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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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In re the Custody of B.M.H.

MICHAEL J. HOLT,  
Respondent,

v.

LAURIE L. HOLT,  
Petitioner.

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2012 SEP -5 P 3:56  
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BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION  
OF WASHINGTON, CENTER FOR CHILDREN & YOUTH  
JUSTICE, AND LEGAL VOICE

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## I. INTRODUCTION

"The demographic changes of the past century make it difficult to speak of an average American family." *Troxel v. Granville*, 530 U.S. 57, 63, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). B.M.H.'s dad, Michael Holt, has raised him since birth.<sup>1</sup> Although Mr. Holt is the biological father of B.M.H.'s brother C.H., he is not B.M.H.'s biological father. B.M.H.'s biological father died before B.M.H. was born. B.M.H.'s mother, Laurie Holt, considered letting Mr. Holt adopt him, but did not want B.M.H. to lose survivor benefits. Mr. Holt has been B.M.H.'s dad for all 13 years of B.M.H.'s life. Even after Mr. and Ms. Holt divorced when B.M.H. was two, B.M.H. and his brother would typically spend approximately 10 to 12 days a month with their dad. Since the child's birth, Mr. Holt has been a consistent parent in B.M.H.'s life.

B.M.H. may not live in the "average" American family, but he has plenty of company in that respect. Forty years ago, 85 percent of children lived with two parents; today fewer than 70 percent do.<sup>2</sup> Of the 50.8 million children who do live with two parents, about one in eight live with

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<sup>1</sup> *Amici curiae* adopt the facts described in the Brief of Respondent and Opening Brief of Cross-Appellant, *In re Custody of B.M.H.*, 165 Wn. App. 361, 267 P.3d 499 (2011) (No. 41211-0-II).

<sup>2</sup> See Rose M. Kreider & Renee Ellis, U.S. Census Bureau, *Living Arrangements of Children: 2009*, at 7 (June 2011).

either a stepparent or adoptive parent.<sup>3</sup> One in 10 children lives with a half sibling.<sup>4</sup> The number of children living with stay-at-home dads has increased 46 percent over the past 15 years.<sup>5</sup>

When there are no "average" American families, our laws cannot limit the definition of family to "average" either. This Court has recognized that "statutes often fail to contemplate all potential scenarios which may arise in the ever changing and evolving notion of familial relations." *In re Parentage of L.B.*, 155 Wn.2d 679, 706, 122 P.3d 161 (2005). Rather, "inevitably, in the field of familial relations, factual scenarios arise, which . . . leav[e] deserving parties without any appropriate remedy, often where demonstrated public policy is in favor of redress." *Id.* at 687. Consequently, to remedy inequities like B.M.H. losing the only dad he has ever known, this Court recognized in *L.B.* the equitable common law doctrine of *de facto* parentage. *De facto* parentage provides a way to preserve a parent-child relationship when a person who has acted in all respects as a child's parent lacks a remedy under state law.

This brief makes three points. First, recognizing Mr. Holt as a *de facto* parent protects B.M.H.'s constitutional rights and does not violate

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> U.S. Census Bureau, Families and Living Arrangements, <http://www.census.gov/hhes/families/data/families.html> (Oct. 2011) (click "Table SHP-1. Parents and Children in Stay-At-Home Parent Family Groups: 1994 to Present").

Laurie Holt's constitutional rights. Second, neither this Court's decision in *In re Parentage of M.F.*, 168 Wn.2d 528, 228 P.3d 1270 (2010), nor the legislature's recent amendments to the Uniform Parentage Act preclude the application of the *de facto* parent doctrine in this case. Finally, the *de facto* parent doctrine is needed to preserve the relationship of children like B.M.H. with adults like Michael Holt who act in every respect as a parent but lack legal recognition under Washington statutes.

## II. IDENTITY AND INTEREST OF AMICI

The identity and interest of *amici curiae* are set forth in the Motion for Leave to File an *Amici Curiae* Brief

## III. STATEMENT OF THE CASE

*Amici curiae* adopt the Statement of the Case set forth in the Supplemental Brief of Respondent Michael J. Holt.

