires shall not be~~
8 ~~controlling. The judge shall further have broad discretion as to how the child's desires~~
9 ~~are to be considered, including through the report of a guardian ad litem. The best~~
10 ~~interests of the child standard shall be controlling. The desire of a child who has reached~~
11 ~~the age of 11 years shall not, in and of itself, constitute a material change of conditions~~
12 ~~or circumstances in any action seeking a modification or change in the custody of that~~
13 ~~child. The judge may issue an order granting temporary custody to the selected parent~~
14 ~~for a trial period not to exceed six months regarding the custody of a child who has~~
15 ~~reached the age of 11 years where the judge hearing the case determines such a temporary~~
16 ~~order is appropriate.~~

17 ~~(5) Joint custody, as defined by Code Section 19-9-6, may be considered as an~~
18 ~~alternative form of custody by the court. This provision allows a court at any temporary~~
19 ~~or permanent hearing to grant sole custody, joint custody, joint legal custody, or joint~~
20 ~~physical custody where appropriate.~~

21 ~~(6) The court judge is authorized to order a psychological custody evaluation of the~~
22 ~~family or an independent medical evaluation. In addition to the privilege afforded a~~
23 ~~witness, neither a court appointed custody evaluator nor a court appointed guardian ad~~
24 ~~litem shall be subject to civil liability resulting from any act or failure to act in the~~
25 ~~performance of his or her duties unless such act or failure to act was in bad faith.~~

26 ~~(7) Unless otherwise agreed upon by the parties, any permanent court order awarding~~
27 ~~child custody shall set forth specific findings of fact as to the basis for the judge's~~
28 ~~decision in making an award of custody including any relevant factor relied upon by the~~
29 ~~judge as set forth in paragraph (3) of this subsection. Such order shall set forth in detail~~
30 ~~why the court awarded custody in the manner set forth in the order and, if joint legal~~
31 ~~custody is awarded, a manner in which final decision making on matters affecting the~~
32 ~~child's education, health, extracurricular activities, religion, and any other important~~
33 ~~matter shall be divided. Such order shall be filed within 30 days of the final hearing in~~
34 ~~the case.~~

35 (b) In any case in which a judgment awarding the custody of a minor has been entered, on
36 the motion of any party or on the motion of the court judge, that portion of the judgment
37 effecting visitation rights between the parties and their minor children child may be subject

1 to review and modification or alteration without the necessity of any showing of a change
2 in any material conditions and circumstances of either party or the minor, provided that the
3 review and modification or alteration shall not be had more often than once in each
4 two-year period following the date of entry of the judgment. However, this subsection
5 shall not limit or restrict the power of the court judge to enter a judgment relating to the
6 custody of a minor in any new proceeding based upon a showing of a change in any
7 material conditions or circumstances of a party or the minor.

8 (c) In the event of any conflict between this Code section and any provision of Article 3
9 of this chapter, Article 3 shall apply.

10 (d) It is the express policy of this state to encourage that a minor child has continuing
11 contact with parents and grandparents who have shown the ability to act in the best interest
12 of the child and to encourage parents to share in the rights and responsibilities of raising
13 their ~~children~~ child after such parents have separated or dissolved their marriage or
14 relationship.

15 (e) Upon the filing of an action for a change of child custody, the court judge may in its
16 his or her discretion change the terms of custody on a temporary basis pending final
17 judgment on such issue. Any such award of temporary custody shall not constitute an
18 adjudication of the rights of the parties.

19 (f)(1) In any case in which a judgment awarding the custody of a minor has been entered,
20 the court entering such judgment shall retain jurisdiction of the case for the purpose of
21 ordering the custodial parent to notify the court of any changes in the residence of the
22 child.

23 (2) In any case in which visitation rights have been provided to the noncustodial parent
24 and the court orders that the custodial parent provide notice of a change in address of the
25 place for pickup and delivery of the child for visitation, the custodial parent shall notify
26 the noncustodial parent, in writing, of any change in such address. Such written
27 notification shall provide a street address or other description of the new location for
28 pickup and delivery so that the noncustodial parent may exercise such parent's visitation
29 rights.

30 (3) Except where otherwise provided by court order, in any case under this subsection
31 in which a parent changes his or her residence, he or she must give notification of such
32 change to the other parent and, if the parent changing residence is the custodial parent,
33 to any other person granted visitation rights under this title or a court order. Such
34 notification shall be given at least 30 days prior to the anticipated change of residence and
35 shall include the full address of the new residence.

36 (g) The judge may order reasonable attorney's fees and expenses of litigation, experts, and
37 the child's guardian ad litem and other costs of the child custody action and pretrial

1 proceedings to be paid by the parties in proportions and at times determined by the judge.
2 Attorney's fees may be awarded at both the temporary hearing and the final hearing. A
3 final judgment shall include the amount granted, whether the grant is in full or on account,
4 which may be enforced by attachment for contempt of court or by writ of fieri facias,
5 whether the parties subsequently reconcile or not. An attorney may bring an action in his
6 or her own name to enforce a grant of attorney's fees made pursuant to this subsection.

7 19-9-4.

