

No. 89093-5  
WASHINGTON STATE SUPREME COURT  
(COA No. 68424-8-1)

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NEHA VYAS CHANDOLA,

Respondent,

v.

MANJUL VARN CHANDOLA,

Petitioner.

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SUPREME COURT  
STATE OF WASHINGTON  
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ON APPEAL FROM KING COUNTY SUPERIOR COURT

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**MOTION AND MEMORANDUM OF AMICUS CURIAE  
NATIONAL PARENTS ORGANIZATION  
IN SUPPORT OF PETITION FOR REVIEW**

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**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
I. IDENTITY AND INTEREST OF <i>AMICUS CURIAE</i> .....	1
II. REASONS WHY <i>AMICUS</i> STATUS SHOULD BE RECOGNIZED AT THIS STAGE.....	4
III. REASONS WHY NATIONAL PARENTS ORGANIZATION SUPPORT GRANTING REVIEW .....	5
IV. CONCLUSION .....	10

**APPENDIX**

**Appendix A:** Brief of National Parents Organization, accepted by Court Of Appeals (COA No. 68424-8-I), dated February 1, 2013.

**TABLE OF AUTHORITIES**

<b>Washington Cases</b>	<b><u>Page(s)</u></b>
<i>In re Custody of Smith</i> , 137 Wn.2d 1, 969 P.2d 21 (1998) .....	7
<i>In re Marriage of Chandoloa</i> (No. 68424-8-I, May 13, 2013) .....	<i>passim</i>
<i>In re Marriage of Combs</i> , 105 Wn. App. 168, 19 P.3d 469, <i>review denied</i> , 144 Wn.2d 1013 (2001) .....	5
<i>In re Marriage of Kovacs</i> , 121 Wn.2d 795, 854 P.2d 629 (1993).....	2, 5
<i>In re Marriage of Possinger</i> , 105 Wn. App. 326, 19 P.3d 1109, <i>review denied</i> , 145 Wn.2d 1008 (2001) .....	8
<i>In re Marriage of Watson</i> , 132 Wn. App. 222, 130 P.3d 915 (2006).....	5, 7, 9
<i>In re Marriage of Wicklund</i> , 84 Wn. App. 763, 932 P.2d 652 (1996).....	7
<i>Katare v. Katare</i> , 175 Wn.2d 23, 283 P.3d 546 (2012), <i>cert. denied</i> , 133 S. Ct. 889 (2013).....	7
<b>Federal and Other State Cases</b>	
<i>Glucksberg v. Washington</i> , 521 U.S. 702 (1997) .....	7
<i>Troxel v. Granville</i> , 530 U.S. 57 (2000) .....	5, 7
<i>A.H. v. M.P.</i> , 447 Mass. 828, 857 N.E.2d 1061 (2006).....	3
<i>Cooper v. Cooper</i> , 99 N.J. 42, 491 A.2d 606 (1984) .....	3

**Statutes and Court Rules**

Parenting Act of 1987, Ch. 26.09 RCW ..... 2  
RCW 26.09.002 ..... 5  
RCW 26.09.191 ..... 7  
RCW 26.09.191(3)(g)..... 7  
RAP 13.4(b)(3) & (4) ..... 5, 7

**Treatises & Other Authorities**

Richard A. Warshak, *Social Science and Children's Best Interests  
in Relocation Cases: Burgess Revisited*,  
34 FAMILY L.Q. 83 (2000)..... 3

## I. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The National Parents Organization (“National Parents”) is a charitable and educational §501(c)(3) organization headquartered in Boston, Massachusetts.<sup>1</sup> It was granted status as an *amicus curiae* at the Court of Appeals and filed a brief on the merits.

By this Motion and Memorandum in Support of Petition for Review, National Parents reaffirms its interest in the case following the decision by the Court of Appeals panel and states its belief that review should be granted.<sup>2</sup> To avoid unnecessary duplication and to facilitate consideration by the Court, National Parents’ brief accepted at the Court of Appeals (“AB”) is attached as App. A.

National Parents wish to assist the Court by addressing from a broader perspective some of the important issues raised by the case, particularly the need to insure a wrongly accused parent is not penalized in the final parenting plan due to the fact that his or her pre-accusation relationship with the child was drastically -- and

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<sup>1</sup> National Parents’ predecessor organization was named “Fathers and Families”. The change to National Parents Organization took effect before the Court of Appeals’ decision in this case.

<sup>2</sup> The Court’s most recent correspondence of August 8 did not include notice to National Parents’ counsel. National Parents is therefore including a brief motion with the memorandum in case it is needed to participate as an *amicus curiae* at this stage.

wrongfully – disrupted. That includes the disruption here where the parent’s parenting skills, and/or his relationship with the child, were both criticized and penalized for the diminished and artificial contact of short, supervised visitations during the pre-trial period which resulted from the false accusation.

National Parents and its predecessor have focused since 1998 on promoting shared parenting where both parents have equal standing for raising children after a separation or divorce. The legislative history of the Parenting Act of 1987 reflects that it includes shared parenting principles and carefully eliminated any presumptions in favor of the primary caregiver under temporary orders. *See In re Marriage of Kovacs*, 121 Wn.2d 795, 808-09, 854 P.2d 629 (1993).<sup>3</sup> National Parents also recognize, and seek to have courts take into account, that restoring and preserving a strong bond between a child and *both* parents is critically important for the child’s psychological development. There is:

a broad consensus of professional opinion, based on a large body of evidence, that children normally develop close

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<sup>3</sup> *Kovacs* recognizes that the Parenting Act ultimately included elements promoted by “advocates of shared parenting as well as advocates of a primary caregiver presumption,” 121 Wn.2d at 804-05, and that ultimately any presumptions in favor of primary caregivers were removed from the Act. *Kovacs*, 121 Wn.2d at 806-09.

attachments to both parents, and that they do best when they have the opportunity to establish and maintain such attachments.

Richard A. Warshak, "Social Science and Children's Best Interests in Relocation Cases: *Burgess* Revisited", 34 FAMILY L.Q. 83,85 (2000).<sup>4</sup> See National Parents' *amicus* brief below, AB pp. 4-6, App. A-8 to A-10, for additional discussion and citations.

