[ ] EXPEDITE (if filed < 5 days of Hearing)
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Commissioner/Calendar: / N/A



**Superior Court of Washington, County of Kitsap**

**In re the most recent petition filed by Lenard Feulner for a parenting plan & support of:**
Adeline Marylynn Feulner (child)
DOB: 6-2-07

Petitioner *(party who started case 07-3-01713-1)*:

**Heather Lynn Wood (mother)**

And Respondent/s *(other party/parties)*:

Lenard Ray Feulner (father)

**No. 07-3-01713-1** ←(objection to case #)

NOTICE & Declaration to Clerk **and All Parties of Disqualification of Judge Adams (RCW 4.12.050)**

by Affiant: Heather Wood

**RE: Lenard Feulner's Motion to join a dismissed/withdrawn Petition's proceedings (the mother's, Heather Wood's) to his newly filed (after the fact of dismissal/withdrawal) Petition to the above cause # entailing a surfeit of errors and facially defective docs. [CR 40(e)].**

(Clerk's Action Required re: RCW 4.12.050)

TO: The Kitsap County Superior Court Clerk, 614 Division St #202, Port Orchard, WA, 98366, (360) 337-7164, superiorcourt@kitsap.gov; exparte@kitsap.gov, AND

**Lenard Feulner, Respondent, 333 Lippert Dr, W, #C129, (360) 228-6079,**

**Lenardfeulner@gmail.com; AND**

**Adeline Feulner, 4101 Anderson Hill Rd SW, Port Orchard, WA, 98367, (564) 220-8922,**

**Adelinewolfpaw@gmail.com ; AND**

**Nancy Tarbell, esq., #26686, PO Box 840, Manchester, WA 98353-0840, (360)871-2794; AND**
**Kerry Stevens, esq., Bar #15420, *11074 SE Glendale Ave Unit A, Port Orchard, WA 98366-9033, (360) 269-2947;* slo@wavecable.com *AND***
**Commissioner Matthew Ciucas, esq. #22929, *614 Division St, Port Orchard, WA 98366-4683, (360) 337-7140***

## I Identity of the Parties & Jurisdiction

**COMES now, Heather Wood, pro se of necessity, w/o counsel, under protest, indigent, in Forma Pauperis to make the Objections noted hereon, serve notice via declaration pursuant tp RCW 4.12.050 disqualifying judge Adams as a nondiscretionary matter of right, & clarify the arc of this cause:**

## JURISDICTION & VENUE

**While the case # captioned above would have been properly within Kitsap County's Family Court subject matter and in personum jurisdiction due to the minor child's birth and both litigants' residency in Washington State, the Kangaroo unlawfully held impromptu hearing on 8-15-23 before Commissioner Clucas, without a scintilla of due process after the regularly scheduled MTSC hearing was disposed of and Lenard Feulner's motion dismissed, DEPRIVED jurisdiction and authority from this Court when it failed to meet even the most minimal procedural mandates subsequent to luring the parties back into the courtroom w/o notice in collusion with two non-participating attorneys (Williamson & Yelish) who observed a commotion/altercation between Heather Wood, mother, and Adeline, her child, OUTSIDE the COURTROOM & Courthouse in the hallway/lobby where it ensued-extrajudicially contacting Clucas and MODIFYING THE RECORD through UNSWORN statements without either parent's permission or participation. Thus, Heather Wood took exception to jurisdiction, and reserved the objection THROUGHOUT these *fruit of the poisoned tree* proceedings in protest despite her appearance. Similarly, Venue was improper in Kitsap because the child's domicile remained with the legal custodial parent, Heather Wood, who was and remains domiciled in Thurston County. Heather Wood NEVER abandoned Adeline. Adeline refused to leave the Lewis county (Providence) hospital w/her mother, & ran away w/her father who acted in concert w/his daughter to further alienate Adeline's affections from her mother while engaging in custodial interference, i.e. hiding/sheltering a runaway.**

