

# RELIGION AND CHILD CUSTODY

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*While participation in organized religion is becoming less common in the United States, it remains important for many Americans. This Article hopes to demonstrate the effects of religion on a particular group of vulnerable Americans: married couples with children going through the divorce process. The Article draws upon divorce pleadings and other records to show how indicators of religious affiliation (or disaffiliation) in custody agreements and orders affect the course of the legal proceedings in the five years following the divorce filing. The study draws upon data taken from Arizona and Indiana, as these two states have comparable child support guidelines, have substantial experience in making shared parenting awards, and allow remote access to electronic records.*

*The study explores the correlation between religion and the following divorce-related issues: domestic violence, “fault” divorce, shared parenting, stability of shared-parenting decrees, length of marriage, and age of children. It concludes that divorcing couples specifying religious upbringing in their parenting plans tends to be more affluent, have fewer reports of domestic violence, settle cases before litigation more often, share custody more equally, and come from lengthier marriages. These couples were also more likely to divorce alleging substance abuse and were more likely to seek reductions of the noncustodial parent’s time with the children. While the pattern is complex, these parents are thoughtful, divorcing only when needed and minimizing the conflict that their children experience.*

## TABLE OF CONTENTS

|      |   |      |
|------|---|------|
| I.   | INTRODUCTION .....                      | 1370 |
| II.  | THE STUDY: THE DATA.....                | 1372 |
| III. | THE FINDINGS.....                       | 1380 |
|      | A. Religion and Domestic Violence ..... | 1380 |
|      | B. Religion and “Fault” Divorce.....    | 1382 |

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|     |   |      |
|-----|---|------|
|     | <i>C. Religion and Shared Parenting</i> .....                     | 1383 |
|     | <i>D. Stability of Shared-Parenting Decrees</i> .....             | 1385 |
|     | <i>E. Religion, Lengthier Marriages, and Older Children</i> ..... | 1386 |
| IV. | DIRECTIONS FOR FUTURE RESEARCH .....                              | 1387 |
| V.  | CONCLUSION .....  | 1390 |

## I. INTRODUCTION

While a recent survey reveals that adherence to organized religion is becoming less common for Americans,<sup>1</sup> it still remains important for many in the United States. The questions of how to measure religious affiliation,<sup>2</sup> whose religious needs within a family should be considered,<sup>3</sup> and how to identify the causes for the decline in adherence,<sup>4</sup> are beyond the scope of this paper. What I do hope to accomplish here is to show some of the effects of religion on a particular group of vulnerable Americans, those going through the divorce process, as they self-identify not through surveys, but through divorce pleadings and parenting agreements. While some will rely more on faith during such difficult times, whatever stigma remains<sup>5</sup> for divorcing parents may cause others to withdraw from church affiliation,<sup>6</sup> particularly when they seek to remarry.<sup>7</sup> Other work has shown that when both spouses are similarly religious,

1. Press Release, Pew Res. Ctr., New Pew Research Center Study Examines America's Changing Religious Landscape (May 12, 2015), available at <http://www.pewforum.org/2015/05/12/new-pew-research-center-study-examines-americas-changing-religious-landscape> (reporting that the percentage identifying as Christians dropped eight percentage points in seven years to 70.6%, while those identifying as unaffiliated rose six to 22.8%).

2. Pew does this using nationally representative survey data, as do other datasets frequently used by academics. Other data comes from religious organizations themselves (through church membership, rolls baptisms, funerals and marriages, offering envelopes, etc.). The U.S. Census does not collect such data. See *id.* While the most recent report does not detail this, some studies measure the importance of religion in respondents' lives, the frequency of attendance at services or meetings of religious groups, reliance on daily prayer or the Bible. See, e.g., SUSAN CRAWFORD SULLIVAN, LIVING FAITH: EVERYDAY RELIGION AND MOTHERS IN POVERTY 27–65 (2011).

3. I have made a stab at this in Margaret F. Brinig, *Children's Beliefs and Family Law*, 58 EMORY L.J. 55 (2008).

4. Pew Res. Ctr., *supra* note 1, notes declines in most Christian religious denominations and all regions of the country. They are particularly acute in the Catholic Church, which accounts for a plurality of the shifting of one faith to another, and among young, non-Hispanic white people, who are far more likely to be in the unaffiliated group. *Id.* A number of publications suggest that formal affiliation may be far less common among unmarried, poor families (a number increasing dramatically in the United States). See, e.g., KATHRYN EDIN & TIMOTHY J. NELSON, DOING THE BEST I CAN: FATHERHOOD IN THE INNER CITY (2013); SULLIVAN, *supra* note 2; W. Bradford Wilcox & Nicholas H. Wolfinger, *Then Comes Marriage? Religion, Race and Marriage in Urban America*, 36 SOC. SCI. RES. 569 (2007).

5. See, e.g., Robert Joseph Taylor & Linda M. Chatters, *Church Members as a Source of Informal Social Support*, 30 REV. RELIGIOUS RES. 193, 200 (1988) (suggesting some stigma still remains).

6. *Id.* at 197 tbl.1 (National Survey of Black Americans showing divorced less likely to receive support).

7. See, e.g., Paul M. de Graff & Matthijs Kalmijn, *Alternative Routes in the Remarriage Market: Competing-Risk Analyses of Union Formation after Divorce*, 81 SOC. FORCES 1459, 1466, 1488–89 (2003) (suggesting that religion pulls two ways, since people are less apt to cohabit if religious and therefore more likely to marry; prior studies are inconsistent but show that Catholics less apt to remarry).

they are less likely to divorce.<sup>8</sup> Of course, some couples quarrel about religion during their marriages, and differences either in religiosity or, sometimes, religious denominations may add to the discord in the marriage that eventually culminates in divorce.<sup>9</sup> In a prior study based upon Iowa data, I showed that when they did divorce, religious couples tended more than others to indicate fault-based reasons for the divorce (even when these could not be used to any legal advantage) and to litigate rather than settle divorce-related issues.<sup>10</sup>

Here I draw upon divorce pleadings and other records to show how indications of religion (or disaffiliation) that appear in custody agreements and orders (called in both states parenting plans) affect the course of the proceedings and legal activities over the five years following divorce filing. Some of the apparent findings are normative, but most are merely descriptive and some may be correlative rather than caused by the indicated concern about religion. While parenting plans are accepted by courts only when they are in the best interests of the child (at least in theory), the child's *independent* religious needs were never mentioned in the files I perused.<sup>11</sup>

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8. See, e.g., Vaughn R.A. Call & Tim B. Heaton, *Religious Influence on Marital Stability*, 36 J. SCI. STUDY RELIGION 382, 383 (1997); Arland Thornton et al., *Reciprocal Effects of Religiosity, Co-habitation, and Marriage*, 98 AM. J. SOC. 628, 648 (1992); Linda J. Waite & Evelyn L. Lehrer, *The Benefits from Marriage and Religion in the United States: A Comparative Analysis*, 29 POPULATION & DEV. REV. 255, 268 (2003).

9. Some literature suggests that it is the difference in religiosity rather than different denominations that causes stress. See, e.g., Paul A. Nakonezny et al., *The Effect of No-Fault Divorce Law on the Divorce Rate Across the 50 States and Its Relation to Income, Education, and Religiosity*, 57 J. MARRIAGE & FAM. 477, 478 (1995).

In the case files I reviewed, I found examples of religious disagreements following divorce as well. In one memorable case from Arizona, a father insisted that he, and not the child's mother, attend LDS religious services with their sons (even when the mother was enjoying her parenting time) so that he could provide a male role model for them in that setting. In another case, the parent objected to the child's being raised as a Jehovah's Witness. One father claimed that the mother joined a religious cult. A mother wished to move from Maricopa County to Utah to raise their son in its Mormon culture, and an Indiana custodial father said the mother was engaged in "anti-Catholic behavior."

10. Margaret F. Brinig, *Unhappy Contracts: The Case of Divorce Settlements*, 1 REV. L. & ECON. 241 (2005).

11. Children's independent rights were the subject of Brinig, *supra* note 3, at 56.

## II. THE STUDY: THE DATA

The Arizona law in place at the beginning of my study was typical of the rules in many states “friendly” to shared parenting.<sup>12</sup> The state progressively moved in 2010<sup>13</sup> and again in 2012<sup>14</sup> toward mandating equal parenting time for all separating couples consistent with the best interests of the child.<sup>15</sup> Even in 2007, Arizona as a whole had more equal parenting than most other jurisdictions,<sup>16</sup> and Maricopa County, the most populous in the state, led the way and drives the state-level results.

When I set about looking for particular jurisdictions in which to study the effect of preferences for shared parenting and child support laws, I had several criteria: first, a “modern” statute, that is, one that thought about post-separation parental roles in terms of parenting time. Second and relatedly, I wanted a state that for some time had parenting

12. 2005 Ariz. Legis. Serv. Ch. 45 (S.B. 1045) (West):

Sole and joint custody

- A. In awarding child custody, the court may order sole custody or joint custody. This section does not create a presumption in favor of one custody arrangement over another. The court in determining custody shall not prefer a parent as custodian because of that parent's sex.
- B. The court may issue an order for joint custody over the objection of one of the parents if the court makes specific written findings of why the order is in the child's best interests. In determining whether joint custody is in the child's best interests, the court shall consider the factors prescribed in § 25-403, subsection A and all of the following:
  - 1. The agreement or lack of an agreement by the parents regarding joint custody.
  - 2. Whether a parent's lack of agreement is unreasonable or is influenced by an issue not related to the best interests of the child.
  - 3. The past, present and future abilities of the parents to cooperate in decision-making about the child to the extent required by the order of joint custody.
  - 4. Whether the joint custody arrangement is logistically possible.
- C. The court may issue an order for joint custody of a child if both parents agree and submit a written parenting plan and the court finds such an order is in the best interests of the child. The court may order joint legal custody without ordering joint physical custody.

