Case No. 123667

ILLINOIS SUPREME COURT

CHARLES D. YAKICH, PETITIONER-APPELLEE,	)	From the 18th Judicial Circuit Court DuPage County, Illinois
AND	)	Circuit Case No. 15 F 561
ROSEMARY A. AULDS, RESPONDENT-APPELLANT.	)	Trial Judge: Hon. Thomas A. Else

BRIEF OF THE APPELLANT ROSEMARY A. AULDS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

I. THE TRIAL COURT LACKED AUTHORITY TO GRANT CHARLES' MOTION TO DECLARE SECTION 513 OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT UNCONSTITUTIONAL

POINTS AND AUTHORITIES

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II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING SECTION 513 OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT UNCONSTITUTIONAL

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(e) Section 513 is Constitutional "As-Applied" in this Case

NATURE OF THE ACTION

This case arises from proceedings involving the contribution to the college expenses of a non-minor child whose parents were never married, pursuant to Section 802 of the Illinois Parentage Act of 2015 and Section 513 of the Illinois Marriage and Dissolution of Marriage Act. On July 22, 2016, after an evidentiary hearing, the trial court granted mother's petition for college contribution and allocated the expenses among the parties and their daughter. Sixty-two (62) days later, the father filed a motion to declare Section 513 unconstitutional. On May 4, 2018, the trial court granted father's motion and declared Section 513 unconstitutional. Mother now appeals from the May 4, 2018 order. The judgment was not the result of a jury verdict. There are questions raised on the pleadings; specifically whether the father's motion to declare Section 513 unconstitutional was insufficient on its face or barred as a matter of law due to timeliness, *res judicata*, and lack of an actual controversy.

ISSUES PRESENTED FOR REVIEW

I. WHETHER THE TRIAL COURT HAD THE AUTHORITY TO DECLARE SECTION 513 OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT UNCONSTITUTIONAL

II. WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DECLARING SECTION 513 OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT UNCONSTITUTIONAL

JURISDICTION

Jurisdiction is conferred pursuant to Illinois Supreme Court Rule 302(a)(1), which allows appeals from final judgments of the circuit court directly to the Supreme Court in cases in which a federal or state statute has been held invalid. Ill. S.C.R. 302(a)(1) (West 2018). On May 4, 2018, the trial court declared Section 513 of the Illinois Marriage and Dissolution of Marriage Act unconstitutional. On May 31, 2018, the Respondent-Appellant, Rosemary Aulds, filed a notice of appeal from that order. Accordingly, this court has jurisdiction. Ill. S.C.R. 302(a)(1) (West 2018); and Ill. S.C.R. 303(a)(1) (West 2018).

STATUTES INVOLVED

Section 802 of the Illinois Parentage Act of 2015
750 ILCS 46/802(a)

(See Appendix)

Section 513 of the Illinois Marriage and Dissolution of Marriage Act
750 ILCS 5/513

(See Appendix)

STATEMENT OF FACTS

The parties in this case, Respondent-Appellant, Rosemary Aulds ("Rosemary"), and Petitioner-Appellee, Charles Yakich ("Charles"), were never married. R. C562. On July 23, 1995, one daughter was born to the parties, namely, Dylan Yakich ("Dylan"). R. C157; Sup C14. On February 6, 1997, the trial court entered an Agreed Order granting the parties joint custody, equal parenting time, and reserving child support. R. C157-163. The Agreed Order was silent with respect to Dylan's college expenses. R. C157-163. The Agreed Order also stated that if the parties disagreed on any future parenting issues, they would first attempt to resolve the disagreement through mediation. R. C161.

On August 6, 2015, Rosemary filed a petition for contribution to Dylan's college expenses. R. C89-91. Rosemary's petition alleged that Dylan was now 20 years old, had been accepted to Florida Gulf Coast University ("FGCU"), that the anticipated college expenses for the 2015-2016 academic year were $39,316, and that Charles had the financial ability to contribute to Dylan's expenses. R. C89-91. Accordingly, Rosemary asked the court to order Charles to pay an equitable share of the expenses. R. C90.

On November 20, 2015, Rosemary filed a separate petition for modification of health insurance coverage. R. C175-178. The petition alleged that, per a prior agreed order in 2011, Charles was responsible for Dylan's health insurance, but that since that time Rosemary found better coverage and wished to switch Dylan to her (Rosemary's) health insurance plan. R. C175-178.

On February 4, 2016, Charles filed a response to Rosemary's petition for college contribution. R. C197-200. Charles admitted that Dylan had been accepted to FGCU, but stated that he was not a party to or included in any tours or applications to Dylan's college. R. C198. Charles admitted that he had the financial ability to pay, but denied that he should be required to do so. R. C198. Charles also raised the affirmative response that the parties had not attended mediation on the issue of college expenses, as required by the Agreed Order of February 6, 1997. R. C198. Charles' response requested that the parties be ordered to mediation, with Rosemary paying his costs, attorney's fees, and travel expenses. R. C199.

On February 4, 2016, Charles also filed a response to Rosemary's petition to modify Dylan's health insurance coverage. R. C191-195. Charles did not necessarily deny that Dylan should be switched to Rosemary's plan, but instead alleged that Rosemary had failed to pay her share of healthcare costs per the 2011 agreed order, and requested that the parties attend mediation on those issues. R. C191-195.

On February 26, 2016, the trial court ordered the parties to mediation on the issues of college and healthcare. R. C211-212. On May 12, 2016, the mediator filed a notice with the court stating that mediation had been unsuccessful. R. C214.

June-July 2016 Hearings on College Contribution

Rosemary's Testimony

The case proceeded to hearing on Rosemary's petition for college contribution over two days, June 9, 2016 and July 22, 2016. R. 2, 82. The hearing began with Rosemary being called on direct examination. R. 6. She testified that Dylan is 20 years old and just completed her sophomore year at FGCU. R. 7-8. When Dylan is not in school, she resides

with Rosemary in Roselle, Illinois. R. 7. At the time of the hearing (June 9, 2016), Dylan was attending summer school at Harper College in Illinois. R. 8. Dylan had attended Harper College full-time for her freshman year. R. 9. Rosemary paid for Dylan's freshman year. R. 9. Charles did not pay, nor did he offer to pay. R. 9.

After her freshman year, Dylan visited five different colleges. R. 9-10. She visited four colleges in Florida with Rosemary and one college (Scripps) in California with Charles. R. 9-10. Rosemary paid for Dylan's college visits to Florida and Charles paid for her visit to California. R. 10.

According to Rosemary, Dylan chose to attend FGCU. R. 10. Dylan's started as a major in marine science, but then changed to biology in the middle of her sophomore year. R. 11. Dylan planned to continue her education (after college) in marine biology. R. 11. Dylan selected FGCU because it felt comfortable and she liked it the most. R. 11. Attending FGCU was strictly Dylan's choice. R. 11. Rosemary paid for Dylan's sophomore year at FGCU, without contribution from Charles. R. 12. The costs totaled approximately $42,726.78, including two payments of $26,873.76 and $1,590.00 for tuition and fees, $409.55 for books, $5,340.30 for activities, and $8,423.17 for food and supplies. R. 15-16; R. Sup. C5-10. Additionally, Rosemary paid for Dylan's transportation costs to and from Roselle and FGCU, which is located in Fort Myers, Florida. R. 16-17. This included 4 flights, with each costing between $300 and $350. R. 17. Additionally, Rosemary paid Dylan' summer school tuition (at Harper College), which was $747.25. R. 19; Sup C12.

Rosemary acknowledged that copies of her financial disclosure statement dated February 11, 2016 and her 2014 U.S. income tax return were true and accurate, both of

which were admitted into evidence. R. 20-22; Sup C14-25, C27-38. Her 2014 tax return showed wages of $0.00, dividends of $14,499, capital gains of $74,465, and business losses of ($25,000), for a total income of $43,419. R. Sup. C27.

Rosemary stated that, for the Fall 2016 semester, Dylan was residing in an off-campus apartment. R. 23. Rosemary co-signed the lease. R. 23; Sup C40-41. Dylan received B's for her freshman year at Harper College and A's and B's for her sophomore year at FGCU. R 24; Sup C43-45. She had a 3.5 grade point average. R. 24.

On cross-examination, Rosemary testified that she owned a home in Cape Coral, Florida, which she visits 4-5 times per year, for a week at a time. R. 25-26. Dylan wanted to go to a college in Florida because it was on a coast. R. 26. Rosemary acknowledged that FGCU offers a marine science, but not a marine biology, program, and that Dylan wants to pursue marine biology. R. 26. Rosemary stated that she is the sole owner of a company called Fly South, LLC, which, in turn, owns ten (10) residential rental properties in Florida. R. 28-30; Sup C17.

Charles did not attend any of Dylan's college visits to Florida, even though Rosemary believed that Dylan had invited him. R. 41. Initially, Charles said he would attend Dylan's orientation at FGCU, but then called Dylan shortly after it ended to say he couldn't make it. R. 41-43. At FGCU, Dylan was a full-time student, which included classes three days per week. R. 43-44, 46. She did not work during that time. R. 43-44. She is also not working during summer school. R. 44.

On re-direct examination, Rosemary stated that her parents and Charles' parents live in Florida, as well as other relatives. R. 45. Dylan has a relationship with all of them. R. 45.

On adverse examination, Rosemary testified that her fiancé, Jeffrey Belinda, pays for Rosemary's and Dylan's health insurance. R. 83. She stated that she owns Fly South, LLC, which, in turn, owns twelve (12) properties. R. 84-86; Sup C159-164. The purchase prices ranged from $85,000 and $150,000. R. 84-86. Rosemary paid for all of them in cash. R. 84-86. Rosemary acknowledged that she submitted a personal financial statement to MB Financial Bank for a line of credit. R. 86-87; Sup C112-113. The statement listed her net assets at $3,940,000 as of November 30, 2010. R. 86-87; Sup C112-113.

Dylan's Testimony

Dylan testified that she is twenty years old. R. 47. She is going into her junior year in college. R. 48. She is attending Harper College for summer school. R. 48. She is taking one class, Chemistry II, at Harper. R. 48-49. It was Dylan's choice to attend summer school. R. 49. Dylan got good grades during her freshman year at Harper. R. 49-50. Dylan stated that she wants to go into marine biology and that is all she had wanted to do her whole life. R. 50. Dylan stated that she applied to six schools and that she was accepted by four or five. R. 52. She was initially rejected by FGCU, but after appealing that decision, she was accepted. R. 52. Dylan learned about the appeal process by talking to some counselors. R. 52. It was her decision to attend FGCU. R. 52. She chose FGCU because, after visiting all the schools, it felt the best for her. R. 53. She liked the environment and the location. R. 53.

Dylan lived in a dorm on campus for her first year at FGCU. R. 53. She has registered for the upcoming school year at FGCU. R. 53. Charles asked her if she could register early, so that he could take her on a trip to Fiji. R. 54-55. Accordingly, Dylan registered early. R. 55. On May 1, 2015, Dylan forwarded an e-mail to Charles from

FGCU's Office of New Student Programs (the "NSP Office"), which contained information regarding FGCU's student orientation on May 8, 2015. R. 55-57; C47. The e-mail stated that the NSP Office is also responsible for "Parent and Family Programs." R. C47. The e-mail also stated, "We look forward to meeting you and your family during your time on campus." R. C47.

Additionally, Dylan discussed her decision to attend FGCU with Charles by phone on multiple occasions, including her application, appeal, acceptance, and orientation. R. 57-58. Charles was intending to go to FGCU's orientation, but wasn't able to come due to his mother having surgery. R. 58. Dylan wants to go back to FGCU for her junior and senior year because she likes it and worked hard to get in. R. 59.

On cross-examination, Dylan stated that when she applied to FGCU, she thought marine science and marine biology were about the same thing. R. 60. Soon after she started at FGCU, Dylan learned that it did not offer a marine biology program. R. 60. Marine biology is the study of animals in the ocean and marine science relates to industrial work in the ocean. R. 60-61. Dylan does not want to do marine science or industrial work. R. 61. She wants to be a marine biologist. R. 61. Throughout her life, she has spent a great deal of time in the water. R. 61. She is a certified scuba diver. R. 61. She likes to be with animals in the water. R. 61.

Dylan acknowledged that she visited Scripps in California with Charles. R. 61-62. Scripps has a marine biology program. R. 62. Dylan had reasons for not liking Scripps. R. 62. Dylan has not been to the marine biology school in Hawaii, but knows a little bit about it. R. 62. Dylan chose FGCU because it was by the ocean and close to her grandparents and Rosemary's home in Cape Coral. R. 63. Dylan stated that she could visit

her grandparents or mom if she ever got homesick or wanted to get away from school. R. 63. Dylan stated that Rosemary encouraged her to go to a Florida college. R. 63. When Dylan chose to appeal her rejection from FGCU, Rosemary encouraged her. R. 64. Dylan visited Scripps with Charles a couple years before her high school graduation. R. 64. Charles offered to pay Dylan's entire tuition at Scripps. R. 64.

On re-direct examination, Dylan stated that Charles did not pay for FGCU, nor has he offered to pay. R. 65. Dylan sated that after starting at FGCU, she switched from marine science to biology. R. 66. She did this after talking to counselors at FGCU and her high school. R. 66-67. She stated that she didn't like Scripps because she believed it was an all girls' school[1]. R. 67.

In response to questions by the court, Dylan stated that she is PADI-certified for scuba diving in open water. R. 68. She has done a lot of dives, but doesn't know how many. R. 68. She did some research as to the academic reputations of the schools she applied to. R. 69. She did not do much research on Scripps academic reputation. R. 69. She did some research on FGCU's academic reputation. R. 70. She liked FGCU because she felt the most comfortable there and liked the environment. R. 70. After her first year at FGCU, she can't say anything bad about it. R. 70.

On direct examination by Charles' counsel, Dylan testified in support her resume, which she had drafted a few years prior and which stated that for college, Dylan wanted to major in marine biology and that since she was young, she was always very interested in

[1] Dylan appears to have confused Scripps College, which is a women's college in Claremont, California (https://scrippscollege.edu) with the Scripps Institution of Oceanography at the University of California, San Diego, which is co-ed (https://scripps.ucsd.edu). Both are named after Ellen Browning Scripps.

marine life and being in the ocean. R. 89-90; Sup C109. She acknowledged that she sent Charles a text message on November 18, 2015, in which stated that she did not want to go to graduate school, but felt she had no choice. R. 89; Sup C110. The text message also stated that she would rather finish college and take a break before graduate school, as opposed to taking a break now (during college). R. 89; Sup C110. Dylan testified that she would have to go to graduate school to become a marine biologist, but that she might not if she finds a different job that she loves. R. 89. She stated that she didn't know at this point if she wanted to go to graduate school. R. 89. Dylan stated that at the time she applied to FGCU, she thought marine science and marine biology were close enough that they were almost interchangeable. R. 91.

Charles' Testimony

Charles was first called to testify on adverse examination. R. 71. His financial disclosure statement dated April 15, 2016 and his 2014 U.S. income tax return were admitted into evidence. R. 72-73; Sup C79-89, C91-105. His financial disclosure statement listed net assets of approximately $15 million. Sup C79-89. His income tax return listed wages of $0.00, taxable interest of $10,938, dividends of $140,066, and capital gains of $41,373, for a total income of $192,377. R. C91.

He maintained a Charles Schwab account on behalf of Dylan with a value of $57,748.43 as of April 30, 2016. R. 74; Sup C107. The account was intended to be Dylan's college graduation gift, which she could use to buy a car or a down payment on a house. R. 74-75. However, it could be used to pay for Dylan's college if necessary. R. 75.

On direct examination, Charles testified that he lived in Paradise Valley, Arizona and was unemployed. R. 91. His gross income is $190,000 per year, which he receives

from interest and dividends. R. 91-92. He owns homes in Arizona, Barrington Hills [Illinois], and some vacant land in Arkansas. R. 92. He had owned some property in Fiji, but not anymore. R. 92. He stated that his 2015 is approximately the same as his 2014 income. R. 92.

He stated that he has a good relationship with Dylan, but that it is currently strained a bit due to the litigation. R. 92. He says that he tries to see her as often as possible when he's in Chicago or Florida. R. 92. He asked her to come visit him in Arizona outside the courtroom that day. R. 92. He stated that she contacts him on an almost weekly basis to help her with class assignments. R. 92. The prior year, Charles had helped Dylan with 20 assignments, and she got A's in those classes. R. 92.

Charles stated that he took Dylan on many trips since she was very little, including the Bahamas, the Atlantic Aquarium, Mexico twice (Holbox and Guadalupe Island), and Fiji. R. 92. These trips included snorkeling, diving, fishing, and observing great white sharks. R. 92. For the Fiji visit, Dylan had to turn around and go home, due to her boyfriend's father dying in a tractor accident. R. 92.

Charles stated that Dylan has always expressed a desire to be a marine biologist. R. 92. He refuses to pay for Dylan's school because she will not be able to obtain the degree she wants in four years from FGCU. R. 93. He stated that he was not involved in Dylan's choice to attend FGCU. R. 93. The only involvement he had was receiving Dylan's e-mail on May 1, 2015 regarding orientation at FGCU, which he could not attend due to his mother having surgery. R. 93.

Charles wanted Dylan to attend the Scripps Institute (the "Scripps Institute" or "Scripps") at the University of California, San Diego ("UCSD"). R. 93. He stated that

Scripps is ranked 9th in the nation in biological sciences, which includes marine biology. R. 93. The school has an aquarium and research vessels. R. 93. In contrast, FGCU is only 17 years old, is ranked 80th out of 93 schools in the southern region, and doesn't offer a marine biology degree. R. 93. Charles also believed that Dylan would be able to get a job out of college with a marine biology degree. R. 93. He also believed that Dylan's going to school with other students in the same field would give her a network of contacts later in life. R. 93. Charles received Dylan's SAT scores in May of 2013. R. 93.

Charles also offered to take Dylan to the University of Hawaii at Manoa. R. 93. In 2012, Charles took Dylan on a dive at the Scripps Institute's aquarium, but it was not a tour of the school. R. 93. Charles stated that he would pay 100% of Dylan's school if she went to Scripps or another good school. R. 93-94.

A couple weeks after Dylan started at FGCU, she told Charles that FGCU didn't offer a marine biology program. R. 94. In February 2016, Charles and Dylan met with a counselor at FGCU to discuss her options. R. 94.

Charles believes it is his responsibility as as a parent to help Dylan make the best decision for her future. R. 94. Having gone on all the diving trips with her, he sees the joy that those activities brings her. R. 94. He believes that he should be guiding her to fulfill her dreams and become successful. R. 94. Occasionally, Charles gives Dylan money when he sees her or when she has needed equipment. R. 94-95. Dylan does not have a job now, but Charles thinks she should get one because it builds character, responsibility, and financial management skills. R. 95.

On cross-examination, Charles acknowledged that Dylan's ACT score was 17 and, according to UCSD's website, it accepts students with ACT scores between 27 and 32 and

a "B" grade-point average. R. 95. He further acknowledged that UCSD's website states that a student with a grade-point average between 3.25 and 3.49 has a 1% chance of getting into UCSD, and that Dylan's high school grade-point average was 2.95. R. 95-96. Charles acknowledged that Dylan took the ACT four times, and received scores of 16, 17, 18, and 18, respectively. R. 96. Charles researched the cost of Scripps three years prior, and believed it costs $36,000-$37,000 per year at that time. R. 96. Charles knew that at the time Dylan graduated from high school, she did not have the academic qualifications to get into Scripps. R. 96. He also knew that she did not get into FGCU, and told her to appeal. R. 96.

On re-direct examination, Charles stated that at the time he advised Dylan to appeal her rejection from FGCU, he was led to believe that FGCU had a marine biology program. R. 97. He stated that after Dylan didn't get into any schools, she attended Harper College to build her grade-point average up. R. 97. Charles believed Dylan got A's and B's at Harper. R. 97. Her current grade point average is 3.2. R. 97. Based on this, he believes Dylan would be accepted as a transfer student to Scripps now. R. 97.

The trial court took judicial notice of the fact that Scripps' website stated that a transfer student must have a 3.0 grade point average and the University of Hawaii, Manoa's website states that a transfer student must have a 2.5 grade point average. R. 97.

In response to questions by the trial court, Charles testified that he was not consulted about Dylan's attending Harper College for her freshman year, but that no one asked him to pay for Harper either. R. 97-98. He stated that Rosemary sent him a letter asking him to pay for Dylan's junior year at FGCU. R. 98. Other than that, he was not

consulted about Dylan's attending FGCU. R. 98. The parties did not attend mediation on the college issue prior to Dylan's sophomore year at FGCU. R. 98.

Closing Arguments

After the close of evidence, Rosemary argued that Charles' level of input was not important to the allocation of costs for Dylan's college. R. 98. This was because the recent amendment to Section 513 of the Dissolution Act – capping costs at the level of the University of Illinois – made the child's choice of schools irrelevant from a cost perspective. R. 98. Rosemary further argued that Dylan was not a strong academic candidate, did not get into Scripps, and would be unlikely to excel at Scripps. R. 98. By contrast, Dylan was doing well at FGCU. R. 98. In fact, Charles had helped Dylan with 20 of her assignments and Dylan got A's in those classes. R. 98. Rosemary argued that both parties had the financial resources to pay for Dylan's college, and that each should pay 50%, retroactive to Dylan's second year of college. R. 99.

Charles argued that Dylan went to FGCU by mistake because she thought it offered a marine biology program, when it did not. R. 99. He thought it was appropriate to discourage her from attending a school that would not allow her to fulfill her dreams, or would at least take longer to do so. R. 99. He acknowledged that the court had broad discretion to allocate college costs, but that FGCU was the wrong school. R. 99.

Trial Court's Order of July 22, 2016

After closing arguments (on July 22, 2016), the trial court noted that Section 513 was interesting because people who are married have no obligation to pay for their children's college. R. 99. For that reason, married parents can influence which schools their children attend by choosing which schools they (the parents) will or will not pay for.

R. 99. The court noted that the legislature has taken that choice away from parents who are not married. R. 99. The court stated that: "If you were to say that that is unfair, if you were to say that those people were treated unequally, I would agree with you, but that's what the law is." R. 99.

The court stated that Charles is a great dad and the court understands he is trying to do the right thing. R. 99. However, the court noted that Scripps is "the Mecca" of marine biology, and if Dylan did not want to go to Scripps, then she might not be that serious about marine biology. R. 99-100. The court noted that Dylan liked FGCU, received low ACT scores, and had not applied to or been accepted by Scripps. R. 100. The court could not make Dylan apply to Scripps. R. 100.

The court stated that because Charles did not have input into Dylan's choice of school, it would only make him responsible for college commencing with her junior year (the 2016-2017 school year) and going forward. R. 100; C238-239. This was also based on the court's finding that Rosemary had severe credibility problems with respect to her financial affidavit. R. 100. The court ordered the parties to each be responsible for 40% of Dylan's college expenses, with Dylan responsible for the remaining 20% of expenses. R. 100; C238-239. The court's written order stated that Dylan's 20% contribution may be in the form of scholarships, grants, work-study, or employment. R. C238-239.

The July 22, 2016 order also indicated that Rosemary's petition for modification of health insurance was voluntarily withdrawn, which was based on the parties' and court's colloquy at the end of the July 22, 2016 hearing. R. 100-104; R. C239.

Subsequent "Dueling" Petitions to Enforce Payment of Health Insurance & Expenses

On August 5, 2016, Charles filed a petition for rule to show cause, alleging that Rosemary had failed to reimburse him for Dylan's health insurance premiums and out-of-pocket medical expenses. R. C242-244. On August 29, 2016, Rosemary filed a similar petition against Charles, alleging that he had failed to reimburse her for Dylan's out-of-pocket medical expenses. R. C312-314. Both parties filed responses to the other's petitions. R. C315-320; R. C344-345.

Charles' Motion to Declare Section 513 Unconstitutional

On September 23, 2016, Charles filed a motion to declare Section 513 of the Dissolution Act unconstitutional, with an attached memorandum of law. R. C327-342. He argued that Section 513 violated the equal protection clause of the U.S. Constitution by arbitrarily classifying similarly-situated individuals by marital status. R. C327. Furthermore, he argued that the rationale for the Illinois Supreme Court's 1978 decision in *Kujawinski,* which upheld Section 513 on equal protection grounds, no longer applied in today's society. R. C332-333.

On October 27, 2016, Rosemary filed her reply to Charles' motion. R. C358-359. She noted that the court ordered the parties to contribute to Dylan's college expenses on July 22, 2016, and that Charles failed to file a motion to reconsider or a notice of appeal within 30 days. R. C358. She argued that the doctrine of *res judicata* barred Charles' motion to declare Section 513 unconstitutional because the doctrine applied to both matters that were decided and could have been decided in the original action. R. C359. The time for Charles' argument was during the college hearing and could not be brought 60 days after the court's ruling. R. C359.

On December 22, 2016, Charles filed a reply to Rosemary's response, combined with a petition to terminate or modify his obligation to contribute to Dylan's college, pursuant to Sections 510 and 513 of the Dissolution Act. R. C366-374. Charles argued that since the order of July 22, 2016, a substantial change in circumstances had occurred in that Dylan was not working or paying 20% of her college expenses and that, instead, Rosemary was paying that portion. R. C366-374. Charles argued this was a "relevant factor" under Section 513. R. C369. The pleading further incorporated Charles' previous constitutional arguments. R. C370. Accordingly, Charles' argued that his obligation to contribute to Dylan's college expenses should be terminated or modified. R. C370-371.

On January 11, 2017, Charles filed an amended reply with respect to his motion to declare Section 513 unconstitutional. R. C387-392. He argued that the court's order of July 22, 2016 was not final and appealable after 30 days, because it did not contain a Rule 304(a) finding and the parties' other pleadings (related to health insurance filed on August 5, 2016 and August 29, 2016, respectively) remained pending. R. C387-392.

