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Supreme Court No. 89093-5

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IN THE WASHINGTON SUPREME COURT

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In re the Marriage of:

NEHA VYAS,  
Respondent,

v.

MANJUL VARN CHANDOLA,  
Petitioner.

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M. VARN CHANDOLA'S RESPONSE TO AMICUS BRIEF OF  
LEGAL VOICE, ET AL., AND TO AMICUS BRIEF OF SOUTH  
ASIAN DOMESTIC VIOLENCE ORGANIZATIONS, ET AL.

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By:

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 ORIGINAL

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## I. INTRODUCTION

On February 14, 2014, two amicus briefs were filed in support of Neha Vyas (formerly Chandola).<sup>1</sup> One is from Legal Voice, et al. The second is from South Asian Domestic Violence Organizations, et al. In the interest of judicial efficiency, Varn will respond to both in this brief.

## II. STATEMENT OF THE CASE

Varn relies on the statement of the case in the AOB at 4-23.

## III. ARGUMENT

### A. RESPONSE TO BRIEF OF LEGAL VOICE

Legal Voice's brief largely repeats arguments raised by Neha. Varn will not respond to those because they are already addressed in his opening and reply briefs.

Legal Voice suggests that Varn's due process analysis should not be considered because it was raised for the first time in his supplemental brief. In fact, Varn argued in his opening brief that the due process clause limits the power of a court to impose restrictions on parenting unless there is a sufficient showing of harm to the child. *See* Appellant's Opening Brief (AOB) at 26-27. Varn conceded, as he has in his supplemental brief, that a judge may apply the best interests of the child standard when the wishes of two divorcing parents conflict. He maintained, however, that because both parents approve of co-sleeping and grandparent involvement,

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<sup>1</sup> For consistency with prior briefs, this brief will continue to refer to the parties by their first names.

the trial court could not restrict those practices without a sufficient showing of harm. AOB at 32-25. In his supplemental brief, Varn has more fully fleshed out the due process analysis, particularly regarding the precise level of harm required before restrictions may be imposed. But he has not raised any new legal issue.

Legal Voice cites *Marriage of Katare*, 175 Wn.2d 23, 42, 283 P.3d 546 (2012), *cert. denied*, 133 S.Ct. 889, 184 L.Ed.2d 661 (2013), for the proposition that the best interests of the child standard invariably applies to parenting plans. Legal Voice brief at 3-4. As the *Katare* Court noted, however, “the trial court had to balance the constitutional rights of both parents.” *Katare*, 175 Wn.2d at 42. In that case the parents strenuously disagreed over whether the father should be permitted to take the children to India. Further, in that case there was no dispute that abduction of the children was a sufficient harm to warrant restrictions. The only issue was whether the father truly planned to abduct the children. It does not appear that this Court has ever addressed the scenario presented here, that is, a trial court restricting a parenting practice that neither party objected to.

Legal Voice suggests that Varn’s expert, Dr. Hedrick, confirmed the findings of Dr. Wheeler. In fact, Dr. Hedrick did not do any investigation on her own but merely evaluated the procedure and conclusions of Dr. Wheeler. AOB at 19-21.

Legal Voice argues that a parent should not be penalized for raising good-faith concerns that the other parent is sexually abusing the child. Varn agrees. Here, however, it is not clear that the accusations

were made in good faith. Judge Doerty noted that “it appears to the court that Neha may have needed to precipitate a crisis in order to escape the marriage and extended family dynamic.” CP 94. At the least, “Neha’s over-reactive tendencies played a part.” *Id.* Both experts in this case concluded that Neha’s extreme anxiety could lead her to infer abuse from benign behavior. AOB at 15-19.

In any event, Varn did not ask at trial that Neha be punished. He sought no sanctions against her and asked for a 50-50 split of residential time. Varn and amicus The National Parent’s Organization have proposed some guidelines for expeditious restoration of the parent-child relationship after an unfounded allegation of sexual abuse. Even when such concerns are raised in the utmost good faith, there can be great harm to the accused parent and his child. The proposed guidelines are not designed to punish the other parent, but rather to repair the harm caused by the allegations.

