NO. 81043-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Parentage of M.F.

JOHN CORBIN,

Petitioner,

v.

PATRICIA REIMEN,

Respondent,

and

EDWARD FRAZIER,

Respondent.

BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON

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INTEREST OF AMICUS

The American Civil Liberties Union of Washington ("ACLU") is a statewide, non-partisan, non-profit organization with over 20,000 members, dedicated to the preservation and defense of constitutional and civil liberties, including the fundamental right to a parent-child relationship recognized by the courts as protected by the due process clauses of the state and federal constitutions. The ACLU participated as amicus curiae in *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) (involving the rights of parents versus non-parents) and in *In re Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005) (involving the rights of persons who satisfy the strict common-law test for *de facto* parent status).

INTRODUCTION

This case is about whether the law protects the parent-child relationship between John Corbin and M.F. that was created and sustained by all the parties ever since now-15-year old M.F. was an infant. This Court has adopted equitable principles for determining whether a particular person is a *de facto* parent. *In re Parentage of L.B.,* 155 Wn.2d 679, 122 P.3d 161 (2005). In this case, the trial court applied the factors set forth in *L.B.,* and correctly determined that Corbin had made at least a *prima facie* showing that a *de facto* parent-child relationship exists

between him and M.F. He had lived with M.F. since she was an infant and for most of her life, and took on a role as M.F.'s father with the consent of M.F.'s mother and her biological father. M.F. lived in his home, along with her half-brothers, even after Corbin separated from M.F.'s mother, and M.F. viewed him as her father. Under *L.B.,* Corbin had standing to seek a declaration that he is M.F.'s *de facto* parent.

Nevertheless, the Court of Appeals refused to apply the *de facto* parent rule to the relationship between Corbin and M.F. Instead, the court focused solely on the separate relationship between Corbin and M.F.'s mother, Respondent Patricia Reimen. A panel of the Court of Appeals held that anyone who during the course of his or her relationship with a child was married to the child's legal parent can ***never*** establish that he or she is the child's *de facto* parent. 141 Wn. App. at 563.

As this Court recognized in *L.B.,* establishing *de facto* parentage is "no easy task," and can only be determined after a rigorous case-by-case inquiry. 155 Wn.2d at 712. Not every blended family results in a *de facto* parent-child relationship between stepparent and stepchild. But some do. As in *L.B.,* this case presents the question of how the law should treat the bond between a child and an adult who actually functioned as her parent in every way since her infancy, with the consent and encouragement of her biological parents. Will relationships like this be recognized and protected

like other parent-child relationships, or will they be denied legal protection – solely because Corbin and Reimen were married during a portion of M.F.'s life? This Court should reverse the decision of the Court of Appeals, and reaffirm that the *L.B.* rule provides the correct framework for determining whether a *de facto* parent-child relationship exists.

STATEMENT OF THE CASE

M.F. is now 15 years old and has been parented by petitioner John Corbin most of her life. Pet. for Rev. at 2. She lived with Corbin together with her mother (Reimen) from when she was an infant until age seven. *Id.* Corbin and M.F.'s mother married in 1995. M.F. lived with them and two sons that Corbin and Reimen had together (her half-brothers) during their marriage. *Id.* Corbin and Reimen separated in 2000 and then divorced. *Id.* Even after the divorce, M.F. continued to live with Corbin and her two half-brothers about half of the time, and visited Reimen at the same time as her half-brothers. *Id.* In 2005, M.F. abruptly stopped spending time with Corbin. Pet. for Rev. at 3. The reason for the abrupt change is disputed by the parties. *Id.*

M.F. has always called Corbin "Dad," with Reimen's encouragement and consent. Pet. for Rev. at 2. M.F. uses Corbin's last name. *Id.* She has had little contact with her biological father

(Respondent Frazier), and he supports Corbin's claim for de facto parent status. *Id.*

Shortly after this Court announced its *L.B.* decision regarding *de facto* parentage in 2005, Corbin filed a petition in Snohomish County Superior Court seeking *de facto* parent status as to M.F. Pet. for Rev. at 3. His petition alleged that he met all the requirements for a *de facto* parent pursuant to *L.B.* *Id.*

Reimen moved to dismiss Corbin's petition. Pet. for Rev. at 4. The Superior Court denied the motion to dismiss, ruling that former stepparents were not, as a matter of law, precluded from petitioning as *de facto* parents and that the common law cause of action recognized in *L.B.* was not limited to same-sex parents. Pet. for Rev. at 5. M.F.'s guardian ad litem and her psychologist also recommended reunification with Corbin, and a residential schedule in which she spent about half the time with Corbin and her half-brothers was established. Pet. for Rev. at 6.