## IV. ARGUMENT

### A. **Recognizing Mr. Holt as a *De Facto* Parent Protects B.M.H.'s Constitutional Rights and Does Not Violate Ms. Holt's Constitutional Rights**

As this Court has long recognized, children like B.M.H. have an interest in having the affection and care of their parents. *Moore v. Burdman*, 84 Wn.2d 408, 411, 526 P.2d 893 (1974). While parents do have a constitutional interest in the "custody, care, and control of their children" free from undue interference by the state, *see Prince v.*

*Massachusetts*, 321 U.S. 158, 166, 64 S. Ct. 438, 88 L. Ed. 645 (1944), courts have recognized that this constitutional protection is reciprocal and applies as equally to the child, *see Smith v. Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987), *overruled on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1040–41 n.1 (9th Cir. 1999). As this Court explained in another parentage action, "[i]t would be ironic to find issues of parent-child ties are of constitutional dimension when the parents' rights are involved but not when the child's are at stake." *State v. Santos*, 104 Wn.2d 142, 143–44, 702 P.2d 1179 (1985). Indeed, "a child has a constitutionally protected interest in *whatever* relationship comprises his or her family unit." *In re Custody of Shields*, 157 Wn.2d 126, 152, 136 P.3d 117 (2006) (Bridge, J., concurring) (emphasis added) (citation omitted). "[B]iological relationships are not [the] exclusive determination of the existence of a family." *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 843, 97 S. Ct. 2094, 53 L. Ed. 2d 14 (1977).

Recognizing B.M.H.'s right to preserve a relationship with Mr. Holt, regardless of their biological ties, does not violate Ms. Holt's rights as a parent. This Court has made clear that a *de facto* parent is not an unrelated third party, but is instead placed "in parity with biological and adoptive parents in our state." *See L.B.*, 155 Wn.2d at 710. As the *de facto* parent of B.M.H., Mr. Holt would share the same "fundamental liberty

interest" in the "care, custody, and control" of B.M.H. as Ms. Holt and be entitled to the same constitutional protections with respect to maintaining this relationship. *Id.* (quoting *Troxel*, 530 U.S. at 65).

Mr. Holt's status as a *de facto* parent can be achieved only through Ms. Holt's active encouragement and the affirmative establishment of a family unit that includes Mr. Holt and their son. *Id.* at 709, 712.

Notwithstanding the presumption that fit parents act in the best interests of their children, *see Troxel*, 530 U.S. at 68, Ms. Holt does not have a constitutional right to consent to and foster B.M.H.'s relationship with Mr. Holt, but then arbitrarily sever that relationship. Ms. Holt's affirmative acts for nine years, both before and after she and Mr. Holt separated, manifested her intent that, in all ways except biological, Mr. Holt and B.M.H. were parent and child, regardless of her relationship with Mr. Holt. Even after the couple divorced, Ms. Holt changed her son's name to Mr. Holt's last name, supported his close relationship with Mr. Holt's extended family, allowed Mr. Holt to be the more active and visible parent, and accepted Mr. Holt's voluntary payments of child support and miscellaneous expenses and his provision of insurance coverage. During this period, Ms. Holt endorsed Mr. Holt's equal and identical treatment of B.M.H. and C.H. and agreed to raise the boys together on the same residential schedule. "When parents make a commitment to meet [their

responsibilities as parents], the child has a right to rely on the unique contribution of each parent to material and emotional support." *Bowen v. Gilliard*, 483 U.S. 587, 613–14, 107 S. Ct. 3008, 97 L. Ed. 2d 485 (1987).

