

No. 93645-5

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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ESMERALDA RODRIGUEZ,

Petitioner,

v.

LUIS DANIEL ZAVALA,

Respondent.

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**MOTION OF AMERICAN CIVIL LIBERTIES UNION OF  
WASHINGTON FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

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*Attorneys for Amicus Curiae*

The American Civil Liberties Union of Washington (“ACLU”) respectfully moves, pursuant to RAP 10.1(e) and 10.6 for leave to file an *amicus* brief in this matter. The Brief of *Amicus Curiae* (“Brief”) is filed with this Motion. In support of this Motion, the ACLU offers the following information.

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

The ACLU is a statewide, nonpartisan, nonprofit organization with over 75,000 members and supporters dedicated to the preservation and promotion of civil liberties. Domestic violence is a terrible crime, and Incidents of domestic violence involving children are particularly heartbreaking. Washington State has long had a policy and legal structures aimed at punishing offenders and preventing its occurrence. The ACLU has been a steady advocate of these efforts and has filed *amicus* briefs and engaged in legislative advocacy in support of preventing domestic violence.

At the same time, however, no-contact orders in a domestic violence case can affect fundamental and constitutionally-protected familial rights of the participants: the right of a parent to have contact with their child and the right of the child to have a relationship with that parent. Where appropriate, the ACLU has filed *amicus* briefs addressing the ways

in which those fundamental familial rights must be balanced with the significant need to protect the safety of the victims.

## **II. FAMILIARITY WITH ISSUES AND SCOPE OF ARGUMENT ON REVIEW**

Counsel for *amicus* have read the briefs of Appellant and of *Amici Curiae* Legal Voice and Child Justice, and the verbatim report of proceedings in the trial court. Counsel are familiar with the Parties' arguments and have not unduly repeated them.

## **III. ISSUE ADDRESSED BY *AMICUS***

Whether this Court should adopt a rule that a child of a parent who experiences domestic violence—particularly if the domestic violence occurs in the home—must be automatically included as a person with whom contact is prohibited under a domestic violence protection order (“DVPO”) and that all contact with that child should be prohibited.

## **IV. WHY *AMICUS* BRIEFING WILL ASSIST THE COURT**

This Court has repeatedly recognized that parental rights are fundamental rights that may not be restricted except to serve a compelling state interest, and restrictions must be “sensitively imposed” in a manner that is “reasonably necessary to accomplish the essential needs of the State and public order.” *In re Rainey*, 168 Wn.2d 367, 377, 229 P.3d 686 (2010).

As to the “reasonable necessity” requirement, the interplay of [restrictions on contact] and fundamental rights is delicate and fact-specific, not lending itself to broad statements and bright line rules.

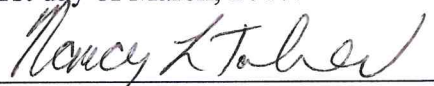
*Id.*

The ACLU’s *amicus* brief addresses (1) the federal and state constitutional principles that require continuation of the current individualized inquiry and (2) the statutory provisions that mandate such an inquiry. The *amicus* brief provides a wider perspective than the Parties on the significant constitutional and statutory rights involved, thereby aiding the Court in reaching a fully informed decision.

## **V. CONCLUSION**

For the foregoing reasons, the ACLU respectfully requests that the Court grant leave to file the *amicus* brief filed concurrently with this Motion.

Respectfully submitted this 31st day of March, 2017.

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