13. 2010 Ariz. Legis. Serv. Ch. 186 (S.B. 1095).

14. 2012 Ariz. Legis. Serv. Ch. 309 (S.B. 1127) (eff. Jan. 1, 2013).

15. ARIZ. REV. STAT. ANN. § 25-403.02(B) (2015) (“B. Consistent with the child's best interests in § 25-403 and §§ 25-403.03, 25-403.04 and 25-403.05, the court shall adopt a parenting plan that provides for both parents to share legal decision-making regarding their child and that maximizes their respective parenting time. The court shall not prefer a parent's proposed plan because of the parent's or child's gender.”).

16. See Patrick Parkinson, *The Payoffs and Pitfalls of Laws that Encourage Shared Parenting: Lessons from the Australian Experience*, 37 DALHOUSIE L.J. 301, 313 (2014). Oregon, in 2002, had 32% of joint custody according to MARGARET F. BRINIG, FAMILY, LAW, AND COMMUNITY: SUPPORTING THE COVENANT 89 (2010) (See Fig. 2.1); North Carolina in 2006 had 15.3% of cases with at least 123 days of parenting time (33%). Suzanne Reynolds et al., *Back to the Future: An Empirical Study of Child Custody Outcomes*, 85 N.C. L. REV. 1629, 1667 (2007); Wisconsin had 43.8% with at least 30% parenting time in 2007, according to JUDI BARTFELD, UNIV. OF WIS. INST. ON POVERTY, SHARED PLACEMENT: AN OVERVIEW OF PREVALENCE, TRENDS, ECONOMIC IMPLICATIONS, AND IMPACTS ON CHILD WELL-BEING 6 (2011); Washington in 2007 had 16% equal and another eighteen percent over 35% according to THOMAS GEORGE, WASH. STATE CTR. FOR CT. RES., RESIDENTIAL TIME SUMMARY REPORTS FILED IN WASHINGTON FROM JULY 2007–MARCH 2008 5 (2008), available at <https://www.courts.wa.gov/wscsr/docs/ResidentialTimeSummaryReport.pdf>; while Arizona in 2007 had 15% equal custody, and another 19% with at least 116 days, according to JANE VENOHR & RASA KAUNELIS, CTR. FOR POLICY RES., ARIZONA CHILD SUPPORT GUIDELINES REVIEW: ANALYSIS OF CASE FILE DATA 12 (2008), available at [www.azcourts.gov/Portals/74/CSGRC/repository/2009-CaseFileRev.pdf](http://www.azcourts.gov/Portals/74/CSGRC/repository/2009-CaseFileRev.pdf).

guidelines propounded by the judiciary to give additional guidance to judges making parenting time decisions. Third, I preferred to analyze states that had comparable child support guidelines, especially in the way they treated substantially shared parenting. Fourth, given the first criteria, I looked for states with substantial experience with shared parenting: that is, states likely to be above average in shared parenting awards, since this would minimize a selection effect into shared custody. And last, I needed states that would allow me remote access to electronic records. This required that the counties involved at least keep electronic records of not only judicial activity (or minute entries), but also scanned documents such as pleadings, reports of various kinds, motions, and decisions and orders of judges, mediators, and so forth. The two states I ultimately chose were Arizona and Indiana.

The Court Administrator in Maricopa County, Arizona, sent me the complete list of intake files from eight weeks in January-February, April and September of 2008. These identified not only file names and the type of action involved, but also the names of parties, their addresses (where available), their counsel (or whether, like most couples, they were self-representing, or “pro per” as it is called there), and very often their dates of birth. From these I randomly selected files representing specific types of actions,<sup>17</sup> with the following results:

TABLE 1: TYPES OF CASES IN SAMPLE FROM MARICOPA COUNTY, ARIZONA

|                              | Frequency | Percent | Valid Percent | Cumulative Percent |
|------------------------------|-----------|---------|---------------|--------------------|
| Dissolution with Children    | 363       | 58.5    | 58.5          | 58.5               |
| Dissolution without Children | 51        | 8.2     | 8.2           | 66.8               |
| Legal Separation             | 7         | 1.1     | 1.1           | 67.9               |
| Custody                      | 43        | 6.9     | 6.9           | 74.8               |
| Protective Order             | 1         | .2      | .2            | 75.0               |
| Support                      | 155       | 25.0    | 25.0          | 100.0              |
| Total                        | 620       | 100.0   | 100.0         |                    |

Most of the legal separations eventually were changed by one of the spouses to a final dissolution. The one protective order case was not analyzed further, though there were protective orders that were part of each of the other types of cases. Some of these cases were dismissed at various points, and for various reasons. Seventeen couples reconciled and voluntarily dismissed the actions. A perhaps overlapping group of twenty-eight had their cases dismissed by the court for failure to prosecute them. A

17. Please note that while I selected files randomly, I did not attempt to match the actual proportion of files in the sample. Thus, while my contrasts within and between groups does not present statistical issues, I am sure that it is not representative of all the cases involving children decided in Maricopa, for instance. The sample underrepresented the population of divorces with children among this group (58.5% compared with 73% in the intake weeks represented), underrepresented the unmarried custody cases (6.9% compared to 9.7% in the intake weeks represented) and overrepresented the establishment of support group (25% compared to 17% in the weeks intake represented).

third group of sixteen involved absent parents or children and therefore a lack of jurisdiction to decide custody and/or support issues. All these were dropped from further analysis. This paper largely deals with the first category, dissolutions (divorces) with children.

There are two kinds of court data involved in the study. The first is publicly available online,<sup>18</sup> and is simply a listing of transactions with the clerk's office dealing with the file. The second kind of data was obtained after receiving institutional review board approval and with assurances that individual records would be kept confidential. It was the actual documents, such as pleadings and other motions, letters, reports, orders, and so forth, involved with each file selected above. These documents contain a host of information. Some are routine or appear in every case involving children. Such documents include affidavits of service of process, orders to complete parenting time education classes (and certifications when they were attended), motions and orders dealing with continuances of various trial dates. Some were quite routine but did not appear in every case, including motions and orders for return of evidence, cash receipts, calculations of arrearages by the department of economic security (since the final numbers would always be found elsewhere), and orders of publication when respondents could not be located.

The information I coded came from complaints and answers (or motions and responses), reports by child coordinators or of drug testing, completed parental worksheets for child support, parenting plans (joint or sole), and final dissolution orders (or orders dealing with motions or protective orders). The complaint typically included names and birth dates of parents and any children, the date of marriage (if the parties were married), addresses, occupations of the parents, what property was owned by the couple and how the petitioner wanted it split, what parenting time was asked for, and whether spousal support or child support was sought. It also indicated which party was bringing the action (father or, at least nominally, in the case of Title IVD support, mother) and whether or not there had been or currently was domestic violence.<sup>19</sup> The answer corroborated or sometimes corrected the details found in the complaint,

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18. See, e.g., *Docket: Public Access to Family Court Case Information*, JUDICIAL BRANCH ARIZ.: MARICOPA COUNTY, <http://www.superiorcourt.maricopa.gov/docket/FamilyCourtCases> (last visited Feb. 18, 2016); *Website Record Search*, PIMA COUNTY CLERK OF THE SUPERIOR CT., <http://www.agave.cosc.pima.gov/PublicDocs> (last visited Feb. 18, 2016); see also *Case Search*, MYCASE.IN.GOV, <https://public.courts.in.gov/mycase> (last visited Feb. 18, 2016); *Public Court Case Search*, LAKE CTY. IND., <https://www.lakecountyin.org/portal/media-type/html/user/anon/page/online-docket> (last visited Feb. 18, 2016).

19. SUPER. CT. OF ARIZ. IN MARICOPA CTY., CONSENT DECREE FOR DIVORCE OR LEGAL SEPARATION FOR A NON-COVENANT MARRIAGE, available at <http://www.superiorcourt.maricopa.gov/sscDocs/packets/dr7z.pdf> (last visited Feb. 18, 2016)

A. Domestic Violence has *not* occurred between the parties; OR

B. Domestic Violence *has* occurred between the parties, *but*:

1. it was mutual (committed by both parties), (see A.R.S. § 25-403.03 (D))

OR

2. it is otherwise still in the best interests of the minor child(ren) to grant joint or sole legal decision making (joint or sole custody) to a parent who has committed domestic violence *because*: (EXPLAIN”).

asking for the same or different things. The child support worksheets at the time of the dissolution or other order identified which parent was the primary custodial parent, the amount of each parent's monthly income, whether or not either was responsible for additional or court ordered support for another child, whether the child was over twelve or had extraordinary expenses, who was ordered to pay child support, what the parenting time of the payor parent was (calculated by totaling the number of days or partial days), and whether the amount was adjusted because it exceeded the amount needed for self-support (in 2008 in Arizona, \$775 monthly).

