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**SUPREME COURT OF THE STATE OF WASHINGTON**

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In re the Marriage of:

NEHA CHANDOLA NKA NEHA VYAS,

Respondent,

and

MANJUL VARN CHANDOLA,

Appellant.

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**BRIEF OF *AMICUS CURIAE* BRANDY DeORNELLAS**

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**Other Authorities**

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California Senate Judiciary Committee, <u>Analysis of A.B. 2517</u> , (2006) .....	12
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Farver, Joann M., Yiyang Xu, Bakhtawar R. Bhada, Sonia Narang, and Eli Lieber. “Ethnic Identity, Acculturation, Parenting Beliefs, and Adolescent Adjustment: A Comparison of Asian Indian and European American Families.” <u>Merrill-Palmer Quarterly</u> . Vol. 53, No. 2 (April 2007): 184-215 .....	16
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Anne Marie Jackson, <u>The Coming of Age of Grandparent Visitation Rights</u> . 43 Am. U. L. Rev. 563, 568 (1994) .....	13
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Lau, Annie. “Transcultural Issues in Family Therapy.” <u>Journal of Family Therapy</u> . 1984 (6): 91-112 .....	16, 18
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Tripathi, Ritu and Daniel Cervone. "Cultural Variations in Achievement Motivation Despite Equivalent Motivational Strength: Motivational Concerns Among Indian and American Corporate Professionals." *Journal of Research in Personality*. Vol. 42 (2008) . . . . . 16

U.S. Census Bureau, United States Census 2010, "Grandparents" (Issued 2012) . . . . . 1, 11

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Everett Waters, Susan Merrick, Dominique Treboux, Judith Crowell, and Leah Pettys, Gregory L. and Pallassana R. Balgopal. "Multigenerational Conflicts and New Immigrants: An Indo-American Experience." Families in Society: The Journal of Contemporary Human Services. (July-August 1998): 410-423 . . . . . 13

## I. INTRODUCTION

Grandparents have come to serve an increasingly important role in the lives of grandchildren. In Washington alone there are over one hundred ten thousand households where grandchildren live with their grandparents, and this trend is on the rise.<sup>1</sup> This is a 12.4 percent increase from a decade ago, as the 2000 Census reported 928,290 households in Washington in which grandparents live with minor grandchildren.<sup>2</sup> In many instances, the grandparent serves as the primary caregiver of a grandchild. According to the 2010 Washington Census, in 38.2% of the households in which grandparents lived with grandchildren, a grandparent was principally responsible for at least one grandchild, with the majority of these grandparents serving as caregiver for over three years.<sup>3</sup> As grandparents assume an integral role in the lives of their grandchildren, grandchildren may come to depend on the love, support, and care offered by their grandparents.

Nevertheless, and despite the increasing prevalence and importance of the grandparent-grandchild relationship, there are innumerable examples in which, as a result of the restrictions imposed upon grandparent visitation under Washington law, a grandchild is separated from a grandparent, with the bond between them forcefully broken. Most commonly we see this when parents file for marital dissolution and one parent opposes visitation between grandparent and grandchild. In these instances, the “right to parent” of the parent opposing visitation takes precedence over the interest of the child in having an on-going relationship with her or his grandparent. In the case before the Court today, the merit of this general principle of law is not disputed. Rather, the facts before the Court present the unique question of whether a court, incident to a

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<sup>1</sup> U.S. Census Bureau, *United States Census 2010*, “Grandparents” Pg. 3, (Issued 2012) available at [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_11\\_5YR\\_DP02](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_5YR_DP02)

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Census Bureau, *2007-2011 American Community Survey*, Table DP 02 “Selected Social Characteristics” available at [http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/11\\_5YR/DP02/0400000US06](http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/11_5YR/DP02/0400000US06)

divorce proceeding, is permitted to infringe upon a well-established relationship between a grandparent and a grandchild, even when neither parent has demanded such a restriction and, therefore, no “right to parent” has been invoked under Washington law.

*Amicus* suggests that, due to the unique developmental, psychological, and cultural, benefits that a child gains from maintaining a healthy and meaningful relationship with their extended family, a court should not be permitted to restrict a pre-existing relationship between a grandparent and a grandchild as a result of a divorce proceeding unless such a restriction is found to be in the best interests of the child or necessary to protect the “right to parent” of the child’s mother or father.

In the present case, the trial Court considered the dissolution of an Indian-American couple that, since the beginning of their relationship, has embraced the cultural tradition of including their extended family (especially grandparents) in the parenting of their child. As a result, their daughter formed a positive and meaningful bond with her grandparents. Nevertheless, at the conclusion of dissolution proceedings, despite neither parent requesting that the child’s relationship with her grandparents be restricted, the Court ordered that her grandparents not be permitted to visit their grandchild for more than 10 days per year. The Court stated that this restriction was imposed in order to teach her father about the necessity of independent parenting.

