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

REPLY BRIEF OF THE APPELLANT ROSEMARY A. AULDS

Attorneys for Respondent-Appellant, Rosemary A. Aulds

Todd D. Scalzo
Mirabella Kincaid Frederick & Mirabella, LLC
1737 S. Naperville Rd., Suite 100
Wheaton, IL 60189
Phone: (630) 665-7300
todd@mkfmlaw.com

Michael J. Scalzo
Scalzo Law Offices
1776A S. Naperville Rd., Suite 201
Wheaton, IL 60189
Phone: (630) 384-1280
mjs@scalzolaw.com

E-FILED
5/23/2019 8:09 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

ORAL ARGUMENT REQUESTED

ARGUMENT

I. Section 513 is Constitutional

A. The Constitutional Standard for Section 513 is Rational Basis

(1) Charles Has Forfeited His Strict Scrutiny Argument Because He Argued for Rational Basis in the Trial Court

Charles argues that Section 513 is subject to the "strict scrutiny" constitutional standard because it imposes upon a parent's fundamental right to oversee and guide the upbringing and education of his/her child. *Appellee's Brief*, p. 5 (May 9, 2019). However, Charles has forfeited this argument because he argued for a rational basis standard in the trial court. R. C521 ("…this Court should analyze Section 513 under the rational basis test."); *Haudrich v. Howmedica, Inc.*, 169 Ill.2d 525, 536 (Ill. 1996) ("…the theory upon which a case is tried in the lower court cannot be changed on review…"); *and McLeod v. Starnes*, 723 S.E.2d 198, 204 (S.C. 2012) (where father argued for one classification in the trial court, he was barred from arguing different classification on appeal).

Likewise, Charles contradicts himself on appeal when he claims that "…Illinois courts have not examined the issue of whether court-ordered support infringes on a parent's fundamental right to raise their child…" (*Appellee's Brief*, pp. 6-7 (May 9, 2019)), only to acknowledge later that "The [*Kujawinski*] Court applied the rational basis standard and held that Section 513 does not violate the equal protection [clause]…" *Appellee's Brief*, p. 9 (May 9, 2019). Therefore, this Court should deny Charles's request to apply a strict scrutiny standard to Section 513 because he has forfeited that argument.

(2) The Rational Basis Standard Applies to Post-Secondary Education Laws That Are Challenged On Equal Protection Grounds

In the event this Court considers Charles's strict scrutiny arguments, we agree with his last point above. This Court found that the rational basis standard applied to Section 513 in *Kujawinski v. Kujawinski*, 71 Ill.2d 563, 578 (Ill. 1978). Other courts have found the same, including some of the cases cited by Charles. *Appellee's Brief,* pp. 4-5 (May 9, 2019), citing *Curtis v. Kline*, 666 A.2d 265 (Penn. 1995) (rational basis); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (rational basis); *Ginsberg v. New York*, 390 U.S. 629 (1968) (rational basis); and *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (rational basis).

In order to determine the constitutional standard for an equal protection claim, the first step is to determine whether the challenged statutory classification operates to the disadvantage of some suspect class or impinges on a fundamental right explicitly or implicitly protected by the Constitution. *In re Marriage of Kohring*, 999 S.W.2d 228, 231-232 (Mo. 1999), quoting *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1 (1973).

In *In re Marriage of McGinley*, the Oregon Supreme Court held that the rational basis standard applied to its post-secondary education law because divorced parents were a pseudo-class created by the law itself, rather than a historically suspect class. *In re Marriage of McGinley*, 19 P.3d 954, 960 (Oregon 2001). A suspect class is a distinct, socially recognized group that has been the subject of adverse social or political stereotyping or prejudice. *Id.* at 959. This includes gender, race, religious affiliation, alienage, and sexual orientation. *Id.* at 960. Divorced (or unmarried) parents are not on par with any of these categories. *Id.*

In *In re Marriage of Kohring*, the Missouri Supreme Court held that the rational basis standard applied to its post-secondary education law because while "the parent-child relationship is an 'associational right' of basic importance to our society…a parent's financial obligations to his or her child are considered merely economic consequences that do not critically affect associational rights." *In re Marriage of Kohring* 999 S.W.2d 228, 232-233 (Mo. 1999), citing *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996); and *Rivera v. Minnich*, 483 U.S. 574 (1987).