**(1) OBJECTION 1: Commissioner Clucas was privately contracted by these two women w/o standing, local attorneys, Amanda Williams and Laura Yelish, who manipulated Clucas into unlawfully recalling the case w/o due process, notice, or an opportunity to confront the litigants' accusers, and taking statements from the two attorneys on the record w/o swearing them in: i.e. with NO testimony as a basis, and an illegally held hearing at that. Heather Wood continues to take exception on the record to this outrage and lawless Kangaroo hearing.**

**Heather Wood, the complaining mother in this instance continues to take exception on an continuing ongoing basis, reserving her protest/objection to the same to this violation of her civil rights and the kidnapping of her child under the pretext of the Court's authority without even the color of State law, thus lack of**

**proper jurisdiction. Moreover, as a matter of law, the above captioned cause number, a Petition by the mother for a parenting plan was withdrawn and confirmed as withdraw by judge Adams, after recognizing the mother had served notice on all parties she had withdrawn her petition effective immediately. i.e. Procedurally, there exists no Petition to be joined to Lenard Feulner's de novo Petition for a parenting plan, thus requiring either a new case # to distinguish it from the rubbish pile he created in the above captioned cause number, now defunct/dismissed. Ms. Wood objects to Lenard Feulner's attempt to further his trashing the record, ambiguation and abuse of process. If he chooses to file a de novo petition, he is required to strictly adhere to original procedural requirements. He has yet to do so.**

**Mr Feulner may file under the original cause number brought on by the State of Washington as the Petitioner in 2007 or file under a NEW cause # issued by the Kitsap County Clerk's office as a parenting case. Procedurally, he should file as the Petitioner in that new cause # for a parenting plan, allowing for discovery and the full exercise of Due Process by the parties instead of the court acting as a shadow litigant and knight errant for the at risk child, Adeline Feulner.**

**Declaration/Affidavit of Heather Wood to Disqualify judge Adams from hearing, Lenard Feulner's Petition De Novo for a Parenting Plan (RCW 4.12.050)**

**I, Heather Wood, the mother of the minor Adeline Feulner, have been unlawfully stripped of my parental rights w/o due process in the Kitsap County Courthouse. I am a fit parent who has exclusively nurtured and raised Adeline Feulner for her 16 years of life.**

**2. I am over 18, a U.S. citizen, and a permanent resident of the State of Washington as is Lenard Feulner. My only child, Adeline Feulner, a minor, born in Washington State and permanent resident thereof currently domiciled in Thurston County, the domicile of her legally custodial parent, Heather Wood, mother.**

**3. I AM CERTAIN I CANNOT RECEIVE A FAIR HEARING/TRIAL IN FRONT OF JUDGE ADAMS GIVEN HER EGREGIOUS RETICENCE TO RESPECT THE INTEGRITY OF THE RECORD IS A PRIOR PETITION I FILED UNDER THE ABOVE CAPTIONED CASE # AND EAGERNESS TO CONTINUE THE FRUIT OF THE POISONED TREE GENERATED BY COMMISSIONER CLUCAS KANGAROO HEARING OF 8-15-23.**

**4. Mr. Feulner's new Petition and Summons creates a new proceeding more correctly based on proper due process under an independent cause number newly generated by his original process now pending before this court.**

**5. My disqualification of judge Adams from hearing Mr. Feulner's Petition De Novo for a Parenting Plan is a matter of right under RCW 4.12.050 and not discretionary. If Mr. Feulner chooses to seek a remedy under the State of Washington's original cause # filed in 2007 as the Petitioner in that case, my reliance on RCW 4.12.050 remains valid in such event and judge Adams must be disqualified/barred from hearing any further matters in either event.**

**6. Lenard Feulner's attempt at an end run around my withdrawing my Petition under the above captioned cause # would effectively moot my withdrawal of my petition were he to succeed and continue his abuse of the record and process.**

I declare under penalty of perjury of the laws of the State of Washington and pursuant to GENERAL Court RULE 13 and RCW 9A.72.085 that the foregoing is true and correct.

DATED this 3rd day of March , 2024, in the County of Thurston, WA.