8 (a) On motion of either party in any action or proceeding involving determination of the
9 award of child custody between parents of the child, when such motion contains a specific
10 recitation of actual abuse, neglect, or other overt acts which have adversely affected the
11 health and welfare of the child, the court judge may direct the appropriate family and
12 children services agency or any other appropriate entity to investigate the home life and
13 home environment of each of the parents. In any action or proceeding involving
14 determination of the award of child custody between parents of the child when during such
15 proceedings a specific recitation of actual abuse, neglect, or other overt acts which have
16 adversely affected the health and welfare of the child has been made the court judge shall
17 also have authority on its his or her own motion to order such an investigation if in the
18 court's judge's opinion the investigation would be useful in determining placement or
19 custody of the child. The court judge may also direct either party to pay to the agency the
20 reasonable cost, or any portion thereof, of the investigation. The report of the investigation
21 will be made to the court judge directing the investigation. Any report made at the
22 direction of the court judge shall be made available to either or both parties for a reasonable
23 period of time prior to the proceedings at which any temporary or permanent custody is to
24 be determined. Both parties shall have the right to confront and cross-examine the person
25 or persons who conducted the investigation or compiled the report if adequate and legal
26 notice is given.

27 (b) This Code section shall apply only with respect to actions or proceedings in which the
28 issue of child custody is contested; and this Code section is not intended to alter or repeal
29 Code Sections 49-5-40 through 49-5-44.

30 19-9-5.

31 (a) In all proceedings under this article between parents, it shall be expressly permissible
32 for the parents of a minor child to present to the court judge an agreement respecting any
33 and all issues concerning custody of the minor child. As used in this Code section, the term
34 'custody' shall include, without limitation, joint custody as such term is defined in Code

1 Section 19-9-6. As used in this Code section, the term 'custody' shall not include payment
2 of child support.

3 (b) The ~~court~~ judge shall ratify the agreement and make such agreement a part of the
4 ~~court's~~ judge's final judgment in the proceedings unless the ~~court~~ judge makes specific
5 written factual findings as a part of the final judgment that under the circumstances of the
6 parents and the child in such agreement that the agreement would not be in the best
7 interests of the child. The ~~court~~ judge shall not refuse to ratify such agreement and to make
8 such agreement a part of the final judgment based solely upon the parents' choice to use
9 joint custody as a part of such agreement.

10 (c) In its his or her judgment, the ~~court~~ judge may supplement the agreement on issues not
11 covered by such agreement.

12 19-9-6.

13 As used in this article, the term:

14 (1) 'Joint custody' means joint legal custody, joint physical custody, or both joint legal
15 custody and joint physical custody. In making an order for joint custody, the ~~court~~ judge
16 may order joint legal custody without ordering joint physical custody.

17 (2) 'Joint legal custody' means both parents have equal rights and responsibilities for
18 major decisions concerning the child, including the child's education, health care,
19 extracurricular activities, and religious training; provided, however, that the ~~court~~ judge
20 may designate one parent to have sole power to make certain decisions while both parents
21 retain equal rights and responsibilities for other decisions.

22 (3) 'Joint physical custody' means that physical custody is shared by the parents in such
23 a way as to assure the child of substantially equal time and contact with both parents.

24 (4) 'Sole custody' means a person, including, but not limited to, a parent, has been
25 awarded permanent custody of a child by a court order. Unless otherwise provided by
26 court order, the person awarded sole custody of a child shall have the rights and
27 responsibilities for major decisions concerning the child, including the child's education,
28 health care, extracurricular activities, and religious training, and the noncustodial parent
29 shall have the right to visitation. A person who has not been awarded custody of a child
30 by court order shall not be considered as the sole legal custodian while exercising
31 visitation rights.

32 19-9-7.

33 (a) A ~~court~~ judge may award visitation by a parent who committed one or more acts
34 involving family violence only if the ~~court~~ judge finds that adequate provision for the

1 safety of the child and the parent who is a victim of family violence can be made. In a
2 visitation order, a court judge may:

- 3 (1) Order an exchange of a child to occur in a protected setting;
 - 4 (2) Order visitation supervised by another person or agency;
 - 5 (3) Order the perpetrator of family violence to attend and complete, to the satisfaction
6 of the court judge, a certified family violence intervention program for perpetrators as
7 defined in Article 1A of Chapter 13 of this title as a condition of the visitation;
 - 8 (4) Order the perpetrator of family violence to abstain from possession or consumption
9 of alcohol, marijuana, or any Schedule I controlled substance listed in Code Section
10 16-13-25 during the visitation and for 24 hours preceding the visitation;
 - 11 (5) Order the perpetrator of family violence to pay a fee to defray the costs of supervised
12 visitation;
 - 13 (6) Prohibit overnight visitation;
 - 14 (7) Require a bond from the perpetrator of family violence for the return and safety of
15 the child; and
 - 16 (8) Impose any other condition that is deemed necessary to provide for the safety of the
17 child, the victim of family violence, or another family or household member.
- 18 (b) Whether or not visitation is allowed, the court judge may order the address of the child
19 and the victim of family violence to be kept confidential.
- 20 (c) The court judge shall not order an adult who is a victim of family violence to attend
21 joint counseling with the perpetrator of family violence as a condition of receiving custody
22 of a child or as a condition of visitation.
- 23 (d) If a court judge allows a family or household member to supervise visitation, the court
24 judge shall establish conditions to be followed during visitation."

25 SECTION 5.

26 Code Section 19-7-22 of the Official Code of Georgia Annotated, relating to petition for
27 legitimation of a child, is amended by revising subsection (f.1) as follows:

28 "(f.1) The petition for legitimation may also include claims for visitation or custody. If
29 such claims are raised in the legitimation action, the court may order, in addition to
30 legitimation, visitation or custody based on the best interests of the child standard. In a
31 case involving allegations of family violence, the provisions of paragraph ~~(2)~~ (4) of
32 subsection (a) of Code Section ~~19-9-1~~ 19-9-3 shall also apply."

33 SECTION 6.

34 This Act shall become effective on July 1, 2007, and shall apply to all child custody
35 proceedings and modifications of child custody filed on or after July 1, 2007.

1

SECTION 7.

2 All laws and parts of laws in conflict with this Act are repealed.