Supreme Court Case No. 1037368

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SEAN KUHLMEYER,
Appellant,
vs.
ISABELLE LATOUR,
Appellee

On Review from Division I of the Washington State Court of Appeals, No. 85544-1-I

Memorandum of Parents for a Constitutional Judiciary as *Amicus Curiae* in Support of Appellant Sean Kuhlmeyer

Parents for A Constitutional Judiciary
Shannon Draughon, JD
WSBA# 35424
PO Box 217
Carnation, WA 98014
(425) 333-4848
www.carnationlegal.com
www.pfcj.org
sdraughon@carnationlegal.com

Attorneys for *Amicus Curiae*,
Parents for a Constitutional Judiciary

I. TABLE OF CONTENTS

II. TABLE OF AUTHORITIES

CASES

STATUTES

RULES

CONSTITUTIONAL PROVISIONS

III. INTEREST OF AMICUS CURIAE

Parents for a Constitutional Judiciary (PFCJ) submit this motion and memorandum in support of Appellant Sean Kuhlmeyer. PFCJ is an advocacy group focused on ensuring the exercise of judicial and legislative power complies with constitutional standards. PFCJ believes this case presents important questions about when an individual's rights, including parental rights, may be limited, or effectively terminated, by government.

IV. STATEMENT OF FACTS

PFCJ adopts and incorporates Mr. Kuhlmeyer's Statement of Facts; PFCJ draws attention to several key facts:

- The disputed Domestic Violence Protection Order (DVPO) was ordered based on long stale, procedurally unproven allegations, from years past, applied retroactively to validate the DVPO.
- Based on a review of the record, there is no substantive

evidence of domestic-violence, only testimony by Appellee against Appellant.

- It is undisputed Kuhlmeyer has had no contact with his son for six-years, and with Appellee for seven-years.
- The DVPO applies to a 16-year-old boy for 20-years, long past adulthood.
- The 20-year period is not based in specific findings or reasoning why a DVPO is necessary, only the "record."

V. SUMMARY OF ARGUMENT

The trial court violated constitutional protections against limiting Mr. Kuhlmeyer's fundamental rights by issuing a DVPO that was constitutionally flawed because it was not based in provable evidence, and because it applied the DVPO to father and son for the rest of the father's life.

VI. ARGUMENT

A. Parental rights are fundamental

Parental rights are fundamental rights protected by the U.S. Constitution; "the 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. 57, 65 (2000); *Also see,* U.S. Const. amend. V (5th); U.S. Const. amend. XIV (14th); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Santosky v. Kramer,* 455 U.S. 745 (1982); *Reno v. Flores*, 507 U.S. 292, 302 (1993).

Yoder said the "primary role of the parents in the upbringing of their children is now established beyond debate." *Yoder*, 406 U.S. at 232. And *Troxel* said, " the custody, care and nurture of the child reside first in the parents . . . ." *Troxel, 530 U.S. at* 65. Thus, it is well established in federal law parents have fundamental constitutional rights to relationships with their children.

The Washington Constitution also protect these rights, stating: *"No person shall be deprived of life, liberty, or property, without due process of law."* WASH. CONST. art. I, §3 (*'Substantive Due Process')*. Whereas *'Procedural Due Process'* requires *'fundamental fairness.'* Wash. Const.. art. I, §3. This court has repeatedly recognized the fundamental nature of the parent-child relationship as of "constitutional significance." *Welfare of Luscier*, 84 Wash.2d 135, 524 P.2d 906 (1974). Washington's protection for parental rights traces to this state's founding, where the first Justices of this Court recognized parents' right to "the care, control, custody and education of their children." *Lovell v. House of the Good Shepherd*, 9 Wash. 419, 422, 37 P. 660 (1894). Parental rights cannot be infringed upon without complete due process safeguards. *Halsted v. Sallee,* 31 Wn. App. 193, 195, 639 P.2d 877 (1982). Which the state must protect. *Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). And only "under 'extraordinary circumstances' does there exist a compelling

state interest that justifies interference with ... parental rights.'" *Siufanua v. Fuga (In re Custody of L.M.S.),* 187 Wash.2d 567 , 387 P.3d 707 (2017).

