

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

<b>FATHERS AND FAMILIES, Inc.,</b>	)	
<b>TODD W. SANDAHL,</b>	)	
<b>MICHAEL T. FOGG</b>	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CIVIL ACTION No.
	)	
<b>ROBERT A. MULLIGAN, in his</b>	)	
<b>Official capacity, and THE JUSTICES</b>	)	
<b>OF THE TRIAL COURT OF</b>	)	
<b>MASSACHUSETTS</b>	)	
Defendants.	)	
	)	

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiffs complain as follows:

**Introduction**

1. This complaint seeks declaratory and injunctive relief against Robert A. Mulligan, in his official capacity as Chief Justice for Administration and Management of the Massachusetts Trial Court, and the Justices of The Trial Court of Massachusetts, to enjoin the mandatory use of new Child Support Guidelines (“New Guidelines”) after January 1, 2009.
2. The New Guidelines were developed by a committee of The Trial Court, and unilaterally approved and mandated by Chief Justice Mulligan, without a vote of the Massachusetts General Court or a signature of the Governor.
3. Defendant Justice Mulligan did not obtain and use data on the cost of raising children to develop the New Guidelines, in violation of federal law and regulation requiring them to use

such data, and thus the resulting child support orders under the New Guidelines are not rationally related to the costs of raising a child. They fail to account for substantial child raising cost variations depending on geography, tax status, marital status, employment status, receipt of public benefits, and a number of other factors.

4. The New Guidelines violate the equal protection clause of the Fourteenth Amendment to the United States Constitution on their face, because they mandate different obligations, rights, and outcomes for married, divorced, and never married parents in relation to support of their children.
5. The New Guidelines violate the equal protection clause of the Fourteenth Amendment to the United States Constitution as applied, because they mandate different obligations, rights, and outcomes for parents in relation to the support of their children, based on categories of employment, receipt of public benefits, tax status, marital status, and other factors.
6. The New Guidelines violate the due process clause of the Fourteenth Amendment to the United States Constitution, in that they were essentially passed into law by judicial fiat of Defendant Justice Mulligan, without consideration by or vote of the legislature and signature of the governor. Plaintiffs are also deprived of property without due process of law, in that the amount of support required to be paid under the New Guidelines is not rationally related to the amount it costs to raise a child.
7. Defendants have violated the unambiguous provision of Article XXX of the Massachusetts Declaration of Rights, by allowing a Justice of the Trial Court to enact a law in lieu of a vote by the State Legislature, and subsequent signature of the governor. Virtually all other states in the union require a vote of the state legislature for enactment of their child support guidelines.

### **Jurisdiction**

8. Jurisdiction in the United States District Court is proper under 28 U.S.C. §1331, as the matters in the Complaint arise under the Constitution and Laws of the United States, pursuant to 42 U.S.C. §1983.
9. Supplemental jurisdiction of state claims arises under 28 U.S.C. §1367, as the state claims arise out of the same case and controversy as the federal claims.

### **Parties**

10. Plaintiff ***Fathers and Families, Inc.*** (“Fathers and Families”) is a non-profit corporation incorporated in the Commonwealth of Massachusetts, with a principal place of business at 20 Park Plaza, Suite 628, Boston, Massachusetts. Fathers and Families has thousands of members, who are primarily divorced, re-married, or never-married fathers who seek reform of child custody and child support policies. The majority of its members pays child support and are subject to the Massachusetts child support guidelines.
11. Plaintiff ***Todd W. Sandahl***, is a natural person residing in Walpole, Massachusetts, and has one child for whom he pays child support. He will be directly and negatively affected by the implementation of the New Guidelines. He is not a member of Fathers and Families.
12. Plaintiff ***Michael T. Fogg***, is a natural person residing in Holyoke, Massachusetts, and the adoptive father of five children for whom he is paying child support. He will be directly and negatively affected by the implementation of the New Guidelines. He is not a member of Fathers and Families.
13. Defendant ***Robert A. Mulligan***, is the Chief Justice for Administration and Management (“CJAM” or “Justice Mulligan”) for the department of the Trial Court of the Commonwealth

of Massachusetts, with a principal place of business at 2 Center Plaza, Suite 540, Boston, Massachusetts. He is named as a defendant in his official capacity only.

