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RESTORING CONSTITUTIONAL GOVERNANCE IN AMERICA'S FAMILY COURTS

A Proposal for Congressional Investigation and Standards-Based Reform

A Congressional Policy Proposal

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Executive Summary

Family courts exercise one of the most consequential powers delegated to government: the authority to determine where children live, who may make decisions on their behalf, and under what circumstances the state may alter or restrict the parent-child relationship. Because that authority reaches a fundamental liberty interest without most of the procedural protections that accompany deprivations of liberty in other legal contexts, family court adjudication is properly understood as a civil rights matter, not solely a domestic relations one.

Unlike criminal courts or most areas of civil litigation, family courts operate through thousands of independently administered judicial systems. States establish statutory frameworks, but implementation frequently varies among judicial districts, and even between neighboring counties within the same state, through local court rules, administrative orders, courtroom practice, and broad judicial discretion.

The result is a governance structure in which similarly situated families may receive substantially different outcomes depending on geography, local practice, and individual judicial approach, rather than the consistent application of constitutional principles and evidence. For many litigants, meaningful review of these decisions is limited: proceedings often move faster than appellate courts can review them, and once a state judgment is final, federal district courts generally cannot function as an appellate tier reviewing that judgment.

This paper argues that family court adjudication should be understood not solely as a matter of domestic relations, but as a national governance question implicating due process, the integrity of fact-finding, child safety, and public confidence in the administration of justice. It identifies the specific, limited constitutional and statutory hooks by which Congress may act without displacing state authority over family law, and it proposes a modest, evidence-generating first step: a voluntary, Spending Clause-conditioned pilot program that uses structured, AI-assisted decision support, subject to full human judicial control and record-based review, to standardize the evidentiary and analytical process without displacing the judge as decision-maker.

The objective is not to federalize family law, and it is not to replace judges with automated systems. The objective is to give Congress a defensible basis to investigate whether the current governance architecture is producing outcomes consistent with the constitutional rights at stake, and to propose a mechanism, modeled on existing conditional-funding programs such as Title IV-D and the Adoption and Safe Families Act, for testing improvements before recommending anything resembling a national standard.

When family courts get this wrong, the consequences do not end with the case. Adverse Childhood Experiences research indicates that the effects compound across a child's development and, in documented patterns, across generations: children who grow up in prolonged conflict or unaddressed abuse carry an elevated risk of impaired attachment, self-regulation, and trust into their own adult lives and, eventually, their own parenting. This is a human-capital cost borne by the country as a whole, not only by the individual family, and it belongs in the same governance frame as the constitutional and fiscal costs described throughout this paper.

I. The National Governance Problem

A. Thousands of Courts, Thousands of Processes

The United States does not operate a single family court system. Family law is administered through thousands of local courtrooms governed by state statutes, judicial branch rules, local administrative orders, and courtroom customs that often differ substantially across jurisdictions, and at times within a single state. Litigants may encounter different filing requirements, evidentiary expectations, scheduling practices, and approaches to court-appointed professionals depending on the county in which their case is heard.

When the subject of litigation is property or contract rights, this variation is a familiar and, within limits, tolerable feature of federalism. When the subject is the custody of a child, the calculus changes. Adverse Childhood Experiences (ACE) research has established that childhood exposure to instability, conflict, and abuse produces measurable, often lifelong effects on health, development, and life outcomes. A family court decision that places a child in continued contact with a documented source of harm is not simply a legal error subject to eventual correction: in a meaningful share of cases the harm accrues faster than any available process can review it, and a later reversal on appeal cannot undo years already spent in an unsafe placement.

Research associated with the Saunders study and related domestic-violence scholarship indicates that a majority of the relatively small share of custody cases that become highly contested, as distinct from the much larger share resolved without trial, involve family-violence allegations that the current system is not reliably equipped to identify or weigh. This paper describes that finding directionally rather than assigning it a specific percentage, because no single, methodologically transparent figure could be traced for that purpose; the subsequent full report should carry a named source and methodology for any such proportion, not an estimate of uncertain origin.

That combination of stakes, volume, and limited review capacity is compounded by a practical access-to-justice barrier: the litigation, evaluation, and expert costs required to contest an unsafe custody arrangement are, for most parents, simply unaffordable. The result is that the families with the least financial capacity to correct an erroneous placement are frequently among the most exposed to one.

A further, related pattern deserves direct statement. Once a court has gotten a case wrong, the structural features described throughout this paper, deferential appellate review, limited data collection, and the immunity doctrine discussed in Section III.D, function collectively as a shield against correction, regardless of any individual actor's intent. This paper treats that as an institutional design finding, not a claim that courts or judges deliberately conceal error. A related and more direct contributor is the doctrine of litigation privilege, which shields attorney conduct in the course of litigation, including representations to the court, from most forms of civil liability. Combined with fee structures that can reward prolonged engagement, litigation privilege allows adversarial conduct, including unsupported allegations, to proceed largely without consequence to the attorney who advances it, at direct cost to the litigant and child on the other side. Section III.D addresses this alongside judicial and quasi-judicial immunity as a single, connected accountability gap.

