

**UNITED STATES DISTRICT COURT 1  
DISTRICT OF MASSACHUSETTS**

**FATHERS AND FAMILIES, Inc.,**  
**TODD SANDAHL,**  
**MICHAEL FOGG,**  
Plaintiffs,

vs.

**ROBERT A. MULLIGAN, in his**  
**Official capacity, and THE JUSTICES**  
**OF THE TRIAL COURT OF**  
**MASSACHUSETTS**  
Defendants.

CIVIL ACTION No.

**MEMORANDUM OF LAW SUPPORTING PLAINTIFFS' REQUEST  
FOR PRELIMINARY INJUNCTION**

Plaintiffs submit this memorandum of law to support their request for a preliminary injunction.

**I. Introduction**

Plaintiffs seek a preliminary injunction against the Defendants in this complaint, to enjoin them from implementing new child support guidelines (“New Guidelines”) which are scheduled to be applied to all cases that come before any department of the Trial Court of Massachusetts after January 1, 2009, in which child support is to be ordered. If the New Guidelines are allowed to go into effect, Plaintiffs will be irreparably harmed by the imposition of substantially larger child support orders, and a number of discriminatory effects and violations of their legal rights, as enumerated in the Complaint and in the affidavits attached hereto.

By this injunction, Plaintiffs seek only to preserve the *status quo*, pending full review of the matter by this Honorable Court, and do not ask the Court to change or vacate any existing

child support order which is in place under the current child support guidelines, nor will it stop new child support orders from being issued under the existing guidelines.

Plaintiffs will show that the New Guidelines were formulated without obtaining data on the cost of raising a child in Massachusetts, as required by federal law and regulations, and without a vote of the Massachusetts General Court, its state legislature, as required by the due process clause of the United States Constitution and by Article XXX of the Massachusetts Declaration of Rights. They will also show that the New Guidelines are formulated in such a manner as to apply unequally and discriminatorily to the support of children by married, divorced, and never-married persons.

## **II. General Factual Considerations**

In October of 2006, Defendant Robert A. Mulligan, Chief Justice of Administration and Management for the Trial Court of Massachusetts, appointed a Child Support Guidelines Task Force (“Task Force”) to conduct a comprehensive review of the Massachusetts Child Support guidelines. (Report of the Child Support Guidelines Task Force, Exhibit 1 to Holstein Affidavit, Page 3, hereafter, “Task Force Report”)

The Task Force did not comply with the requirements of 45 CFR 302.56 (h), which is applicable to all states who take federal funds for child support enforcement, which includes the Commonwealth of Massachusetts. It provides that:

(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.

The task force considered a number of methods of determining the cost of raising children, rejecting them all as not accurate. Exhibit 1, Task Force Report, Pages 21-25. No

attempt was made to gather actual data from families in Massachusetts or elsewhere concerning the cost of raising children, or variations in components of those costs, such as for housing costs, division of parenting time, effect of public benefits, and other significant factors.

The Task Force formulated a set of criteria for the New Guidelines, which it set forth in its Task Force Report, Attached as Exhibit 1 to the Holstein Affidavit. It also prepared a set of New Guidelines, attached as Exhibit 3 to the Holstein Affidavit. Defendant Mulligan has unilaterally “issued” the New Guidelines, in lieu of Legislative and Executive approval, with the inviolable mandate that they be applied to any new child support calculations and orders issued by any department of The Trial Court in Massachusetts after January 1, 2009.

The New Guidelines are arbitrary, since they are not based on actual data regarding the cost of raising a child in the Commonwealth, nor on any economic model intended to estimate those costs. They are also inequitable, in that they fail to account for numerous variations in circumstances of parties to orders, such as large differences in the cost of housing around the Commonwealth, differences in taxation, receipt of public in-kind benefits, and differences in the situation of a divorced and never married person paying support.

The New Guidelines have numerous discriminatory aspects built into them, such as allowing a portion of child support to be paid as tax deductible alimony by formerly married Payors, a benefit not available to never-married Payors. They fail to account for the support of new children of remarried or re-partnered parents. They do not adjust for the extra housing needs of poorer non-custodial parents, or the larger proportion of their income paid in taxes.