Severing B.M.H.'s relationship with Mr. Holt, who has acted as his parent for his entire life, would not only deprive B.M.H. of a constitutional interest in maintaining a relationship with his parent but would also inflict great harm at this formative stage of his life. Accordingly, while Ms. Holt might have a constitutional interest in being free of government scrutiny of such decisions with respect to an outside third party, *see, Troxel*, 530 U.S. at 68, by inviting Mr. Holt to function as a parent to B.M.H., she necessarily forfeited a measure of autonomy over any future parenting decisions intending to sever this relationship. As other states have recognized, a biological parent's rights "do not extend to erasing a relationship between her partner and her child which she voluntarily created and actively fostered simply because after the parties' separation she regretted having done so." *J.A.L. v. E.P.H.*, 682 A.2d 1314, 1322 (Pa. Super. Ct. 1996); *see also V.C. v. M.J.B.*, 748 A.2d 539, 552 (N.J. 2000) ("Although the intent of the legally recognized parent is critical to the psychological parent analysis, the focus is on that party's intent during the formation and pendency of the parent-child relationship."); *Jones v. Barlow*, 154 P.3d 808, 834 (Utah 2007); (Durham, C.J., dissenting) ("A

parent who encourages the formation of such a relationship cannot later unilaterally sever the connection or complain that a court has violated his or her rights by protecting the relationship.").

Based on her reading of *M.F.*, Ms. Holt mistakenly suggests that strict scrutiny applies because she is being afforded less protection from intrusion than is enjoyed by families with two natural or legal parents. *See* Pet. Supp. Br. at 7. Contrary to Ms. Holt's equal protection arguments, this case does not turn on whether B.M.H. has two living legal parents or just one. Rather, it is because Ms. Holt, B.M.H.'s sole legal parent, actively encouraged the development of a strong parent-child bond between her son and Mr. Holt that strict scrutiny is inapplicable in this situation. *Cf. In re Marriage of Katore*, No. 85591-9, slip op. at 21 (Wash. filed Aug. 16, 2012) (reaffirming that "no case has applied a strict scrutiny standard when weighing the interests of two parents") (quoting with approval *Momb v. Ragone*, 132 Wn. App. 70, 77, 130 P.3d 406 (2006)).

By allowing Mr. Holt to present evidence of being B.M.H.'s *de facto* parent, this Court would merely be effecting Ms. Holt's parenting decision to create a parent-child relationship between Mr. Holt and B.M.H. and protecting B.M.H.'s interest in maintaining this relationship.

**B. Neither *M.F.* Nor Recent Amendments to the UPA Preclude Recognizing Mr. Holt as B.M.H.'s *De Facto* Parent**

**1. *M.F.* Does Not Categorically Prevent *All* Stepparents in *All* Cases from Ever Presenting Evidence of *De Facto* Parentage**

B.M.H.'s unique situation is unlike any situation previously before this Court, which is precisely the nature of equitable relief. In *M.F.*, this Court stated that the *de facto* parent doctrine did not apply to a stepfather who entered his stepdaughter's life as a third party to the two existing parents whose respective roles already were established under Washington's statutory scheme. 168 Wn.2d at 532. Consistent with the equitable flexibility of the *de facto* parent doctrine, however, this Court limited its holding in *M.F.* to its facts. *See id.* at 529 ("We . . . hold that the *de facto* parentage doctrine does not apply under *the circumstances present in this case.*") (emphasis added), 531 ("This case requires us to . . . decide whether the doctrine of *de facto* parentage should extend to *the facts before us in this case.*") (emphasis added), 534 ("[T]he *de facto* parentage doctrine should not extend to *the circumstances in this case.*") (emphasis added), 535 ("[W]e decline to extend the *de facto* parentage doctrine to *the facts presented.*") (emphasis added).<sup>6</sup>

*M.F.* should not be interpreted as creating a categorical ban on any

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<sup>6</sup> *M.F.* made no reference to any constitutional basis for its holding. Rather, this Court made abundantly clear that its decision not to extend the *de facto* parent doctrine was limited to "the circumstances *present in this case.*" 168 Wn.2d at 529 (emphasis added).

stepparent *ever* having standing as a *de facto* parent without examining the circumstances present in the case. This reading of *M.F.* is overly broad and at odds with the flexible remedy the doctrine represents. It is not possible for the legislature to have contemplated *all* scenarios that may arise in cases involving former stepparents. Rather than creating categorical exclusions, this Court must preserve *de facto* parentage as a flexible doctrine that is able to protect children's relationships with parents who clearly satisfy the rigorous five-part *de facto* parentage test where the particular circumstances are not covered by a statutory scheme.

