

PETITION TO RECLAIM THE RIGHT TO JURY TRIALS FOR VIRGINIA CITIZENS

WHEREAS the Citizens' Right to a Trial by Jury of his or her Peers is a most valuable Right, a Right enshrined in the Constitution for the United States of America in the first ten amendments known as the "Bill of Rights", both (amendment) Article VI for criminal cases and in civil cases by (amendment) Article VII where is proclaimed:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved..."; and

WHEREAS, in Virginia the Framers made the Bill of Rights Article I of the Constitution for Virginia to precede the rest of the Constitution to establish its preeminence in importance, wherein Section 11 the second paragraph states:

"That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred.

The General Assembly **may limit the number of jurors for civil cases in courts of record to not less than five.**"; and

WHEREAS, Thomas Jefferson designed the Capitol building where the General Assembly meets, once rewrote the laws of Virginia, when later writing on Rights, also wrote: **"The new Constitution has secured these in the Executive and Legislative departments, but not in the Judiciary. It should have established trials by the people themselves, that is to say, by jury."** also wrote, **"The Constitution is a mere thing of wax in the hands of the judiciary..."**; and

WHEREAS, Thomas Jefferson in the "Birth Certificate" of America, in our Declaration of Independence wrote in that inspired document of freedom: **"...sent hither swarms of Officers to harass our people, and eat out their substance..."**

The history of the present... is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny...For depriving us in many cases of the benefits of Trial by Jury."; and

WHEREAS, the **Supreme Court of the United States over fifty years ago noted that a parent's right to "the companionship, care, custody, and management of his or her children" is an interest "far more precious" than any property right.** *May v. Anderson*, 345 U.S. 528, 533, 97 L. Ed. 1221, 73 S. Ct. 840, 843 (1952); and

WHEREAS, just six years ago, in *Troxel v. Granville*, 527 U. S. 1069 (1999) Justice Sandra Day O'Connor wrote,

"The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of the law. We have long recognized that the Amendment's Due Process Clause like its Fifth Amendment counterpart, 'guarantees more than fair process'. The Clause includes a substantive component that 'provides heightened protection against governmental interference with certain fundamental rights and liberty interest' and 'the liberty interest of parents in the care, custody, and control of their children - is perhaps the oldest of the fundamental liberty interest recognized by this Court.'"; and

WHEREAS, Court of Appeals of Virginia Judge D. Arthur Kelsey in his Special Feature article in the October 2004 issue of Virginia Lawyer magazine writes: **"To many of the Framers' generation, the jury was "the lower judicial bench" in a bi-cameral judiciary" and "the democratic branch of judiciary power – more necessary than representatives in the legislature..."**, yet in 1993 in *Powell v. Ward*, the same Court restricted Citizens' Rights to Jury Trials; and

WHEREAS, Virginia Appeals Court Judge Kelsey reminds Virginia citizens of the Framers beliefs: **"To them, the jury was "no mere procedural formality, but a fundamental reservation of power in our constitutional structure. Just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary."**; yet many citizens in Virginia consider **the judiciary is "out of control"**; and

WHEREAS, contrary to the rich tradition of Rights of Virginia Citizens to Trial by Jury, the practice of the Courts of Virginia is to deny Citizens a Trial by Jury in Chancery cases, that is to say Rights are denied in a large portion of cases decided in the Courts of Virginia when they are domestic cases based on the abuse or judicial misuse of:

Code of Virginia §8.01-336 titled **"Jury trial of right, waiver of jury trial, court-ordered jury trial, trial by jury of plea in equity, issue out of chancery"** where part E. states: **"Issue out of chancery. – In any suit in equity, the court may, of its own motion or upon motion of any party, supported by such party's affidavit that the case will be rendered doubtful by conflicting evidence of another party, direct an issue to be tried by a jury.** (Code of 1950, and further modified in 1954, 1973, 1974, 1975, and 1977, all changes of the past 55 years, contrary to the Framers' original intent); and

WHEREAS, the phrase "the court may" defines what judges call a "permissive right", and a "permissive" right is **NO right at all**, but rather a **"privilege"** to be bestowed - or **withheld** - at the whimsy or wish of a judge, making for **"...establishment of an absolute Tyranny...For depriving us in many cases of the benefits of Trial by Jury."**; and

WHEREAS, the proper modern day reading of the phrase **"man and man"** by right includes man and woman so that the Virginia Bill of Rights Article I Section 11 is correctly interpreted to also say: **"in suits between woman and man, to include suits of wife and husband, trial by jury is preferable to any other, and ought to be held sacred."**

In Virginia, the Right to Jury Trial **"ought to be held sacred"** even when the marital bonds are not held sacred; and

THEREFORE, BE IT RESOLVED, that as a Citizen of Virginia and the United States of America, in exercise of the First Amendment Right to Petition the Government for Redress of Grievances, Individually, and We, the People, in union together, for ourselves and for posterity – our children, do Petition the Government to Restore the Inviolable Right to Trial by Jury in Chancery Cases by a Referendum Vote for wording change to the Code of Virginia:

§8.01-336 E. Issue out of chancery. – In any suit of chancery or equity, the court must direct an issue to be tried by a jury, upon motion of any party or of its own motion, with the costs for the jury trial to be apportioned to the parties (or counsels for the parties where §8.01-271.1 issues apply) as the jury may decide.

Witnessed: _____ Signed, Sworn and Affirmed: _____

Email Address (optional): _____ Name Printed: _____

Date: _____ Address: _____ City: _____ County: _____

Witnessed: _____ Signed, Sworn and Affirmed: _____

Email Address (optional): _____ Name Printed: _____

Date: _____ Address: _____ City: _____ County: _____

For more information, or to help with Petition, please contact: Moms4@JusticeUponJudges.org or Rights2Jury@Fathers4Life.us.