B. Fundamental Rights Applied Through Broad Discretion

The Supreme Court has repeatedly recognized the parent-child relationship as a fundamental liberty interest protected by the Due Process Clause. Yet family courts routinely apply that protection through standards, most notably "the best interests of the child", that confer substantial discretion without a uniform evidentiary methodology or a consistent analytical framework across jurisdictions. That discretion is further mediated by a class of court-connected professionals, including guardians ad litem, custody evaluators, and reunification

providers, whose recommendations can carry significant, sometimes determinative, weight, while remaining subject to limited structured review.

C. The Accountability Gap

Judicial independence is a constitutional value, not a synonym for the absence of accountability. Appellate review of family court decisions is typically conducted under deferential standards, and the practical timeline of custody litigation means that many arrangements take lasting effect long before an appellate court can act. Once a state proceeding concludes, federal review is further constrained by jurisdictional doctrine discussed in Section III below. The cumulative effect is a class of decisions, touching a fundamental constitutional interest, that receives less structured external review than decisions in many other areas of law affecting property or liberty. This holds even where the underlying due process or civil rights violation is clear-cut: the absence of an available forum, not the strength of the underlying claim, is what closes off remedy in most cases.

D. The Human Cost

Every custody proceeding represents more than a legal dispute; it represents a determination about a child's developmental environment. The Center for Judicial Excellence, a nonprofit that has tracked media-reported cases since 2008, has documented approximately 950 to 980 children killed by a parent or parental figure in circumstances involving divorce, separation, custody, or visitation, a subset of which reportedly involved a family court granting or continuing contact despite a documented history of violence. This figure is drawn from news-coverage tracking rather than a government registry, and that absence is itself notable: no federal agency currently maintains a comparable count. That gap is, on its own, a governance finding, and Section IX recommends federal data collection designed specifically to replace advocacy tracking with an authoritative source.

Separately, and just as material to this paper's argument, protective parents who raise abuse allegations are, in a documented pattern, themselves at heightened risk of losing custody or access on theories such as parental alienation, when the underlying allegation is not credited. The domestic-violence literature describes this general pattern as post-separation abuse: a continuation of coercive or controlling conduct after a relationship ends, carried out in part through the custody proceeding itself rather than despite it. Family courts and their governing frameworks employ a recurring set of labels, among them abusive use of conflict, emotional impairment, parent-child contact problems, and parental alienation, that can have the practical effect of recharacterizing a reported safety concern as a defect in the reporting parent, closing off further inquiry into the underlying allegation. Section III.E proposes a due-process design standard, requiring a clear definition, an evidentiary standard, a challenge process, and a path to restoration, aimed directly at this pattern.

Some advocates have drawn an analogy to a pattern reported in parts of the United Kingdom and European Union, in which individuals who report sexual assault have in some instances faced legal consequences connected to the act of reporting. The analogy is illustrative, not a claim of legal equivalence between distinct legal systems; the shared governance concern is that an institution which responds to the person raising a concern rather than to the concern itself is not functioning as a fact-finder, whatever its formal design intends.

Cases that reach a contested trial are, by most available estimates, a small share of custody matters overall, commonly cited in the low single digits as a percentage of filings. A small percentage is not a small number: applied to the population of children who pass through custody proceedings nationally each year, even a low single-digit share of contested, high-risk cases represents tens of thousands of children, which is the relevant

figure for assessing stakes, not the percentage alone. These cases are cited because they illustrate, concretely, the stakes of inconsistent risk assessment and fact-finding, and because they motivate the population-level research question Congress is best positioned to ask: across the children who pass through contested custody proceedings annually, what outcomes is the current governance structure producing, and who is measuring it? A note on sourcing remains important here: this paper does not adopt figures describing the scale of the family court system in economic terms, or a specific national count of affected children, without a traceable, independent methodology. Advocacy estimates of both kinds circulate widely; this paper recommends the federal data collection described in Section IX precisely so that Congress is not left choosing among competing, unverified figures.

II. Why Congress Has Jurisdiction, and Where It Does Not

Family law is a core area of state police power, and any credible proposal must state plainly where federal authority ends before it explains where it begins. This section identifies three distinct bases on which Congress may act, and two doctrines that meaningfully constrain how it may act.

A. The Investigative Power

Congress's power to investigate is broad and does not depend on having already identified specific legislation it intends to pass. The Supreme Court has long recognized that the power to investigate is inherent in the legislative function, extending to inquiries into the administration of existing laws and the need for new ones (*McGrain v. Daugherty*, 273 U.S. 135 (1927)). This is the least constitutionally contested basis for action described in this paper: Congress may direct the Government Accountability Office or the Congressional Research Service to study family court governance nationally without resolving, at the outset, any question about the scope of subsequent legislative authority.

B. The Spending Power

Congress has repeatedly used its Spending Clause authority to condition federal funds on state adoption of uniform standards in areas of traditional state control, including family law. Title IV-D of the Social Security Act (42 U.S.C. § 651 et seq.) conditions federal funding on state adoption of uniform child support enforcement standards and guidelines. The Adoption and Safe Families Act similarly conditions child welfare funding on state compliance with defined permanency and safety timelines. This is the most defensible mechanism available for the framework proposed in this paper: a voluntary program in which states that accept federal funds agree to adopt defined standards for evidentiary practice, data reporting, recusal, and structured decision support.