At no time, did the Task Force or the Defendant Mulligan submit the proposed New Guidelines for debate and vote by the Massachusetts General Court, and subsequent signature of the Governor, in violation of Article XXX of the Massachusetts Declaration of Rights.

### **III. Standing of Plaintiff Fathers And Families, Inc.**

Plaintiff Fathers and Families, Inc. (“Fathers and Families”) has standing to represent its members in the case at bar. According to Ned Holstein, president of Fathers and Families, it consists of thousands of members, men and women, with varying custody, family, and economic circumstances. Holstein Affidavit, Par. 3. It and its members have been heavily involved in child support public policy issues. Holstein Affidavit, Pars. 4 through 6.

An association has standing to bring suit on behalf of its membership where: (1) its members themselves would have standing to sue; (2) it seeks to protect interests that are germane to its own purpose; (3) neither the claim nor the requested relief require the participation of its members in the suit. See [Hunt v. Washington Apple State Advertising Commission, 432 U.S. 333, 343, 53 L. Ed. 2d 383, 97 S. Ct. 2434 \(1977\).](#)

Regarding the first prong of the *Hunt* case above, the individual members of Fathers and Families have standing to sue, as they will be individually affected by the New Guidelines. Many of them will likely be individual defendants in new complaints for modification, brought by Recipients of child support to obtain yet larger amounts of child support. See Holstein Affidavit, Par. 13. On the second point of *Hunt*, Fathers and Families has a long history of seeking to protect its members from excessive child support awards. It has done so by participation in the public policy debate involving child support issues, and assisting its members to understand the application of the law. Holstein Aff., Par. 4-6. Finally, on the third *Hunt* criterion, the issues before the court in the case at bar can be fully adjudicated by the Fathers and Families organization, with or without the participation of individual member plaintiffs.

Thus, Fathers and Families is a proper plaintiff with standing to bring a complaint in this case.

#### **IV. Application of the New Guidelines to Plaintiffs**

The New Guidelines will be applicable to any new child support determinations for the Plaintiffs starting on January 1, 2009, under Massachusetts General Laws Chapter 208, Section 28, regarding child support pursuant to divorce, MGL Ch. 209C §9, regarding child support pursuant to a case of paternity, MGL Ch. 209A §3, regarding support in domestic abuse restraining order cases, and MGL Ch. 209 §32F, regarding actions for separate support of married persons. (Holstein Affidavit, Exhibit 3, Page 2 of the New Guidelines.)

Defendant Justices of all Massachusetts Trial Court Departments must apply the New Guidelines in all cases where the court determines that support is to be paid by a non-custodial parent to a custodial parent, after January 1, 2009.

Under the terms of the New Guidelines, a recipient may file a complaint for modification of child support without a “substantial change of circumstances”, as long as an order has been in place for three years. Until now, a substantial change of circumstances has been a requirement for filing a complaint for modification of a child support judgment. See M.G.L. c. 208 §28; New Guidelines, Section III (A). A Recipient may also file a complaint for modification if it would result in a higher child support order, as long as a change of circumstances has occurred.

The Probate and Family Court issues the majority of child support determinations, in cases of divorce, paternity, modification of divorce and paternity judgments, separate support, and restraining order cases. The District Court Department makes a number of child support determinations pursuant to its jurisdiction granted under M.G.L. Ch. 209A, the Massachusetts domestic abuse restraining order statute. The other departments of The Trial Court also have jurisdiction under that statute, and may make child support determinations under it as well.

The Plaintiffs herein will be defendants in numerous complaints for modification of child support if the New Guidelines are allowed to be utilized. Their new support orders will be based

on the higher guideline amounts. The Plaintiffs will also be improperly subjected to the violations of their due process as set forth herein, deprivation of equal protection of the law, deprived of the right of redress, and the right to have had the state legislature and Governor debate the matter and pass a bill into law concerning the terms of the New Guidelines.

