NATIONAL FAMILY
CIVIL RIGHTS CENTER

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March 18, 2014

New York State Senate
Committee on Children and Families
Hon. Chairman Simcha Felder
Legislative Office Building 944
Albany, N.Y. 12247

RE: Senate Bills S-949 and S-5316

Dear Honorable Chairman and Committee Members:

We write to urge the Committee on Children and Families to pass Senate bills 949 and 5316 out of Committee so that this important legislation may be presented on the floor of the Senate.

The **NATIONAL FAMILY CIVIL RIGHTS CENTER ("NFCRC")** is the only national organization focused on protecting and enhancing the civil rights of parents, children and families in government and the legal system. We focus exclusively on issues where the liberty interests of the family intersect with public policy and the courts, including in custody and matrimonial proceedings, and we accomplish this through advocacy at state and federal levels and through aggressive litigation.

With offices and a local presence in New York, we offer our expertise and assistance to the Committee while this important legislation is under consideration and we address the Committee's attention to the following important points.

In our experiences, as reported by our affiliate attorneys and members, and confirmed by a number of important studies, parents and children are best served after divorce by an equal, collaborative, shared parenting model where each parent shares equally in the legal and physical custody of their children when there are no findings of abuse.[1]

Indeed, across the United States, state courts and legislatures are reforming domestic relations laws to establish the presumption of shared legal and physical custody, including with respect to parenting time, in custody and matrimonial proceedings. It is time for New York to do so too.

[1] As an excellent preliminary resource, we draw the Committee's attention to Kruk, Edward (PhD). "***Shared Parental Responsibility: A Harm Reduction-Based Approach to Divorce Law Reform***" Journal of Divorce and Remarriage, Vol. 43(3/4) 2005, page 119 <Available online at http://www.haworthpress.com/web/JDR>

All too often, when parents ask the courts for custody determinations, this unfortunately occurs at the most inopportune point in the family's dynamics. Indeed, the Holmes and Rahe Stress Scale, which has remained the standard-bearer for ranking the relative stressfulness of life events in adults, places divorce and marital separation at second and third only to the death of a spouse and well above other life-altering events including imprisonment, dismissal from work, home foreclosure, or the deaths of close family members.[2]

Consequently, when the relationship between two parents has soured and the courts are asked to make a custody determination, the acrimonious feelings held by the parties toward each other is at its most visceral point, which unquestionably clouds the judgment of parents. As any divorce attorney can attest, the dissolution of a marriage is never a pleasant experience and often the process is laden with emotional hostility. Too often this hostility manifests itself in parties bitterly contesting the custody of their children—not because one parent is inherently less-capable of providing love, affection and care for the children—but because parents feel they can impact each other most adversely by affecting parent-child relationships.

Also inextricably intertwined with the above are the undisputed adverse impacts of divorce on long-term family economics.[3] Combined, and as divorce rates climb, the impacts of costly custody litigation together with the already-difficult economics of two separate households post-divorce, gives further reason to codify the presumption of equal custody and parenting time.

This is especially relevant here because New York is one of only nine states which do not enumerate factors for determining custody.[4] Instead, and despite urgent calls for reform for over a decade from parents, attorneys, mental health practitioners, advocacy groups ranging from the **NFCRC** to the National Council of Juvenile and Family Court Judges, to the New York judiciary itself; New York largely delegates custody determination assessments to extremely costly court-appointed forensic evaluators, and then, with respect to increasingly vexatious litigation costs, New York is the only state in the United States which makes discovery impossible with respect to the use of custody forensic reports and testimony.[5, 6, 7]

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[2] *See e.g.* Holmes TH, Rahe RH. "***The Social Readjustment Rating Scale***". Journal of Psychosomatic Research. Vol 11, Iss. 2: pg 213–8 (1967).