This power is not unlimited. *South Dakota v. Dole*, 483 U.S. 203 (1987), requires that conditions be related to the federal interest in the funded program and not be so coercive as to leave states no real choice but to accept (see also *NFIB v. Sebelius*, 567 U.S. 519 (2012), invalidating a Medicaid expansion condition as unconstitutionally coercive). Any pilot or standards program proposed under this authority must therefore be structured as a genuinely optional grant, not a de facto mandate tied to funding states cannot afford to lose.

C. Section 5 Enforcement Power: A Narrower and Riskier Path

Congress also holds power under Section 5 of the Fourteenth Amendment to enact appropriate legislation enforcing due process and equal protection guarantees against the states. This power is real but has been narrowed by the requirement that legislation be "congruent and proportional" to a documented pattern of constitutional

violation (*City of Boerne v. Flores*, 521 U.S. 507 (1997)). Congress should approach this path with caution: in *United States v. Morrison*, 529 U.S. 598 (2000), the Court struck down the civil remedy provision of the Violence Against Women Act, enacted on the strength of an extensive congressional record, as exceeding both the Commerce Clause and Section 5 authority, in part because the remedy ran against private individuals rather than state actors. Any Section 5-based proposal in this space should be limited to obligations imposed on state actors, supported by a substantial and well-documented record, and should not be presented to Congress as a low-risk option. It is included here for completeness, not as the paper's primary recommendation.

D. Two Doctrines That Limit the Federal Courts, Not Congress

Two related but distinct jurisdictional doctrines are frequently, and imprecisely, invoked in this debate. Both limit access to the federal courts as a forum; neither limits Congress's legislative or spending authority.

- The Rooker-Feldman doctrine bars federal district courts from exercising appellate jurisdiction over final state-court judgments (*Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983)). It explains why a litigant cannot ask a federal district court to overturn a state custody decree after the fact. It says nothing about whether Congress may condition funding or direct data collection prospectively.
- The domestic relations exception bars federal courts from exercising diversity jurisdiction to issue divorce, alimony, or child custody decrees (*Ankenbrandt v. Richards*, 504 U.S. 689 (1992)). This is a distinct, older doctrine grounded in diversity jurisdiction, not federal-question jurisdiction, and it likewise does not constrain Congress's Article I authority.

Precision on this point matters. A paper that conflates these doctrines, or that overstates either as a bar on congressional action, will not withstand review by committee counsel. The correct claim is narrower and more defensible: these doctrines close off after-the-fact federal litigation as a check on individual state custody decisions, which is precisely why Congress, through its investigative and spending powers, is one of the few institutions positioned to address the systemic pattern rather than the individual case.

III. Structural Failures in the Current Governance Architecture

A. A Delegation Chain Without Matching Accountability

Family court is a creature of state statute, but its day-to-day operation is shaped less by statute than by what happens after delegation: legislatures establish a broad statutory framework and delegate implementation to the judiciary; the judiciary in turn shapes practice through court rule-making processes, often informed by professional associations; appellate precedent layers on top. At each step in this chain, operational authority moves further from direct legislative accountability, while the professional and institutional actors closest to case outcomes, court rule committees, court-appointed evaluators, and guardians ad litem, face the least structured external review.

This is best understood as a governance design problem rather than an indictment of individual actors. Broad delegation of implementation authority is a common and often necessary legislative choice; the issue is that family law delegation has rarely been paired with the reporting, sunset, or outcome-measurement requirements

that accompany comparable delegations in other regulated areas of federal-state cooperation, such as child welfare financing under Title IV-E.

A specific and documentable example of this delegation chain in operation is the role of interdisciplinary professional associations, most notably the Association of Family and Conciliation Courts (AFCC), whose published model standards and practice guidelines have directly informed custody-evaluation and parenting-coordination guidelines adopted in numerous states. Bar associations and judicial associations play a comparable role with respect to attorney conduct and judicial rule-making. This paper does not characterize that influence as improper; professional associations routinely inform regulatory practice in many fields. The governance concern is structural: standards developed by an association with an institutional stake in the system's continued operation can become de facto binding practice with limited legislative visibility and no electoral accountability, which is precisely the rule-making transparency gap described in Section III.B.

B. Rule-Making Visibility

Substantive policy in family law is frequently embedded in court rules and local administrative orders rather than in statute. Rule-making processes typically receive less public notice, less legislative debate, and less press coverage than statutory amendments, even where the practical effect on litigants is equivalent or greater. Congress should treat the visibility of rule-making as an independent governance variable worth measuring, separate from the content of any particular rule.

C. Incentive Structures Warrant Empirical Study, Not Assumption

A recurring argument in practitioner and advocacy literature is that court-appointed professionals, evaluators, guardians ad litem, reunification providers, are compensated in ways that may reward prolonged engagement over swift resolution. This is a plausible and testable governance hypothesis; it is not, on the present record, an established empirical finding. Before this claim is used to justify specific legislative remedies, it should be tested against actual compensation structures, billing data, and case-duration data across a sample of jurisdictions. Congress is well positioned to commission exactly this kind of study through the GAO, and Section IX recommends that it do so.