Neither the need to involve both parents nor National Parents' interest are gender-specific. For instance, National Parents' predecessor participated as an *amicus curiae* on behalf of the same-sex partner who was denied both visitation and custody rights as to her non-biological child for whom she was a *de facto* parent in the 2006 Massachusetts case of *A.H. v. M.P.*, 447 Mass. 828, 857 N.E.2d 1061 (2006). The concern and focus of shared parenting from National Parents' perspective is on the welfare of the child, not either of the parents.

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<sup>4</sup> Recognition of the need and desire of children for a relationship with *both* parents, particularly the non-custodial parent, is well established. See, e.g., the concurring opinion in *Cooper v. Cooper*, 99 N.J. 42, 491 A.2d 606, 620-23 (1984) (Schreiber, J., concurring) ("In sum, the social science literature is virtually unanimous in stressing the importance to children of regular, frequent contact with both their parents and in recommending that children's relationships with their noncustodial parents not be lightly disturbed or frustrated.").

## II. REASONS WHY *AMICUS* STATUS SHOULD BE RECOGNIZED AT THIS STAGE.

National Parents were granted *amicus curiae* status by the Court of Appeals. Its brief was accepted and is part of the appellate record. Although it is counsel's understanding from prior cases that such status remains throughout a case, this abbreviated motion is being submitted to insure compliance with any procedural requirements at this stage of the appellate proceedings on whether the Court should grant review.

After the panel decision on the merits, National Parents wants to clearly state its support for the Petition for Review. It also agrees review should examine the key issues and potential rules which necessarily arise from this case involving unfounded allegations of abuse that materially and drastically disrupted the relationship of the child and one parent. National Parents set out suggested rules for future cases in the briefing below, summarized *infra*. National Parents adds a perspective focusing on the law and current research and commentary that will assist the Court by giving a broader context for consideration of the issues raised by this case which arise too frequently in the trial courts, but rarely get appealed.

### III. REASONS WHY NATIONAL PARENTS SUPPORT GRANTING REVIEW.

This case raises a significant state-wide issue that merits review under RAP 13.4(b)(3) & (4): it addresses the improper disruption, and consequent needed restoration, of the constitutionally protected child-parent relationship under our statutory scheme providing for the best interests of the child in making parenting plans, when one parent has been falsely accused of abusing the child:

**Issue:** How is a child best restored to a full relationship with a parent who was falsely accused of abuse, and who thus had his or her contact with the child totally or severely limited during the pendency of the dissolution proceedings and before entry of a final parenting plan, where, under Washington's statutory scheme and associated case law, and the constitution, the decision is to promote the best interests of the child without penalizing or unduly benefitting either parent based on the temporary orders and their effects?

*See* RCW 26.09.002; *In re Marriage of Kovacs*, 121 Wn.2d 795, 854 P.2d 629 (1993); *In re Marriage of Watson*, 132 Wn. App. 222, 130 P.3d 915 (2006); *In re Marriage of Combs*, 105 Wn. App. 168, 19 P.3d 469, *review denied*, 144 Wn.2d 1013 (2001); *Troxel v. Granville*, 530 U.S. 57, 64-67 (2000).

National Parents suggest that the panel decision failed to directly address this issue. *See In re Marriage of Chandola*, (No.

68424-8-I, May 13, 2013), Slip. Op. pp. 16-19 (discussing the “unproven sexual abuse allegations”). It glossed over the evidence that the trial judge’s ruling was influenced by the extremely limited and unnatural relationship forced on Petitioner Varn Chandola<sup>5</sup> and his daughter P.C. while the temporary orders were in effect. *Id.* The panel decision thus effectively decided that the drastic effects of the temporary orders were irrelevant as long as the trial court referred to *some* problems with Varn’s parenting that were present before the temporary orders. *See Id.*

National Parents respectfully suggests review is appropriate because the panel decision failed to even examine into whether there was a showing the trial judge was to some extent *influenced* by the situation that existed during the temporary orders (including the abuse allegation), an analysis which appears to be the teaching of *Watson*. Moreover, the panel decision failed to address the *necessary impact* of the temporary orders which so severely restricted P.C.’s contact with her father Varn, how that limited contact drove the trial court’s decision on the highly restrictive

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<sup>5</sup> National Parents uses the naming convention of the parties and the Court of Appeals for clarity: Mr. Chandola is “Varn”; Ms. Chandola is “Neha”; their daughter is “P.C.”.

parenting plan, and the fact that those restrictive temporary orders were not even necessary because the allegations were unfounded.

The panel decision also failed to address what is a necessary element of the best interests analysis, and which is an issue of state-wide import that merits review under RAP 13.4(b)(3) & (4): the way a child must be expeditiously restored to the constitutionally-protected child-parent relationship that was improperly interrupted by an unfounded allegation where, as here, there were no proper disabling factors as to the accused parent under RCW 26.09.191 or otherwise.<sup>6</sup> National Parents agrees with the Petition that affirmance of the trial court's use of RCW 26.09.191(3)(g) in this case goes beyond what the statute is intended to protect against, and beyond what the Constitution allows, since it essentially lets any judge say, "I don't like your parenting style." Restrictions can be based, in

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<sup>6</sup> See, e.g., "[T]he interest of parents in the care, custody and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. at 65, affirming *In re Custody of Smith*, 137 Wn.2d 1, 969 P.2d 21 (1998). "[T]he 'liberty' specially protected by the Due Process Clause includes the righ[t] . . . to direct the education and upbringing of one's children." *Glucksberg v. Washington*, 521 U.S. 702, 720 (1997). See *Custody of Smith*, 137 Wn.2d at 13-15 (recognizing as fundamental "a parent's constitutionally protected right to raise his or her children without state interference."). Accord, *Katаре v. Katаре*, 175 Wn.2d 23,37-38 & 47-49, ¶¶ 50-51, 57 (Madsen, C.J., dissenting), 283 P.3d 546 (2012), cert. denied, 133 S. Ct. 889 (2013) (parental rights may only be restricted where there is a nexus between proven parental conduct and potential harm to the child as demonstrated by supported findings under RCW 26.09.191); *Marriage of Watson*, 132 Wn. App. at 233-34 (same); *Marriage of Wicklund*, 84 Wn. App. 763, 771-72, 932 P.2d 652 (1996) (same).

whole or in part, merely on socio-economic or cultural norms different from the judge's, *e.g.*, judicial imposition of "middle class morality" and a preferred culture that is at heart subjective (*e.g.*, *Wicklund*); or that results from a "spill-over" from the false accusation of abuse, rather than a clearly established harm to the child from proven conduct of the parent that goes beyond a difference in parenting styles.