The lower Court’s decision to restrict grandparent visitation was based upon its desire to teach the father independent parenting, and not in order to protect a parent’s interest in parenting or the best interests of the child, this is an imposition not permissible under the law. As the lower Court’s decision does not have a foundation in law, and for the other reasons stated, the *Amicus* urges that the lower court’s ruling be reversed.

## **II. IDENTITY AND INTERESTS OF *AMICUS CURAIE***

Brandy DeOrnellas ("*Amicus*") is a J.D. Candidate from Harvard Law School. She has completed significant research into grandparent visitation in cases of dissolution. *Amicus* urges the Court to accept this case because *Amicus* is concerned that the precedent established by the lower court in the present action will constitute a substantial infringement upon the rights of the child and parent, and will severely damage the ability of grandparents and grandchildren in Washington to maintain their relationships, even where visitation is in the best interest of the child. *Amicus*, further, in order to allow the Court to make a more fully informed decision in this case, hopes to share with the Court the results of her research concerning the manner in which a child's best interests are served by allowing them a continued relationship with their grandparents as well as the unique cultural import that the grandparent-grandchild relationship has in Indian communities.

## **III. STATEMENT OF THE CASE**

On May 16, 1998, after a brief courtship, Varn Chandola and Neha Vyas were married and since that time have carried on the Indian cultural tradition of encouraging their parents and extended family to play a meaningful role in their life together. I RP 29. Immediately following their marriage, for example, Varn's parents, Mrs. Sudha Chandola and Mr. Anoop Chandola (both professors at universities in the United States<sup>4</sup>), invited Varn and Neha to stay in their home in Tucson, Arizona. VI RP 843. Neha and Varn accepted their invitation and lived with Varn's parents for nearly four years, until 2002, when the couple moved to Seattle, Washington as Neha had accepted a job there as the legal director of the Northwest Immigrant Rights Project. I RP 31.

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<sup>4</sup> Sudha Chandola, taught at U. California at Berkeley, U. of Wisconsin, and U. of Arizona and is a writer. See IV RP 597-598.

Even after their move, Varn's parents continued to play an important role in the life of the couple, especially after the birth of their first child, P.R.C., on November 2, 2008. I RP 29. Both Varn's parents and Neha's mother, Kuldeep Vyas, were present for P.R.C.'s birth and began living with Neha and Varn to help care for the new child.<sup>5</sup> I RP 39-40. Sudha and Anoop also began supporting the couple, financially providing over \$20,000 a year to help the new family get on their feet. IV RP 632.

There is some disagreement between the parties concerning the level of responsibility P.R.C.'s grandparents assumed related to her day-to-day caregiving. It is uncontested that, before Neha returned to work in April 2009, Neha, Varn and, on occasion, Kuldeep would take turns sleeping with P.R.C. and getting up to feed her and hold her. I RP 44-48. When Neha returned to work, Varn testified that he took primary responsibility for P.R.C.'s care, but would seek the aid of Sudha and Anoop when he needed to be out of the house for work (as an attorney, Varn was required to leave home to conduct legal work). VI RP 861-62. Though Varn stated that he was the primary caregiver, this is not to suggest that he did not acknowledge or appreciate the important role P.R.C.'s grandparents played in her life. He stated:

[I]t was great to have them around because we very much believe in extended families. I didn't just want grandparents. I wanted other family members around as well . . . I would encourage all family to come whether it was Neha's side or our side because we very much have an extended family culture.

VI RP 879. Sudha agreed with Varn's characterization of P.R.C.'s care following Neha's return to work. Sudha explained that, although she provided assistance to her son, Varn was primarily responsible for P.R.C.'s care and did the majority of the parenting, particularly after he closed his legal practice. IV RP 603-4. *See also* VI RP 852 (in 2009 Varn closed his business and began working part time as a hearing officer for the Seattle

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<sup>5</sup> Varn's parents, Sudha Chandola and Anoop Chandola, stayed with the family until December, 2008 when they returned to their home in Tucson, Arizona. They began living with Neha and Varn, again, beginning in November, 2010. Neha's mother, Kuldeep Vyas, stayed with the family until August, 2009.

Housing Authority). Neha, however, testified that P.R.C.'s grandparents played a much more significant role in her caregiving. She testified, for example, that when she returned to work Kuldeep and Sudha took on nearly all of the responsibility for P.R.C.'s parenting and day-to-day caregiving. I RP 48-49; III RP 407.

Although the parties dispute the level to which P.R.C.'s grandparents were involved in her parenting, both parties do agree that P.R.C. has meaningfully bonded with her grandparents. Together, P.R.C. and her grandparents would "learn . . . new word[s] . . . dance" and play. IV RP 631; 612-13. Thus, in February of 2011, when Neha filed for dissolution, there was little disagreement concerning the role that P.R.C.'s grandparents would play in her life going forward. The parties similarly resolved most issues in their divorce by amicable agreement. Supp. CP \_\_\_\_\_ (Ex. 5). A trial was held, however, concerning P.R.C.'s residential schedule and whether there should be any restrictions under RCW 26.09.191. *See* CP 92.