Here, it is uncontested the trial court's application of RCW 7.105, to issue a protection-order against Mr. Kuhlmeyer, did not comply with the constitutional standards necessary to restrict any of his fundamental rights, let alone his right to a relationship with his child.[1] Thus, the trial court's action, as applied to Kuhlmeyer is unconstitutional.

B. A lifetime protective order terminates parental rights

The trial court's issuance of the 20-year DVPO terminated what remained of Kuhlmeyer's parental rights (except for his 'right' to pay child-support), which Division-I affirmed on flawed logic that because Kuhlmeyer retained hypothetical parental

[1] PCJ recognizes that Mr. Kuhlmeyer has detailed in the declaration he presented to this court on 2/21/2025, that several of his fundamental rights, far beyond only his parental rights, have been impacted by the trial court's issuance of the lifetime DVPO.

rights via the Parenting Plan, that was not a termination. Division-1 is wrong.

Kuhlmeyer is not allowed to have any contact with his son, attend any of his important events, have any information or participate in any educational, medical, or religious decisions, or act as a parent to his child in any way. Thus, the protective order entirely eliminates Kuhlmeyer's ability to enjoy his parental relationship with his son. Division-I's logic is as long as Kuhlmeyer retains some rights, no matter how hypothetical or relatively unimportant they are, that is not a termination, because a termination severs all parental rights.

While this may in a hyper-technical sense be true, it ignores the reality that without being able to exercise any of the core rights of parenthood, maintaining other *de minimis* rights means nothing. People choose parenthood to be <u>parents</u> to their children, and maintaining hyper-technical parental rights that do not preserve their ability to have a relationship with their children is the same as having no parenting rights whatsoever.

Differences between a termination order and a permanent protection-order exist, which shows a lifetime DVPO is, in fact, worse than a termination. Most notably is, in a termination, nothing *per se* restricts a parent and child from having a relationship upon majority. But a permanent protection-order prohibits all parent/child contact for life. And a termination contains a built-in process to educate a child of their right to reinstate their parent's parental rights, and help them do so. RCW 13.34.215. There is no such provision for protection-orders issued pursuant to RCW 7.105.

Here, nothing Kuhlmeyer did, rises to any standard of evidence sufficient to restrict Kuhlmeyer's parenting rights, much less terminate them.

The following chart shows differences between a permanent protection-order, and a termination action.

	Protection-Order RCW 7.105	**Termination of Rights RCW 13.34**
Brought by Govt.?	No. Filed by other parent.[2] Enforced by State action	Usually. DCYF[3]
Right to Counsel?	No	Yes[4]
Rules of Evidence?	No.[5]	Yes.[6]
Standard of Proof?	Preponderance of the Evidence.[7]	Clear, Cogent, and Convincing.[8]
Timeline	Short motion calendar. Often 14 days.[9]	Full trial. 12-months to correct parental deficiencies.[10]
Hearsay admissible?	Yes. Commonly admitted.[11]	No. Hearsay must be supported by sworn testimony, with evaluation under rules of evidence[12]
Right to Discovery?	Disfavored, only permitted if specifically authorized for good cause.[13]	Yes.[14]
Consider Parents Statement?	Discretionary, often not allowed.[15]	Specifically protected. Court must consider.[16]
Right to Testify?	No[17]	Yes[18]
Services to Parents?	No	Yes.[19]
Terminates possibility of adult relationship after child reaches 18?	Yes. Lifetime permanent orders common.[20]	No. Nothing prohibits an adult relationship
Appointment of GAL?	No, discretionary by court, and not at public expenses	Yes.[21]
Court appointed Attorney for Child?	No.	Yes.[22]
Right to reinstate parental rights?	In application, No.	Yes, child can petition, and must be notified of rights.[23]

