No. 236137

COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION III

SHAWNNA J. HUGHES,

Appellant,

v.

CARLOS A. HUGHES

and

STATE OF WASHINGTON,

Respondents.

AMICUS BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON, THE AMERICAN CIVIL LIBERTIES UNION WOMEN'S RIGHTS PROJECT, THE NORTHWEST WOMEN'S LAW CENTER, CHAYA, THE REFUGEE AND IMMIGRANT FORUM, THE WASHINGTON STATE COALITION AGAINST DOMESTIC VIOLENCE, NARAL PRO-CHOICE WASHINGTON, THE NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, WASHINGTON NOW, THE WASHINGTON COALITION OF SEXUAL ASSAULT PROGRAMS, STOP FAMILY VIOLENCE AND THE FAMILY VIOLENCE PREVENTION FUND

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INTRODUCTION

A pregnant woman is entitled to the same rights under the law as any other Washington resident. The trial court violated this fundamental principle when it denied a divorce to Shawnna and Carlos Hughes solely on the basis of Shawnna's pregnancy. As Shawnna's brief explains, the trial court's decision was contrary to Washington law. *Amici* submit that the trial court's decision also: (1) creates dangerous public policy that discriminates against pregnant women and places them at greater risk when they are victims of domestic violence, and (2) violates constitutional principles of equality and reproductive freedom.

STATEMENTS OF INTEREST OF AMICI CURIAE

Amici are civil rights, women's rights and domestic violence organizations. The interests of individual *amici* are set forth more particularly in Appendix A to this Brief and the accompanying Motion.

STATEMENT OF THE CASE

On April 15, 2004, Shawnna Hughes sought a divorce from her husband, Carlos, the father of her two children. Carlos failed to answer and therefore defaulted. On October 26, 2004, a pro tem Commissioner signed the final order granting the divorce. Prior to their entry, Shawnna

had checked the box on the mandatory pattern form decree that indicated she was pregnant, and that Carlos was not the biological father.

One week later, the trial court sua sponte revoked the dissolution decree. Explaining its decision, the trial court stated:

> …not only is it the policy of this Court, it is the policy of the state that you cannot dissolve a marriage when one of the parties is pregnant. Now, you won't find a statute with regard to that. But it is implicit in everything we have in the case law and the statutory law.

Verbatim Report of Proceedings ("VRP") at 31:16-22.

The trial court expressed concern that a final decree might prevent Carlos from asserting in a later paternity action that he was the father. The trial court also commented that Shawnna had brought the situation upon herself by having sex with someone other than her husband before her divorce was final:

> If you are going to go out and commit an intentional act, that changes the circumstances, which is what occurred here, then you have created the situation by your own actions that delay your opportunity to dissolve your marriage.

VRP at 33:17-21.

Thus, by the terms of the trial court's order, Shawnna remains married to Carlos, a man who abused her throughout their marriage and was incarcerated for that violence.

ARGUMENT

A. There is No Basis in Washington Law for Denying a Dissolution Petition Based on the Wife's Pregnancy

1. Washington Divorce Law and the Parentage Act Grant the Trial Court No Discretion to Deny the Dissolution Petition

Under Washington's no-fault dissolution statute, trial courts have no discretion to deny a properly made dissolution petition on the basis that the wife is pregnant:

> When a party…petitions for a dissolution of marriage, and alleges that the marriage is irretrievably broken, and when ninety days have elapsed since the petition was filed and [served]…, the court shall proceed as follows:
>
> (1) If the other party joins in the petition or does not deny that the marriage is irretrievably broken, the court shall enter a decree of dissolution….

RCW 26.09.030 (emphases added). The Hughes dissolution petition met these criteria. Neither Shawnna nor Carlos denied that the marriage was irretrievably broken and there is no question that the requisite ninety day waiting period had lapsed. Consequently, it was improper for the trial court to invalidate the dissolution decree.

The dissolution statute does not contain any exception, either explicit or implicit, that permits a court to deny or delay a divorce because the wife is pregnant. While the mandatory pattern dissolution form includes a disclosure of whether the wife is pregnant, and if so, whether

the husband is the father, this disclosure has no effect on the trial court's obligation to grant the dissolution. *See* RCW 26.09.020(1)(d). Any concern that the form's standard parentage clauses would have preclusive effect could have been remedied by simply striking those clauses from the decree. *See* RCW 26.26.630(3) (dissolution decree that is silent regarding paternity will not adjudicate parentage).