At trial, two parenting evaluators, Dr. Jennifer Wheeler and Dr. Hendrick, agreed "there does not appear to be sufficient evidence to support restrictions to the residential schedule, consistent with RCW 26.09.191." Supp. CP \_\_\_\_\_ (Ex. 1 at 29). Moreover, during the course of the trial, Dr. Wheeler and others testified to the importance in Indian culture of including extended family, and grandparents in particular, in the parenting of a child. *See, e.g.*, I RP 155 (testimony of Rupayan Bhattacharyya) (" Q. In your experience is it customary for grandparents to live with their grandchildren? A. Yes. To live with their grandchildren is a social custom and also our cultural customs. In India, we live with our grandchildren, grandsons and granddaughter. We . . . live in joint families."); IV RP 599 (testimony of Sudha Chandola) ("Ours is a culture where family means a lot. Often times they say that it takes a village to raise a child because normally joined families used to live in the vicinity, you know, two, three generation living maybe just in the same neighborhood. So sometimes you did not even know where the baby is, in this

house or that house, or which aunt is taking care of the baby or what. So we have very much that kind of culture where grandparents are considered very important for raising the child.”); Supp. CP \_\_\_ (Ex. 1 at 27) (testimony of Dr. Wheeler) (Dr. Wheeler concluded that “involvement of extended family appears to be consistent with Indian culture,” and found it “unclear” whether Varn would be able “to effectively perform all necessary day-to-day parenting functions, without the support of his parents.”); I RP 155 (testimony of Rahul Gupta) (“Q. Mr. Gupta, your family and your wife’s family didn’t come to your house when your children were born to help out, did they? In the fashion, for extended periods of time. A. Yes, they did.”).

Nevertheless, and despite the fact that neither party requested such a restriction, the trial Court included a provision in the parties’ parenting plan prohibiting Varn’s parents from being present during more than 20% of his time with P.R.C. – a total of ten (10) days a year. *See* CP 84 (“the father shall not facilitate or allow either paternal grandparent to be present during the father’s residential time except as follows: either or both parental grandparents may be present up to 20% total of the father’s time in any given calendar year”). In order to ensure that Varn limit his contact with P.R.C.’s grandparents during visitation, he was also required to “notify [Neha] . . . and [the parties’] case manager in advance of any time his parents will visit” with P.R.C. *Id.*

#### **IV. ARGUMENT**

As previously described, the face of the American family is changing, and it is not uncommon for a grandparent to play a major role in the life of a grandchild. Nevertheless, following a dissolution, a grandparent who seeks visitation with a grandchild in the state of Washington will face a number of unique legal challenges, many of which are justified and based upon sound precedent. The purpose of the present brief is not to challenge the long-standing principles of this Court, but rather seeks only to

speak to those cases in which present law concerning the ability of grandparents to seek visitation is being applied in a manner that conflicts with the most fundamental touchstone of Washington's family law: that the Court act in the "best interests of the child." *Amicus* believes that the restrictions on grandparent-grandchild visitation ordered by the lower court in the instant case presents an example of precisely such a situation.

The following sections will: (A) trace the development of the ability of grandparents to seek visitation in order to establish that Washington law does not, and was not intended to, impose restrictions on grandparent visitation as those imposed by the lower Court in the present case; (B) present research indicating the ways in which promoting the maintenance of the grandparent-grandchild relationship serves the best interests of children; and (C) outline the unique cultural import that the grandparent-grandchild relationship has in Indian culture, and briefly note the ways in which disallowing a child to connect with and express their cultural traditions may be counter to their best interests.

***A. The Lower Court's Restriction on Grandparent-Grandchild Visitation in the Parties' Parenting Plan was Outside of its Authority***

Washington State is often considered to be among the most difficult legal arenas for grandparents to seek and obtain visitation with their grandchildren. However, this was not always the case. Indeed, Washington statutes prior to 1996 granted the Court broad authority to permit visitation by grandparents. Former statute RCW 26.10.106(3), for example, read:

Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.

RCW 26.10.106(3). Granting similarly expansive opportunity for grandparents to seek visitation, former statute RCW 26.09.240 stated:

The court may order visitation rights for a person other than a parent when visitation may serve the best interest of the child whether or not there has been any change of circumstances. A person other than a parent may petition the court for visitation rights at any time. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child.