[2] RCW 7.105.100
[3] RCW 13.34.040(1)
[4] RCW 13.34.090
[5] RCW 7.105.200(8)
[6] RCW 13.34.110
[7] RCW 7.105.225
[8] RCW 13.34.110(4); RCW 13.34.190(1)(a)(i)
[9] RCW 7.105.305
[10] RCW 13.34.180
[11] RCW 7.105.200(8); *Gourley v. Gourley*, 158 Wn.2d 460, 464, 145 P.3d 1185 (2006); ER 1101(c)(4).
[12] RCW 13.34.065(2)(c)
[13] RCW 7.105.200(7)
[14] RCW 13.34.090(5)
[15] RCW 7.105.200(5)
[16] RCW 13.34.120
[17] RCW 7.105.200(5) (Per the language of the statute it appears that party testimony is discretionary to the court).
[18] RCW 13.34.096
[19] RCW 13.34.094; RCW 13.34.045(3)(a)(iii); RCW 13.34.067
[20] RCW 7.105.315(1)
[21] RCW 13.34.100
[22] RCW 13.43.212
[23] RCW 13.34.215.

A lifetime protective order and a termination of parental rights order are procedurally different, but the effect is the same – *a parent's rights to their child is permanently terminated.*

Since the former does not comply with constitutional requirements, it fails.

C. A lifetime protective order requires strict scrutiny

Any intervention into the parent-child relationship is fraught with peril, for it is presumed the interests of parent and child will normally align. *Santosky*, 455 U.S. at 753, 760 ("the State cannot presume that a child and his parents are adversaries."). Yes it is sometimes necessary to protect children from an abusive parent, but a strict scrutiny analysis provides the way to analyze any such intervention, ensuring the proper balance between advancing a compelling interest, and respecting fundamental liberties.

Courts apply strict scrutiny if a statute infringes upon a

fundamental liberty interest. U.S. CONST. amend. XIV §1; *Reno v. Flores*, 507 U.S. 292, 302 (1993). The standard of review of legislative action when parental rights are at issue is strict scrutiny. *See Id.; also see Troxel*, 530 U.S. at 80.

Application of this standard prevents any limiting of fundamental rights "unless the infringement is narrowly tailored to serve a compelling state interest." *Reno*, 507 U.S. at 301–02 (1993); *see also, Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (noting government may not infringe on fundamental liberty interests *at all, no matter what process is provided*, unless it is narrowly tailored to a compelling state interest). *Also see, Reno*, 507 U.S. at 302 ("strict scrutiny must be "narrowly tailored to serve a compelling state interest.").

This Court has said regarding a "parent's constitutionally protected right to rear his or her children without state interference," that where "a fundamental right is involved, state interference is justified only if the state can show it has a legitimate compelling interest and such interference is narrowly drawn to

meet only the compelling state interest involved." *Custody of Smith,* 137 Wn.2d 1, 969 P.2d 21 (1998) *superseded on other grounds by Troxel, Ibid.*. *Also see, O'Hartigan v. Department of Personnel*, 118 Wash.2d 111, 117, 821 P.2d 44 (1991); *Welfare of Sumey*, 94 Wash.2d 757, 762, 621 P.2d 108 (1980). Application of the statute must also be narrowly tailored. *Bering v. Share*, 721 P.2d 918, 106 Wn.2d 212 (1986).

The DVPO constitutes a lifetime ban order, and is thus not narrowly tailored to protect Kuhlmeyer's son from a discrete danger. A look at common hypotheticals proves that. For example, were Mr. Kuhlmeyer dying, even after his son is an adult, they couldn't even connect on Kuhlmeyer's deathbed. Or, presume Kuhlmeyer's son needs a kidney, bone-marrow, or other body part, father and son couldn't even discuss the issue. Or what if Kuhlmeyer's adult son would like his dad to attend a graduation or wedding? All are banned by the DVPO. These are activities in every family, but are impossible by the DVPO, thus it is not narrowly tailored.