Some cases involved temporary motions for support, requests for custody evaluations or mediation, discovery motions (which I usually ignored unless the total number of these was very large), actions involving protective orders and, if requested, the results of protective order hearings, and motions post dissolution (or order) to increase or decrease child support or parenting time or to enforce either. The motions were accompanied by supporting reasons, which were frequently referred to by the court in resolving them. The divorce decrees or parenting orders incorporated any agreements of the parties, which sometimes were attached and sometimes separately filed. These usually included parenting plans and sometimes included property settlement agreements. The stand-alone support orders included reasons for deviating from the amounts calculated on the worksheet (the state child support guideline amounts) and sometimes employer information (which was also sometimes included in a separate document). All of these alleged or found facts were carefully coded.

The Arizona child support guidelines explicitly defined and still define<sup>20</sup> how to count days or partial days for parenting time.<sup>21</sup> Once the total is determined, a table in the guidelines reveals what percentage of the obligation should be reduced to obtain preliminary child support owed.<sup>22</sup> For example, the traditional, or "basic," parenting plan would be for the child to spend every other weekend plus one evening during the week plus split holidays plus two weeks in the summer with the non-primary

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20. ARIZ. SUP. CT., ARIZONA CHILD SUPPORT GUIDELINES 10 (2015), available at <http://www.azcourts.gov/Portals/31/Child%20Support/2015CSGuidelinesRED.pdf>.

21. ARIZ. SUP. CT., ARIZONA CHILD SUPPORT GUIDELINES 10 (2005) [hereinafter 2005 GUIDELINES], available at <https://www.azcourts.gov/Portals/31/Child%20Support/CSG2004.pdf>

A. Each block of time begins and ends when the noncustodial parent receives or returns the child from the custodial parent or from a third party with whom the custodial parent left the child. Third party includes, for example, a school or childcare provider.

B. Count one day of parenting time for each 24 hours within any block of time.

C. To the extent there is a period of less than 24 hours remaining in the block of time, after all 24-hour days are counted or for any block of time which is in total less than 24 hours in duration:

1. A period of 12 hours or more counts as one day.

2. A period of 6 to 11 hours counts as a half-day.

3. A period of 3 to 5 hours counts as a quarter-day.

5. Periods of less than 3 hours may count as a quarter-day if, during those hours, the non-custodial parent pays for routine expenses of the child, such as meals.

22. *Id.* at 11.

parent. While many parents use a software calculator (obtainable as a free download) for this, the “basic” plan would include 52 (for the weekends) + 13 (52 X .25, for one mid-week evening a week) + 5 (for holidays) + 12 days (for summer, two weeks less the weekend already counted) = 82 days, or a 10.5% reduction in the support that would otherwise have been awarded. A separate table known as Appendix B equates the total support obligation borne by (or imputed) to each parent when parenting time is equal.<sup>23</sup>

I replicated the Maricopa process, including the relative proportion of case types, first in Pima County, Arizona, and then in Indiana. Obtaining the Indiana records required me to gain a court order from the Indiana Supreme Court, and I used five counties scattered around the state to permit consideration of different demographics: urban and rural, prosperous and poor, racially diverse and homogeneous or not.<sup>24</sup> I utilized the same months from 2008 obtained from Arizona, including smaller numbers of unmarried couples. The state demographics are presented below:

TABLE 2: STATE DEMOGRAPHICS

|                         | Arizona  | Indiana  |
|-------------------------|----------|--|
| Hispanic Population     | 29.3%    | 12.4%  |
| Black Population        | 4%       | 19% (27.6 in Marion and 25.3 in Lake Counties) |
| Already Divorced        | 6%       | 15%  |
| Foreign Born            | 14%      | 6%   |
| Median Household Income | \$55,862 | \$42,714                                       |
| High School Graduates   | 78%      | 86%  |

While both states have both child custody and child support guidelines, however, Indiana’s suggests meaningful contact with both parents based upon the age of the child rather than “maximum contact with both.”<sup>25</sup> The difference is not semantic only: there is far less equally shared parenting time among divorcing Indiana couples and the bulk of parenting days in Indiana are in the 20–128 days per year range, (mean: 72.47 days) as opposed to 47–163 days (mean: 105 days) for comparable divorcing parents in Arizona. Child support when there is shared parenting is computed differently as well. In Arizona, the base amount is typically reduced by a “parenting time deduction” ranging from one percent

23. See *id.* at 12–13. The simplest way of thinking about this is to subtract the smaller amount due from each parent from the larger one and divide by two.

24. The counties are Lake (Gary and Crown Point), Marion (Indianapolis), Monroe (Bloomington), Posey (Evansville), and St. Joseph (South Bend).

25. *Parenting Edge: Parenting After Separation and Divorce*, PLEA (Dec. 5, 2012), [http://www.plea.org/legal\\_resources/?a=313](http://www.plea.org/legal_resources/?a=313).

to 48.6%. In Indiana, the base amount is first multiplied by 1.4, and then the reductions credit only the variable as opposed to the fixed costs of parenting. Further, a finding of domestic violence in Arizona at the time data was collected meant a rebuttable presumption against shared custody,<sup>26</sup> while in Indiana,<sup>27</sup> and most other states,<sup>28</sup> it would preclude shared physical custody (parenting time).<sup>29</sup> Descriptive statistics from the most often utilized subsets (divorces with children) from the two states follow.

26. While joint decision-making was generally not granted, a surprising number of would-be custodians in both states were apparently able to rebut the presumption. An ANOVA between a pre-decree domestic violence allegation and parenting time days showed an insignificant ( $p < .304$ ) difference: 107 days if there was no allegation to ninety-nine if there was. There was a statistically significant difference in the percentage of equal custody cases, however (12.5 percent of the time versus nineteen,  $p < .10$ ). In Indiana, the difference was seventy-four days if no domestic violence, nearly sixty-one if there was ( $p = .214$ ). There was about half as much equal custody indicated on the child support worksheets (.02 compared to .04 of the cases).

ARIZ. REV. STAT. ANN. § 25-403.03 (2015) (West):

Domestic violence and child abuse

A. Notwithstanding subsection D of this section, joint legal-decision-making shall not be awarded if the court makes a finding of the existence of significant domestic violence pursuant to § 13-3601 [felony domestic violence] or if the court finds by a preponderance of the evidence that there has been a significant history of domestic violence.

B. The court shall consider evidence of domestic violence as being contrary to the best interests of the child. The court shall consider the safety and well-being of the child and of the victim of the act of domestic violence to be of primary importance. The court shall consider a perpetrator's history of causing or threatening to cause physical harm to another person . . .

D. If the court determines that a parent who is seeking sole or joint legal decision-making has committed an act of domestic violence against the other parent, there is a rebuttable presumption that an award of sole or joint legal decision-making to the parent who committed the act of domestic violence is contrary to the child's best interests. This presumption does not apply if both parents have committed an act of domestic violence. . . .

E. To determine if the parent has rebutted the presumption the court shall consider all of the following:

1. Whether the parent has demonstrated that being awarded sole or joint legal decision-making or substantially equal parenting time is in the child's best interests.

2. Whether the parent has successfully completed a batterer's prevention program.

3. Whether the parent has successfully completed a program of alcohol or drug abuse counseling, if the court determines that counseling is appropriate.

4. Whether the parent has successfully completed a parenting class, if the court determines that a parenting class is appropriate.

5. If the parent is on probation, parole or community supervision, whether the parent is restrained by a protective order that was granted after a hearing.

6. Whether the parent has committed any further acts of domestic violence."Even if not given legal decision-making, typically parenting time (visitation) will be awarded under ARIZ. REV. STAT. ANN. § 25-403.01:

D. A parent who is not granted sole or joint legal decision-making is entitled to reasonable parenting time to ensure that the minor child has substantial, frequent, meaningful and continuing contact with the parent unless the court finds, after a hearing, that parenting time would endanger the child's physical, mental, moral or emotional health.

27. The Indiana Code lists domestic violence as a factor that must be considered by judges, and suggests that it be dealt with through supervised visitation. IND. CODE § 31-17-2-8(7) (2016).

28. See, e.g., ARK. CODE ANN. § 9-13-101(c)(2) (2015); IDAHO CODE ANN. § 32-717B(5) (2015); MINN. STAT. § 518.17 subd. 1(b)(9) (2015).

29. See, e.g., Merle H. Weiner, *Domestic Violence and Custody: Importing the American Law Institute's Principles of the Law of Family Dissolution into Oregon Law*, 35 WILLAMETTE L. REV. 643, 645 (1999) (noting the attention paid to domestic violence in what was then a draft). More recently, see, e.g., Jennifer L. Hardesty & Lawrence H. Ganong, *How Women Make Custody Decisions and Manage Co-Parenting with Abusive Former Husbands*, 23 J. SOC. & PERS. RELATIONSHIPS 543, 544 (2006); Katherine M. Reihing, *Protecting Victims of Domestic Violence and Their Children After Di-*

|                                   | N<br>AZ/IN | Arizona   |                   | Indiana*  |                   |
|-----------------------------------|------------|-----------|-------------------|-----------|-------------------|
|                                   |            | Mean      | Std.<br>Deviation | Mean      | Std.<br>Deviation |
| Joint legal custody               | 685/310    | .540      | .50               | .519      | .50               |
| Pre-divorce protective order      | 685/310    | .187      | .14               | .119      | .32               |
| Monthly gross income mother       | 608/225    | \$2163.72 | 2106.06           | \$2241.37 | 1456.04           |
| Monthly gross income father       | 609/225    | \$3608.85 | 3040.70           | \$3193.88 | 2140.50           |
| Spousal support to mother- amount | 101/12     | \$103.04  | 1228.82           | \$1070.00 | 231.72            |
| Days of parenting time            | 567/203    | 105.00    | 57.9731           | 74.70     | 54.90             |
| Mediator involved                 | 685/310    | .251      | .43               | .210      | .41               |
| Dissolution after default         | 685/310    | .385      | .48               | .123      | .33               |
| Dissolution by consent decree     | 685/310    | .336      | .47               | .526      | .50               |
| Dissolution after trial           | 685/310    | .142      | .35               | .077      | .27               |
| Post-decree protective order      | 685/310    | .072      | .26               | .035      | .19               |

\*Indiana child-support worksheets use weekly income; I multiplied these numbers by 52 and divided by 12 to make them comparable.