## V. **Legal Argument**

### A. **Introduction**

The method which Justice Mulligan used to amend the Massachusetts Child Support Guidelines was not respectful of the due process rights of the plaintiffs, did not ensure equal protection for them under the law, and did violence to the strict and unambiguous separation of powers doctrine set forth in Article XXX of the Massachusetts Declaration of Rights.

### B. **Standard of Review for Injunction**

The standard for obtaining injunctive relief in the First Circuit requires a movant to demonstrate: (1) irreparable injury if the injunction is not granted; (2) that such injury outweighs any harm which granting injunctive relief would inflict on appellee; (3) a likelihood of success on the merits; and (4) that the public interest will not be adversely affected by the granting of the injunction. See [Auburn News Co., Inc. v. Providence Journal Co., 659 F.2d 273, 277 \(1st Cir. 1981\)](#). Of these four factors, the probability-of-success component is the most critical in determining the propriety of injunctive relief. See, e.g., [Planned Parenthood League v. Bellotti, 641 F.2d 1006, 1009-22 \(1st Cir. 1981\)](#). This memorandum will review these factors as applied to the facts of the case at bar.

**C. Likelihood of Success on the Merits - Substantive Law**

**1. Due Process of Law**

The violation of the due process rights of the Plaintiffs revolves around two separate and distinct deprivations: 1) The failure of Justice Mulligan to comply with the requirements of federal law and regulations concerning the review and revision of state child support guidelines; and 2) The failure of Justice Mulligan to submit the proposed guidelines to the State Legislature for a vote and signature or veto of the Governor.

Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the [Due Process Clause of the Fifth](#) or [Fourteenth Amendment](#)." [Mathews v. Eldridge, 424 U.S. 319, 332, 47 L. Ed. 2d 18, 96 S. Ct. 893 \(1976\)](#). Child support guidelines inherently deprive persons of property. Failure to pay amounts ordered under the guidelines can, and usually does, result in arrest and incarceration. Thus, fundamental rights are implicated in this matter.

In order to prevail on a claim for deprivation of procedural due process, "the claimant must either avail himself of the remedies guaranteed by state law or prove that the available remedies are inadequate." [Lamoureux v. Haight, 648 F. Supp. 1169, 1175 \(D. Mass. 1986\)](#), quoting [Hudson v. Palmer, 468 U.S. 517, 533, 539 \(1984\)](#). (O'Connor, J. concurring). For claims to reach constitutional magnitude and be cognizable under 42 U.S.C. §1983, the Plaintiffs must allege, and ultimately prove, that the defendants acted under color of state law, that they were deprived of constitutionally protected property because of defendants' actions, and that the deprivation occurred without due process of law. [Parratt v. Taylor, 451 U.S. 527, 536-37, 68 L. Ed. 2d 420, 101 S. Ct. 1908 \(1981\)](#).

First, when Justice Mulligan established the New Guidelines, without gathering any data concerning the cost of raising a child, he acted arbitrarily and capriciously, which deprived the

plaintiffs of due process. See *Sierra Club v. Martin*, 168 F.3d 1 (11<sup>th</sup> Cir. 1999). In the *Sierra Club* case, the Court determined that the National Forest Service acted arbitrarily and capriciously and violated applicable law when it approved timber sales from a Georgia national forest, without gathering data first, concerning the impact of the timber sales on the residents.

In a case challenging the constitutionality of child support guidelines in the State of Washington, the Washington State legislature had already passed the guidelines into law, rather than enact them by one unelected judge. See *P.O.P.S. v. Gardner*, 998 F.2d 764, 766 (9<sup>th</sup> Cir. 1993). They were also based on “hard data”, unlike in the present case. *Id.* at 769.

Most other states include the child support guidelines in their statutes which have to be passed by the state legislature.<sup>1</sup> See e.g.: Cal. Family Code §4055. A minority of states delegate the amounts to a judicial committee, without legislative action, as Massachusetts has done.<sup>2</sup>

The statutes of many states include the federal requirement to obtain data on the cost of raising a child. For Example, the California Family Code states:

(b) The review shall include economic data on the cost of raising children and analysis of case data, gathered through sampling or other methods, on the actual application of the guideline after the guideline's operative date. The review shall also include an analysis of guidelines and studies from other states, and other research and studies available to or undertaken by the Judicial Council. California Family Code 4054(b).