Further, the trial court fundamentally misapprehended the relationship between dissolution and parentage under Washington law. Washington's Uniform Parentage Act ("UPA"), RCW 26.26 *et seq.*, sets forth procedures for determining the paternity of children. The UPA is plainly inapplicable where, as here, there is a fetus, but no child. Under the express terms of the UPA, a paternity proceeding "may not be concluded until after the birth of the child." RCW 26.26.550. In addition, the UPA provides for equal treatment of all children regardless of whether their parents are married to each other. RCW 26.26.106. Finally, there is no requirement that paternity issues be resolved within the court system, let alone within the four corners of a dissolution action. *See* RCW 26.26.300, *et. seq.* (permitting joint acknowledgement and denial of paternity). As the trial judge himself acknowledged, nothing in the Washington dissolution statute or the UPA explicitly authorizes a court to

deny a pregnant woman a dissolution until she gives birth. VRP, at 31:16-22.

2. Illegitimacy is a Meaningless Concept Under Washington Law

The trial court suggested that the dissolution should be denied to avoid an out-of-wedlock birth. VRP, at 32:5-34:8. Illegitimacy is an archaic concept, and there is no valid reason, legal or otherwise, to deny Shawnna and Carlos a dissolution on this basis.

Courts have dismantled disparate treatment of children who are born to unmarried parents. *See, e.g., Jimenez v. Weinberger*, 417 U.S. 628, 636, 94 S.Ct. 2496 (1974) (holding that denying social security benefits to children of unmarried parents violates equal protection requirements); *Trimble v. Gordon,* 430 U.S. 762, 769-70, 97 S. Ct. 1459 (1977). In Washington, children of unmarried parents are provided the same protections afforded all other children. Washington State ruled its original "bastardy statute" unconstitutional in 1903. *State v. Tieman*, 32 Wash. 294, 298, 73 P.375 (1903). *See also Guard v. Jackson*, 132 Wn.2d 660, 667, 940 P.2d 642 (1997) (granting unmarried father right to bring wrongful death action for his child's death); *Klossner v. San Juan County*, 93 Wn.2d 42, 47-48, 605 P.2d 330 (1980) (interpreting the word "child" to include children of unmarried parents). Indeed, in 1979 the Washington

Supreme Court recognized a "constitutional mandate of equal treatment of all children, legitimate and illegitimate." *State v. Douty*, 92 Wn.2d 930, 934, 603 P.2d 373 (1979) (*citing Gomez v. Perez*, 409 U.S. 535, 538, 93 S.Ct. 872 (1973)). *See also State v. Wood*, 89 Wn.2d 97, 100-101, 569 P.2d 1148 (1977).

Furthermore, the UPA expressly prohibits discrimination against children based on the marital status of their parents:

> A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

RCW 26.26.106. *See also Guard,*132 Wn.2d at 668 (J. Smith concurring) (criticizing the use of the term "illegitimate," and noting that the legislature has largely eliminated the term from Washington statutes).

As there is no *legal* distinction between a child born to married parents and a child born to unmarried parents, the only possible reason for the trial court to deny Shawnna and Carlos a divorce in order to prevent "illegitimacy" is a moral judgment that having a child out of marriage is wrong. There is no place in our legal system for restrictions on an individual's right to divorce based on such judgments. Moreover, waiting for the birth of a child before granting a divorce is merely symbolic; any potential harm to the child that could result from a couple's divorce will occur whether the divorce is finalized before the child is born or

immediately after. The trial court's concerns about illegitimacy therefore have no weight and must be rejected.

B. The Trial Court's Action Violated Public Policy

1. Prohibiting Pregnant Abused Women from Divorcing May Unacceptably Increase Their Risk of Harm

a. Rates of Domestic Violence are Very High and Pregnant Women are Particularly at Risk

Although there is no basis for denying a dissolution to any pregnant woman based upon her pregnancy, this issue becomes particularly pressing in the case of pregnant women who are abused by their husbands.