Both states provide for some mechanism for recognizing the religious upbringing couples may wish to provide their children. Arizona does so by statute<sup>30</sup> as well as the forms for parenting plans provided by the various counties.<sup>31</sup> In my sample, 39.6% (271 cases) checked one of the top two boxes, with 9.1% (sixty-two cases) specifying denominations.

*orce: The American Law Institute's Model, FAM. & CONCILIATION CTS. REV. 393, 398 (1999); see also MINDY E. SCOTT ET AL., CHILD TRENDS, THE CHARACTERISTICS AND CIRCUMSTANCES OF TEEN FATHERS: AT THE BIRTH OF THEIR FIRST CHILD AND BEYOND (2012), available at [http://www.childtrends.org/wp-content/uploads/2013/03/Child\\_Trends-2012\\_06\\_01\\_RB\\_TeenFathers.pdf](http://www.childtrends.org/wp-content/uploads/2013/03/Child_Trends-2012_06_01_RB_TeenFathers.pdf) (containing significant information on teen fathers); Margaret F. Brinig et al., *Perspectives on Joint Custody Presumptions as Applied to Domestic Violence Cases*, 52 FAM. CT. REV. 271, 271 (2014) (discussing domestic violence and shared parenting).*

30. ARIZ. REV. STAT. ANN. § 25-403.02(C) (2015) (West):

C. *Parenting plans shall include* at least the following:

1. A designation of the legal decision-making as joint or sole as defined in § 25-401.
2. Each parent's rights and responsibilities for the personal care of the child and for decisions in are as such as education, health care and *religious training*.

(emphasis added).

31. See, e.g., SUPERIOR CT. OF ARIZ. IN MARICOPA COUNTY, PARENTING PLAN 4, available at [www.superiorcourt.maricopa.gov/sscDocs/pdf/drcvg11f.pdf](http://www.superiorcourt.maricopa.gov/sscDocs/pdf/drcvg11f.pdf):

H. RELIGIOUS EDUCATION ARRANGEMENTS (Choose ONE)

Each parent may take the minor children to a church or place of worship of his or her choice during the time that the minor children is/are in his or her care.

Both parents agree that the minor children may be instructed in the \_\_\_\_\_ faith.

The Indiana child custody statute does not mandate parents' consideration of religious upbringing, but allows them to do so.<sup>32</sup> The forms for divorce and complaint available for pro se petitioners on the Indiana Supreme Court website do not include a religious upbringing clause, presumably since any arrangement will be determined by custodial parent(s).<sup>33</sup> However, some law firm-generated custody plans in the sample and some popular forms do supply religious upbringing paragraphs.<sup>34</sup> In the Indiana case file data, 11% (34) of the cases had parenting plans that provided for religion, 4.8% (15) for specific denominations. Because online forms supplied by the counties did not include them, default divorces (twelve percent of the Indiana cases) did not address religious upbringing.

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Both parents agree that religious arrangements are not applicable to this plan;  
*see also* PIMA CNTY., ARIZ., PARENTING PLAN: PACKET 9, available at [http://www.sc.pima.gov/Portals/0/Library/Child\\_Custody\\_&\\_Parenting\\_\(PimaSC09\).pdf](http://www.sc.pima.gov/Portals/0/Library/Child_Custody_&_Parenting_(PimaSC09).pdf)

(“RELIGIOUS EDUCATION ARRANGEMENTS

Each of us may take the child(ren) to a church or place of worship of our choice during the time that the child(ren) is/are with either of us.

We agree that the child(ren) may be instructed in the \_\_\_\_\_ faith.

Other religious issues: \_\_\_\_\_”).

32. IND. CODE § 31-17-2-17 (2016):

Custodian may determine child's upbringing

Sec. 17. (a) Except:

(1) *as otherwise agreed by the parties in writing* at the time of the custody order; and

(2) as provided in subsection (b);

*the custodian may determine* the child's upbringing, including the child's education, health care, and religious training.

(b) If the court finds after motion by a noncustodial parent that, in the absence of a specific limitation of the custodian's authority, the child's:

(1) physical health would be endangered; or

(2) emotional development would be significantly impaired;

the court may specifically limit the custodian's authority.”) (emphasis added).

33. That is, religious upbringing is to be decided by the parent with legal custody, or both parents if legal custody is held jointly (or at the time of the original decree). *See, e.g.,* Finnerty v. Clutter, 917 N.E.2d 154, 157 (Ind. Ct. App. 2009) (explaining a case where a noncustodial but joint legal custodial father was allowed to modify his parenting time schedule even though it would preclude mother from having the children attend Sunday evening Mass on his alternate weekends); Gonzalez v. Gonzalez, 893 N.E.2d 333, 336 (Ind. Ct. App. 2008) (noting a case where a father and mother shared legal custody of the two younger of the six children, with father to determine religious upbringing since he had been excommunicated from mother's particular Baptist church and was subject to shunning by them; this trial court decision was upheld); *In re* Paternity of K.R.H., 784 N.E.2d 985, 993 (Ind. Ct. App. 2003) (explaining that the custody agreement was upheld even though it provided that noncustodial unmarried mother could not take the child with her to churches other than Roman Catholic ones). There has been substantial additional litigation in Indiana appellate courts about clause B of the statute, which allows noncustodial parents to move to challenge the religious upbringing chosen by the custodial parent if it endangers the health or emotional wellbeing of the child. *See, e.g.,* Jones v. Jones, 832 N.E.2d 1057, 1060–61 (Ind. Ct. App. 2008) (holding that a Wiccan divorced custodial father was incorrectly required by trial court to keep children from attending rituals when joint custodial mother did not object). A third party granted visitation under the grandparent statute has no such authority. *Hoehing v. Williams*, 880 N.E.2d 1217, 1219–20 (Ind. Ct. App. 2008) (stating that a paternal grandmother was not allowed to have holiday visitation with children whose unmarried custodial mother was a Jehovah's Witness and did not celebrate holidays).

34. *See, e.g., Sample Parenting Plan (Comprehensive)*, FATHERS UNITE, <http://www.fathersunite.org> (last visited Feb. 21, 2016) (“That religious training and theology of (your religious preference) be pursued by said children. Both Parents shall show, by example, their support of their respective churches by ensuring that their children REGULARLY attend services and observe holidays.”).

### III. THE FINDINGS

The findings that included religion as a statistically significant coefficient follow.<sup>35</sup> The state involved is included in each table's caption, and the religious choice may be either that a specific religion was indicated<sup>36</sup> or that either a specific or general religious upbringing was included.<sup>37</sup> Findings are presented in the order that they appear in most cases.

#### A. Religion and Domestic Violence

A great deal of literature on custody as well as on domestic violence has concentrated on the problems faced when separation is complicated by domestic violence.<sup>38</sup> One research strain has noted that domestic violence frequently increases at the time of separation or divorce and that it often continues afterwards.<sup>39</sup> Another reports on the advisability (or not) of mediation or other forms of alternative dispute resolution ("ADR") when coercive control situations are involved.<sup>40</sup> Another considers how false allegations of domestic violence may be used strategically in divorce, and particularly custody, negotiations.<sup>41</sup> To the extent that the child is witness to it, or even a direct victim him- or herself, no researchers doubt the harm.<sup>42</sup>

35. In one case, see Table 10, I have also included a state where it was not statistically significant but still positive.

36. My coding for this required a specific denomination. In one Pima County case, the parents specified that the child would attend services in a particular church (building).

37. This either included a specific denomination or an indication "Christian" or a requirement that the parents negotiate the religious upbringing or directed the selection to one parent.

38. See Brinig et al., *supra* note 29, for a summary of the literature.

39. See, e.g., Demetrios N. Kyriacou et al., *Risk Factors for Injury to Women from Domestic Violence*, 341 NEW ENG. J. MED. 1892, 1894 (1999) (discussing how having a former partner was the relationship variable that had the strongest association with injury from domestic violence, 3.5 times risk of injury); Lisa G. Lerman, *The Decontextualization of Domestic Violence*, 83 J. CRIM. L. & CRIMINOLOGY 217, 229 (1992); Martha R. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283, 1289 (1992); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65 (1991).

40. See, e.g., Nancy Ver Steegh, *Yes, No, and Maybe: Informed Decision Making About Mediation in the Presence of Domestic Violence*, 9 WM. & MARY J. WOMEN & L. 145, 169–70 (2003); see also Robert E. Emery et al., *Divorce Mediation: Research and Reflections*, 43 FAM. CT. REV. 22, 22 (2005).

41. Douglas W. Allen & Margaret F. Brinig, *Do Joint Parenting Laws Make Any Difference?*, 8 J. EMPIRICAL LEGAL STUD. 304, 313 (2011); Elizabeth S. Scott & Robert E. Emery, *Gender Politics and Child Custody: The Puzzling Persistence of the Best-Interests Standard*, 77 LAW & CONTEMP. PROBS. 69, 88 (2014).