Finally, Legal Voice advocates for an award of fees to Neha. It cites to Varn’s alleged statements that he would spend vast sums of money to “ruin” her and to keep P.R.C. to himself. Varn denies making those statements. It is true that he made some angry remarks after being falsely accused of molesting the daughter he loves, but that did not carry over to the litigation. When Neha filed for divorce, Varn quickly agreed to supervised visitation so that he could reunite with his daughter. AOB at 14. He settled all issues of child support and property distribution before trial, as well as some of the parenting issues. AOB at 11. At trial, he took a reasonable position that residential time should be equal for both parents,

expressly acknowledging that P.R.C. would benefit from significant time with her mother. Similarly, Varn has pursued this appeal in good faith, raising substantial legal issues.

B. RESPONSE TO SOUTH ASIAN DOMESTIC VIOLENCE ORGANIZATIONS

Amici South Asian Domestic Violence Organizations, et al., note first that Indian culture is not monolithic. Varn agrees. But it is undisputed that co-sleeping and raising children in an extended family are common practices among people of Indian background. Further, both Varn and Neha have followed those practices. *See* AOB at 5, 8-9.

Amici further argue that “culture” should not be used as an excuse for domestic violence. Again Varn agrees. But there is no allegation or finding in this case that Varn perpetrated domestic violence. In fact, the greatest concern about violence in this case stemmed from Neha’s statement, after an altercation with her mother, that she had a gun and was going to drive off. Neha repeated those words over and over until her mother slapped her. RP 869-70.

Amici seem to maintain that Varn used “coercive control” to “disempower” Neha. The undisputed testimony shows otherwise. Before P.R.C. was born, Varn and Neha moved away from Varn’s family in Arizona so that Neha could advance her legal career. AOB at 4-5. Neha worked full time while Varn, whose schedule was more flexible, cared for P.R.C. much of the day. AOB at 6, 10. During their time in Washington, one or both sets of grandparents lived with them at various times.

Ultimately, the paternal grandparents left at the behest of Neha. AOB at 10. Close to the time of separation, some harsh words were used by both parties. The overall picture is not one of male dominance.

Amici further argue that Varn's parents helped to "marginalize" Neha's parenting. Varn disputes that. But even if that were true, the issue was moot once the parties separated. Neha then lived in a household with her mother and P.R.C., and there was apparently no contact with the paternal grandparents. Neha did not object to the paternal grandparents having contact with P.R.C. during Varn's residential time. Further, Judge Doerty did not restrict the paternal grandparent's visitation based on any concerns for Neha. Rather, the restriction was based on the premise that Varn would learn to parent better if he practiced on his own.

Amici also maintain that co-sleeping "became an excuse for the father's persistent disturbance of the child's sleep patterns." Varn maintained, however, that he picked P.R.C. up at night only after she woke up crying, and then did his best to rock her to sleep. AOB at 6. When Neha was on maternity leave, she and her mother did the same. AOB at 5. It is hardly unusual for a two-year-old to wake up frequently. While some parents favor "sleep training" to teach the child to put herself back to sleep, others find it more nurturing to pick the child up and help her go back to sleep.

#### IV. CONCLUSION

The Court should reject the positions of the amicus briefs discussed above.

DATED this 25<sup>th</sup> day of February, 2014.

Respectfully submitted,



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## OFFICE RECEPTIONIST, CLERK

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February 25, 2014

To Whom It May Concern:

Attached for filing in *In re Marriage of Neba Vyas v. Manjul Varn Chandola*, No. 89093-5, is Chandola's Response to Amicus Brief of Legal Voice, et al., and to Amicus Brief of South Asian Domestic Violence Organizations, et al. Please let me know if you have any questions. Thank you.

Sincerely,  
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