A related compensation question worth including in that study: some court-appointed services, most notably individual and family counseling and, in some jurisdictions, components of reunification therapy, may be billable to a family's health insurance, while forensic services performed for the purpose of the litigation itself, such as custody evaluations, are frequently excluded from health-insurance coverage because they are legal rather than treatment services. Where billing structures blend these categories, or where a provider holds both a treatment and an evaluative role in the same case, that dual role is itself worth examining as a potential source of incentive conflict, distinct from the general compensation question above.

D. Immunity Doctrine as a Structural, Not Incidental, Feature

A related governance gap deserves direct treatment: state-court judges enjoy absolute judicial immunity from civil suit for acts taken in their judicial capacity, even where the act is alleged to be erroneous, made in bad faith, or in excess of jurisdiction (*Stump v. Sparkman*, 435 U.S. 349 (1978); *Mireles v. Waco*, 502 U.S. 9 (1991)). Many jurisdictions extend a comparable quasi-judicial immunity to guardians ad litem and court-appointed evaluators precisely because they function as arms of the court. As a result, civil litigation, including suits under 42 U.S.C. § 1983, is not, as a practical matter, an available accountability mechanism for the great majority of family court

decisions, however erroneous. This paper does not recommend proposing Section 1983 litigation as an accountability tool; existing immunity doctrine forecloses it in nearly all ordinary cases. It instead treats the scope and rationale of judicial and quasi-judicial immunity as a subject for the GAO study recommended in Section IX, and recommends that any accountability mechanism Congress considers be built through data reporting, funding conditions, and administrative review rather than through an expanded private right of action, which would face the same doctrinal ceiling that Morrison illustrates in a related context.

E. Administrative Labels Applied Without Defined Process

Family courts, like other government bodies, use administrative labels, terms describing a litigant's conduct or credibility, such as characterizations of a parent as obstructive or uncooperative, that can carry significant practical consequences for custody and visitation without the procedural protections attached to a formal adjudication of misconduct such as abuse. A useful governance standard, drawn from practitioner commentary on this problem, holds that any court-applied label materially restricting a parent's access to a child should carry four minimum features: a clear definition, an articulated evidentiary standard, a defined process for the litigant to challenge the label, and a defined path back from it. Congress should treat this as a candidate drafting standard for the pilot program in Section VIII rather than as settled law; it is offered here as a workable due-process design principle, not as an existing legal requirement.

IV. Constitutional Issues

A. The Liberty Interest Is Well Established

The Supreme Court has recognized the parent-child relationship as a fundamental liberty interest in a consistent line of cases: *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters,* 268 U.S. 510 (1925); *Stanley v. Illinois*, 405 U.S. 645 (1972); *Santosky v. Kramer*, 455 U.S. 745 (1982) (requiring clear and convincing evidence before parental rights may be terminated); and *Troxel v. Granville*, 530 U.S. 57 (2000) (plurality recognizing a fundamental right of parents to make decisions concerning the care, custody, and control of their children, while producing no majority rationale). *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), further recognized that indigent parents cannot be denied access to appellate review of a termination decision solely for inability to pay record preparation costs; this is directly relevant to this paper's concern about the practical availability of appellate review.

The applicable due process framework for evaluating what process is constitutionally required in a given proceeding is the balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), weighing the private interest affected, the risk of erroneous deprivation under current procedures and the value of additional safeguards, and the government's interest including administrative burden. This test, rather than a claim that current procedures are categorically unconstitutional, is the appropriate frame for any argument that additional procedural safeguards are warranted in high-stakes custody and termination proceedings.

B. Equal Protection Is the Weaker Constitutional Hook, and Should Be Recast

Framing jurisdictional and county-to-county variation as an Equal Protection Clause problem is intuitively appealing but doctrinally fragile, and this paper recommends against leading with it. Equal Protection doctrine generally tolerates significant variation in law and procedure across states and even across counties within a state, as an inherent and largely unavoidable feature of federalism, absent a suspect classification or a fundamental-right burden triggering heightened scrutiny. Variation alone, without more, is unlikely to be treated by a reviewing court

as an Equal Protection violation. The more defensible framing, used throughout this paper, is that inconsistent process across jurisdictions is a due process and rule-of-law consistency concern, not an equal protection claim. Congress should be advised accordingly, since an early over-reliance on an Equal Protection theory is one of the more likely points at which committee counsel or opposing witnesses would discount the paper's legal rigor.

C. What This Section Does Not Claim

This paper does not claim that current family court practice is unconstitutional as a categorical matter, and it does not ask Congress to make that finding. It claims that the process by which fundamental liberty interests are adjudicated in this area varies ***more,*** and is reviewed ***less***, than in comparable areas of law, and that this gap is measurable, worth investigating, and amenable to a modest, voluntary, funding-based remedy of the kind described in Sections VII and VIII.