In this case, Charles argues that unmarried parents are a pseudo-class created by Section 513 itself, rather than a suspect class that has been historically subjected to stereotyping and prejudice. *Appellee's Brief*, p. 4 (May 9, 2019). Therefore, it appears that Charles concedes that unmarried parents are not a suspect class. Furthermore, because Section 513 only affects the economic interests of unmarried parents, it does not impose on the associational rights of parents "to oversee and guide the upbringing and education of [their children]" as Charles urges. See *In re Marriage of Kohring*, 999 S.W.2d 228, 232-233 (Mo. 1999). Finally, neither the U.S. Constitution nor the Illinois Constitution provide an individual right to a post-secondary education, so it cannot be argued that Section 513 infringes on a fundamental right of children of married parents. *See Curtis v. Kline*, 666 A.2d 265, 268 (Penn. 1995).

Moreover, the cases cited by Charles deal with the fundamental rights of parents to conceive and raise their *minor* children. *Appellee's Brief*, pp. 5-6 (May 9, 2019), citing *Meyer v. Nebraska*, 262 U.S. 390 (1923) (invalidating state law prohibiting teaching of foreign languages to minor children); *Skinner v. Oklahoma*, 316 U.S. 535 (1942) (invalidating state law allowing the sterilization of habitual larceny convicts); *Troxel v.*

Granville, 530 U.S. 57 (2000) (invalidating state law allowing non-parent visitation with minor children without deference to wishes of parent); *Ginsberg v. New York*, 390 U.S. 629 (1968) (upholding state law prohibiting dissemination of obscene materials to minors); *Parham v. J.R.*, 442 U.S. 584 (1979) (upholding state laws regarding the admission of minor children to mental health hospitals by their parents); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (upholding state law prohibiting parents from having their minor children sell magazines and newspapers on the street); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (invalidating state law requiring parents to send their minor children to high school); and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (invalidating state law requiring parents to send their minor children to public high school).

These cases reflect the "concepts of the family as a unit with broad parental authority over *minor* children…[which]…rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment..." *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (emphasis added). By contrast, Section 513 deals with a parent's financial obligations to his/her *non*-minor child's education. Therefore, the presumption of parental authority (*vis a vis* the state) is not as strong as it is when a parent is raising his/her minor child.

Additionally, Charles cites to a law review article for the proposition that "courts and legislatures may not intrude into the family unit and make parenting decisions, such as choices relating to education." *Appellee's Brief*, p. 6 (May 9, 2019), citing Germanio, Susan J., *When College Begins*… Widener J. Pub. L. (1994). However, this quote is taken out of context, as the author goes on to assert that parenting decisions are, indeed, subject to limitation if they appear to "have a potential for significant social burdens." *Id.* at 1146,

quoting *Wisconsin v. Yoder*, 406 U.S. 205, 233-234 (1972). As is relevant here, a parent's refusal to pay for his/her child's post-secondary education imposes just such a burden by shifting the financial responsibility to the other parent, the child, or the taxpayers in the form of government-subsidized student loans and grants. *Id.* at 1146. Therefore, "a divorced parent's privacy should not be protected if such protection forces others to accommodate the neglectful parent's obligation." *Id.* at 1148. The author concludes by supporting Pennsylvania's post-secondary education law (which was in effect at the time). *Id.* at 1152 ("Act 62 does not seek to discriminate between married and divorced parents and their children. Rather it seeks equity in resolving a problem most common in families where the relationship between parent and child may have deteriorated because of the physical separation and emotional detachment engendered by divorce."), citing 23 PA.CONST.STAT. §4327 (1993), *abrogated by Curtis v. Kline*, 666 A.2d 265 (Penn. 1995).

Lastly, Charles quotes Alabama Supreme Court Justice Roy Moore in *Ex parte Christopher*, a case in which the court overruled its prior precedent in *Ex parte Bayliss*. *Ex parte Christopher*, 145 So.3d 60 (Ala. 2013), *overruling Ex parte Bayliss*, 550 So.2d 986 (Ala. 1989). According to Justice Moore, *Bayliss* had failed to observe "the God-ordained jurisdictional boundaries between the State and the family recognized in our law." *Christopher, supra,* at 79 (Moore, C.J., concurring). Specifically, Justice Moore criticized the *Bayliss* Court for exceeding its authority in awarding post-minority child support as a form of college contribution, despite the absence of a post-secondary education law in Alabama. *Christopher*, *supra,* at 66-67. As Justice Moore admonished, "By reducing the age of majority [from 21 to 19], the legislature… bestowed the…privileges of adulthood

upon persons not formerly entitled to them…" and it was not for the Court to "raise [the age of majority] back to 21." *Christopher*, *supra,* at 67. Justice Moore's jurisprudence notwithstanding, *Christopher* is distinguishable because Alabama did not have a post-secondary education law at the time; whereas here, Illinois has had, at all times, just such a law in Section 513.