Heather Wood

Heather Wood


Heather L Wood, hrwoodo12@gmail.com
9129 James Rd, SW, Rochester, WA 98579

## IV Argument, Points & Authorities

## Grounds for Motion to Disqualify/Recuse Judge Adams

**4.1.1 Strict Scrutiny is a Constitutional mandate for all fundamental rights and Due Process. The Troxel v. Granville U.S. Supreme Court ruling declared Washington State Family Courts' interpretation of what is in the 'best interest of the child' was BREATHTAKING in scope.**

**4.1.2 The Kitsap County Family Court has violated Troxel v. Granville and Heather Wood's civil rights at every turn, gratuitously substituting its judgment for a fit dedicated mother's as though she was the enemy instead of her daughter's protector, even in the face of her daughter's excesses, lies, drug use, and woeful immaturity—a fact even Mr. Feuler now admits in his pleadings consistent with the mother's sworn declarations in Adeline's emancipation Petition.**

**4.2.1 It is facially undeniable the record in the cause # listed above was thoroughly trashed by Lernard Feulner and the Court Clerk's erroneous legal advice to him. It is also clear when the issue was raised to the Court along with a request to correct the matter, the Court turned its back on its own deficient record, opining from the bench that although it had the inherent equitable power to do so, it "didn't want to."**

**4.3.1 RCW 4.12.050 provides the authority to a litigant to exclude a judge from a case such as the Petition De Novo proposed by Lenard Feulner. It is not discretionary but a matter of right available to the mother—though it was also her right as a fit mother to parent Adeline without interference from this Court. The U.S. Supreme Court has ruled poverty is not to be construed as negligence in a parent. This Family Court has defied that ruling, handing the child to a man the mother complained had sexually abused her daughter when the girl was barely 6 yo. Neither the Court nor Nancy Tarbell did anything to recover that police report after both the Kitsap County Sheriff and WASPC both defied the subpoena demanding it.**

**4.4.1. Allowing Mr. Feulner to prolong or add to the heap of trashy facially defective he entered into the record would reward the very miscreant responsible for it along with the incompetent Court Clerk who gave him the initial erroneous pernicious legal advice.**

**4.5.1. RCW 4.12.050 speaks for itself. The Court is required to comply with it and judge Adams must be disqualified from Mr. Feulner's Petition De Novo.**

1. **All parties are entitled to a fair trial, which requires that the judge overseeing the trial be completely impartial. See *Caperton v. A.T.***

*Massey Coal Co.*, 556 U.S. 868 (2009); *Hope v. Charlotte-Mecklenburg Bd. of Educ.*, 110 N.C. App. 599 (1993). **If either the state or the defendant believe that circumstances exist that would prevent the trial judge from carrying out his or her duties in an impartial manner, the party may move the court for recusal on the following grounds: [However, reliance on RCW 4.12.050 does not require any of these to disqualify a judge and Ms. Wood has sworn she does not believe she can receive a fair trial in Mr. Feulner's proposed Petition De Novo.]**

2 Statutory

Per G.S. 15A-1223(b) and (e), a party may move that the trial judge disqualify himself or herself from a hearing or trial on the grounds that the judge is:

a. Prejudiced against either party;
b. Closely related by blood or marriage to the defendant;
c. A witness for or against one of the parties in the case; or
d. Unable to perform the duties required of him or her for any other reason.

**Washington's Code of Judicial Conduct provides that upon the motion of any party, a judge should disqualify himself or herself in a proceeding in which his or her impartiality may reasonably be questioned, including but not limited to instances where he or she has a personal bias or prejudice concerning a party.**

3 **Due Process**

**Although it will apply "only in the most extreme of cases," such as here, a party may also move for a judge's recusal on due process grounds if one or more of the following circumstances exist:**

a. **The judge has a direct, personal, and substantial pecuniary interest in the outcome of the case;**
b. **The court is structured such that the judge may be tempted to impose a fine because the judge's governmental entity would benefit (e.g., where judge was also the mayor, and imposing fines would benefit the town's budget);**
c. **The judge trying the criminal case was responsible for initially bringing the criminal charges, or in contempt cases where**