The constitutionality of Washington's non-parental visitation statutes was first considered by this Court in *In re Custody of Smith*, 137 Wash. 2d 1, 7, 969 P.2d 21, 24 (1998) *aff'd sub nom* and *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). *Smith* held that “parents have a fundamental right to autonomy in child-rearing decisions,” and that this liberty interest is protected under the due process clause of the Fourteenth Amendment. *Smith*, 137 Wash.2d at 13, 969 P.2d 21. *Smith* also explained that “the standard of ‘best interest of the child’ is insufficient to serve as a compelling state interest overruling a parent's fundamental rights.” *Id* at 16. Therefore, the visitation provisions of RCW 26.10.160(3) and former RCW 26.09.240 (1989) just described were held to be unconstitutional.

*Smith* consisted of two consolidated cases, only one of which, *Troxel v. Granville*, was appealed the United States Supreme Court and affirmed on narrower grounds. *Troxel* concluded that Washington's statute applied a presumption favoring grandparent visitation, and this analytical framework was contrary to the established presumption that a fit parent will act in the best interest of his or her child. *Troxel*, 530 U.S. at 69, 120 S.Ct. 2054. As a result, *Troxel* concluded that RCW 26.10.160(3) was *unconstitutional as applied*. However, *Troxel* specifically stated that: “[W]e do not consider the primary constitutional question passed on by the Washington Supreme Court—whether the Due Process Clause requires all non-parental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation.” *Troxel*, 530 U.S. at 73, 120 S.Ct. 2054.

Since 2000, Washington’s courts have struggled to interpret the meaning of *Troxel*. However, the majority have concluded that grandparent/grandchild visitation

included as a component of a court-ordered parenting plan does not infringe upon the rights of the child's parents. For example, *In re Custody of A.C.*, the Court noted:

[A] parenting plan that gave limited visitation rights of father's two children to children's grandmother was not precluded by Supreme Court's decision in *Troxel v. Granville*, which established that a fit custodial parent has the fundamental constitutional right to make decisions concerning the rearing of his or her children; *Troxel* did not preclude trial court's ordered visitation, inasmuch as grandmother brought petition seeking visitation during pendency of marriage dissolution proceedings between children's parents, grandmother had legal custody of children for significant portion of their lives, and father failed to show a likelihood that such visitation would be detrimental to children.

124 Wash. App. 846, 103 P.3d 226 (2004) *review granted, cause remanded*, 155 Wash. 2d 1011, 120 P.3d 928 (2005) (emphasis added). *See also Cumming v. Cumming*, 130 Wash. App. 157, 159, 123 P.3d 121 (2005) ("Here, the grandmother obtained visitation rights under RCW 26.09.240. This statute does not contain the provisions which *Troxel* . . . found troubling.").

Moreover, Washington courts have found that the "right to autonomy in child-rearing decisions" recognized in *Smith* and *Troxel* also protects a parent's decision to allow grandparents to visit their child. *See In re Custody of Z.*, 140 Wash. App. 1026 (2007) (recognizing child may form important bonds with non-parent and allowing grandmother who had cared for grandchild with son's permission to request visitation under dissolution statutes). *In re K.P.H.*, 160 Wash. App. 1004 (2011) ("by mutual agreement . . . Linehan had regular visitation along with his parents Lark and Raymond Linehan (the grandparents)"); *In re Custody of E.T.*, 91 Wash. App. 1023 (1998) ("As part of that proceeding, a parenting plan was approved by the court. The plan provides for 'regular' visitation for the grandparents"); *In re Marriage of Rich*, 80 Wash. App. 252, 254, 907 P.2d 1234, 1235 (1996) ("Following a four-day hearing during which the court heard from a psychologist, counselors, the parents and the grandparents, the court expanded the visitation rights of Mr. Rich and the paternal grandparents"); *Farnsworth v.*

*Glover*, 117 Wash. App. 1029 (2003) (“ the court implemented a parenting plan calling for Bailey to be with his father from 8:00 a.m. to 5:00 p.m. on the weekdays . . . If Mr. Farnsworth is not available, the child shall be delivered to the paternal grandparents”); *In re Marriage of Wixom*, 174 Wash. App. 1020 (2013) (Approving a parenting plan in which “Jordan shall go to the Portland visit with his grandparents”).

In the present case, the lower Court has taken an unprecedented step and, in contravention of parental wishes and in violation of their right to autonomy in parental decision-making, restricted the ability of parents to allow their child to visit her grandparents to ten days per year. As mentioned, the reasoning given by the Court for such a strict restriction on parental decision-making was that the child’s father needed to be “taught a lesson” regarding independent parenting. No Washington precedent or statute, however, permits a court to impose its own view of appropriate parenting in a parenting plan, absent an explicit finding of harm to the child. In fact, the United States Supreme Court has condemned such a restriction noting that the United States Constitution “does not permit a State to infringe on the fundamental right of parents to make a child-rearing decisions simply because state court judge believes a ‘better’ decision could be made.” *Troxel v. Granville*, 520 U.S. 57, 72-73, 120 S. Ct. 2054, 147 L.Ed.2d. 49 (2000). Finding similarly, in *In re Custody of Smith*, this Court held that such a restriction may be imposed “only if the state can show that it has a compelling interest and such interference is narrowly drawn to meet only the compelling state interest involved.” *Momb v. Ragone*, 132 Wash. App. 70, 76, 130 P.3d 406, 409 (2006) (quoting *In re Custody of Smith*, 137 Wash.2d at 15). In the present case, the lower Court failed to identify any compelling interest served by the restriction on grandparent-grandchild visitation it included in the parties’ parenting plan. Therefore, the Court acted outside of the authority granted by Washington law by restricting the authority of a father to allow his child to visit her grandparents and should be reversed.