42. See E. MARK CUMMINGS & PATRICK T. DAVIES, *MARITAL CONFLICT AND CHILDREN: AN EMOTIONAL SECURITY PERSPECTIVE* vii–viii (2010); ROBERT E. EMERY, *RENEGOTIATING FAMILY RELATIONSHIPS: DIVORCE, CHILD CUSTODY, AND MEDIATION* 100 (2d ed. 2012) ("Hundreds of studies show that parental conflict is toxic for children in divorce."); E. Mark Cummings et al., *Fathers, Marriages, And Families: Revisiting and Updating the Framework for Fathering in Family Context*, in *THE ROLE OF THE FATHER IN CHILD DEVELOPMENT* 154 (Michael E. Lamb ed., 5th ed. 2010); Rena L. Repetti et al., *Risky Families: Family Social Environments and the Mental and Physical Health of Offspring*, 128 PSYCHOL. BULL. 330, 330 (2002); see also JANE FORTIN ET AL., *TAKING A LONGER VIEW OF CONTACT: THE PERSPECTIVES OF YOUNG ADULTS WHO EXPERIENCED PARENTAL SEPARATION IN THEIR YOUTH* xii–xiii (2012) [hereinafter NUFFIELD REPORT], available at <https://www.sussex.ac.uk/webteam/gateway/file.php?name=nuffield-foundation-final-report-16nov2012.pdf&site=28> (stating that ongoing conflict leads to poor relationships with parents in adulthood, as does absence of non-residential parent's emotional investment in the child's life).

My coding of the cases here was zero unless there had been an allegation of domestic violence, either in the complaint or in a separate protective order petition. While I do have information about whether a permanent order was issued by a court, whether a victim was hospitalized or received other treatment, or whether the court took notice of it (and in one case it was apparent during a divorce hearing), here I do not differentiate the cases where it undoubtedly occurred from those in which it was simply alleged. Whether simply an allegation or fact, mentioning it usually indicates a high-conflict divorce. In the binary logistic regression that follows, some of the other variables are those typically related to domestic violence because they indicate the power of the mothers (by far the most likely to allege it). Substance abuse or mental illness was included because these characteristics are often associated with domestic violence.<sup>43</sup>

TABLE 4: PRE-DIVORCE PROTECTIVE ORDER SOUGHT (ARIZONA)  
COX & SNELL  $R^2 = .088$ .

| Variables                                  | B      | S.E. | Wald   | Sig. | Exp(B) |
|--|--------|------|--------|------|--------|
| Mother's gross monthly income              | .000   | .000 | 4.276  | .039 | 1.000  |
| Age of mother at marriage                  | .028   | .002 | 2.026  | .155 | 1.028  |
| Religion indicated                         | -.493  | .243 | 4.135  | .042 | .610   |
| Substance abuse or mental illness involved | 1.753  | .264 | 44.200 | .000 | 5.770  |
| Constant                                   | -2.028 | .506 | 16.087 | .000 | .132   |

While, as with many of the regressions that follow, the predicted equation does not explain a large share of the variance in the likelihood that violence was alleged (about 19% of the cases had such allegations), those with the indication of religion in the parenting plans were about forty percent less likely to seek protective orders ( $p < .05$ ). That is, only eleven percent of those couples indicating a religious upbringing would seek them, holding other variables constant. This of course does not mean that greater indications of religiosity cause less violence.<sup>44</sup>

43. See, e.g., Kyriacou et al., *supra* note 39, at 1894, 1896 (discussing how in a study of 256 intentionally injured women and 659 controls, alcohol increased the risk 3.6 times and drug abuse 3.5); Bushra Sabri et al., *Risk Factors for Severe Intimate Partner Violence and Violence-Related Injuries Among Women in India*, 54 *WOMEN & HEALTH* 281, 295 (2014).

44. But see, e.g., Christopher G. Ellison et al., *Race/Ethnicity, Religious Involvement, and Domestic Violence*, 13 *VIOLENCE AGAINST WOMEN* 1094, 1105 (2007); Christopher G. Ellison & Kristin L. Anderson, *Religious Involvement and Domestic Violence Among U.S. Couples*, 40 *J. SCI. STUDY RELIGION* 269, 269–70 (2001) (finding inverse relationship between domestic violence and church attendance, using NSFH); but cf. Claire M. Renzetti et al., *By the Grace of God: Religiosity, Religious Self-Regulation, and Perpetration of Intimate Partner Violence*, 36 *J. FAM. ISSUES* 1, 14 (2015) (noting that fact depends upon precise way religiosity is defined: religious self-regulation is most important in reducing likelihood of intimate partner violence (“IPV”) perpetration).

Skeptics of less violence might claim that the more religious wives would feel it their duty to be “corrected” by their husbands or might be more likely to fear reprisal and therefore not want to “make waves” by alleging it. See, e.g., Jerome R. Koch & Ignacio Luis Ramirez, *Religiosity, Christian Fundamentalism, and Intimate Partner Violence Among U.S. College Students*, 51 *REV. RELIGIOUS RES.* 402, 408 (2010); Nancy Nason-Clark, *Making the Sacred Safe: Woman Abuse and Communities of Faith*, 61 *SOC. RELIGION* 349, 358–59 (2000) (“Women who inhabit very closed religious or ethnic

### B. Religion and “Fault” Divorce

None of the nearly 1000 cases examined in both states utilized a “fault” ground for divorce.<sup>45</sup> Nonetheless, because it might be relevant to custody issues, a number (10% of the cases) alleged various forms of substance abuse or mental illness.<sup>46</sup> I suspected, because of research I did some years ago in Johnson County, Iowa,<sup>47</sup> that more religious couples would both wait longer to divorce<sup>48</sup> and also do so more often for serious reasons (rather than just general malaise in the marriage).<sup>49</sup> Here, I tested this using allegations of substance abuse or mental illness I could find in the file.<sup>50</sup>

TABLE 5: “FAULT” DIVORCE: DRUG, ALCOHOL, OR MENTAL ILLNESS ALLEGED (INDIANA) COX & SNELL  $R^2 = .026$

| Variable                    | B      | S.E. | Wald   | Sig. | Exp(B) |
|-----------------------------|--------|------|--------|------|--------|
| Specific religion indicated | 1.572  | .764 | 4.229  | .040 | 4.815  |
| Length of marriage          | -.079  | .041 | 3.782  | .052 | .924   |
| Constant                    | -1.590 | .375 | 18.013 | .000 | .204   |

communities are especially vulnerable *when* abused, though the incidence rates of that abuse may approximate those of other women . . . [F]rom the perspective of the women involved, but not necessarily of the men who advocate the concept [of wifely submission], there is a persistent perception of a marked degree of freedom in submission.”).

45. Indiana, in IND. CODE § 31-15-2-3 (2015), allows divorces on grounds of irretrievable breakdown, insanity lasting at least two years, a felony conviction, and incurable impotence. All divorces in my sample were on the “irretrievable breakdown” ground. Arizona is a no-fault state using irretrievable breakdown under ARIZ. REV. STAT. ANN. § 25-312 (2015) except for covenant marriages, which need to show grounds as in *id.* §25-903. There were no cases decided under the covenant marriage statute in my sample.

46. I tried to find evidence of adultery, and sometimes did (for example, when someone alleged the other spouse had “left him/her to move in with a boyfriend/girlfriend”) or when one or the other (or both) had a biological child born well after the wedding that had a different other parent, according to the child support worksheet. Since adultery, and sexual activities outside the marriage generally, are not generally relevant for custody, might not be known, and might well be hidden in filed pleadings because of financial arrangements made by the spouses, I lack confidence in these numbers. In any event, they were not significantly correlated with any of the religious variables in either state.

47. Brinig, *supra* note 10, at 266 tbl.3 (showing that religious divorces are five times more likely to be reveal abuse of spouse or child or adultery).

48. See, e.g., Paul R. Amato & Stacy J. Rogers, *A Longitudinal Study of Marital Problems and Subsequent Divorce*, 59 J. MARRIAGE & FAM. 612, 621–23, 623 tbl.3 (1997) (demonstrating that divorce is less common if the couple is religious).

49. The other literature on this is sparse and indirect. See, e.g., Annette Mahoney et al., *Religion in the Home in the 1980s and 1990s: A Meta-Analytic Review and Conceptual Analysis of Links Between Religion, Marriage, and Parenting*, PSYCHOL. RELIGION & SPIRITUALITY 63, 71 (2008) (detailing studies relating lower divorce history or delayed divorce to frequency of attendance); see also Amato & Rogers, *supra* note 48, at 619 (suggesting the most common reasons given by both husbands and wives are jealousy, infidelity, and alcohol/drug abuse); Luiza Y. W. Chan & Tim B. Heaton, *Demographic Determinants of Delayed Divorce*, 13 J. DIVORCE 97, 106–08 (1989) (finding couples married at least twenty years have less risk of divorce when the wives were Catholic and frequent church attenders).

50. In many of the substance abuse cases, restrictions were placed on meeting with the children, such as supervised visits or drug or alcohol testing (with the test results frequently available to me in the Arizona files). Many of the cases alleging mental illness called for evaluations of the parent and sometimes, again, visitation only in a center.

Adding additional factors that also might predict the use of a fault divorce, such as age at marriage did not add appreciably to the simple findings here: indicating religion in pleadings or parenting plans substantially altered the risk of being in the ten percent of divorces involved with alcohol, drug abuse or mental illness.