14. Defendant *Justices of The Trial Court of Massachusetts* are judges within the various departments of the judicial branch of the Commonwealth of Massachusetts, and are mandated to apply the new Child Support Guidelines to any case involving child support in Massachusetts.

### **Standing of Plaintiff Fathers and Families**

15. Plaintiff Fathers and Families has standing to bring this complaint on behalf of its individual members. Its membership is primarily made up of fathers who are obligated to pay child support in Massachusetts and who are subject to the Massachusetts Child Support Guidelines, and who will experience large increases in support owed under the New Guidelines.

16. Individual members of Fathers and Families also have individual standing to sue.

17. Plaintiff Fathers and Families seeks to protect interests that are fundamental to its purpose, namely to address issues of the payment of child support by its members.

18. Neither the claim made by Fathers and Families, nor the relief that it requests, absolutely require the participation of its members in the suit. Naming such members as parties is optional.

19. The president of Fathers And Families, Ned Holstein, M.D., (“Dr. Holstein”), served on The Child Support Guidelines Task Force which developed the new Child Support Guidelines, and authored a minority report refuting many of the findings of the Task Force. He served on the Task Force, as a representative of Plaintiff Fathers and Families.

20. A major portion of the budget and time of the paid staff and volunteers of Fathers and Families, Inc. is devoted to addressing issues involving the child support obligations of its members. Fathers and Families personnel have lobbied for child support reform for many years, have demanded and obtained public hearings about the issue, have participated in the public hearings in large numbers, have submitted recommendations for improvements to the Guidelines on several occasions in past years about the issue, and have sponsored speakers and informational programs and discussions to inform its members about child support law and issues.
21. Fathers and Families and its members participated in prior public hearings concerning earlier revisions of the Massachusetts Child Support Guidelines, and submitted recommended changes at those times.

### **Facts**

#### ***Establishment, Duties, and Composition of the Task Force and Duty of Justice Mulligan***

22. On October 6, 2006, Defendant Justice Mulligan appointed a Child Support Guidelines Task Force (“Task Force”) to conduct a comprehensive review of the Massachusetts Child Support Guidelines, pursuant to 42 USC §667, and 45 CFR §302.56.
23. The president of Plaintiff Fathers and Families, Dr. Ned Holstein, M.D., was appointed as one of eleven members of the Task Force.
24. The Task Force met a number of times, after which the majority of its members propounded recommendations for new Child Support Guidelines, and issued a report describing the

process and the rationale by which they were derived, a copy of which report is attached as Exhibit 1. (“Task Force Report”)

25. Dr. Holstein prepared a Minority Report, in which he argued against many of the methodologies and conclusions of the majority, and documented many undesirable consequences of the New Guidelines. Two other members of the Task Force signed on to important parts of the minority report, where indicated in its text. A copy the Minority Report is attached as Exhibit 2. (“Minority Report”)
26. Justice Mulligan requested that the Task Force members “commit themselves to an open process.” However, the Task Force operated in secret and imposed a partial confidentiality requirement at the outset of the process and a strict, comprehensive confidentiality requirement one year into the two-year process. While the Task Force heard testimony from the public in three hearings, its ultimate recommendations ignored or directly contravened the positions overwhelmingly favored by the public, who had no further role in the process subsequent to the hearings. The minority report only briefly describes the large discrepancy between the wishes of the public and the recommendations of the Task Force because Defendant Justice Mulligan arbitrarily limited the minority report to only six pages. (Task Force Report, Exhibit 1, Page 19; Minority Report, Exhibit 2, Page 5-6)
27. On November 6, 2008, Defendant Justice Mulligan, in his official capacity as CJAM, “issued” the new Child Support Guidelines, (“New Guidelines”), which will be required to be applied to any cases determining child support in the Probate and Family Court after January 1, 2009. See Exhibit 3 attached (“New Guidelines” with worksheet and chart).
28. Defendant Justice Mulligan adopted and promulgated the New Guidelines verbatim as received from the Task Force, together with its incorporated arithmetic formula, Worksheet and text.