In the case of establishing child support guidelines, due process consists of gathering and utilizing actual cost data of raising a child, and having the State Legislature debate and enact the child support guidelines as the people’s representative, thus allowing public input and validation

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<sup>1</sup> The legislatures of most larger states have passed child support guidelines as statutes. See e.g. Pennsylvania Code 1910.16 ff; Ohio Rev. Code 3119.1 et seq.; Code of Virginia § 20-108.2; Texas Family Code Sec. 154.121; Illinois 750 ILCS 5/505; New Jersey St. Title 2A, Chap. 34-23; New York Dom. Rel. Laws – Art. 13 §§ 236, 240, 243; Florida St. 61.30; Cal. Family Code §4055; Georgia Code § 19-6-15; Wisconsin DCF 150; Washington RCW 26.19.020.

<sup>2</sup> Michigan Comp. Laws § 552.605c; Arizona [Admin. Order No. 2004-29](#).

of their terms. See Section 3 below. Additionally, the executive branch, in the form of the Governor, must be allowed to sign or veto the bill, as an additional check on government power.

## 2. Equal Protection Under the Law

The Plaintiffs have been treated unequally by provisions of the New Guidelines, on their face and as applied, in the manner in which child support obligations inequitably and discriminatorily apply by marital status and by gender. Additionally the New Guidelines have the effect of discriminating on the basis of legitimacy.

In 1988, the U.S. Supreme Court adopted an intermediate standard of review for the review of classifications based on illegitimacy of children. *Clark v. Jeter*, 486 U.S. 456 (1988); See also, [Caban v. Mohammed](#), 441 U.S. 380 (1979). That means that a suspect government action will be reviewed to assure that it has a substantial relationship to an important government interest. See *Craig v. Boren*, 429 U.S. 190 (1976).

Regarding sex-based classifications, the Supreme Court has said that, in order to be valid, a sex-based classification also requires an intermediate level of scrutiny, but recent case law has elevated it to a seemingly higher level of "exceedingly persuasive justification." *United States v. Virginia*, [518 U.S. 515](#) (1996); See Also [Mississippi University for Women v. Hogan](#), 458 U.S. 718 (1982).

"These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws." *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Any classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that

all persons similarly circumstanced shall be treated alike." *Reed v. Reed*, 404 U.S. 71, 76 (1971), citing *Royster Guano Co. v. Virginia*, [253 U.S. 412, 415 \(1920\)](#).

The categorizations enforced by the New Guidelines do not show a substantial relationship to an important government interest, and are arbitrary and capricious, not reasonable and consistent. The New Guidelines assume an important government interest in ensuring that parents support their children, which is not a goal contested by the Plaintiffs. However, they do not provide a rationale for treating never-married parents, divorced parents, and married parents differently in a number of ways, or for the disparity as applied to men and women who are subject to child support orders.

The New Guidelines are not neutral on their face, or as applied. A facially neutral law does not violate the [equal protection clause](#) merely because it has a disproportionate impact; the disproportionate impact must be traced to a purpose to discriminate. [Washington v. Davis](#), [426 U.S. 229, 48 L. Ed. 2d 597, 96 S. Ct. 2040 \(1976\)](#). As discussed below, the disproportionate impact of the New Guidelines appears to be the deliberate policy of the Task Force which propounded them.

First, on the matter of alimony, divorced parents can denominate some of their child support obligation as alimony, which obtains favorable tax treatment for the Payor by allowing the Payor to take a deduction from the gross taxable income for all alimony paid. 26 U.S.C. §71. Child support is not so deductible. 26 U.S.C. §262. The child support orders of divorced parents can be deemed alimony by the Probate and Family Court, but M.G.L. c. 209C, the paternity statute, does not provide for the possibility of alimony. Thus, the illegitimate children are treated differently in the matter of child support than those who are born to married, but later divorced, parents. Never-married parents, with precisely the same income as divorced parents, are left with less income with which to support their children.