The decision also did not address the obvious solution of flexibility to restore the disrupted child-parent relationship via frequent review hearings in a longer temporary parenting plan, as Washington cases already permit and recommend for unsettled situations as was presented here. *See In re Marriage of Possinger*, 105 Wn. App. 326, 336-37, 19 P.3d 1109, *review denied*, 145 Wn.2d 1008 (2001) and AB, pp. 12-13, 14-15, App. A, A-16-17, A-18-19.

In the Court of Appeals, National Parents suggested potential rules for addressing this extremely important issue to children in future cases. *See* AB pp. 1-2, 9-20; App. A-5 to 6, 13 to 24. The core suggested rules, taking into account the panel decision, are restated *infra* with minor modifications. Elaboration on the rationales is in the brief included as Appendix A.

This case provides the Court a rare opportunity to address these child-focused issues against the factual backdrop where it necessarily makes a difference. By their nature, such cases rarely get to the appellate courts, *see, e.g., Watson, supra*, and even more rarely to this Court's level. These rules are:

- A. The Court should adopt a rule for cases with unsupported abuse allegations that the parenting plan must contain provisions that promote the immediate, expedited restoration of the child's relationship with the falsely accused parent, and encourage review hearings to maintain flexibility and permit speedier, simpler adjustments to the ultimate balanced schedule.
- B. The determination of the residential schedule and any restrictions must be done so as to not penalize the accused parent or affected child for the unsubstantiated allegations.
- C. Restrictions which result from the effects of the unsubstantiated allegations cannot be fair or necessary to save the child from harm and must be modified to promote restoration of the damaged relationship.
- D. The Court should adopt a rule for false accusation cases that reviews, under strict scrutiny, 1) whether a parenting plan contains provisions that will restore the child-parent relationship disrupted by the false accusation; and 2) convinces the reviewing court that the falsely accused parent and the affected child are not penalized, directly or indirectly, by the false accusation or the effects of the false accusation.

#### IV. CONCLUSION.

For the above reasons, National Parents support the grant of review in this case and urge the Court to hear it at the earliest opportunity.

Dated this 12<sup>th</sup> day of August, 2013.

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# APPENDIX A

No. 68424-8-I

DIVISION I, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

---

NEHA VYAS CHANDOLA,

Respondent,

v.

MANJUL VARN CHANDOLA,

Appellant.

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ON APPEAL FROM KING COUNTY SUPERIOR COURT

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**BRIEF OF AMICUS CURIAE  
FATHERS AND FAMILIES, INC.**

---

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## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES .....	iii
I. INTRODUCTION .....	1
II. IDENTITY AND INTEREST OF <i>AMICUS CURIAE</i> .....	2
III. STATEMENT OF THE CASE .....	6
IV. ARGUMENT .....	9
A. The Court Should Adopt a Rule for Cases With Unsupported Abuse Allegations That the Parenting Plan Must Contain Provisions That Promote the Immediate, Expedited Restoration of the Child's Relationship With the Accused Parent, and Encourage Review Hearings to Maintain Flexibility and Permit Speedier, Simpler Adjustments to the Ultimate Balanced Schedule.....	9
B. The Determination of the Residential Schedule and Any Restrictions Must Be Done So as to Not Penalize the Accused Parent for the Unsubstantiated Allegations.....	13
C. The Restrictions Here Appear to Be the Result of the Unsubstantiated Allegations and Are Therefore Unfair and Not Necessary to Save the Child From Harm .....	16
V. CONCLUSION .....	20

**TABLE OF AUTHORITIES**

<b>Washington Cases</b>	<b><u>Page(s)</u></b>
<i>In re Marriage of Combs</i> , 105 Wn. App. 168, 19 P.3d 469, review denied, 144 Wn.2d 1013 (2001) .....	11, 16
<i>In re Marriage of Kovacs</i> , 121 Wn.2d 705, 854 P.2d 629 (1993).....	3, 11, 13, 14, 16
<i>In re Marriage of Watson</i> , 132 Wn. App. 222, 130 P.3d 915 (2006).....	7, 14, 16
<i>In re Marriage of Possinger</i> , 105 Wn. App. 326, 19 P.3d 1109, review denied, 145 Wn.2d 1008 (2001) .....	8, 12-15, 20
<b>Other Cases</b>	
<i>A.H. v. M.P.</i> , 447 Mass. 828, 857 N.E.2d 1061 (2006).....	5-6
<i>Cooper v. Cooper</i> , 99 N.J. 42, 491 A.2d 606 (1984).....	3-4
<i>Mason v. Coleman</i> , 447 Mass. 177, 850 N.E.2d 513 (2006).....	6
<i>Moore v. City of East Cleveland</i> , 431 U.S. 494 (1977) .....	19
<i>Robert J. v. Catherine D.</i> , 174 Cal. App. 4 <sup>th</sup> 1500 (2009).....	9
<b>Statutes</b>	
RCW 26.09.002.....	5, 10-11, 13, 16-17
RCW 26.09.191(3)(g).....	16, 18-19

**Treatises, Law Reviews and Other Authorities**

*Denial or Restriction of Visitation Rights to Parent Charged With Sexually Abusing Child*,  
1 A.L.R.5TH 776 (1992, 2013 Supp.).....9

Loewy, *Shadow and Fog: Is California Civil Code Section 4611 an Effective Deterrent Against False Accusations of Child Abuse During Custody Proceedings?*  
26 LOY. L.A. L. REV. 881 (1993) .....9

MASSACHUSETTS ASSOCIATION OF FAMILY AND CONCILIATION COURTS, *PLANNING FOR SHARED PARENTING, A GUIDE FOR PARENTS LIVING APART*, available online at <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/afccsharedparenting.pdf> (last visited 1/30/13).....5