**B. *Limitations on Grandparent-Grandchild Relationships Can Result in Severe and Negative Psychological and Developmental Consequences Counter to the Best Interests of the Child***

As previously noted, intergenerational households are prevalent throughout Washington and, in many instances, a grandparent serves as the primary caregiver of a grandchild. According to the 2010 Washington Census, in 38.2% of the households in which grandparents lived with grandchildren, a grandparent was principally responsible for at least one grandchild, with the majority of these grandparents serving as caregiver for over three years.<sup>6</sup> Thus, the grandparent-grandchild relationship is a salient issue for the state of Washington.

In many cases, to remove a child from the care of a loving grandparent is to create serious and lasting negative repercussions in the development and overall wellbeing of the child. Child development experts recognize the need for protecting these relationships. Brenda Jones Harden (“Harden”), a child development researcher, describes that children need familial stability in order to thrive. She describes that, “Children who experience familial stability have caregivers who remain constant, consistent, and connected to them over time...”<sup>7</sup> She then states that this stability has serious benefits for children as, “...positive and consistent caregiving has the potential to compensate for factors that have a deleterious impact on children, such as poverty and its associated risk factors. In other words, children have much better outcomes if their family lives are stable.”<sup>8</sup> Harden also describes that children tend to suffer when their caregiver relationships are disrupted: “Children reared by caregivers who are inconsistent...are much more likely to be insecurely attached, or to have a disordered attachment.”<sup>9</sup> Additionally, attachment issues developed in infancy and adolescence can

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<sup>6</sup> U.S. Census Bureau, *2007-2011 American Community Survey*, Table DP 02 “Selected Social Characteristics” available at [http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/11\\_5YR/DP02/0400000US06](http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/11_5YR/DP02/0400000US06)

<sup>7</sup> Brenda J. Harden, *Safety and Stability for Foster Children: A Developmental Perspective*, 14 *CHILD., FAM., & FOSTER CARE*, 31, 33 (2004).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

affect an individual's ability to develop attachments in adulthood. According to Everett Waters, Nancy Weinfield, and Claire Hamilton, "Specifically, if one has experienced attachment-related negative life events, the presence of developmentally salient autonomy issues might make change from infant security to adult insecurity more likely."<sup>10</sup> In sum, a child benefits from consistency in caregiving and suffers amidst caregiver instability.

In addition to the importance of consistent relationships for the stability of children, a child benefits from having a vast support network, which may include grandparents. Child development experts Everett Waters, Susan Merrick, Dominique Treboux, Judith Crowell, and Leah Albersheim state that, with regard to children, "Strong social support structures might reduce the number or impact of negative experiences and thus increase stability..."<sup>11</sup> Harden adds that a child's stability is greater in situations where the child experiences community, having a, "cohesive, supportive, and flexible family system."<sup>12</sup> Thus, the best interests of the child are served by encouraging a vast support system for the child.

As a result of the increasingly widespread recognition of the importance of the grandparent-grandchild relationship, there has been a nationwide move in courts and state legislatures to protect the ability of grandparents and grandchildren to maintain their relationship following dissolution.<sup>13</sup> A number of states have granted by statute expansive visitation opportunities for grandparents.<sup>14</sup> Those states that have not adopted similar

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<sup>10</sup> Everett Waters, Nancy S. Weinfield, and Claire E. Hamilton, *The Stability of Attachment Security from Infancy to Adolescence and Early Adulthood: General Discussion*, 71 *FUTURE OF CHILD*. 678, 678-683 (2000).

<sup>11</sup> Everett Waters, Susan Merrick, Dominique Treboux, Judith Crowell, and Leah Albersheim, *Attachment Security in Infancy and Early Adulthood: A Twenty-Year Longitudinal Study*, 688, 684-689, 71 *FUTURE OF CHILD*. 684, 688 (2000).

<sup>12</sup> Brenda J. Harden, *Safety and Stability for Foster Children: A Developmental Perspective*, 14 *CHILD., FAM., & FOSTER CARE*, 31, 33 (2004).

<sup>13</sup> See, e.g., Cynthia L. Greene, *Grandparents' Visitation Rights: Is the Tide Turning?*, 12 *J. Am. Acad. Matrim. Law*. 51, 74 (1994); Anne Marie Jackson, *The Coming of Age of Grandparent Visitation Rights*, 43 *Am. U. L. Rev.* 563, 568 (1994).