The Court of Appeals then granted discretionary review and reversed the Superior Court. *In re Parentage of M.F.*, 141 Wn.App. 558, 170 P.3d 601 (2007), *review granted*, 163 Wn.2d 1052, 187 P.3d 752 (2008). Division One ruled Corbin's suit had to be dismissed because he became M.F.'s stepfather when he married her mother, and for stepparents seeking legal rights to a child, the only recourse is through statutory

remedies governing non-parent visitation, which now require a showing that both biological parents are unfit. Because Corbin did not make a showing of unfitness, the Court of Appeals held there was no valid legal basis for giving him residential time with M.F.

ARGUMENT

A. The Court of Appeals erred by barring Corbin from alleging common law *de facto* parent status where, as in *L.B.* and *J.A.B.*, he has no adequate statutory remedy.

1. Statutory remedies (either through non-parent visitation or adoption statutes) are incomplete and inadequate.

Corbin's supplemental brief in this Court explains why the Court of Appeals was wrong to assert that he had statutory remedies available to him to preserve his relationship with M.F. *See* Supp. Br. of Petitioner Corbin at 5-7. As another panel of the Court of Appeals recently observed, in order to rely on nonparental custody and visitation statutes, Corbin would have to prove both biological parents are unfit. *In re Parentage of J.A.B.*, 146 Wn.App. 417, 423-26, 191 P.3d 71 (2008) (citing RCW Chapter 26.10). In order to adopt M.F., Corbin would need the consent of the biological parents or termination of their parental rights. *See J.A.B.*, 146 Wn.App. at 421; RCW 26.33.080, 26.33.100 and 26.33.120 (difficult burden of proof for terminating rights of parent who does not consent to adoption). Neither statutory scheme fits the remedy he

seeks: recognition as a parent based on the compelling facts regarding his relationship with M.F., without depriving anyone else of their parental status.

The facts describing the relationship between the child and the person alleging to be his *de facto* father in *J.A.B.* are remarkably similar to the facts in this case. Just like M.F. and Corbin, the child in *J.A.B.* lived with the mother and *de facto* father since infancy, lived with the mother and *de facto* father and their child (his half-sibling) for years, and the biological father had very little involvement in the child's life. *J.A.B.,* 146 Wn.App. at 420-21. The child lived with the *de facto* father even after he separated from the mother. *Id.* at 421.

The only difference between the present case and *J.A.B.* is that the child's mother and *de facto* father in *J.A.B.* were never married. In *J.A.B.*, the Court of Appeals explained why the difference in marital status did not justify making *de facto* parent status unavailable. As this Court had recognized in *L.B.,* a person may be a *de facto* parent even if he or she did not use nonparental custody or adoption statutory remedies. *J.A.B.,* 146 Wn.App. at 424-25; *L.B.*, 155 Wn.2d at 693. The law must focus on whether a person is in fact the child's parent, rather than on the legal relationships between the adults. 146 Wn.App. at 425.

The availability of the *de facto* parent rule does not depend on whether a child's parents cannot marry (as in *L.B.*) or can legally marry but chose not to (as in *J.A.B*) or were married at one point (as in *Frazier*). The *J.A.B.* court saw no valid legal distinction "between blended families resulting from consecutive marriages and blended families resulting from nonmarital relationships. ... We do not believe the *L.B.* court intended to limit the de facto parent doctrine to parties who have no legal right to marry, leaving to all others the very limited avenue of the nonparent custody statute." 146 Wn.App. at 425-26. This Court's reasoning in *L.B.* regarding the availability of the common law *de facto* parent rule due to the inadequacy of statutory remedies applies with equal force to Corbin:

> Washington courts have consistently invoked their equity powers and common law responsibility to respond to the needs of children and families in the face of changing realities. We have often done so in spite of legislative enactments that may have spoken to the area of law, but did so incompletely.