[3] *See e.g.* Wishik, Heather. "***Economics of Divorce: An Exploratory Study***" Family Law Quarterly, Vol. 20, No. 1: pg 79 (Spring 1986)

[4] Dobrish, Robert. "***Suppose we Depose: Settling Disputed Custody Cases***" The New York Law Journal, June 19, 2013

[5] *See e.g.* FN 4 above; Tippins, Timothy. "***The Bar Won't Raise Itself: The Case for Evaluation Standards***" The New York Law Journal, July 8, 2013; Miller,

[6] *See e.g.* Miller, Hon. Sandra, Chairperson, State of New York Unified Court System, Matrimonial Commission. ***Report to the Chief Judge of the State of New York*** Albany, New York, February 2006.

[7] *See e.g.* Eaton, Leslie. "***For Arbiters in Custody Battles, Wide Power and Little Scrutiny***" The New York Times May 23, 2004

These unique factors in New York result in the perverse paradigm where, when parents are most acrimonious by virtue of the emotional hostilities in divorce, when the economic health of their families is at greatest risk, when children are in most need of healthy and stable relationships with their parents as families break-up, and without any clearly enumerated factors for awarding custody or a presumption of equal legal and physical custody and parenting time; parents are pushed into the litigation apparatus where everyone but the children and parents benefit.

For example, as the national landscape has shifted to the presumption of equal and shared parenting in custody proceedings, in these states with presumed equality, parents go into the divorce process with the expectation of shared parenting time and responsibilities, which removes the perverse incentive for parents to waste precious family resources on prosecuting costly custody litigation which **(i)** does not serve the long-term stability and emotional health of children and **(ii)** often is only a reflection of the parties' heightened animosity during the break-up of a marriage that has no bearing on parenting prior to divorce or after.

Finally, looking to other states can give this State's legislature a clear indication about the very important and divergent interests at stake in shared parenting reforms. Consider Florida, for example. Florida Governor Rick Scott vetoed equal-parenting bill SB 718 last year, which had been passed with overwhelming, bi-partisan support in both the Florida House and Senate with support from a wide coalition of family and children advocates. SB 718 would have established "a presumption that it is in the best interests of the child for the court to order equal-time sharing for each minor child" together with revisions to Florida's alimony laws.[8] Notably, and despite this overwhelming, bi-partisan support, the only organization which extensively-lobbied the Florida Governor's office to veto SB 718 was the Florida Bar Association.

Tragically for families and children everywhere—especially in New York at present without the presumption of equally shared parenting time and responsibility, and without any enumerated factors for determining custody—the only beneficiaries of protracted and bitter custody litigation are attorneys, with increased billable hours, and court-appointed forensic evaluators, with exorbitant forensic evaluation report and testimony costs. For these reasons, it is unsurprising that those who benefit most from messy divorces, like in Florida, are also most opposed to reforms that would remove—in most cases where abuse or other mitigating factors are not present—the single dispute in divorces that leads to the most bitterness and highest litigation costs: custody disputes. S949 and S5316 remove these perverse pecuniary conflicts of interest.

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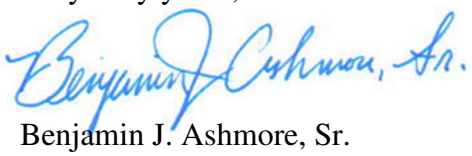
[8] **NFCRC** expressly takes no position here on the national movement to end permanent alimony in states like Florida, Texas, Main, Pennsylvania, Oklahoma, New Jersey, Mississippi, Massachusetts and Tennessee, which should be examined separate and apart from shared parenting reforms. *See e.g.* Levitz, Jennifer. "***The New Art of Alimony***" The Wall Street Journal, October 31, 2009

For these reasons, we urge the Committee to consider S-949 and S-5316 with the utmost concern and expediency, and to pass this important legislation out of Committee for consideration by the full Senate. As the United States Supreme Court has noted, "the fundamental liberty interest of natural parents in the care, custody, and management of their child *** is protected by the 14th Amendment Due Process Clause." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Consequently, the rights of parents, children, and families in New York to stable, equally-shared, involved parent-child relationships after divorce requires the passage of this legislation.

If we can be of further assistance to the Committee or Senate, please do not hesitate to contact our offices below.

Very truly yours,



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