<sup>14</sup> Compare Del. Code Ann. tit. 10, § 950(7) (Supp. 1992) (providing that courts may grant grandparents reasonable visitation rights "regardless of marital status of the parents . . . or the relationship of the grandparents to the person having custody of the child; provided, however, that when the natural or adoptive parents of the child are co-

statutes have been subject to intense lobbying efforts by grandparent rights organizations.<sup>15</sup> The nation-wide trend in case law has also been to interpret statutes and the state and federal Constitutions so as to expand opportunities for grandparent visitation with grandchildren, perhaps due to courts recognizing the increasing importance of these relationships.<sup>16</sup>

*Amicus* urges Washington to consider and adopt the emerging legal principle that the grandparent-grandchild relationship must be promoted and protected where it serves the best interests of the child, especially as children undergo a traumatic change in family life as the result of marital dissolution.

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habiting as husband and wife, grandparent visitation shall not be granted over both parents' objection") *with* Ky. Rev. Stat. Ann. § 405.021 (Baldwin 1991) ("The circuit court may grant reasonable visitation rights to . . . grandparents of a child . . . if it determines that it is in the best interest of the child to do so.") *with* Me. Rev. Stat. Ann. tit. 19, § 752(6) (West Supp. 1993) (stating that "[t]he court may award reasonable rights of contact with a minor child to any 3rd persons") *with* Md. Code Ann., Fam. Law § 9-102 (1991) (providing that after marriage ends "by divorce, annulment, or death, an equity court may: (1) consider a petition for reasonable visitation by a grandparent of a natural or adopted child of the parties whose marriage has been terminated; and (2) if the court finds it to be in the best interests of the child, grant visitation rights to the grandparent") *with* Tenn. Code Ann. § 36-6-301 (1991) (granting grandparents visitation rights "upon a finding that such visitation rights would be in the best interests of the minor child," providing that this statute "shall not apply in the case of any child who has been adopted by any person other than a relative of the child or a stepparent of the child," and providing for grandparent visitation if child is placed in foster home upon analysis of grandparents' past for determination of any criminal wrongdoing) *with* Vt. Stat. Ann. tit. 15, §§ 1011-1016 (1989) (providing that grandparents may commence visitation petition "[i]f a parent of a minor child is deceased, physically or mentally incapable of making a decision or has abandoned the child," listing eight factors to consider in determining child's best interests, and automatically terminating visitation upon adoption by someone other than relative of child).

<sup>15</sup> There exists a strong contingent of statewide and national groups interested in promoting grandparent visitation and the grandparent-grandchild relationship more broadly. Advocates For Grandparent Grandchild Connection (AFGGC), for example, is a California-based non-profit organization "created on behalf of the children who have been denied access to their grandparents...our organization educates the public about grandparents' rights, advocates for grandchildren, and supports grandparents who have suffered from loss of affection and contact from their grandchildren." This organization has sponsored several pieces of grandparent visitation related legislation in the California Legislature, with some success. AFGGC was the sponsor of Assembly Bill 2517 in 2006, which altered the Family Code to allow grandparents to petition for visitation after a grandchild has been adopted by a stepparent. There are several national organizations that work to promote grandparent rights. The 'Grandparents Rights Organization' is a national non-profit that works to educate the public on grandparent rights and advocates for grandparents within the court system. Other active national grandparent rights organizations include the Foundation for Grandparenting based out of California, Generations United based in Washington DC, and the National Coalition for Grandparents based in Wisconsin.

<sup>16</sup> See, e.g. *In re Marriage of Harris*, 34 Cal.4th 210 (Cal. 2004) (overturning a trial court judgment that rejected visitation between two grandparents and their grandchild. The lower court felt incorrectly constrained by the Federal Constitution's right to parent, as the mother of the child did not want visitation); *Fenn v. Sherriff*, 109 Cal.App.4th 185, 193 (Cal. Ct. App. 3d 2003) (the Court granted grandparents an order of visitation after the death of their daughter despite the children's adoption by their stepmother).

C. *Because Grandparent-Grandchild Relationships Hold Unique Import in Indian Families, Restricting These Relationships Risk Denying Children the Ability to Embrace Their Culture*

Washington courts have also been admonished to apply the state's family law in a manner that avoids leaving minority families "vulnerable to judgments based on cultural or class bias." *Santosky v. Kramer*, 445 U.S. 745, 102 S. Ct. 1388, 71 L.Ed.2d. 599 (1982). In the present case, however, the lower Courts' restriction on grandparent-grandchild visitation exhibits precisely the manner of cultural insensitivity and prejudice warned against in *Santosky*.