155 Wn.2d at 687, 689. Recognizing that a common law *de facto* parent rule was supported by a public policy favoring the best interests of the child, reason and common sense, this Court said:

> [S]imply because a statute fails to speak to a specific situation should not, and does not in our common law system, operate to preclude the availability of potential redress. This is especially true when the rights and interests of those least able to speak for themselves are concerned. We cannot read the legislature's pronouncements on this subject to preclude any potential redress to Carvin or L.B. In fact, to do so would be antagonistic to the clear

> legislative intent that permeates this field of law-to effectuate the best interests of the child in the face of differing notions of family and to provide certain and needed economical and psychological support and nurturing to the children of our state. While the legislature may eventually choose to enact differing standards than those recognized here today, and to do so would be within its province, until that time, it is the duty of this court to "endeavor to administer justice according to the promptings of reason and common sense." [citation omitted.]
>
> Reason and common sense support recognizing the existence of de facto parents and according them the rights and responsibilities which attach to parents in this state. We adapt our common law today to fill the interstices that our current legislative enactment fails to cover in a manner consistent with our laws and stated legislative policy.

Id. at 706-07.

2. The *de facto* parent rule is appropriately applied to parent-child relationships where a parent for a period of time was married to another parent.

The Court of Appeals treated Corbin's status as Reimen's ex-spouse as an absolute bar to *de facto* parenthood. 141 Wn.App. at 565. Respondent likewise asks this Court to exclude former stepparents from the doctrine, arguing that "Court should not equate the relationship that naturally arises between stepparent and stepchild to that of a *de facto* parent." Resp. Supp. Br. at 6. Respondent is too quick to make assumptions about the variety of relationships that arise from stepparent status.

Any child automatically receives the kinship label of "stepchild" when a parent remarries, regardless of the child's age, circumstances, or relationship. *See, e.g.,* NEW COLLEGE MERRIAM-WEBSTER ENGLISH DICTIONARY (defining "stepchild" as "a child of one's wife or husband by a former marriage"). But one merely has to watch a double feature of *The Brady Bunch* and *Cinderella* to recognize that the very same ***parent-child*** bond does not "naturally" arise with every remarriage. To the contrary, some step-parents never develop a close relationship with their spouse's children. Others stepparents and stepchildren become intimate, but do not create the same kind of bond that characterizes parent and child. *See, e.g., In re Krystle D.*, 30 Cal.App.4th 1778, 1809, 37 Cal.Rptr.2d 132 (Cal.App. 1994) ("substantial evidence supported the trial court's conclusion that [the former stepfather] was not a de facto parent"). Still other stepparents and stepchildren eventually develop a ***parent***-child relationship – as evidenced by the factors identified by this Court in *L.B. See, e.g., Kinnard v. Kinnard*, 43 P.3d 150 (Alaska 2002) (stepmother was child's "psychological parent"; child had lived with father and stepmother from the time that she was in kindergarten, father admitted that stepmother and his child had bonded together from the beginning of their relationship, and expert witnesses testified that relationship of stepmother and child was that of parent and child); *J.R. v. L.R.*, 386 N.J. Super. 475, 902 A.2d 261,

264 (N.J.Super.2006) (finding that mother's ex-husband was child's "psychological father" and should split child support expenses with biological father). Not every stepparent becomes a *de facto* parent; but contrary to the Court of Appeals' holding, there is no reason to conclude that a stepparent can ***never*** satisfy the requirements set forth in *L.B.*

B. Parents and children have a fundamental interest in their parent-child relationship which is protected under the *de facto* parent rule and is consistent with all parties' constitutional rights.

1. Both child and parent have a constitutional interest in protecting the parent-child relationship.

The relationship between parent and child is perhaps the oldest of the fundamental liberty interests recognized by the United States Supreme Court. The parent-child bond is "far more precious than any property right." *M.L.B. v. S.L.J.,* 519 U.S. 102, 105, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996) (quoting *Santosky v. Kramer,* 455 U.S. 745, 758-759, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)); *In re Welfare of Luscier*, 84 Wn.2d 135, 137, 524 P.2d 906 (1974) (noting that Washington cases have recognized the fundamental nature of the parent-child relationship since 1894 and that the relationship can be described as "more precious to many people than the right of life itself").

