Written by **Gary Benoit** on January 9, 2009

Trying to Uphold Federalism in Federal Court

My recent experience in federal court was a perfect example of that struggle. It was anything but boring, and served as a perfect illustration of how federalism, defined as the inter-relationship between the power of the states and the federal government, should and should not work. As a bonus, the matter also involved the struggle for power between the various branches of the state government of Massachusetts, a doctrine called the "separation of powers."

The case in question involved a constitutional challenge to new Massachusetts child support guidelines, which are used to determine how much support is owed from one parent to another when a family breaks up. Like so many aspects of life, the federal government has now tromped in on what was traditionally a state matter. The method that the U.S. Congress uses when it intrudes into state law and into families is instructive for students of freedom and tyranny. It is remarkable lesson rarely glimpsed by those outside the legal profession, and now here on full display.

As families began to disintegrate in larger numbers, the federal government waded into the domestic relations area, which was always a state matter. It passed all kinds of "pattern" laws concerning divorce, paternity, child support, and domestic violence, which it hoped would be adopted by the individual states, with massive funding attached if the states adopted the federal schemes. The states all complied, and changed all of their family laws to adopt the federal pattern in every case, so they could get the tens of millions in subsidies.

One of the many family-law usurpations involved state collection of child support on behalf of recipients, much of which was codified in the ominously numbered federal statute 42 U.S.C. Sect. 666 and following. In these laws, the federal government set up a complex collection scheme that only a bureaucrat could love, and demanded that states prepare codified mathematical guidelines for calculating child support, based on the cost of raising children. Under the federal law, the state guidelines must be reviewed every four years.

Massachusetts, one of the states rushing to collect the federal "handouts," still refused to comply with many aspects of the federal law, most especially not basing its child support guidelines on cost figures. Secret judicial-department committees were convened to formulate new guidelines, which based them

on arbitrary factors, and churned out the highest child support guideline requirements in the nation.

Massachusetts recently did its required quadrennial review of its child support guidelines. Chief Justice for Administration and Management Robert A. Mulligan did so by convening a task force of the Judicial Department, which met in complete secrecy for two years, after which it excreted new guidelines. Although the task force defiantly refused to base them on the cost of raising a child, it doubled or even tripled the amounts owed by many payors, without a shred of explanation. Then, Justice Mulligan unilaterally "enacted" them into law, without legislative action.

When these new higher child-support guidelines reached the light of day, horrified parents were determined to challenge them in court. Not only did the new payment requirements violate the mandates of federal law, but they violated the Massachusetts constitutional provision (written by John Adams in 1780), which requires legislation to be passed by the legislature, and either signed or vetoed by the governor, in order to have a check on the power of the other branches of government. Thus, the stage was set for the battle.

Fathers & Families, Inc., a non-profit Boston advocacy group representing parents, agreed to file suit on behalf of those whose child support was going to soar under the new guidelines. It quickly brought a complaint in U.S. District Court to request an injunction to stop the implementation of the new guidelines. I represented the plaintiffs, who brought the case under the 14th Amendment to the U.S. Constitution, alleging that the state violated their due process and equal protection under that amendment. In other words, it was a federal case.

A hearing was held in U.S. District Court in Boston, Massachusetts, on Monday, January 5, 2009, to decide whether to issue the requested injunction.

What a mixed up mess. Child support payors were suing in federal court to stop a state judge from breaking federal law, and from violating the state constitution which requires the legislature to pass laws. The judge never reached the merits of the case, but ruled that there was no federal jurisdiction to hear it. Suddenly, the federal government that was so keen to smother the state in regulations was not so keen to adjudicate the case involving its own regulations, under the arcane doctrine of "federal abstention." See *Younger v. Harris*, 401 U.S. 37 (1971).

Younger abstention requires a federal court to allow a state court to resolve a pending matter within its jurisdiction that implicates an important state interest, so long as the state proceeding affords the federal plaintiff an adequate opportunity for judicial review of its federal constitutional claims. A federal court may refuse to hear a case over which it has jurisdiction only in unusual circumstances. When a case poses federal constitutional questions, as did this one, a federal court may abstain only when the challenged state law or regulation is unclear. And so, the aggrieved child-support payors were turned away, with only a state remedy.

The case was in federal court for a reason: the payors must now seek relief from a state judge whose direct boss, Justice Mulligan, promulgated the child-support guidelines. In effect, the judge would have to overrule "up" the chain of authority, rather than the usual appellate process, which overturns lower court judges from above. Can you imagine the next judicial cocktail party when such a maverick walks in?

There is federalism on display: state action which violated federal law, and plaintiffs who sought to have the federal government ensure that their constitutional rights were validated. But now many cross currents interfere in that reasonably simple process, such as federal mandates, secret judicial fiat,

abstention doctrines, and politics galore. The simple issues of federalism are still not clear after 230 years.

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