First, there are several well-documented benefits of extended family arrangements as opposed to nuclear family arrangements, which perhaps were not taken into account by the lower Court. Extended families can be an excellent and undervalued resource for dealing with mental illness, as studies have shown that "nuclear family structure is more prone to mental disorders than [extended] families," with children in large families being "found to report significantly lower behavioral problems like eating and sleeping disorders, aggressiveness, dissocial behavior and delinquency than those from nuclear families."<sup>17</sup> In fact, a World Health Organization study has linked such increased family support with better outcomes in coping with schizophrenia,<sup>18</sup> and at least one study found a correlation between extended family arrangements and increased entrepreneurship and industriousness.<sup>19</sup>

A particular benefit of extended family arrangements absent in nuclear family arrangements is the benefit of close proximity to grandparents. In general, grandparents often play a very positive role in actively helping to raise a child. In Indian families living outside of India, grandparents can play an especially important role in the preservation of

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<sup>17</sup> Chadda, Rakesh K. and Koushik Sinha Deb. "Indian Family Systems, Collectivistic Society and Psychotherapy." *Indian Journal of Psychiatry*. January 2013 Supplement: 299-309 at 302.

<sup>18</sup> *Id.*

<sup>19</sup> Ramu, G. N. "Kinship Structure and Entrepreneurship: An Indian Case." *Journal of Comparative Family Studies*. Vol. XVII No. 2 (Summer 1986): 173-184.

traditions, language, religion, and in helping children develop and appreciate a culturally-informed understanding of self.<sup>20</sup> In diaspora communities, for instance, grandparents serve as keepers and passers-down of culture, which can be particularly crucial in the socialization of Indian children.<sup>21</sup> Grandparents can also be important in instilling ethical and religious values in children. For instance, grandparents are particularly well situated to help teach children about their religious duties—dharma— proscribed in the *Bhagavad Gita*. The grandparents can provide a model of how the child's duties will evolve in the future.<sup>22</sup> In addition, the grandparents are often in the best position to explain issues related to *dharma* because Indian parents in America frequently do not possess the same level of cultural competence, as often have moved away from India at a young age.<sup>23</sup>

Second, in addition to the objective benefits of extended family arrangements in general and close grandparent proximity in particular, the value of such arrangements is deeply embedded in Indian culture. It has been widely documented that Indian culture has a more collectivist and less individualistic focus than “Western” cultures.<sup>24</sup> For example, a 2006 study of Indians living in both India and the U.S. found that Indians were much more motivated by communally focused goals and less motivated by personal goals than their Caucasian-American counterparts.<sup>25</sup> Indian responses to inquiries about what

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<sup>20</sup> *Id*; Roland, Alan. *In Search of Self in India and Japan: Toward a Cross-Cultural Psychology*. Princeton University Press (New Jersey: 1988);

<sup>21</sup> Pettys, Gregory L. and Pallassana R. Balgopal. “Multigenerational Conflicts and New Immigrants: An Indo-American Experience.” *Families in Society: The Journal of Contemporary Human Services*. July-August 1998: 410-423.

<sup>22</sup> Lau (1984).

<sup>23</sup> Pettys and Balgopal (1998).

<sup>24</sup> See, Farver, Joann M., Yiyang Xu, Bakhtawar R. Bhada, Sonia Narang, and Eli Lieber. “Ethnic Identity, Acculturation, Parenting Beliefs, and Adolescent Adjustment: A Comparison of Asian Indian and European American Families.” *Merrill-Palmer Quarterly*. Vol. 53, No. 2 (April 2007): 184-215; Khanna, Anchal, Teresa McDowell, Sebastian Perumbilly, and Gayatri Titus. “Working with Asian Indian American Families: A Delphi Study.” *Journal of Systemic Therapies*. Vol. 28, No. 1 (2009): 52-71; Tripathi, Ritu and Daniel Cervone. “Cultural Variations in Achievement Motivation Despite Equivalent Motivational Strength: Motivational Concerns Among Indian and American Corporate Professionals.” *Journal of Research in Personality*. Vol. 42 (2008): 456-464; Dupree, Jared W., Kruti A Bhakta, and Purva S. Patel. “Developing Culturally Competent Marriage and Family Therapists: Guidelines for Working with Asian Indian American Couples.” *The American Journal of Family Therapy*. Vol. 41 (2013): 311-329.

<sup>25</sup> Tripathi and Cervone (2008).

motivated them centered much more around the wellbeing of their extended families and communities and around making those groups proud of them, while white Americans were more motivated by personal wellbeing and personal pride in their work.<sup>26</sup> Interestingly, there was no significant difference in how Indians in America and those in India valued extended family, despite those in America having less contact with such family. Also, the importance of family relationships is embedded in Indian religion. The *Bhagavad Gita* extensively discusses *dharma*—or duties—and one such duty is a duty to family members, depending on their position in the family. The *Bhagavad Gita* goes on to describe that fulfilling ones duties is required in order to achieve nirvana.<sup>27</sup> It is clear, then, that reproducing appropriate reciprocal relationships in the family is a culturally important ethical and religious value. It is not surprisingly, then, Indian culture places great value on the role of the extended family in providing nurturing environments for children.