On February 28, 2017, Rosemary filed her response to Charles' motion to terminate or modify his college obligation. R. C404-407. Rosemary argued that Dylan's not working is not a substantial change in circumstances because she was not working at the time of the July 22, 2016 order, that Dylan's 20% responsibility did not require her to work (but could be covered by any source, such as scholarships, grants, loans, etc.), that the court did not have personal jurisdiction over Dylan because she was not a party to the case, and that Charles was not harmed by Dylan's not paying her portion. R. C404-406.

Additionally, on February 28, 2017, Rosemary filed a sur-reply to Charles' motion to declare Section 513 unconstitutional. R. C408-410. Rosemary argued that Charles'

motion was, in reality, an untimely motion to reconsider. R. C408-409. Additionally, Charles' arguments with respect to Rule 304(a) were misplaced because Rule 304(a) relates to an order's appealability, not its finality. R. C409. Finally, the fact that other pleadings remained pending had no effect because they were filed after the July 22, 2016 order. R. C409-410.

On March 14, 2017, Charles filed a reply in support of his motion to terminate or modify his college obligation. R. 412-414. He argued that the July 22, 2016 order reflected the court's intent that Dylan would be responsible for a portion of her college expenses, that Rosemary was circumventing that order without judicial approval, and that Dylan's options for her contribution listed in the July 22, 2016 order were exhaustive, not illustrative. R. C412-414. Also on March 14, 2017, Charles filed a sur-response in support of his motion to declare Section 513 unconstitutional. R. C417-419. Additionally, on June 6, 2017, Charles filed an amended reply in support of his motion to declare Section 513 unconstitutional and memorandum of law. R. C423-428, C430-441.

June 16, 2017 Ruling on "Dueling" Petitions to Enforce Health Expenses

On June 8, 2017, the court conducted a hearing on the parties' respective petitions to enforce payment of Dylan's health insurance premiums and out-of-pocket medical expenses. R. C443. The court granted Charles' petition and denied Rosemary's. R. C450-451. The court's ruling was incorporated into an order on June 16, 2017. R. C450-451.

July 28, 2017 Hearing

On July 28, 2017, the court heard arguments on Charles' motion to declare Section 513 unconstitutional and motion to terminate or modify his college obligation. R. 105-129. The court inquired as to how the motion to declare Section 513 unconstitutional was

timely, because the court believed the appellate court would "send [the case] back" on procedural grounds, rather than address the substance of Charles' constitutional argument. R. 109-110. Charles argued that the motion was a declaratory action. R. 110. He further argued in support of his pleadings that the July 22, 2016 order was not final because other matters remained pending; therefore, the motion was timely. R. 111.

The court noted Rosemary's argument that the other matters were not pending on July 22, 2016, which was important because otherwise, "you could just keep filing motions and it would never get done." R. 111.

Rosemary argued that, even if Charles' motion could be considered a declaratory action, it would still be improper because, upon the court's ruling on July 22, 2016, there was no longer a controversy and Charles' arguments were barred by the doctrine of *res judicata*. R. 112, 116. Additionally, Rosemary argued that Charles' finality argument was incorrect because there were no other matters pending on July 22, 2016. R. 117. Charles argued that even if the court declared Section 513 unconstitutional, his obligation would remain ongoing. R. 115-116.

The court granted Charles leave to amend his motion to declare Section 513 unconstitutional in order to address the procedural issues. R. 118-119; C475. The court denied Charles' motion to modify or terminate his college obligation based on the fact that the court could not order Dylan to get a job and Charles was not harmed by Rosemary's paying Dylan's portion. R. 127-128; C475.

Amended Pleadings re Section 513 Constitutionality

On August 1, 2017, Charles filed an amended motion to declare Section 513 unconstitutional. R. C478-483. The motion noted the trial court's ruling on July 28, 2017,

denying his motion to terminate or modify his college obligation. R. C478. Charles argued that, "As a result of this ruling, [Charles'] parental rights in steering his adult daughter to an appropriate college have been usurped." R. C478. Otherwise, the motion incorporated many of the arguments in Charles' previous motions regarding Section 513's constitutionality. R. C478-483. On September 29, 2017, Charles filed a memorandum in support of his motion to declare Section 513 unconstitutional, which incorporated many of the arguments in his previous memoranda. R. 516-530.

On October 27, 2017, Rosemary filed her response to Charles' motion. R. C537-541. Rosemary's response argued again that Charles' motion was an untimely motion to reconsider the order of July 22, 2016 and is barred by *res judicata*. R. C537-538. Additionally, Charles motion to terminate or modify his college obligation did not "reopen the door" on the constitutionality issue. R. C539. To the contrary, Charles motion to terminate or modify presumed that the July 22, 2016 order was valid and that Section 513 is constitutional. R. C539. Moreover, Charles most recent memorandum in support of his motion to declare Section 513 unconstitutional did nothing to remedy the procedural defects raised by Rosemary and discussed at the July 28, 2017 hearing. R. C540-541.

On November 17, 2017, Charles filed a reply in support of his motion. R. C543-552. Charles argued that his motion was timely because, under Section 13-205 of the Code of Civil Procedure, he could bring the action within 5 years after the time the cause of action accrued. R. C545. Furthermore, Charles argued that since the July 22, 2016 order was modifiable, it was not final, which in turn extended the time he could bring his motion to declare Section 513 unconstitutional. R. C547-549. Furthermore, Charles argued that his motion was timely because the most recent version of the motion was filed on August

1, 2017, within 30 days of the court's denial or his motion to terminate or modify on July 28, 2017. R. C549-550. Finally, Charles argued that his motion is not barred by *res judicata* because he is not asking the court to reconsider its rulings on July 22, 2016 or July 28 2017, but rather declare Section 513 unconstitutional, which is not the same issue. R. C549-551.

December 29, 2017 Hearing

On December 29, 2017, the trial court heard arguments on Charles' amended motion to declare Section 513 unconstitutional, filed on August 1, 2017. R. 131-172. At the outset, the court stated that it wanted to hear whether and how Section 513 treats two classes of people differently and which constitutional standard should apply – strict scrutiny or rational basis. R. 138.

Charles argued that Section 513 affects four classes of people: unmarried parents, married parents, and the children of those respective groups. R. 138-139. He further argued that the rational basis standard applied to Section 513. R. 142. He stated that the Supreme Court's 1978 opinion in *Kujawinski* stated that unmarried parents did not have the same level of concern for their children as married parents and that, at the time, the Supreme Court considered unmarried parents "abnormal." R. 143. Charles argued that at least half of the children today have unmarried parents, so the rationale in *Kujawinski* no longer makes sense in today's world. R. 143. Charles further argued that the trial court could find Section 513 unconstitutional as applied to him only, because he lost his parental rights to use his "purse strings" to encourage Dylan to go to the right school. R. 143-144.

In response, Rosemary argued that the court lacked jurisdiction to decide the constitutional question because Charles brought his motion to declare Section 513

unconstitutional more than 30 days after the July 22, 2016 order. R. 145. Likewise, Charles' motion did not seek to vacate the July 22, 2016 order after 30 days, pursuant to Section 2-1401 of the Code of Civil Procedure. R. 145-146. Indeed, Charles' amended motion failed to cure these procedural defects, which the court had pointed out at the July 28, 2017 hearing. R. 146.

Rosemary argued that the real class distinction is between parents who come to court versus parents who don't come to court. R. 149-150. She further argued that college contribution is a form of child support, and a court can order married parents to pay both. R. 150-152. Rosemary argued that the choice of schools was no longer relevant under the current version of Section 513, which capped costs at the level of the University of Illinois at Urbana-Champaign. R. 156-157. Rosemary further argued that there is no such thing as a statute being held unconstitutional as applied to only one individual. R. 157. Rosemary argued that there are factual issues because Charles relied on statistics in his motion, which have not been established from an evidentiary standpoint. R. 158.

The court stated that if the July 22, 2016 order was void *ab initio*, then Rosemary's procedural objections could all "[go] out the window." R. 146-147. While the trial court agreed that married parents could be ordered to pay child support (R. 150), it disagreed that married parents could be ordered to pay for college. R. 153. The trial court stated that the choice of school was relevant, even if the financial level was capped. R. 157. The court stated that it could take judicial notice of the statistics cited in Charles' motion. R. 158.

The court also noted that Illinois is in the minority of states that has a college contribution statute and that a number of other state courts have struck down similar laws. R. 159. The court noted that in *Kujawinski*, the Supreme Court found that Section 513

treated different classes of people differently, but that there was a rational basis to do so because children of unmarried parents needed "a break" since they were not in the same position as children in "normal" families. R. 161. Therefore, the constitutional question could be answered by simply asking whether children from unmarried parents were "normal" in today's society. R. 162. The court also believed the class distinction was between married and unmarried parents, rather than the children of those groups. R. 163.

Charles argued that he had standing to challenge Section 513 because he is injured every time he makes a college contribution, and he has 5 years to bring a cause of action every time he is injured. R. 163-164. He argued that children of married parents don't have the same benefits of Section 513 as children of unmarried parents. R. 164. He reiterated that Section 513 places an unconstitutional burden on unmarried parents. R. 164. He agreed with the trial court that the Supreme Court in *Kujawinski* found that married parents care more about their children than unmarried parents, which is false in today's world. R. 164-165. He argued that the court can take judicial notice of the statistics cited in his motion, which state that more than 50% of the children today are from unmarried parents. R. 165. He also stated that most other states have either struck-down "513-type" statutes or don't have them, and that Illinois is in the minority. R. 165. He stated that treating unmarried parents differently from married parents is antiquated and unfair. R. 165. He reiterated that Section 513 could be found unconstitutional as applied to him only. R. 165-166. The court took the matter under advisement. R. 168.

Trial Court's Written Opinion and Order of May 4, 2018

On May 4, 2018, the trial court issued its written memorandum opinion and order. R. C562-572. The court granted Charles' motion and declared Section 513

unconstitutional as applied to him in this case. R. C562. The court summarized the procedural and factual background of the case. R. C562-563. The court then went on to analyze Section 513. R. C563. It noted that Section 513 does not contain any provisions for the input, advice, or consent of either parent as to the choice of school. R. C563.

The court then reviewed the Illinois Supreme Court's 1978 decision in *Kujawinski*. R. C564. The *Kujawinski* Court applied the rational basis standard to Section 513 and found that it did not violate the equal protection clause of the U.S. Constitution. R. C564. Rather, the *Kujawinski* Court found that Section 513 had a rational basis because children of unmarried parents were less likely to receive assistance for their college education than children of married parents. R. C564. The trial court went on to find that "while traditional two parent households were the norm in 1978, in 2018 they make up less than half." R. 565. Therefore, the trial court found that "the social changes that have occurred since 1978 make the rational basis cited in *Kujawinski* no longer tenable. Further, there is no apparent rational basis for the statute other than that cited in *Kujawinski*." R. C566. The trial court found that Charles was denied equal protection in this case and that Section 513 is unconstitutional as applied. R. C568. The court further found that Section 513 cannot reasonably be construed in a manner that would preserve its validity in this case, that the finding of unconstitutionality is necessary to the court's decision, and that the decision cannot rest on alternative ground. R. C568. Therefore, the trial court vacated its order of July 22, 2016. R. C568.

Rosemary's Notice of Appeal

On May 31, 2018, Rosemary filed a notice of appeal from the trial court's order of May 4, 2018, directly to this Court, pursuant to Rule 302(a)(1). R. C576-587.

ARGUMENT

I. THE TRIAL COURT LACKED AUTHORITY TO GRANT CHARLES' MOTION TO DECLARE SECTION 513 OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT UNCONSTITUTIONAL

A. Standard of review

Questions concerning the authority of a court present issues of law subject to *de novo* review. *Timothy Whelan Law Offices v. Kruppe,* 409 Ill.App.3d 359, 373 (Ill. App. 2nd Dist. 2011).

B. The trial court lacked authority to grant Charles' motion to declare Section 513 unconstitutional because of the doctrine of *stare decisis*

First, the trial court had no authority to declare Section 513 of the Illinois Marriage and Dissolution of Marriage Act (the "Dissolution Act" or the "Act") unconstitutional under the doctrine of *stare decisis*. Under *stare decisis*, when this Court has declared the law on any point, *it alone can overrule or modify its previous opinion*, and the lower judicial tribunals are bound by such decision and it is the duty of such lower tribunals to follow such decision in similar cases. *Blumenthal v. Brewer*, 2016 IL 118781, ¶61 (emphasis in original). A lower court has no authority to depart from this Court's prior decision. *Id.* It can question the case and recommend that this Court revisit its holding, but it cannot overrule it. *Id.*

In the present case, the trial court's order of May 4, 2018 analyzed this Court's decision in *Kujawinski*, which upheld Section 513 as constitutional on equal protection grounds. R. C562-572; *Kujawinski v. Kujawinski,* 71 Ill.2d 563 (Ill. 1978). The trial court then found the rational basis for *Kujawinski* "no longer tenable," and declared Section 513 unconstitutional on those same grounds. R. C563-568. This was not the trial court's decision to make. Unlike the trial court in *Kujawinski*, which passed on Section 513's

constitutionality for the first time, the trial court in this case was bound by the precedent set by *Kujawinski*. Allowing the trial court to ignore the doctrine of *stare decisis* would undermine the supremacy of this Court, upend the judiciary as established by the Illinois Constitution (see Ill. Const., Art. 6 (1970)), and open the floodgates of appeals from lower courts that might disagree with the settled law of this Court. This is no way to run a railroad. If Charles truly wanted to challenge Section 513's constitutionality, the proper procedure would have been to bring his motion in the underlying case (prior to the July 22, 2016 order), accept the trial's court denial based on *Kujawinski*, then seek this Court's review through the appellate process. This procedure was not followed, and the trial court's ruling should be reversed on the basis of *stare decisis* alone.

C. The trial court lacked authority to grant Charles' motion because it was untimely, barred by *res judicata*, and did not resolve an actual controversy

Even if the trial court was not bound by *stare decisis*, it should not have considered Charles' motion to declare Section 513 unconstitutional based on multiple procedural deficiencies. Because the trial court's order of May 4, 2018 does not address any of these procedural issues, we must address them all.

(1) Charles' motion to declare Section 513 unconstitutional was an untimely post-judgment motion

First, Charles' motion to declare Section 513 unconstitutional was an untimely post-judgment motion. Under Section 2-1203 of the Illinois Code of Civil Procedure, a party may move for rehearing, retrial, modification, vacatur, or *other relief* within 30 days after entry of a judgment. 735 ILCS 5/2-1203 (West 2018) (emphasis added). If neither party files such a motion within 30 days, a trial court loses jurisdiction over the case and its authority to vacate or modify the judgment. *In re Marriage of Heinrich*, 2014 IL App

(2d) 121333, ¶35. A final judgment is a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit. *In re Marriage of Heinrich*, 2014 IL App (2d) 121333, ¶35. If affirmed, the only action remaining is to proceed to its execution. *In re Marriage of Agustsson*, 223 Ill.App.3d 510, 514 (Ill. App. 2nd Dist. 1992).

Despite filing his motion to declare Section 513 unconstitutional 62 days after the July 22, 2016 order, Charles argued that his motion was timely because other matters remained pending, his separate motion to terminate or modify his college obligation re-vested the trial court with jurisdiction, his motion did not seek to vacate the order, and he had 5 years from the time he was "injured," which was when he started making actual college payments. None of these arguments is correct.

(a) The July 22, 2016 order was final, and the filing of other motions after its entry had no effect

The July 22, 2016 order was a final judgment because it was a determination by the court on the issues presented by Rosemary's petition for college contribution, which fixed absolutely and finally the rights of the parties with respect to that pleading. It allocated the costs of Dylan's college between Rosemary and Charles, which is all that Rosemary's petition requested. R. C136-138; C238-239. It resolved every right, liability, or matter raised and did not reserve any issues or continue other matters to a future court date for further proceedings. C238-239. To the contrary, the July 22, 2016 order was entered, the only action remaining was for the parties to execute its terms.

The fact that other motions were filed *after* the July 22, 2016 order did not render it non-final. In making this argument, Charles conflated the concepts of finality and appealability. An order may be final, but not appealable. *In re Marriage of Heinrich*, 2014

IL App (2d) 121333, ¶32-33, ¶36 (distinguishing between orders that are final and appealable). It goes without saying that most orders are final but not appealable when, for example, the 30-day appeal period has expired. *See* Ill. S.C. Rule 303(a) (West 2018). Indeed, in this case, the July 22, 2016 order achieved that very status on August 22, 2016.

Even if the other motions were pending at the time of the July 22, 2016 order (which they were not), at best, that only could have had the effect of precluding appellate review of the July 22, 2016 order. The other motions did not somehow re-vest the trial court with jurisdiction over Charles' motion to declare Section 513 unconstitutional, where it otherwise had none. In other words, while finality is a prerequisite to appellate jurisdiction, lack of appellate jurisdiction does not render an order non-final.

In the trial court, Charles relied on Illinois Supreme Court Rule 304(a) and cases interpreting it. However, they do not support his argument. Rule 304(a) states:

> If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both….In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of the parties.
>
> Ill. S.C. Rule 304(a) (West 2018)

The purpose of Rule 304(a) is to discourage piecemeal appeals. *Blumenthal v. Brewer*, 2016 IL 118781, ¶23. It has been applied in the pre-dissolution-of-marriage context to preclude the separate appeal of issues falling within a single dissolution claim. *In re Marriage of Leopando*, 96 Ill.2d 114 (Ill. 1983). Likewise, in the post-dissolution context, Rule 304(a) has precluded the separate appeal of motions that were pending at the

same time. *In re Marriage of Alyassir*, 335 Ill.App.3d 998 (Ill. App. 2nd Dist. 2003); and see also *In re Marriage of Teymour*, 2017 IL App (1st) 161091, ¶41 (noting that *simultaneously pending* post-dissolution matters cannot be appealed separately without a Rule 304(a) finding) (emphasis added).

Contrary to Charles' interpretation, *Alyassir* does not say that a post-decree adjudication becomes non-final if other post-decree motions are filed afterwards. That is because those were neither the facts nor issues presented in *Alyassir*. Rather, *Alyassir* involved a mother's two-count petition to increase child support (count I) and enforce payment of past due medical bills (count II). *In re Marriage of Alyassir*, 335 Ill.App.3d 998 (Ill. App. 2nd Dist. 2003). The trial court granted count I, but continued count II for further proceedings. *Id.* There was no Rule 304(a) finding with respect to count I. *Id.* The mother appealed count I, while count II remained pending in the trial court. *Id.* The Second District dismissed the case for lack of jurisdiction because the trial court's order did not resolve all claims and, thus, was not appealable without a Rule 304(a) finding. *Id.*

From the facts of *Alyassir*, it is clear that the Second District's holding applied only to the appealability of orders involving multiple claims that are pending at the same time. The *Alyassir* court did not hold that the trial court's adjudication of count I (child support) was not final or subject to revision (vacatur) after more than 30 days because count II remained pending. Nonetheless, this was the argument Charles asserted in the trial court. R. 111. Besides being a misreading of *Alayssir*, Charles' interpretation would mean that a party could file endless post-decree petitions, seek perennial revision of prior orders in the trial court (as opposed to modifying them), and prevent appellate jurisdiction over all orders. The purpose of Rule 304(a) is to discourage piecemeal appeals, not to banish them

from the face of the Earth. For these reasons, Charles' argument that the petitions filed after the July 22, 2016 order rendered it non-final was incorrect. To the extent the trial court relied on that argument, it erred.

(b) The July 22, 2016 order was final, even if it was modifiable

Likewise, Charles confused the concepts of finality and modifiability. In dissolution of marriage proceedings, a court which has issued a *final* divorce decree retains jurisdiction of the proceedings at all times to enforce, adjust, or modify the original decree in regard to the custody and care of the children as the changing circumstances may warrant. *In re Marriage of Petersen,* 2011 IL 110984, ¶19 (emphasis added). This includes child support, which, in turn, includes post-high school education expenses. *In re Marriage of Petersen*, 2011 IL 110984, ¶13. Modification of child support, however, is limited to installments accruing after the date of filing of the petition to modify. *In re Marriage of Petersen,* 2011 IL 110984, ¶18, citing 750 ILCS 5/510 (West 2006). This encourages the prompt resolution of issues of child support rather than creating open-ended obligations on the parties. *In re Marriage of Petersen,* 2011 IL 110984, ¶23.

Contrary to Charles' argument, the court's order of July 22, 2016 was final, even if it remained subject to future modification upon a change of circumstances, pursuant to Section 510 of the Dissolution Act. Indeed, Charles' motion to terminate or modify the July 22, 2016 order was premised on the fact that the order was valid and that Section 513 was constitutional. To hold that the July 22, 2016 order was not final because it is subject to future modification would mean that no child support order would ever be final, a party could attack a support order indefinitely without showing a substantial change in circumstances, and thus, create an open-ended obligation on both parties. This would read

Section 510 entirely out of the Dissolution Act; thereby defeating the Act's purpose and statutory framework. This is especially true where, as here, Charles' motion to modify was denied as insufficient on its face. R. 127-128; C475. Once again, Charles' argument is incorrect and if the trial court relied on it, the court erred.

(c) Charles' motion to declare Section 513 unconstitutional was a post-judgment motion to vacate

Charles also argued that he was not bound by the 30-day time in which to file a post-judgment motion because his motion to declare Section 513 unconstitutional did not seek to vacate the July 22, 2016 order. We note that Section 2-1203 of the Code of Civil Procedure includes motions for *other relief*, such as Charles' motion to declare Section 513 unconstitutional. 735 ILCS 5/2-1203 (West 2018); and *see Resolution Trust Corp. v. Holtzman*, 248 Ill.App.3d 105, 111 (Ill. App. 1st Dist. 1993) (defendants' motion to add affirmative defenses 53 days after judgment was tantamount to an untimely post-judgment motion under Section 2-1203). Therefore, Charles' motion was subject to Section 2-1203, based on the motion's substance rather than its label.

Specifically, Charles' motion filed on August 1, 2017 asked the trial court to "declare that [Charles] has no obligation to pay for the college expenses of his adult child." R. C 482. Whether Charles used the actual word "vacate" is irrelevant. He was clearly seeking to set aside the order or negate its legal effect. This is certainly how the trial court interpreted Charles' motion, as its May 4, 2018 order expressly "vacated" its July 22, 2016 order. R. C568. Therefore, Charles motion to declare Section 513 unconstitutional was, in reality, an untimely motion to vacate. For these reasons, the trial court was without authority to grant it, and erred in doing so.

(d) Section 13-205 of the Code of Civil Procedure does not apply to motions to vacate

Finally, Charles argued that, pursuant to Section 13-205 of the Code of Civil Procedure, he could bring his motion to declare Section 513 unconstitutional within 5 years from the time he was "injured," which was when he actually started making the college payments. R. C544-545. While Charles gets points for creativity, there is no authority to support this position. The only cases dealing with Section 13-205 in the child support context involve the time with which an obligee must bring an action against an obligor to enforce a judgment for child support arrearages. *See e.g., In re Marriage of Kramer*, 253 Ill.App.3d 923 (Ill. App. 4th Dist. 1993) (finding that 20-year limitation in Section 13-218 applied to child support judgments, rather than 5-year limitation in Section 13-205). Like Charles' arguments above, his interpretation of Section 13-205 would have the absurd effect of allowing obligors to challenge child support orders indefinitely, rather than seeking modification based upon a substantial change in circumstances. To the extent the trial court considered this argument, it erred.

(2) Charles' motion to declare Section 513 unconstitutional was barred by the doctrine of *res judicata*

Additionally, the trial court should not have considered Charles' motion to declare Section 513 unconstitutional because it was barred by the doctrine of *res judicata*. Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction acts as a bar to a subsequent suit between the parties involving the same cause of action. *Blumenthal v. Brewer*, 2016 IL 118781, ¶42. A cause of action is defined by the facts which give rise to a right to relief. *Id.* Separate claims will be considered the same cause of action for purposes of *res judicata* if they arise from a single group of

operative facts, regardless of whether they assert different theories of relief. *Id.* These principles extend to claims arising from the same operative facts as the plaintiff's claim that were or could have been raised by the defendant, and it has been held that *res judicata* bars a subsequent action if successful prosecution of that action would, in effect, nullify the judgment entered in the original action. *Id.*

Similarly, where a party fails to challenge a legal decision when it has the opportunity to do so, that decision, as a general rule, becomes the law of the case for future stages of litigation and that party is deemed to have waived the right to challenge that decision at a later time. *Blumenthal v. Brewer*, 2016 IL 118781, ¶43. The law-of-the-case doctrine bars relitigation of issues of both law and fact. *Id.*

In this case, the July 22, 2016 order was a final judgment on the merits of Rosemary's petition for college contribution from Charles. The procedural history makes this clear, as Charles filed an answer to Rosemary's petition, the parties attended mediation, and exchanged discovery documents. The case proceeded to hearing in which the court considered the testimony and exhibits of both parties. On July 22, 2016, the court entered its final judgment, which allocated Dylan's college costs between the parties.

Charles had every opportunity to challenge Section 513's constitutionality during this underlying proceeding. Nonetheless, it was not until 62 days after the July 22, 2016 order that Charles filed his motion to declare Section 513 unconstitutional based on the same operative facts as the original action. The fact that Charles advanced a different legal theory is of no import, since *res judicata* bars all subsequent claims that could have been raised in the original action. Lastly, it is clear that *res judicata* applies because in granting Charles' motion, the trial court nullified its prior order. The trial court's May 4, 2018 order

expressly "vacated" the July 22, 2016 order. R. C568. Therefore, Charles' motion to declare Section 513 was barred by *res judicata*, and the trial court erred in granting it.

(3) Charles' motion to declare Section 513 unconstitutional was not a proper declaratory action because there was no actual controversy

Charles' motion to declare Section 513 unconstitutional was not a proper declaratory action because there was no actual controversy. At the hearing on July 28, 2017, Charles argued that his motion to declare Section 513 unconstitutional was a declaratory action. R. 110. Section 2-701 of the Code of Civil Procedure states that:

> The court may, *in cases of actual controversy*, making binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including…a declaration of the rights of the parties interested.