Massachusetts state law does not require a parent to provide support for a child after the age of 18, or earlier if the child is legally emancipated. See M.G.L. c. 231 §85P and M.G.L. c. 4 §7 ¶48. However, divorced and never married parents can be required to do so by court order, and required by the New Guidelines to pay a full amount of child support until a child reaches the age of 23, if the child is in college. This requirement adheres even if the child does not live with the non-custodial parent/Recipient. No married parent is required to provide this measure of financial support to a child.

Additionally, a court can order divorced and never-married parents to supply college costs to a child until graduation. By contrast, married parents cannot be ordered to provide college costs to their children.

Thus, divorced and never-married parents are treated in a significantly different manner than married ones, in matters of the support of older children.

Finally, the New Guidelines discriminate, as applied to men and women, in that the vastly larger numbers of Payors of child support are men, while Recipients are primarily women. The women Recipients, who can, by virtue of their status as custodial parents, avail themselves of numerous public benefits not available to Payors. However, these benefits are not counted as part of income, so as to balance the Payor's child support obligation. All of the other inequities set forth in the Complaint and affidavits attached hereto enumerate a long list of such inequities, inherent in the application of the New Guidelines.

Thus, the New Guidelines must be enjoined as depriving the Plaintiffs of equal protection of the law.

3. **The Legislature is the Proper Branch to Oversee Child Support Guidelines Under Article XXX of the Massachusetts Declaration of Rights.**

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 a government of laws and not of men.

The means which Justice Mulligan used to amend the Massachusetts child support guidelines encroached on the province of the legislative and executive branches of the government, in violation of Article XXX. The process of appointing an unelected committee of insiders to prepare what amounts to legislation, and then circumventing the legislature by unilaterally imposing it himself, is precisely the type of government action that Article XXX was intended to prevent.

The political benefits of ignoring Article XXX are substantial. There is no difficult gauntlet of proposing legislation, having it considered by committee, having it amended, and then voted upon, and possibly being rejected. It avoids dealing with a potentially volatile political issue, which could arouse protest and conflict when its details were aired in public committee hearings and floor debate. By approving it clandestinely, it avoids any possibility of having the plan, or even any of its details, rejected. It completely avoids public scrutiny and potential embarrassment of explaining the substantial increases in child support, since the public had no input until the plan was fully formed, approved and unassailable by any representative of the people. It avoids accountability by elected representatives who may pay a price for ignoring their constituents. It also eliminates the possibility of rejection by the legislature.

By avoiding legislative action, the Governor is also spared a political hot potato that could elicit much protest against his office by political dissenters. The large number of payors of child support could have derailed the implementation of these guidelines by political pressure and involvement at both the legislative and executive branches, and completely destroyed the whole project. And that is exactly how it is supposed to work, under Article XXX.

“The General Court may not delegate the general power to make laws.” *Opinion of the Justices*, 393 Mass. 1209, 1219 (1984). Nor may it “abandon any of the powers entrusted to it by the Constitution or transfer those powers to any other person or group of persons.” *Opinion of the Justices*, 328 Mass. 674, 675 (1952). The New Guidelines comprise the type of government proposal which has traditionally fallen under the ambit of the legislative branch. Rather than merely applying mathematical formulas, the derivation of which could readily be delegated, the New Guidelines put into place a comprehensive framework of rules which consist of creating policies that govern much of the social, familial, and financial well being of hundreds of thousands of families around the Commonwealth.

In reviewing a claim of improper delegation of legislative power, the Massachusetts court considers three factors: "(1) Did the Legislature delegate the making of fundamental policy decisions, rather than just the implementation of legislatively determined policy; (2) does the act provide adequate direction for implementation, either in the form of statutory standards or, if the local authority is to develop the standards, sufficient guidance to enable it to do so; and (3) does the act provide safeguards such that abuses of discretion can be controlled?" " [Construction Indus. of Mass. v. Commissioner of Labor & Indus.](#), 406 Mass. 162, 171, 546 N.E.2d 367 (1989), quoting [Chelmsford Trailer Park Inc. v. Chelmsford](#), 393 Mass. 186, 190, 469 N.E.2d 1259 (1984).