For the reasons stated above, and in the event this Court even considers Charles's strict scrutiny arguments, such a standard is inappropriate. Instead, this Court should adhere to *Kujawinski* and apply a rational basis standard to Section 513.

B. The State's Objective is to Support Children Regardless of Their Parent's Legal Relationship and to Mitigate Harm to Spouses and Children During and After Divorce

(1) The rational basis in *Kujawinski* is stronger today than it was 40 years ago

Next, Charles declares that the "rational basis for the *Kujawinski* 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" and that "our society has changed over the last 40 years." *Appellee's Brief*, pp. 10-12 (May 9, 2019). In support of this, Charles cites a Pew Research study that (he claims) shows that "50% of marriages end in divorce." *Appellee's Brief*, p. 11 (May 9, 2019), citing Parker & Stepler, *As U.S. Marriage Rate Hovers at 50%...* Pew Research Center (Sept. 14, 2017). First of all, that claim appears nowhere in the study. *Id.* Rather, the study attributes the declining marriage rate to people marrying later in life, as well as those choosing not to marry, either because they haven't found the right person or because they prefer to live as partners, rather than as husband and wife. *Id.*

Interestingly, the study found that 65% of college-educated adults are married; whereas only 50% of high school-only graduates are married. *Id.* This would seem to support another salutary effect of a college education (assuming marriage is a salutary effect). Moreover, the study further found that the declining marriage rate is attributable to those who don't believe they are financially stable enough to marry. *Id.* This would seem to imply a growing number of economically disadvantaged children, since some of those parents may nonetheless have children.

Charles cites another study (adopted by the trial court) that found that in 1980, 61% of children in the United States lived in a married household, whereas today only 46% of children live in a married household. *Appellee's Brief*, pp. 11-12 (May 9, 2019), citing Livingston, Gretchen, *Fewer Than Half of U.S. Kids Today Live in a 'Traditional' Family.* Pew Research Center (Dec. 22, 2014). The study goes on to state that today 41% of children are born out of wedlock (compared to 5% in 1960) and 34% of children live with an unmarried parent (compared to 19% in 1980).

However, by relying on this study, Charles confuses quantity with quality. He argues that because the number of children of unmarried parents is the same as (or greater than) the number of children of married parents, children of unmarried parents are the "new normal" and, therefore, no longer economically disadvantaged. It is difficult to perceive anything even approaching logic in this. That is because, regardless of the population ratio between the two groups, children of unmarried parents may be (and are) still economically disadvantaged compared to children of married parents. Indeed, as Rosemary argued in her opening brief, the statistics cited by Charles actually strengthen the rational basis for Section 513 (and the rationale of *Kujawinski*) because they show that more children today

are in need of financial assistance than ever before. That is because these children receive less parental support than their peers whose parents are married to each other. 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); Livingston, Gretchen, *The Changing Profile of Unmarried Parents,* Pew Research Center (April 25, 2018) (finding that 27% of solo parents live below the poverty line, compared with 8% of married couples); and Germanio, Susan J., *When College Begins…* Widener J. Pub. L. at 1141-1142 (1994), citing United States Senate Report ("The problem of welfare in the United States is, to a considerable extent, a problem of the nonsupport of children by their absent parents. Of the 11 million recipients who are now receiving Aid to Families With Dependent Children (AFDC), 4 out of every 5 are on the rolls because they have been deprived of the support of a parent who has absented himself from the home."). For these reasons, Charles argument is unsupported by the facts and does not come close to negating the facts that support Section 513. See *Kujawinski v. Kujawinski,* 71 Ill.2d 563, 578 (Ill. 1978) ("The burden rests upon the person challenging the statute to negate the existence of any facts which may reasonably be conceived to sustain it.")

Clearly, Charles disagrees with Rosemary's arguments above. *Appellee's Brief*, p. 12 (May 9, 2019) ("The [*Kujawinski*] Court's decision was based on the 'archaic and overbroad' generalization that unmarried parents were uncommon and less likely to contribute to college expenses for their children than married parents.") However, Charles's objection is not with the Illinois Supreme Court 40 years ago, but with the Illinois legislature today. That is because Section 513 has been amended ten (10) times since *Kujwanski* was decided, including when the Dissolution Act was overhauled in 2016, and

when Section 513 was subsequently amended in 2017. *See* Ill. P.A. 99-90 (eff. Jan. 1, 2016); and Ill. P.A. 99-763 (eff. Jan. 1, 2017). Despite these various amendments, the core purpose and substance of Section 513 has remained the same at all times. These enactments have affirmed (and reaffirmed) the public policy of Illinois through its elected representatives. Charles's redress is through the political process. He can seek to change the law by contacting his representatives, forming an interest group of like-minded individuals, supporting candidates who share his views, or running for office himself. What he cannot do is seek a legislative end-around through the judicial branch.