*Amici curiae* recognize that this Court expressed concern that "the *de facto* parent test we applied in *L.B.* could not, in the stepparent context, be applied in a meaningful way . . . because in most cases they will be very easily satisfied." *M.F.*, 168 Wn.2d at 534. However, the Court did not recognize that the *L.B.* test includes a fifth factor that sharply limits its application. Specifically, the fifth factor limits recognition as a *de facto* parent to only "those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life," *L.B.*, 155 Wn.2d at 708 (quoting *C.E.W. v. D.E.W.*, 845 A.2d 1146, 1152 (Me. 2004)). As a result, the test would apply only to those few former stepparents who can satisfy all parts of the *L.B.* test, justifying legal recognition of their enforceable obligation to consistently support

and love the child they have parented, even after separating from the child's legal parent.

Trial courts are well equipped to evaluate the *de facto* parentage cases and to apply equitable doctrines, provided they have appropriate guidance from this Court on the factors, as they do when applying the committed intimate relationship doctrine or the best interests test for residential time. *See, e.g., In re Marriage of Lindsey*, 101 Wn.2d 299, 678 P.2d 328 (1984); *Borenback v. Borenback*, 34 Wn.2d 172, 208 P.2d 635 (1949). When applying the *de facto* parent doctrine, lower courts must have the flexibility to fashion an equitable remedy on a case-by-case basis for children and parents whose legal situations the legislature failed to contemplate. *See L.B.*, 155 Wn.2d at 706, 707. By definition, categorical exclusions inequitably hamper a trial court's ability to account for the varying scenarios that may arise. They hamper the ability of a trial court, intimately familiar with the facts and circumstances of a case like this, to prevent a child like B.M.H. from losing the only dad he has ever known.

**2. The Legislature's Recent Amendments to the Uniform Parentage Act Are Not Applicable**

Ms. Holt also argues that because the legislature amended Washington's Uniform Parentage Act (UPA) in 2011, the Court should "decline to further extend the [*de facto*] parent doctrine past the specific

facts in *L.B.*" Pet. Supp. Br. at 5. In essence, Ms. Holt suggests that the legislature's action should preclude the application of the *de facto* parent doctrine in this case. This argument is flawed in several respects.

The legislature's recent amendments to the UPA simply are not applicable to this case. In 2011, the legislature adopted Engrossed Second Substitute House Bill 1267, "an act relating to clarifying and expanding the rights and obligations of state registered domestic partners and other couples." Laws of 2011, ch. 283. The bill made a number of changes to the UPA, largely to ensure that it would apply to state registered domestic partners and their children. The legislation also restored a "holding out" provision to Washington's UPA, which provides a rebuttable presumption of parentage if a person lives with a child for the first two years of the child's life and openly holds the child out as his or her own. *Id.* § 8(2). The legislature specifically provided that "[t]his act applies to causes of action filed on or after the effective date of this section," which was July 22, 2011. *Id.* § 58. Because Mr. Holt filed this action on February 23, 2010, the 2011 UPA amendments do not apply to this case.

In any event, the legislature's 2011 UPA amendments cannot be regarded as abrogating or limiting the *de facto* parent doctrine. The *de facto* parent doctrine arises from the common law. *See L.B.*, 155 Wn.2d at 710. This Court has repeatedly "decline[d] to recognize the abrogation of a

common law cause of action in the absence of either an explicit statement or clear evidence of the legislature's intent to abrogate the common law." *Potter v. Wash. State Patrol*, 165 Wn.2d 67, 76–77, 196 P.3d 691 (2008). There is no abrogation here.