Prof. James T. Patterson (*emeritus*), *Misrepresenting the Moynihan Report—Will It Ever Stop?*,  
GEORGE MASON UNIVERSITY’S HISTORY NEWS NETWORK,  
Oct. 25, 2010, <http://www.hnn.us/articles/132791.html>.....5

Prof. N. M. Rutledge, *Turning A Blind Eye: Perjury In Domestic Violence Cases*, 39 N.M. L. REV. 149 (2009).....9

Richard A. Warshak, *Social Science and Children’s Best Interests in Relocation Cases: Burgess Revisited*,  
34 FAMILY L.Q. 83 (2000).....3

*Sexual Abuse of Child by Parent as Ground for Termination of Parent’s Right to Child*,  
58 A.L.R.3D 1074 (1974, 2013 Supp.).....9

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Wikipedia.org, Daniel Patrick Moynihan,  
[http://en.wikipedia.org/wiki/Daniel\\_Patrick\\_Moynihan](http://en.wikipedia.org/wiki/Daniel_Patrick_Moynihan) (last visited 1/30/2013).....4

## I. INTRODUCTION

A critical issue underlying this case is how to expeditiously restore the relationship between a falsely accused parent and his child so that the child gets, as soon as possible, the maximum benefit of both parents. In legal terms, the issue is whether a parent who has been falsely accused by the other parent of sexually abusing their child can be penalized in the final parenting plan, directly or indirectly: Can the falsely accused parent have his time and/or activities with his child restricted as a result of unsubstantiated allegations, or as a result of the disruption in that parent's contact and relationship with the child while the allegations were examined into and determined to be false?

*Amicus* suggests that the best interest of the child, the established public policy of this State, and a strong body of research which finds that children develop best when they have genuine relationships with two parents, all require close review of the parenting plan in a false allegation case to insure the damaged relationship is restored as fast as possible and monitored to maximize the speed of that restoration. Here, the opposite occurred. The parenting plan severely restricts the father until at least 2017 for the stated purpose of assuring "the mother's parenting is not diluted by the father." CP 93. The parenting plan thus turns on its head *both* the settled principle that temporary orders are not to provide the basis for the permanent plan *and* the determination the abuse allegations or "concerns" were unsupported because, by its own terms, it does marginalize him, and for at least five years until his daughter is nearly nine.

Where an allegation of abuse by a parent is determined to be unfounded, the courts should do all they can to adopt and affirm parenting plans that support both parents in having a strong relationship in raising the child, ideally shared parenting that is premised on the relationships between the children and each parent before separation or the divorce proceedings began. If damage was done to a parent's relationship with her child due to false allegations, the court's priority must be to restore the relationship with the innocent parent as fast as possible. In short, in a false allegation of abuse case, a final parenting plan should insure the innocent parent's relationship with his or her children is quickly restored to the pre-allegation norm, not compromised even further than already done by the effect of the false allegation.

## II. IDENTITY AND INTEREST OF *AMICUS CURIAE*

Fathers and Families, Inc. ("*Amicus*") is a charitable and educational §501(c)(3) organization headquartered in Boston, Massachusetts.<sup>1</sup> *Amicus* wishes to assist the Court by addressing from a broader perspective some of the important issues raised by the case, including the need to insure a wrongly accused parent is not penalized in the final parenting plan because his or her pre-allegation relationship with the child was drastically – and wrongfully – disrupted. That includes the disruption here where the parent's parenting skills, and/or his relationship

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<sup>1</sup> Fathers and Families is in the process of changing its name to The National Parents Organization ("NPO"), which change will be in effect by the time the case is argued and decided. That new operative name will be used *infra* to identify the organization.

with the child, can be criticized for diminished contact or the artificial contact of short, supervised visitations.

*Amicus* has focused since its founding in 1998 on promoting shared parenting where both parents have equal standing to raise their children after a separation or divorce. The legislative history of the Parenting Act of 1987 (“Act”) reflects that it includes shared parenting principles and carefully eliminated any presumptions in favor of the primary caregiver. See *In re Marriage of Kovacs*, 121 Wn.2d 795, 808-09, 854 P.2d 629 (1993).<sup>2</sup> *Amicus* also recognizes, and seeks to have courts take into account, that restoring and preserving a strong bond between a child and both parents is critically important to her psychological development. There is a

broad consensus of professional opinion, based on a large body of evidence, that children normally develop close attachments to both parents, and that they do best when they have the opportunity to establish and maintain such attachments.

Richard A. Warshak, *Social Science and Children's Best Interests in Relocation Cases: Burgess Revisited*, 34 FAMILY L.Q. 83,85 (2000). The large body of social research which demonstrates the need – and desire – of children for a relationship with *both* parents, particularly the non-custodial parent, is not new. See, e.g., *Cooper v. Cooper*, 99 N.J. 42, 491 A.2d 606, 620-23 (1984) (Schreiber, J., concurring) (“In sum, the social

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<sup>2</sup> *Kovacs* recognizes that the Parenting Act ultimately included elements promoted by “advocates of shared parenting as well as advocates of a primary caregiver presumption”, 121 Wn.2d at 804-05, and that ultimately any presumptions in favor of primary caregivers was removed from the Act. *Kovacs*, 121 Wn.2d at 806-09.

science literature is virtually unanimous in stressing the importance to children of regular, frequent contact with both their parents and in recommending that children's relationships with their noncustodial parents not be lightly disturbed or frustrated.”<sup>3</sup>

Large-scale public discussion of this need for both parents began with the famous 1965 report<sup>4</sup> of the late Senator Daniel Moynihan in which he painstakingly documented the devastating effect of fatherlessness on the African-American community.<sup>5</sup> Tragically, since

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<sup>3</sup> For instance, Judge Schreiber summarizes the literature as showing that:

Researchers have found that a large majority of children whose parents have divorced yearn for their absent parent with surprising persistence and passion. Wallerstein and Kelly, in one of the most complete, long-term studies of children of divorced parents, found that children expressed the wish for increased contact with the non-custodial parent, usually the father, “with a startling and moving intensity,” that they found twice-monthly weekend visits woefully inadequate, and that “[t]he intense longing for greater contact persisted undiminished over many years.”

*Cooper*, 491 A.2d at 621 (Schreiber, J., concurring) (emphasis added).

