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SUPREME COURT  
STATE OF WASHINGTON  
Aug 28, 2012, 4:30 pm  
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No. 86895-6

SUPREME COURT  
OF THE STATE OF WASHINGTON

In re the Custody of:

BENJAMIN MATTHEW  
HOLT,

MICHAEL J. HOLT,

Respondent,

vs.

LAURIE L. HOLT,

Petitioner.

OBJECTION TO MOTION  
OF AMERICAN CIVIL  
LIBERTIES UNION OF  
WASHINGTON, CENTER  
FOR CHILDREN & YOUTH  
JUSTICE, AND LEGAL  
VOICE, TO FILE AMICUS  
CURIAE BRIEF

Petitioner Laurie L. Holt asks this Court to deny the motion by the American Civil Liberties Union of Washington, Center for Children & Youth Justice, and Legal Voice (collectively Amici) to file an amicus curiae brief in this case, which is set for argument on the merits on September 27, 2012. RAP 10.6(a) provides that an amicus curiae brief may only be filed, absent consent of all the parties, "if the filing of the brief would assist the appellate court." Here, the brief proposed by Amici will not "assist the appellate

court” because, to the extent it does not improperly respond to arguments made in petitioner’s supplemental brief, it addresses issues raised solely by Amici.

The Court should not accept the brief for filing in the first instance because the appellate courts will not pass upon points raised only by amicus. *Schuster v. Schuster*, 90 Wn.2d 626, 585 P.2d 130 (1978). The substantive issue to which Amici ostensibly direct their proposed brief is whether a child has a constitutional right to maintain a family relationship that “trumps” his fit parent’s constitutional right to make decisions for her child. (Motion 3) This is not an issue that is before this Court.

Amici’s brief is an extension of the arguments they raised in the Court of Appeals that a child has the right to appointment of counsel in *de facto* parentage cases in order to protect the child’s purported “constitutional right to maintain family relationships with the people who comprise their family unit.” (Amici COA Br. 9, 14) The Court of Appeals refused to consider this issue because it was not “properly raised at the trial level.” *Custody of B.M.H.*, 165 Wn. App. 361, 383-84, 267 P.3d 499 (2011). Neither party sought review of that decision in this Court, and this Court should decline to consider it now. “The case must be made by the parties

and its course and issues involved cannot be changed or added to by friends of the court.” *City of Lakewood v. Koenig*, 160 Wn. App. 883, ¶ 4, fn. 2, 250 P.3d 113 (2011).

Second, by arguing (often with no citation to the record) disputed and post-decision facts and asserting that Ms. Holt “invited” a parent-like relationship between Mr. Holt and her son (see Amici Br. 1, 5, 7)<sup>1</sup>, Amici is not acting as a friend of the Court. “An amicus brief should be confined to legal analysis of legal issues, whether substantive or procedural, and should not address factual disputes between the parties.” Washington Appellate Practice Deskbook §28.8 (3<sup>rd</sup> ed. 2005 & Supp. 2011) (citing *New England Patriots Football Club, Inc. v. Univ. of Colo.*, 592 F.2d 1196, 1198, n. 3 (1<sup>st</sup> Cir. 1979)). The proposed brief violates this limitation on amicus submissions as well.

Third, significant portions of the proposed brief are in fact a transparent response to petitioner’s supplemental brief, filed not as a friend of the Court but as respondent’s surrogate counsel. (Amicus Br. 7, 10-14) By seeking to respond directly only to arguments raised by petitioner in her supplemental brief, including

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<sup>1</sup> Notably, Amicus specifically adopted in its brief only the version of facts represented by Michael Holt. (See Amici Br. 1, fn. 1)

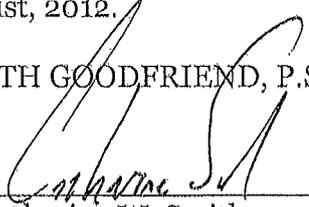
in particular the consequence of the Legislature's recent amendments to the Uniform Parentage Act (Motion 3), Amici violate RAP 13.7(d), which provides that "no response to a supplemental brief may be filed or served except by leave of the Supreme Court." Amici should not be permitted to file a brief that a party himself could not file. *See e.g. Pleas v. City of Seattle*, 49 Wn. App. 825, 827, 746 P.2d 823 (1987), *reversed on other grounds by Pleas v. City of Seattle*, 112 Wn.2d 794, 796, 774 P.2d 1158 (1989) ("the City would be collaterally estopped from raising that issue by a specific finding made in the prior litigation. Amicus should not be permitted to litigate a factual matter prohibited to a party.")

Finally, this Court should consider that petitioner is a single mother who cannot afford to pay for her attorneys' services in this Court, and that petitioner's lawyers are partners in a small law firm. Petitioner's counsel are fully engaged this week preparing a reply in support of an emergency Motion for Discretionary Review in Cause No. 69166-0-I, and in arguing that motion on Friday, August 31, in Division One of the Court of Appeals. Petitioner's lead counsel is then scheduled to be "off the grid" closing down a scientific field camp on the North Slope of Alaska from September 6 to 17. As a

practical matter, acceptance of this amicus brief for filing will condemn petitioner's lawyers to a Labor Day weekend of uncompensated work responding to an improper brief that adds nothing to the substantive policy debate before this Court, and that is nothing but a factually inaccurate and unauthorized response by respondent's surrogate counsel to petitioner's supplemental brief. Pursuant to RAP 1.2(a), RAP 8.3, RAP 10.6(a), and RAP 13.7(d), this Court should deny leave to file the proposed amicus brief of the American Civil Liberties Union of Washington, Center for Children & Youth Justice, and Legal Voice.

DATED this 28<sup>th</sup> day of August, 2012.

SMITH GOODFRIEND, P.S.

By: 

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**DECLARATION OF SERVICE**

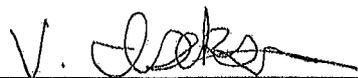
The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on August 28, 2012, I arranged for service of the foregoing Objection to Motion of American Civil Liberties Union of Washington, Center for Children & Youth Justice, and Legal Voice, to File Amicus Curiae Brief, to the court and to the parties to this action as follows:

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David Ward Legal Voice 907 Pine Street, Suite 500 Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email

DATED at Seattle, Washington this 28<sup>th</sup> day of August, 2012.

  
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Victoria K. Isaksen

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Rec. 8-28-12

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**Subject:** No. 86895-6, In re Custody of B.M.H.

Attached for filing in pdf format is the Objection to Motion of American Civil Liberties Union of Washington, Center for Children & Youth Justice, and Legal Voice to File Amicus Curiae Brief, in *Custody of B.M.H.*, Cause No. 86896-6. The person submitting this document is Catherine W. Smith, WSBA No. 9542, email address [cate@washingtonappeals.com](mailto:cate@washingtonappeals.com).

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