735 ILCS 5/2-701(a) (West 2018)

Declaratory judgments are appropriate in dissolution of marriage proceedings. *In re Marriage of Best*, 228 Ill.2d 107, 116 (Ill. 2008). For example, declaratory motions are used to determine the validity, scope, and application of the provisions of a pre-marital agreement prior to entry of a final judgment for dissolution. *See e.g., In re Marriage of Best*, 228 Ill.2d 107, 117 (Ill. 2008); and *In re Marriage of Heinrich*, 2014 IL App (2d) 121333.

For the same reasons that the July 22, 2016 order was final and Charles' motion is barred by *res judicata*, it is likewise improper because there was no actual controversy, as required by Section 2-701 of the Code. As stated above, Charles brought his motion 62 days after the court's order of July 22, 2016. The parties' rights had already been adjudicated by that order and, therefore, no controversy remained pending. Charles had no standing to bring a declaratory motion, and the court had no authority to grant it. For these

reasons, the trial court's order of May 4, 2018 should be reversed and its July 22, 2016 order should be reinstated.

II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING SECTION 513 OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT UNCONSTITUTIONAL

A. Standard of review

This case comes to this Court upon the trial court's granting Charles' motion to declare Section 513 unconstitutional. The review of the constitutionality of a statute is *de novo*. *In re Marriage of Bates*, 212 Ill.2d 489, 509 (Ill. 2004).

B. The trial court committed reversible error in finding Section 513 of the Illinois Marriage and Dissolution of Marriage Act Unconstitutional

(1) Principles of Statutory Construction

Statutes are presumed constitutional, and the party challenging the validity of a statute has the burden of clearly establishing that it is unconstitutional. *In re Marriage of Bates*, 212 Ill.2d 489, 509 (Ill. 2004). The strong presumption of constitutionality requires courts to construe statutes in order to uphold their constitutionality whenever possible. *Id.* Courts will address constitutional issues only as a last resort, relying whenever possible on nonconstitutional grounds to decide cases. *Mulay v. Mulay,* 225 Ill.2d 601, 607 (Ill. 2007).

(2) Equal Protection Clause

The 14th Amendment of the U.S. Constitution states that: "[No]…State [shall] deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amendment XIV, Sect. 1. The equal protection clause guarantees that similarly situated individuals will be treated in a similar manner, unless the government can demonstrate an appropriate reason to treat those individuals differently. *In re M.A.*, 2015 IL 118049, ¶24.

(3) Illinois Parentage Act of 2015 and Section 513 of Dissolution Act

The Illinois Parentage Act of 2015 incorporates Section 513 of the Dissolution Act by reference. 750 ILCS 46/802(a) (West 2018). Section 513, in turns, provides that a court may order divorced parents to contribute to their child's post-high school education expenses. 750 ILCS 5/513 (West 2018). The most important provisions of Section 513 can be summarized as follows:

> (1) Section 513(a) states that the court may order the parents to contribute to their child's post-high school education expenses until the child turns 23 years old, which may be extended to 25 years old for good cause;
>
> (2) Section 513(c) states that the provision applies to children still in high school, even if they are over 19 years old;
>
> (3) Section 513(d) lists the eligible expenses as the tuition and fees, housing, and meal plan not to exceed the cost of the University of Illinois at Urbana-Champaign, actual medical insurance and expenses, reasonable living expenses if the child lives at home (including food, utilities, and transportation), and books and supplies;
>
> (4) Section 513(f) states that the parents hall have access to the child's academic records and that failure to grant access could result in the modification or termination of the parent's obligation to contribute;
>
> (5) Section 513(g) states that a court's authority terminates when the child fails to maintain a cumulative "C" grade point average, attains the age of 23, receives a baccalaureate degree, or marries;
>
> (6) Section 513(j) states that in making its award, the court shall consider all relevant factors that appear reasonable and necessary, including: (a) the parties' financial resources; (b) the standard of living the child would have enjoyed had the marriage not been dissolved; (c) the financial resources of the child; and (d) the child's academic performance;
>
> (7) Section 513(k) states that a court's award may be retroactive only to the date of filing of the petition to establish contribution.
>
> 750 ILCS 5/513 (West 2018)

(4) *Kujawinski v. Kujawinski* (1978)

In *Kujawinski v. Kujawinski*, this Court addressed a constitutional challenge to Section 513 soon after its enactment. *Kujawinski v. Kujawinski,* 71 Ill.2d 563 (Ill. 1978). In that case, the husband was a party to a pending divorce case, involving his wife and six children. *Id.* at 568. He brought an action to declare Section 513 unconstitutional on the basis that it denied him equal protection because it invidiously discriminated against divorced parents. *Id.* at 577. The trial court granted the husband's complaint and declared Section 513 unconstitutional. *Id.* at 568.

On appeal, this Court reversed the trial court's ruling and upheld Section 513 as constitutional. *Id.* at 582. In so doing, the Court found that the obligation on divorced parents to contribute to their children's post-high school education expenses was reasonably related to a legitimate legislative purpose. *Id.* at 579. The Court reasoned as follows:

> It cannot be overemphasized that divorce, by its nature, has a major economic and personal impact on the lives of those involved. That the legislature is cognizant of this is evident by the express purpose of the [Dissolution] Act to 'mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.
>
> …
>
> Unfortunately, it is not the isolated exception that noncustodial divorced parents, because of…additional expenses or because of a loss of concern for children who are no longer in their immediate care and custody, or out of animosity directed at the custodial spouse, cannot be relied upon to voluntarily support the children of an earlier marriage to the extent they would have had they not divorced.
>
> *Id.* at 579.

The Court went on to further quote the First District's decision in *Maitzen v. Maitzen,* as follows:

> In a normal household, parents direct their children as to when and how they should work or study. That is on the assumption of a normal family relationship, where parental love and moral obligation dictate what is best for the children. Under such circumstances, natural pride in the attainments of a child would demand of parents provision for a college education, even at a sacrifice. When we turn to divorced parents a disrupted family society cannot count on normal protection for the child, and it is here that equity takes control to mitigate the hardship that may befall children of divorced parents.
>
> *Id.* at 579-580*,* quoting *Maitzen v. Maitzen*, 24 Ill.App.2d 32, 38 (1959)

The *Kujawinski* Court further noted that Section 513 is discretionary and does not mandate that divorced parents contribute to post-high school education expenses in all cases. *Id.* at 580. Rather, the Court found that:

> It is certainly a legitimate legislative purpose to minimize any economic and educational disadvantages to children of divorced parents. If parents could have been expected to provide an education for their child of majority age absent a divorce, it is not unreasonable for the legislature to furnish a means for providing that they do so after they have been divorced. We have no hesitation, therefore, in concluding that it is reasonably related to that legitimate purpose for the legislature to permit the trial court, in its sound discretion, to compel divorced parents to educate their children to the same extent as might reasonably be expected of nondivorced parents.
>
> *Id.*

(5) <u>Equal Protection analysis in the case before this Court</u>

(a) <u>Classification</u>

The first step in an equal protection analysis is to identify the classes which fall under the challenged statute. *Kujawinski v. Kujawinski,* 71 Ill.2d 563, 578 (Ill. 1978). The legislature may differentiate between persons similarly situated as long as the classification bears a reasonable relationship to a legitimate legislative purpose. *Id.*, citing *McGowan v. Maryland*, 366 U.S. 420, 425-426 (1961). The constitutional safeguard [of equal

protection] is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. *McGowan v. Maryland*, 366 U.S. 420, 425 (1961).

The equal protection clause does not forbid the legislature from drawing proper distinctions in legislation among different categories of people, but the equal protection clause does prohibit the legislature from doing so based on criteria wholly unrelated to the legislation's purpose. *In re M.A.*, 2015 IL 118049, ¶24. A threshold matter in addressing an equal protection claim is determining whether the individual claiming an equal protection violation is similarly situated to the comparison group. *Id.* at ¶25. When a party bringing an equal protection claim fails to show that he is similarly situated to the comparison group, his equal protection challenge fails. *Id.* at ¶26.

In this case, the trial court identified the classes as divorced or unmarried parents versus married parents, as well as children of those groups. R. C562-572. The court cited the Pennsylvania Supreme Court's decision in *Curtis v. Kline*, which focused on the rights of children of unmarried parents, as having greater rights to a post-secondary education than children of married parents. R. C566; *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995). Additionally, the court noted that Section 513 places a financial burden on unmarried parents and deprives them of the same input and ability to educate their children as married parents. R. C567. The court's ultimate ruling appeared to be based on Charles, as an unmarried parent, as applied only to him in this case. R. C567-568.

We take issue with the trial court's classifications in some respects. First, it appears incongruous that the discriminated classes include unmarried parents at the same time as children of married parents. Indeed, the *Curtis* court's finding that Pennsylvania's college

statute violated equal protection by over-empowering children of unmarried parents seems to turn an equal protection analysis on its head.

Secondly, the statute does not apply to all unmarried parents. There are unmarried parents who agree to send their children to college, and unmarried parents who agree *not* to send their children to college, neither of whom will ever have Section 513 applied to them. Rather, Section 513 only applies to unmarried parents when one parent wishes to pay for his/her child's college, and the other does not.

Likewise, there are married parents who agree to send their children to college and married parents who agree *not* to send their children to college. Again, they fall outside the purview of the law. However, contrary to Charles' arguments and the trial court's findings, married parents do have a legal mechanism to compel their spouses to pay for child support and post-high school education expenses through the Illinois Parentage Act of 2015. See *Ill. Dept. of Healthcare & Fam. Serv. v. Arevalo*, 2016 IL App (2d) 150504, ¶31 ("Every child has equal rights regardless of the parents' legal relationship. Thus, the fact that [mother] and [father] are married is not an impediment to proceeding under the Parentage Act."). The fact that such a proceeding may be rare (and likely to lead to a dissolution action soon thereafter) does not make it any less relevant from a legal standpoint.

Thus, the true classification could be viewed as parents who agree on their child's college expenses versus parents who do not agree, regardless of marital status. In that case, Charles' and the trial court's equal protection analysis fails because: (1) it does not establish that Charles is similarly situated to other unmarried parents (many of whom agree on the issue of paying for their child's college expenses); and (2) the Illinois Parentage Act

of 2015 applies to both unmarried and married parents. See *In re M.A.*, 2015 IL 118049, ¶26.

Even accepting the trial court's classifications does not support an equal protection violation because the classification bears a reasonable relationship to a legitimate legislative purpose (discussed below). *Kujawinski v. Kujawinski,* 71 Ill.2d 563, 578 (Ill. 1978). In the present case, the trial court homed in on the *Maitzen* court's use of the word "normal" as applied to married parents and found that such a concept was antiquated, no longer represented a majority of households, and no longer provided a rational basis to treat divorced parents differently. R. C564-565. This is a purely semantical argument. While the terms "normal" (and by implication "abnormal") are inartful, the *Kujawinski* Court could have easily substituted the words "married" and "unmarried" or "divorced" and "nondivorced," to make the same point: that divorce is disruptive to the family, that children in those circumstances may be disadvantaged, and that the State has an interest in protecting them. Concluding that there's *no* rational basis for distinguishing between divorced and nondivorced parents simply because the terminology was less diplomatic 60 years ago is not enough to overrule Supreme Court precedent and strike down a statute.

(b) Public Purpose of Illinois Parentage Act and Illinois Marriage and Dissolution of Marriage Act

The next step in a rational basis analysis is to state the public purpose of the statute involved. *In re M.A.*, 2015 IL 118049, ¶55. The public policy of the Illinois Parentage Act of 2015 is to recognize "the right of every child to the physical, mental, emotional, and financial support of his or her parents. The parent-child relationship, including support obligations, extends equally to every child and to his or her parent[s]…regardless of the legal relationship of the parents…" 750 ILCS 46/102 (West 2018). Similarly, the

Dissolution Act is to be liberally construed and applied to promote its underlying purposes, which is to: "mitigate the potential harm to spouses and their children caused by an action brought under this Act…" and "make reasonable provision for support during and after an underlying dissolution of marriage [or]…parentage…action." 750 ILCS 5/102(4)(8) (West 2018).

In *Blumenthal v. Brewer*, this Court noted that various legislative amendments to the Dissolution Act over the last 38 years demonstrated that the legislature knows how to alter family-related statutes and does not hesitate to do so when and if it believes public policy so requires. *Blumenthal v. Brewer*, 2016 IL 118781, ¶76. When deciding complex public policy considerations, such questions are appropriately within the province of the legislature, and if there is to be a change in the law of this State, it is for the legislature and not the courts to bring about that change. *Blumenthal v. Brewer*, 2016 IL 118781, ¶76. The legislative branch is far better suited to declare public policy in the domestic relations field due to its superior investigative and fact-finding facilities, as declaring public policy requires evaluation of sociological data and alternatives. *Blumenthal v. Brewer*, 2016 IL 118781, ¶77.

Section 513 has been amended ten (10) times since *Kujwanski* was decided, including when the Dissolution Act was overhauled through Public Act 99-90, effective January 1, 2016. *See* Ill. P.A. 99-90 (eff. Jan. 1, 2016). Despite these amendments, the core purpose and language of Section 513 has remained in place at all times. The Illinois legislature is presumed to have been aware of *Kujawinski's* interpretation of Section 513 and acquiesced to the purpose stated therein, despite the passage of these various amendments over the course of 40 years. See *Blumenthal v. Brewer*, 2016 IL 118781, ¶77

("When the legislature chooses not to amend a statute to reverse a judicial construction, it is presumed that the legislature has acquiesced in the court's statement of the legislative intent.") The trial court's finding that *Kujawinski's* rationale "may have been true in 1978, [but] there is no basis for such a conclusion today" (R. C565) flies directly in the face of repeated, and recent, legislative intent.

(c) Rational Relationship to Legitimate Legislative Purpose

The next step in a rational basis analysis is to determine if the statute bears a reasonable relationship to the public interest to be served and the means adopted are a reasonable method of accomplishing the desired objective. *In re M.A.*, 2015 IL 118049, ¶26. A statute need not be the best means of accomplishing the stated objective. *Id.* Courts will not second guess the wisdom of legislative enactments or dictate alternative means to achieve the desired result. *Id.* If there is any conceivable set of facts that show a rational basis for the statute, the statute will be upheld. *Id.* The burden rests upon the person challenging the statute to negate the existence of any facts which may be reasonably conceived to sustain it. *Kujawinski v. Kujawinski,* 71 Ill.2d 563 (Ill. 1978). State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. *McGowan v. Maryland*, 366 U.S. 420, 425 (1961).

In this case, the plain language of Section 513 is to enable and encourage children to receive a post-high school education by providing them with the financial support to do so. 750 ILCS 5/513 (West 2018). There is no question that this bears some rational relationship to providing financial support and mitigating harm to children involved in

dissolution, child support, or custody proceedings. *See* 750 ILCS 46/102 (West 2018); and 750 ILCS 5/102(4)(8) (West 2018).

While the trial court cited statistics to show that children of unmarried parents are now a majority in the United States (R. C565), the statistics actually support the opposite conclusion: that more children today are in need of financial assistance for their post-high school education than ever before. In any event, all Section 513 needs to show is *some* rational basis to financially support and mitigating harm to children, even if it is not the best means to achieve that outcome. *In re M.A.*, 2015 IL 118049, ¶26 (emphasis added). The burden remains on Charles to negate those facts, and as stated above, the statistics he cited (and upon which the trial court relied) are actually inapposite. See *Kujawinski v. Kujawinski,* 71 Ill.2d 563 (Ill. 1978).

Meanwhile, other statistics overwhelmingly support the rationale behind Section 513. It is almost universally held that a college education is a desirable goal. One study has found that workers with a bachelor's degree earn well over $1 million more than high school graduates over their working lives.[2] Another study found that college graduates are more likely to be employed, exercise, volunteer, and vote than high school graduates.[3] By 2020, an estimated two-thirds of job openings will require post-secondary education or training.[4]

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[2] Abel & Deitz, *Do the Benefits of College Still Outweigh the Costs*? Federal Reserve Bank of New York, Current Issues, Vol. 20, No. 3 (2014) https://www.newyorkfed.org/medialibrary/ media/research/current_issues/ci20-3.pdf

[3] Ma, Pender & Welch, *Education Pays 2016*, Report of the College Board (2016) https://trends.collegeboard.org/sites/default/files/education-pays-2016-full-report.pdf

[4] Press Release from U.S. Secretary of Education, Arne Duncan (July 27, 2015) https://www.ed.gov/news/press-releases/fact-sheet-focusing-higher-education-student-success

Meanwhile, the costs of college continue to rise. In 2015-2016, the average cost of in-state tuition, fees, and room and board at a public four-year college was $19,548, and the cost at a private non-profit four-year college was $43,921.[5] The average student loan debt for the Class of 2017 was $39,400.[6] Additionally, in 2015, 82% of high school graduates from a high-income level enrolled in college immediately, compared with 62% of those from the middle-income level, and 58% of those from the lowest income level.[7]

Most importantly, in 2014, states that had post-secondary education laws had a college participation rate 7.6% higher than those that did not[8]. Various law review articles have looked at different aspects of post-secondary education laws and found that children of parents who are divorced, separated, or never married receive less parental support during young adulthood than their peers whose parents are married to each other. [9] [10] [11] [12] Furthermore, among parents who are divorced, separated, or never married, mothers pay a disproportionate share of support for young adult children, which results in a greater

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[5] Harris, Leslie Joan, *Child Support for Post-Secondary Education: Empirical and Historical Perspectives,* Journal of the American Academy of Matrimonial Lawyers, Vol. 29, Issue 299 (2017).

[6] *A Look at the Shocking Student Loan Debt Statistics for 2018*, StudentLoanHero.com (May 1, 2018) https://studentloanhero.com/student-loan-debt-statistics

[7] Ma, Pender & Welch, *Education Pays 2016*

[8] Harris, Leslie, *Child Support for Post-Secondary Education* (2017).

[9] Goldfarb, Sally F., *Who Pays for the Boomerang Generation? A Legal Perspective on Financial Support for Young Adults*, Harvard Journal of Law & Gender, Vol. 37, Issue 45 (Winter 2014)

[10] Brandabur, Matthew, *Getting Back to Our Roots: Increasing the Age of Child Support Termination to Twenty-One*, Valparaiso University Law Review, Vol. 47, Issue 169 (Fall 2012)

[11] Wallace, Monica Hof, *A Federal Referendum: Extending Child Support for Higher Education,* University of Kansas Law Review, Vol. 58, Issue 665 (March 2010)

[12] Evans, Emily A., *Jurisprudence Clarified or McLeod-ed? The Real Constitutional Implications of Court-Mandated Postsecondary Educational Support*, South Carolina Law Review, Vol. 64, Issue 995 (Summer 2013).

poverty rate for women.[13] These studies show that the rational basis for Section 513, as stated in *Kujawinksi*, remains not only tenable, but even more relevant today.

(d) Out-of-State Cases Supporting Post-Secondary Education Statutes

Despite the trial court's finding that "case law from other jurisdictions over the last forty years supports the argument made by Charles" (R. C564), various cases from other states support a rational basis for their Section 513 counterparts. While the trial court cited the Pennsylvania Supreme Court's 1995 decision in *Curtis v. Kline*, which declared its post-secondary education statute unconstitutional, (R. C566); *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995)), at least three supreme courts have declined to follow *Kline. See e.g., In re Marriage of Kohring*, 999 S.W.2d 228 (Missouri 1999); *In re Marriage of McGinley*, 19 P.3d 954, 961 (Oregon 2001) ("The economic disadvantages suffered by children of divorced parents are well documented. [Oregon statute] reflects the legislature's effort to ameliorate that disadvantage, and nothing in the Pennsylvania Supreme Court's decision in *Kline* convinces us that that effort is irrational."); and *McLeod v. Starnes*, 723 S.E.2d 198 (South Carolina 2012); *see also In re Marriage of Vrban*, 293 N.W.2d 198 (Iowa 1980); and *Childers v. Childers*, 575 P.2d 201 (Washington 1978). As of 2017, sixteen (16) states and the District of Columbia allow a court to award post-majority child support for education expenses[14].

In *McLeod v. Starnes*, the South Carolina Supreme Court reversed its prior holding in *Webb v. Sowell*, acknowledging that it had mistakenly "inverted the burden of proof" by requiring the State to show a rational basis for South Carolina's post-secondary education

[13] Goldfarb, Sally F., *Who Pays for the Boomerang Generation?* (Winter 2014)
[14] Harris, Leslie Joan, *Child Support for Post-Secondary Education* (2017)

statute, rather than requiring the party challenging the statute to disprove its rational basis. *McLeod v. Starnes*, 723 S.E.2d 198, 204 (S.C. 2012), *overruling Webb v. Sowell*, 692 N.E.2d 543 (2010). The *McLeod* Court concluded that, "Our decision in *Webb* therefore rests on unsound constitutional principles." *Id.*

Similarly, *Kline* and the line of cases that strike down post-secondary education laws essentially make the same mistake as *Webb*, which is to "invert the burden of proof." *See e.g., Curtis v. Kline*, 666 A.2d 265, 273-274 (Pa. 1995) (Montemuro, J., dissenting) ("It cannot successfully be argued that the state has no interest in furthering the education of its children…By disregarding the rational basis for [the Pennsylvania statute], the Majority now transforms this Court into a super-Legislature.") Therefore, those decisions flow from an "unsound" equal protection analysis, which the trial court should have rejected. Instead, the trial court embraced *Kline*, and rejected *Kujawinski.* This was error.

(e) Section 513 is Constitutional "As-Applied" in this Case

Despite the trial court's finding that Section 513 was unconstitutional only "as applied" to Charles in this case, the court nonetheless erred. A statute is facially invalid only if there is no set of circumstances under which the statute would be valid. *In re M.A.*, 2015 IL 118049, ¶39. By contrast, an "as-applied" challenge tests how a statute was applied in the particular context in which a plaintiff acted or proposed to act. *Id.* at ¶40. In an "as-applied" challenge, the facts surrounding the plaintiff's particular circumstances become relevant. *Id.* If a plaintiff prevails in an "as-applied" challenge, enforcement of the statute is enjoined only against the plaintiff, while a finding that a statute is facially unconstitutional voids the statute in its entirety and in all applications. *Id.*

The trial court noted that Charles lacked input into Dylan's choice of school, and was deprived of his ability to steer Dylan to a better school with his "economic largesse." R. C566-567. However, it is well settled that a parent's obligation to contribute to educational expenses is not conditioned upon a continued good relationship between parent and child or upon obtaining prior consent from the supporting parent. *In re Marriage of Drysch*, 314 Ill.App.3d 640, 647 (Ill. App. 2nd Dist. 2000).

In any event, the facts of this case do not support Charles' as-applied challenge or the trial court's finding regarding same. For example, Charles acknowledged that he had encouraged Dylan's interest in marine biology throughout her life. R. 92. He took Dylan to the Scripps Institution in 2012. R. 93. However, he acknowledged Dylan's academic limitations and that Dylan had not applied to Scripps. R. 95-96.

Although he was not involved in Dylan's initial choice to attend FGCU, he encouraged her to appeal her rejection from FCGU, prior to their trip to Fiji. R. 96. Additionally, Charles was planning on attending orientation at FGCU, until his mother had to have surgery. R. 93. In February 2016, he and Dylan met with a counselor at FGCU to discuss Dylan's options with respect to her major. R. 94. He stated that he had helped Dylan with 20 assignments over the prior year, and she got A's in those classes. R. 92. He acknowledged that he had a good relationship with Dylan and tries to see her as often as possible. R. 92.

It bears repeating that in its initial July 22, 2016 order, the trial court only made Charles responsible for Dylan's college expenses commencing with her junior year (and going forward) because Charles did not have input into Dylan's choice of school. R. 100; C238-239. The court did this despite the fact that Rosemary filed her petition for college

contribution in August 2015, prior to Dylan's sophomore year. R. C89-91. Therefore, Charles cannot complain that he was unduly imposed upon, when he did not pay for two years of Dylan's college, including one in which the trial court could have held him responsible. *See* 750 ILCS 5/513(k) (West 2018) (college obligation is retroactive to the date of filing of the petition). The effect of Charles' argument is to shift the financial burden entirely to Rosemary.

By limiting the retroactivity of Charles' obligation, the trial court made clear, as the *Kujawinski* Court noted, that awards under Section 513 are discretionary, not mandatory. *Kujawinski v. Kujawinski,* 71 Ill.2d 563, 580 (Ill. 1978). Likewise, post-high school education awards come with a number of "strings attached," including age limits, a cap on expenses (at the University of Illinois, Urbana-Champaign), parental access to the child's academic records, requiring the child's maintaining a minimum "C" grade point average, and "all relevant factors that appear reasonable and necessary." 750 ILCS 5/513 (West 2018).

While the trial court noted the supremacy of parental rights in *Troxel v. Granville*, 530 U.S. 57 (2000), the State's interference with parental powers begins even before the family is formed. See *In re Marriage of Mehring*, 324 Ill.App.3d 262 (Ill. App. 5th Dist. 2001) *vacated in light of Wickam v. Byrne*, 199 Ill.2d 309 (Ill. 2002) (noting Illinois' laws prohibiting bigamy, requiring medical testing of infants, requiring immunizations for children, requiring children to receive hearing and visual examinations, requiring parents to keep children in school, prohibiting parents from putting children into labor force, prohibiting incest, requiring blood transfusions for children over parents' objections, removal of children from home due to abuse or neglect, and terminating parental rights),

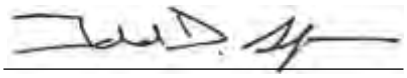
Given the facts of this case, the trial court's limit of retroactivity in its July 22, 2016 order, the discretionary nature of Section 513, and numerous other conditions contained therein, as well as the State's legitimate interest in protecting children, it cannot be said that Section 513 was unconstitutional as applied to Charles in this case. For these reasons, the trial court's May 4, 2018 order was erroneous and should be reversed.