29. The Massachusetts General Court has never considered, debated or voted upon the New Guidelines, nor sent them to the Governor for signature or veto.
30. Virtually all states in the Union, including California, Texas, Illinois, New York, New Jersey, Virginia, Ohio, Wisconsin, Florida, Georgia, Pennsylvania, Washington, and many others, require a vote of the state legislature to enact child support guidelines into law.
31. The New Guidelines apply to all child support determinations made by any department of The Trial Court pursuant to Massachusetts General Laws Chapter 208, Section 28, related to child support in divorce, M.G.L. c. 209C §9, related to child support in a paternity case, M.G.L. c. 209A §3, related to child support in domestic abuse restraining order cases, and M.G.L. c. 209 §32F, related to actions for separate support of married persons.
32. Representatives of several major organizations representing attorneys in the Commonwealth, as well as representatives of state agencies whose budget would be enhanced by larger child support orders, constituted the majority of the members of the Task Force, and were given the majority of input into the process of determining the New Guidelines.

**Task Force Ignores Federal Requirement to Use Data On the Cost of Raising Children**

33. The applicable federal regulation, 45 C.F.R. §302.56 (h), states, in pertinent part:

(h) As part of the review of a State's guidelines required under paragraph (e) of this section, **a State must consider economic data on the cost of raising children** and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data **must** be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.  
[Emphasis Added]

34. Section 128 of Public Law 100-485, passed by Congress in 1988, requires:

The Secretary of Health and Human Services shall, by grant or contract, **conduct a study of the patterns of expenditures on children in 2-parent families, in single-**

**parent families following divorce or separation, and in single-parent families in which the parents were never married,** giving particular attention to the relative standards of living in households in which both parents and all of the children do not live together. The Secretary shall submit to the Congress no later than 2 years after the date of the enactment of this Act a full and complete report of the results of such study, including such recommendations as the Secretary may have for legislative, administrative, and other actions. There are authorized to be appropriated such sums as may be necessary to carry out this section. [Emphasis added]

35. In formulating the New Guidelines, the Task Force did not rely upon data from the study conducted pursuant to P.L. 100-485 or data from any other study showing the costs of raising children in Massachusetts.
36. The Task Force did not attempt to acquire such data, which would have been readily available by commissioning a study.
37. The Task Force considered various models for calculating the cost of raising children, but “ultimately.... decided not to rely directly on any one particular economic model or specific set of results” for formulating the New Guidelines. Exhibit 1, Page 24. Every model, method, and metric considered by the Task Force was rejected as invalid in its report as substantially inaccurate in some fashion. Exhibit 1, Pages 20-25.
38. The Task Force established the New Guidelines with arbitrary figures, based upon unproven and esoteric “broad principles”, not economic data reflecting the cost of raising children when the parents are apart, as required by law, or on any economic model that approximates those costs. Exhibit 1, Page 24.
39. The presumption of the Task Force and Justice Mulligan in establishing the New Guidelines is that child support payments depend on income alone, not the expenses incurred by the custodial parent to raise the child. This approach is not supported by Federal or state law.
40. The New Guidelines do not accomplish any consistent goal, objective, or rationale. They do not create the standard of living of the child that would exist were the parents together. They

do not equalize either the household income or the standards of living of the two parents' households. They do not divide the available income equally. They do not closely track the actual amounts families expend on their children. They do not correlate with some reasonably defined "basic needs" of the child. Children of a first relationship are treated differently than children of a subsequent relationship. Thus, without an identifiable rationale, the New Guidelines are arbitrary and capricious.

41. The Task Force failed to account for the impact of Federal and State income taxes, Social Security and Medicare taxes, state sales taxes, excise taxes on items such as fuel, earned income credits, head of household status, assignment of child exemptions, progressive tax rates, impact of alimony, and many other tax related issues on parents situated in various economic strata.
42. As a result, child support amounts under the New Guidelines stated to be twenty-five percent of a Payor's income for a single child, are actually on the order of thirty-five percent or more of a Payor's after-tax income for a single child, and even higher for two or more children.
43. When costs of health insurance, college or other education costs, extra-curricular activities ranging from summer camp to sports to music lessons are added to the amount of the basic order, they go much higher still.
44. The New Guidelines do not account for the necessary expenditures incurred in setting up a separate household in which the child will reside for the presumed one third of the time with the non-custodial parent. (See Exhibit 1, Page 38-39) These costs are such things as first and last month's rental and security deposits, mortgage closing costs, new furnishings and household necessities, new utility deposits, or an additional vehicle, which were previously held in common in the intact household.