To the contrary, the legislature's recent amendments to the UPA provide clear evidence that the legislature did not intend to abrogate or limit the application of the *de facto* parent doctrine. Prior to 2011, the UPA provided that "[t]his chapter governs every determination of parentage in this state." *See* RCW 26.26.021(1) (2002). In 2011, the legislature amended this broad language to make the more limited statement that "[t]his chapter applies to determinations of parentage in this state." Laws of 2011, ch. 283, § 2(1). If the legislature had intended to abrogate or limit the *de facto* parent doctrine, it would not have narrowed the language regarding the UPA's scope.

Notably, when this Court issued its decision in *L.B.* in 2005 recognizing the common law *de facto* parent doctrine, the UPA still included the sweeping pronouncement that the act "governs every determination of parentage in this state." Despite this language, this Court held that the UPA did not provide the exclusive means of determining parentage in Washington. Instead, the Court found that "[i]t is evident that the UPA, especially when considered in the broader context of [the] . . .

statutory scheme, was intended to supplement and clarify parentage actions and not to supplant the common law equity powers of our trial courts with regard to parentage, visitation, child custody, and support." *L.B.*, 155 Wn.2d at 701. Nothing in the legislature's recent amendments to the UPA purport to preclude the common law equity powers of Washington courts in making parentage determinations.

The recent UPA amendments should mean that fewer parents will need to resort to the *de facto* parent doctrine to protect their relationships with their children. While this development is welcome, it does not mean that the *de facto* parent doctrine has been abrogated or limited. Most importantly, this development does not mean the doctrine is no longer needed. As this Court recognized in *L.B.*, "simply because a statute fails to speak to a specific situation should not, and does not in our common law system, operate to preclude the availability of potential redress," especially "when the rights and interests of those least able to speak for themselves are concerned." 155 Wn.2d at 707. Here, as in many other circumstances, the common law works to complement the legislature's efforts to protect the most vulnerable.

**C. The *De Facto* Parent Doctrine Protects B.M.H.'s Relationship with Mr. Holt**

**1. The *De Facto* Parent Doctrine Is Needed to Protect Families**

The *de facto* parent doctrine is necessary to protect parent-child relationships in Washington. The court system should recognize the reality of children's lives, however unusual or complex, and design rules to serve children's best interest. Nancy D. Polikoff, *This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families*, 78 Geo. L. J. 461, 469 (1990). A court's equitable power can ensure that parent-child relationships do not fall through the interstices that current legislative enactments fail to cover. *See L.B.*, 155 Wn.2d at 707. This Court can protect children like B.M.H. from needlessly being torn from their parents.

Like the petitioner in *L.B.*, Mr. Holt has no statutory remedy to preserve the parent-child relationship with B.M.H. that Ms. Holt fostered – both before and after the couple separated. Just as it was not a remedy for the petitioner in *L.B.*, and contrary to the position of Ms. Holt, *see* Pet. Supp. Br. at 6, Washington's nonparental custody statute fails to protect the rights of children and is not a remedy in this case. *See* RCW 26.10.030. Nonparental custody does not protect the rights of children in obtaining inheritance rights, family bonds, and accurate identification of

their parents. *See McDaniels v. Carlson*, 108 Wn.2d 299, 311, 738 P.2d 254 (1987). Unlike a *de facto* parent, who has "a fundamental liberty interest in the care, custody, and control of his or her child," a nonparental custodian has "only a temporary and uncertain right to custody of the child for the present time because the child has no suitable legal parent." *In re Parentage of J.A.B.*, 146 Wn. App. 417, 426, 191 P.3d 71 (2008). *But see M.F.*, 168 Wn.2d at 532–33. In short, to a child, like B.M.H., a custodian is not a parent.

