SB432 Poses a Threat to Public Confidence in the Family Court and in the Judiciary

Before the Senate is a bill that would make a person who publicly discusses their family court case a felon. A parent posting criticisms of the operation of the family court on Facebook, or discussing same in a podcast interview, could face criminal prosecution simply because of a law that categorically closes all paternity cases. A lawyer's cease and desist letters could be used to threaten civil and criminal consequences, effectively coercing silence from critics. As draconian as this measure already sounds, the actual scope of the proposed law is far broader than family court.

Though the judiciary committee purports it is needed to protect children, it will inevitably be used to protect bad actors, shield incompetence, and conceal misconduct. This is not merely a theory, existing laws have already made certain family court cases inaccessible and interfered with the accuracy and quality of important news reporting.

To understand how this bill made it this far, a discussion of the culture of family court as well as the agenda of the divorce lawyer who presented it is necessary.

I founded Our Nevada Judges, Inc. ('ONJ') to bridge the gap between the general public and the judiciary. The organization grew at a steady pace until the decision was made to provide coverage of the family court. At issue was a tradition of privacy extending back to 1865, when the legislature created a law that allowed litigants to close a divorce on demand. I authorized a lawsuit confronting this statute despite the controversy that may arise, because I knew that the family court was too big to be ignored. In other words, without coverage of the family court, there could be no bridging of the gap. It was making too much of an impression on public perception and had to be addressed.

The family court sees far more self-represented litigants than is seen in other types of cases. This is because when it comes to children, parents are willing to endure struggles they would otherwise avoid. Unfortunately, this often leads to lopsided contests, with a lawyer representing a wealthier client against a mother or father who cannot afford counsel. Together, ONJ, the American Civil Liberties Union, the Las Vegas Review Journal, the Legal Aid Center of Southern Nevada, Northern Nevada Legal Aid, and Nevada Legal Services, prevailed, and the Supreme Court struck down the statute as unconstitutional.

It is not that the First Amendment required access to the entirety of the family court, but rather, that the mere demand of a party was insufficient to close the court. In other words, a judge must make this decision and balance the public's right to know with the litigant's right to privacy.

The Falconi decision, as it is now cited in court, opened many but not all of the doors of the family court. The resistance I encountered from divorce lawyers initially waxed, later waned, but never did cease.

It would then seem that along came Marshal Willick, an authority on the subject looking to rectify what he and other divorce lawyers presented to the Judiciary Committee as a problem that needed solving. To Mr. Willick, a sealing and closure was not enough, it was also necessary to imprison any who dared publicly discuss the cases.

Mr. Willick's history on the issue of secrecy stretches back to a conflict between he and the President of Veterans in Politics International. He personally sued Steve Sanson, urged his jailing, and demanded the take-down of published videos criticizing his colleagues and their conduct in open court. Mr. Willick lost, and the Supreme Court published an opinion explaining the importance of public discussion on the conduct of family court lawyers. It was not long after that family court judges began granting ONJ access to unmarried child custody cases. Mr. Willick, in what this newspaper referred to as a "colossal overreaction", worked with a judicial committee to promulgate court rules that categorically closed off access to the remainder of the family court. ONJ sued. Mr. Willick presented the rule changes as a mere fix to a glitch. He argued that family court was always meant to operate in secret, and that the rules were necessary to effectuate the Legislature's intent. Mr. Willick lost again, and his efforts backfired spectacularly. The Supreme Court nullified not only the newly created rules, but also the 1865 statute.

I am often asked how the Judiciary Committee could have possibly reached the conclusion that the solution to the Supreme Court's constitutional approach is a convoluted privacy scheme that would criminalize public discussion. The answer is simple, Mr. Willick has asked them to govern from their own self-interests. How would you feel if your family court case was open to the public? This is not a conspiracy theory, during oral arguments before the Supreme Court, Mr. Willick singled out Justice Ronald Parraguirre and suggested his divorce could be unsealed. The argument, a golden rule violation as it is called when presented to a jury, does not inspire wisdom. It is wholly inappropriate and is not an effective approach to governing a free and open society. Mr. Willick's misconduct did not end there, as the very same Supreme Court admonished him publicly for his misrepresentations claiming to represent the mother in falsely arguing that she too wanted secrecy in her case.

Access to the family court is required, not because it is always in the best interests of the parents or the children specifically at issue in a case, but because it is in the best interests of an open society generally, which in and of itself consists entirely of families. Any laws or rules purporting to protect the confidentiality of children must be crafted in a way that narrowly focuses on those efforts. When the names, faces, and details concerning children are protected, you have confidentiality. When entire case files are sealed, and hearings are wholly closed, you end up with secrecy because it invariably serves to protect lawyers, judges, and other bad actors.

If the Legislature is going to listen to Mr. Willick's voice, it must also take a step back to listen to the voice of the public. The Supreme Court has equipped our family court judges with the constitutional instructions necessary to carry out the First Amendment mandate. The Legislature should follow the judiciary's example and, with the exception of repealing unconstitutional statutes, reject SB432.

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