Children have a special interest in the preservation of the parent-child relationship. *See, e.g.*, *Santosky*, 455 U.S. at 760 ("the child and his parents share a vital interest in preventing erroneous termination of their natural relationship"); *Moore v. Burdman*, 84 Wn.2d 408, 411, 526 P.2d 893, 895 (1974) (recognizing child's interest in "the affection and care of his parents"); *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977) (the "right to the preservation of family integrity encompasses the reciprocal rights of both parent and children," including the interest of a child "in not being dislocated from the 'emotional attachments that derive from the intimacy of daily association' with the parent") (citations omitted).

Like the child, each parent also has a fundamental interest in the parent-child relationship which is protected by the due process clause of the constitution. *L.B.*, 155 Wn.2d at 709 (citing *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000)). The parent's "right to the companionship, care, custody, and management of her children is an important interest that undeniably warrants, absent a powerful countervailing interest, protection." *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *Luscier*, *supra*; U.S. Const. Am. 14; Wash. Const. Art. 1, sec. 3.

The constitutionally protected parent-child relationship is not limited by the quality of the separate relationship between the parent and other persons, including with another parent of the child. To the contrary, a child's relationship with each parent exists regardless of whether the parents are currently happily together, or acrimoniously separated. Even when romantic partners break up, the law protects their children's relationships with each parent. This is particularly true when the biological parent voluntarily chose during most of M.F.'s life to share parental control with Corbin as M.F.'s *de facto* father; in those circumstances the law recognizes that the biological parent lacks the right to unilaterally terminate the father-child relationship that has been established with the mother's consent during all those years. *See, e.g., V.C. v. M.J.B.,* 163 N.J. 200, 553-54, 748 A.2d 539, 554 (2000). As this Court recognized in *L.B.*, courts have traditionally performed their equitable role as referee in determining child custody arrangements between persons with parent status. *L.B.*, 155 Wn.2d at 697-99. There is no valid reason to treat former stepparents who can satisfy the *L.B. de facto* parent rule any differently than the parents in *L.B.* or *J.A.B.*

2. For purposes of the constitutional as well as the statutory analysis, a *de facto* parent-child relationship is not limited by biology, marital status or adoptive status.

One role of the law is to acknowledge and sustain the relationships created by family members themselves, including the parent-child bond. This Court has wisely recognized that the existence of a parent-child relationship is determined by the realities of family life and individual connections, rather than focusing solely on isolated factors such as biology or marital status. *See, e.g., L.B.,* 155 Wn.2d at 693. As the United States Supreme Court has observed, "The intangible fibers that connect parent and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty, and flexibility." *Lehr v. Robertson,* 463 U.S. 248, 256, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983). An approach to family that "disdains present realities in deference to past formalities, [] needlessly risks running roughshod over the important interests of both parent and child." *Stanley*, 405 U.S. at 657.[1] By

[1] Even before the advent of assisted reproductive technology and other contemporary changes to family patterns, courts' understanding of the parent-child relationship was never limited to biological parentage. Thus, the United States Supreme Court has repeatedly acknowledged that particular individuals can perform a parenting role in some families. In *Moore v. City of East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977), it was a grandmother. And in *Prince v. Massachusetts,* 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), the Court relied on the notion of "parental rights" to protect the child's custodial aunt from improper

protecting parent-child relationships through the common law *de facto* parent rule, Washington courts have not operated to deny the realities of family life, but rather have encompassed them. *See, e.g., L.B.,* 155 Wn.2d at 693; *J.A.B., supra.*[2]

The parent-child relationship between children and their *de facto* parents – just like parent-child relationships that begin through sexual intercourse, assisted reproduction technology, adoption, or operation of law – is constitutionally protected. Excluding *de facto* parents from the State's mechanisms for recognizing and protecting parent-child relationships would deprive the affected children and parents of a fundamental familial relationship. As this Court stated in *L.B.*, "Neither the United States Supreme Court nor this court has ever held that 'family'

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state interference with child-rearing because she exhibited "motherlike" behavior in rearing the child. 321 U.S. at 162, 166.

[2] Other jurisdictions similarly recognize *de facto* parent-child relationships. *L.B.,* 155 Wn.2d at 702-06 (collecting cases). Contrary to Respondent Reimen's suggestion, Resp. Supp. Br. at 3, *de facto* parentage is not limited to lesbian couples. *See, e.g., J.A.B.,* 146 Wn. App. at 425 (ex-boyfriend); *P.B. v. T.H.*, 370 N.J. Super. 586, 851 A.2d 780 (N.J.Super. 2004) (neighbor with whom the child resided); *New Jersey Div. of Youth and Family Services v. C.S.*, 367 N.J. Super. 76, 842 A.2d 215, 242 (N.J.Super. 2004) (court found that the child had "been provided with both a stable, permanent placement and a nurturing psychological parent in" her aunt and granted custody to the aunt over the child's biological mother).

or 'parents' are terms limited in their definition by a strict biological prerequisite." 155 Wn.2d at 711.