Plaintiffs assert that the procedure used by Justice Mulligan does not satisfy the standard set out above. Child support guidelines should be enacted through the normal legislative process. They involve fundamental value judgments which are the essence of the province of the State Legislature, and should not be delegated.

On the first point, the Legislature has made an improper delegation of fundamental policy, since it actually provided no legislative policy at all regarding the matter of child support. All delegation is not inherently improper, as long as it merely involves fleshing out the details of

a policy adopted by the legislature. See, e.g. *Di Loreto v. Fireman's Fund Ins. Co.*, 383 Mass. 243, 246 (1981). However, the entire extent of legislative guidance is only an oblique reference in M.G.L. c. 208 §28 and parallel statutes which simply require that courts, “shall apply the child support guidelines promulgated by the chief justice for administration and management.” Under no reading could that thin reference constitute a “fundamental policy” adopted by the legislature on how to construct child support guidelines.

Defendant Justice Mulligan makes numerous “fundamental policy decisions” in the New Guidelines, including, but not limited to:

- Whether Massachusetts child support policy should be to provide primarily for the economic needs of the child, or for the custodial parent household as a whole;
- Whether Massachusetts child support policy should be based on the actual costs of raising children, or on the incomes of the parties, or on some other standard;
- Whether Massachusetts child support policy should provide the same economic support to all children, or whether children of a second relationship should be disadvantaged compared to children of a first relationship;
- Whether Massachusetts child support policy should require indigent Payors to pay significant amounts of child support as a matter of principle, even if the child is economically comfortable in the home of the custodial parent;
- Whether Massachusetts child support policy should require incarcerated payers to pay child support as a matter of principle, thus leading to substantial arrearages for most inmates at the time of release;
- Whether Massachusetts child support policy should call for child support orders high enough that never-married custodial parents can receive sufficient funds to make up for the alimony for which they are not eligible;

- Whether pro-rating child support orders according to the division of parenting time is a desirable social policy because it promotes shared parenting, or an undesirable social policy because it might increase custody litigation;
- Whether or not Massachusetts child support policy should require payments for college expenses, or whether this improperly imposes a burden on non-custodial parents that is not placed on married parents;
- Whether or not Massachusetts child support policy should favor maximum economic advantage to the child by including the income from second jobs and overtime pay in the definition of income for purposes of the Guidelines, or should promote increased parenting by the payer by releasing him from the obligation to work excessive hours;

All of the foregoing fundamental policy issues should properly have been debated by the State Legislature, with public input and contribution, before being placed into child support legislation.

Delegation by the State Legislature, or seizure of the Legislative Power by Justice Mulligan, went too far in other matters as well. At a minimum, the Legislature should have started with a requirement to gather data about the cost of child raising in Massachusetts, as required by 45 CFR 302.56. A bill proposing legislation to establish child support guidelines would have further specified a number of parameters on which such guidelines must be constructed, as per the bulleted points above, and would have clearly proscribed the due process and equal protection errors with which the New Guidelines are riddled. The statutes passed in states referenced in footnote 2 – as well as many others - have found no need to delegate the process of formulating child support guidelines at all, but the referenced statutes have been developed with all the specifics included within them.

This failure by the Legislature or usurpation by the Judiciary – it is unclear from which direction the problem originated – is particularly important in light of the fact that failure of a Payor to fulfill an obligation under the child support guidelines can result in arrest, fine and imprisonment by the court. Any law, the disobedience of which can result in what amount to criminal penalties, is inherently undelegable. [Opinion of the Justices, 239 Mass. 606 \(1921\)](#)

There are no safeguards in the Legislature’s “hands-off” approach, to stop the unbridled increases in child support which appeared in the New Guidelines, which were not based on any collection or application of child-raising cost data. Delegation can only be legitimate when proper safeguards are provided, such as judicial review and public accountability. [Corning Glass Works v. Ann & Hope, Inc., 363 Mass. 409, 420-424 \(1973\)](#); See also [Arlington v. Board of Conciliation & Arbitration, 370 Mass. 769, 777 \(1976\)](#).