Despite the increased recognition of crimes of domestic violence over the last two decades (*see, e.g., Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S.Ct. 2791 (1992)), the problem of intimate partner violence remains epidemic in the United States. Washington State is no exception. Though the Legislature has recognized the need to "assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide," (RCW 10.99.010), at least 281 people in Washington State died at the hands of domestic abusers between 1997 and 2004. *See* Kelly Starr, Margaret Hobart & Jake Fawcett for the Washington State Coalition Against Domestic Violence, *Findings and Recommendations from the*

Washington State Domestic Violence Fatality Review 6 (2004) (hereinafter *Washington State Domestic Violence Fatality Review 2004*). Women were the majority of victims of these fatal assaults. *Id.*, p. 18. These cases were only the most extreme; hundreds more women were injured in domestic attacks, including Shawnna Hughes. According to the National Crime Victimization Study, in 2001 roughly 588,490 women in the United States were the victims of domestic violence. *See* Callie Marie Rennison, Bureau of Justice Statistics, Crime Data Brief, *Intimate Partner Violence, 1993-2001*.[1] Further, one third of female murder victims in the United States are killed by an intimate partner. *Id.* In Washington, the numbers are even higher; in 2003, 44% of Washington female murder victims where killed by a husband or boyfriend. *See Washington State Domestic Violence Fatality Review 2004*, p. 6.

Pregnant women are particularly vulnerable to domestic violence. *See* Julie A. Gazmararian, et. al., *Prevalence of Violence Against Pregnant Women*, 275 J. Am. Med. Ass'n, 1915-1920 (1996) (1996. In Washington State, approximately 6% of women reported physical violence by their partners during or around the time of pregnancy. *See* Washington State Department of Health, *Washington State Domestic Violence and*

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[1] *See* http://www.ojp.usdoj.gov/bjs/abstract/ipv.htm

Pregnancy Facts 1 (2004)[2]. In fact, women who are pregnant or recently pregnant appear to be murdered at higher rates than women who are not pregnant. *See* Isabelle L. Horon & Diana Cheng, *Enhanced Surveillance for Pregnancy-Associated Mortality-Maryland 1993-1998*, 285 J. Am. Med. Ass'n. 1455, (March 21, 2001). *See also* Nancy K. D. Lemon, *Health Watch*, 8 Domestic Violence Report 69 (2003).

Domestic violence against pregnant women can cause physical injury, sexually-transmitted diseases, miscarriage and stillbirth, and can lead to low birth weight babies. *See, e.g.,* Bullock, L., *Characteristics of Battered Women in a Primary Care Setting*, 14 Nurse Practitioner 47, 47-55 (1989) (1989).[3] "Unlike other domestic violence, where the head is usually attacked, batterings of pregnant women tend to be directed at breasts, abdomen or genitals." Bewley C., et. al., *Coping with domestic violence during pregnancy*, 8 Nursing Standard 25, 25-28 (1994).

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[2] *See* http://www.doh.wa.gov/cfh/PRAMS/DVandPregnancyFactSheet2004.pdf.

[3] *See also* McFarlene J. & Gondolf, E., *Preventing Abuse During Pregnancy: A Clinical Protocol*, 23 Matern. Child Health J. 85, 85-89 (1998); Claire C. Murphy, Berit Schei, Terri L. Myhr, and Janice Du Mont, *Abuse: A risk factor for low birth weight? A systematic review and meta-analysis*, 164 Can. Med. Assoc. J. 1567, 1567-1572 (2002); Gazmararian, pp 1915-1920.

b. Unnecessary Delays in Divorce Can Increase the Risk of Harm to Pregnant Women Married to Abusers

Denying dissolutions to abused pregnant women exacerbates the risks associated with that violence. Women are frequently at the most risk when they decide to leave their abusers. "The most dangerous time for a woman and a child appears to be immediately after she leaves the batterer…." *Nicholson v. Williams*, 203 F. Supp. 2d 153, 248 (E.D.N.Y. 2002). *See also,* Heather Tonsing, *Battered Women Syndrome as a Tort Cause of Action*, 12 J.L. & Health 407, 415 (1997/1998); Martha F. Davis & Susan J. Kraham, *Protecting Women's Welfare In The Face of Violence*, 22 Fordham Urb. L.J. 1141 (1995). In Washington, 44% of the deaths from domestic abuse occurred when the victim had left or was attempting to leave the abuser. *See Washington State Domestic Violence Fatality Review 2004*, p. 27. Significantly extending the time between the initial filing for divorce and the ultimate dissolution decree is an unnecessary extension of this dangerous time period.

Many women continue to be subject to abuse even after obtaining a restraining order. From September 2002 to June 2004, "14 of the 81 abusers (17%) were subject to a type of protective order at some point before the murder. Some had been respondents in multiple orders." *Washington State Domestic Violence Fatality Review 2004*, p. 29.