Nor is the remedy the order could be changed, as doing so under the current statute is also unconstitutional as it fails to require a showing of continuing need, and shifts to the respondent a standard of evidence difficult to prove. Per RCW 7.105.500(3) a respondent can "file a motion to modify or terminate an order no more than once in every 12-month period that the order is in effect." But they must prove several negatives including "there has been a substantial change in circumstances such that the respondent will not resume, engage in, or attempt to engage in, the following acts against the petitioner or those persons protected by the protection-order if the order is terminated or modified." RCW 7.105.500(7).

As every first-year law student learns, forcing someone to prove a negative is nearly impossible. And this standard inherently subjective. But regardless, a method to change a protective order exists, because protective orders were <u>never</u> designed to last a lifetime. Except now they do…

That's not needed for a termination, because a

termination is narrowly tailored to eliminate the specific problem it seeks to remedy – severing the rights of an unfit parent. And once a child reaches adulthood there is no need to continue it as they can make their own decisions. In contrast, a lifetime protective order goes far beyond, zero contact is allowed, completely severing all parenting rights, and the relationship itself. As such, it is not narrowly tailored to a specific issue, and fails constitutionally-required strict scrutiny.

Kuhlmeyer's recently submitted declarations of other citizens proving he is not unique. *See, Declarations of Sean Kuhlmeyer, Adam Grossman, Stephan Hicks, and John Loop,* Kuhlmeyer's Motion to Consider Additional Evidence, submitted to this court on 2/21/2025.

Wanting to protect someone who claims they need protection does not let a court suspend the constitution. The trial court failed to use the required constitutional safeguards; thus the DVPO must fail.

D. A lifetime protective order violates due process

Involuntary termination of parental rights must pass a two-pronged test. RCW 13.34. The court must find parental unfitness, by finding the parent engaged in conduct sufficient to terminate their parenting, proved by "clear, cogent, and convincing evidence." RCW 13.34.190(1)(a)(i). Such that "the ultimate fact in issue must be shown by evidence to be 'highly probable.'" *In re. M.A.S.C.,* 197 Wash.2d 685 , 486 P.3d 886 (2021), *citing, In re Welfare of Sego,* 82 Wash.2d 736, 739, 513 P.2d 831 (1973).

This is also required by the U.S. Constitution. "Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence." *Santosky*, 455 U.S. at 747–48.

The lifetime DVPO was not issued under this standard. Per RCW 7.105.225(1), the burden of proof for a protective order is preponderance of the evidence, far less than clear and

convincing evidence. *Bergman v. Moto,* 85588-3-I (Wash. Div.-I, July 1, 2024) (Unpublished)). A preponderance of the evidence means the proposition is merely more probably true than not. *Spivey v. City of Bellevue,* 187 Wn.2d 716, 728, 389 P.3d 504 (2017 (unpublished)).

Such a standard may be sufficient for a protective order of limited duration, but, for an order of significant length, it is improper. When a protective order permanently deprives a parent of the constitutional right to the care, custody and control of a child, the clear-and-convincing standard is mandated.

True, not *all* of Kuhlmeyer's rights are completely severed, but the important constitutionally-protected rights to care, custody, and control of his child, absolutely ***<u>are</u>***. *Santosky*, 455 U.S. at 747–48. *Santosky* stated:

> This Court has mandated an intermediate standard of proof—"clear and convincing evidence"—when the individual interests at stake in a state proceeding are both "particularly important" and "more substantial than mere loss of money." Notwithstanding "the state's 'civil labels and good intentions,'" the Court has deemed this level of certainty necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual

> involved with "a significant deprivation of liberty" or "stigma." *Santosky,* 455 U.S. at 756 (citations omitted).