CONCLUSION

WHEREFORE, the Respondent-Appellant, Rosemary A. Aulds, respectfully requests that this Honorable Court reverse the trial court's order of May 4, 2018, reinstate its order of July 22, 2016, and for any other relief the Court deems fair and equitable.

Respectfully submitted,

ROSEMARY A. AULDS

By: 

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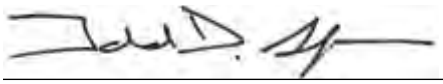
CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 50 pages.



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Case No. 123667

ILLINOIS SUPREME COURT

CHARLES D. YAKICH, PETITIONER-APPELLEE,	)	From the Eighteenth Judicial Circuit Court DuPage County, Illinois
v.	)	
	)	Circuit Case No. 15 F 651
ROSEMARY A. AULDS, RESPONDENT-APPELLANT.	)	Trial Judge: Hon. Thomas A. Else

APPENDIX

PARTIES' TESTIMONY

Page Number	Date	Witness	Type of Examination
R4 – 25	06/09/2016	Rosemary Aulds	Direct Examination
R25 – 45	06/09/2016	Rosemary Aulds	Cross Examination
R45 – 47	06/09/2016	Rosemary Aulds	Re-Direct Examination
R47 – 59	06/09/2016	Dylan Yakich	Direct Examination
R60 – 65	06/09/2016	Dylan Yakich	Cross Examination
R65 – 70	06/09/2016	Dylan Yakich	Re-Direct Examination
R71 – 80	06/09/2016	Charles Yakich	Adverse Examination
R83 – 88	07/22/2016	Rosemary Aulds	Adverse Examination
R89 – 90	07/22/2016	Dylan Yakich	Adverse Examination
R90 – 91	07/22/2016	Dylan Yakich	Cross Examination
R91	07/22/2016	Dylan Yakich	Re-Direct Examination
R91 – 95	07/22/2016	Charles Yakich	Direct Examination
R95 – 97	07/22/2016	Charles Yakich	Cross Examination
R97 – 98	07/22/2016	Charles Yakich	Re-Direct Examination

STATUTES INVOLVED

I.
Section 802 of the Illinois Parentage Act of 2015
750 ILCS 46/802(a)

In determining the…educational expenses for a non-minor child…the court shall apply the relevant provisions of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 46/802(a) (West 2018)

II.
Section 513 of the Illinois Marriage and Dissolution of Marriage Act
750 ILCS 5/513

Section 513. Educational expenses for a non-minor child

(a) The court may award sums of money out of the property and income of either or both parties or the estate of a deceased parent, as equity may require, for the educational expenses of any child of the parties. Unless otherwise agreed to by the parties, all educational expenses which are the subject of a petition brought pursuant to this Section shall be incurred no later than the student's 23rd birthday, except for good cause shown, but in no event later than the child's 25th birthday.

(b) Regardless of whether an award has been made under subsection (a), the court may require both parties and the child to complete the Free Application for Federal Student Aid (FAFSA) and other financial aid forms and to submit any form of that type prior to the designated submission deadline for the form. The court may require either or both parties to provide funds for the child so as to pay for the cost of up to 5 college applications, the cost of 2 standardized college entrance examinations, and the cost of one standardized college entrance examination preparatory course.

(c) The authority under this Section to make provision for educational expenses extends not only to periods of college education or vocational or professional or other training after graduation from high school, but also to any period during which the child of the parties is still attending high school, even though he or she attained the age of 19.

(d) Educational expenses may include, but shall not be limited to, the following:

(1) except for good cause shown, the actual cost of the child's post-secondary expenses, including tuition and fees, provided that the cost for tuition and fees does not exceed the amount of in-state tuition and fees paid by a student at the University of Illinois at Urbana-Champaign for the same academic year;

(continued on next page)

(2) except for good cause shown, the actual costs of the child's housing expenses, whether on-campus or off-campus, provided that the housing expenses do not exceed the cost for the same academic year of a double-occupancy student room, with a standard meal plan, in a residence hall operated by the University of Illinois at Urbana-Champaign;

(3) the actual costs of the child's medical expenses, including medical insurance, and dental expenses;

(4) the reasonable living expenses of the child during the academic year and periods of recess:

(A) if the child is a resident student attending a post-secondary educational program; or

(B) if the child is living with one party at that party's home and attending a post-secondary educational program as a non-resident student, in which case the living expenses include an amount that pays for the reasonable cost of the child's food, utilities, and transportation; and

(5) the cost of books and other supplies necessary to attend college.

(e) Sums may be ordered payable to the child, to either party, or to the educational institution, directly or through a special account or trust created for that purpose, as the court sees fit.

(f) If educational expenses are ordered payable, each party and the child shall sign any consent necessary for the educational institution to provide a supporting party with access to the child's academic transcripts, records, and grade reports. Failure to execute the required consent may be a basis for a modification or termination of any order entered under this Section. Unless the court specifically finds that the child's safety would be jeopardized, each party is entitled to know the name of the educational institution the child attends.

(g) The authority under this Section to make provision for educational expenses terminates when the child either: fails to maintain a cumulative "C" grade point average, except in the event of illness or other good cause shown; attains the age of 23; receives a baccalaureate degree; or marries. A child's enlisting in the armed forces, being incarcerated, or becoming pregnant does not terminate the court's authority to make provisions for the educational expenses of the child under this Section.

(continued on next page)

(h) An account established prior to the dissolution that is to be used for the child's post-secondary education, that is an account in a state tuition program under Section 529 of the Internal Revenue Code, or that is some other college savings plan, is to be considered by the court to be a resource of the child, provided that any post-judgment contribution made by a party to such an account is to be considered a contribution from that party.

(i) The child is not a third party beneficiary to the settlement agreement or judgment between the parties after trial and is not entitled to file a petition for contribution. If the parties' settlement agreement describes the manner in which a child's educational expenses will be paid, or if the court makes an award pursuant to this Section, then the parties are responsible pursuant to that agreement or award for the child's educational expenses, but in no event shall the court consider the child a third party beneficiary of that provision. In the event of the death or legal disability of a party who would have the right to file a petition for contribution, the child of the party may file a petition for contribution.

(j) In making awards under this Section, or pursuant to a petition or motion to decrease, modify, or terminate any such award, the court shall consider all relevant factors that appear reasonable and necessary, including:

(1) The present and future financial resources of both parties to meet their needs, including, but not limited to, savings for retirement.

(2) The standard of living the child would have enjoyed had the marriage not been dissolved.

(3) The financial resources of the child.

(4) The child's academic performance.

(k) The establishment of an obligation to pay under this Section is retroactive to only to the date of filing a petition. The right to enforce a prior obligation to pay may be enforced either before or after the obligation is incurred.

750 ILCS 5/513 (West 2018)

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION

IN RE THE MATTER OF:	)	
	)	
CHARLES D. YAKICH and	)	No. 96 D 379062
ROSEMARY A. AULDS	)	

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AGREED ORDER

THIS CAUSE before the court for hearing on entry of a joint child custody and parenting agreement;

The parties being present and having reached an agreement and the court having reviewed the pleadings and finding the proposed custody and joint parenting agreement to be fair and proper and being otherwise advised;

THE COURT DOTH FIND:

That the court has jurisdiction over both Charles D. Yakich and Rosemary A. Aulds and Dylan M. Yakich;

That Dylan M. Yakich is the natural child of Charles D. Yakich and Rosemary A. Aulds;

That the court has subject matter jurisdiction;

That the court has reviewed the joint custody and parenting agreement by and between the parties and finds it to be in the best interests of the minor child of the parties;

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

I. That the parties are awarded the joint custody of Dylan M. Yakich subject to the terms and conditions of the child custody and joint parenting agreement which in its entirety is set forth below:

CHILD CUSTODY AND
JOINT PARENTING AGREEMENT

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This agreement is entered into this 29th day of April, 1996 by and between CHARLES D. YAKICH (hereinafter referred to as "Father") and ROSEMARY A. AULDS (hereinafter referred to as "Mother") relative to the parties having Joint Custody of their child, DYLAN M. YAKICH (hereinafter referred to as "child") with the primary residence of the child with the Father. The agreement of the parties is as follows :

1. In order to secure the maximum involvement and cooperation of both parents regarding the physical, mental, moral and emotional well being of the parties minor child, both now and in the future, the parties agree that they shall request the Court to approve this Joint Parenting Agreement.

2. The parties agree that the maximum involvement and cooperation of both parents is required and in the child's best interests, and accordingly the parties shall confer with each other about and jointly decide all important matters pertaining to the child's health, welfare, education and upbringing with a view toward arriving at a harmonious policy designed to promote the child's best interests and not with a view toward the personal desires of the parties.

3. **RESIDENTIAL PARENTING SCHEDULE**

Both parties acknowledge the continuing need for their minor child to have close, frequent and continuing contact with both parents and have agreed that the child will spend as close to an equal amount of time with each parent as is practical; it being dependant upon the age, activities, school and needs of the child along with the work schedules of the parents.

4. **SPECIAL DAY AND HOLIDAY SCHEDULE**

A) The Mother shall have the child with her on Mother's Day and her birthday each year.

B) The Father shall have the child with him on Father's Day and his birthday each year.

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C) With respect to the child's birthdays, the parties shall alternate these on an annual basis as follows :

1) When the child's age will end in an odd number, the Mother shall have the child.

2) When the child's age will end in an even number, the Father shall have the child.

D) With respect to holidays the parties shall share the Holidays as follows:

Odd Numbered Years		Even Numbered Years	
Father	Mother	Father	Mother
Veteran's Day	Easter	Easter	Veteran's Day
Labor Day	Memorial Day	Memorial Day	Labor Day
Thanksgiving	Independence Day	Independence Day	Thanksgiving
Christmas Eve	Christmas Day	Christmas Day	Christmas Eve
New Year's Eve	New Year's Day	New Year's Day	New Year's Eve
	Halloween	Halloween	

E) The Special/Holiday schedule shall take precedence over regular parenting time.

5. **GRANDPARENTS' VISITATION**

It is agreed between the parties that the Maternal and Paternal Grandparents shall be entitled to take the child for a period of one (1) week (seven consecutive days) each year with reasonable notice given to the parents so as not to interfere with parental vacations or special plans. The week being confined to periods of time when Dylan is not in school.

6. **CHILD'S ACTIVITIES**

The parents shall continue to be involved in the child's activities and they shall

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cooperate with each other in this regard taking into consideration the child's desires, aptitude and schedule. Both parents shall allow the other parent to take the child rather than use other family members, babysitters, day care or hired help.

7. **CHILD'S RECORDS and SCHOOL ACTIVITIES**

Each party shall (a) cooperate in facilitating the other party's obtaining of the child's grades and progress in school; (b) shall supply the other with copies of grade reports, evaluations and report cards when received; (c) authorizes the other to inspect the child's school and medical records and to communicate with teachers, school personnel, counselors and physicians to discuss the child's standing and progress; (d) shall notify the other of any medical or dental appointments and give the other the opportunity (in non-emergencies) to be present; and (e) cooperate in advising the school to notify the other parent of programs open to parents. In the event that a parent receives notice of a school-parent-teacher conference, that parent shall communicate that date to the other parent as soon as known and in sufficient time to allow the other parent to attend.

8. **BASIC INFORMATION**

Each party shall keep each other informed as to the exact place where each of them resides, the phone numbers of said residence, his or her place of employment, the phone numbers of said place of employment and, if either party travels out of town for any period of more than three (3) consecutive days, then such person shall notify the other of his or her destination and shall provide a phone number where he or she can be reached. In the event the child travels out of town, for any duration, a complete itinerary shall be provided listing travel arrangements, flight schedules, hotel or other out of town accommodations, phone numbers where the child will be staying, etc.

9. **DISPUTE RESOLUTION, CHANGE of CIRCUMSTANCE and PERIODIC REVIEW**

The parties acknowledge that the Child Custody and Joint Parenting Agreement as provided herein may require future adjustments and changes to reflect the

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child's best interest in the future after taking into account :

A) The ability of the parents to cooperate effectively and consistently with each other;

B) The residential circumstances of each parent and;

C) All other factors which may be relevant to the best interests of the child.

The parents also recognize that this joint parenting agreement is a dynamic concept subject to reevaluation and change based upon a change in circumstances of a parent or child including but not limited to remarriage, illness, employment requirements and economic changes. The parties acknowledge that when the child attains school age that the parenting schedule may be subject to change considering the child's schedule, best interests and schedules of the parties. The parties recognize that this agreement shall be reviewed by the parties every two (2) years to determine whether the provisions continue to successfully meet the needs and requirements of the child and the parents and to determine whether alternative arrangements might better suit future circumstances. The parties hereby agree and stipulate in the event that they disagree concerning any aspect of the custody arrangements or about this Joint Parenting Agreement, including but not limited to its interpretation or meaning, or if there are disputes or alleged breaches; proposed changes, either temporary or permanent, changes of circumstances, or other difficulties or disagreements, they shall jointly choose a mediator in an attempt to reasonably resolve their differences. Any mediator jointly selected shall minimally meet the MEDIATION QUALIFICATIONS STANDARDS approved by the Illinois State Bar Association Family Law Section Council. If the parties are unable to agree upon a mediator or arrive at a mediated agreement, either party may request a court of competent jurisdiction to resolve the dispute upon proper petition and notice.

II. Each parent will enroll the child of the parties in any medical and dental plans

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made available by and through their employers, whether paid by the company of payroll deduction. Primary coverage shall lodge with the most expansive and generous coverage plan available. Each of the parties will tender to the other a copy of the medical and dental policies available along with necessary insurance cards and claim forms.

III. Any uninsured medical expenses will be divided equally between the parties.

IV. That the issue of child support is reserved and will be reviewed periodically as provided for in the Joint Custody and Parenting Agreement or by this court, as necessary.

V. That each party shall have the right to a Federal and State income tax exemption for the minor child of the parties to the full extent allowed and shall alternate with the Mother to claim the exemption in odd-numbered years and the Father to claim the exemption in even-numbered years.

APPROVED:

Charles D. Yakich

APPROVED:

Rosemary Aulds

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Before me, a notary public in and for the county and state aforesaid, appeared Charles D. Yakich, personally known to me to be the same person who executed the foregoing instrument and he acknowledged that he executed and delivered said instrument as his free and voluntary act and deed, for the uses and purposed therein set forth.

Given under my hand and notarial seal this 29th day of April, 1996.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

OFFICIAL SEAL
THOMAS W. GOOCH, III
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 2-17-99

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Before me, a notary public in and for the county and state aforesaid, appeared Rosemary A. Aulds, personally known to me to be the same person who executed the foregoing instrument and she acknowledged that she executed and delivered said instrument as her free and voluntary act and deed, for the uses and purposed therein set forth.

Given under my hand and notarial seal this 24th day of April, 1996.

Notary Public

ENTER:

Circuit Judge

ENTERED
THIRD MUNICIPAL DISTRICT
OF CIRCUIT COURT COOK COUNTY
FEB 06 1997
AURELIA PUCINSKI
Clerk of the Circuit Court

Dated at Rolling Meadows, Illinois,
this ~~19th~~ 6th day of ~~December~~ February, 1997.

THOMAS W. GOOCH & ASSOCIATES
209 South Main Street
Wauconda, Illinois 60084
(847) 526-0110

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30010

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - DOMESTIC RELATIONS DIVISION

CHARLES D. YAKICH,	)	
	)	
Petitioner,	)	
	)	No. 96 D3 79062
and	)	
	)	
ROSEMARY A. AULDS,	)	
	)	
Respondent.	)	

PETITION FOR CONTRIBUTION TO COLLEGE EXPENSES AND FOR OTHER RELIEF

NOW COMES the Respondent, ROSEMARY A. AULDS, pursuant to Sections 1.1, 13.1 and 14 of the Illinois Parentage Act and Sections 510 and 513 of the Illinois Marriage and Dissolution of Marriage Act, and in support of her Petition for Contribution to College Expenses and For Other Relief, states as follows:

1. An Agreed Order ("Agreed Order") was entered in this cause on February 6, 1997 regarding the custody and joint parenting of the parties' child, DYLAN M. YAKICH ("DYLAN").

2. The Agreed Order is silent with respect to the allocation of DYLAN's college expenses.

3. DYLAN is now 20 years of age and graduated from high school in June 2014.

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4. DYLAN has been accepted for admission by Florida Gulf Coast University ("FCGU") on a full time basis and will attend FCGU commencing August 2015.

5. DYLAN is expected to live on the FCGU campus during the school year and at Petitioner's residence when school is not in session.

6. Anticipated college expenses for the 2015-2016 academic year total approximately $39,316, including tuition and fees, books and supplies, room and board, and other miscellaneous expenses.

7. Petitioner is financially able to contribute to DYLAN's college expenses.

8. Pursuant to 750 ILCS 5/513, this Court should require Petitioner to pay an equitable share of the college expenses for DYLAN.

WHEREFORE, the Respondent, ROSEMARY A. AULDS, prays for the following relief:

A. That this Court enter an Order requiring Petitioner to pay an equitable share of DYLAN's college expenses; and

B. For such other and further relief as this Court deems equitable and just.

Respectfully submitted,

ROSEMARY A. AULDS

By: /s/ William J. Arendt
William J. Arendt, Attorney

WILLIAM J. ARENDT & ASSOCIATES, P.C.
7035 Veterans Blvd., Suite A
Burr Ridge, Illinois 60527
(630) 887-7500
Attorney Code No. 36768
William.arendt@wjarendtlaw.com

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CERTIFICATION

Under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be information and belief and as to such matters the undersigned certifies aforesaid that he verily believes the same to be true.

Rosemary A. Aulds

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Attorney Code No. 23

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH	)	
	)	
Petitioner,	)	
	)	No. 15 F 651
and	)	
	)	
ROSEMARY A. AULDS,	)	
	)	
Respondent.	)	

RESPONSE TO PETITION FOR CONTRIBUTION
TO COLLEGE EXPENSES AND FOR OTHER RELIEF

NOW COMES the Petitioner, CHARLES D. YAKICH, pursuant to Sections 1.1, 13.1, and 14 of the Illinois Parentage Act and Sections 510 and 513 of the Illinois Marriage and dissolution of Marriage Act, and as and for his Response To Petition For Contribution To College Expenses And For Other Relief, states as follows:

1. An Agreed Order ("Agreed Order) was entered in this cause on February 6, 1997 regarding the custody and joint parenting of the parties' child, DYLAN M. YAKICH ("DYLAN").

RESPONSE: Petitioner admits.

2. The Agreed Order is silent with respect to the allocation of DYLAN's college expenses.

RESPONSE: Petitioner admits.

3. DYLAN is now 20 years of age and graduated from high school in June 2014.

RESPONSE: Petitioner admits.

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4. DYLAN has been accepted for admission by Florida Gulf Coast University ("FCGU") on a full time basis and will attend FCGU commencing August 2015.

RESPONSE: Petitioner admits.

5. DYLAN is expected to live on the FCGU campus during the school year and at Petitioner's residence when school is not in session.

RESPONSE: Petitioner lacks sufficient information or knowledge as to the allegations of paragraph 5 of Respondent's Petition. Further responding, Petitioner was not party to or included in any tours or applications to colleges.

6. Anticipated college expenses for the 2015-2016 academic year total approximately $39,316, including tuition and fees, books and supplies, room and board, and other miscellaneous expenses.

RESPONSE: Petitioner lacks sufficient information or knowledge as to the allegations of paragraph 6 of Respondent's Petition.

7. Petitioner is financially able to contribute to DYLAN's college expenses.

RESPONSE: Petitioner admits.

8. Pursuant to 750 ILCS 5/513, this Court should require Petitioner to pay an equitable share of the college expenses for DYLAN.

RESPONSE: Petitioner denies.

PETITIONER'S AFFIRMATIVE RESPONSE

1. The Agreed Order entered on February 6, 1997 contained the Parties Co-Parenting Agreement.

2. Pursuant to the Co-Parenting Agreement the Parties are to seek mediation to resolve conflicts BEFORE seeking relief from any court.

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3. Respondent has not offered, sought or attempted to resolve these issues through mediation.

4. Respondent is in direct violation of the Agreed Order entered on February 6, 1997.

WHEREFORE, the Petitioner, CHARLES D. YAKICH, prays for the following relief:

A. The Court enter an Order requiring Respondent to enter into mediation.

B. The Court enter an Order requiring the Respondent to pay all Petitioner's attorney's fees to respond to Respondent's Motions.

C. The Court enter an Order requiring the Respondent to pay all Petitioner's travel expenses related to this action.

D. For such other and further relief as this court deems equitable and just.

Respectfully submitted,

CHARLES D. YACKICH

By: /s/ Vincent L. DiTommaso
His Attorney

Vincent L. DiTommaso
DiTOMMASO♦LUBIN, P.C.
17W220 22nd Street, Suite 410
Oakbrook Terrace, IL 60181
(630) 333-0000
(630) 333-0333 (Fax)
vdt@ditommasolaw.com
eservice@ditommasolaw.com

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CERTIFICATION

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies under oath that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Charles D. Yakich

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ORDER - BLANK

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2116 (Rev. 2/16)

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Lines 17+21

Charles Yakich

vs

Rosemary Aulds

15 F 651
CASE NUMBER

p1 of 2

FILED
16 JUL 22 PM 2:45
CLERK OF THE
18TH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

File Stamp Here

ORDER

This cause coming before the Court;* the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:** * for hearing on Rosemary's Petition for Contribution to College and Petition for Modification of Health Insurance

① Commencing with the 2016-2017 acamedic year, the college expenses for Dylan shall be divided such that Rosemary shall be responsible for paying 40%, Charlie shall be responsible for paying 40%, and Dylan shall be responsible for paying 20%. The college expenses to be divided shall be as follows: tuition and fees, room and board, books, lab fees and associated expenses.
Travel to and from college shall not be subject to division. Dylan's 20% contribution may be in the form of scholarships, grants, work-study or ~~any other form~~ employment. Payment shall be made directly to the provider, within 14 days of receipt of bill of charges and expenses. ~~as set forth above to the party who received the expenses and charges.~~

Name: William Arendt & Assoc P.C. ☐ PRO SE
DuPage Attorney Number: 27902
Attorney for: Rosemary Aulds
Address: 7035 Veterans Blvd, Suite A
City/State/Zip: Burr Ridge, IL 60527
Telephone Number: (630) 887-7500
Email: william.arendt@wjarendtlaw.com

ENTER:

Judge

Date: 7/22/16

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

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ORDER - BLANK 2116 (Rev. 2/16)

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Charlie Yakich

vs

Rosemary Aulds

15 F 651
CASE NUMBER

p2 of 2

File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:**

(2) Rosemary's Petition for Modification of Health Insurance is voluntarily withdrawn.

Name: William Arendt & Assoc ☐ PRO SE
DuPage Attorney Number: 27902
Attorney for: Rosemary Aulds
Address: 7035 Veterans Blvd, Suite A
City/State/Zip: Burr Ridge, IL 60527
Telephone Number: (630) 887-7500
Email: william.arendt@wjarendtlaw.com

ENTER:

Judge

Date: 7/22/16

CHRIS R. CHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

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Attorney Code No. 23

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH	)	
	)	
Petitioner,	)	No. 15 F 651
and		
	)	Judge Thomas A. Else
ROSEMARY A. AULDS,	)	
	)	
Respondent.	)	

PETITIONER'S MOTION TO DECLARE 750 ILCS § 5/513 UNCONSTITUTIONAL

Charles D. Yakich, through his counsel, hereby moves this Court for an order declaring 750 ILCS § 5/513 (Educational Expenses for a Non-minor Child) ("Section 513 or "the Act") unconstitutional for violating the Equal Protection Clause of the U.S. Constitution. In support of this Motion, Petitioner states:

1. Section 513, which allows courts to mandate post-secondary educational support to able-bodied adult children of unmarried or divorced parents is unconstitutional.

2. Section 513 violates the Equal Protection Clause by arbitrarily classifying similarly-situated individuals based on marital status. Further, such classification is not rationally related to a legitimate governmental purpose.

3. Illinois precedent upholding Section 513 relies on outdated vital statistics and archaic notions of a traditional family. Current statistics demonstrate that over half of U.S. parents are unmarried or divorced. The Act should be revisited by a modern court based on current statistics.

4. Due to the complexity of the issue, in support of this motion, Petitioner files simultaneously the Memorandum in Support of Petitioner's Motion to Declare 750 ILCS § 5/513 Unconstitutional.

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WHEREFORE, Petitioner Charles Yakich respectfully requests that the Court declare 750 ILCS § 5/513 unconstitutional. Furthermore, Petitioner requests this Court stay its July 22, 2016 Order, pending any Appeals.

Respectfully submitted,

CHARLES D. YAKICH

By: /s/ Vincent L. DiTommaso
His Attorney

Vincent L. DiTommaso
DiTOMMASO♦LUBIN, P.C.
17W220 22nd Street, Suite 410
Oakbrook Terrace, IL 60181
(630) 333-0000
(630) 333-0333 (Fax)
vdt@ditommasolaw.com
eservice@ditommasolaw.com

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CERTIFICATE OF SERVICE

I, Vincent L. DiTommaso, the undersigned attorney, hereby certify that I caused the foregoing PETITIONER'S MOTION TO DECLARE 750 ILCS § 5/513 UNCONSTITUTIONAL to be served upon:

William J. Arendt
Nicola K.B. Latus
William J. Arendt & Associates, P.C.
7035 Veterans Boulevard, Suite A
Burr Ridge, IL 60527
William.Arendt@wjarendtlaw.com
Nicola.Latus@wjarendtlaw.com

via e-mail transmission.