Charles cites other articles, including one that finds that children who receive parental aid tend to have lower GPA's than those whose parents do not provide such aid. *Appellee's Brief*, p. 13 (May 9, 2019), citing Hamilton, Laura T., *More is More or More is Less?...* 78 Am. Soc. R. 70 (2013). However, this article has been criticized for not accounting for several statistical variables[1]. On such variable is "survivorship bias," which holds the following: out of college students who are struggling academically, those who have their college paid-for are more likely to stay in college, as opposed to those who are paying for college themselves (who are more likely to drop-out and, therefore, are excluded from the statistical sample)[2] This is exactly why, even accepting Charles's arguments, complex public policy considerations are the province of the legislature, based on its superior investigative and fact-finding facilities, and its ability to evaluate sociological data and alternatives. See *Blumenthal v. Brewer*, 2016 IL 118781, ¶77.

[1] Gelman, Andrew, Statistical Modeling, Causal Inference, and Social Science (Jan. 22, 2013);https://statmodeling.stat.columbia.edu/2013/that-claim-that-students-whose-parents-pay-for-more-of-college-get-wors-grades/

[2] *Id.*

C. The State's Objective is to Support Children Regardless of Their Parent's Legal Relationship and to Mitigate Harm to Spouses and Children During and After Divorce

Next, Charles argues that Section 513 discriminates against children of unmarried parents because it classifies children based on "illegitimacy" and rewards one group over another based on the marital status of their parents. *Appellee's Brief*, pp. 13-14 (May 9, 2019). First, this contradicts Charles's later argument, based on the Pennsylvania's Supreme Court's decision in *Kline*, which found its post-secondary education law unconstitutional because it discriminated against children of *married* parents. *Appellee's Brief*, p. 15-16 (May 9, 2019) ("By creating two groups, this classification established that children of unmarried parents were able to obtain a benefit via court order that was not available to nondivorced children."), citing *Curtis v Kline*, 666 A.2d 270 (Penn. 1995). Contradictions aside, a similar argument was rejected by the Missouri Supreme Court in *Kohring* because the intent of Missouri's post-secondary education law was to support, rather than burden, children of unmarried parents. *In re Marriage of Kohring*, 999 S.W.2d 228, 232 (Mo. 1999) ("Father concedes that this claim [of discrimination against children of unmarried parents] is tenuous."). Indeed, the declared policy of the Illinois Parentage Act is to recognize "the right of every child to the physical, mental, emotional, and financial support of his or her parents…regardless of [the parents']…legal relationship…" 750 ILCS 46/102 (West 2018). This is why the Parentage Act incorporates Section 513. *See* 750 ILCS 46/802(a) (West 2018). The stated objective of Section 513 is to support, rather than burden, children of unmarried parents; and it cannot be argued otherwise.

(1) The majority of states that have college support laws have upheld them as constitutional

Charles states that the majority of states do not have a post-secondary education (or post-minority support) law. *Appellee's Brief*, p. 14 (May 9, 2019). The cases cited by Charles all deal with courts that were unwilling to award post-minority support in the absence of a corresponding statute. *Ex parte Christopher*, 145 So.3d 60 (Ala. 2013) (denying college contribution in absence of post-secondary education law); *Litel v. Litel*, 490 So.2d 741 (La. 1986) (denying college contribution in absence of post-secondary education law); and *Towery v. Towery*, 285 S.W.2d 155 (Ark. 1985) (denying support to emancipated child, who later became disabled in auto accident, in absence of applicable post-minority support statute).

These cases reflect an entirely appropriate exercise of each state's legislative judgment and each court's deference towards same. *Litel v. Litel*, 490 So.2d 741, 743 (La. 1986) ("Since the legislature did not so provide, we must conclude that they did not desire that effect. It is not the role of this court to vary from an expression of the legislative will.") It is curious, then, that Charles relies on these cases to urge this Court to strike down Section 513, contrary to Illinois' legislative judgment.