The lack of a remedy in this case is no less true because B.M.H. is the child of different-sex parents and not the child of same-sex parents like L.B. The focus of the doctrine is on the child's relationships, not on the relationship between the adults. *Cf. Sacha M. Coupet, Beyond "Ergos": Relative Caregiving, "Agape" Parentage, and the Best Interests of Children*, 20 Am. U. J. Gender Soc. Pol'y & L. 611, 618 (2012) ("[T]he construct of parenthood, with all the attendant rights and responsibilities, should rest upon an understanding of how adults relate to the child, not necessarily the manner in which they themselves are intimately connected."). This Court has never suggested that a parent's sexual orientation is a factor in the applicability of the *de facto* parent doctrine. *See generally M.F.*, 168 Wn.2d 528; *L.B.*, 155 Wn.2d 679; *see also V.C.*, 748 A.2d at 542 ("Although the case arises in the context of a lesbian

couple, the standard we enunciate is applicable to all persons who have willingly, and with the approval of the legal parent, undertaken the duties of a parent to a child not related by blood or adoption." To limit the doctrine based on sexual orientation would only exacerbate the inequities the doctrine was intended to correct and create a disparity between the rights afforded children of same-sex couples and those afforded children of different-sex couples. *Cf.* Courtney G. Joslin & Shannon P. Minter, *Lesbian, Gay, Bisexual and Transgender Family Law* § 5:1 (2009) (noting same result when prohibiting same-sex partner adoption). Courts should not deny critical protections to children based on a factor irrelevant to the parent-child relationship, such as their parents' sexual orientation. *Cf.* *Plyler v. Doe*, 457 U.S. 202, 220, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982) (holding that a prohibition on educating the children of illegal immigrants imposed a "discriminatory burden on the basis of a legal characteristic over which children can have little control"); *see also In re Marriage of Cabalquinto*, 100 Wn.2d 325, 329, 669 P.2d 886 (1983) ("Visitation rights must be determined with reference to the needs of the child rather than the sexual preferences of the parent."). In short, B.M.H. should not lose a parent simply because Mr. Holt did not have a same-sex relationship with B.M.H.'s mother.

## 2. Preserving Parental Relationship Under the *De Facto* Parent Doctrine Helps Children Avoid the Long-Term Consequences of Losing a Parent

This is a case in which the courts have the equitable power to prevent a potentially long-lasting harm. Before categorically refusing to recognize a parent who otherwise satisfies the stringent *de facto* parentage test, courts must consider the effect of their legal decrees on the vulnerable children at the center of the disputes. *Cf. L.B.*, 155 Wn.2d at 694 n.10, 701; *McDaniels*, 108 Wn.2d at 311–12 ("Where someone outside the family files a paternity action, the trial judge should consider the impact upon the child in deciding whether the action may proceed."). And at the center of this dispute is an adolescent who is facing the potential trauma and long-term devastation of losing the one dad he has known for the entirety of his 13-year life.

Parents – particularly consistent, stable, involved parents like Mr. Holt – play a critical role in shaping the social, emotional, personal, and cognitive development of their children. Disrupting the relationship between a parent and child can adversely affect the child's development and adjustment.<sup>7</sup> Multiple changes in a child's family structure – such as precluding B.M.H. from access to the only dad he has ever known – can

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<sup>7</sup> See Joan B. Kelly & Holt E. Lamb, *Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children*, 38 Fam. & Conciliation Cts. Rev. 297, 303 (2000) (citations omitted).

negatively impact how a child develops socially, emotionally, educationally, and behaviorally.<sup>8</sup> This is particularly true for an adolescent like B.M.H., who is in the midst of "a time of continued growth, development, and reorganization as shown by ongoing biological maturation of the brain and associated changes in cognition, self regulation, and decision making."<sup>9</sup> During this chaotic time, being permanently separated from a parent like Mr. Holt can produce significant psychological harm and has been associated with an impaired ability to commit to long-term relationships,<sup>10</sup> profound insecurity,<sup>11</sup> and major depression that can continue through adulthood.<sup>12</sup> Thus, while those close to B.M.H. have stated that losing Mr. Holt would be "devastating," even they may not fully understand the potential severity and long-term devastation B.M.H. would experience in losing his dad as he enters adolescence.<sup>13</sup>

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<sup>8</sup> *Id.* (citations omitted).