Dated: September 23, 2016

/s/ Vincent L. DiTommaso

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Attorney Code No. 23

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH Petitioner, and ROSEMARY A. AULDS, Respondent.	)	No. 15 F 651 Honorable Thomas A. Else

PETITIONER'S MOTION FOR LEAVE TO FILE A MEMORANDUM IN EXCESS OF 10 PAGES, *INSTANTER*

Petitioner, Charles Yakich, through his counsel, respectfully requests leave to file the attached memorandum in excess of ten (10) pages in support of his Motion to Declare 750 ILCS § 5/513 Unconstitutional. In order to fully address the relevant constitutional issues raised, Petitioner will need to file the attached memorandum that exceeds the ten (10) page limit set forth in Local Rule 6.05(d). Accordingly, Petitioner respectfully requests leave to file the attached memorandum of twelve (12) pages in length, *instanter*.

WHEREFORE, Petitioner respectfully requests that this Court grant him leave to file his Memorandum in Support of Petitioner's Motion to Declare 750 ILCS § 5/513 Unconstitutional, not to exceed twelve (12) pages in length, *instanter*.

Respectfully submitted,

CHARLES D. YAKICH

By: /s/ Vincent L. DiTommaso
His Attorney

Vincent L. DiTommaso
DiTOMMASO♦LUBIN, P.C.
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Attorney Code No. 23

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH	)	
	)	
Petitioner,	)	
and	)	No. 15 F 651
	)	
ROSEMARY A. AULDS,	)	Judge Thomas A. Else
	)	
Respondent.	)	

MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION TO DECLARE 750 ILCS § 5/513 UNCONSTITUTIONAL

Petitioner, Charles D. Yakich ("Yakich"), through his counsel, hereby submits this Memorandum in Support of his Motion to Declare 750 ILCS § 5/513 (Educational Expenses for a Non-minor Child) (herein "Section 513" or "the Act") unconstitutional for violating the Equal Protection Clause of the United States Constitution. Section 513 is unconstitutional where it allows courts to order college support to able-bodied adult children of unmarried parents or divorced parents only. The Act thus discriminates against similarly-situated adult children of married parents, and unmarried or divorced parents. In support of said Motion, Petitioner states as follows:

FACTUAL BACKGROUND

Charles Yakich is the biological father of Dylan Yakich and was granted Primary Residency of Dylan in 1996. Subsequently, Dylan spent half her time with Yakich and the other half with her mother. In July 2016, a hearing was held in regard to college contribution.

At the hearing on college contribution, the following evidence was submitted: Since Yakich's daughter was very young, her dream was to become a marine biologist. Yakich fostered her interest by enrolling her in scuba diving classes and taking her on many diving trips. Now as a 21 year old adult, Yakich's daughter still dreams of becoming a marine biologist. Yakich was not included or involved in Dylan's selection of colleges. Dylan and her mother, thinking that a

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marine science degree was the same as marine biology, enrolled Dylan in the Marine Science program at Florida Gulf Coast University ("FGCU"). After commencing this Marine Science program, Yakich's daughter learned that her college did not offer a marine biology degree and that marine science had little to do with marine biology. Dylan met with her school counselor and was told to remain at FGCU and earn a four-year degree in biology, and then, if she still wanted to become a marine biologist, to transfer to another school to earn her Master's Degree in Marine Biology. This would add two years to Dylan's education. Other schools, specifically Scripps Institution of Oceanography in San Diego and the University of Hawaii, offer four-year undergraduate Marine Biology degrees. Contrary to Yakich's advice and wishes, Dylan changed her degree to biology instead of transferring to one of the schools offering four-year degrees, which Yakich offered to pay for. Yakich wants his daughter's dream to come true. He has offered to pay 100% of tuition, boarding and other expenses for his daughter to obtain a marine biology degree in four years. Yet, Yakich's daughter continues to obtain an unrelated degree. Because Yakich is an unmarried parent, by statute, he is being forced to pay for a degree he knows his daughter will not use.

With some qualifiers, Section 513 mandates that unmarried and divorced parents pay for their adult children's college expenses. There is no such mandate for married parents. The Act also divides similarly-situated college students into two classes: those with unmarried or divorced parents who can receive court-ordered college support, and those with married parents who cannot receive court-ordered college support. These classifications of college students and their parents are arbitrary in a nation where more than half of households are unmarried or divorced.

Almost 40 years ago, our Supreme Court upheld the Act in *Kujawinski v. Kujawinski*, 71 Ill.2d 563 (1978). In that case, Section 513 was upheld because it was determined that the Act was rationally related to a state interest in protecting adult children from non-traditional families. *Id.*

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That Court reasoned that noncustodial divorced parents would not voluntarily support their children to the extent they would if they were married. *Id.* The Court contrasted the divorced family with what it termed a "*normal*" household, where "natural pride would demand a moral obligation" for the parents to pay (emphasis added). *Id.*, quoting the 1959 decision in *Maitzen v. Maitzen*, 24 Ill.App.2d 32, 38 (1959). Ten years later, the Second District Appellate Court expanded the holding in *Kujawinski* to apply to all unmarried parents. *Rawles v. Hartman*, 172 Ill.App.3d 931 (1988).

Since *Kujawinski* and *Rawles*, the national birth rate to unmarried women has increased from 18.4% to over 40%[1]. As of 2011, the divorce rate in Illinois was 46%. Putting these two rates together leads to the conclusion that more than half of households include unmarried or divorced parents. In fact, according to a recent study, only 46% of children under the age of 18 live in a traditional home as *Kujawinski* termed as a "normal" home[2]. Thus, the "normal" household is no longer comprised of only married parents and their children.

Kujawinski and *Rawles* are antiquated and should not apply in 2016 and beyond. Relying on *Maitzen*, a case that is now almost 60 years old, *Kujawinski* held that that divorced families will feel less "morally obligated" than "normal" families to help their children through college. The Act's classification of similarly-situated adult children and their parents based on marital status is premised on an archaic notion that suggests that more than half of today's parents do not care about

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[1] Births: Final Data for 2014 by Brady E. Hamilton, Ph.D.; Joyce A. Martin, M.P.H.; Michelle J.K. Osterman, M.H.S.; Sally C. Curtin, M.A.; and T.J. Mathews, M.S., Division of Vital Statistics; Illinois Department of Public Health, Marriage, Divorces and Annulments Occurring in Illinois 1958-2011, available at http://www.idph.state.il.us/health/bdmd/marr_div_annul.htm; CDC National Center for Health Statistics, National Marriage and Divorce Rate Trends 200-2014, available at http://www.cdc.gov/nchs/nvss/marriage_divorce_tables.htm.

[2] Livingston, Gretchen "Fewer than Half of U.S.Kids Today Live in a 'Traditional' Family," Pew Research Center, December 22, 2014, http://www.pewresearch.org/fact-tank/2014/12/22/less-than-half-of-u-s-kids-today-live-in-a-traditional-family.

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their children's college education. Because it based on such outdated reasoning, the Act is no longer rationally related to a legitimate governmental interest, and should be declared unconstitutional.

ARGUMENT

I. Standard of Review

The Equal Protection Clause of the Fourteenth Amendment protects persons from being denied the equal protection of the laws. *Curtis v. Kline*, 666 A.2d 265, 267 (Pa. 1995). The main principle of this clause is that similarly-situated individuals should be treated equally. *Id.* However, a state can resort to classifying similarly-situated people differently if the classifications are reasonable rather than arbitrary and bear a reasonable relationship to the object of the legislation. *Id.* In analyzing whether a state statute violates the Equal Protection Clause by treating similarly-situated persons differently, courts will use one of three standards of review, ranging from high to low scrutiny. *Id.* at 268. When the classification implicates a "suspect class" or fundamental right, the standard of review is strict scrutiny, resulting in a higher probability it will be struck down as unconstitutional. *Id.* "A suspect class exists and will be legally categorized as such where a group of persons is 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.'" *In re Marriage of Kohring*, 999 S.W.2d 228, 232 (Mo. 1999). When the classification involves a quasi-suspect class (for example, age or wealth), or important but not fundamental right, the standard of review is that of intermediate or heightened scrutiny. *Curtis*, 666 A.2d at 268. Finally, when the classification does not fall into either category, courts will apply a "rational basis test" to determine whether the state statute has a rational relationship to a legitimate governmental purpose. *Curtis*, 666 A.2d at 268. Under the

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rational basis test, a statute will be ruled invalid if it is patently arbitrary in its application. *In re Marriage of Vrban*, 293 N.W.2d 198, 201 (Iowa 1980).

The *Kujawinski* Court analyzed Section 513 under the rational basis test, finding "the legislature may differentiate between persons similarly situated as long as the classification bears a reasonable relationship to a legitimate legislative purpose." *Kujawinski*, 71 Ill.2d at 571. Other state courts have also applied the rational basis test to their respective post-majority support statutes under the equal protection clause[3]. Accordingly, this Court should analyze Section 513 under the rational basis test.

Today, Section 513 does not have a reasonable relationship to a legitimate governmental interest. The Act differentiates between similarly-situated individuals, and the classification does not bear a reasonable relationship to a legitimate legislative purpose. Young adults seeking to attend college, and their parents, are two classes of similarly-situated persons, and thus should be treated similarly under the Equal Protection Clause. Section 513 divides these similarly-situated persons into groups, according to the marital status of the parents. The state's interest in protecting adult college students of unmarried or divorced parents is no longer legitimate because it is outdated and based upon false premises. More than half of American families now consist of unmarried or divorced parents. It is absurd to assume that unmarried or divorced parents do not care about their adult children's college education[4]. Section 513 is arbitrary and unreasonable because it allows courts to order college support for about half of similarly situated college-age

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[3] See *Curtis*, 666 A.2d at 268 (finding no individual right to post-secondary education, and that the statutory classification did not implicate either a suspect or quasi-suspect class); *Vrban*, 293 N.W.2d at 201 (finding no suspect classification or fundamental right involved, and thus applying the rational basis test).

[4] Yakich cares about his daughter's college education and has offered to pay for 100% of her marine biology education and cost. However, Section 513 does not allow Yakich to make a parental decision about the type of education his daughter is receiving.

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students, while leaving the other half to fend for themselves. This discrimination is arbitrary and does not bear a reasonable relationship to any legitimate governmental interest. Therefore, Section 513 should be declared unconstitutional.

II. The Court Should Declare Section 513 Unconstitutional on its Face.

This Court should find Section 513 unconstitutional on its face. In 1995, the Supreme Court of Pennsylvania struck down a similar post-secondary education support statute in *Curtis v. Kline*. *Curtis*, 666 A.2d at 269. There, the Court held that the Pennsylvania act violated the Equal Protection Clause because the act classified young adults who are "similarly situated [persons] with respect to their need for assistance, into groups according to the marital status of their parents." *Id.* That Court held that the state did not have the authority to empower only those young adults of unmarried or divorced parents to receive court-ordered college support. *Id.* The *Curtis* Court reasoned that there was not a generally applicable requirement that parents assist their adult children to obtain a post-secondary education, and thus, there was "no rational basis for the state to provide only such adults with legal means to overcome the difficulties they encounter in pursuing that end." *Id.* at 269-70. To demonstrate the absurd effects of the statute, the *Curtis* Court gave two examples: (1) that an adult child from a father's first marriage would be able to force the father to pay college expenses, while a similarly situated adult child from the father's current marriage could not; and (2) that the adult child of a woman, whose husband died would not be able to recover for post-secondary education, but in the same situation, where the parents never married, the adult child could recover expenses. *Curtis*, 666 A.2d at 270. In its reasoning, that Court rejected the notion held by the Court in *Kujawinski*, that unmarried or divorced parents must care less about their adult children's college education than married parents. Ultimately, the Court struck down the act for arbitrarily classifying adult college students according to their parents' marital status, and thus violating the Equal Protection Clause. *Id.*

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Both the Illinois and Pennsylvania statutes classify similarly situated young adults according to the marital status of their parents. Both statutes result in arbitrary, and in some cases absurd, results for similarly situated young adults and their parents. Here, Yakich wants his daughter to attend a college that provides her with the degree she has dreamed of. Section 513 prevents him from guiding his daughter toward that dream.

The United States Supreme Court held in *Weinberger v. Wiesenfeld*, 420 U.S. 636, 643 (1975) that a challenged classification premised on an "archaic and overbroad generalization" would not be tolerated under the Constitution. Section 513 classifies adult children and their parents based on marital status. The Illinois Supreme Court in *Kujawinski* held that this classification was justified because the state had a legitimate interest in protecting adult children in non-traditional households, reasoning that in "a normal household, parents direct their children as to when and how they should work or study. That is on the assumption of a normal family relationship, where parental love and moral obligation dictate what is best for the children." *Kujawinski*, 71 Ill.2d at 571, quoting *Maitzen*, 24 Ill.App.2d at 38. *Kujawinski* premises the classification in Section 513 on an "archaic and overbroad" generalization that unmarried or divorced parents have less morals when it comes to their children's post-high school education.

In *Obergefell v. Hodges*, the United States Supreme Court recently recognized that the passage of time can reveal inequality:

> Indeed, in interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions… To take but one period, this occurred with respect to marriage in the 1970's and 1980's. Notwithstanding the gradual erosion of the doctrine of coverture… invidious sex-based classifications in marriage remained common through the mid–20th century…(an extensive reference to laws extant as of 1971 treating women as unequal to men in marriage). These classifications denied the equal dignity of men and women. One State's law, for example, provided in 1971 that 'the husband is the head of the family and the wife is subject to him; her legal civil existence is merged in the husband, except so far as the law recognizes her separately, either for her own protection, or for her benefit'.

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Obergefell v. Hodges, 135 S.Ct. 2584, 2603-04 (2015).

Likewise, in our society today, *Kujawinski*'s reasoning simply no longer applies and the constitution should not tolerate this is the type of "archaic" generalization. Section 513 must be declared unconstitutional.

III. Illinois Should Allow Post-Majority Support for Dependent Adults with Special Needs Only.

In some states, Courts have found that able-bodied college adults should not be considered dependents, and therefore, should not be awarded college expenses past majority. The Florida Supreme Court held that post-majority support can only be ordered upon "dependent" adult children, such as those with physical or mental disabilities, and that simply being enrolled in college did not make a child "dependent." *Grapin v. Grapin*, 450 So.2d 853 (Fla. 1984). The Court went on to quote Judge Cowart, a dissenting judge in a similar case, who said that such a statute "denies such divorced parents their constitutional right to equal treatment under law; that being the same right to voluntarily make such decisions concerning their adult children as other, non-divorced parents have under law." *Grapin*, 450 So.2d at 853, quoting *Owens v. Owens*, 415 So.2d 855, 858 (Fla. 5th DCA 1982) (Cowart, J., dissenting).

The Supreme Court of Michigan interpreted its statute to require children to be actually disabled before receiving post-majority support. *Smith v. Smith*, 447 N.W.2d 715 (Mich. 1989). That Court also held that enrolling in college did not make an adult child dependent. *Id.* The Court reasoned that "most states do not provide post-majority support," in interpreting its support statute as not allowing court-ordered post-majority educational support. *Id.* Finally, the Supreme Court of Colorado narrowed the interpretation of its statute to award post-majority support to disabled adult children only, holding "capable, able-bodied young adult choos[ing] to attend college after

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reaching the age of majority," were not covered by its statute. *In re Marriage of Plummer*, 735 P.2d 165, 167 (Col. 1987).

Here, Yakich is not arguing that 750 ILCS § 5/513.5, which provides post-majority support for disabled children, is unconstitutional. However, Section 513, which gives the Court the authority to order college expenses for able-bodied adult children, is unconstitutional. The governmental interests behind each section are different. Section 513.5 protects dependent adults with special needs who rely on their custodial parents, while Section 513 protects able-bodied independent adults and forces their unmarried or divorced parents to pay for their children's college education. Protecting able-bodied adult college students because of a decades-old notion that unmarried or divorced parents care less about their children's college education, is not a legitimate state interest. Section 513 permits discriminatory treatment among young adults and their unmarried or divorced parents. This discriminatory treatment is arbitrary now that divorced and unmarried households make up more than half of all households. Like in *Grapin*, Yakich's adult daughter and other able-bodied young adults in similar situations are not dependent simply because they wish to go to college. Yakich should not be treated differently simply because he never married his daughter's mother. This discrimination is not premised on a legitimate state interest, and therefore Section 513 should be declared unconstitutional.

IV. Most States Do Not Allow for Post-Majority Educational Support.

The vast majority of states do not allow courts to order post-majority educational support. Those states simply do not have statutes that allow post-majority college support. Other state courts have concluded that allowing courts to order college support based on marital status would be fundamentally unfair to divorced and unmarried parents. See *Dowling v. Dowling*, 679 P.2d 205 (Alaska 1984); *Ex parte Christopher*, 145 So.3d 60, 80 (Ala. 2013) (Moore, J., concurring). Florida, Michigan, and Colorado have laws that only provide post-majority support for adult

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children with special needs. Illinois is part of a small minority of states that mandate college support orders. Pennsylvania was part of this minority, but struck its statute down for violating the Equal Protection Clause. *Curtis*, 666 A.2d at 269.

Alabama does not allow courts to order post-majority college support. In a recent opinion, the Alabama Supreme Court overruled a prior decision, and held that courts are not authorized to require noncustodial parents to pay educational support past the age of majority. *Ex parte Christopher*, 145 So.3d 60 (Ala. 2013). In his concurring opinion, Chief Justice Moore opined that post-minority college expenses are matters which fall within the sphere of family governance and are not suitable for judicial determination. *Id.* at 80 (Moore, J., concurring). Furthermore, Chief Justice Moore explained that courts should be wary of further disturbing the residual affection and mutual sense of responsibility between parents that may yet survive the stress of divorce. *Id.* He further stated that it would be an arbitrary intrusion by the state to disturb this type of parental decision-making. *Id.*

Alaska also does not allow for post-majority educational support. The Supreme Court of Alaska held that courts cannot order post-minority educational support because, in part, adult children of married parents do not have the same legal right to educational support. *Dowling*, 679 P.2d at 205. The Court's reasoning in *Dowling* supports an additional argument here: Section 513 is unconstitutional because it discriminates against the adult children of married parents who are unable to obtain college support by court order.

The Supreme Court of Arkansas held that it would be fundamentally unfair for courts to enforce the moral obligations of providing college support only against divorced parents, while other parents may do as they choose. *Towery v. Towery*, 685 S.W.2d 155, 157 (Ark. 1985). Quoting the Florida Supreme Court in *Grapin v. Grapin*, the Supreme Court of Arkansas held that a court

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may not order post-majority support simply because a child is in college and a divorced parent can pay. *Id.* at 157, quoting *Grapin*, 450 So.2d at 854.

Similarly, Chief Justice Vande Walle of the North Dakota Supreme Court stated in his concurring opinion that "[t]here are parents who remain married who do not provide a college education for their children for a variety of reasons, not all of them financial . . . I do not believe the child of a divorced parent has a greater legal right to that college education than a child whose parents remain married." *Donarski v. Donarski*, 581 N.W.2d 130, 137 (N.D. 1998) (Vande Walle, J., concurring).

Yakich should be free to make the parental decisions regarding his daughter's college education which he believes are in his daughter's best interests and which encourages his daughter to fulfill her life-long dreams. Yakich reasonably believes that his daughter will not use her current degree and will not attain her life's goal of becoming marine biologist. Yakich's situation is a precise example of inappropriate judicial interference in the "sphere of family governance" described by Chief Justice Moore. Yakich is prevented from being a parent. He cannot discourage his daughter from seeking a course of study that she has no interest in by refusing to pay for such education. Yakich is precluded from using his influence to steer his daughter toward her life's ambition of becoming a marine biologist.

CONCLUSION

This Court should declare Section 513 unconstitutional on its face for unfairly classifying similarly-situated individuals in violation of the Equal Protection Clause. The Act's classification is not reasonably related to any legitimate governmental interest. Families have changed. Unmarried or divorced households now make up about half of the households in the nation. It is outdated to assume that parents will make different decisions regarding their adult children's

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education based on their marital status. For the reasons stated above, Charles Yakich respectfully requests this Court to declare 750 ILCS § 5/513 unconstitutional.

Respectfully submitted,

CHARLES D. YAKICH

By: /s/ Vincent L. DiTommaso
His Attorney

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Attorney Code No. 27902

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH,	)	
	)	
Petitioner,	)	
	)	No. 15 F 651
and	)	
	)	
ROSEMARY A. AULDS,	)	
	)	
Respondent.	)	

RESPONSE TO MOTION TO DECLARE 750 ILCS §513 UNCONSTITUTIONAL

NOW COMES the Respondent, ROSEMARY A. AULDS, by and through her attorneys, William J. Arendt & Associates, P.C., and in support of her Response to Motion to Declare 750 ILCS §513 Unconstitutional, states as follows:

1. Respondent filed her Petition for Contribution to College Expenses pursuant to Section 513 of the Illinois Marriage and Dissolution of Marriage Act on August 6, 2015.

2. On July 22, 2016, following a hearing, a final Order was entered requiring both parties to contribute to certain college expenses for their daughter.

3. Petitioner did not file any post-judgment motions pursuant to Section 2-1203 of the Illinois Code of Civil Procedure or any notice of appeal pursuant to Supreme Court Rule 303 within the 30 day time period allowed by law. As a result, the July 22, 2016 Order became final and unappealable on August 22, 2016.

4. "Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction acts as bar to a subsequent suit between the parties involving the same cause of action." In Re the Marriage of Lyman, 2015 IL App (1st) 132832, ¶68, 27 N.E.3d 126, 147 (1st Dist. 2015).

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5. "[*R*]*es judicata* applies not only to what was actually decided in the original action, but also to matters which could have been decided in that suit." Id (internal quotation marks omitted).

6. If Petitioner wished to challenge the constitutionality of Section 513 with respect to the case with Respondent, he could and should have raised the argument prior to the entry of the July 22, 2016 Order. The doctrine of *res judicata* bars Petitioner from raising the issue now after the time for filing of post-judgment motions or an appeal has expired.

7. "Court decisions cannot be applied retroactively to civil causes already barred by... *res judicata*." Sundance Homes, Inc. v. County of DuPage, 195 Ill.2d 257, 269, 746 N.E.2d 254, 262 (2001).

8. "Legal principles, even when applied retroactively, do not apply to cases already closed." Sundance Homes, 195 Ill.2d at 268, 746 N.E.2d at 261.

9. The case between Petitioner and Respondent regarding college expenses is closed. Therefore, any ruling regarding the constitutionality of Section 513 will have no bearing on the July 22, 2016 Order.

10. Because any ruling regarding the constitutionality of Section 513 cannot be applied retroactively to the July 22, 2016 Order, Respondent has no obligation or stake in defending the constitutionality of the statute.

WHEREFORE, the Respondent, ROSEMARY A. AULDS, prays that this Court enter an Order denying Petitioner's Motion to Deem 750 ILCs §513 Unconstitutional, and for such other and further relief as this Court deems equitable and just.

Respectfully submitted,

ROSEMARY A. AULDS

By: /s/ William J. Arendt
William J. Arendt, Esq.

William J. Arendt & Associates, P.C.
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William.arendt@wiarendtlaw.com

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ORDER - BLANK 2116 (Rev. 2/16)

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STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Charles Yakich

vs

Rosemary Aulds

Line #37

2015F651
CASE NUMBER

FILED
2017 JUN -8 PM 4:08
CLERK OF THE 18TH JUDICIAL CIRCUIT DU PAGE COUNTY, ILLINOIS
File Stamp Here

ORDER

This cause coming before the Court, the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:** Hearing on both parties' Petitions for Rule, Petitioner's Motion to Deem §513 Unconstitutional & Petition to Modify Contribution to College, the Court having heard evidence on the parties' Petitions for Rule.

(1) the Court having made its ruling on both Petitions for Rule, the parties shall cooperate to submit a proposed Order to the Court reflecting the ruling within 7 ~~seven~~ days.

(2) Both parties granted leave to withdraw their exhibits.

(3) Hearing on Motion to Deem §513 Unconstitutional and Petition to Modify Contribution to College is set for 7/20/17 at 9:30 a.m.

or terminate.

Name: William Arendt & Assoc. PRO SE
DuPage Attorney Number: 27902
Attorney for: Rosemary
Address: 7035 Veterans Blvd, Suite A
City/State/Zip: Burr Ridge IL 60527
Telephone Number: (630) 887-7500
Email: William.arendt@arendtlaw.com

ENTER:

Judge BB

Date: 6/8/17

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

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Attorney Code No. 27902

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS**

CHARLES D. YAKICH, Petitioner,	)	No. 15 F 651
and	)	
ROSEMARY A. AULDS, Respondent.	)	

ORDER

This Cause coming to be heard upon Petitioner's Petition for Rule to Show Cause Against Respondent and Respondent's Petition for Adjudication of Indirect Civil Contempt, Attorney Fees and for Other Relief against Petitioner, the Court having conducted an evidentiary hearing on June 8, 2017 and made its findings on the record, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED:

1. Respondent is hereby held in indirect civil contempt of Court for her failure to pay her 50% share of the cost of the health insurance premiums for Dylan carried by Petitioner for the period of August 1, 2011 through August 5, 2016, the date of filing of the Petitioner's Petition for Rule and such failure was without justification on the part of Respondent.

2. Counsel for the parties shall, on or before June 22, 2017, calculate the total amount owed by Respondent to Petitioner for her obligation to pay or reimburse fifty percent (50%) of the health insurance premiums attributable to Dylan (excluding the costs of vision and dental health insurance coverage) since August 1, 2011 through and including August 5, 2016. For the time period that Petitioner also carried Devon Yakich on the same dependent health insurance coverage, the portion attributable to Dylan shall be calculated as one-half (1/2) of the total cost (excluding the costs of vision and dental health insurance coverage) of dependent coverage. Respondent shall have thirty (30) days from June 22, 2017 to pay Petitioner the total amount of the above calculations. Notwithstanding, if counsel for the parties are unable to agree on the total amount owed by Respondent by June 22, 2017, then same shall be submitted to the Court to determine the total amount owed by Respondent, and Respondent shall have 30 days from the Court's determination to pay the amount that the Court determines Respondent owes.