The reality is that sixteen (16) states and the District of Columbia currently allow a court to award post-majority support for education expenses[3]. Out of the states that have (or had) such laws, the Pennsylvania Supreme Court is the only one to have declared their

[3] 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).

statute unconstitutional[4]. Meanwhile, at least eight (8) other states have upheld their post-secondary education statutes in the face of constitutional challenges. *See Kujawinski v. Kujawinski*, 71 Ill.2d 563 (Ill. 1978); *Childers v. Childers*, 575 P.2d 201 (Washington 1978); *In re Marriage of Vrban*, 293 N.W.2d 198 (Iowa 1980); *Birchfield v. Birchfield*, 417 S.W.2d 891 (S.D. 1988); *LeClair v. LeClair*, 624 A.2d 1350 (N.H. 1993); *In re Marriage of Kohring*, 999 S.W.2d 228 (Missouri 1999); *In re Marriage of McGinley*, 19 P.3d 954 (Oregon 2001); and *McLeod v. Starnes*, 723 S.E.2d 198 (South Carolina 2012).

(a) The Court should decline to follow *Kline* because it flows from unsound constitutional principles

In making his call for judicial intervention, Charles asks this Court to adopt the Pennsylvania Supreme Court's decision in *Kline*. *Appellee's Brief*, p. 15 (May 9, 2019), citing *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995). As noted above, *Kline* is an outlier, which other courts have rejected. *See e.g., In re Marriage of McGinley*, 19 P.3d 954 (Oregon 2001). Moreover, as Rosemary argued in her opening brief, *Kline* flows from unsound constitutional principles because it inverted the burden of proof in its equal protection analysis. *Appellant's Brief*, p. 47 (Dec. 20, 2018). That is, the *Kline* Court put the onus on the State to prove the rational basis for the statute, rather than the challenging party to disprove its rational basis. *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.") For these reasons, this Court should decline *Kline*.

[4] Arzoumanidis, Sophia, *Why Requiring Parents to Pay for Post-Secondary Education is Unconstitutional and Bad Policy,* 54 Fam. Ct. Rev. 314 (April 2016).

(2) Section 513 *does* apply to all parents, regardless of their marital status

Next, Charles suggests a constitutional fix to Section 513's infirmity: that Illinois apply Section 513 to all parents, regardless of their marital status. *Appellee's Brief*, p. 16-17 (May 9, 2019). As Rosemary has already argued, Section 513 *does* apply to all parents, both married and unmarried, through Section 802 of the Illinois Parentage Act of 2015. *Appellant's Brief*, p. 40 (Dec. 20, 2018); citing 750 ILCS 46/802(a) (West 2018) (incorporating Section 513); and *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.").

However, rather than recognize this, Charles attempts to show how the (purportedly) selective application of Section 513 is discriminatory, turning again to a law review article for the proposition that "Certainly, the intended government end – the higher education of its citizens – could be best achieved by applying [Section 513] to all those who are similarly situated: all parents of children desiring to attend college." *Appellee's Brief*, p. 17 (May 9, 2019), citing Germanio, Susan J., *When College Begins*… Widener J. Pub. L. (1994). And, once again, Charles wrenches the author out of context by omitting her crucial follow-up, in which she refutes that very point:

> The difficulty with this reasoning [of applying a post-secondary education law to all parents] is that, for support purposes, parents and children in intact families are not similarly situated with parents and children in broken families. The need for a support law and support orders is testimony to the fact that the duty of support is more likely to be neglected in the case of broken families.
>
> …

> If noncustodial parents in broken families are less likely than custodial parents in intact families to provide adequate support for their children's necessities, it follows then that they are less likely to provide support for their children's college educations.
>
> …
>
> Because of the history of child support enforcement problems in relation to broke families, the [Pennsylvania] General Assembly, in adopting [its post-secondary education law], could have reasonably concluded that it is children of those families who will most often be denied college support. Therefore, the most urgent need was to provide for the payment of such support by divorced or separated parents who otherwise would seek relief from their support obligations as soon as their children turned eighteen, regardless of the circumstances.

Germanio, Susan J., *When College Begins*…, at 1141-1142, Widener J. Pub. L. (1994)

For these reasons, Charles's argument that Section 513 lacks a rational basis because it only applies to unmarried parents is incorrect.