Victims of domestic violence should never be constrained when they seek to sever all legal ties with their abusive husbands. This step is crucial in attaining safety for victims of abusive husbands. Further, the trial court's decision would create an incentive for an abuser to get his wife pregnant to prevent her from divorcing him.

Denying dissolution to a woman who is abused is not a mere inconvenience to her, but creates a risk of real harm. The trial court's (incorrect) assumption that it should wait for the mother to give birth and determine the dissolution and parentage at the same time is not worth this risk. Any purported convenience to the trial court does not outweigh the physical and emotional safety of the abused women subject to its jurisdiction.

2. Preventing Pregnant Women From Divorcing Contravenes State and Federal Antidiscrimination Policy

The trial court's decision that pregnant women are not entitled to a divorce where they otherwise meet the dissolution requirements violates the public policy prohibiting discrimination against pregnant women. The trial court's ruling discriminates against pregnant women because it prevents only pregnant women from obtaining a divorce. Men who impregnate other women while married remain free to dissolve their

marriages. Such disparate treatment inevitably perpetuates and reinforces archaic notions of paternalism and patterns of discrimination.

Public policy against this sort of discrimination is exemplified in the federal Pregnancy Discrimination Act ("PDA"), enacted in 1978. 42 U.S.C. § 2000e(k). In passing the PDA, Congress made clear that Title VII's prohibition on sex discrimination in the employment context includes a prohibition on discrimination based on pregnancy. *Id.* (discrimination "on the basis of sex" defined to include discrimination "on the basis of pregnancy, childbirth, or related medical conditions"). Subsequent decisions have recognized the PDA's broad remedial purpose of eliminating all forms of employment discrimination based on pregnancy. *See, e.g., Newport News Shipbuilding and Drydock Co. v. E.E.O.C.,* 462 U.S. 669, 684, 103 S.Ct. 2622 (1983) ("[F]or all Title VII purposes, discrimination based on a woman's pregnancy is, on its face, discrimination because of her sex."); *International Union, UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 199, 111 S.Ct. 1196 (1991) (a policy that classifies employees by their potential for pregnancy "must be regarded, for Title VII purposes, in the same light as explicit sex discrimination.").

The Washington Legislature also prohibited pregnancy-based employment discrimination when it enacted the Washington Law Against

Discrimination ("WLAD"). *See* RCW 49.60 et seq.; WAC 162-30-020 (1) & (2) ("[t]he overall purpose of the law against discrimination in employment because of sex is to equalize employment opportunity for men and women.…Pregnancy is an expectable incident in the life of a woman. Discrimination against women because of pregnancy or childbirth lessens the employment opportunities of women."). Under this statute, pregnant women are treated as a protected class. *See, e.g., Kuest v. Regent Assisted Living, Inc.*, 111 Wn. App. 36, 45, 43 P.3d 23 (2002).

The public policy against pregnancy discrimination is also expressed in the State's tort law. The employer in *Roberts v. Dudley* had fewer than eight employees and hence was not subject to the remedies of the WLAD. 140 Wn.2d 58, 993 P.2d 901 (2000) Nonetheless, the Court found that firing an employee because of her pregnancy was a wrongful discharge in violation of the "strong and clear public policy against discrimination." Id. at 68.

Shawnna may sign contracts, work, vote, and serve on a jury regardless of her pregnancy status. Similarly, her dissolution petition should be decided under the same rules that apply to all other women and men. A prohibition on divorce for pregnant women contravenes the strong federal and state policies against pregnancy discrimination and in favor of equal treatment of all citizens.

C. The Trial Court's Interpretation of the Dissolution Statute Raises Significant Constitutional Problems

The trial court interpreted the dissolution statute to prevent an entire class of people – pregnant women – from obtaining divorces. Under the Washington and United States Constitutions, the state may not deny equal treatment to a woman merely because she is pregnant, nor may it unduly burden her personal reproductive decisions based upon her pregnancy.

1. *Statutes Should be Construed to Avoid Constitutional Problems Wherever Possible*

If this Court rules that pregnant women cannot divorce, it will be required to grapple with serious objections to the constitutionality of the Washington dissolution statute. The Court should construe the dissolution statute "to avoid such [constitutional] problems" unless such construction is plainly contrary to legislative intent. *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575, 108 S.Ct. 1392 (1988) (citations omitted).