V. The Proposed Framework: Standardization Through Structured Decision Support

Part of the case for structured decision-support technology is administrative capacity, not consistency alone. Contested custody litigation, not divorce filings generally, the large majority of which resolve without a trial, has grown in volume and complexity in many jurisdictions, while judicial and guardian ad litem bandwidth has not grown to match it. A tool that organizes the evidentiary record, applies validated risk factors, and checks for internal inconsistency can meaningfully expand what a single judge or guardian ad litem can responsibly review in the time available, without changing who is responsible for the decision itself. This capacity rationale supports, but does not replace, the paper's primary justification below: consistency, explainability, and a reviewable record.

Fully autonomous AI adjudication, in which a system would function as the primary analytical engine and produce findings of fact and law for judicial ratification, may well become technically feasible in the near future, and Congress should expect proposals along those lines to arrive whether or not it acts first. The responsible starting point is narrower and more defensible: establish AI as a standardization and audit tool now, under full human judicial control, rather than wait for a more aggressive model to arrive without a governance framework already in place. This section explains why a primary-engine model would fail on due process and constitutional grounds if it were proposed today, and sets out the audit-layer alternative this paper recommends instead.

A. Why a Primary-Engine Model Would Not Work

First, due process in this context has been understood by the Supreme Court to require that the decision-maker actually and independently weigh the evidence and arguments a party presents, not simply ratify a prior determination absent a heightened showing (see, e.g., *Goldberg v. Kelly*, 397 U.S. 254 (1970), on the requirement of a meaningful, individualized hearing before deprivation of a protected interest). A structure in which a judge may depart from an automated recommendation only by clearing a defined, elevated justification threshold functionally shifts the burden of persuasion away from the litigant and onto the judge, inverting who the decision-maker actually is in practice. Second, the judicial power exercised by a state court, the making of findings of fact and conclusions of law in an adjudication, has consistently been treated as non-delegable to a non-judicial actor, whether that actor is a private board, a special master exceeding an advisory role, or an automated system. Advisory input from non-judicial actors is well established (magistrates, special masters, guardians ad litem); the outsourcing of the adjudicative act itself is not.

B. The Revised Model: AI as Standardization and Audit Layer

The revised proposal treats structured decision-support technology as an evidentiary and analytical scaffolding tool, not a decision-maker. Under this model, the system would:

- Compile and organize the pleadings, admissible evidence, applicable statutes, and controlling precedent into a structured record;
- Apply validated, legislatively identified risk-assessment instruments (drawing on the peer-reviewed literature on domestic violence risk, including the body of research associated with the Saunders study, and on Adverse Childhood Experiences research) to flag relevant risk factors present in the record, without generating a disposition;
- Flag internal inconsistencies, evidentiary gaps, and departures from the jurisdiction's own published evidentiary standards;
- Flag patterns that may indicate inconsistent treatment of similarly situated litigants within the same court, or other indicators warranting a bias review, for the judge's express, on-the-record consideration, applied to every recommendation reaching the court, including those from guardians ad litem and evaluators, not only to the judge's own disposition;
- Generate a structured, machine-readable and human-readable summary that the judge must expressly address, on the record, in a written order.

Under this model, the judge remains the sole finder of fact and law. The system's output does not carry a presumption of correctness, and the judge's obligation is not to justify departure from a recommendation but simply to address, in a reasoned and appealable order, the material contained in the structured record, much as judges today are already expected to address material evidence and controlling authority. This preserves the paper's core consistency and transparency objectives (uniform application of evidentiary standards and validated research, a documented and reviewable record) while avoiding the due process and non-delegation exposure a primary-engine model would carry. It also produces a more useful appellate record than current practice in many jurisdictions, which should, if anything, narrow rather than widen the accountability gap described in Section III.

C. Explainability as a Design Requirement, Not an Afterthought

Any system fitting this description must be built for explainability from the outset. An opaque risk score or recommendation would recreate, in a more technologically sophisticated form, the same accountability problem this paper identifies in current practice. Every output the system generates should be traceable to a specific rule, statute, precedent, or named research instrument, and that traceability should itself be a mandatory condition of any funding tied to adoption of the framework.

VI. Pilot Program

Congress should not be asked to adopt a national standard on the strength of this paper alone. The recommended first step is a voluntary, time-limited, Spending Clause-conditioned pilot, structured to generate the evidence a national standard would require.

A. Structure

- Voluntary participation by states or, within a state, by specific judicial districts, consistent with Dole's requirement that conditions not be coercive;

- Funding tied to adoption of: published evidentiary standards for custody proceedings; mandatory recorded proceedings; binding recusal standards addressing financial and professional conflicts among judges and court-appointed professionals; and the structured decision-support and audit-layer framework described in Section V;
- Independent, pre-registered evaluation design, run by a body independent of the participating court systems, measuring defined outcome metrics over a period of no less than three to five years;
- A sunset and reauthorization requirement, so that continuation of the pilot, and any later proposal to expand it, depends on documented evidence of outcomes rather than continuation by default;
- Mandatory interim outcome reporting at twelve-month intervals throughout the evaluation period, so that Congress and the public receive regular findings rather than a single report at the end of a multi-year term.

