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SENT VIA EMAIL

Date: February 4, 2021

To: Hon. Senators of the Texas State Senate
and the Texas House of Representatives

Re: ***In Support of House Bill 803***
Equal Parenting

To Whom It May Concern,

I have served as a Texas family law attorney for approximately 15 years. Over that time, I have handled a prolific case load of more than 1,500 family law cases, primarily focusing on child custody determinations. I have concluded that the single most important cause of conflict in family courts is the incentivization of conflict by way of the Texas Family Code.

Texas House Bill 803 drastically reduces, if not eliminates, the incentivization of conflict currently in the Texas Family Code by mandating equal parenting time for children amongst divorced or separated parents, with proper exceptions for unfit parents. In summary, enactment of this Bill would, among other things:

1. promote peace amongst families;
2. reduce litigation by de-incentivizing it;
3. unburden the family court system;
4. turn the focus of family courts to unfit parents;
5. benefit children by providing substantial contact with both parents; and
6. reduce the financial ruin of families through litigation.

In support of this summary, I would offer the following:

Unbeknownst to legislators who have not encountered divorce or child custody on a personal level, the Texas Family Code sets forth a *presumption* that one parent must receive a Standard

Possession Order schedule, which provides the winning parent approximately 65% of the time and the losing parent approximately 35% of the time. Notably, in my experience, that presumption is tantamount to a mandate as interpreted by the vast majority of judges I have encountered.

To make matters worse, once the winner has been selected, Courts then award child support to the winner and require child support payments from the loser. Why? Section 154.123 of the Texas Family Code states that “the amount of time of possession of and access to a child” is a factor in determining child support. In practice, that factor alone has invariably been outcome determinative in assessing the child support award.

As a result, far too many good parents with only personal disputes amongst themselves wage lengthy, contentious, and costly battles over the custody of their children. The stakes are simply too high as incentivized by the Texas Family Code. Stated differently, the Texas Family Code does not promote neutral outcomes in Texas Courts; it does not promote peace amongst divided families.

Even once the dust has settled in the first round of litigation, the odds are far too high for another round of litigation over the very same issues, for all of the reasons previously stated.

Lobbyist groups such as the Texas Family Law Foundation, and backed by large, high-dollar family law firms, have promoted false narratives to strike down previous attempts at equal parenting bills. I would invite you to visit the Texas Family Law Foundation’s (TFLF) website (<https://www.texasfamilylawfoundation.com/>) and, prominently on their front page is the headline: **“Bills that didn't pass and the damage they would have done to your practice.”**

Aside from what would be an offensive focus of the TFLF on the financial impact of legislation on Texas family lawyers instead of properly focusing on the needs of Texas families and children, in the link below that headline the TFLF states the following regarding 2019’s failed HB 2157 equal parenting law:

“They also explained that judges could already do this where it is deemed appropriate. And, thanks to the Family Law Section poll on this issue, our lobby team shared that 72% of lawyers who had handled “50/50” custody arrangements had to return to court for modifications because often 50/50 plans are just not feasible. Based on the evident increased litigation, this arrangement should not be the presumption. This frank yet thoughtful discussion delayed the bill from being filed for a month.”

First, the supposed poll results are misleading. What is the sample size? Is it 72% of lawyers who have *ever* handled a 50/50 custody arrangement returned to Court over custody and 28% who have ever handled a 50/50 custody arrangement *never* returned to Court over such an issue? If so, what an astounding result as I have *never* met a family lawyer who has *never* been to Court to relitigate a Standard Possession Order. Nonetheless, I have handled relitigation over 50 / 50 custody

arrangements and would emphatically state that such relitigation is most frequently about money—connected both to the presumption of a Standard Possession Order and the tie-in factor contained in Section 154.123 of the Texas Family Code. “Unfeasible” is merely the code language to judges to re-invoke the presumption.

Further, to refute the TFLF contention that judges “already” are free to order 50 / 50 custody arrangements, in truth, judges *rarely* order equal parenting even when encountering two fit/competent parents because they feel constrained by the presumption in the Texas Family Code. That is not merely an assumption as countless courts have specifically stated on the record the current legal restraints which, they feel, bind their decisions.

The difference between proponents of equal parenting laws and the TFLF and its adherents is stark: the TFLF and its adherents want courts to presume that fit parents should not have equal time with their children, while opponents, myself included, feel that courts should not be in the business of doling out winners and losers in family court except in the rare case of the unfit parent. I hope that I am not alone in the belief that the overwhelming majority of Texas Mothers and Fathers serve the best interest of their children on a daily basis. The absence of an equal parenting law suggests that the Legislature feels otherwise.

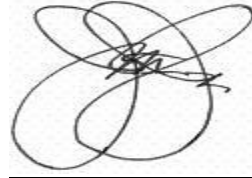
I also fundamentally disagree with the TFLF and its adherents on what the proper purpose of family courts should be. If the consequences were not so severe and disheartening, it would almost be comical the types of central inquiries that clog our current family courts on a routine basis. In the battle over a Standard Possession Order, these types of questions are *not* the exception but the *norm* and are frequently the focal point of rulings:

1. “Who typically gets [the child] ready for school in the morning?”
2. “Who typically takes [the child] to school each morning?”
3. “What is your work schedule?” (A line of questioning meant to penalize working parents by suggesting they don’t spend “as much” with the child as another parent)
4. “Over the past 3 years, who has taken [the child] to doctor’s appointments?”
5. “Over the past 3 years, who has taken [the child] to dentist’s appointments?”

I do not believe the Legislature intended this or the litany of adverse outcomes under the existing Texas Family Code.

I appreciate your time in thoughtfully reviewing this letter and House Bill 803. Feel free to contact my office at any time should you wish to discuss this with me further. In contrast to the TFLF and equal parenting opponents, I would eagerly trade the “damage” it would have on my practice for the valuable, generational affect it would have on Texas children and families.

Sincerely,



Justin M. Jackson
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