2. The Trial Court's Interpretation of Washington's Dissolution Statute Violates Constitutional Principles of Equality

Denying dissolutions to pregnant women is a violation of Washington's constitutional commitment to equal treatment of all persons. Washington State demonstrated its strong policy against discrimination by

enacting the Equal Rights Amendment ("ERA") to the Washington Constitution in 1972, as well as by enacting numerous statutory prohibitions against sex discrimination.[4] The ERA provides that:

> Equality of rights and responsibility under the law shall not be denied or abridged on account of sex.

Washington Constitution, Article XXXI, § 1. The ERA's "broad, sweeping, mandatory language" has no parallel in the federal constitution, and is more protective than the Fourteenth Amendment. *Darrin v. Gould*, 85 Wn.2d 859, 871, 540 P.2d 882 (1975). *See also State v. Burch*, 65 Wn. App. 828, 837, 830 P.2d 357 (1992). Indeed, the ERA:

> absolutely prohibits discrimination on the basis of sex and <u>is not subject to even the narrow exceptions permitted under traditional 'strict scrutiny</u>.'

Southwest Wash. Chapter, Nat'l Elec. Contractors Ass'n v. Pierce County, 100 Wn.2d 109, 127, 667 P.2d 1092 (1983) (emphasis added).

As the Washington Supreme Court has recognized, classifications based on pregnancy are inherently sex-based, and should be subjected to the same analysis as other sex-based distinctions. *See Hanson v. Hutt*, 83

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[4] *See, e.g.,* RCW 49.60 *et seq* ("[t]he right to be free from discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical disability is recognized as and declared to be a civil right.); RCW 74.04.515 (prohibiting discrimination based on sex for the purposes of public assistance); RCW 2.36.080 (prohibiting exclusion from jury pools based on sex); RCW 48.30.300(1) ("No person or entity engaged in the business of insurance in this state shall refuse to issue any contract of insurance or cancel or decline to renew such contract because of ... sex....."); RCW 49.12.175 (prohibiting sex discrimination in the payment of wages).

Wn.2d 195, 198, 517 P.2d 599 (1973), *superseded in part by statute as stated in* 90 Wn.2d 298 (1978). In *Hanson*, the court struck down a statute disqualifying pregnant women from receiving unemployment insurance benefits under Art. I, § 12 of the Washington Constitution (the privileges and immunities clause), reasoning that:

> While it is oversimplistic, it is true that only women become pregnant. It is equally clear that only women must remain barren to be eligible for and to receive unemployment compensation. This requirement of RCW 50.20.030 not only applies to only one sex but places a heavier burden upon women who seek unemployment benefits. We hold that the statute discriminates against women on the basis of sex.

Hanson, 83 Wn.2d at 601-02.

When a court reviews a sex-based classification to determine whether it complies with the ERA, if equality is restricted or denied on the basis of sex, the classification is discriminatory. *See Marchioro v. Chaney*, 90 Wn.2d 298, 305, 582 P.2d 487 (1978). Here, if the trial court's ruling is allowed to stand, only a <u>woman</u> who became pregnant by a man other than her spouse would be prevented from divorcing. In contrast, a <u>man</u> who conceived a child with a woman who was not his wife during the marriage would not be prohibited from divorcing his wife until the other woman's child was born. Such disparate treatment based on pregnancy clearly constitutes sex discrimination in violation of the ERA.

Any alleged state interest in prohibiting pregnant women from divorcing is irrelevant.

The trial court's ruling also violates the Privileges and Immunities Clause of the Washington Constitution, Article I, § 12. This clause again expresses our state's strong mandate for equal treatment of its citizens:

> No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Constitution, Article I, § 12. Divorce is a privilege that must be made available on the same terms equally to all Washington citizens. However, the trial court's ruling prevents only pregnant women from divorcing during their pregnancy. This disparate treatment violates the Privileges and Immunities Clause. "The aim and purpose of the special privileges and immunities provision of article I, section 12 of the State Constitution … is to secure equality of treatment of all persons." *State ex rel. Bacich v. Huse*, 187 Wn. 75, 80, 59 P.2d 1101 (1936), *overruled on other grounds,* 92 Wn.2d 939.

3. The Trial Court's Ruling Violates Shawnna's Fundamental Right to Privacy

By withholding a statutory right to which Shawnna would otherwise be entitled but for her pregnancy – the right to obtain a no-fault dissolution – the state is interfering substantially with Shawnna's ability to

make personal decisions regarding reproduction and child-rearing. The state has no constitutionally valid grounds for this intrusion into Shawnna's privacy.