A distinction worth stating plainly: the baseline accountability reforms, recorded proceedings, recusal standards, published evidentiary standards, and the four-part standard for administrative labels described in Section III.E, should become binding conditions of participation immediately upon a jurisdiction's enrollment. Only the structured decision-support component itself, and the measurement of its effect on outcomes, runs on the multi-year evaluation timeline described below. The pilot's evaluation period is a constraint on how quickly Congress can respectably claim the AI-assisted layer works; it is not, and should not be presented as, a delay on adopting the accountability reforms that do not depend on that technology at all.

B. What the Pilot Is Designed to Learn

The pilot should be designed to answer, with real data, the questions this paper can currently only frame: whether structured decision support measurably improves consistency of outcomes across similarly situated cases; whether it affects the rate or nature of appellate reversals; whether it affects time to case resolution; and whether it affects documented child-safety outcomes. Congress should resist recommending nationwide adoption of any specific technical framework before this data exists.

The evaluation design should include, at minimum, the following outcome categories:

- Victim and child safety outcomes, including repeat protective-order filings, documented incidents following a custody order, and, where available, the child-homicide and serious-injury tracking discussed in Section I.D;
- Where a finding of past abusive conduct has been made, evidence of documented behavioral change by that parent and its relationship to subsequent parenting-time outcomes, rather than measuring compliance with a program alone;
- A cost-and-necessity analysis of court-appointed third-party professionals, assessing whether their continued, routine involvement in every case improves outcomes relative to cases resolved without them, and separately assessing rates of relevant abuse-dynamics and trauma-informed training among evaluators and guardians ad litem currently practicing in the pilot jurisdictions;
- Attorney conduct outcomes, including the frequency and disposition of professional-responsibility complaints arising from pilot cases, as a proxy for whether litigation privilege is functioning as designed or as a shield for misconduct in this specific context.

C. Funding Accountability: Lessons From Existing Federal Programs

Any new federal funding stream in this area should be designed against the documented history of existing federal family-violence funding programs, rather than assuming compliance by default. Department of Justice Inspector General audits of Office on Violence Against Women (OVW) grantees have identified significant compliance

failures in sampled reviews, including a large majority of audited recipients rated "Generally Non-Compliant" and millions of dollars in unallowable or unsupported costs; separate, well-documented instances of grant fund mismanagement at specific state-level grantees have also been reported publicly. On a distinct track, U.S. Citizenship and Immigration Services issued updated policy guidance in December 2025 citing a substantial multi-year increase in Violence Against Women Act immigration self-petitions and fraud concerns sufficient to prompt tightened evidentiary requirements.

Neither finding is a reason to withhold funding from documented survivors of abuse, and this paper does not recommend that. It is a reason to build mandatory, independent audit and outcome-reporting requirements into any new pilot funding from its first appropriation, rather than adding them retroactively after problems surface, as has occurred in adjacent federal programs. This should be treated as a design requirement for the pilot's grant terms, not as a broader critique of the Violence Against Women Act's underlying purpose.

VII. Legislative Recommendations

The following recommendations are organized by the branch or level of government primarily responsible for acting on them. Several are corrected or narrowed versions of proposals that appear, in less precise form, in practitioner and advocacy literature on this subject; the corrections are noted where relevant.

A. Legislative (Congressional) Levers

- Direct the GAO to conduct a nationwide study of family court governance structures, including delegation of authority to court rule-making bodies, compensation structures for court-appointed professionals, and the availability and use of judicial and quasi-judicial immunity, using Congress's investigative authority under McGrain v. Daugherty.
- Establish a voluntary Spending Clause-conditioned grant program, modeled structurally on Title IV-D and the Adoption and Safe Families Act, funding the pilot program described in Section VI.
- Direct federal data collection on family court custody-proceeding outcomes, modeled on the existing National Child Abuse and Neglect Data System (NCANDS) infrastructure used for dependency and welfare data, to close the population-level data gap identified in Section I.D.
- Require, as a condition of any pilot funding, periodic reauthorization based on outcome data rather than indefinite continuation.

B. Judicial and Administrative Levers (to be adopted by participating jurisdictions as funding conditions, not imposed directly by Congress)

- Binding recusal standards addressing financial and professional conflicts of interest involving judges and court-appointed professionals;
- A defined evidentiary standard, rather than a purely deferential standard, for judicial review of guardian ad litem and evaluator recommendations;
- Mandatory recorded proceedings in custody matters;
- Published, jurisdiction-specific evidentiary standards governing custody determinations;
- Adoption of the four-part standard described in Section III.E for any administrative label materially restricting parental access, as a condition of pilot participation.

C. Federal Levers, Corrected

- This paper does not recommend expanding 42 U.S.C. § 1983 as an accountability mechanism against judges or quasi-judicial actors; existing absolute and quasi-judicial immunity doctrine forecloses this path in nearly all cases, and proposing it without acknowledging Stump v. Sparkman and Mireles v. Waco would materially undermine the paper's credibility.
- Any future Section 5 enforcement-power legislation in this space should be approached only after the GAO study produces the kind of documented record contemplated by City of Boerne, and should be drafted with United States v. Morrison's limits squarely in view.

D. Cultural and Professional Levers

- Public reporting requirements for court-appointed professionals as a condition of pilot funding, distinct from self-regulation by professional associations with an institutional interest in the current structure;
- Support for independent, peer-reviewed development of evaluation standards for custody evaluators and guardians ad litem.