In sum, the enactment into law of the New Guidelines by Defendant Justice Mulligan violated Article XXX of the Massachusetts Declaration of Rights, and should be struck down as unconstitutional.

Finally, as indicated in Footnote 2 above, most of the larger states, comprising the majority of the population of the United States, require their state legislatures to approve child support guidelines. Of all of them, Massachusetts has the clearest and most unambiguous “separation of powers” provisions in its state constitution.

***D. Irreparable Harm***

The Plaintiffs will be irreparably harmed by the implementation of the New Child Support Guidelines after January 1, 2009, because their child support obligations may be substantially increased by up to 200% over the orders which are currently in place, without a basis in data showing such an increase in the cost of raising a child. Application of the New

Guidelines would result in irreparable harm to many Payors and their families in the following ways:

1. Failure to pay the child support amounts ordered often results in an court order for arrest and incarceration;
2. The New Guidelines more than double the amounts owed for child support in many cases;
3. The New Guidelines require payment of support in amounts far in excess of the cost of raising a child in Massachusetts;
4. The New Guidelines require the non-custodial parent to pay 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 after the child reaches the age of 18, regardless of college attendance.
5. The New Guidelines require a non-custodial unmarried parent to be responsible for college costs for a child, whereas a married parent has no legal obligation to pay such costs.
6. Under the New Guidelines, health insurance is not equitably treated. The recipient cannot be ordered to provide health insurance for a child, but the payor can be ordered to do so, at up to 75-80% of the cost of health insurance.
7. The New Guidelines are based on the premise that a child will spend one third time with the non-custodial parent. However, they make no provision, nor provide any credit against the amount of support due, for the cost of housing, food, clothing, transportation, books, toys, and other expenses made necessary by having a fully equipped second home for the child.
8. The New Guidelines, for the first time, allow a divorced Payor to have alimony account for part of the child support obligation, which gets favorable tax treatment, a benefit which never married parents cannot claim.

9. The New Guidelines provide no adjustment for income, payroll, or other taxes, where one parent's income is taxed, and the other's is not, or where the rates of taxation of both parents are grossly different, resulting in vast *net* income inequities.
10. The New Guidelines do not provide a uniform method of allocating and crediting tax exemptions for children, even though such allocations can result in large variations in disposable income on the same gross earnings.
11. 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 living standard upon which the guidelines are premised.
12. The New Guidelines do not account for the expenses of new children (and wife or partner) in addition to those of the child or children for whom he is already paying child support.
13. 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 thousands of dollars of income-equivalent per month.
14. The New Guidelines do not account for substantial differences in the cost of housing and other expenses which vary greatly throughout the Commonwealth.
15. The New Guidelines do not account for the necessary expenditures incurred in setting up a separate household in which the child will reside when with the non-custodial parent, such as rental and security deposits, first and last month's rent or mortgage closing costs, new furnishings and household necessities, new utility deposits, or an additional vehicle, of which were previously held in common in the intact household.
16. The New Guidelines fail to cap the obligations of high-income non-custodial parents at the highest level set in the New Guidelines. Instead, that level is described as a presumptive

minimum, depriving the high-income parent of certainty – the purpose of the Guidelines – and encouraging litigation.

**E. Balance of Harms**

While the Plaintiffs will be irreparably harmed by the imposition of substantially higher child support obligations, neither the Defendants or any custodial parents/Recipients will suffer detriment, in that the current guidelines, in place since 2001 with only minor changes, would stay in place with no further change. Essentially, the *status quo* would be preserved and no support order would be reduced by granting the requested preliminary injunction.

**F. Public Policy Considerations**

The public interest is greatly and negatively affected by the unilateral imposition of confiscatory child support guidelines without basing them on factual cost data of raising children, without due process of law, with inequitable and unjustified differences in application to similarly situated individuals without equal protection of the law, 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.

**G. Conclusion**

In light of the foregoing, Plaintiffs respectfully request that this Honorable Court issue the requested preliminary injunction, enjoining the imposition of the New Guidelines, pursuant to the terms in the accompanying Proposed Preliminary Injunction.

Respectfully Submitted,  
The Plaintiffs, By their Counsel,

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