Shawnna's personal decisions regarding marriage, procreation, child bearing and how to structure her family relationships lie at the heart of the right of privacy guaranteed by the Fourteenth Amendment:

> While the outer limits of [the right of personal privacy] have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified governmental interference are personal decisions "relating to marriage, procreation, contraception, family relationships, and child rearing and education."

Carey v. Population Services Int'l, 431 U.S. 678, 684-85, 97 S.Ct. 2010 (1977) (quoting *Roe v. Wade*, 410 U.S. 113, 152-153, 93 S.Ct. 705 (1973) (internal citations omitted)). The United States Supreme Court has repeatedly recognized that the right of privacy encompasses reproductive choices including procreation, childrearing, contraceptive use, sterilization, and abortion. *See Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541, 62 S.Ct. 1110 (1942).[5] As the Supreme Court has stated:

> If the right of privacy means anything, it is the right of the

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[5] *See also*, *Carey,* 431 U.S. at 684-86; *Roe,* 410 U.S. at 142-153 (1973); *Planned Parenthood of Southeastern Pennsylvania,* 505 U.S. at 859 (1992); *Cleveland Board of Education v. LaFleur et al*., 414 U.S. 632, 640, 94 S.Ct. 791 (1974); *Griswold v. Connecticut*, 381 U.S. 479, 485-86, 85 S.Ct. 1678 (1965).

> individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.

Eisenstadt v. Baird, 405 U.S. 438, 453, 92 S.Ct. 1029 (1972). The trial court's interpretation of the dissolution statute creates a significant "governmental intrusion" into this fundamentally personal decision, by forcing Shawnna to choose between her statutory right to a timely escape from a broken marriage and her right to procreate.

The State's interference with Shawnna's decision to divorce her abusive husband, conceive and bear a child, and raise that child in a family unit of her own choosing fails a strict scrutiny analysis:

> When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.

Zablocki v. Redhail, 434 U.S. 374, 388, 98 S.Ct. 673 (1978). There is no state interest in delaying a paternity decision until the birth of a child that is sufficiently compelling to deny Shawnna and Carlos a dissolution. While *amici* agree that the state has a legitimate interest in determining a child's paternity, they disagree that paternity must be established as part of the dissolution proceeding. Neither the dissolution statute nor the UPA require paternity to be established before the child's birth. In fact, the UPA explicitly prohibits establishment of paternity prior to the birth of a

child. *See* RCW 26.26.550. Rather, the UPA has explicit procedures that govern how and when paternity may be established. Preventing women from obtaining divorces while pregnant is completely unnecessary to a paternity determination under the UPA's statutory scheme, let alone closely tailored to effectuate the state's interest in establishing paternity. Further, as discussed in section B, such a requirement is antithetical to the safety of women like Shawnna Hughes who seek dissolutions to escape from abusive husbands.

CONCLUSION

By discriminating against the entire class of pregnant women, the trial court's ruling undermines the principles of equality and autonomy that are fundamental to Washington. Such unequal treatment is particularly untenable here, where Shawnna Hughes is attempting to escape from a physically and emotionally abusive marriage. Consequently, *amici* respectfully request that this Court reverse the trial

court's ruling.

Respectfully submitted this _____ day of March, 2005.

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APPENDIX A

IDENTITY AND INTEREST OF *AMICI*

A. The American Civil Liberties Union of Washington and the American Civil Liberties Union Women's Rights Project

The American Civil Liberties Union of Washington and the American Civil Liberties Union Women's Rights Project (together, "ACLU") are nonprofit, nonpartisan membership organizations that work to protect and advance civil liberties throughout the United States. The ACLU has more than 400,000 members nationwide, with some 20,000 members in Washington. The Women's Rights Project of the ACLU, founded in 1972 by Ruth Bader Ginsburg, now a United States Supreme Court Justice, protects and promotes the civil and constitutional rights of women. The ACLU has appeared frequently in courts in Washington and other states in cases involving women's right to receive equal treatment in family courts, to be free from discrimination on the basis of pregnancy, and to be free from government policies that place women at increased danger of domestic violence.