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**judge has a strong personal interest in the outcome; and/or**

d. **One party has made a campaign contribution to the judge that was large enough to have likely affected the outcome, and knowing that the party's case would come before that judge.**
e. **See *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009) (key inquiry for due process analysis is whether there exists a "constitutionally intolerable probability of actual bias"); *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986) (allegations of judge's bias based on "general frustration with insurance companies" were "insufficient to establish any constitutional violation"); *Ward v. Monroeville*, 409 U.S. 57 (1972) (finding due process violation where mayor also sat as judge hearing traffic violations, and thus stood to benefit financially from fines, costs, and fees collected in court).**

## TABLE OF AUTHORITIES FOR STRICT SCRUTINY

Cases



Other Authorities



## A. PARENTS' FUNDAMENTAL RIGHTS OF CARE, CUSTODY, AND CONTROL OF THEIR CHILDREN

Pursuant to Supreme Court Rule 37, The Justice Foundation has submitted briefs like what Heather Wood (Mother) Petitioner, faces in the issues before this Court. "The Justice Foundation is a 501(c)(3) charitable foundation that provides free legal representation in cases to protect individual and parental rights and to promote appropriate limited government. The following summarizes its position in this regard: "We

*believe in protecting children from those who would destroy their innocence and exploit them for their own purposes. On the whole, parents are the best protectors of children and have the natural right and duty for the care, custody, and control for their children. Children, in the main, are naturally incapable of exercising self-government until reaching the age of majority."*

*Heather Wood's case (Petitioner) is important to* every parent who seeks to assert their right to determine the upbringing and education of their child as a state, federal, natural, and God-given right.

## SUMMARY OF THE ARGUMENT

This case centers upon the very cornerstone of our society: the family. Deeper still, this case involves the intersection of the family and the law: parents' fundamental rights in directing the care, custody, and control of their children as a family and the State's power to affect, limit, or even terminate those rights.

The U.S. Supeme Court has determined that parents have a fundamental right to direct the care, custody, and control of their children. That Court also has determined that the government shall not interfere with this right unless and until a parent is proven unfit. In contradiction to this determination, the North Carolina Supreme Court in the case below declared protection of that fundamental right irrelevant in a custody dispute between two natural parents. Routten v. Routten, 843 S.E.2d 154, 159 (2020). Instead, the North Carolina Supreme Court upheld the trial judge's denial of custody and reasonable visitation to the Petitioner based on the judge's findings related to the best interest of the child, even though the trial judge did not find the mother unfit. Id. at 159. The holding below directly contradicts the U.S. Supreme Court's recognition of parents' primary and fundamental rights in the care, custody, and control of their children.

No doubt contributing to this contradiction, the U.S. SupremeCourt has not clearly articulated the appropriate test for adjudicating the protection of parents' right when involving both natural parents. The U.S. Supreme Court also has not clearly articulated the level of scrutiny in judicial review of parents' fundamental right in such cases. To safeguard against such government infringement and avoid such contradictions in this State's courts, this Kitsap Family Court should explicitly adopt a standard articulating both the appropriate test and the appropriate level of scrutiny consistent with the Constitution and the U.S. Supreme Court's precedent.

This case presents the opportunity for the Kitsap Family Court to unequivocally articulate the fitness of the parent as that test and **strict scrutiny** as that level of scrutiny for judicial review. Indeed, this case presents the appropriate vehicle to do so because it involves the rights of two natural parents.


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## ARGUMENT

I. THE KITSAP FAMILY COURT SHOULD GRANT THE PETITIONER'S MOTION TO CLARIFY THE APPROPRIATE TEST COURTS MUST USE IN ADJUDICATING PARENTS' FUNDAMENTAL RIGHTS OF CARE, CUSTODY, AND CONTROL OF THEIR CHILDREN.