### C. Religion and Shared Parenting

Both Indiana, through the use of judicially sponsored parenting time guidelines<sup>51</sup> and Arizona, through statutes<sup>52</sup> and customs particularly favorable to it,<sup>53</sup> encourage shared or alternating custody (also called joint physical custody in Arizona until 2013). While only one study has directly looked at the effect of religion on shared parenting after dissolution,<sup>54</sup> claims that evangelical fathers spend more time with their children during marriage does shed some light on parenting by religious fathers.<sup>55</sup> The instant study provides direct evidence that, at least where the parents have planned for religious upbringing of their children, they plan and are ordered to spend more time with them following divorce. In the linear regressions that follow from both states, reported in Tables 6 and 7, I have included other factors that I am confident also predict time spent with children. A number of studies have reported the relationship between shared custody and parents' income.<sup>56</sup> I was able to code for Hispanic identity in Arizona, but not in Indiana, where there are far fewer Hispanics in the counties I selected.<sup>57</sup> In both jurisdictions I included

51. See INDIANA RULES OF COURT: INDIANA PARENTING TIME GUIDELINES 3 (2013), available at <http://www.in.gov/judiciary/rules/parenting/parenting.pdf>.

52. ARIZ. REV. STAT. ANN. § 25-403.02(B) (2015) (“Consistent with the child’s best interests . . . the court shall adopt a parenting plan that provides for both parents to share legal decision-making regarding their child and that maximizes their respective parenting time.”).

53. Arizona in 2007 had 15% equal custody, and another 19% with at least 116 days. VENOHR & KAUNELIS, *supra* note 16. As Table 3 shows, the mean (average) number of days was 105, to Indiana’s 75. 105 days roughly corresponds to having parenting time every weekend; while 75 might be every other weekend plus one evening during the week plus 2 weeks in the summer. For data for comparable periods from other states, see sources cited and data reported at VENOHR & KAUNELIS, *supra* note 16.

54. Elizabeth C. Cooksey & Patricia H. Craig, *Parenting from a Distance: The Effects of Paternal Characteristics on Contact Between Nonresidential Fathers and their Children*, 35 DEMOGRAPHY 187, 196 (1998) (using NSFH to find—contrary to authors’ hypothesis—more religious fathers were not significantly more apt to visit with noncustodial children, though noncustodial fundamentalist Christian fathers were significantly less likely to have weekly phone conversations with them).

55. See W. Bradford Wilcox, *Religious, Convention, and Paternal Involvement*, 64 J. MARRIAGE & FAM. 780, 786–88 (2002); see also David C. Dollahite, *Fathering, Faith, and Spirituality*, 7 J. MEN’S STUD. 3 (1998); Annette Mahoney, *Religion in Families, 1999–2009: A Relational Spirituality Framework*, 72 J. MARRIAGE & FAM. 805, 812 (2010).

56. See, e.g., BARTFELD, *supra* note 16 (Wisconsin); Marygold S. Melli & Patricia R. Brown, *Exploring A New Family Form - The Shared Time Family*, 22 INT’L J.L. POL’Y & FAM. 231 (2008) (Wisconsin); see also Heather Juby et al., *Sharing Roles, Sharing Custody? Couples’ Characteristics and Children’s Living Arrangements at Separation*, 67 J. MARRIAGE & FAM. 157 (2005) (Canada); Reynolds, *supra* note 16 (North Carolina).

57. The classic article suggesting that looking at common Hispanic surnames is the appropriate way to identify Hispanic or Latino families used by the Census Bureau, is David L. Word et al., *Demographic Aspects of Surnames from Census 2000* (2008), available at <http://www2.census.gov/topics/genealogy/2000surnames/surnames.pdf>. In the wealthier, married group 25.2% of the couples had at least one with a common Hispanic surname (that is, with over 70% likelihood that the person using it

the variable for a consent dissolution:<sup>58</sup> in these cases, by definition, parenting plans were always agreed to by both parents and therefore were more likely to feature shared parenting (as well as, because they had detailed parenting plans, to take into account religious upbringing). In Indiana, I also accounted for the presence of lawyers.<sup>59</sup> I hypothesize that lawyers were more likely to encourage shared parenting because they would be aware both of the court-directed Indiana parenting guidelines<sup>60</sup> and of the empirical work done on shared parenting. Several cases from Indiana where parties were represented actually included the entire Guidelines in the file as copies of what they had mailed to their clients.<sup>61</sup>

TABLE 6: PARENTING TIME DAYS (ARIZONA)  $R^2$  (ADJ.) = .079.

| Variables                   | Unstandardized Coefficients |            | Standardized Coefficients | t      | Sig. |
|-----------------------------|-----------------------------|------------|---------------------------|--------|------|
|                             | B                           | Std. Error | Beta                      |        |      |
| (Constant)                  | 81.710                      | 5.509      |                           | 14.833 | .000 |
| Mother's monthly income     | .003                        | .001       | .115                      | 2.771  | .006 |
| Father's monthly income     | .001                        | .001       | .077                      | 1.834  | .067 |
| Consent dissolution         | 15.429                      | 5.111      | .128                      | 3.019  | .003 |
| Religion indicated          | 16.421                      | 4.820      | .140                      | 3.407  | .001 |
| Either has Hispanic surname | -11.487                     | 5.687      | -.083                     | -2.020 | .044 |

would self-identify as Hispanic according to the 2000 census). For the less wealthy, married couples it was 36.7%, nearly the same as for the custody group (37.2%), but still lower than the support group, where 49.7% had at least one common Hispanic surname. See Marc N. Elliott et al., *Using Indirect Estimates Based on Name and Census Tract to Improve the Efficiency of Sampling Matched Ethnic Couples from Marriage License Data*, 77 PUB. OPINION Q. 375 (2013). Ethnicity is important because it is possible that with this population social norms might run toward mother-caretaking, and also because information about the real possibility of judges' ordering equal or substantially shared custody may not be effectively communicated to the Hispanic parents. Hispanic parents may be less likely to elect shared parenting. See Christine Winquist Nord & Nicholas Zill, *Non-Custodial Parents' Participation in their Children's Lives: Evidence from the Survey of Income and Program Participation*, NAT'L ARCHIVES (Aug. 14, 1996), <http://webharvest.gov/peth04/20041108182924/http://fatherhood.hhs.gov/sipp/noncuspl.htm>.

58. 28.8% had default dissolutions, and 13.5% had a decree of dissolution following a trial.

59. At least one party was represented in about three-quarters of the cases in Indiana (76.45%), but only 23.55% in Arizona.

60. The Preamble to the Indiana Guidelines includes the following language:

The Indiana Parenting Time Guidelines are based on the premise that it is usually in a child's best interest to have frequent, meaningful and continuing contact with each parent. It is assumed that both parents nurture their child in important ways, significant to the development and well being of the child. The Guidelines also acknowledge that scheduling parenting time is more difficult when separate households are involved and requires persistent effort and communication between parents to promote the best interest of the children involved. The purpose of these guidelines is to provide a model which may be adjusted depending upon the unique needs and circumstances of each family. These guidelines are based upon the developmental stages of children. The members of the Domestic Relations Committee of the Judicial Conference of Indiana developed the guidelines after reviewing the current and relevant literature concerning visitation, the visitation guidelines of other geographic areas, and the input of child development experts and family law practitioners. Committee members also relied upon data from surveys of judges, attorneys, and mental health professionals who work with children, reviews of court files, and a public hearing.

INDIANA RULES OF COURT: INDIANA PARENTING TIME GUIDELINES, *supra* note 51, at 1–2.

61. These will be supplied by the author on request. I did not recopy the Guidelines in most cases when I could separate them from the documents I did want, but the students who scanned the files in Marion County were not as careful.

TABLE 7: PARENTING TIME DAYS (INDIANA)  $R^2$  (ADJ.) = .147.

| Variables                 | Unstandardized Coefficients |            | Standardized Coefficients | t      | Sig  |
|---------------------------|-----------------------------|------------|---------------------------|--------|------|
|                           | B                           | Std. Error | Beta                      |        |      |
| (Constant)                | 45.004                      | 7.681      |                           | 5.859  | .000 |
| Father's weekly Income    | .009                        | .007       | .087                      | 1.230  | .220 |
| Consent dissolution       | 32.638                      | 7.528      | .299                      | 4.336  | .000 |
| Religion indicated        | 28.354                      | 11.265     | .174                      | 2.517  | .013 |
| Neither party represented | -10.225                     | 8.812      | -.078                     | -1.160 | .247 |

The results from both states indicate (in Tables 6 and 7) that parents who include religious upbringing in their parenting plans are significantly more likely to have decrees ordering more shared parenting, holding constant income, whether or not there was a consent decree, in Arizona whether or not they were Hispanic and in Indiana whether or not they were represented. The coefficients are large: in Arizona, see Table 6, it is the largest standard coefficient (.136,  $p < .001$ ), and in Indiana, see Table 7, second only to whether the decree was a consent decree and more than twice as large as income (which did not reach statistical significance) (.161,  $p < .05$ ).