3. Respondent's Petition for Adjudication of Indirect Civil Contempt is denied. Notwithstanding, Respondent may submit any out-of-pocket expenses incurred by her since June

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13, 2011 to Petitioner's insurance provider, and Petitioner shall cooperate in Respondent's efforts in providing such expenses to Petitioner's health insurance provider. If coverage for any of such out-of-pocket expenses are time barred under the terms of Petitioner's policy, then Petitioner shall not be required to pay for any portion of the time-barred expenses. If any of such out-of-pocket expenses are not time-barred under the terms of Petitioner's policy and, after coverage for said expenses is applied by Petitioner's insurer, there remains an out-of-pocket portion that is not covered by Petitioner's health insurance provider, then Petitioner shall reimburse Respondent for fifty percent (50%) of such remaining out-of-pocket portion. Petitioner shall pay any amounts owed by him to Respondent within thirty (30) days of receiving an explanation of benefits from Petitioner's insurance provider as to coverage of such out-of-pocket expenses which are not time barred.

ENTER:

6/16/17

Judge Thomas Else Date

William J. Arendt & Associates, P.C.
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ORDER - BLANK

2116 (Rev. 2/16)

STATE OF ILLINOIS
UNITED STATES OF AMERICA
COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Yakich,

vs

AULDS

15 F 651

CASE NUMBER

#14

e-FILED
JUL 28, 2017 11:48 AM
Chris Kachiroubas
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

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ORDER

This cause coming before the Court,* the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:** * Hearing on Π's Motion to Declare 5/513 Unconstitutional and Π's Petition to Terminate or in the alternative to Modify Π's Obligation to Contribute Toward the Educational Expenses of his Adult Child and presentation of Π's Petition for 508(b) and Δ's Motion for Adjudication of Medical Issue

(1) Π's Petition to Terminate or Modify Π's Obligation to Contribute Toward Educational Expense is Denied
(2) Π is granted 28 days to amend/reply or otherwise file a new Petition/Counterclaim consistent with 513
(3) Π shall have 28 days to respond to Δ's Motion to Modify
(4) Δ shall have 28 days to respond to Π's 508b Petition
(5) Hearing on Δ's Motion to Modify and Π's 508b Petition is set for 9/15/17 at 9:30 a.m.

Name: AKOND ☐ PRO SE
DuPage Attorney Number: 27902
Attorney for: Respondent
Address: 7035 Veterans Blvd #A
City/State/Zip: Burr Ridge, IL 60527
Telephone Number: 630/887-7500
Email: William.Arnold@WJArnoldLaw.com

ENTER:

Judge

BB

Date: 7/28/17

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WHEATON, ILLINOIS 60187-0707

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Attorney Code No. 23

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH Petitioner, and ROSEMARY A. AULDS, Respondent.	)))))))	No. 15 F 651 Judge Thomas A. Else

PETITIONER'S MOTION TO DECLARE 750 ILCS § 5/513 UNCONSTITUTIONAL

Charles D. Yakich, through his counsel, moves this Court for an order declaring 750 ILCS § 5/513 (Educational Expenses for a Non-minor Child) ("Section 513") unconstitutional for violating the Equal Protection Clause of the U.S. Constitution. In support of this Motion, Petitioner states:

1. On July 28, 2017, this Court denied Petitioner's Motion to Terminate on in the Alternative to Modify Petitioner's Obligation to Contribute Toward the Educational Expenses of His Adult Child which expenses include tuition fees, room and board, books, lab fees, and associated expenses. As a result of this ruling, Petitioner's parental rights in steering his adult daughter to an appropriate college have been usurped.

2. Respondent argued that the only change in current circumstances was that the adult child of the parties failed to comply with this Court's July 22, 2016 order and that the parties' adult child's continued lack of employment, work study and scholarships cannot be a change in circumstances.

3. On August 6, 2015, Respondent filed her Petition for Contribution to College Expenses pursuant to Section 513 of the Illinois Marriage and Dissolution of Marriage Act ("513").

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4. Following an evidentiary hearing, on July 22, 2016 an Order ("Order") was entered requiring Petitioner, Respondent, and their adult daughter, Dylan, to contribute to certain college expenses as follows: "[Respondent] Rosemary shall be responsible for paying 40%, [Petitioner] Charlie shall be responsible for paying 40%, and Dylan shall be responsible for paying 20% . . . Dylan's 20% contribution may be in the form of scholarships, grants, work-study or employment." (A copy of the Order is attached hereto as Exhibit A).

5. Requiring Dylan to pay for 20% of her college expenses was grounded upon a number of facts in evidence: (i) for many years, and through the date of the 513 hearing, Dylan had a life-long desire to become a marine biologist; (ii) Dylan and Respondent mistakenly chose a college that had a marine science program (not marine biology), thinking that marine science was the same as marine biology; (iii) Dylan continues to attend such college; (iv) Petitioner was not consulted with regard to Dylan's and Respondent's decision to attend this mistaken college; and (v) despite having only one and at other times no college classes, Dylan made little or no efforts to obtain employment, but instead relied and continues to rely solely upon her wealthy parents for money. The Court apportioned the obligations for the payment of college expenses based upon the particular facts and circumstances in this case. The plain language of the Order reflects the intention that both parents and their adult child would bear the financial responsibility for college expenses.

6. Since the entry of the Order, Dylan has not contributed her 20% obligation for her college expenses. Dylan has not received a scholarship, grant, or work-study. Dylan is not employed. Instead, Respondent is paying Dylan's 20% obligation under the Order. Dylan has taken no responsibility or even made an effort to take responsibility towards paying 20% of her college expenses pursuant to the Order.

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7. With some qualifiers, Section 513 mandates that unmarried and divorced parents pay for their adult children's college expenses. There is no such mandate for married parents. The Act also divides similarly-situated college students into two classes: those with unmarried or divorced parents who can receive court-ordered college support, and those with married parents who cannot receive court-ordered college support. These classifications of college students and their parents are arbitrary in a nation where more than half of households are unmarried or divorced.

8. Section 513 protects able-bodied independent adults and forces their unmarried or divorced parents to pay for their children's college education. Protecting able-bodied adult college students because of a decades-old notion that unmarried or divorced parents care less about their children's college education, is not a legitimate state interest. Section 513 permits discriminatory treatment among young adults and their unmarried or divorced parents. This discriminatory treatment is arbitrary now that divorced and unmarried households make up more than half of all households. Petitioner's adult daughter and other able-bodied young adults in similar situations are not dependent simply because they wish to go to college. Petitioner should not be treated differently simply because he never married his daughter's mother. This discrimination is not premised on a legitimate state interest, and therefore Section 513 should be declared unconstitutional.

9. Section 513 states:

> § 513(a) The court may award sums of money out of the property and income of either or both parties or the estate of a deceased parent, as equity may require, for the educational expenses of any child of the parties. Unless otherwise agreed to by

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the parties, all educational expenses which are the subject of a petition brought pursuant to this Section shall be incurred no later than the child's 25th birthday.

§ 513(b) Regardless of whether an award has been made under subsection (a), the court may require both parties and the child complete the Free Application for Federal Student Aid (FAFSA) and other financial aid forms and to submit any form of that type prior to the designated submission deadline for the form. The court may require either or both parties to provide funds for the child so as to pay for the cost of up to 5 college applications, and the cost of one standardized college entrance examination preparatory course.

§ 513(c) The authority under this Section to make provision for educational expenses extends not only to periods of college education or vocational or professional or other training after graduation from high school, but also to any period during which the child of the parties is still attending high school, even though he or she attained the age of 19.

10. Section 513 violates the Equal Protection Clause by arbitrarily classifying similarly-situated individuals based on marital status. Further, such classification is no longer rationally related to a legitimate governmental purpose.

11. Section 513 provides dissimilar treatment for married and unmarried persons who are similarly situated and therefore is unconstitutional.

12. Illinois precedent upholding Section 513 relies on outdated vital statistics and archaic notions of a traditional family. Current statistics demonstrate that over half of U.S. parents are unmarried. The Act should be currently revisited by a Court based on current statistics and realities.

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13. Unmarried parents are equally able to be "counted on" for protecting the best interests of their adult children.

14. Section 513 classifies young adults according to the marital status of their parents, establishing for one group, an action to obtain benefits enforceable by Court order that is not available to the other group.

15. Due to the complexity of the issue, in support of this motion, Petitioner intends to file his Memorandum in Support of Petitioner's Motion to Declare 750 ILCS § 5/513 Unconstitutional.

16. An actual controversy exists as to whether or not Section 513 is constitutional and therefore enforceable which decision on this issue directly impacts Petitioner's parental rights in steering his adult child to an appropriate college.

WHEREFORE, Petitioner Charles Yakich respectfully requests that the Court:

A. Declare the rights of the parties hereto;

B. Declare 750 ILCS § 5/513 unconstitutional;

C. Declare that Petitioner has no obligation to pay for the college expenses of his adult child; and

D. For any such other relief as is just.

Respectfully submitted,

CHARLES D. YAKICH

By: /s/ Vincent L. DiTommaso
His Attorney

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DiTommaso Lubin Austermuehle, P.C.
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2015F000651

EXHIBIT A

ORDER - BLANK 2116 (Rev. 2/16)

STATE OF ILLINOIS **UNITED STATES OF AMERICA** **COUNTY OF DU PAGE**

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Lines 17+21

Charles Yakich

vs

Rosemary Aulds

15 F 651
CASE NUMBER

p1 of 2

File Stamp Here

ORDER

This cause coming before the Court* the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:** * for hearing on Rosemary's Petition for Contribution to College and Petition for Modification of Health Insurance

① Commencing with the 2016-2017 academic year, the college expenses for Dylan shall be divided such that Rosemary shall be responsible for paying 40%, Charlie shall be responsible for paying 40%, and Dylan shall be responsible for paying 20%. The college expenses to be divided shall be as follows: tuition and fees, room and board, books, lab fees and associated expenses.
Travel to and from college shall not be subject to division. Dylan's 20% contribution may be in the form of scholarships, grants, work-study or ~~any other~~ ~~means~~ employment. Payment shall be made directly to the provider/ within 14 days of receipt of bill of charges and expenses. ~~as set forth above to the party who received the expenses/or charges.~~

Name: William Arendt & Assoc, P.C. ☐ PRO SE

DuPage Attorney Number: 27902

Attorney for: Rosemary Aulds

Address: 7035 Veterans Blvd, Suite A

City/State/Zip: Burr Ridge, IL 60527

Telephone Number: (630) 887-7500

Email: william.arendt@wjarendtlaw.com

ENTER:

Judge

Date: 7/22/16

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

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ORDER - BLANK 2116 (Rev. 2/16)

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Charlie Yakich

vs

Rosemary Aulds

15 F 651
CASE NUMBER

p2 of 2

File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:**

(2) Rosemary's Petition for Modification of Health Insurance is voluntarily withdrawn.

Name: William Arendt & Assoc ☐ PRO SE
DuPage Attorney Number: 27902
Attorney for: Rosemary Aulds
Address: 7035 Veterans Blvd, Suite A
City/State/Zip: Burr Ridge, IL 60527
Telephone Number: (630) 887-7500
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ENTER:

Judge

Date: 7/22/16

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WHEATON, ILLINOIS 60187-0707

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Attorney Code No. 23

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH Petitioner, and ROSEMARY A. AULDS, Respondent.	))))))))	No. 15 F 651 Judge Thomas A. Else

MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION
TO DECLARE 750 ILCS § 5/513 UNCONSTITUTIONAL

Petitioner, Charles D. Yakich ("Yakich"), through his counsel, hereby submits this Memorandum in Support of his Motion to Declare 750 ILCS § 5/513 (Educational Expenses for a Non-minor Child) (herein "Section 513" or "the Act") unconstitutional for violating the Equal Protection Clause of the United States Constitution. Section 513 is unconstitutional where it allows courts to order college support to able-bodied adult children of unmarried parents or divorced parents only. The Act thus discriminates against similarly-situated adult children of married parents, and unmarried or divorced parents. In support of said Motion, Petitioner states as follows:

FACTUAL BACKGROUND

Charles Yakich is the biological father of Dylan Yakich and was granted Primary Residency of Dylan in 1996. Subsequently, Dylan spent half her time with Yakich and the other half with her mother. In July 2016, a hearing was held in regard to college contribution.

At the hearing on college contribution, the following evidence was submitted: Since Yakich's daughter was very young, her dream was to become a marine biologist. Yakich fostered her interest by enrolling her in scuba diving classes and taking her on many diving trips. Now as a 21-year-old adult, Yakich's daughter still dreams of becoming a marine biologist. Yakich was not included or involved in Dylan's selection of colleges. Dylan and her mother, thinking that a

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marine science degree was the same as marine biology, enrolled Dylan in the Marine Science program at Florida Gulf Coast University ("FGCU"). After commencing this Marine Science program, Yakich's daughter learned that her college did not offer a marine biology degree and that marine science had little to do with marine biology. Dylan met with her school counselor and was told to remain at FGCU and earn a four-year degree in biology, and then, if she still wanted to become a marine biologist, to transfer to another school to earn her Master's Degree in Marine Biology. This would add two years to Dylan's education. Other schools, specifically Scripps Institution of Oceanography in San Diego and the University of Hawaii, offer four-year undergraduate Marine Biology degrees. Contrary to Yakich's advice and wishes, Dylan changed her degree to biology instead of transferring to one of the schools offering four-year degrees, which Yakich offered to pay for. Yakich wants his daughter's dream to come true. He has offered to pay 100% of tuition, boarding and other expenses for his daughter to obtain a marine biology degree in four years. Yet, Yakich's daughter continues to obtain an unrelated degree. Because Yakich is an unmarried parent, by statute, he is being forced to pay for a degree he knows his daughter will not use.

Following an evidentiary hearing, on July 22, 2016 an Order ("Order") was entered requiring Petitioner, Respondent, and their adult daughter, Dylan, to contribute to certain college expenses as follows: "[Respondent] Rosemary shall be responsible for paying 40%, [Petitioner] Charlie shall be responsible for paying 40%, and Dylan shall be responsible for paying 20% . . . Dylan's 20% contribution may be in the form of scholarships, grants, work-study or employment." since the entry of the Order, Dylan has not contributed her 20% obligation for her college expenses. Dylan has not received a scholarship, grant, or work-study. Dylan is not employed. Instead, Respondent is paying Dylan's 20% obligation under the Order. Dylan has taken no responsibility

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or even made an effort to take responsibility towards paying 20% of her college expenses pursuant to the Order.

Because Dylan was not, and is not, contributing her 20% obligation for her college expenses, has not received a scholarship, grant, or work-study and remains unemployed, on January 11, 2017, Petitioner filed Petitioner's Petition to Terminate or in the Alternative to Modify Petitioner's Obligation to Contribute Toward the Educational Expenses of His Adult Child ("Petition"). On July 28, 2017, the Court denied the Petition. Petitioner filed the instant Motion to Declare 750 ILCS § 5/513 Unconstitutional on August 1, 2017.

With some qualifiers, Section 513 mandates that unmarried and divorced parents pay for their adult children's college expenses. There is no such mandate for married parents. The Act also divides similarly-situated college students into two classes: those with unmarried or divorced parents who can receive court-ordered college support, and those with married parents who cannot receive court-ordered college support. These classifications of college students and their parents are arbitrary in a nation where more than half of households are unmarried or divorced.

Nearly 40 years ago, our Supreme Court upheld the Act in *Kujawinski v. Kujawinski*, 71 Ill.2d 563 (1978). In that case, Section 513 was upheld because it was determined that the Act was rationally related to a state interest in protecting adult children from non-traditional families. *Id.* at 579. That Court reasoned that noncustodial divorced parents would not voluntarily support their children to the extent they would if they were married. *Id.* The Court contrasted the divorced family with what it termed a "*normal*" household, where "natural pride would demand a moral obligation" for the parents to pay (emphasis added). *Id.*, quoting the 1959 decision in *Maitzen v. Maitzen*, 24 Ill.App.2d 32, 38 (1959). Ten years later, the Second District Appellate Court expanded the holding in *Kujawinski* to apply to all unmarried parents. *Rawles v. Hartman,* 172 Ill.App.3d 931 (1988).

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Since *Kujawinski* and *Rawles*, the national birth rate to unmarried women has increased from 18.4% to over 40%[1]. As of 2011, the divorce rate in Illinois was 46%. Putting these two rates together leads to the conclusion that more than half of households include unmarried or divorced parents. In fact, according to a recent study, only 46% of children under the age of 18 live in a traditional home as *Kujawinski* termed as a "normal" home[2]. Thus, the "normal" household is no longer comprised of only married parents and their children.

Kujawinski and *Rawles* are antiquated and should not apply in 2017 and beyond. Relying on *Maitzen*, a case that is now almost 60 years old, *Kujawinski* held that that divorced families will feel less "morally obligated" than "normal" families to help their children through college. The Act's classification of similarly-situated adult children and their parents based on marital status is premised on an archaic notion that suggests that more than half of today's parents do not care about their children's college education. Because it based on such outdated reasoning, the Act is no longer rationally related to a legitimate governmental interest, and should be declared unconstitutional.

ARGUMENT

I. Standard of Review

The Equal Protection Clause of the Fourteenth Amendment protects persons from being denied the equal protection of the laws. *Curtis v. Kline*, 666 A.2d 265, 267 (Pa. 1995). The main

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[1] Births: Final Data for 2014 by Brady E. Hamilton, Ph.D.; Joyce A. Martin, M.P.H.; Michelle J.K. Osterman, M.H.S.; Sally C. Curtin, M.A.; and T.J. Mathews, M.S., Division of Vital Statistics; Illinois Department of Public Health, Marriage, Divorces and Annulments Occurring in Illinois 1958-2011, available at http://www.idph.state.il.us/health/bdmd/marr_div_annul.htm; CDC National Center for Health Statistics, National Marriage and Divorce Rate Trends 200-2014, available at http://www.cdc.gov/nchs/nvss/marriage_divorce_tables.htm.

[2] Livingston, Gretchen "Fewer than Half of U.S.Kids Today Live in a 'Traditional' Family," Pew Research Center, December 22, 2014, http://www.pewresearch.org/fact-tank/2014/12/22/less-than-half-of-u-s-kids-today-live-in-a-traditional-family.

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principle of this clause is that similarly-situated individuals should be treated equally. *Id.* However, a state can resort to classifying similarly-situated people differently if the classifications are reasonable rather than arbitrary and bear a reasonable relationship to the object of the legislation. *Id.* In analyzing whether a state statute violates the Equal Protection Clause by treating similarly-situated persons differently, courts will use one of three standards of review, ranging from high to low scrutiny. *Id.* at 268. When the classification implicates a "suspect class" or fundamental right, the standard of review is strict scrutiny, resulting in a higher probability it will be struck down as unconstitutional. *Id.* "A suspect class exists and will be legally categorized as such where a group of persons is 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.'" *In re Marriage of Kohring*, 999 S.W.2d 228, 232 (Mo. 1999). When the classification involves a quasi-suspect class (for example, age or wealth), or important but not fundamental right, the standard of review is that of intermediate or heightened scrutiny. *Curtis*, 666 A.2d at 268. Finally, when the classification does not fall into either category, courts will apply a "rational basis test" to determine whether the state statute has a rational relationship to a legitimate governmental purpose. *Id.* Under the rational basis test, a statute will be ruled invalid if it is patently arbitrary in its application. *In re Marriage of Vrban*, 293 N.W.2d 198, 201 (Iowa 1980).

The *Kujawinski* Court analyzed Section 513 under the rational basis test, finding "the legislature may differentiate between persons similarly situated as long as the classification bears a reasonable relationship to a legitimate legislative purpose." *Kujawinski*, 71 Ill.2d at 571. Other state courts have also applied the rational basis test to their respective post-majority support

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statutes under the equal protection clause[3]. Accordingly, this Court should analyze Section 513 under the rational basis test.

Today, Section 513 does not have a reasonable relationship to a legitimate governmental interest. The Act differentiates between similarly-situated individuals, and the classification does not bear a reasonable relationship to a legitimate legislative purpose. Young adults seeking to attend college, and their parents, are two classes of similarly-situated persons, and thus should be treated similarly under the Equal Protection Clause. Section 513 divides these similarly-situated persons into groups, according to the marital status of the parents. The state's interest in protecting adult college students of unmarried or divorced parents is no longer legitimate because it is outdated and based upon false premises. More than half of American families now consist of unmarried or divorced parents. It is absurd to assume that unmarried or divorced parents do not care about their adult children's college education[4]. Section 513 is arbitrary and unreasonable because it allows courts to order college support for about half of similarly situated college-age students, while leaving the other half to fend for themselves. This discrimination is arbitrary and does not bear a reasonable relationship to any legitimate governmental interest. Therefore, Section 513 should be declared unconstitutional.

II. The Court Should Declare Section 513 Unconstitutional on its Face.

This Court should find Section 513 unconstitutional on its face. In 1995, the Supreme Court of Pennsylvania struck down a similar post-secondary education support statute in *Curtis v. Kline*.

[3] See *Curtis*, 666 A.2d at 268 (finding no individual right to post-secondary education, and that the statutory classification did not implicate either a suspect or quasi-suspect class); *Vrban*, 293 N.W.2d at 201 (finding no suspect classification or fundamental right involved, and thus applying the rational basis test).

[4] Yakich cares about his daughter's college education and has offered to pay for 100% of her marine biology education and cost. However, Section 513 does not allow Yakich to make a parental decision about the type of education his daughter is receiving.

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Curtis, 666 A.2d at 269. The *Curtis* Court held that the Pennsylvania act violated the Equal Protection Clause because the act classified young adults who are "similarly situated [persons] with respect to their need for assistance, into groups according to the marital status of their parents." *Id.* That Court held that the state did not have the authority to empower only those young adults of unmarried or divorced parents to receive court-ordered college support. *Id.* The *Curtis* Court reasoned that there was not a generally applicable requirement that parents assist their adult children to obtain a post-secondary education, and thus; there was "no rational basis for the state to provide only such adults with legal means to overcome the difficulties they encounter in pursuing that end." *Id.* at 269-70. To demonstrate the absurd effects of the statute, the *Curtis* Court gave two examples: (1) that an adult child from a father's first marriage would be able to force the father to pay college expenses, while a similarly situated adult child from the father's current marriage could not; and (2) that the adult child of a woman, whose husband died would not be able to recover for post-secondary education, but in the same situation, where the parents never married, the adult child could recover expenses. *Curtis*, 666 A.2d at 270. In its reasoning, that Court rejected the notion held by the Court in *Kujawinski*, that unmarried or divorced parents must care less about their adult children's college education than married parents. Ultimately, the Court struck down the act for arbitrarily classifying adult college students according to their parents' marital status, and thus violating the Equal Protection Clause. *Id.*

Both the Illinois and Pennsylvania statutes classify similarly situated young adults according to the marital status of their parents. Both statutes result in arbitrary, and in some cases absurd, results for similarly situated young adults and their parents. Here, Yakich wants his daughter to attend a college that provides her with the degree she has dreamed of. Section 513 prevents him from guiding his daughter toward that dream.

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The question for the Court's determination in this case is whether there is some ground of difference that rationally explains the different treatment accorded married and unmarried persons and children of married and unmarried persons under Section 513.

In *Eisenstadt v. Baird*, 92 S.Ct. 1029 (1972), Massachusetts General Laws Ann., c. 272, s 21 ("Massachusetts Law") provided a maximum five-year term of imprisonment for "whoever . . .gives away . . . any drug, medicine, instrument or article whatever for the prevention of conception," except as authorized in s 21A. Under s 21A, "(a) registered physician may administer to or prescribe for any married person drugs or articles intended for the prevention of pregnancy or conception. *Eisenstadt*, 92 S.Ct. at 1032. (And a) registered pharmacist actually engaged in the business of pharmacy may furnish such drugs or articles **to any married person presenting a prescription from a registered physician**." *Id* (emphasis added). In declaring the Massachusetts Law to be unconstitutional, the Supreme Court stated:

> "[T]he marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion…"

There, citing Justice Jackson in *Railway Express Agency v. New York*, 69 S.Ct. 463, 466 (1949), the Supreme Court further stated as follows:

> "The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers

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were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation."

The United States Supreme Court held in *Weinberger v. Wiesenfeld*, 95 S.Ct. 1225, 1231 (1975) that a challenged classification premised on an "archaic and overbroad generalization" would not be tolerated under the Constitution. Section 513 classifies adult children and their parents based on the parents' marital status. The Illinois Supreme Court in *Kujawinski* held that this classification was justified because the state had a legitimate interest in protecting adult children in non-traditional households, reasoning that in "a normal household, parents direct their children as to when and how they should work or study. That is on the assumption of a normal family relationship, where parental love and moral obligation dictate what is best for the children." *Kujawinski*, 71 Ill.2d at 571, quoting *Maitzen*, 24 Ill.App.2d at 38. *Kujawinski* premises the classification in Section 513 on an "archaic and overbroad" generalization that unmarried or divorced parents have less morals when it comes to their children's post-high school education.

In *Obergefell v. Hodges*, the United States Supreme Court recently recognized that the passage of time can reveal inequality:

> "Indeed, in interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions…To take but one period, this occurred with respect to marriage in the 1970's and 1980's. Notwithstanding the gradual erosion of the doctrine of coverture…invidious sex-based classifications in marriage remained common through the mid–20th century… (an extensive reference to laws extant as of 1971 treating women as unequal to men in marriage). These classifications denied the equal dignity of men and women. One State's law, for example, provided in 1971 that 'the husband is the head of the family and the wife

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is subject to him; her legal civil existence is merged in the husband, except so far as the law recognizes her separately, either for her own protection, or for her benefit'."

Obergefell v. Hodges, 135 S.Ct. 2584, 2603-04 (2015).

Likewise, in our society today, *Kujawinski*'s reasoning simply no longer applies and the constitution should not tolerate this is the type of "archaic" generalization. Section 513 must be declared unconstitutional.