<sup>4</sup> Wikipedia.org summarizes at [http://en.wikipedia.org/wiki/Daniel\\_Patrick\\_Moynihan](http://en.wikipedia.org/wiki/Daniel_Patrick_Moynihan) (last visited 1/30/2013) (emphasis added):

Moynihan was an Assistant Secretary of Labor for policy in the Kennedy Administration and in the early part of the Lyndon Johnson Administration. . . . he did not have operational responsibilities, allowing him to devote all of his time to trying to formulate national policy for what would become the War on Poverty. . . .

Moynihan's research of Labor Department data demonstrated that even as fewer people were unemployed, more people were joining the welfare rolls. These recipients were families with children but only one parent (almost invariably the mother). The laws at that time permitted such families to receive welfare payments in certain parts of the United States.

Moynihan issued his research under the title *The Negro Family: The Case For National Action*, now commonly known as The Moynihan Report. . . . much of the press coverage of the report focused on the discussion of children being born out of wedlock.

<sup>5</sup> The report is at <http://www.dol.gov/oasam/programs/history/webid-meynihan.htm> (last visited 1/30/2013).

1965 fatherlessness has worsened in that community,<sup>6</sup> while the rest of the nation has “caught up” to those 1965 statistics. These concerns have not diminished, but grown.

The need to involve both parents and *Amicus*’ interests are not gender-specific. This is demonstrated by *Amicus*’ participation on behalf of the same-sex partner who was denied both visitation and custody rights as to her non-biological child for whom she was a *de facto* parent in the 2006 Massachusetts case of *A.H. v. M.P.*, 447 Mass. 828, 857 N.E.2d 1061 (2006), summarized *infra*. The concern and focus of shared parenting by *Amicus* is on the welfare of the child, not the parents.

*Amicus* is concerned that too often the courts give insufficient support for the principle, embodied in RCW 26.09.002, that active participation by both parents (and, ideally, shared parenting) is critically important to the well-being of the children, a principle now used in the Massachusetts courts.<sup>7</sup> *Amicus*’ mission includes seeking court reform

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<sup>6</sup> See, e.g., Prof. James T. Patterson (*emeritus*), *Misrepresenting the Moynihan Report—Will It Ever Stop?*, GEORGE MASON UNIVERSITY’S HISTORY NEWS NETWORK, Oct. 25, 2010, <http://www.hnn.us/articles/132791.html>:

Thereafter, of course, the plight of lower-class African Americans has become far more serious. In 1965, 25 percent of black babies were born out of wedlock. Today, roughly 72 percent are—including more than 80 percent in many inner cities.

<sup>7</sup> See MASSACHUSETTS ASSOCIATION OF FAMILY AND CONCILIATION COURTS, PLANNING FOR SHARED PARENTING, A GUIDE FOR PARENTS LIVING APART, available online at <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/afccsharedparenting.pdf> (last viewed 1/30/13). For instance, it states at page 3:

Thanks to the large body of research completed over the last decade, we now have a better understanding of the impact of separation and divorce on children. Using this research makes it possible to better assess and meet their needs.

We now know that:

that establishes equal rights for *both* parents, and participating in court cases such as this where these principles arise.<sup>8</sup>

### III. STATEMENT OF THE CASE

The parties married in 1998 in Arizona and lived with Mr. Chandola's parents for four years, then moved to Kent in fall 2002 for a job for Ms. Vyas. Op. Br. pp. 4-5. Both are of Indian descent, and the parents of both lived with them after marriage at different times and helped out with parenting for the two new parents. *E.g.*, Op. Br., pp. 4-10. Their daughter was born in November 2008 and Ms. Vyas returned to work in April 2009, after which Mr. Chandola was the primary parent for their daughter, with help from his parents until November, 2010. In February, 2011, Ms. Vyas took their daughter, left the house, and filed for divorce. Op. Br., pp. 10-11.

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- Children do best when both parents have a stable and meaningful involvement in their children's lives.
  - Each parent has different and valuable contributions to make to their children's development.

<sup>8</sup> Examples of cases in which *Amicus* participated as a friend of the court at the appellate level include:

- *A.H. v. M.P.*, 447 Mass. 828, 857 N.E.2d 1061 (2006), in which the Massachusetts Supreme Court ruled that the same-sex partner and *de facto* parent of a child's biological mother was not entitled to visitation or custody rights. The woman had been a parental figure for the child for years but was cut off from the child by the biological mother after the couple separated. *Amicus* feared that the case could set a precedent, marginalizing parents to whom children are deeply attached simply because they are breadwinners, a "critical caretaking function."
- *Mason v. Coleman*, 447 Mass. 177, 850 N.E.2d 513 (2006), in which the Massachusetts Supreme Court affirmed a trial court decision denying a parent's petition to relocate the children to another state when the parents had joint custody. *Amicus* argued the trial court's decision was appropriate because the proposed move would have been a *de facto* modification of joint custody and denied the children the support of the noncustodial parent.

Ms. Vyas then raised “concerns” that alleged Mr. Chandola had sexually abused their daughter. Those “concerns” resulted in a temporary order requiring supervised visitation. See Ex. 1, Wheeler Nov. 1, 2011 report at p. 25 ¶3: “As a result of these concerns, [Mr. Chandola’s] access to [his daughter] was restricted and he has had supervised visitation since that time.” This is typical when such allegations are raised, even if they ultimately are unfounded. See *In re Marriage of Watson*, 132 Wn. App. 222, 130 P.3d 915 (2006). The requirement of supervised visitation was not lifted until December 2011, after mediation and the parenting evaluator determined the “concern” of sexual abuse by Mr. Chandola was not supported by the evidence. Ex. 1, pp. 25-26; Opening Brief pp. 13-17. Ms. Vyas testified the allegations were unsupported. See III RP, pp. 416-17 (Ms. Vyas, direct).

The parties resolved property issues and trial was in late January 2012 on the parenting issues and parenting plan. Opening Brief p. 11; see VRPs. Mr. Chandola sought equal time with both parents for their daughter; Ms. Vyas sought restrictions on Mr. Chandola’s time with their daughter and close controls over what he was allowed to do.