B. The Northwest Women's Law Center

The Northwest Women's Law Center (NWLC) is a regional non-profit public interest organization that works to advance the legal rights of all women through litigation, legislation, education and the provision of legal information and referral services. Since its founding in 1978, the NWLC has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country, and is currently involved in

numerous legislative and litigation efforts. The NWLC has developed expertise in numerous areas of law pertaining to women's rights, including domestic violence and reproductive rights and serves as a regional expert and leading advocate for survivors of domestic violence. Of particular relevance to this case, the NWLC has been a leader for more than twenty years in shaping the development of family law and ensuring its fair and equitable application to women, issues directly raised in the *Hughes* case.

C. Chaya

Chaya (translated from the Sanskrit word for "shelter" or "shade") is a community-based, non-profit organization founded in 1996 that provides resources and services to South Asian women in situations of domestic violence and works towards creating awareness about the issue in the South Asian and larger communities. Chaya's work is informed by a complex understanding of the specific cultural circumstances surrounding domestic violence in the South Asian community. Of the dozens of clients served by Chaya each year, some are pregnant women fearing domestic violence or seeking divorce.

D. The Refugee and Immigrant Forum

The Refugee and Immigrant Forum of Snohomish County (RIF) is a non-profit agency with nine offices serving refugees and immigrants in Snohomish, Skagit and Whatcom counties. Founded in 1977, RIF's mission is commitment to the well bring of refugee and immigrant populations that resettle in the three counties it serves. RIF works tirelessly to acculturate, educate, and guide new arrivals toward self-

sufficiency, through services such as English as a Second Language classes, employment and vocational training, citizenship training, K-12 tutoring, and advocacy. Unfortunately, the marriages of some RIF clients result in divorce when families transition from more patriarchal cultures to the United States. Every year, RIF helps dozens of women obtain services and information they need to escape abusive relationships, and usually a number of those women are pregnant. RIF believes that the state should not force pregnant women to remain in broken marriages that they could otherwise leave if they were not pregnant.

E. The Washington State Coalition Against Domestic Violence

The Washington State Coalition Against Domestic Violence (WSCADV) is a non-profit organization, incorporated in the state of Washington. Founded in 1990, WSCADV is a statewide membership organization committed to eradicating domestic violence through advocacy and action for social change. WSCADV's core membership is comprised of domestic violence shelters and advocacy programs statewide that provide services for victims of domestic violence. Founded by domestic violence survivors, the WSCADV was organized to share resources, develop common strategies and strengthen community responses to domestic violence around the state. The core commitment of the WSCADV is to support domestic violence survivors, and emergency shelter and advocacy programs by advocating for laws and public policies that promote safety and justice for domestic violence victims. In the context of domestic relations, WSCADV believes that battered women

should not be trapped in abusive relationships. Victims of domestic violence should be able to terminate abusive marriages and seek legal protection from abuse. WSCADV is concerned that the trial court ruling, if allowed to stand, will send a chilling message to domestic violence victims in Washington State – that if pregnant, their rights to separate from an abuser are limited, despite the fact that there is no legal basis to withhold divorce on these grounds and that existing statutory mechanisms exist to establish paternity once the child is born.

F. NARAL Pro-Choice Washington

NARAL Pro-Choice Washington ("NARAL") is a grassroots political advocacy organization. NARAL's mission is to guarantee every woman the right to make personal decisions regarding the full range of reproductive choices, preventing unintended pregnancy, including bearing healthy children and choosing legal abortion. We represent 12,000 Washingtonians statewide. It is NARAL's position that no woman should be denied a divorce due to pregnancy. In accordance with existing legal precedent, including but not limited to the *Roe v. Wade* decision, it is clear that a fetus is not a person with legal standing. It is therefore entirely inappropriate for the court to place the rights of a fetus above those of a woman seeking a divorce. Such an action clearly infringes upon a woman's right to privacy and right to make her own reproductive health decisions.

G. The National Coalition Against Domestic Violence

The National Coalition Against Domestic Violence (NCADV) was formed in 1978 to establish and support a national network of programs providing services to victims of domestic violence. NCADV represents that network of over 2,000 local programs and state coalitions throughout the United States. NCADV provides technical assistance, general information and referrals, community awareness campaigns, public policy advocacy and sponsors a national conference every two years.

According to a recent Centers for Disease Control report, the second leading cause of trauma related deaths for pregnant and new mothers is homicide, second only to automobile accidents. The danger that pregnant and new mothers face when domestic violence is present in the relationship is high, and their safety must be the primary focus of any civil or criminal decisions handed down by judges. NCADV is strongly committed to finding ways to ensure that this primary focus is universally and consistently implemented in U.S. courts.