Santosky also said the infringement or loss of parental rights threatens "a significant deprivation of liberty" certainly "more substantial than mere loss of money." *Id.* (*quoting Addington v. Texas*, 441 U.S. 418, 424, 425 (1979))

The deficient standard of evidence used by the trial court, along with the lack of discovery and other missing due process protections for a parental termination case, makes it clear the lifetime DVPO does not pass constitutional muster.

VII. CONCLUSION

Parents for a Constitutional Judiciary (PFCJ), requests this Court, vacate the lifetime DVPO issued by the trial court.

Respectfully submitted.

I certify that this document contains 2493 total words of a 2500 word limit in compliance with RAP 18.17(b). See below certification.
Dated: Thursday, March 6, 2025 at Carnation, Washington.

By: s/ Shannon Draughon .
Shannon Draughon, *WSBA#* 35424

Memorandum of Parents for a Constitutional Judiciary as Amicus Curiae in Support of Appellant Sean Kuhlmeyer

Filename: 2025.03.06 Amicus Memo PFCJ 1037368 V.2

Appeal Signature Block Certification: I certify in compliance with RAP 18.17(b), "the number of words contained in the document, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, exhibits)," comply with the limits established by the rule, and this memorandum contains 2493 total words of a 2500 word limit.

Total Words: 3817 (raw words) –598 (header) –712 (signature) –14 (footer) –00 (misc. words)) = 2493

Estimated-Reading-Time: 4.99 Decimal-Minutes

Hidden below is a table that computes the total words. The calculator's hidden 308 words calculate as part of the signature block, and do not count towards the total words.

VIII. CERTIFICATE OF SERVICE

I hereby certify that on this Thursday, March 6, 2025 (3/6/2025), I caused a true and correct copy of this

- Memorandum of Parents for a Constitutional Judiciary as Amicus Curiae in Support of Appellant Sean Kuhlmeyer

To be served on the following in the manner indicated below:

☒ ECF Service ☐ USPS Mail ☐ Hand Delivery

Sean Patrick Kuhlmeyer **Appellant *Pro Se*** 1752 NW Market Street #625 Seattle, WA 98117-4449 sean@emeraldcitybikelawyer.com	**Brian Christopher Zuanich** 1420 5th Ave Ste 2200 Seattle WA 98101-1346 brian@zuanichlaw.com
Parents for A Constitutional Judiciary **Shannon Draughon, JD** PO Box 217 Carnation, WA 98014 (425) 333-4848 www.carnationlegal.com www.pfcj.org sdraughon@carnationlegal.com	**Ellery Archer Johannessen** 5400 California Ave SW Ste E Seattle, WA 98136 ellery@eaj-law.com
Benjamin James Hodges **Foster Garvey PC** **Counsel for Isabelle Latour** 1111 3rd Ave Ste 3000 Seattle, WA 98101-3296 ben.hodges@foster.com	**Kelly Ann Mennemeier** **Foster Garvey PC** **Counsel for Isabelle Latour** 1111 3rd Ave Ste 3000 Seattle, WA 98101-3296 kelly.mennemeier@foster.com
Adrian Urquhart Winder **Foster Garvey PC** **Counsel for Isabelle Latour** 1111 3rd Ave Ste 3000 Seattle, WA 98101-3296 adrian.winder@foster.com	**Rylan Lee Scott Weythman** **Foster Garvey PC** **Counsel for Isabelle Latour** 1111 3rd Ave Ste 3000 Seattle, WA 98101-3296 rylan.weythman@foster.com
Hon. Lea Ennis, Clerk **Court of Appeals, Division I** 600 University Street One Union Square Seattle, WA 98101-1176	

EXHIBIT-2. Declaration of Sean Kuhlmeyer Regarding Amicus Curiae Parents for a Constitutional Judiciary Motion.

Filename: 2025.03.06 WSCT 1037368 DecS.Kuhlmeyer re Amicus PFCJ

Sean Kuhlmeyer Declaration re PFCJ Motion

Exhibit-2.