II. The Circuit Court Did Not Have the Authority to Declare Section 513 unconstitutional

A. Courts Defer to the Legislative Branch to Change the Law According to Cultural and Societal Changes

Turning to the some of the procedural issues (which neither the trial court nor Charles addressed in the first instance), Charles argues that it is proper for the courts to "adapt to the current social climate" even when it "outpaces the legislators." *Appellee's Brief*, p. 19 (May 9, 2019). To support this claim, he cites some of the landmark cases by the U.S. Supreme Court, all of which involved fundamental rights protected by the U.S. Constitution. *Appellee's Brief*, p. 19 (May 9, 2019), citing *Brown v. Board of Education*, 347 U.S. 483, 493 (1954) ("[Public education]…is a right which must be made available to all on equal terms."); *Roe v. Wade*, 410 U.S. 113, 154 (1973) ("…the right of personal privacy includes the abortion decision, but that right is not unqualified and must be considered against important state interests in regulation."); *Obergefell v. Hodges*, 135

S.Ct. 2584, 2602 (2015) ("The right of same-sex couples to marry…is part of the liberty promised by the Fourteenth Amendment [and] is derived, too, from that Amendment's guarantee of the equal protection of the laws."). These fundamental rights are akin to "the rights to free speech, to vote, to freedom of interstate travel, as well as other basic liberties." *In re Marriage of Kohring* 999 S.W.2d 228, 232-233 (Mo. 1999), citing *Kramer v. Union Free School Dist.*, 395 U.S. 621, 626 (1969).

By contrast, and as already stated above, Section 513 invokes "…a parent's financial obligations to his or her child are considered [which are] merely economic consequences that do not critically affect associational rights." *Id.*, citing *Rivera v. Minnich*, 483 U.S. 574 (1987). Nonetheless, Charles argues that this Court should "interpret" Section 513 right out of existence. *Appellee's Brief*, p. 19 (May 9, 2019) ("Because the Legislature fails to recognize that Section 513 tramples on Yakich's constitutional rights, the Court should interject and recognize that society has shifted towards equal rights for all parents, regardless of their marital status.")

Nowhere does Charles address the effect that striking down Section 513 would have on children desiring to go to college, or the custodial parents wanting to send them to college, or the public resources that might be required to pay for children whose parents won't. Rather, Charles focuses only on the rights of the objecting parent, to the exclusion of everyone else. Through this omission, he ignores "the right of citizens to debate so they can learn and decide and then, through the political process, act in concert to try to shape the course of their own times." *Obergefell, supra*, at 2605. "Indeed, it is most often through democracy that liberty is preserved and protected in our lives." *Id.*

This is precisely why, 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. Where objections pose what are essentially questions of policy, they are more appropriately directed to the legislature than to this court. *In re Parentage of John M.*, 212 Ill.2d 253, 273 (Ill. 2004). When assessing the constitutionality of a statute, the court does not sit as a superlegislature to weigh the wisdom of legislation nor to decide whether the policy it expresses offends the public welfare. *Id.* For these reasons, Charles's arguments that this Court should declare Section 513 unconstitutional due to the "changing social climate," and without deference to the Illinois legislature, are misplaced.

B. Section 513 Orders Are Final Orders, Despite Being Modifiable

Next Charles argues that the trial court's order of July 22, 2016 was not a final order because it was modifiable. *Appellee's Brief*, pp. 19-21 (May 9, 2019). However, none of the cases cited by Charles stand for this proposition; therefore, Charles has forfeited this argument pursuant to Illinois Supreme Court Rule 341. Ill. S.C.R. 341(h)(7) (West 2018). For example, Charles states that, "Section 513 orders are a unique type of court order that cannot be final and can be modified even after the child, who is indirectly subject to the order, has graduated from college," but then fails to support that statement with any authority. *Appellee's Brief*, p. 20 (May 9, 2019). Likewise, Charles ends his argument with the declaration that "If an order is modifiable, as a Section 513 order requires, then by its nature it cannot be a final order," but again fails to follow-up with any citation to

authority. *Appellee's Brief*, p. 21 (May 9, 2019). For these reasons, Charles's argument that the July 22, 2016 was not final is forfeited.

C. Orders Made Pursuant to Laws That Have Been Upheld as Constitutional by the Supreme Court Are Not Subject to Attack by Lower Courts

Next, Charles argues that the trial court's order of July 22, 2016 could be attacked at any time because it was a void order. *Appellee's Brief*, p. 26 (May 9, 2019). To the extent Charles argues that the July 22, 2016 was void because the trial court lacked subject matter jurisdiction to enter it in the first place, and setting aside this woeful misapprehension of subject matter jurisdiction, Charles has also forfeited this argument because he never argued that the trial court lacked subject matter jurisdiction. *See Haudrich v. Howmedica, Inc.*, 169 Ill.2d 525, 536 (Ill. 1996) ("…the theory upon which a case is tried in the lower court cannot be changed on review…"). Therefore, Charles has forfeited any argument that the July 22, 2016 was void for lack of jurisdiction.