45. The Massachusetts Department of Children and Families has determined that the amount of \$116 per week per child is appropriate to pay foster parents for the costs they incur in raising a child, regardless of the income of the foster parents. See Exhibit 3, Minority Report, Pg 5.
46. The child support amounts mandated by the New Guidelines start to exceed this \$116 cost per week of raising a child at the Payor's approximate weekly income level of \$469.
47. The amounts of support mandated in the new guidelines range from \$20 per week, all the way to \$915 per week for one child or \$1098 for two children, and beyond.
48. On information and belief, the child support amounts in the New Guidelines are substantially in excess of those in place in other states. The Task Force failed to explain or justify this discrepancy.

***Inequities and Deficiencies of New Guidelines***

49. Application of the New Guidelines would result in the impoverishment or imposition of great hardship upon many of the non-custodial father members of Plaintiff Fathers and Families, as well as the individual plaintiffs and their families, as child support can more than double under the New Guidelines.
50. Plaintiffs acknowledge that it is not possible to formulate perfect guidelines which account for every variable and possibility faced by Payors and Recipients of child support. This Complaint addresses unlawful procedure used to formulate the New Guidelines, and significant inequities in their application. The correction of these unlawful procedures and discriminatory application requested by the Plaintiffs would be statistically quantifiable, practical, and feasible within a plan which must be broad based enough to apply to a wide range of situations.

51. The minority report, attached as Exhibit 2, does not fully express the inequities inherent in the New Guidelines, because Defendant Justice Mulligan arbitrarily limited the report to six pages, as opposed to fifty-two pages in the Majority Report. The minority report demonstrates that under the New Guidelines, the standard of living of a custodial parent will be almost double that of the non-custodial parent who earns the same amount, even after taking into account the greater expenditures by the custodial parent on the child.
52. For lower-income Payors, the child support obligations under the New Guidelines are so high that basic living expenses cannot be paid on the available remainder. A minimum wage Payor under the New Guidelines will have only \$9,978 per year to live on after paying income taxes, payroll taxes and child support, barely enough to pay rent alone in Boston.
53. In many case, the new Guidelines more than double the child support payments that non-custodial parent must make, as compared to the existing child support guidelines. See Exhibit 2, Minority Report. For upper income Payors, the child support obligation in real dollars is astronomical, and do not reflect the actual cost of caring for a child. The Task Force provides no rationale for these enormous increases.
54. For example, the New Guidelines set annual child support for one child at \$12,480, \$22,828, and \$47,580 per year for a non-custodial parent with an annual pre-tax income of, respectively, \$50,000, \$100,000 and \$250,000, subject to adjustment by the income of the custodial parent. The amounts are significantly higher for two to five children. For three children, the amount of child support mandated in the New Guidelines is \$15,875, \$29,083, and \$60,770 respectively. These amounts are greatly in excess of the actual cost of raising a child in Massachusetts.
55. For Payors whose income exceeds the highest level specified in the New Guidelines, they fail to cap the child support obligation at the highest level set in the New Guidelines.

56. The New Guidelines allow the court to order the non-custodial parent to pay the full amount of child support to the custodial parent until a child reaches age of 23 if the child attends college, even if the child does not continue to reside with the parent, whereas a married parent has no legal obligation to support an unemancipated child in any amount after the child reaches the age of 18, regardless of college attendance. See Exhibit 1, Pages 41-42.
57. The New Guidelines require unmarried fathers to pay prescribed large portions of their incomes to mothers, but do not require married parents to any particular standard of support of their children other than the avoidance of gross neglect. The New Guidelines for the first time would apply this approach to parents awarded equal shared physical custody. (New Guidelines, Exhibit 3, Page 4-5)
58. Under the New Guidelines, the cost of health insurance is not equitably allocated. By statute, health insurance must be ordered for children as part of a child support order. The recipient cannot be ordered to provide health insurance for a child, but the Payor can be ordered to do so. Under the New Guidelines, the Payor can only deduct the cost of health insurance from gross income *prior* to calculating the support amount. Thus, in most cases, the Payor will be responsible for at least 75-80% of the cost of health insurance, regardless of the financial circumstances of the recipient.
59. The New Guidelines are based on the premise that a child will spend one third time with the non-custodial parent. See Exhibit 1, Pages 38-39. However, they make no provision, nor provide any credit against the amount of support due, for the Payor's cost of housing, food, clothing, transportation, books, toys, and other expenses made necessary by having a fully equipped second home for the child, nor for any variations in the amount of time the child spends with the Payor.