Nearly one hundred years ago, the U.S. Supreme Court acknowledged that "the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." Pierce v. Society of Sisters, 268 U.S. 510 (1925). Thereafter, in Stanley v. Illinois, 405 U.S. 645 (1972), the U.S. Supreme Court affirmed the fundamental rights of parents "in the companionship, care, custody, and management" of their children. Id. at 651. That same year, in Wisconsin v. Yoder, 406 U.S. 205 (1972), the U.S. Supreme Court declared that "[t]his primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." Id. at 232.

More recently, the High Court declared in Washington v. Glucksberg, 521 U.S. 702 (1997), that the Constitution, and specifically the Due Process Clause of the Fourteenth Amendment, protects the fundamental right of parents to direct the care, upbringing, and education of their children. Id. at 720. And in Troxel v. Granville, 530 U.S. 57 (2000), the High Court again unequivocally affirmed the fundamental right of parents to direct the care, custody, and control of their children.

In Troxel, the U.S. Supreme Court stated that "so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of the parent to make the best decisions concerning the rearing of that parent's child." 530 U.S. at 68-69 (emphasis added). Therefore, a failure to consider the fitness of the parent represents "an unconstitutional infringement on [that parent's] fundamental right to make decisions concerning the care, custody, and control" of her children. 530 U.S. at 72. In fact, so inviolable and sacred is this right that the nation's Supreme Court declared a presumption that "a fit parent will act in the best interest of his or her child." Id. at 69. Yet, in the case below, the North Carolina Supreme Court expressly rejected allowing this presumption in favor of the natural mother of the children. Routten, 843 S.E.2d at 159

In 2005, quoting Yoder and Troxel in response to a public school district's subjection of children to inappropriate and sexually explicit content, the United States House of Representatives affirmed that "the fundamental right of parents to direct the education of their children is firmly grounded in the Nation's Constitution and traditions." House Resolution 547 (November 16, 2005). Yet today, State courts of last resort throughout the United States are split, adjudicating children as "creatures of the State" by limiting or terminating parents' rights through using a subjective "best interest of the child" test or by evaluating some level of "harm" to the child. In fact, in the case below, the North

Carolina Supreme Court determined that, in a dispute between two natural parents, "the trial court must apply the 'best interest of the child' standard to determine custody and visitation questions." Routten, 843 S.E.2d at 159. Such a test blatantly violates the fundamental rights of natural parents, not only in custody and termination cases, but also in separation agreements where extra protection may be necessary due to inequality among spouses.

In that regard, scholars recognize that the "best interest of the child" standard provides "no standard at all because of its vagueness" and uncertainty. See, e.g., Janet Weinstein, And Never the Twain Shall Meet: The Best Interest of Children and the Adversary System, 52 U. Miami L. Rev. 79, 108 (1997). As Notre Dame Law School Professor Eugene Volokh recognized, courts applying "the best interest of the child" test in parent custody cases violate sacred, fundamental, constitutional rights of those parents. See Volokh, "Parent-Child Speech and Child Custody Speech Restrictions," 81 N.Y.U. L. Rev. 631 (2006). Professor Volokh also recognized that "harm" analyses have significant limits, foremost being their highly subjective nature and risk of the fact-finder's personal hostilities entering into the determination. Volokh, supra at 700. Essentially, both tests violate the due process rights of parents guaranteed by the Fourteenth Amendment to the Constitution if the fitness of the parents is disregarded. Yet today, some State courts still apply these inappropriate tests without first making the required constitutional finding of a parent's unfitness. As a result, these courts continue to violate the fundamental right of parents to direct the care, custody, and control of their children.

While the U.S. SupremeCourt has alluded to the fitness of the parent test in the past, that Court has not articulated the exact standard in these cases. See Troxel, 530 U.S. at 73 ("We do not, and need not, define today the precise scope of the parental due process right in the visitation context"). Given the complexities of the modern family dynamic and the high-stakes interest of the parties involved in these cases, Heather Wood submits that the time has come for the Kitsap Family Court to adopt the fitness of the parent test as the appropriate standard moving forward for cases involving both natural parents.