<sup>9</sup> See K.J. Tyson-Rawson, *Adolescent Responses to the Death of a Parent*, in *Handbook of Adolescent Death and Bereavement* 156 (C.A. Corr & D.C. Balk eds., 1996).

<sup>10</sup> See William Hodges, *Interventions for Children of Divorce: Custody, Access and Psychotherapy* 8 (2d ed. 1991).

<sup>11</sup> See James X. Bremby & Carolyn Ericson, *Therapeutic Termination with the Early Adolescent Who Has Experienced Multiple Losses*, 16 *Child & Adolescent Soc. Work. J.* 177, 182–82 (1999).

<sup>12</sup> See Brianna Coffino, *The Role of Childhood Parent Figure Loss in the Etiology of Adult Depression: Findings From a Prospective Longitudinal Study*, 11 *Attachment & Human Dev.* 445, 445–46 (2009).

<sup>13</sup> Further, B.M.H.'s potential loss is not confined to his dad. Since B.M.H.'s older brother, C.H., moved in with Mr. Holt three years ago, B.M.H. has seen less of his brother. Children who are separated from the siblings risk experiencing a decreased sense of stability, identity, family, and culture. Natalie Amato, *Black v. Simms: A Lost*

This is a case in which the courts have the power to prevent a potentially long-lasting harm. "The importance of family and familiar relationships to a natural and healthy childhood seems well established." *In re Dependency of M.S.R.*, 174 Wn.2d 1, 15, 271 P.3d 234 (2012). A child deprived of a parent suffers a devastating harm, regardless of whether the two share the same biological makeup. *See McDaniels*, 108 Wn.2d at 310 ("Child development experts widely stress the importance of stability and predictability in parent/child relationships, even where the parent figure is not the natural parent."). Because of this harm, the state intervenes to separate a parent and child only where there is a countervailing harm, such as neglect or abuse. *See, e.g., In re Dependency of Esgate*, 99 Wn.2d 210, 660 P.2d 758 (1983); *Schulz v. Schultz*, 66 Wn.2d 713, 404 P.2d 987 (1965). Likewise, to protect the child, there are circumstances in which courts exercise their equitable power to preserve the relationship. *See, e.g., L.B.*, 155 Wn.2d 679; *Moore*, 84 Wn.2d 408. This is one of those cases.

## V. CONCLUSION

"[U]nderneath every legal debate over family law is a family in crisis." Sandra Day O'Connor, *The Supreme Court and the Family*, 3 U. Pa. J. Const. L. 573, 579 (2001). Underneath this legal debate is a boy,

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*Opportunity to Benefit Children by Preserving Sibling Relationships When Same-Sex Families Dissolve*, 45 Fam. L.Q. 377, 385 (2011).

soon to be a young man, who is facing the risk of losing a relationship with a man who has been his parent for his entire life.

This case is not about a stepfather and his ex-wife. It is about a child and his relationship with his parent. To ensure that B.M.H. and children like him can maintain a legally protected relationship with the adults who have undertaken a permanent, unequivocal, committed, and responsible parental role in their lives, the *de facto* parent doctrine must be equitable and free from categorical proscriptions that would prevent certain categories of persons from petitioning for parentage as a matter of law.

Respectfully submitted, this 24th day of August, 2012.

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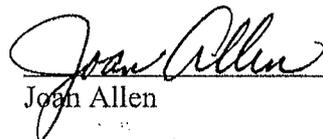
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## DECLARATION OF SERVICE

I, Joan Allen, hereby certify under penalty of perjury under the laws of the United States and the State of Washington that on August 24, 2012, I caused the Brief of *Amici Curiae* American Civil Liberties Union of Washington, Center for Children & Youth Justice, and Legal Voice to be filed and served as follows:

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