D. The Circuit Court's Compliance with Illinois Supreme Court Rule 18 is Irrelevant to the Court's Authority to Declare Section 513 Unconstitutional in the First Place

Next, Charles states that Illinois Supreme Court Rule 18 "specifically allow[s]" a circuit court to declare a statute unconstitutional. *Appellee's Brief*, p. 28 (May 9, 2019). First, courts derive their powers from the Illinois Constitution, not Supreme Court Rules. *See McCormick v. Robertson*, 2015 IL 118230. Secondly, Rule 18 is not a mere checklist, but a codification of constitutional jurisprudence. For example, the requirement that the finding of unconstitutionality must be necessary to its judgment, and cannot rest upon an alternative ground, is a long-standing principle. *See Mulay v. Mulay,* 225 Ill.2d 601, 607 (Ill. 2007) ("Courts will address constitutional issues only as a last resort, relying whenever

possible on nonconstitutional grounds to decide cases.") In this case, the trial court's rote "box-checking" of the findings required by Rule 18 is wholly irrelevant to whether its decision was correct. Indeed, the trial court's order of May 4, 2018 did not address any of the procedural deficiencies, which the court itself raised, and would have allowed the court to decide the case on an alternative ground, without resorting to the constitutional question. For this reason, Rule 18 did not "allow" the trial court to declare Section 513 unconstitutional.

E. The Court Should Adhere to *Kujawinski* in Light of the Illinois Legislature's Recent Affirmations of Section 513

Next Charles argues that the trial court was not bound to follow *Kujawinski*, relying instead on this Court's decision in *O'Casek* for the proposition that "an inferior court's adherence to precedent is required unless it is shown that 'serious detriment is likely to arise that will prejudice the public interest.'" *Appellee's Brief*, p. 29 (May 9, 2019), citing *O'Casek v. Children's Home & Aid Soc. of Ill.*, 229 Ill.2d 421, 440 (Ill. 2008). However, *O'Casek* says nothing of the sort and merely reaffirms that *stare decisis* requires inferior courts to follow the decisions of higher courts. *O'Casek v. Children's Home & Aid Soc. of Ill.*, 229 Ill.2d 421, 440 (Ill. 2008) ("*Stare decisis* requires courts to follow the decisions of higher courts, but does not bind courts to follow decisions of equal or inferior courts.") In this regard, *O'Casek* supports Rosemary's position that the trial court was bound by *Kujawinski.*

F. *Res Judicata* is Applicable Because It Applies to Legal Theories That Were Asserted, And Those That Could Have Been Asserted

Next Charles argues that he was not barred from arguing that Section 513 was unconstitutional under the doctrine of *res judicata. Appellee's Brief,* p. 31 (May 9, 2019). Charles argues that *res judicata* did not attach because the trial court "did not determine the constitutionality of Section 513 until May 4, 2018" and "Prior to this date, the circuit court did not make any findings on the constitutionality of Section 513 or issue a final order." *Appellee's Brief*, p. 31 (May 9, 2019). Obviously, Charles omits the fact that the *reason* the court did not rule on Section 513's constitutionality is because Charles did not *raise* Section 513's constitutionality until 62 days after the court's had already ruled on the issue of college contribution. R. C327-342. Because *res judicata* extends to claims that *could have been* raised by the defendant, the fact that the trial court did not rule on Section 513's constitutionality until May, 2018 (due to Charles' own failure to timely raise it in the underlying proceeding) does not excuse Charles from the preclusive effect of *res judicata*. See *Blumenthal v. Brewer*, 2016 IL 118781, ¶42.

G. The Court Should Not Invoke Its Supervisory Authority and Should Decide the Constitutional Question Only as a Last Resort

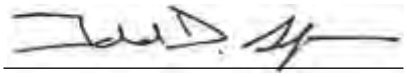
Finally, Charles argues that this Court should invoke its supervisory authority and decide the constitutional question, despite the procedural deficiencies in this case. *Appellee's Brief,* p. 33 (May 9, 2019). To the contrary, if this Court even allows this case to get past the procedural issues, it should decide the case on *stare decisis* grounds alone, to send the message to all lower courts throughout the state to not do what the trial court in this case did.