The parenting evaluator’s report stated that, as their three-year-old daughter “now appears to be bonded with both her parents,” it was in her “best interest for this more balanced, adaptive pattern of bonding with both parents to continue to be supported.” Ex. 1, p. 25 ¶2 (underlining in original). Dr. Wheeler also recommended that five and a half years later, after second grade in summer 2017, “the family should undergo a re-evaluation to determine whether this schedule should be modified to provide

either parent with more/less access,” Ex. 1, p. 30 ¶3, rather than move to a default schedule made over five years earlier, which is what the trial court ultimately did. *See* CP 81-82, setting out the schedule.

The trial court imposed severe restrictions on both Mr. Chandola’s time and his activities with his daughter, including limiting the time the paternal grandparents could spend in the house with the child. Parenting Plan (Final Order) ¶3.10, CP 84. *See generally* Parenting Plan, CP 80-91; Memorandum Findings on Trial (“Findings Memo”), CP 92-94. *See also* Opening Brief, pp. 21-22. The Findings Memo makes clear the trial court was not trying to be balanced when imposing the restrictions. It explicitly stated: “It is therefore necessary to impose such restrictions *as may best be anticipated assure the mother’s parenting is not diluted by the father.*” CP 93 (emphasis added). And despite the recommendation of Dr. Wheeler, the parenting plan contains no provision for any re-evaluation and adjustment of the residential arrangements for their daughter after entry of the plan, much less one in the relatively near future, as case law supports when, as here, the parties and child are in flux. *See In re Marriage of Possinger*, 105 Wn. App. 326, 19 P.3d 1109, *review denied*, 145 Wn.2d 1008 (2001).

#### IV. ARGUMENT

**A. The Court Should Adopt a Rule for Cases With Unsupported Abuse Allegations That the Parenting Plan Must Contain Provisions That Promote the Immediate, Expedited Restoration of the Child's Relationship With the Accused Parent, and Encourage Review Hearings to Maintain Flexibility and Permit Speedier, Simpler Adjustments to the Ultimate Balanced Schedule.**

No more serious “concern” can be raised or allegation explicitly made against a parent as to their fitness to be with and raise their child than he or she sexually abused the child. Unfortunately, such allegations are all too frequent, perhaps in part because they are so potent, and in part because emotions are high.<sup>9</sup> They can and do lead to not just temporary loss of or restrictions on contact, but also can lead to a complete loss of parental rights and loss of relationship by the child. *See* fn.9, *supra*. This is the case whether the concerns or allegations are made in complete good faith, or for complicated psychological reasons, or for untoward reasons – the effect on the accused parent is the same in terms of the immediate loss and potential total loss of parental rights. Such allegations or “concerns” thus cannot be - and are not - taken lightly, precisely because they are so potent. The stakes are high. This is all the more reason why when abuse allegations are found to

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<sup>9</sup> *See, e.g.*, Prof. N. M. Rutledge, *Turning A Blind Eye: Perjury In Domestic Violence Cases*, 39 N.M. L. REV. 149 (2009); *Robert J. v. Catherine D.*, 174 Cal.App.4<sup>th</sup> 1500, (2009) (reversing a denial of sanctions sought by father for false child abuse accusations made by mother and her former attorney); Loewy, *Shadow and Fog: Is California Civil Code Section 4611 an Effective Deterrent Against False Accusations of Child Abuse During Custody Proceedings?*, 26 LOY. L.A. L. REV. 881 (1993). *See also* *Denial or Restriction of Visitation Rights to Parent Charged With Sexually Abusing Child*, 1 A.L.R.5TH 776 (1992, 2013 Supp.) and *Sexual Abuse of Child by Parent as Ground for Termination of Parent's Right to Child*, 58 A.L.R.3D 1074 (1974, 2013 Supp.).

be unsupported, immediate work must begin to repair the damaged relationship. Precious time has been lost.

In this case, it was established shortly before trial the allegations of sexual abuse arising from Ms. Vyas' "concerns" were not supported – but not until after 10 months of supervised visitation and extremely limited contact between father and daughter. Despite the toxic effect of such unsupported allegations, the trial court downplayed the fact the allegations were made in its Findings Memo written to justify the restrictions under RCW 26.09.191(30(g)). The court essentially gave Ms. Vyas, a "pass" for having made them stating "Neha [Ms. Vyas] *may have needed to precipitate a crisis in order to escape the marriage* and extended family dynamic" and at the same time, imposed severe restrictions on when Mr. Chandola can see his daughter or what he can do with her. CP 94 (emphasis added).

Nothing in the statutes or cases excuses the total disruption of Mr. Chandola's relationship with his daughter as a justifiable act in order "to escape the marriage," whether that disruption is for "just" the year following the allegations, or for the next five years given the current parenting plan.

It appears Mr. Chandola has been marginalized from his daughter's life for at least the first three and a half years of the parenting plan until August 2014 because of the allegation of sexual abuse, even though the allegations ultimately were unsupported by the evidence. But since state policy is to maintain *both* parent-child relationships, which are explicitly recognized to be of "fundamental importance . . . to the welfare of the child," RCW 26.09.002, restoration of the damaged or broken relationship

with the falsely accused parent must be a top priority. It also is a first step toward genuine shared parenting and the healthy upbringing of their daughter by both parents.

*Amicus'* focus on the need for immediate and expedited restoration of the damaged relationship is consistent with, if not required by, the public policy established by the Legislature in RCW 26.09.002 and associated case law cited by Mr. Chandola. It provides that the temporary orders do not provide a basis for the permanent parenting plan and may not prejudice either party in determining the final parenting plan. *Kovacs, supra*, 121 Wn.2d at 808-09; *In re Marriage of Combs*, 105 Wn. App. 168, 176-77, 19 P.3d 469, *review denied*, 144 Wn.2d 1013 (2001).

For false allegation cases such as this, *Amicus* strongly urges the Court to apply a standard of strict scrutiny for any parenting plan review. Appellate review must insure parenting plans in such cases contain provisions designed to *expeditiously* restore the parent-child relationship that was disrupted and/or interrupted by the false allegation and (in most cases) by temporary orders and denied, reduced, or supervised visitation that followed the false allegation. This close review also must assure the innocent parent is in no way penalized by the effects of the unfounded allegation and any resulting orders.