III. Illinois Should Allow Post-Majority Support for Dependent Adults with Special Needs Only.

In some states, Courts have found that able-bodied college adults should not be considered dependents, and therefore, should not be awarded college expenses past majority. The Florida Supreme Court held that post-majority support can only be ordered upon "dependent" adult children, such as those with physical or mental disabilities, and that simply being enrolled in college did not make a child "dependent." *Grapin v. Grapin*, 450 So.2d 853 (Fla. 1984). The Court went on to quote Judge Cowart, a dissenting judge in a similar case, who said that such a statute "denies such divorced parents their constitutional right to equal treatment under law; that being the same right to voluntarily make such decisions concerning their adult children as other, non-divorced parents have under law." *Grapin*, 450 So.2d at 854, quoting *Owens v. Owens*, 415 So.2d 855, 858 (Fla. 5th DCA 1982) (Cowart, J., dissenting).

The Supreme Court of Michigan interpreted its statute to require children to be actually disabled before receiving post-majority support. *Smith v. Smith*, 447 N.W.2d 715 (Mich. 1989). That Court also held that enrolling in college did not make an adult child dependent. *Id.* at 726. The Court reasoned that "most states do not provide post-majority support," in interpreting its support statute as not allowing court-ordered post-majority educational support. *Id.* Finally, the

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Supreme Court of Colorado narrowed the interpretation of its statute to award post-majority support to disabled adult children only, holding "capable, able-bodied young adult[s] choos[ing] to attend college after reaching the age of majority," were not covered by its statute. *In re Marriage of Plummer*, 735 P.2d 165, 167 (Col. 1987).

Here, Yakich is not arguing that 750 ILCS § 5/513.5, which provides post-majority support for disabled children, is unconstitutional. However, Section 513, which gives the Court the authority to order college expenses for able-bodied adult children, is unconstitutional. The governmental interests behind each section are different. Section 513.5 protects dependent adults with special needs who rely on their custodial parents, while Section 513 protects able-bodied independent adults and forces their unmarried or divorced parents to pay for their children's college education. Protecting able-bodied adult college students because of a decades-old notion that unmarried or divorced parents care less about their children's college education, is not a legitimate state interest. Section 513 permits discriminatory treatment among young adults and their unmarried or divorced parents. This discriminatory treatment is arbitrary now that divorced and unmarried households make up more than half of all households. Like in *Grapin*, Yakich's adult daughter and other able-bodied young adults in similar situations are not dependent because they wish to go to college. Yakich should not be treated differently because he never married his daughter's mother. This discrimination is not premised on a legitimate state interest, and therefore Section 513 should be declared unconstitutional.

IV. Most States Do Not Allow for Post-Majority Educational Support.

The vast majority of states do not allow courts to order post-majority educational support. Those states do not have statutes that allow post-majority college support. Other state courts have concluded that allowing courts to order college support based on marital status would be fundamentally unfair to divorced and unmarried parents. See generally, *Dowling v. Dowling*, 679

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P.2d 480 (Alaska 1984); *Ex parte Christopher*, 145 So.3d 60, 80 (Alabama 2013) (Moore, J., concurring). Florida, Michigan, and Colorado have laws that only provide post-majority support for adult children with special needs. Illinois is part of a small minority of states that mandate college support orders. Pennsylvania was part of this minority, but struck its statute down for violating the Equal Protection Clause. *Curtis*, 666 A.2d at 269.

Alabama does not allow courts to order post-majority college support. In a recent opinion, the Alabama Supreme Court overruled a prior decision, and held that courts are not authorized to require noncustodial parents to pay educational support past the age of majority. *Ex parte Christopher*, 145 So.3d 60 (Ala. 2013). In his concurring opinion, Chief Justice Moore opined that post-minority college expenses are matters which fall within the sphere of family governance and are not suitable for judicial determination. *Id.* at 80 (Moore, J., concurring). Furthermore, Chief Justice Moore explained that courts should be wary of further disturbing the residual affection and mutual sense of responsibility between parents that may yet survive the stress of divorce. *Id.* He further stated that it would be an arbitrary intrusion by the state to disturb this type of parental decision-making. *Id.*

Alaska also does not allow for post-majority educational support. The Supreme Court of Alaska held that courts cannot order post-minority educational support because, in part, adult children of married parents do not have the same legal right to educational support. *Dowling*, 679 P.2d at 205. The Court's reasoning in *Dowling* supports an additional argument here: Section 513 is unconstitutional because it discriminates against the adult children of married parents who are unable to obtain college support by court order.

The Supreme Court of Arkansas held that it would be fundamentally unfair for courts to enforce the moral obligations of providing college support only against divorced parents, while other parents may do as they choose. *Towery v. Towery*, 685 S.W.2d 155, 157 (Ark. 1985). Quoting

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the Florida Supreme Court in *Grapin v. Grapin*, the Supreme Court of Arkansas held that a court may not order post-majority support because a child is in college and a divorced parent can pay. *Id.* at 157, quoting *Grapin*, 450 So.2d at 854.

Similarly, Chief Justice Vande Walle of the North Dakota Supreme Court stated in his concurring opinion that "[t]here are parents who remain married who do not provide a college education for their children for a variety of reasons, not all of them financial . . . I do not believe the child of a divorced parent has a greater legal right to that college education than a child whose parents remain married." *Donarski v. Donarski*, 581 N.W.2d 130, 137 (N.D. 1998) (Vande Walle, J., concurring).

Yakich should be free to make the parental decisions regarding his daughter's college education which he believes are in his daughter's best interests and which encourages his daughter to fulfill her life-long dreams. Yakich reasonably believes that his daughter will not use her current degree and will not attain her life's goal of becoming a marine biologist. Yakich's situation is a precise example of inappropriate judicial interference in the "sphere of family governance" described by Chief Justice Moore. Yakich is prevented from being a parent. He cannot discourage his daughter from seeking a course of study that she has no interest in by refusing to pay for such education. Yakich is precluded from using his influence to steer his daughter toward her life's ambition of becoming a marine biologist.

CONCLUSION

This Court should declare Section 513 unconstitutional on its face for unfairly classifying similarly-situated individuals in violation of the Equal Protection Clause. The Act's classification is not reasonably related to any legitimate governmental interest. Families have changed. Unmarried or divorced households now make up more than half of the households in the nation. It is outdated to assume that parents will make different decisions regarding their adult children's

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education based on their marital status. For the reasons stated above, Charles Yakich respectfully requests this Court to declare 750 ILCS § 5/513 unconstitutional.

Respectfully submitted,

CHARLES D. YAKICH

By: /s/ Vincent L. DiTommaso
His Attorney

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Attorney Code No. 27902

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH,	)	
	)	
Petitioner,	)	
	)	No. 15 F 651
and	)	
	)	
ROSEMARY A. AULDS,	)	
	)	
Respondent.	)	

RESPONSE TO MOTION TO DECLARE 750 ILCS §513 UNCONSTITUTIONAL

NOW COMES the Respondent, ROSEMARY A. AULDS, by and through her attorneys, William J. Arendt & Associates, P.C., and in support of her Response to Motion to Declare 750 ILCS §513 Unconstitutional, states as follows:

1. Respondent filed her Petition for Contribution to College Expenses pursuant to Section 513 of the Illinois Marriage and Dissolution of Marriage Act on August 6, 2015.

2. On July 22, 2016, following a hearing, a final Order was entered requiring both parties to contribute to certain college expenses for their daughter, Dylan.

3. At no time prior to the entry of the July 22, 2016 Order did Petitioner raise the issue of the constitutionality of Section 513.

4. Petitioner did not file any post-judgment motions pursuant to Section 2-1203 of the Illinois Code of Civil Procedure or any notice of appeal pursuant to Supreme Court Rule 303 within the 30-day time period allowed by law. As a result, the July 22, 2016 Order became final and unappealable on August 22, 2016.

5. "Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction acts as bar to a subsequent suit between the parties involving the

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same cause of action." In Re the Marriage of Lyman, 2015 IL App (1st) 132832, ¶68, 27 N.E.3d 126, 147 (1st Dist. 2015).

6. "[*R*]*es judicata* applies not only to what was actually decided in the original action, but also to matters which could have been decided in that suit." Id (internal quotation marks omitted).

7. If Petitioner wished to challenge the constitutionality of Section 513 with respect to the case with Respondent, he could and should have raised the argument prior to the entry of the July 22, 2016 Order. The case between Petitioner and Respondent regarding college expenses is closed and the issue of the constitutionality of Section 513 is *res judicata*. The doctrine of *res judicata* bars Petitioner from raising the issue now after the time for filing of post-judgment motions or an appeal has expired.

8. Petitioner first raised the constitutionality of Section 513 in his first Motion to Deem Section 513 Unconstitutional filed on September 23, 2016 ("First Unconstitutional Motion"), a full sixty (60) days after the entry of the July 22, 2016 Order.

9. A hearing on the First Unconstitutional Motion was held on July 28, 2017. At the hearing, Respondent's counsel argued that the First Unconstitutional Motion was untimely, that the constitutionality of Section 513 is *res judicata* in the action between the parties and that Petitioner's First Unconstitutional Motion was otherwise procedurally improper because challenging the constitutionality of the statute requires a new Complaint. As a result, an Order was entered on July 28, 2017 granting Petitioner 28 days to "amend/file or otherwise file a new Petition/Complaint re constitutionality of 513."

10. Rather than file a new Complaint, on August 1, 2017, Petitioner merely filed a new Motion to Deem Section 513 Unconstitutional ("Second Unconstitutional Motion"). The Second

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Unconstitutional Motion asserts that, because another previously filed motion unrelated to the issue of constitutionality of Section 513 (Petitioner's Petition to Terminate or Modify or "Modification Petition") was denied on July 28, 2017, "[a]n actual controversy exists as to whether or not Section 513 is constitutional and therefore enforceable which decision on this issue directly impacts Petitioner's parental rights in steering his adult child to an appropriate college." Second Constitutional Motion at ¶16. In other words, Petitioner appears to believe that the deficiencies of his First Unconstitutional Motion are remedied simply because his Second Unconstitutional Motion was filed within 30 days of the denial of his Modification Petition.

11. Contrary to Petitioner's assertion, the denial of his Modification Petition does not reopen the door for Petitioner to now litigate the constitutionality of Section 513. That issue became *res judicata* when the July 22, 2016 Order became final and appealable on August 22, 2016 and, therefore, can never be raised in the case between the parties. The denial of Petitioner's long-subsequent and unrelated Modification Petition does not enable Petitioner's Second Unconstitutional Motion to relate back and become timely.

12. The Modification Petition had nothing to do with the constitutionality of Section 513. Rather, the Modification Petition simply alleged that a modification was necessary due to a change in the circumstances since the entry of the July 22, 2016 Order. Moreover, seeking to modify the July 22, 2016 Order presumes that said Order is valid and that Section 513 is constitutional. Therefore, by filing his Modification Petition, Petitioner waived the ability to take a contrary position now by seeking to challenge the constitutionality of Section 513.

13. In fact, it is clear that Petitioner's Second Unconstitutional Motion seeks to invalidate the original July 22, 2016 Order, and not the July 28, 2017 Order denying his Modification Petition. Notably, the Memorandum that Petitioner filed in connection with his

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Second Unconstitutional Motion is as identical to the Memorandum that Petitioner filed in support of his First Unconstitutional Motion, except for the addition of two paragraphs[1] that do not remedy the deficiencies of the First Unconstitutional Motion that was found to be tardy and defective. The Second Unconstitutional Motion is still untimely, barred by *res judicata* and procedurally improper.

15. Even if Petitioner had followed the proper procedure and filed a new Complaint, "[c]ourt decisions cannot be applied retroactively to civil causes already barred by... *res judicata*." Sundance Homes, Inc. v. County of DuPage, 195 Ill.2d 257, 269, 746 N.E.2d 254, 262 (2001).

16. "Legal principles, even when applied retroactively, do not apply to cases already closed." Sundance Homes, 195 Ill.2d at 268, 746 N.E.2d at 261.

17. Therefore, any ruling regarding the constitutionality of Section 513, whether in this case number or a new case, can have no bearing on the July 22, 2016 Order between Petitioner

[1] Petitioner added the following two paragraphs:

> Following an evidentiary hearing, on July 22, 2016 an Order ("Order") was entered requiring Petitioner, Respondent, and their adult daughter, Dylan, to contribute to certain college expenses as follows: "[Respondent] Rosemary shall be responsible for paying 40%, [Petitioner] Charlie shall be responsible for paying 40%, and Dylan shall be responsible for paying 20%...Dylan's 20% contribution may be in the form of scholarships, grants, work-study or employment." Since the entry of the Order, Dylan has not contributed her 20% obligation for her college expenses. Dylan has not received a scholarship, grant, or work-study. Dylan is not employed. Instead, Respondent is paying Dylan's 20% obligation under the Order. Dylan has taken no responsibility or even made an effort to take responsibility towards paying 20% of her college expenses pursuant to the Order.
>
> Because Dylan was not, and is not, contributing her 20% obligation for her college expenses, has not received a scholarship, grant, or work-study and remains unemployed, on January 11, 2017, Petitioner file Petitioner's Petition to Terminate or in the Alternative to Modify Petitioner's Obligation to Contribute Toward the Education Expenses of His Adult Child ("Petition"). On July 28, 2017, the Court denied the Petition. Petitioner filed the instant Motion to Declare 750 ILCs §5/513 Unconstitutional on August 1, 2017.

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and Respondent.

18. Because any ruling regarding the constitutionality of Section 513 cannot be applied retroactively to the July 22, 2016 Order, Respondent has no obligation or stake in defending the constitutionality of the statute.

WHEREFORE, the Respondent, ROSEMARY A. AULDS, prays that this Court enter an Order denying Petitioner's Motion to Deem 750 ILCS §513 Unconstitutional, and for such other and further relief as this Court deems equitable and just.

Respectfully submitted,

ROSEMARY A. AULDS

By: /s/ William J. Arendt
William J. Arendt, Esq.

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Attorney Code No. 23

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH Petitioner, and ROSEMARY A. AULDS, Respondent.	))))))))	No. 15 F 651 Judge Thomas A. Else

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE
TO MOTION TO DECLARE 750 ILCS § 5/513 UNCONSTITUTIONAL

Petitioner, Charles D. Yakich, ("Yakich") hereby replies to Respondent's response to Petitioner's Motion to declare 750 ILCS § 5/513 (West 2017) ("Section 513") unconstitutional ("Motion"). Section 513 discriminates against both unmarried parents and the children of unmarried parents. Petitioner replies as follows:

I. Petitioner has a Good-Faith Argument to Abolish Section 513.

Petitioner is aware that this Court is bound by the Appellate and Supreme Court decisions in the State of Illinois. Circuit Courts should obey decisions of the appellate court. *Jachim v. Townsley*, 249 Ill. App. 3d 878, 882 (2d. Dist. 1993). Petitioner believes that the decision rendered in *Kujawinski v. Kujawinski*, 71 Ill.2d 563 (1978) is antiquated and should not be applied in today's era. "The signature of…[a] party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or **a good-faith argument for the extension, modification, or reversal of existing law**[.]" Ill. Sup. Ct. R 137(a) (West 2017) emphasis added. Petitioner has a good faith reason for this Court to reverse the

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Kujawinski decision as stated in his Memorandum in Support of Petitioner's Motion to Declare 750 ILCS § 5/513 Unconstitutional and this Reply. For those reasons and the reasons stated here, this Court should not adhere to an unconstitutional law that discriminates against both unmarried parents and the children of married parents.

II. Petitioner Can Bring an Action for a Constitutional Violation After His Injury Occurred.

The right to raise a child is a fundamental right that should not be interfered with by the government, regardless of the marital status of the parents. "If the right of privacy means anything, it is the right of the individual, *married or single*, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Eisenstadt v. Baird*, 92 S. Ct. 1029, 1038 (1972) emphasis added.

Section 513 required the Court to obstruct Petitioner's fundamental right of raising his child and choosing to guide his daughter to an appropriate learning institution through the tightening of his "pocket-book strings". Petitioner was not affected (injured-in-fact by the law) by this unconstitutional law (as applied to him) until the Court entered its ruling under Section 513 which required Petitioner to contribute to his adult daughter's college expenses. Petitioner was again affected when the Court denied Petitioner's motion to modify or terminate his obligation to contribute toward his daughter's college expenses. Moreover, each time Petitioner makes a Section 513 contribution toward his adult daughter's college expenses, Petitioner is once again inured-in-fact by this unconstitutional statute.

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Petitioner could not have successfully advanced an argument on the merits that Section 513 was unconstitutional until he was injured-in-fact by the law. *See*, *Id.*, (where the defendant was unable to advance a constitutional challenge until he was arrested, and his injury accrued from an unconstitutional law); *Travis v. County of Santa Cruz*, 33 Cal. 4th 757, 769 (2004) (where the plaintiff alleged to be injured not by the enactment of an ordinance, but the imposition of the ordinance. Plaintiff's facial attack on the ordinance's validity was found to be timely when he brought his action after the law was applied to him.); *Brown v. Barry*, 710 F. Supp. 352 (D.D.C. 1989) (where a law was in effect for almost a century that required a shoe shining business to obtain a permit. The plaintiff's claim was timely since his injury accrued only when he learned of the permit requirement and that the law applied to him). Petitioner was not injured by Section 513 until this unconstitutional law was applied to him and he could not have successfully brought this claim until he was injured by it. The statute of limitations for Petitioner to attack Section 513 did not begin to run until the Court's July 22, 2016 Order was entered. "all civil actions not otherwise provided for, **shall be commenced within 5 years next after the cause of action accrued.**" 735 ILCS § 5/13-205 (West 2017) emphasis added. The five-year statute of limitations that Petitioner has to bring his claim has not lapsed. Therefore, Petitioner's unconstitutional claim is timely (and the statute of limitations has not passed).

The *Kujawinski* Court's interpretation of Section 513 creates, without a rational basis, a disparate treatment of classes of persons who are either: (i) unmarried parents or (ii) the adult children of married parents and widowed parents (who were not divorced at the time of the respective spouse's death) ("Widowed Parents"). Clearly, unmarried

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parents who are forced to contribute to their adult children's post-high school education expenses are injured by the overreaching authority of Section 513. No similar statute confers this authority (and no such decision exists) to order married parents or Widowed Parents to pay the college expenses for their adult children. The *Kujawinski* case was hinged on a subjective and unwarranted notion that children of unmarried parents are financially disadvantaged and that this disadvantage creates a State interest in requiring their unmarried parents to pay for their post-high school education expenses.

However, the minor children of Widowed Parents who live in a one-parent and one income home are potentially far more economically disadvantaged than the minor children of two unmarried parents who each could contribute to their minor child's support. Children of Widowed Parents, like all other children of married parents, have no ability to seek an order requiring their parent(s) to pay for their post-high school education expenses. The so-called "rational" basis for the reasoning behind Section 513 is even more irrational since, the most disadvantaged children – children of Widowed Parents – cannot obtain the benefit of a court order which could require their surviving parent to contribute to their post-high school education expenses. Another example of the irrationality of the application of Section 513 is the instance where the adult children of separated, but married parents, where such children also cannot obtain the benefit of a court order which could require their parents to contribute to their post-high school education expenses.

This Court should invalidate Section 513 on Equal Protection grounds because it classifies children based on the martial status of their parents. The U.S. Supreme Court has struck down similar statutes that created an improper classification based on

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illegitimacy. *See*, *Trimble v. Gordon*, 430 U.S. 762, 766-76 (1977) (an intestate succession law was struck down because it allowed children of unmarried parents to inherit from their mothers but not their fathers, where children of married could inherit from both their mothers and their fathers); *Gomez v. Perez*, 409 U.S. 535, 537-38 (1973) (held it unconstitutional to deny a child the right to obtain child support because the father did not marry its mother). When the Court addresses classifications based on illegitimacy, and the children affected by the classification have no control over the marital status of their parents, rewarding one group while denying the same benefit to another group is illogical and unjust. *Trimble*, 430 U.S. at 769-70, *quoting Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972).

It is understandable that the Illinois Supreme Court is expressing concern for children who may be economically disadvantaged by divorce. However, this concern is not rationally related to the *Kujawinski* Court singling out one class of adult children and conferring on them a benefit not available to another class of adult children who need assistance with their post-high school expenses, including those of Widowed Parents. *Kujawinski* interpreted Section 513 focusing on how families were viewed in the 1970's. This outdated perspective is not founded in the ever-changing reality of today's families. An unmarried families' right to raise their children should not be obstructed by any statute, including Section 513.

III. Orders Entered Pursuant to Section 513 are Not Final.

Section 513 orders are modifiable and are not "final orders". Section 513 orders must be pliable, because any number of variables may arise during the process of the child's education. Such orders must not be stagnant and be able to adapt to changes.

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While it is true that the Court entered a Section 513 Order on July 22, 2016 ("Order") requiring Petitioner, Respondent and their adult child to each contribute to the adult child's college expenses, it is well settled that this Order was and is modifiable. *In re Marriage of Loffredi*, 232 Ill.App.3d 709, 712 (3d. Dist. 1992). Section 513 orders which require only unmarried parents to contribute to the post-high school educational expenses of their adult children are all, while in effect, subject to modification and termination because such obligation is a form of a child support obligation rather than a property settlement. *In re Marriage of Dieter*, 271 Ill.App.3d 181, 190 (1st. Dist. 1995). Section 513 orders are modifiable upon a showing of a substantial change in circumstances has/have occurred since the entry of the last such order. *In re Marriage of Saracco*, 2014 IL App (3d) 130741, ¶¶ 11-13. As a result, the Order was and is not a "final" order.

"Section 513 covers the "what" of an expense petition, not the "when." *In re Marriage of Chee*, 2011 IL App (1st) 102797, ¶ 14. If there was a statutorily imposed deadline for filing and adjudicating a child's education expenses petition, it would be very problematic. *Id* at ¶ 15. It was and is not the intent of the legislature that Section 513 should result-in indiscriminate inconvenience to the unmarried parents of adult children, disadvantage other litigants, and to interfere with the court's efficient administration of its docket, by requiring a hardline deadline for a Section 513 petition. *Id.* A court's order is not "final" unless it resolves all the issues between the parties. *Id* at ¶ 17. This Court's Order was not final as all the issues between Petitioner and Respondent were not resolved within the 30-day period after the Order. Respondent's "timeliness" argument would result-in an unmarried parent not being legally liable for their adult children's post-high school education expenses when a Section 513 petition is filed more than 30 days *after* a

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final judgment is entered. *Id.* The *In re Marriage of Chee* Court held that even when a court enters a "final" order, a parent can successfully petition the court eight years later for a modification of a final judgment. Section 513 orders do not contain a bright line deadline for their modification.

IV. Notwithstanding the Forgoing, The Motion to Declare 513 Unconstitutional Was Filed Within 30 Days of the Court's Denial of Petitioner's Motion to Modify or Terminate Petitioner's Obligation to Pay College Expenses.

Modifications and terminations of college expenses are permitted after notice, by the moving party of the filing of a motion for modification. 750 ILCS § 5/510(a)(1) (West 2017) ("Section 510"). Since orders for post-high school educational expenses are a form of child support, they can be modified at any time upon a showing of a substantial change in circumstances. *Id.* Initially, Petitioner moved this Court to modify or terminate Petitioner's Section 513 obligations which arose under this Court's July 22, 2016 Order. That motion was denied on July 28, 2017. Petitioner filed his Motion to declare Section 513 unconstitutional on August 1, 2017. Even if this Court's July 28, 2017 Order was a "final" Order, the Motion to declare 750 ILCS § 5/513 unconstitutional was timely filed.

In any event, this Court's July 28, 2017 Order was not a "final" Order. Further, Petitioner filed a motion for rule to show cause against Respondent within 30-days of the July 22, 2016 Order. Also, the July 28, 2017 Order denying Petitioner's motion to modify or terminate Petitioner's Section 513 obligations was and is modifiable under Section 510.

Under Section 510, any judgment with respect to maintenance or support may be modified upon a showing of substantial changes in circumstances. *In re Marriage of*

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Turrell, 335 Ill. App. 3d 297, 310 (2d. Dist. 2002). Further, Section 510 does not distinguish between "procedural" and "substantive" changes of circumstances: all types of substantial changes in circumstances are subject to modification. *Id.* Section 510 *does not* permit a court to make a child support award (which includes Section 513 obligations) nonmodifiable and/or nonreviewable.

V. Petitioner's Motion is not Barred by *Res Judicata*.

Petitioner's motion asks this Court to declare Section 513 unconstitutional. Petitioner was not affected (injured-in-fact by the law) by this unconstitutional law, and therefore could not seek to declare Section 513 unconstitutional, until the Court entered its ruling under Section 513 which required Petitioner to contribute to his adult daughter's college expenses. Petitioner was again affected (injured-in-fact), when the Court denied Petitioner's motion to modify or terminate his obligation to contribute toward his daughter's college expenses. Moreover, each time Petitioner makes a Court ordered Section 513 contribution toward his adult daughter's college expenses, Petitioner is once again inured-in-fact by this unconstitutional statute. Therefore, Petitioner's unconstitutional claim is, was, and will be timely.

Respondent attempts to distract the Court by saying that Petitioner's motion to declare Section 513 unconstitutional is the same issue that was (or could have been) decided in the July 22, 2016 Section 513 contribution hearing; it was not and could not have been decided in that hearing. These motions are not related and are not the same. Petitioner is not asking this Court to rehear, reconsider or re-determine any of the issues that were raised in either the motion for Section 513 contribution hearing (decided on July 22, 2016) or in the motion to modify or terminate Petitioner's Section 513

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obligations hearing (decided on July 28, 2017). Instead, the motion seeks this Court's declaration that Section 513 is unconstitutional because it violates the Equal Protection Clause of the United States Constitution. Simply put, this Court has not ruled on any of the merits of Petitioner's motion to declare Section 513 is unconstitutional.