60. The New Guidelines do not account for income received by custodial parents in various forms of direct or in-kind public assistance, such as Section 8 housing assistance, fuel assistance, WIC vouchers, food stamps, state-paid health insurance, and the like, which can amount to many thousands of dollars of income-equivalent per month.
61. The New Guidelines treat divorced and never-married persons inequitably by assuming that alimony can account for part of the child support obligation, without accounting for more favorable tax treatment of alimony in the U.S. Tax Code for divorced persons. However, a never-married parent cannot have part of his child support obligation treated as alimony. (See Exhibit 1, Task Force Report, Pages 34-35).
62. The Task Force blurs the distinction between alimony and child support, and in so doing, reveals its intention to provide spousal support under the guise of child support. See Task Force Report, Exhibit 1, Page 36. Alimony was not intended by the Legislature to provide “additional support for the children of divorced or divorcing parents,” but to provide spousal support.
63. The New Guidelines penalize never-married parents in relation to divorced parents, concerning the application of alimony, in two ways. First, they effectively require never-married parents as well as divorced parents to pay alimony. (“The maximum [income] was increased to provide equal treatment for children born of married and never-married parents, recognizing that alimony is not available to never-married parents.” Exhibit 1, Task Force Report at p. 7.) Second, divorced Payors can re-define child support as alimony, and obtain a tax deduction, a benefit not available to never-married parents, since courts cannot award alimony in paternity judgments.
64. Child support amounts that include alimony are not permitted under Massachusetts law. In cases where a divorced parent becomes subject to an order to pay alimony, the amounts in

the New Guidelines effectively produce substantial double-counting, as the implicit alimony in the new child support amounts is added to the explicit alimony that the parent is also ordered to pay. Such situations, which would be common, could produce combined child support and alimony orders mandating that a non-custodial parent pay half or even three-quarters of his after-tax income to a custodial parent.

65. The New Guidelines provide no adjustment for the Payor's income, payroll, or other taxes, when the Recipient's income is untaxed, when the recipient receives untaxed public benefits such as public housing, food stamps, and health care in lieu of taxable income, or where the rates of taxation of both parents are grossly different, resulting in vast *net* income inequities.
66. The Task Force failed to adjust for the impact of tax advantages that accrue to custodial parents, which are unavailable to non-custodial parents. These include the right to claim children as exemptions, the Child Tax Credit, the lower tax rates for those filing as "head of household" rather than "single," the availability of the Earned Income Credit, and the fact that child support is paid from after-tax income and is tax-free to the recipient.
67. The New Guidelines contain no rebuttable presumption that a parent paying more than half of the child-raising expense for a child is entitled to the tax exemption for the child.
68. The New Guideline amounts do not take into account any contributions of a new partner or spouse to the household income of a custodial parent, which often substantially change the effective income of the recipient and enhance the living standard of a child.
69. The New Guidelines state that the need to support a second family is not a reason for a downward modification of an order to support a child from a first family. In most cases, children of second families will have considerably less financial support than children of first families. (Minority Report, pages 4-5.) No rationale is given why children of second families should be discriminated against in favor of children of first families. This provision

concerning second families conflicts with the mandate in M.G.L. c. 208 §28 and M.G.L. c. 209C §9, which provide that the court shall take into consideration responsibility for the support of other children, even if a court order for such maintenance does not exist.

70. The New Guidelines do not account for substantial geographic differences in the cost of housing and other expenses which vary greatly throughout the Commonwealth.

71. The New Guidelines do not require any accounting or accountability whatsoever by the recipient of child support payments, to assure that the child support payments are expended for costs related to raising the child, rather than for the sole benefit of the custodial parent.

#### **Impact of the New Guidelines on Plaintiffs**

72. Many members of Fathers and Families will suffer irreparable harm if the New Guidelines are implemented.

73. The members of Fathers and Families have varying economic, family, custody, employment and tax situations, but almost all of them will suffer harm within a reasonably short period of time, due to the imposition of higher support orders under the New Guidelines. Some Members are divorced and single, some never-married, some divorced and re-married. Some have new children, some are wage earners, and some are self-employed. There is a large income range among the members, from low to high.

74. In contrast to the current Guidelines, the New Guidelines permit complaints for modification of child support to be brought to the Probate and Family court without any showing of a change in circumstances, provided that the current child support Order has been in effect for three or more years, including the three years preceding January 1, 2009.