*Amicus* suggests that the rule for false or unsubstantiated abuse cases should be that parenting plans will only be upheld if the appellate court is firmly convinced that: 1) the parenting plan contains explicit provisions to expeditiously restore the parent-child relationship that was

disrupted by the allegations; and 2) the parenting plan does not penalize, directly or indirectly, the falsely accused parent, either as a result of the false allegation itself, or from the effects of the false allegation, such as from the result of reduced or compromised visitations under any of the temporary orders. Rather, in most such cases, interim parenting provisions should be entered to facilitate restoration of the disrupted parent-child relationship, and a truly final parenting plan can be deferred pending a later hearing or hearings, as has been done for other unsettled circumstances, e.g., *Possinger, supra*.

A “permanent” parenting plan should not have long-term, automatic staged-in changes based on before-the-fact micro-managing of one of the parents via vague and undefined criteria which restrict a wrongfully accused parent, as was done here. It is too difficult to accurately predict the future and what will be needed for the child. *See Possinger*, 105 Wn. App. at 336.<sup>10</sup> This ill serves the child, ties the hands of any later reviewing trial court, and purports to know many years in advance what is in the best interests of the child after substantial learning and therapy is supposed to have transpired for both parties. As Judges DuBuque and Kennedy recognized in *Possinger*, there are times when the flexibility of a review and parenting provisions not cast in stone is

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<sup>10</sup> “It would be strange indeed to construe an act designed to serve the best interests of the children of divorcing parents in such a manner as to require trial courts to rush to judgment on insufficient evidence with respect to the children’s best interests, or to ignore the fact that the lives of the parents are in such a state of transition that the children’s best interests would be served by deferring long-term parenting decisions for a reasonable period of time following entry of a decree of dissolution of marriage.”

required because any judge can only see so far into the future. It is difficult to change the provisions of a permanent parenting via modification with the normal requirements of adequate cause but, absent reversal by this Court, that is the inflexible situation the current parenting plans leaves the parties and their daughter in. This does not serve the child, nor is it required by the Act. *Possinger*, 105 Wn. App. at 336-37.

**B. The Determination of the Residential Schedule and Any Restrictions Must Be Done So as to Not Penalize the Accused Parent for the Unsubstantiated Allegations.**

Washington statutes provide a reasonable and common sense framework for protecting the rights of both parents and children when parents no longer live together. The first statute in Ch. 26.09 states the policy adopted by the Legislature:

... In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that **the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests**. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, **the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm**.

RCW 26.09.002 (emphasis added). As noted, *Kovacs* documents that the Act incorporates shared parenting principles, such as the bolded language.

The question is, how should trial courts apply the statutes on residential provisions or restrictions when abuse allegations are not supported?

It ultimately does not matter if the abuse is not established – the allegation or “raised concern” has already done its work and given the accusing parent what *Kovacs* recognized is a critical part of the most important factor for establishing the residential schedule, RCW 26.09.187(3)(a)(i):<sup>11</sup> “whether a parent has taken greater responsibility for performing parenting functions relative to the daily needs of the child.” This case is typical in the sense that, once restrictions are put in place following allegations of abuse, they stay for a year or more, typically until the trial, when the accusing parent gets the benefit of that critically-important factor, just by the nature of the process. *E.g., Watson*, 132 Wn. App. at 226, 229. This is a bad incentive.

But an ultimately unsupported allegation need not have this prejudicial or preclusive effect. With proper guidance from this court, trial courts can be reminded of the flexibility they have to mitigate any prejudicial effect from allegations or “concerns” of abuse, and that the plan in such cases will be carefully examined on appeal to insure there is no prejudicial effect on the accused parent. Any improper incentive to make a false allegation will be reduced, if not eliminated.

The chief tool is a periodic re-evaluation, similar to what the parenting evaluator recommended here, and which is recognized as an

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<sup>11</sup> See *Kovacs*, 121 Wn.2d at 805-808, giving the legislative history of the provision. Including the “greater responsibility” component in the most significant factor was, in the words of Rep. Appelwick, “politically important to list.” *Id.* at 807.

appropriate option by *Possinger* and later cases. *Amicus* suggests that there be earlier review than at the five-and-a-half-year mark suggested by the parenting evaluator because of the very high priority in quickly restoring the parent-child relationship that should not have been disrupted, and which may or may not be capable of an immediate fix. As in *Possinger*, it should only be after the Court is satisfied the proper long-term equilibrium of residential time and parenting functions has been reached, with full mitigation of the deleterious effects of the unfounded allegations, that a truly permanent parenting plan is entered which can only be changed by a modification.

Another approach is to take the effect of the false allegation into account in going through the statutory factors of RCW 26.09.187(3)(a), especially factor (a)(i)'s component of "whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child." That factor should be held in abeyance and not given effect for the time period the accused parent was wrongfully restricted in care or visitation, as it would be fundamentally unfair. To the extent the trial court cannot fairly evaluate that factor due to restrictions on the falsely accused parent, it should set that factor aside until there is sufficient data for it to be meaningfully and fairly applied. *See Possinger*, 105 Wn. App. at 336. Thus the suggestion for an "interim" parenting plan subject to a review within a specified time, either as required by the Court or as may be initiated at the option of one or both of the parties. *Id.*

**C. The Restrictions Here Appear to Be the Result of the Unsubstantiated Allegations and Are Therefore Unfair and Not Necessary to Save the Child From Harm.**

The existing public policy as established by the Legislature in RCW 26.09.002 and applied in *Kovacs*, *Watson*, and *Combs* requires vacating the parenting plan because the restrictions placed on Mr. Chandola under the guise of RCW 26.09.191(3)(g) unnecessarily and unjustifiably disrupt and marginalize the relationship between Mr. Chandola and his daughter for a minimum of five-and-a-half years, when she will be nearly nine. The restrictions are not justified by his alleged “misbehavior” of being a “doting father but ineffective parent.” CP 92. After all, this is Mr. Chandola’s first child and he has ample opportunity to improve his parenting skills while having regular, meaningful, and substantial contact with his daughter. Few, if any, new parents started perfectly with their first child.

