Children Made Fatherless By Family Courts

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One impressive vote last November second has been overlooked by the media. By 85 to 15 percent, a ballot initiative in Massachusetts approved equal legal and physical custody of children whose parents are divorced.

That ballot initiative is nonbinding, but it certainly is indicative of the will of the people and the growing recognition that children are best off under the care of both parents. The initiative came out of the grassroots with a massive signature-gathering effort during the summer.

The proposition appeared on the ballot as follows: "Shall the State Representative from this district be instructed to vote in favor of legislation requiring that in all separation and divorce proceedings involving minor children, the courts shall uphold the fundamental rights of both parents to the shared physical and legal custody of their children and the children's right to maximize their time with each parent, so far as is practical, unless one parent is found unfit or the parents agree otherwise, subject to the requirements of existing child support and abuse prevention laws?"

This initiative was sponsored by a fathers' rights group whose members believe that fathers are systematically discriminated against by family courts which nearly always award physical custody to the mother even when the father has committed no fault. Family courts typically deny faultless fathers their equal parental rights even when state law appears to require equal custody.

California Family Law, for example, states (Sec. 3010(a)): "The mother . . . and the father . . . are equally entitled to the custody of the child." The only specific examples the statute gives for denying custody to a parent are child abuse, false accusations of child abuse, abuse of someone else with whom the person has a domestic relationship, substance abuse, and conviction of certain felonies.

State laws about custody rights vary, and only about a dozen states specify a legal presumption in favor of equal custody. Iowa's new law says that if a court denies a request for joint physical custody, the judge must explain why it's not in the best interest of the child.

Whether or not a state law mandates equal rights to both parents, family courts appear instead to rely on a concept called "the best interest of the child." Since that notion is wholly subjective, an undefinable rule with no standards or accountability, in practice it rests on the personal whim or bias of the family court.

Family court judges find unwelcome the task of rendering a judicial decision detached from the law and from any due-process finding of fault, so they call on a court-appointed psychologist to provide his opinion of who should have custody. But the issue before the court is not psychological (except in rare cases of mental illness), and the psychologist's credentials no more qualify him to determine what is "the best interest of the child" than the judge -- or the father or mother.

The social ills that are caused by the lack of a father role-model and discipline-dispenser in the home have been voluminously reported. We've been led to believe that the plight of fatherless children is caused by husbands walking out on their wives, fathers abandoning their children, and deadbeat dads.

That may be a primary cause in the matriarchal welfare system, but no evidence supports a claim that large numbers of non-welfare fathers are voluntarily abandoning their children. Thousands, perhaps

millions, of middle-class children are growing up fatherless because the family courts have deprived them of their fathers.

One of the best-kept secrets in American society today is that two-thirds of divorces are now sought by wives, not husbands. The feminist movement has taught wives that they can seek "liberation" by walking out on the marriage contract and marital duties and still reap the benefits of marriage, i.e., their children and his money.

Some 80 percent of divorces are involuntary, over the objections of one spouse. Very few of these divorces involve grounds such as desertion, adultery, or abuse.

We urgently need a comprehensive study of how many family court decisions deprive fathers of their parental rights, and deprive children of their fathers, when that awesome punishment is not based on any finding of fault. Information is difficult to gather because most of what family courts do is not available to public scrutiny.

How many children are separated by judicial fiat from involuntarily divorced fathers who have done nothing wrong? How many children are separated from their fathers because of questionable child abuse accusations without any evidentiary hearing or due process of law?

Fathers are starting to fight back. During 2004, federal class action suits were filed against 46 states on behalf of an estimated 25 million non-custodial parents, primarily fathers, claiming violation of their right to equal custody of their children.

The gay-rights lobby has a national strategy based on federal "equal protection" to get their day in court to demand marriage licenses. What we really need are laws ensuring that children of broken homes have equal access to their fathers and mothers.