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March 13, 2023

VIA E-MAIL (OHRFamilies&AgingCommittee@ohiohouse.gov)

The Ohio Legislature
Families and Aging Committee

RE: HB 14

Dear Ohio Legislators:

My name is Brian Vandiver and I have been licensed to practice law in Arkansas for over 20 years. I am a part of the organization Arkansas Advocates for Parental Equality that helped to write and pass what is now Arkansas Act 604 of 2021, the law amending child custody law in Arkansas and creating a rebuttable presumption of equal joint custody generally requiring clear and convincing evidence to deviate from that presumption.

I have written about the Arkansas law here:

<https://gregellis.substack.com/p/arkansas-giant-leap-to-fairer-shared>

In that article, I explain why the clear and convincing evidence burden of proof is so important. Burdens of proof are creatures of the due process clause. The higher burden of proof is appropriate to protect the fundamental rights of children and parents. I also explained that to the Arkansas legislature here:

<https://www.youtube.com/watch?v=3wxLQH51A2A>

The overwhelming weight of social science also supports a rebuttable presumption of joint custody. One of my favorite examples comes from the Georgia Judiciary Committee in 2020 when Dr. Spirit Clanton testified in favor of a joint custody rebuttable presumption:

<https://www.youtube.com/watch?v=PPkGBpWNFRo>

In Arkansas, we faced similar alarmist opposition from opponents like the judiciary, family lawyers, and domestic violence advocacy groups. But nearly two years after Act 604 went into effect, the sky has not fallen. Indeed, nearly every lawyer and judge I have

surveyed has reported that the new law is working very well. It has significantly reduced custody litigation, forcing the lawyers and courts to focus only cases that rightfully deserve attention (e.g., when a parent's fitness is in question) and not cases of petty grievances. Some family lawyers are having to expand their law practices into other areas because of the reduced custody litigation. Judges report that custody cases are now much easier to resolve. Less litigation between the parents is better for the parents and the children involved.

The statistics further support this result. I recently submitted a FOIA request to the Arkansas Administrative Office of the Courts for the initial case filings in domestic relations cases for 2018-2022. See Exhibit 1 attached. Act 604 went into effect in July 2021. Also, the 2020 and 2021 numbers are likely somewhat affected by the COVID-19 pandemic. But when comparing the 2022 numbers to 2018-19, we see a noticeable decline in filings for orders of protection (domestic violence) and even divorces. These numbers are in line with the statistics from Kentucky after it adopted a rebuttable presumption of equal joint custody.

Finally, the Arkansas courts have started to interpret and apply Act 604 with excellent results. Just last week, the Arkansas Court of Appeals released the decision of *Wallis v. Holsing*, 2023 Ark. App. 137. In that case, the Arkansas Court of Appeals affirmed the trial court's decision to modify custody and award joint custody to the parents (which benefitted the mother in this specific case). The Court said:

We are also mindful that the law of custody in Arkansas has changed in the last decade. In 2013, the General Assembly dictated that joint custody is "favored," which our supreme court recognized was a "profound" change in the law. Act 1156 of 2013; *Pace*, 2020 Ark. 108, at 9, 595 S.W.3d at 352. In 2021, the General Assembly again significantly changed the law regarding custody, creating a rebuttable presumption that joint custody is in a child's best interest. Act 604 of 2021; Ark. Code Ann. § 9-13-101(a)(1)(A)(iv)(a)(Supp. 2021). Furthermore, in the event a court determines that the presumption has been rebutted and does not award joint custody, the legislature provided that the noncustodial parent is entitled to "reasonable parenting time." Ark. Code Ann. § 9-13-101(b)(1)(A)(vii).

These legislative changes recognized a preference for divorced parents to share equal time with their children unless clear and convincing evidence demonstrates it is not in the best interest of the child. Ark. Code Ann. § 9-13-101(b)(1). Although we recognize that these laws apply specifically to initial custody determinations, they have been applied in other custody determinations. The supreme court recently affirmed a circuit court's denial of a motion for modification and continuance of a joint-custody arrangement when the parties clearly could not get along but there was no evidence the "parental discord" had affected the child's health and welfare. *Pace*, 2020 Ark. 108, at 10, 595 S.W.3d at 353. The court specifically recognized the legislature's change favoring joint custody,

noting that “the parties were no longer obligated to maintain a careful balance of cooperation to stave off a judicial dissolution of a joint-custody arrangement.” *Id.* at 10, 595 S.W.3d at 352; *see also Nalley v. Adams*, 2021 Ark. 191, 632 S.W.3d 297 (holding there was no “modification” but affirming a circuit court’s change of custody from primarily with the mother to equal time with each parent as an authorized adjustment of parenting time).

These are positive developments in Arkansas child custody law and reflect a growing trend in the nation. I hope Ohio will follow the trend with HB 14.

Sincerely,

By: /s/ Brian A. Vandiver
Brian A. Vandiver