This case presents the ideal vehicle for the Kitsap Superior Family Court to clearly articulate the "fitness of the parents" test as the appropriate test for all custody disputes before it because this case involves a likely review of the rights of both natural parents. Troxel, while providing cogent precedent, involved the rights of a natural parent and the rights of grandparents after the children's father died. Stanley, likewise, is analytically different because it involved the natural but unwed father of the children who had been declared wards of the state after their mother died. As demonstrated in Petitioner's Motion, this case involves two natural biological parents, both of whom have fundamental rights protected from unwarranted government interference by the Fourteenth Amendment and both of whom seek care, custody, and control of their child. Only the fitness test protects the constitutional rights of both natural parents in a custody case such as that presented in this case.

## II. THIS COURT SHOULD GRANT THE MOTION TO CLARIFY THE LEVEL OF SCRUTINY A COURT MUST USE IN ADJUDICATING PARENTS' FUNDAMENTAL RIGHTS OF CARE, CUSTODY, AND CONTROL OF THEIR CHILDREN.

In addition to articulating the appropriate test, the Kitsap Superior Family Court also has the opportunity to clearly articulate the appropriate level of scrutiny a court should use in adjudicating parents' constitutional rights of care, custody, and control of their children. As one State court judge explained regarding the failure of State courts and judges to follow what this U.S. Supreme Court has suggested as the appropriate standard:

Despite the United States Supreme Court's determination to subject infringement upon such fundamental rights to strict scrutiny and of our own legislature's mandate to preserve and foster parent-child relationships . . . courts have developed a jurisprudence under which trial court decisions severely curtailing that relationship stand absent an abuse of discretion. Considering the importance of and the risk to the rights at issue and the legislature's clear mandates that courts take measures to protect this most sacred of relationships, The mother (Heather Wood, Petitioner) believes the Family Court needs to carefully re-examine the standards by which decisions that limit a parent's access to or possession of a child are made and reviewed.

In Re: J.R.D. and R.C.D., 169 S.W.3d 740, 752 (Tex. App. 2005) (Puryear, J., concurring) (internal citations omitted).

Because this case involves such deeply grounded fundamental rights guaranteed under the Constitution to the parents, this court must consistently apply the appropriate level of judicial scrutiny. In this regard, just as the fitness of the parent test alone satisfies the constitutional requirements, only strict scrutiny will suffice for judicial review in these situations.

In his concurring opinion in Troxel, Justice Thomas summarized an important aspect of this Court's precedential opinion in Pierce v. Society of Sisters, 268 U.S. 510 (1925), writing that "parents have a fundamental constitutional right to rear their children, including the right to determine who shall educate and socialize them." Troxel at 80 (Thomas, J., concurring). This fundamental right is just as critical and sacred today as when Justice Thomas wrote those words twenty years ago and when the High Court cemented that truth in 1925. Justice Thomas proceeded to the next step in the analysis by concluding: "I would apply strict scrutiny to infringements of fundamental rights." Id.

The Petitioner (Heather Wood) agrees Strict Scrutiny is the appropriate level of review and submits this issue alone, as presented in this case, supports the Court applying Strict Scrutiny.


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## CONCLUSION

This case presents the ideal opportunity for this Court to resolve the conflict among the Parties and articulate one test – the fitness of the parent test – for adjudicating natural parents' rights in the care, custody, and control of their children. The North Carolina Supreme Court, in the opinion below, declared this test irrelevant.

This case also presents the ideal opportunity for this Court to resolve the conflicts between parents and articulate one standard of review – strict scrutiny – when reviewing the fundamental rights of natural parents in the care, custody, and control of their children. The North Carolina Supreme Court, in the opinion below, required no such level of review.

In today's world, family dynamics are always changing, especially in an era of ever-increase divorce rates. Even in the face of such change, however, constitutional rights remain steadfast. Therefore, Heather Wood respectfully submits that this Court should grant the same to her..

Respectfully submitted,

Heather Wood

I declare under penalty of perjury of the laws of the State of Washington and pursuant to GENERAL Court RULE 13 and RCW 9A.72.085 that the foregoing is true and correct.

DATED this 3rd day of March, 2024, in the County of Thurston, WA.


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