75. In the great majority of cases, the amount of child support payable under the New Guidelines exceeds the amount payable under the current Guidelines. As a result, it can be expected that the majority of recipients under existing orders will file complaints for modification. This will impose a great burden on non-custodial parents, who will have to pay attorneys to defend against such Complaints.
76. The New Guidelines provide at least ten bases for deviations from the specified amounts. Because the specified amounts in the New Guidelines are extremely high, it can be expected that in desperation, non-custodial parents will litigate to achieve deviations, which will be complex, protracted, contentious, and fact-specific, and will impose heavy burdens on fathers for attorneys to represent them.
77. Plaintiff Todd Sandahl pays child support for one child in the amount of \$345 per week, per order of the Norfolk Probate and Family Court. Under the New Guidelines, his child support obligation will rise \$50 per week.
78. Plaintiff Michael Fogg pays child support for five children in the amount of \$96 per week, per order of the Hampshire Probate and Family Court. Under the New Guidelines, his child support obligation will rise to \$194 per week.

### **Count I –Declaratory Relief**

79. All averments in the preceding paragraphs are re-asserted and incorporated into this count.
80. The Task Force did not base the calculation of the New Guidelines on economic data on the costs of raising children, as required by P.L. 110-485, 42 USC §667, and 45 CFR §302.56.
81. The actions of the Defendants set forth above violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution, in that they deprive the plaintiffs of property without due process of law.

82. The actions of the Defendants set forth above constitute a violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution, in that they treat married, divorced, and never-married parents differently in the matter of the support of their children. The actions of the defendants also discriminate against the plaintiffs on the basis of employment, receipt of public benefits, tax status, and other class distinctions.
83. The actions of the Defendants set forth above violate the Separation of Powers clause in Article XXX of the Massachusetts Declaration of Rights, in that Defendant Justice Mulligan unilaterally “enacted” a new law with broad sweeping powers, which substantially affects the rights and property of tens of thousands of people in the Commonwealth, and in so doing, usurped the functions of the legislative and executive branches.
84. This Court can declare the rights and obligations of any interested party pursuant to 28 U.S.C. §2201 and Rule 57 of The Federal Rules of Civil Procedure.
85. The Plaintiffs have established the existence of an actual legal controversy, regarding the promulgation and implementation of the New Guidelines by the Commonwealth in violation of the legal and constitutional requirements set forth herein.
86. The issue is ripe for judgment, because, in absence of action by this Honorable Court, the New Guidelines will go into effect on January 1, 2009, to the legal detriment of the Plaintiffs and all other similarly situated persons.
87. A ruling in this matter will resolve the controversy among the parties.
88. **WHEREFORE**, Plaintiffs request a declaration by this Honorable Court, that the New Guidelines:
- Violate the protected due process rights of the Plaintiffs;
  - Deprive the Plaintiffs of equal protection of the law;
  - Violate Article XXX of the Massachusetts Declaration of Rights;

## **Count II – Violation of Equal Protection**

89. All averments in the preceding paragraphs are re-asserted and incorporated into this count.
90. The Fourteenth Amendment to the United States Constitution provides that no state may deny to any person within its jurisdiction the equal protection of the laws.
91. The New Guidelines are discriminatory on their face in that without justification they impose substantial burdens on unmarried parents that are not imposed on married parents.
92. The New Guidelines are discriminatory on their face, in that divorced parents are treated differently from similarly situated parents who were never married, because the former can re-categorize child support as alimony, carrying with it a tax deduction, which is a benefit denied to the latter.
93. The New Guidelines will have a highly disparate and negative impact on men as applied, in comparison with women, because the large majority of Payors are men.
94. The New Guidelines are discriminatory on their face, as the non-custodial parent must make child support payments based on gross income, without accounting for a disparity in tax treatment and other involuntary reductions that substantially reduce disposable income.
95. The New Guidelines are discriminatory on their face in that they allow a court to order that divorced or never married parents to pay child support for a child up to age 23, whereas married parents cannot be legally required to supply support to a child after the age of 18 in Massachusetts, pursuant to M.G.L. Ch. 231 §85P.
96. The New Guidelines are discriminatory on their face in that they allow a court to require divorced or never married parents to pay college costs of their children, whereas married parents cannot be legally required to pay such costs.

