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## **Opposing Viewpoints: Best Interests of the Child vs. The Fathers' Rights Movement**

*By: Elizabeth Gresk*

While gender bias is a concern, it is often one that is overlooked or ignored, in family court proceedings, particularly in child custody determinations. In 2010, it was estimated that twenty-two million children, nearly one-quarter of all children under age twenty-one, in the United States reside primarily with one parent while the second parent lives elsewhere. Approximately 13.7 million parents serve in the primary custodial parent role, but only one out of every six are fathers. This statistic demonstrates that even after decades of ideological changes, courts still seem to rely on the presumption that mothers are best suited to parent children.

The concept of operating family court proceedings with a focus on the children involved and their best interests, first took shape in the late nineteenth and early twentieth centuries. As changes in the American family structure—such as increased divorce rates, out-of-wedlock births, and blended families, became more prevalent, the best interests standard evolved and was used to promote gender neutrality in custody determinations. Three developments assisted this shift: (1) social science research demonstrating sole custody with mothers was not always best for children; (2) reliance on expert witnesses to conduct individual evaluations of each divorce case; and (3) a trend towards a more therapeutic, rather than adversarial, court system.

As of 2013, the courts of all fifty states employed some form of best interests analysis when making decisions about child placement and custody. This method of analysis allows courts to consider factors like a child's relationship with his or her caregivers, which home environment offers the child the most stability, and which parent is better suited to care for the child. Joint custody and shared parenting have become popular outcomes for custody disputes. Several states also make it explicit in their best interests statutes that a parent's gender cannot serve as grounds for granting primary custody to that parent.

### Opposing Viewpoints

Research suggests though, that the best interests standard may still be heavily intertwined with a preference for maternal custody, known as the “tender years doctrine.” Throughout much of family law history, courts operated under this doctrine when making custody decisions and many courts have been reluctant to abandon it completely.

The tender years doctrine was most prevalent in the nineteenth century, evolving from then-modern scientific research that recognized the importance of childhood in overall healthy social and emotional development. The tender years doctrine promoted the belief that children were in need of nurturing care and mothers were the most suitable parent to provide it. It was commonly accepted that caregiving and emotional support were inherent aspects of the maternal role and attitude. The fact that fathers were the primary wage-earners and increasingly spent time out of the home as industrial jobs became more popular, further supported the conclusion that mothers were best situated to provide the care children needed. Consequently, children remained for the most part, in the custody of their mothers in the event of divorce or separation.

Today, the tender years doctrine still influences decisions made in family courts. As the statistics show, mothers are overwhelmingly favored as primary custodians for children. Even when both parents are found equally suitable to care for a child, some states still allow courts to grant maternal custody because of a presumption that mothers are inherently better suited to raise children. But even when a court takes a purportedly gender-neutral approach to custody proceedings and grants joint custody, fathers are often left with only partial visitation rights. Alternating weekend visits and occasional holiday overnights for fathers tend to be the reality of shared parenting arrangements in the United States.

This gender disparity in custodial parenting has sparked an outcry from fathers and their advocates. Since the 1990s, there has been growing support for the Fathers' Rights Movement in the United States.

The increase in popularity of the Father's Rights Movement has been commonly attributed to changing social attitudes. In particular, the divorce reform movement of the 1960s, anti-feminist

## Opposing Viewpoints

activism of the 1990s, and the rise of conservative religious groups have been named as impacting fathers' activism. While the precise motives of fathers' rights activists are not always clear, scholars posit that the movement is an attempt to counteract the power and authority men are allegedly losing to women in modern society. Additionally, some fathers' rights advocates contend society is now a "fatherless America." Advocates want to address the growing problem of deadbeat or absentee fathers, to ensure all children grow up and have an emotional relationship with their fathers.

Fathers' rights advocates have a broad agenda, ranging from joint custody legislation to visitation rights to child support payment reform. The movement's overall guiding principle is that children are best served by knowing and developing relationships with both parents. However, this principle is frequently lost when deciding parental rights and custody. Rather than looking for ways to provide children with access to both parents, the discussion often focuses instead on why one parent—usually the father—has been mistreated by the justice system.

Fathers' rights groups take on many different roles and employ a variety of strategies to advocate on behalf of fathers. One of the preeminent organizations is the American Coalition for Fathers and Children ("ACFC"). The ACFC was founded in 1996 and calls itself "America's Shared Parenting Organization."

While the organization establishes itself as pro-two parent, the majority of its focus is on fathers' rights. The underlying presumption in almost all of ACFC's efforts is that children will already be living with or have complete access to their mothers. In its mission statement, the ACFC stresses the importance of providing children with two parents and the need to shift the law to reflect that family structure. Many of the organization's other tenets, however, express concern that the family court system is biased in favor of women and mothers.

The ACFC also emphasizes the role unbalanced custody, child support, and visitation orders can play in creating discord for children who lack full access to both parents.

To address these issues, the ACFC utilizes online and in-person tactics. On its website, the ACFC has a blog of articles written by

### Opposing Viewpoints

fathers' rights activists, highlighting new issues that impact parenting and custody. Additionally, the ACFC publishes materials—such as its e-newsletter and factsheets about shared parenting—and works with centers like the National Men's Law Center, Conflict Resolution Office, and the Co-Parenting and Access Office to assist fathers in accessing resources.

The ACFC works with state and national legislatures to help reform custody and visitation laws to support dual-parenting and joint custody in divorce or separation cases. The organization has also taken on a larger role in court proceedings. For example, the organization recently assisted a military father in his international custody dispute. In February 2013, the United States Supreme Court held in *Chafin v. Chafin* that parents of children currently residing abroad with a foreign parent do have standing to proceed in American family courts, even if the child is not presently in the United States. While the Court's decision applies to any parent, regardless of gender, the ACFC declared a strong victory for fathers' rights in general, while also strongly criticizing the respondent mother's parenting skills and actions and lauding the petitioner father's.

The Fathers' Rights Movement presents an interesting contrast to the best interests or tender years doctrine. Interaction between the two ideologies has sparked increased discussion as to what a child's "best interests" truly means and how assumptions about parenting may be influencing the courts. The ongoing debate suggests there are still changes to be made in how courts manage child custody proceedings. Ultimately, the court's focus is meant to be on the children. In fact, Dianna Thompson, a founder and executive director of the ACFC, told the ABA Journal that the mission of the ACFC is "not about fathers' rights or mothers' rights, but about seeking what's best for the children." From the actions of parties on both sides of the issue, though, it is hard to tell who is really the focus: parents or children.

Opposing Viewpoints

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