IN THE SUPREME COURT OF THE

STATE OF WASHINGTON

SEAN KUHLMEYER, Appellant, vs. ISABELLE LATOUR, Appellee	Supreme Court Case No.: 1037368 **DECLARATION OF SEAN KUHLMEYER REGARDING *AMICUS CURIAE* PARENTS FOR A CONSTITUTIONAL JUDICIARY MOTION**

I, Sean Kuhlmeyer, solemnly affirm under penalty of perjury of the laws of Washington the following statements are true and correct.

1. I am over 18 years of age and am competent to testify. All statements herein are based upon my personal knowledge. I am the Appellant and Respondent in the family law action below, and Appellee, Isabelle Latour, is my former spouse. We share one child together – CMK.

2. Per RAP 10.6(a) I write this declaration regarding Amicus Curiae Parents for a Constitutional Judiciary's, and Shannon Draughon's, motion to file a brief in this case.

3. The issues PFCJ and Ms. Draughon raise are important

civil-rights issues based in state and federal constitutional law, that warrant consideration. As this court is aware, on 2/21/2025, I submitted four (4) declarations, including my own, detailing how protection orders are being misused in Washington to restrict citizens' fundamental rights, as well as *de facto* terminate parental rights. *See, Declarations of Sean Kuhlmeyer, Adam Grossman, Stephan Hick, and John Loop,* submitted to this court via Motion to Consider Additional Evidence on 2/21/2025.

4. Thus, this case is about a citizen's right to be free from governmental overreach in restricting their fundamental rights, including the fundamental right to parent one's child, and to have a relationship with one's child. My case deserves to be treated with the consequent respect that civil rights cases are afforded.

5. In reading PFCJ's brief, Ms. Draughon raises issues that are broader and more general than the issues that I anticipate raising in my brief. Or at least, argues them differently from what I anticipate I will argue. I believe I will be primarily focused on the injustice done to me, my son, my family (and even Ms. Latour), more than the larger sociological implications of what the trial court did and what it means to society by using the standards it did, and thus, PFCJ's brief brings an important nuance to consideration of the issues which should be considered.

6. Issues of justice would seem to dictate that the issues as PFCJ articulate them, demand consideration, and I would challenge any

lawyer, including Appellee Ms. Latour's attorneys, to articulate reasoned arguments as to why those arguments should not be considered by this court.

7. Per RAP 10.6 (d) I do not object to PFCJ and Ms. Draughon's motion to file their brief in this case, and I would urge Ms. Latour's attorneys to not oppose the filing of said brief either.

Respectfully submitted.

I declare under penalty of perjury under the laws of the State of Washington, that all statements, observations, and facts, are true and correct, to the best of my knowledge.

Signed at Seattle, King County, Washington, on Thursday, Mar. 6, 2025.

s/ Sean Kuhlmeyer

CARNATION LEGAL SERVICES LLC

March 06, 2025 - 2:55 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,736-8
Appellate Court Case Title:	In the Matter of the Marriage of: Isabelle Latour v. Sean Kuhlmeyer

The following documents have been uploaded:

- 1037368_Other_20250306145330SC270588_3445.pdf
  This File Contains:
  Other - Amended Amicus - word limit
  The Original File Name was 2025.03.06 Amicus Motion PFCJ 1037368 final Amnd. SMD.pdf

A copy of the uploaded files will be sent to:

- adrian.winder@foster.com
- ben.hodges@foster.com
- biancachamusco@dwt.com
- ellery@eaj-law.com
- kelly.mennemeier@foster.com
- litdocket@foster.com
- mckenna.filler@foster.com
- rylan.weythman@foster.com
- sean@emeraldcitybikelawyer.com

Comments:

Please find as requested corrected Amicus in compliance with word limit. With thanks.

Sender Name: Shannon Draughon - Email: sdraughon@carnationlegal.com
Address:
PO BOX 217
CARNATION, WA, 98014-0217
Phone: 425-945-6862

Note: The Filing Id is 20250306145330SC270588