Under the doctrine of *res judicata*, the court determines whether a former judgment is an absolute bar to a subsequent action. *Altman v. Altman*, 22 Ill. App. 3d 420, 424 (1st. Dist. 1974). The elements of *res judicata* are: (i) If the cause of action is the same in both proceedings [they are not here]; (ii) If the two actions are between the same parties; (iii) If the former action was a final judgment or decree on the merits [they are not here]; and (iv) If it was within the jurisdiction of the court rendering it. *Id.*

Res judicata bars the re-litigation of an issue between the same parties after a final judgment on the merits has been rendered by a court of competent jurisdiction. *In re Marriage of Connors*, 303 Ill. App. 3d 219, 225-26 (2d. Dist. 1999). This Court has never even considered whether Section 513 is unconstitutional. This Court has never entered a final order or even any order determining the constitutionality of Section 513. Petitioner's motion to declare Section 513 unconstitutional does not satisfy each of the elements of *res judicata*. The Court has not made a determination on the merits of Petitioner's motion to declare Section 513 unconstitutional, and thus, it is not barred by *res judicata*.

Respectfully submitted,

CHARLES D. YAKICH

By: /s/ Vincent L. DiTommaso
His Attorney

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Attorney Code No. 23

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH	)	
	)	
Petitioner,	)	No. 15 F 651
and	)	
	)	Judge Thomas A. Else
ROSEMARY A. AULDS,	)	
	)	
Respondent.	)	

NOTICE TO THE ATTORNEY GENERAL PURSUANT TO ILLINOIS SUPREME COURT RULE 19 AND ATTORNEY GENERAL RESPONSE

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September 23, 2016

Attorney General Lisa Madigan
Chicago Main Office
100 West Randolph Street
Chicago, IL 60601

Re: *Yakich v. Aulds*, No. 15 F 651

Dear Attorney General Madigan:

Pursuant to Illinois Supreme Rule 19, enclosed please find a copy of Petitioner's Motion and Memorandum in Support of Petitioner's Motion challenging the constitutionality of 750 ILCS § 5/513. That statute violates the Equal Protection Clause by arbitrarily classifying similarly-situated individuals based on marital status. The Motion was filed on September 23, 2016 in the Circuit Court of the Eighteenth Judicial Circuit, Du Page County, Illinois. The Memorandum will be filed pending a Court order granting Petitioner's Motion for Leave to File a Memorandum in Excess of ten (10 pages). As indicated on the enclosed Notice of Motion, they will be presented to the Court before the Honorable Thomas A. Else in Courtroom 2011 on September 30, 2016 at 9:15 a.m.

Very truly yours,

DITOMMASO ♦ LUBIN

Vincent L. DiTommaso

Enc.

cc: Nicola K.B. Latus
William J. Arendt
Honorable Thomas A. Else

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 6, 2016

Vincent L. DiTommaso
DiTommaso Lubin, P.C.
17W 220 22nd Street, Suite 410
Oakbrook Terrace, IL 60181

Re: Charles D. Yakich v. Rosemary A. Aulds
No. 15 F 651

Dear Mr. DiTommaso:

This letter acknowledges receipt of your September 23, 2016 notice of claim of unconstitutionality in the above-referenced matter. Based upon a review of the notice and enclosed documents, the opportunity to intervene will not be pursued by this office at this time.

Kindly advise me of the Court's resolution of this constitutional claim. Thank you for your cooperation. Should you have any questions, please contact me at 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601 or at (312) 814-1030.

Very truly yours,

Roger P. Flahaven
Deputy Attorney General
Civil Litigation

RPF/amr

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Attorney No. 23

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH	)	
	)	
Petitioner,	)	
	)	No. 15 F 651
and	)	
	)	
ROSEMARY A. AULDS,	)	Honorable Thomas A. Else
	)	
Respondent.	)	

NOTICE OF MOTION

TO: William J. Arendt
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PLEASE TAKE NOTICE that on September 15, 2017, at 9:15 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Thomas A. Else, or any judge sitting in his stead, in the courtroom usually occupied by him in Courtroom 2001, DuPage Judicial Center, 505 North County Farm Road, Wheaton, Illinois and shall then and there present the attached PETITIONER'S MOTION TO DECLARE 750 ILCS § 5/513 UNCONSTITUTIONAL, a copy of which is herewith served upon you.

CHARLES YAKICH

By: /s/ Vincent L. DiTommaso
One of his attorneys

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IN THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH,	)	
Petitioner	)	
-vs-	)	No. 15 F 651
ROSEMARY A. AULDS,	)	
Respondent	)	

MEMORANDUM OPINION AND ORDER

THIS CAUSE comes before the court on the motion of Charles Yakich to declare 750 ILCS sec. 5/513 unconstitutional as applied to him in this case. For the following reasons, the motion is granted.

FACTS OF THE CASE

The parties to this case, Charles D. Yakich (hereinafter "Charles") and Rosemary A. Aulds (hereinafter "Rosemary") are the biological parents of Dylan Yakich (hereinafter "Dylan"). The parties were never married and this action was brought under the Parentage Act (750 ILCS 46/101 et seq.). Primary residency of Dylan was granted to Charles. At the time of the underlying hearing in this case, Dylan was twenty-one years old.

A petition was filed by Rosemary pursuant to 750 ILCS sec. 5/513 seeking contribution from Charles for Dylan's college expenses. The petition was heard before this court on July 22, 2016. The evidence at the hearing showed that Dylan had consistently expressed a desire to become a marine biologist. By way of encouragement, Charles paid for SCUBA classes for Dylan, and upon her certification (PADI Open Water) took her on many dive excursions in the Caribbean, Atlantic and Pacific Oceans. Her expressed desire to become a marine biologist continued through the hearing of this case. When the time came for choosing colleges, Charles was not in any way consulted by Dylan or Rosemary.

Rosemary and Dylan decided that Dylan should attend Florida Gulf Coast University (hereinafter, "FGCU"), and informed Charles of their choice. FGCU enjoys a rating of number 21 in the compilation of "Top Party Schools of Florida", but does not offer a degree in marine biology. It does offer a degree in marine science which is not remotely the same thing. Dylan mistakenly enrolled in the marine science program at FGCU believing that she would be earning a degree equivalent to a degree in marine biology. She testified that her revised plan was to major in biology, graduate with a bachelor's degree, then seek an advanced degree in marine biology.

Charles, in the meantime, offered to pay one hundred percent of Dylan's college expenses, a "free ride" in his words, if she would transfer to Scripps Institute of Oceanography in San Diego, or the University of Hawaii, both of which offer four year degrees in marine biology

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and have excellent reputations. Charles's offer was summarily refused by both Rosemary and Dylan.

Subsequent to an evidentiary hearing this court ordered Charles and Rosemary to contribute 40% of Dylan's college expenses each, and that Dylan be responsible for the remaining 20% which could be in the form of grants, scholarships, work-study, or employment. Dylan did not apply for any grants or scholarships or become employed. Instead, her portion was paid by Rosemary.

Charles initially filed a motion on September 23, 2016 asking this Court to declare 750 ILCS 5/513 unconstitutional and gave notice to the Attorney General of the State of Illinois. On October 6, 2016 the Deputy Attorney General advised the attorney for Charles that "the opportunity to intervene will not be pursued by this office at this time."

On January 11, 2017, Charles filed a motion seeking to have his obligation of support either terminated or modified based on the non-compliance of Dylan with the court's previous order. This court denied the motion of Charles based, in sum, on the fact that Charles was not monetarily damaged by Dylan's actions.

On August 1, 2017 Charles filed his instant motion asking this court to declare 750 ILCS 5/513 unconstitutional, and again gave notice to the Attorney General of the State of Illinois. (Copies of relevant notices and correspondence from the Office of the Attorney General are attached to this decision)

ANALYSIS

Chapter 750 ILCS 5/513, provides, in relevant part, as follows:

> (a) The court may award sums of money out of the property and income of either or both parties or the estate of a deceased parent, as equity may require, for the educational expenses of any child of the parties. Unless otherwise agreed to by the parties, all educational expenses which are the subject of a petition brought pursuant to this Section shall be incurred no later than the student's 23rd birthday, except for good cause shown, but in no event later than the child's 25th birthday.

The statute goes on make numerous provisions for financial matters concerning the payment of college expenses for otherwise able bodied adults. It does not contain any provisions for the input, advice or consent of either parent as to the choice of school.

Charles argues that the statute is unconstitutional pursuant to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, which provides, in relevant part as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property,

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without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Charles contends that he has been denied the equal protection of the law because section 513 requires the parents of divorced or unmarried couples to pay for the college expenses of their children, while not requiring the same of married couples. Further, Charles contends that section 513 creates two different classes of children, those whose parents are divorced or unmarried and those whose parents are married. Finally, Charles argues that he has been denied the same right to make parental decisions regarding the education of his child that is enjoyed by parents of married couples or single parents.

EQUAL PROTECTION (Different Classes)

In *Whitaker v. Kenosha Unified School District*, et al., 858 F.3d 1034 (7th Cir., 2017) the Seventh Circuit Court of Appeals stated: "The Equal Protection Clause of the Fourteenth Amendment "is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985) (citing Plyler v. Doe, 457 U.S. 202, 216 (1982)). It therefore, protects against intentional and arbitrary discrimination. See Vill. Of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (per curiam). Generally, state action is presumed to be lawful and will be upheld if the classification drawn by the statute is rationally related to a legitimate state interest. City of Cleburne, 473 U.S.at 440. "

858 F. 3d at 1050

Charles agrees that the rational basis standard, set forth above, is properly applicable to this case, rather than the strict scrutiny standard.

In 1978, almost forty years ago to the date of this order, the Illinois Supreme Court decided the case of *Kujawinski v. Kujawinski*, 71 Ill. 2d 563 (1978). That case was an action for declaratory judgment, and a class action, which sought to have section 513, among others, of the Illinois Marriage and Dissolution of Marriage Act, declared unconstitutional on equal protection grounds. The Court applied the rational basis standard and held the statute constitutional. The rational basis stated by the Court, in sum, was that children of divorced parents were less likely to receive assistance from their parents for college education than children of married or single parents, citing *Maitzen v. Maitzen*, 24 Ill. App. 2d 32, 38 (1959). The quote from *Maitzen* used by the Court stated:

"In a normal household, parents * * * direct their children as to when and how they should work or study. That is on the assumption of a normal family relationship, where parental love and moral obligation dictate what is best for the children. Under such circumstances, natural pride in the attainments of a child * * * would demand of parents provision for a college education, even at a sacrifice. When we turn to divorced parents a disrupted family society cannot count on normal protection for the child, and it is here that equity takes control to mitigate the hardship that may befall children of divorced parents."

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71 Ill.2d at 579-580

In *Rawles v. Hartman*, 172 Ill. App. 3d 931 (2d. Dist., 1988), the Second Appellate District found that section 513 was applicable to parentage cases.

Faced with the Court's ruling in *Kujawinski*, Charles contends that the rational basis for the Court's ruling in 1978, no longer exists in view of changed demographics, societal attitudes and developments in case law in both state and federal courts.

In *Troxel v. Granville*, 537 U.S. 57 (2000), Justice O'Connor noted:

"The demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household. While many children may have two married parents and grandparents who visit regularly, many other children are raised in single-parent households. In 1996, children living with only one parent accounted for 28 percent of all children under age 18 in the United States. U.S. Dept. of Commerce, Bureau of Census, Current Population Reports, 1997 Population Profile of the United States 27 (1998)."

537 U.S. at 63-64.

While traditional two parent, married families were the norm in 1978, in 2018 they make up less than half. In fact, if considered in statistical terms, children from either non-married or divorced parents would be considered "normal" based on today's demographics. Unmarried women account for 40% of the birth rate in the United States as of 2014. The divorce rate in Illinois as of 2011 was 46%. Only 46% of children under the age of eighteen live in a two parent married home.

See: Births: Final Data for 2014 by Brady E. Hamilton, Ph.D.; Joyce A. Martin, M.P.H.; Michelle J.K. Osterman, M.H.S.; Sally C. Curtin, M.A.; and T.J. Mathews, M.S., Division of Vital Statistics; Illinois Department of Public Health, Marriage, Divorces and Annulments Occurringin Illinois 1958-2011, available at http://www.idph.state.il.us/health/bdmd/marr_div_annul.htm;
CDC National Center for Health Statistics, National Marriage and Divorce Rate Trends 2000-2014, available at http://www.cdc.gov/nchs/nvss/marriage_divorce_tables.htm.

Livingston, Gretchen "Fewer than Half of U.S.Kids Today Live in a 'Traditional' Family," PewResearch Center, December 22, 2014, http://www.pewresearch.org/fact-tank/2014/12/22/lessthan-half-of-u-s-kids-today-live-in-a-traditional-family.

The rational basis standard utilized in *Kujawinski* presumes that never married or divorced couples are less normal, and less likely to provide post-secondary education for their offspring than couples who are married, or single parents. While this may have been true in 1978, there is no basis for such a conclusion today.

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Case law from other jurisdictions over the last forty years (fifty nine years since *Maitzen v. Maitzen)* supports the argument made by Charles. For example, in *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995), the Supreme Court of Pennsylvania directly addressed the constitutionality of the Pennsylvania statute which required payment of post-secondary educational expenses of emancipated adult offspring of divorced or never married parents. In *Blue v. Blue*, 532 Pa. 521, 616 A.2d 628 (1992), the Pennsylvania Supreme Court had declined to recognize a duty requiring a parent to provide college educational support because no such legal duty had been imposed by the General Assembly of Pennsylvania or developed by the case law of that state. As a result of the *Blue* decision, the Pennsylvania legislature promulgated a new law which stated:

(a) General rule. . . . a court may order either or both parents who are separated, divorced, unmarried or otherwise subject to an existing support obligation to provide equitably for educational costs of their child whether an application for this support is made before or after the child has reached 18 years of age. 23 Pa.C.S. § 4327(a).

The question then became whether the new act violated the Equal Protection Clause of the Fourteenth Amendment. The Pennsylvania appeals court ruled that it did, which resulted in a direct appeal to the Pennsylvania Supreme Court. In the preamble to the new act, the Pennsylvania legislature had inserted the following:

"Further, the General Assembly finds that it has a rational and legitimate governmental interest in requiring some parental financial assistance for a higher education for children of parents who are separated, divorced, unmarried or otherwise subject to an existing support obligation."

Despite the stated legislative purpose of the act, which appears to have been inserted in order to satisfy a "rational basis" analysis, the Pennsylvania Supreme Court went through its own equal protection analysis and concluded:

"Recognizing that within the category of young adults in need of financial help to attend college there are some having a parent or parents unwilling to provide such help, the question remains whether the authority of the state may be selectively applied to empower only those from non-intact families to compel such help. We hold that it may not. In the absence of an entitlement on the part of any individual to post-secondary education, or a generally applicable requirement that parents assist their adult children in obtaining such an education, we perceive no rational basis for the state government to provide only certain adult citizens with legal means to overcome the difficulties they encounter in pursuing that end." 666 A2d at 258-259

In sum, the social changes that have occurred since 1978 make the rational basis cited in *Kujawinski* no longer tenable. Further, there is no apparent rationale basis for the statute other than that cited in *Kujawinski*.

EQUAL PROTECTION /DECISION MAKING

In this case the objection made by Mr. Yakich does not go directly to whether he should have to pay for college. He has stated adamantly and often that he is willing and able to pay the full

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college expenses of his child. His complaint is that he was never consulted and his input never considered. He argues that if he were married to the respondent, his desire to send his daughter to an excellent college would have the full force of his economic largesse, and if his daughter wished to attend what is colloquially described as a "party" school, she would do so on her own. In other words, Mr. Yakich argues that parental decision making with respect to college contribution continues for married persons but ends for others, while non-married parties bear a financial burden that does not exist for those that are married or single. This, he believes, is a violation of equal protection.

In the case of *Troxel v. Granville*, 530 U.S. 57 (2000), the U.S. Supreme Court dealt with a case of grandparent visitation and the paramount rights of parents to make decisions regarding their offspring. In that opinion, the Supreme Court discussed and reaffirmed the constitutional protections afforded to parents in the upbringing and education of their children. Specifically, the Court stated:

"The liberty interest at issue in this case-the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in Meyer v. Nebraska, 262 U. S. 390, 399, 401 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in Pierce v. Society of Sisters, 268 U. S. 510, 534-535 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in Pierce that "[t]he 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." Id., at 535. We returned to the subject in Prince v. Massachusetts, 321 U. S. 158 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Id., at 166."

530 U.S. at 64

This was not the argument made in *Kujawinski*, nor was it addressed by the Court. The court in *Kujawinksi*, did note, the following:

"We have no hesitation, therefore, in concluding that it is reasonably related to that legitimate purpose for the legislature to permit the trial court, in its sound discretion, to compel divorced parents to educate their children to the same extent as might reasonably be expected of nondivorced parents."

71 Ill. 2d at 580

However, section 513 does not permit divorced or never married parents the same input and ability to educate their children as is afforded to married or parents. This court finds that there is no rational basis for this difference.

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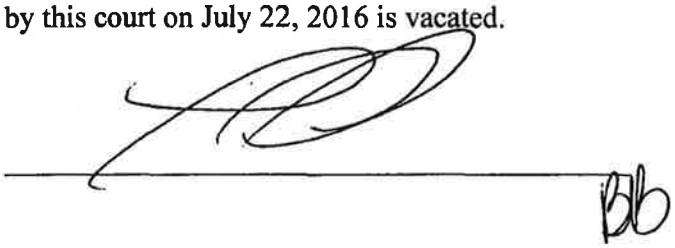
CONCLUSION

For the reasons set forth above, this Court concludes that equal protection was denied to Mr. Yakich in this case, and that section 513 is unconstitutional as applied. This Court further finds that section 513 cannot reasonably be construed in a manner that would preserve its validity in this case. Finally, this Court finds that this finding of unconstitutionality is necessary to this decision and that this decision cannot rest on an alternative ground. Therefore, the order entered by this court on July 22, 2016 is vacated.



JUDGE THOMAS A. ELSE
May 4, 2018

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Attorney No. 23

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

CHARLES D. YAKICH	)	
	)	
Petitioner,	)	
	)	No. 15 F 651
and	)	
	)	
ROSEMARY A. AULDS,	)	Honorable Thomas A. Else
	)	
Respondent.	)	

NOTICE OF MOTION

TO: William J. Arendt
Nicola K.B. Latus
William J. Arendt & Associates, P.C.
7035 Veterans Boulevard, Suite A
Burr Ridge, IL 60527
William.Arendt@wjarendtlaw.com
Nicola.Latus@wjarendtlaw.com

Roger P Flahaven
Deputy Attorney General
Office of the Attorney General
100 W. Randolph Street, 12th Floor
Chicago, IL 60601
rflahaven@atg.state.il.us

PLEASE TAKE NOTICE that on September 15, 2017, at 9:15 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Thomas A. Else, or any judge sitting in his stead, in the courtroom usually occupied by him in Courtroom 2001, DuPage Judicial Center, 505 North County Farm Road, Wheaton, Illinois and shall then and there present the attached PETITIONER'S MOTION TO DECLARE 750 ILCS § 5/513 UNCONSTITUTIONAL, a copy of which is herewith served upon you.

CHARLES YAKICH

By: /s/ Vincent L. DiTommaso
One of his attorneys

Vincent L. DiTommaso
DITOMMASO LUBIN AUSTERMUEHLE, P.C.
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Oakbrook Terrace, IL 60181
(630) 333-0000
vdt@ditommasolaw.com
eservice@ditommasolaw.com

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CERTIFICATE OF SERVICE

I, Vincent L. DiTommaso, the undersigned attorney, hereby certify that on August 1, 2017, I caused copies of the foregoing NOTICE OF MOTION and PETITIONER'S MOTION TO DECLARE 750 ILCS § 5/513 UNCONSTITUTIONAL to be served upon:

William J. Arendt
Nicola K.B. Latus
William J. Arendt & Associates, P.C.
7035 Veterans Boulevard, Suite A
Burr Ridge, IL 60527
William.Arendt@wjarendtlaw.com
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Roger P Flahaven
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Office of the Attorney General
100 W. Randolph Street, 12th Floor
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via e-mail transmission.

/s/ Vincent L. DiTommaso
Vincent L. DiTommaso

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 6, 2016

Vincent L. DiTommaso
DiTommaso Lubin, P.C.
17W 220 22nd Street, Suite 410
Oakbrook Terrace, IL 60181

Re: Charles D. Yakich v. Rosemary A. Aulds
No. 15 F 651

Dear Mr. DiTommaso:

This letter acknowledges receipt of your September 23, 2016 notice of claim of unconstitutionality in the above-referenced matter. Based upon a review of the notice and enclosed documents, the opportunity to intervene will not be pursued by this office at this time.

Kindly advise me of the Court's resolution of this constitutional claim. Thank you for your cooperation. Should you have any questions, please contact me at 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601 or at (312) 814-1030.

Very truly yours,

Roger P. Flahaven
Deputy Attorney General
Civil Litigation

RPF/amr

500 South Second Street, Springfield, Illinois 62706 • (217) 782-1090 • TTY: (877) 844-5461 • Fax: (217) 782-7046
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601 South University Avenue, Suite 102, Carbondale, Illinois 62901 • (618) 529-6400 • TTY: (877) 675-9339 • Fax: (618) 529-6416

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VINCENT L. DITOMMASO
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www.ditommasolaw.com

September 23, 2016

Attorney General Lisa Madigan
Chicago Main Office
100 West Randolph Street
Chicago, IL 60601

Re: *Yakich v. Aulds*, No. 15 F 651

Dear Attorney General Madigan:

Pursuant to Illinois Supreme Rule 19, enclosed please find a copy of Petitioner's Motion and Memorandum in Support of Petitioner's Motion challenging the constitutionality of 750 ILCS § 5/513. That statute violates the Equal Protection Clause by arbitrarily classifying similarly-situated individuals based on marital status. The Motion was filed on September 23, 2016 in the Circuit Court of the Eighteenth Judicial Circuit, Du Page County, Illinois. The Memorandum will be filed pending a Court order granting Petitioner's Motion for Leave to File a Memorandum in Excess of ten (10 pages). As indicated on the enclosed Notice of Motion, they will be presented to the Court before the Honorable Thomas A. Else in Courtroom 2011 on September 30, 2016 at 9:15 a.m.

Very truly yours,

DiTOMMASO ♦ LUBIN

Vincent L. DiTommaso

Enc.

cc: Nicola K.B. Latus
William J. Arendt
Honorable Thomas A. Else

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APPEAL TO THE ILLINOIS SUPREME COURT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

CHARLES D. YAKICH, PETITIONER-APPELLEE, AND ROSEMARY A. AULDS, RESPONDENT-APPELLANT.	))))))	CASE NO. 15 F 651

NOTICE OF APPEAL

To: **VIA E-MAIL vdt@ditommasolaw.com**
Vincent L. DiTommaso
DiTommaso Lubin, P.C.
17W 220 22nd St., Suite 410
Oakbrook Terrace, IL 60181

VIA E-MAIL nwichern@atg.state.il.us
Nadine Wichern
Office of the Illinois Attorney General
100 W. Randolph St., 12th Floor
Chicago, IL 60601

YOU ARE HEREBY NOTIFIED that Respondent-Appellant, Rosemary A. Aulds, appeals the circuit court's Order of May 4, 2018 declaring Section 513 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/513) unconstitutional (a copy of which Order is attached hereto as Exhibit A), directly to the Illinois Supreme Court, pursuant to Illinois Supreme Court Rule 302(a)(1), and respectfully requests that said Order be reversed and for any other relief the Court deems fair and equitable.

Todd D. Scalzo
Attorney for Rosemary A. Aulds

PROOF OF SERVICE

The undersigned attorney states on oath that on May 31, 2018, the undersigned attorney served this ***Notice of Appeal*** upon the above-addressed attorneys by e-mail before 5:00 p.m.

Todd D. Scalzo

Todd D. Scalzo
Mirabella Kincaid Frederick & Mirabella, LLC
DuPage Atty. No. 58500
Attorneys for Rosemary A. Aulds
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Phone: (630) 665-7300
todd@mkfmlaw.com

Michael J. Scalzo
Scalzo Law Offices
DuPage Atty. No. 75555
Attorneys for Rosemary A. Aulds
1776A S. Naperville Rd., Suite 201
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mjs@scalzolaw.com

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APPEAL TO THE ILLINOIS SUPREME COURT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

CHARLES YAKICH
Plaintiff/Petitioner

Reviewing Court No: 123667
Circuit Court No: 2015F000651
Trial Judge: THOMAS A ELSE

v.

ROSEMARY AULDS
Defendant/Respondent

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APPEAL TO THE ILLINOIS SUPREME COURT
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APPEAL TO THE ILLINOIS SUPREME COURT
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Defendant/Respondent

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Case No. 123667

ILLINOIS SUPREME COURT

CHARLES D. YAKICH, PETITIONER-APPELLEE,	)	From the Eighteenth Judicial Circuit Court DuPage County, Illinois
v.	)	
	)	Circuit Case No. 15 F 651
ROSEMARY A. AULDS, RESPONDENT-APPELLANT.	)	Trial Judge: Hon. Thomas A. Else

NOTICE OF FILING

	VIA E-MAIL vdt@ditommasolaw.com	**VIA E-MAIL nwichern@atg.state.il.us**
To:	Vincent L. DiTommaso DiTommaso Lubin Austermuehle, PC 17W 220 22nd St., Suite 410 Oakbrook Terrace, IL 60181	Nadine Wichern Attorney General's Office 100 W. Randolph St., 12th Floor Chicago, IL 60601

YOU ARE HEREBY NOTIFIED that on December 20, 2018, the undersigned attorney filed with the Clerk of the Illinois Supreme Court, via electronic means, a ***Brief of the Appellant, Rosemary A. Aulds***, a copy of which is attached hereto.

Todd D. Scalzo
Attorney for Rosemary A. Aulds

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct and that on December 20, 2018, he served this **(1) *Notice of Filing*; and (2) *Brief of the Appellant, Rosemary A. Aulds***, both of which were filed by electronic means on the Clerk's Office, upon the above-addressed attorneys by e-mail before 5:00 p.m.

Todd D. Scalzo

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