97. The New Guidelines are discriminatory on their face in that they allocate the substantial cost of health insurance unequally and inequitably, with the majority of the cost to be borne by the non-custodial parent, regardless of the resources of the custodial parent.
98. The New Guidelines are discriminatory on their face, in that new children of a remarried Payor are treated differently under the law than the Payor's children in the custody of the other parent.
99. The Defendants are state actors, operating at all pertinent times under the color of state law.
100. **WHEREFORE**, the Plaintiffs request declaratory and injunctive relief, as set forth in Counts I, V, and VI, declaring that the New Guidelines violate the right of the Plaintiffs to equal protection under the law, and to enjoin implementation of the New Guidelines until the state has met the requirements set forth in Count VI below.

### **Count III – Violation of Due Process**

101. All averments in the preceding paragraphs are re-asserted and incorporated into this count.
102. The Fourteenth Amendment to the United States Constitution asserts that no state may deprive any person of life, liberty, or property, without due process of law.
103. Defendant Justice Mulligan deprived the Plaintiffs and other persons similarly situated of due process of law when he promulgated the New Guidelines based on income of the parties, rather than on the cost of raising children in the Commonwealth of Massachusetts.
104. The Massachusetts Legislature, as the elected representatives of the plaintiffs, did not have an opportunity to consider or vote on the New Guidelines after their promulgation by Defendant Justice Mulligan, nor did the Governor have an opportunity to sign or veto said bill, depriving the plaintiffs of due process of law.

105. The New Guidelines provide no mechanism by which to challenge their applicability to the individual situation of the Plaintiffs, which deprive them of property without due process of law.
106. The Defendants are state actors, operating at all pertinent times under color of state law.
107. **WHEREFORE**, the Plaintiffs request declaratory and injunctive relief, as set forth in Counts I, V, and VI, declaring that the New Guidelines violate the due process rights of the Plaintiffs, and enjoin implementation of the New Guidelines until the state has met the requirements set forth in Count VI below.

**Count IV –Massachusetts Declaration of Rights – Article XXX - Separation of Powers**

108. All averments in the preceding paragraphs are re-asserted and incorporated into this count.
109. Article XXX of the Massachusetts Declaration of Rights states, in pertinent part:  
The Judicial [Department] shall never exercise the legislative and executive power, or either of them: to the end that it may be government of laws and not of men.
110. The Legislature may delegate execution of certain of its functions, but only under explicit legislative guidelines.
111. The Legislature has not provided guidelines or standards of any sort to Defendant Justice Mulligan or to the Task Force with respect to setting the New Guidelines.
112. The Legislature did not mandate that Defendant Mulligan or the Task Force collect data concerning the cost of raising a child in the Commonwealth, as a basis for making its child support determinations, as required by Federal Law.

113. The Legislature did not consider debate or vote on legislation to enact the New Guidelines into law, nor did the governor have an opportunity to sign or veto such legislation.
114. When Defendant Justice Mulligan unilaterally “enacted” the New Guidelines, without consideration by or a vote of the state Legislature, he improperly usurped the legislative power, and imposed a government “of men”, in fact, of a single man, in violation of Article XXX of the Massachusetts Declaration of Rights.
115. **WHEREFORE**, the Plaintiffs request declaratory and injunctive relief, as set forth in Counts I, V, and VI, declaring that the New Child Support Guidelines violate the separation of powers required under Article XXX of the Massachusetts Declaration of Rights, and enjoining implementation of the New Guidelines until the state has met the requirements set forth in Count VI below.

#### **Count V –Preliminary Injunction**

116. All averments in the preceding paragraphs are re-asserted and incorporated into this count.
117. The Plaintiffs will be irreparably harmed by the implementation of the New Guidelines after January 1, 2009, in that their child support obligations are likely to be substantially increased by up to 200% over the orders which are currently in place, without any basis in cost data showing such an increase in the cost of raising a child.
118. Plaintiffs have no adequate remedy at law other than this action, as the New Guidelines provide no mechanism for appealing their basic premises, or their presumptive and mandatory application to all subsequent child support orders, either through the legislative process or on an individual basis in court.