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: 

Todd D. Scalzo
One of Her Attorneys

Attorneys for Appellant, Rosemary Aulds:

Todd D. Scalzo
Mirabella Kincaid Frederick & Mirabella, LLC
1737 S. Naperville Rd., Suite 100
Wheaton, IL 60189
Phone: (630) 665-7300
todd@mkfmlaw.com

Michael J. Scalzo
Scalzo Law Offices
1776A S. Naperville Rd., Suite 201
Wheaton, IL 60189
Phone: (630) 384-1280
mjs@scalzolaw.com

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

To: See attached **Service List**

YOU ARE HEREBY NOTIFIED that on May 23, 2019, the undersigned attorney filed with the Clerk of the Illinois Supreme Court, via electronic means, the ***Reply 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 May 24, 2019, he served this **(1)** ***Notice of Filing*****; and (2)** ***Reply 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

Todd D. Scalzo, ARDC No. 6283937
Mirabella Kincaid Frederick & Mirabella, LLC
Attorney for Rosemary A. Aulds
1737 S. Naperville Rd., Suite 100
Wheaton, IL 60189
Phone: (630) 665-7300
todd@mkfmlaw.com

Michael J. Scalzo, ARDC No. 2466619
Scalzo Law Offices
Attorney for Rosemary A. Aulds
1776A S. Naperville Rd., Suite 201
Wheaton, IL 60189
Phone: (630) 384-1280
mjs@scalzolaw.com

SERVICE LIST

VIA E-MAIL
Vincent L. DiTommaso – **vdt@ditommasolaw.com**
James V. DiTommaso – **jvd@ditommasolaw.com**
DiTommaso Law, LLC
17W 220 22nd St., Suite 410
Oakbrook Terrace, IL 60181

VIA E-MAIL sarah.casey@bennett.bangser.com
Sarah D. Casey
Bennett & Bangser, LLC
150 S. Wacker Dr., 24th Floor
Chicago, IL 60606

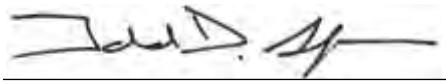
VIA E-MAIL mdidomenico@laketoback.com
Michael G. DiDomenico
Lake Toback DiDomenico
33 N. Dearborn St., Suite 1720
Chicago, IL 60602

VIA E-MAIL pfeinlaw@aol.com
Paul L. Feinstein
Paul L. Feinstein, Ltd.
10 S. LaSalle St., Suite 1420
Chicago, IL 60603

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

CERTIFICATE OF COMPLIANCE
FOR APPELLANT'S REPLY BRIEF

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in 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 20 pages.



Todd D. Scalzo
Attorney for Appellant, Rosemary Aulds

Attorneys for Respondent-Appellant, Rosemary A. Aulds:

Todd D. Scalzo
Mirabella Kincaid Frederic& Mirabella, LLC
1737S. Naperville Rd., Suite 100
Wheaton, IL 60189
(630) 665-7300
todd@mkfmlaw.com

Michael J. Scalzo
Scalzo Law Offices
1776A S. Naperville Rd., Suite 201
Wheaton, IL 60189
(630) 384-1280
mjs@scalzolaw.com

Case No. 123667

ILLINOIS SUPREME COURT

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

NOTICE OF FILING

To: See attached **Service List**

YOU ARE HEREBY NOTIFIED that on May 24, 2019, the undersigned attorney filed with the Clerk of the Illinois Supreme Court, via electronic means, the ***Certificate of Compliance for Appellant's Reply Brief***, 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 May 24, 2019, he served this **(1)** ***Notice of Filing*****; and (2)** ***Certificate of Compliance for Appellant's Reply Brief***, 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

Todd D. Scalzo, ARDC No. 6283937
Mirabella Kincaid Frederick & Mirabella, LLC
Attorney for Rosemary A. Aulds
1737 S. Naperville Rd., Suite 100
Wheaton, IL 60189
Phone: (630) 665-7300
todd@mkfmlaw.com

Michael J. Scalzo, ARDC No. 2466619
Scalzo Law Offices
Attorney for Rosemary A. Aulds
1776A S. Naperville Rd., Suite 201
Wheaton, IL 60189
Phone: (630) 384-1280
mjs@scalzolaw.com

E-FILED
5/24/2019 10:19 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

SERVICE LIST

VIA E-MAIL
Vincent L. DiTommaso – **vdt@ditommasolaw.com**
James V. DiTommaso – **jvd@ditommasolaw.com**
DiTommaso Law, LLC
17W 220 22nd St., Suite 410
Oakbrook Terrace, IL 60181

VIA E-MAIL sarah.casey@bennett.bangser.com
Sarah D. Casey
Bennett & Bangser, LLC
150 S. Wacker Dr., 24th Floor
Chicago, IL 60606

VIA E-MAIL mdidomenico@laketoback.com
Michael G. DiDomenico
Lake Toback DiDomenico
33 N. Dearborn St., Suite 1720
Chicago, IL 60602

VIA E-MAIL pfeinlaw@aol.com
Paul L. Feinstein
Paul L. Feinstein, Ltd.
10 S. LaSalle St., Suite 1420
Chicago, IL 60603

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