#### D. Stability of Shared-Parenting Decrees

The fact that shared parenting is decreed, however, does not necessarily mean that it will be stable. In fact, in Indiana, it was more likely that there would be a motion to reduce parenting time, holding constant the original number of parenting days, for those couples indicating a specific religion in their parenting plans.<sup>62</sup>

TABLE 8: MOTIONS TO REDUCE PARENTING TIME (INDIANA)  
COX & SNELL  $R^2$  = .074.

|                             | B      | S.E.  | Wald  | Sig. | Exp(B) |
|-----------------------------|--------|-------|-------|------|--------|
| Specific religion indicated | 2.856  | 1.190 | 5.760 | .016 | 17.398 |
| Father's weekly income      | -.003  | .001  | 5.882 | .015 | .997   |
| Days of parenting time      | .014   | .006  | 5.455 | .020 | 1.015  |
| Constant                    | -2.250 | .744  | 9.141 | .002 | .105   |

62. For a specific religion to be coded, a particular denomination needed to be mentioned, e.g., Catholic, Jewish, Latter Day Saints (Mormon). Quite a few couples in Arizona, particularly, indicated they wanted the child raised "Christian." I could not tell whether this meant Evangelical Protestant or just Christian compared to non-religious, so I coded them as "general religion." This may have undercounted the number that should be counted in "specific religion indicated."

Lawrence M. Berger found no "drift" from shared custody in the three years following divorce. Lawrence M. Berger et al., *The Stability of Child Physical Placements Following Divorce: Descriptive Evidence from Wisconsin*, 70 J. MARRIAGE & FAM. 273, 279 (2008). They concluded that to the extent shared custody was associated with increased father involvement and positive developmental outcomes, increased shared physical custody may benefit children. Motions for changes in the custodial arrangement were rare. Depending on who was surveyed, they involved ten percent of the shared custody cases and thirteen percent of shared custody, mother primary, cases. *Id.* at 278, 278 tbl.1.

Table 8 shows that it was significantly less likely that there would be such a motion given the father's weekly income, but that the likelihood increased with the number of days of parenting time.<sup>63</sup> The very large exponent (17.372) means that the risk of such motions, filed in nineteen (6.1%) of the cases, was increased seventeen fold.<sup>64</sup>

### *E. Religion, Lengthier Marriages, and Older Children*

Table 9 displays the results of another binary logistic regression, this time asking whether the parent paying child support moved to have responsibility for payment reduced (in the case of multiple children) or eliminated (in the case of one child) when the child was legally emancipated.<sup>65</sup> As we would expect, this was more likely in the years following divorces initiated in 2008 when the couple had older children, i.e., those reaching age nineteen during the next five years. It would also be expected to be more common when the amount paid was substantial or because the payor parent's income was higher. It was less obvious whether

63. About twelve percent (11.9%) of the couples had fathers as primary parents. The motion would in these cases be reducing the noncustodial mother's parenting time. This growing instability with more shared parenting is in contrast to the stability found in Wisconsin. *Id.* at 273.

64. Another, slightly less elegant, since it does not account for income or the days of parenting time, way of showing the difference is to compare the means for filing such motions by the couples with and without specific religious indicators. An ANOVA with significance of  $p = .022$  shows a mean of .054 for couples without and .200 for couples with specific religion indicated.

65. Indiana considers a child emancipated if the child:

is age nineteen; has joined the United States armed services; is married; is not under the care or control of either parent or someone else approved by the court; or is at least 18 years old, has not gone to school for the last 4 months, is not enrolled in school, and is or is capable of supporting himself or herself through employment.

IND. CODE § 31-16-6-6 (2016).

In Arizona, a child emancipates when that child is eighteen unless the child is attending high school or a certified high school equivalency program; a support order will continue as long as the child is actually attending, but only until the age of nineteen; a child is also emancipated on the date of the child's marriage, adoption, or death.

ARIZ. REV. STAT. ANN. §§ 25-320(F), 25-501(A), 25-503(O) (2015) (West).

In both states, child support may extend to college tuition. For example, Arizona courts may enforce divorce settlement provisions requiring payment of college tuition under contract law. *Solomon v. Findley*, 808 P.2d 294, 297 (Ariz. 1991). Indiana's statute authorizes courts to order payment of college tuition depending on the child's ability and aptitude, income and financial aid, and each parent's ability to contribute. IND. CODE § 31-16-6-2.

IND. CODE § 31-16-6-2 provides in part:

Sec. 2. (a) The child support order or an educational support order may also include, where appropriate:

(1) amounts for the child's education in elementary and secondary schools and at postsecondary educational institutions, taking into account:

(A) the child's aptitude and ability;

(B) the child's reasonable ability to contribute to educational expenses through:

(i) work;

(ii) obtaining loans; and

(iii) obtaining other sources of financial aid reasonably available to the child and each parent; and

(C) the ability of each parent to meet these expenses.

Should such an order be made, the parent is relieved from paying the other parent (duplicated) periodic child support by IND. CODE § 31-16-6-2(b).

indications of religious training should be related, and, if so, in what direction.<sup>66</sup>

TABLE 9: LIKELIHOOD OF REDUCTION OF CHILD SUPPORT FOR EMANCIPATION (ARIZONA) COX & SNELL  $R^2 = .053$

| Variable                    | B      | S.E. | Wald   | Sig. | Exp(B) |
|-----------------------------|--------|------|--------|------|--------|
| Number of children          | .3869  | .188 | 3.843  | .050 | 1.446  |
| Length of marriage          | .009   | .002 | 17.222 | .000 | 1.009  |
| Religion indicated          | .931   | .409 | 5.170  | .023 | 2.537  |
| Total child support ordered | .001   | .000 | 1.943  | .163 | 1.001  |
| Constant                    | -5.842 | .724 | 65.062 | .000 | .003   |

TABLE 10: LIKELIHOOD OF REDUCTION OF CHILD SUPPORT FOR EMANCIPATION (INDIANA) (INSIGNIFICANT), COX & SNELL  $R^2 = .172$ .

| Variable                    | B      | S.E. | Wald   | Sig. | Exp(B) |
|-----------------------------|--------|------|--------|------|--------|
| Specific religion indicated | .920   | .795 | 342    | .247 | 2.510  |
| Father's weekly income      | .002   | .000 | 11.702 | .001 | 1.002  |
| Length of marriage          | .040   | .037 | 14.580 | .000 | 1.151  |
| Constant                    | -5.446 | .846 | 41.403 | .000 | .004   |

In Arizona, holding other factors constant, the fact that the parenting plan indicated religious upbringing was significantly (at  $p < .05$ ) and positively related to a motion to reduce or eliminate child support because of emancipation. In Indiana, even with some modifications of the model, though the direction was positive, the coefficient for religious upbringing never reached statistical significance. We can only speculate why this is, but it may be related more to religious parents' identification of child support as a positive relationship, or a particular duty connected with their identity as parents of minors.<sup>67</sup>

#### IV. DIRECTIONS FOR FUTURE RESEARCH

This paper is confined to divorcing couples with children who consider their religious upbringing. It does not consider the increasing proportion of children whose parents never married, nor, since neither state

66. For example, if the parents were sending the children to private, religious schools, the relationship should be positive. It might be negative for more religious couples if the noncustodial parents felt an obligation to be the providers of support. *See, e.g.,* W. BRADFORD WILCOX, *SOFT PATRIARCHS, NEW MEN: HOW CHRISTIANITY SHAPES FATHERS AND HUSBANDS* 9, 89–91 (2004).

67. In Arizona, specific religion was correlated at  $p < .05$  with enforcement actions for child support. When controls were included, statistical significance disappeared.

recognized it in 2008, same-sex married couples.<sup>68</sup> There may be significant differences in how they resolve custody matters upon dissolution.<sup>69</sup>

Although the U.S. divorce rate has continued to fall since its peak in 1981, to about what it was in 1970,<sup>70</sup> as long as the birth rate remains constant, the rate of disputes involving children is likely to rise. The rate of marriage has decreased while coupling has not, and the unwed birth rate has increased dramatically since 1960, so that in 2010 it was about forty-one percent.<sup>71</sup> Unmarried couples in the United States, even those with children, are less stable than their married counterparts.<sup>72</sup> When unmarried parents with children separate, courts still must deal with custody and child support issues should the parents want to enforce either or collect public assistance.<sup>73</sup> Many unmarried couples, however, negotiate informal arrangements including visitation and support without court intervention.<sup>74</sup> Some literature suggests that unmarried mothers may act as gatekeepers, requiring payments or in-kind support before allowing contact.<sup>75</sup> The number of formal agreements may increase, however, because

68. Neither state recognized same-sex marriage until October of 2014. *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014); *Connolly v. Jeanes*, 73 F.Supp. 3d 1094 (D. Ariz. 2014).

69. See, for example, Pruett and DiFonzo writing about presumptions of shared parenting:

It is inappropriate to have a presumption that covers all situations when not enough is known to verify that the presumption will benefit almost all children and families. Presumptions appear in the law as a blunt instrument, yet we know very little empirically about how a presumption would apply to same-sex couples, nonbiological parents, never-married partners who had no significant partnership before having a child together, and so on.

Marsha Kline Pruett & J. Herbie DiFonzo, *Closing the Gap: Research, Policy, Practice, and Shared Parenting*, 52 FAM. CT. REV. 152, 168 (2014).

70. See, e.g., Betsy Stevenson & Justin Wolfers, *Marriage and Divorce: Changes and Their Driving Forces* 21 J. ECON. PERSPS. 27, 29 (2007); Claire Cain Miller, *The Divorce Surge Is Over, But the Myth Lives On*, N.Y. TIMES (Dec. 2, 2014), [http://www.nytimes.com/2014/12/02/upshot/the-divorce-surge-is-over-but-the-myth-lives-on.html?\\_r=1](http://www.nytimes.com/2014/12/02/upshot/the-divorce-surge-is-over-but-the-myth-lives-on.html?_r=1); Dana Rotz, *Why Have Divorce Rates Fallen? The Role of Women's Age at Marriage*, 1, 5, 53 fig.2 (Dec. 20, 2011), (unpublished manuscript), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1960017](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1960017).