Rather, the restrictions must be vacated because, the trial court’s verbiage to the contrary notwithstanding, it appears the court penalized Mr. Chandola based on the circumstances during the temporary orders – the disrupted relationship, tenuously maintained only by supervised visits for nearly a year. Those restrictive and short visits were, in turn, based on the false allegations against him. It cannot be said that the ultimate parenting plan with its severe restrictions was fair to Mr. Chandola or that it promotes the best interests of the child, since it serves to keep him away and impede repair of the relationship.

The net result here also is a determination that the child cannot be raised consistent with cultural views of extended families. Rather, she must be raised under the trial court's view of a strict nuclear family in which extended family is precluded because, apparently, that is not an acceptable way or context in which Mr. Chandola is to improve his parenting skills. The net effect and message of the parenting plan is that Mr. Chandola may "parent" his daughter only if he does it exactly like the mother, Ms. Vyas. He must "parent" the same way she does, as the Findings Memo states, "It is therefore necessary to impose such restrictions as may best be anticipated assure the mother's parenting is not diluted by the father." CP 93.

The parenting plan thus destroys any semblance of a second parent under the guise of § 191(3)(g), an apparent result of the false allegations or their year-long shadow of restrictions. In effect, the parenting plan erases Mr. Chandola as though he was a dangerous molester; if he does not parent in exactly the way that the judge decided was the "right" way to parent, he loses *all* his parental rights. This is not shared parenting, nor is it allowing the non-custodial parent to be himself or be anything other than what amounts to a clone of the custodial parent.

Most importantly under Washington law, it is not giving their child the benefit of both her parents. Rather, it cuts out Mr. Chandola and violates RCW 26.09.002 because it in effect destroys the second parent. The plan does this *not* because he is violent - there are no domestic violence findings; *not* because he has substance abuse issues; and *not*

because he was found to have any sex abuse or deviancy issues. He is not a threat to harm their daughter. It was nominally done because the trial court does not like his parenting “style” and Ms. Vyas got the trial court to impose her preferred method of parenting. What was this father’s sin that would constitute a genuine harm allowing restrictions under RCW 26.09.191(3)(g)? He doted on his daughter; he was not strict enough.

The trial court asked, rhetorically (and ironically), “Are Varn’s issues so problematic that he *should* be marginalized? The Court finds not.” CP 93. Yet, despite this determination that Varn need not and should *not* be marginalized, the rest of the Findings Memo and the parenting plan go on to do just that. He is told quite explicitly he must be a different person than he was born and raised if he wants to have any contact with his daughter. He is to be supervised to see if the court will, at some distant point after his daughter is in third grade in the fall of 2017 and nearly nine years old, allow a smidgeon more time; but, explicitly, only if that additional time will not “dilute” the mother’s parenting. This amounts to the *de facto* removal of Mr. Chandola as a genuine parent.

With all due respect to the trial court, there is such a disconnect between the nature of the Mr. Chandola’s claimed deficiencies and the severe, long-term restrictions that are imposed that the only reasonable conclusion to a disinterested observer is that Mr. Chandola is being severely penalized for the false allegations, just not directly by explicit statement. Not only are such restrictions unjustified on the face of the ruling, if not vacated here it lets trial courts micro-manage parents under

the guise of RCW 26.09.191(3)(g) as the “catch-all” justification for any behavior the trial judge happens to disagree with, such as here, an ancient custom of extended families helping to raise children. But what could be a more natural way to acquire knowledge and experience in raising a child for a rookie parent – a first-time parent who is not presumed to know all about infants?

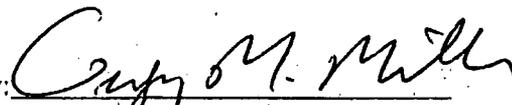
The provisions banning the paternal grandparents from regular contact and helpful participation are particularly striking – and grating – after watching the second Inauguration of President Obama and seeing Mrs. Obama’s mother in the stands as a visibly integral part of that “nuclear” family, a grandparent who famously lives in the White House with the President and Mrs. Obama and, if news reports are to be believed, is directly involved in raising their girls on a daily basis. This certainly cannot be allowed only for Presidential families. Rather, whatever may be the “preferred” family model approach in King County amongst its judges and parenting evaluators, there nevertheless must be recognition and tolerance of the diversity of approaches to family and child-raising. This includes recognition of the long-standing, continuing, and well-recognized traditions of extended family participation, or there can be nothing close to genuine shared parenting and full participation by both parents consistent with who they are. *See Moore v. City of East Cleveland*, 431 U.S. 494, 504 (1977) (“The tradition of . . . grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition.”).

## V. CONCLUSION

The allegations against Mr. Chandola of sexual abuse of their daughter had immediate, severe, and lasting effects that are not yet resolved. *Amicus* respectfully submits that Washington law, substantial research, and common sense support requiring immediate steps to restore the disrupted parent-child relationship in false allegation cases as part of what is needed for each child to maximize her relationship with both parents. *Amicus* suggests this is a proper case for the Court to require that plans in false allegation cases contain explicit and flexible provisions to expeditiously restore the parent-child relationship that was disrupted by the unsubstantiated allegations, including monitoring with periodic review hearings as in *Possinger*. To affirm on review, the court should be clearly convinced that the wrongly accused parent is not penalized, directly or indirectly, by the unsubstantiated allegations, or by the effects of the unsubstantiated allegations such as reduced or compromised visits under earlier temporary orders, and that affirmative provisions are included to restore the interfered-with relationship and to promote that restoration as fast as possible.

Dated this 15<sup>th</sup> day of February, 2013.

CARNEY BADLEY SPELLMAN, P.S.

By:   
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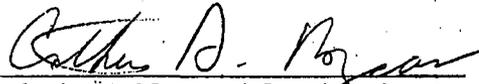
CERTIFICATE OF SERVICE

I certify under penalty under the laws of the State of Washington that on 15<sup>th</sup> day of February, 2013, I caused a true and correct copy of the foregoing Brief of *Amicus Curiae* Fathers and Families, Inc. to be delivered as follows:

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DATED this 15<sup>th</sup> day of February, 2013.

  
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Documents to be filed on behalf of *Amicus Curiae* National Parents Organization:

1. Motion and Memorandum in Support of Petition for Review/App A-1 to A-25
2. Notice of Unavailability of Counsel – G. Miller
3. Certificate of Service

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**Case No.:** 89093-5  
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