

FRANKLIN COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION
COLUMBUS, OHIO

Charles Evans,
Plaintiff,

v.

State of Ohio, *et al*,
Defendants.

08CVH 1-1 15756

CASE NO.

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2008 NOV -3 PM 4:41
CLERK OF COURTS

NOTICE OF RESERVATION

Plaintiff Evans notices this Court of his reservation of federal jurisdiction over the federal constitutional issue(s) raised herein. Reservation provides the state court to render a decision on the constitutionality of Ohio Rule of Civil Procedure 75(N); Ohio R.C. §3109.043 and R. C. §3109.04 {hereinafter, "Ohio's statutory scheme"} jointly; severely; and in *pari materia*; pursuant to federal law where the deprivation of Plaintiff's fundamental rights have been denied in 2 separate Franklin County Ohio domestic cases involving totally different parties, specifically Case No. 96 DR 1865 and pending Case No. 07 DR 0355. Further, Plaintiff's request for prospective relief is necessary where Ohio's statutory scheme is capable of repetition, yet continues to evade review. Further, there is no constitutionally compliant remedy under Ohio's statutory scheme where the same unconstitutional evidentiary standard in Ohio R.C. §3109.04 is applicable to post-decree custody modifications.

Plaintiff Evans asserts that Ohio's domestic relations courts do not have jurisdiction where the statutory evidentiary standard, assessing arbitrary factors in determining a child's best interests, violates the supremacy clause where the state court implicates fundamental parental rights of all Ohio parents without a finding of unsuitability by clear and convincing evidence. Where parents are implicitly presumed to be fit under Ohio law, the fundamental liberty rights of parents, *i.e.* custodial determination, are abridged by state decree. R.C. §3109.04 expressly violates the supremacy clause, Article IV, where *no* evidentiary standard *meets federal requirements* depriving suitable parents of custody and pursuant to modification of an original custody decree of minor children.

Under Ohio's current statutory scheme, Ohio parents are deprived of associational rights, substantive liberty, autonomy and privacy rights, and equal protection where similarly situated parents shall be treated similarly, pursuant to the 1st, 9th, and 14th amendments.

As written, Ohio's statutory scheme is not narrowly construed, therefore, vague; is discretionary; and is wholly invalid. Where no due process requirements exist on the face of Ohio's statutory scheme, *i.e.*, an evidentiary standard based on a series of arbitrarily applied factors; *there are no set of circumstances* where Ohio parents can achieve a constitutionally compliant remedy in any Ohio court. The facial language of Ohio's statutory scheme expressly denies due process one hundred percent (100%) of the time. Pursuant to a post-decree modification of custody, under Ohio's statutory scheme, the already deprived parent *must further* evince a change of circumstances, an evidentiary requirement *not* at issue in an original custody proceeding.

In *Galluzzo v. Champaign County Court of Common Pleas*, No. 04-3527, January 31, 2006, the Federal Sixth Circuit Court of Appeals addressed the proper venue to raise a constitutional challenge to Ohio's statutory scheme, concluding that a state court of competent jurisdiction is "an adequate forum to argue the constitutional issues presented".

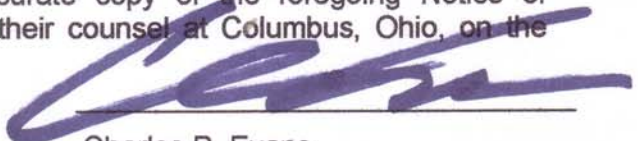
WHEREFORE, Plaintiff Charles Evans files this reservation pursuant to the authority in *Government & Civic Employees Organizing Comm, CIO v. Windsor*, 353 U.S. 364, 366-67 (1957); *England v. Medical Examiners*, 375 U.S. 411 (1963); and *Gottfried v. Medical Planning Services, Inc.*, Electronic Citation: 1998 FED App. 0113P(6th Cir.). See 28 USC §1441, 1446, & 1447.



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Reservation was served upon all parties or their counsel at Columbus, Ohio, on the 3rd day of November 2008.



Charles R. Evans