While some have predicted the gradual demise of such extended family arrangements, such arrangements remain prevalent within the Indian community. In South Africa, for example, where Indians have been living in diaspora communities since the 1870's, there has actually been a resurgence of extended family living arrangements, belying the value many Indians place on proximity to family for the support it provides and to help reproduce Indian culture in a geographically distant location.<sup>28</sup> Nearly one hundred fifty years after the establishment of such communities, a 2007 survey of Indians in South Africa found that 74.66% expressed positive attitudes toward extended family living arrangements.<sup>29</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> Pettys and Balgopal (1998).

<sup>28</sup> Khan, Sultan. "Changing Family Forms, Patterns and Emerging Challenges Within the South African Indian Diaspora." *Journal of Comparative Family Studies*. Vol. 43 Issue 1 (2012): 133-150.

<sup>29</sup> *Id.*

Third, it is important that Indian children be exposed to their culture as the construction of the Indian self is deeply intertwined with the reproduction of culture. The extended family is key to the psychological development of the self in Indian child rearing, having been described as the “social and psychological locus throughout life of the vast majority of Indians,” and other friendships in life are then patterned after personalized familial relationships.<sup>30</sup>

Finally, it is important to note the relevant differences between Indian and “Western” culture regarding family arrangements, which may help explain the lower Court’s decision. Separate nuclear family arrangements are uncommon in many non-“Western” cultures.<sup>31</sup> Instead, in many cultures, including in Indian society, it is common for dwellings to house the nuclear family or families of one or more siblings plus their grandparents.<sup>32</sup> Western observers may sometimes misunderstand the underlying reasoning for emphasis on community and the importance of close familial relationships. For example, mother-child relationships in Indian culture are uniquely close: “extraordinarily close tie of the developing child” to the “mothering person(s)” has been “universally noted.”<sup>33</sup> From a Western perspective, for instance, mothering relationships with the child can sometimes be misread as bordering on pathologically symbiotic, but are part of preparing the child for the intense familial interdependencies in Indian culture, as Indians define self in relation to a group.<sup>34</sup>

It is important to acknowledge that Western concepts of the supreme family structure are derived within a specifically developed cultural context, which can lead Westerners to misperceive the value of other family structures. It may be just this sort of

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<sup>30</sup> Roland (1988).

<sup>31</sup> Some generalizing of “Indian culture” may have been made in this attempt to provide a broad outline of some common dynamics in Indian culture, but it should be noted that Indian culture is not monolithic and exceptions, large or small, can be found to most generalizations about “Indian culture.”

<sup>32</sup> Lau, Annie. “Transcultural Issues in Family Therapy.” *Journal of Family Therapy*. 1984 (6): 91-112.

<sup>33</sup> *Id* at 232.

<sup>34</sup> *Id*.

misperception that has resulted in the presently considered decision and, on this ground as well, *Amicus* urges the Court to reverse the lower Court's ruling.

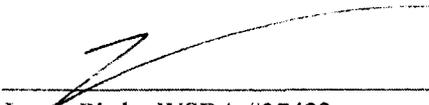
## V. CONCLUSION

Despite the well-documented psychological, developmental, and cultural benefits children experience by maintaining strong relationships with their extended families following a divorce, the ability of grandparents, and other extended-family members, to seek visitation following dissolution have historically been restricted due to the Court's respect for the child's parents to make autonomous decisions when it comes to raising their own child.

The present case, however, represents a divergence from this state's respect for the "right to parent" and the lower Court, in this case, has actually gone so far as to infringe upon a parent's autonomy in order to restrict the development of a grandparent-grandchild relationship. Such a restriction is not only outside of the authority granted to the Court by Washington state law but is also, and more importantly, counter to the best interests of the child in this case.

Therefore, in recognition of the growing national trend favoring increased protection for the grandparent-grandchild relationship and the cultural shifts in Washington families that have, more and more, come to welcome grandparents and extended family into their home, *amicus* urges the Court to reverse the lower Court's decision restricting grandparent/grandchild visitation and establish a precedent that, in cases such as this, when no "right to parent" is infringed upon and it would be in the best interests of the child, a parent should presumptively be free to allow their child to visit with their grandparents and extended family following dissolution as they see fit.

Dated this 13 day of September, 2013



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James Pirtle, WSBA #37422  
Attorney for *Amicus Curiae*  
Brandy DeOrnellas

## CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by email one copy of this Amicus Brief on the following :

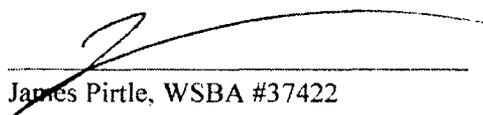
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