VIII. Anticipated Objections and Responses

Objection 1: This is federal overreach into a core area of state authority.

Response: The paper's primary recommendations rest on the investigative power and the Spending Clause, both well-established bases for federal involvement in areas of traditional state authority, and both used previously in this exact domain through Title IV-D and ASFA. Participation in the pilot program is voluntary. The paper explicitly declines to recommend the more aggressive Section 5 pathway without substantially more evidence.

Objection 2: "AI in family court" will not survive public or judicial skepticism.

Response: The revised framework in Section V does not authorize an automated system to decide cases. It requires the system to organize evidence and flag issues that the human judge must then address on the record, expanding rather than replacing judicial reasoning. This distinction should be maintained rigorously in any further development of this proposal, since collapsing it is the most likely way it loses credibility.

Objection 3: The human-cost examples are anecdotal and cannot support systemic claims.

Response: Correct, and the paper does not rely on them for that purpose. They are offered as motivating illustrations for a data-collection recommendation, not as proof of a systemic failure rate. The paper explicitly recommends that Congress commission the population-level data that does not currently exist, rather than rely on estimates of uncertain provenance.

Objection 4: Existing remedies (appeal, civil rights litigation) are sufficient.

Response: Section III.D addresses this directly. Appellate review operates under deferential standards and a compressed practical timeline; civil litigation is foreclosed in nearly all cases by judicial and quasi-judicial immunity. For most parents, that combination leaves no meaningfully available path to correct an erroneous decision before its practical effects are locked in. This paper treats that as a documented structural gap in the current system, not as a claim about any individual judge's motives, and it is precisely why a data-driven, funding-based governance intervention is the more realistic path than continued reliance on appeal or litigation.

IX. Research Agenda for the Full Report

This paper identifies, rather than resolves, the following research needs for the subsequent 75-100 page report:

- A GAO or CRS-commissioned empirical study of court-appointed professional compensation structures and case-duration data across a representative sample of jurisdictions;
- A full 50-state survey of evidentiary standards, recusal rules, and appellate review standards applicable to guardian ad litem and evaluator recommendations;
- A review of the peer-reviewed domestic violence risk-assessment literature, including the Saunders study and related research, sufficient to identify which instruments could responsibly inform the structured decision-support framework in Section V;
- A review of Adverse Childhood Experiences research as it bears specifically on custody and visitation risk assessment, distinguishing established findings from extrapolations not yet validated for this use;
- International comparisons, particularly jurisdictions that have adopted structured or actuarial risk-assessment tools in family law, together with an honest accounting of their documented failure modes;
- A legal memorandum tracing the outer limits of Section 5 enforcement power in this area post-Morrison, including a survey of any subsequent lower-court treatment;
- A study of NCANDS and comparable federal data infrastructure as a model for the family-court outcome data system recommended in Section VII.A;
- An independent review of the Center for Judicial Excellence's child-homicide tracking methodology, to determine what a federally maintained equivalent would require;
- A review of Department of Justice Inspector General audits of Office on Violence Against Women grantees, to inform the funding-accountability terms described in Section VI.C.

X. A Note on Sequencing

This paper is written for federal audience and federal levers, and its jurisdictional caution in Section II reflects that. A parallel, and in some respects more tractable, project is a state-level adaptation of the same framework, for example, in Washington State, where a legislature acting on its own courts does not need the Spending Clause or Section 5 workarounds described in Section II at all, since it would be regulating its own judicial branch directly, subject only to that state's own constitutional constraints. The recommendation is to complete the federal groundwork first, since the legal and evidentiary work developed here, including the corrected AI-framework model in Section V, the four-part label standard in Section III.E, and the funding-accountability lessons in Section VI.C, transfers directly into a state bill and does not need to be redeveloped from scratch.

MEMORANDUM

TO: Chairman Jim Jordan, House Judiciary Committee
RE: Request to Consider a GAO Study on Family Court Governance and Accountability
DATE: July 17, 2026

THE ASK

We respectfully request that the Committee direct the Government Accountability Office (GAO) to conduct a comprehensive study of family court governance structures nationwide, with particular attention to:

1. The delegation of rule-making authority from state legislatures to state courts, judicial administrative bodies, and professional associations;
2. The compensation, funding, and incentive structures governing court-appointed evaluators, guardians ad litem, parenting coordinators, and other court-appointed professionals; and
3. The scope and application of judicial and quasi-judicial immunity, and its effect on the availability of meaningful remedies for alleged constitutional violations arising from child custody and family court proceedings.

This request is limited to congressional oversight and fact-finding. It does not seek federal legislation governing domestic relations or the substantive law of family courts. Rather, it seeks an independent assessment of institutional governance, accountability, and due process protections to assist Congress in evaluating whether existing structures adequately safeguard constitutional rights.

We respectfully request that the Committee direct a Government Accountability Office study of family court governance structures nationally, specifically: the delegation of rule-making authority from state legislatures to courts and professional associations; compensation and incentive structures for court-appointed evaluators and guardians ad litem; and the scope of judicial and quasi-judicial immunity as it affects available remedies for constitutional violations in custody proceedings. This is a request for investigation, not for federal legislation over family law.