H. Washington State NOW

Washington State NOW is an affiliate of the National Organization for Women, whose purpose is to take action to bring women into full participation in the mainstream of American society now, exercising all privileges and responsibilities thereof in truly equal partnership with men. This purpose includes, but is not limited to, equal rights and responsibilities in all aspects of citizenship, public service, employment, education, and family life, and it includes freedom from discrimination

because of race, ethnic origin, age, marital status, sexual preference/orientation, economic status or parenthood.

Washington State NOW is a grass roots organization of approximately 3000 individuals from all income statuses, dedicated to enhancing the lives of women.

NOW also recognizes the disruptive and dangerous nature of domestic violence and has advocated for over thirty years to deal effectively with the problem. Violence against women and children is an enormous problem in our country and in our state. Statistically, most women will experience some form of violence in their lifetime. According to FBI statistics, domestic violence is the leading cause of injury to women, causing more injuries than muggings, stranger rape and car accidents combined. In Washington State between 1997 and 2004 at least 281 people were killed in domestic violence crimes. Domestic violence causes almost 100,000 days of hospitalization 30,000 emergency room visits and 40,000 trips to a doctor every year. In Washington State there are between 48,000 and 50,000 domestic violence assaults every year that result in serious injuries. About 17% of pregnant women report having been battered, often with serious, sometimes with life-threatening results.

Preventing a pregnant woman from divorcing is discrimination. Only women can be come pregnant. Women do not seek preferential, special or protected treatment because of pregnancy. What women do want is recognition that pregnancy is part of the natural human experience

and should not be used to put women at a disadvantage. Decisions made in divorce proceedings should be made under the same rules and standards for all men and women equally.

I. The Washington Coalition of Sexual Assault Programs

The Washington Coalition of Sexual Assault Programs ("WCSAP") is the only statewide organization that links 40 community sexual assault programs throughout the state of Washington. Through its affiliates, WCSAP member programs serve approximately 10,000 victims of domestic and sexual violence annually. Since 1979, WCSAP has engaged in legislative and systems advocacy towards improving the legal response, both criminal and civil to survivors of domestic and sexual violence. WCSAP hopes to ensure that Washington's public policy does not discriminate against pregnant women and to ensure that all state and federal constitutional provisions are upheld to protect the rights of all women and girls who are disproportionately impacted by domestic and sexual violence.

J. Stop Family Violence

Stop Family Violence is a national grassroots organization with 30,000 members and representing the interests of victims of domestic and sexual violence nationwide. We work at the local, state and national level to ensure safety, justice, accountability and healing for people whose lives are affected by violent relationships.

K. Family Violence Prevention Fund

The Family Violence Prevention Fund ("FVPF") is a national non-profit organization, founded in 1980 and incorporated in the state of California, that works to end violence against women and children. The FVPF mobilizes concerned individuals, children's groups, allied professionals, women's rights, civil rights, and other social justice organizations to join the campaign to end violence through public education/prevention campaigns, public policy reform model training, advocacy programs and organizing. The FVPF is extremely concerned about the trial court's refusal, because the petitioner is pregnant, to grant the dissolution decree to terminate an abusive relationship. Battered women make many choices each day in an attempt to keep themselves and their children safe in both the short and the long-term. Research has consistently demonstrated that the time of separation leads to an increased risk of violence toward a battered woman and her children. The risk in separating from an abusive partner is exacerbated when a woman is pregnant. In refusing the petitioner's request for dissolution in this case, the trial court has not only violated constitutional and legislative protections but has prolonged the increased danger to Ms. Hughes in her attempts to terminate and abusive relationship.

The issues presented by this appeal have significant implications for pregnant and battered women throughout this state. The American Civil Liberties Union of Washington, American Civil Liberties Union Women's Rights Project, the Northwest Women's Law Center, Chaya, the

Refugee and Immigrant Forum, the Washington State Coalition Against Domestic Violence, NARAL Pro-Choice Washington, the National Coalition Against Domestic Violence, Washington State NOW, the Washington Coalition of Sexual Assault Programs, Stop Family Violence and the Family Violence Prevention Fund seek to participate as *amici* in order to provide this Court with information on (1) the impact the trial court's ruling will have on married victims of domestic violence throughout this state if allowed to stand, and (2) an analysis of why the trial court's ruling violates fundamental rights protected by the United States and Washington Constitutions.

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