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**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT  
CINCINNATI, OHIO**

Michael A. Galluzzo,

**PLAINTIFF-APPELLANT,**

vs.

**CASE NO. 04-3527**

Champaign County, Court of Common Pleas;  
Roger B. Wilson; Teresa A. Cook, also known  
as Teresa A. Galluzzo; State of Ohio

**DEFENDANTS-APPELLEES.**

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On an Appeal of Right from the Order of Magistrate Judge Michael R. Merz upon  
the Decision And Order on Reconsideration of the Merits on February 4, 2004 in Case  
No. 3:01-cv-174 from the United States District Court for the Southern District of Ohio,  
Western Division, Dayton, Ohio.

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**APPELLANT**

Michael A. Galluzzo  
P.O. Box 710  
St. Paris, OH 43072

**APPELLEE**

Sanford H. Flack, Esq.  
Flack & Mayhall  
101 N. Fountain Avenue  
Springfield, OH 45502  
Counsel for Teresa A. Cook  
(*aka* Galluzzo)

## REQUEST FOR ORAL PRESENTATION

Pursuant to Federal Rules of Appellate Procedure 34 and the Sixth Circuit Court of Appeals Rule 34, Appellant Michael A. Galluzzo requests oral argument of the Assignment of Issues presented in the instant appeal.

The basis for this request derives from the fact that the issues presented are of uncontroverted significance. The instant matter is the *prima facie* federal challenge addressing the explicit language of Ohio's statutory scheme and the express lack of a constitutionally compliant evidentiary standard pursuant to the state's implication and deprivation of a fit parent's right to custody of children in a divorce situation.

As was determined by the Magistrate Judge, this issue has *never* been raised before in any Federal District Court *nor* addressed *directly* by the U.S. Supreme Court. {See January 20, 2004 Decision and Order on the Merits @ pgs. 17-19.}

Pursuant to the merits and Appellant's entitlement to a federal forum, Appellant Michael A. Galluzzo requests oral argument in the instant appeal.


Respectfully submitted,



Michael A. Galluzzo, Appellant

**CERTIFICATE OF COMPLIANCE**

I hereby certify to the best of my knowledge that the principal brief complies with the type-volume limitation submitted under Federal Appellate Rule 32(a)(7)(B) pursuant to the computer processing system used to prepare the brief.

  
Michael A. Galluzzo, Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Appellant's Brief was served upon the aforesaid Counsel for Appellee, Sanford H. Flack, Esq., 101 North Fountain Avenue, Springfield, OH 45502 by ordinary mail, postage paid at St. Paris, Ohio, on the 8th day of June 2004.

  
Michael A. Galluzzo, Appellant

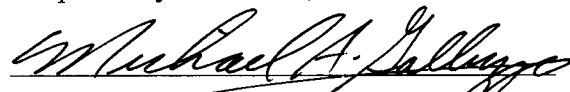
“The touchstone of due process is protection of the individual against arbitrary action of government.” See *Daniels v. Williams*, 474 327, 331 (1986); *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974); *Dent v. West Virginia*, 129 U.S. 114, 123 (1889).

### **CONCLUSION & REQUEST FOR RELIEF FOR ISSUES PRESENTED**

First, the Dayton District Court should be provided the opportunity to perform its judicial duty to determine the point of implication of a parent’s fundamental right to custody of their minor children in a divorce situation. Second, the District Court should strictly scrutinize R.C. §3109.04 and Ohio R. Civ. P. 75(N) where the statutory scheme is vague; not narrowly construed; discretionary; and overbroad. Third, the District Court must revisit its Decision pursuant to the Supremacy clause.

Magistrate Merz did not identify his standard of review {strict scrutiny or rational basis}. He provided no analysis of how he reached his conclusion. The Sixth Circuit Court would have a difficult time in determining whether the Magistrate was correct or not, for there is no ability to examine his methodology. Appellant Galluzzo requests that the Sixth Circuit REMAND the matter back to Magistrate Merz with instructions to determine the point at which the parental right was implicated in the state court action {*Cf. Stanley v. Illinois*, 405 U.S. 645, 650-651 (1972)} and to strictly scrutinize R.C. §3109.04 and Ohio R. Civ. P. 75 (N) pursuant to the Supremacy clause {Article VI}, and the 14<sup>th</sup>, 9<sup>th</sup>, and 1<sup>st</sup> Amendments to the U.S. Constitution.

Respectfully submitted,



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of such a constitutional challenge is negligible, for the designated custodial parent reaps the protections and benefits afforded the “custodial” statutory classification/designation.