WHY THIS FALLS WITHIN THE COMMITTEE'S INTEREST

Family courts make decisions that can permanently change the relationship between parents and their children. Yet there is often little practical oversight of those decisions. Appeals are expensive, take months or years, and judges are generally given broad discretion, so lower court decisions are rarely overturned. In most cases, judges and many court-appointed professionals are legally immune from lawsuits for actions taken in the course of their official duties. As a result, families who believe their constitutional rights were violated often have few meaningful avenues for review or relief. Despite the importance of these cases, there is no comprehensive national system for tracking outcomes, identifying patterns, or evaluating whether the system consistently protects due process and other constitutional rights. Family court decisions reach a fundamental liberty interest, the parent-child relationship, through processes that vary significantly across jurisdictions and receive limited structured review. Appellate review is deferential and often too slow to matter practically; civil litigation is foreclosed in nearly all cases by absolute judicial immunity and quasi-judicial immunity extended to court-appointed professionals. The result is a category of decisions affecting due process and civil rights that operates with less external accountability than most other areas of state governance touching federal constitutional interests, and with no federal data source tracking outcomes at all.

These concerns are not new to the Committee. Congress already oversees federal programs where accountability, oversight, and the proper use of public funds are important issues. In recent years, Department of Justice Inspector General audits found significant compliance problems among some recipients of Office on Violence Against Women grants. Separately, U.S. Citizenship and Immigration

Services reported a sharp increase in Violence Against Women Act (VAWA) self-petitions and issued new anti-fraud guidance in December 2025. These examples show why independent oversight matters. If the federal government expands its role in this area, strong auditing, reporting, and accountability measures should be built into the system from the beginning—not added later after problems have already occurred. This pattern intersects directly with issues the Committee already oversees: unaccountable institutional delegation, and documented compliance failures in adjacent federally funded programs. DOJ Inspector General audits of Office on Violence Against Women grantees have found significant, and in some samples widespread, compliance failures; USCIS separately identified a substantial rise in Violence Against Women Act self-petition filings sufficient to prompt new anti-fraud guidance in December 2025. Any future federal role in this space should be built with independent audit and reporting requirements from the outset, not added after the fact.

ON THE USE OF ARTIFICIAL INTelligence

The attached paper discusses artificial intelligence (AI) only as a tool to help judges and court staff—not to make decisions. Under the approach described, AI would help organize case files, identify missing information, compare facts with established research, and flag possible inconsistencies or bias in the record. Its purpose would be to improve due process, protect constitutional rights, and promote the safety of children and victims.

The judge would remain fully responsible for every decision. AI would not determine the facts, apply the law, or decide the outcome of any case. We emphasize this point because it is essential to understanding the proposal and to avoid the mistaken impression that we are asking computers to replace judges.

WHAT WE ARE NOT ASKING FOR

We are not asking Congress to take over family law or require states to change how they handle custody or domestic relations cases. Family law has traditionally been the responsibility of the states.

At this time, we are asking only for a Government Accountability Office (GAO) study to examine how family courts operate across the country. The attached paper discusses a possible future voluntary pilot program that states could choose to participate in, but that idea is offered only as a discussion for the future. It is **not** part of this request.

BACKGROUND

The attached paper explains the constitutional and legal basis for this request, including the limits on federal authority in family law. It also identifies the narrow circumstances in which Congress may examine issues involving constitutional rights and due process.

Finally, the paper brings together information from identified public sources to document the scope of the concerns raised by parents, attorneys, and researchers. The purpose of the requested GAO study is to provide Congress with an independent, fact-based assessment of these issues so that future policy discussions can be based on reliable national data rather than anecdotal accounts.

ON THE USE OF ARTIFICIAL INTELLIGENCE

Where the attached paper discusses artificial intelligence, it proposes AI strictly as a tool, not as a decision-maker. The model described would use AI to organize case records, apply validated risk-assessment research, flag evidentiary gaps, and check for inconsistency and bias, all directed at strengthening due process, civil rights, and child and victim safety. The judge remains the sole finder of fact and law in every case, required to address the record on the record. We raise this distinction explicitly

and early because it is central to how the Committee should evaluate any future pilot, and because collapsing it is the fastest way this proposal could be misread.

WHAT WE ARE NOT ASKING FOR

We are not asking Congress to federalize family law or to mandate that states adopt any specific procedure. Family law remains a core area of state authority. The attached paper proposes, as a possible next step following the GAO study, a voluntary, Spending Clause-conditioned pilot program, modeled structurally on Title IV-D and the Adoption and Safe Families Act, that states could elect to join. No such program is being requested at this time.

BACKGROUND

The attached paper, prepared for Committee review, sets out the constitutional and jurisdictional basis for this request in full, including the specific limits on federal authority in this area (the Rooker-Feldman doctrine, the domestic relations exception, and the narrower path under Section 5 of the Fourteenth Amendment). It also documents, with named sources, the scale of the problem this request is meant to help Congress measure accurately for the first time.

CONTACT

I welcome the opportunity to brief Committee staff directly.

Respectfully submitted,



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