71. JOYCE A. MARTIN ET AL., NAT'L VITAL STAT. REP., BIRTHS: FINAL DATA FOR 2010 8 tbl.C (2012), available at [http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61\\_01.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_01.pdf).

72. See, e.g., Marcia J. Carlson et al., *Coparenting and Nonresident Fathers' Involvement with Young Children after a Nonmarital Birth*, 45 DEMOGRAPHY 461, 461 (2008).

73. In the United States, custody rules pertain not only for divorces, but also for separating unmarried parents. In practice, far fewer of these currently have formal custody or child support orders. See, e.g., Lenna Nepomnyaschy & Irwin Garfinkel, *Child Support, Fatherhood, and Marriage: Findings from the First 5 Years of the Fragile Families and Child Wellbeing Study*, 1 ASIAN SOC. WORK & POL'Y REV. 1, 6, 7 tbl.2 (2007); Maureen R. Waller & Allison Dwyer Emory, *Parents Apart: Differences Between Unmarried and Divorcing Parents in Separated Families*, 52 FAM. CT. REV. 686, 697, 697 tbl.4 (2014).

74. See, e.g., EDIN & NELSON, *supra* note 4, at 110, 114–15 (narrating ethnographic work suggesting that the fathers say that good fathers should provide, but first must provide for himself and the families with whom they live, and offer nonresident children some portion of what remains); Karen Benjamin Guzzo, *Maternal Relationships and Nonresidential Father Visitation of Children Born Outside of Marriage*, 71 J. MARRIAGE & FAM. 632, 643 (2009) (stating black fathers are twice as likely to have seen their child at either follow-up interview compared to white fathers); Lenna Nepomnyaschy, *Child Support and Father-Child Contact: Testing Reciprocal Pathways*, 44 DEMOGRAPHY 93, 106 (2007) (“[I]t is very likely that fathers who see their children but do not pay support through the formal system contribute to these children and to their mothers informally.”); see also Solangel Maldonado, *Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers*, 39 U.C. DAVIS L. REV. 991, 995 (2006) (stating in-kind child support is particularly evident among impoverished black fathers).

75. See, e.g., Daniela Del Boca & Rocio Ribero, *The Effect of Child-Support Policies on Visitations and Transfers*, 91 AM. ECON. REV. 130, 130 (2001); Guzzo, *supra* note 74, at 638–43, 641 tbl.2, 642

of new federal legislation encouraging voluntary parenting time arrangements when child support duties are established.<sup>76</sup>

Recently, and largely working with the Fragile Families study of unmarried parents, a number of authors have written about unmarried parents, most of whom are financially disadvantaged. Susan Sullivan, in her 2012 ethnographic study, notes that many of the unmarried mothers she talked to remained “highly personally religious,” they had largely “eschewed . . . [formal] organized religion” and therefore church attendance.<sup>77</sup> Sometimes, they reported to her that this was because they felt judged<sup>78</sup> or otherwise unwelcome at the churches they formally attended. Richard Petts, using the Fragile Families study, found that when poor single mothers “frequently attended religious services,” their children were “less likely to display problem behaviors” and the mothers were more likely to be more involved with them and to have “reduced parent-

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tbl.3 (analyzing the relationship between father visitation and mother’s subsequent relationships where fathers are also less likely to visit when they had different coresidential partners).

76. See Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, Sec. 303, 128 Stat. 1919, 1946 (2014):

SEC. 303. SENSE OF THE CONGRESS REGARDING OFFERING OF VOLUNTARY PARENTING TIME ARRANGEMENTS.

(a) Findings.—The Congress finds as follows:

- (1) The separation of a child from a parent does not end the financial or other responsibilities of the parent toward the child.
- (2) Increased parental access and visitation not only improve parent-child relationships and outcomes for children, but also have been demonstrated to result in improved child support collections, which creates a double win for children—a more engaged parent and improved financial security.

(b) Sense Of The Congress.—It is the sense of the Congress that—

- (1) establishing parenting time arrangements when obtaining child support orders is an important goal which should be accompanied by strong family violence safeguards; and
- (2) States should use existing funding sources to support the establishment of parenting time arrangements, including child support incentives, Access and Visitation Grants, and Healthy Marriage Promotion and Responsible Fatherhood Grants.

The legislation that was enacted is not as strong as DHS 2015, the Administration’s fatherhood and child support budget proposals:

The Budget includes a set of proposals to encourage states to pay child support collections to families rather than retaining those payments. This effort includes a proposal to encourage states to provide all current monthly child support collections to Temporary Assistance for Needy Families (TANF) recipients. [Recognizing that healthy families need more than just financial support alone.] [t]he proposal requires states to include provisions in initial child support orders addressing parenting time responsibilities, to increase resources to support and facilitate non-custodial parents’ access to and visitation with their children, and to implement domestic violence safeguards.

*The President’s Fiscal 2015 Budget for HHS: Hearing Before the H. Comm. on Ways & Means*, 113th Cong. 3 (Mar. 12, 2014) (statement of Kathleen Sebelius, Sec., Dep’t of Health & Hum. Servs.), [http://waysandmeans.house.gov/UploadedFiles/Sebelius\\_Testimony\\_Final\\_031214HL.pdf](http://waysandmeans.house.gov/UploadedFiles/Sebelius_Testimony_Final_031214HL.pdf).

For commentary, compare Stacy Brustin & Lisa Vollendorf Martin, *Paved with Good Intentions: Unintended Consequences of Federal Proposals to Integrate Child Support and Parenting Time*, 48 IND. L. REV. 803 (2015) (providing a critical evaluation suggesting it may impede unmarried mothers from accepting TANF because of concern about contact with fathers), with Jessica Pearson, *Establishing Parenting Time in Child Support Cases: New Opportunities and Challenges*, 53 FAM. CT. REV. 246 (2015) (suggesting strengths and problems).

77. SULLIVAN, *supra* note 2, at 173–74, 205.

78. *Id.* at 156–57. This was also true of the men in EDIN & NELSON, *supra* note 4, at 211 (“[T]ies to organized religion are rare among our men.”).

ing stress.”<sup>79</sup> In other work, Petts<sup>80</sup> notes that the “fathers” in the Fragile Families study “increase[d] their religious [participation] in the year following . . . [the] birth” of their children, “and most maintain[ed] [the] higher rate of religious participation throughout the early years of their child’s life.”<sup>81</sup> Natalie Sheets, working with data from the Pew Forum on Religion and Public Life 2007 Religious Landscape Survey<sup>82</sup> found that:

Married mothers attend[ed] religious services once a week 6 percent more [often] than [did] single mothers, but [were] only 2 percent more likely to be members of a congregation. Single mothers [indicated they] “never” participate[d] in social activities at their house of worship 5 percent more [often] than [did] married mothers[.] . . . and sen[t] their children to Sunday school less . . . [often, but were equally likely to] participat[e] in prayer groups. . . . [M]others with lower income, and black mothers are all at higher odds to be a member of a house of worship than other mothers. . . . Mothers who are black also are more likely to pray and read scripture with their children outside of religious services [than other mothers].<sup>83</sup>

Data limitations prevent my extending the literature appreciably here. In neither state were there enough unmarried parent (or independent) custody actions to do much comparative work on indications of religiosity. In Arizona, where the reader may recall the statutes required consideration of religious training, or not, in parenting plans, forty-three cases involved unmarried parents seeking custody orders, and just under thirty-five percent of these indicated a general religious upbringing with just under ten percent specifying a denomination. This indicates almost as much desire among these parents as among the .396 of the married couples who specified a general religious upbringing or .091 who specified a particular denomination or religion. In Indiana, which has no such requirement, so that religion is in the province of the custodial parent absent agreement, of the ten custody cases, none involved any indication of religious upbringing.

## V. CONCLUSION

Divorcing couples specifying religious upbringing in their parenting plans tended to be more affluent, to come from lengthier marriages, to settle cases before litigation more often, to share custody more equally (in both states), and to have less domestic violence reported either prior to or following divorce. They were more likely to divorce alleging sub-

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79. Richard J. Petts, *Single Mothers' Religious Participation and Early Childhood Behavior*, 74 J. MARRIAGE & FAM. 251, 262–63, 262 tbl.3, 263 tbl.4 (2012).

80. Richard J. Petts, *Fathers' Religious Involvement and Early Childhood Behavior* (Ball State Univ., Dep't of Sociology, Fragile Families Working Paper No. 2009-22-FF, 2009).

81. *Id.* at 17.

82. Natalie J. Sheets, *Single Mothers and Religiosity* (2014) (unpublished M.A. thesis, East Tennessee State University), available at <http://dc.etsu.edu/etd/2356>.

83. *Id.* at 28, 38.

No. 4]

## RELIGION AND CHILD CUSTODY

1391

stance abuse, and were more likely to seek reductions of the noncustodial parent's time with the children following final decrees, particularly when fathers were relatively poorer. The noncustodial (payor) parent was more likely to seek relief because one of the children reached emancipation age. In general, while the pattern is complex, these parents seem like good and thoughtful parents, divorcing only when they needed to and minimizing conflict that the children would see or experience.