119. Plaintiffs have no adequate remedy at law by which they could recover excess amounts of child support after they have been paid pursuant to a court order under the New Guidelines.
120. The plaintiffs are likely to succeed on the merits of this case, based on the numerous violations of legal requirements and constitutional protections set forth herein.
121. While the Plaintiffs will be irreparably harmed by the imposition of substantially higher child support obligations, neither the defendants nor non-custodial parents will suffer detriment if an injunction is granted. Plaintiffs merely seek to preserve the *status quo* until the Court can make a full inquiry on the merits of the matter. The current child support guidelines, in place since 2001 with only minor changes, would be operative pending the enactment of new child support guidelines in compliance with legal and Constitutional requirements, and no recipient's order would be reduced because of the requested injunction.
122. The public interest is greatly and negatively affected by the unilateral imposition of confiscatory child support guidelines without basing them on factual data, without due process of law, with inequitable and unjustified differences in application to similarly situated individuals, without a vote of enactment into law by the state Legislature, and without a signature of the Governor. Hence, their application should be enjoined until the process complies with all lawful requirements.
123. **WHEREFORE**, the Plaintiffs request this Honorable Court issue a preliminary injunction to enjoin the Defendants from implementation of the New Guidelines on January 1, 2009.

#### **Count VI – Permanent Injunction**

124. All averments in the preceding paragraphs are re-asserted and incorporated into this count.

125. The Plaintiffs will be permanently and irreparably harmed if the Defendants implement the New Guidelines as presently constituted.
126. The Plaintiffs will be permanently and irreparably harmed by any new child support guidelines which fail to safeguard the due process rights of the Plaintiffs, as set forth herein.
127. The Plaintiffs will be permanently and irreparably harmed by any new child support guidelines which fail to insure equal protection of the law as set forth herein.
128. The Plaintiffs will be permanently and irreparably harmed by any new child support guidelines, unless they are submitted to the State Legislature for debate and a vote, and for the signature or veto of the Governor.
129. Plaintiffs will have no adequate remedy at law, if new child support guidelines are promulgated which violate the legal and constitutional rights of plaintiffs set forth above.
130. Plaintiffs are without legal remedy to recover any excess amounts of child support ordered by a court to be paid under the New Guidelines.
131. The plaintiffs are likely to succeed on the merits of this case, based on the numerous violations of legal requirements and constitutional protections set forth herein.
132. While the Plaintiffs will be irreparably harmed by the imposition of substantially higher child support obligations, without being based upon the actual cost of raising a child in Massachusetts, and without them being enacted into law by the Legislature or signed by the Governor, neither the defendants nor non-custodial parents will suffer detriment from this Honorable Court requiring that Defendants comply with all legal and constitutional requirements in promulgating future child support guidelines.
133. The public interest is greatly and negatively affected by the unilateral imposition of confiscatory child support guidelines without basing them on actual child raising costs, without due process of law, with inequitable and unjustified differences in application to

similarly situated individuals, without a vote of enactment into law by the state Legislature, and without a signature of the Governor. Hence, no Defendant or their agents satisfy the public interest by promulgating guidelines which fail to comply with all lawful and constitutional requirements.

134. **WHEREFORE**, the Plaintiffs request that this Honorable Court issue a permanent injunction to enjoin the Defendants, or any of their agents, from issuance and implementation of any new Massachusetts child support guidelines, until the Commonwealth of Massachusetts complies with all federal and state statutory and constitutional requirements for calculating new child support guidelines, as follows:

- A. That current data on the actual costs of raising children in the Commonwealth of Massachusetts be obtained in a manner consistent with best sampling practices, including data which accounts for variations in the cost of raising children, including, but not limited to: employment status of the parties, public benefits received by the parties, geographic location of the households and housing costs, marital status of the parties, re-marriage and new children, federal and state taxes required to be paid by the parties, assignment of tax exemptions for children, quantity of parenting time for each parent, and any other pertinent variables identified in the process of gathering such data;
- B. That child support guidelines be based on the data collected, reflecting the cost of raising children in the Commonwealth of Massachusetts;
- C. That any child support guidelines treat all persons similarly situated as equal under the law;
- D. That any child support guidelines preserve the due process rights of all persons subject to their application.

- E. That any proposed child support guidelines be submitted to the State Legislature for debate and vote in accordance with its normal rules and procedures, and to the Governor for approval before becoming law.

Respectfully Submitted,  
The Plaintiffs, by their Counsel,

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Gregory A. Hession J.D.  
172 Thompson Street  
Springfield, MA 01109  
413.746.3333  
BBO No. 564457