3. Under the stringent requirements of *L.B.*, *de facto* parent status does not unconstitutionally interfere with another parent's rights.

As this Court ruled in *L.B.*, common law recognition of *de facto* parents does not implicate the constitutional infirmities recognized in *Troxel.* 155 Wn.2d at 709-12 (citing *Troxel*, 530 U.S. 57). The Supreme Court in *Troxel* ruled that Washington's former third party visitation statute violated a fit parent's constitutionally protected liberty interest to care for and control her child without unwarranted state intervention when the statute permitted ***any*** person at ***any*** time to seek visitation with the parent's child. However, *Troxel* dealt with the competing interests of parents and ***nonparents***. No case has ever applied a strict scrutiny analysis in cases weighing the competing interests of two parents. *L.B.*, 155 Wn.2d at 709.

This Court specifically found that the first of the *de facto* parent factors (the natural or legal parent's consent to and fostering of the parent-like relationship) "incorporates the constitutionally requisite deference to the legal parent." *L.B.*, 155 Wn.2d at 709. Under *L.B.*,

> The State is not interfering on behalf of a third party in an insular family unit but is enforcing the rights and obligations of parenthood that attach to de facto parents; a status that can be

> achieved only through the active encouragement of the biological or adoptive parent by affirmatively establishing a family unit with the de facto parent and child or children that accompany the family. [footnote omitted.] In sum, we find that the rights and responsibilities which we recognize as attaching to de facto parents do not infringe on the fundamental liberty interests of the other legal parent in the family unit.

155 Wn.2d at 712 (emphasis supplied). Similarly, the New Jersey Supreme Court has explained, in a case similar to *L.B.*, that the *de facto parent* rule

> should not be viewed as an incursion on the general right of a fit legal parent to raise his or her child without outside interference. What we have addressed here is a specific set of circumstances involving the volitional choice of a legal parent to cede a measure of parental authority to a third party; to allow that party to function as a parent in the day-to-day life of the child; and to foster the forging of a parental bond between the third party and the child. In such circumstances, the legal parent has created a family with the third party and the child, and has invited the third party into the otherwise inviolable realm of family privacy. By virtue of her own actions, the legal parent's expectation of autonomous privacy in her relationship with her child is necessarily reduced from that which would have been the case had she never invited the third party into their lives. Most important, where that invitation and its consequences have altered her child's life by essentially giving him or her another parent, the legal parent's options are constrained. It is the child's best interest that is preeminent as it would be if two legal parents were in a conflict over custody and visitation.

V.C. v. M.J.B., 748 A.2d at 553-54 (2000) (emphasis supplied). As with other individuals who embarked on parenthood together – such as through assisted reproductive technology or an agreed adoption petition – the *de facto* parent-child bond created with the "active encouragement" of the

legal parent does not unconstitutionally interfere with another parent's rights. *L.B.*, 155 Wn.2d at 712.

C. *L.B.* provides an appropriate framework for determining whether a *de facto* parent-child relationship exists, including strict limits that take into account the child's best interests.

1. The child's best interests must be considered in a dispute between parents.

As this Court held in *L.B.*, in disputes between a child's parents – including *de facto* parents – the child's best interests must be considered:

> The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

155 Wn.2d at 700. *See also V.C. v. M.J.B.*, 748 A.2d at 554 (*de facto* parent rule promotes child's best interest in disputes between parents). Indeed, in addition to the important interests of the child discussed in *L.B.*, an appropriately rigorous *de facto* parent rule also decreases unwarranted accusations that a parent is unfit, further serving the child's best interest.

Rather than considering M.F.'s best interests, the Court of Appeals instead announced a rule excluding stepparents from ever being considered *de facto* parents. Yet the question presented by this case is not how the law should treat a relationship between a child and ***non***-parents,

but rather ***who is a parent?*** The Court of Appeals' opinion in the present case applied an incorrect legal analysis by examining only the limited circumstances where ***nonparents*** may seek custody or visitation. 141 Wn.App. at 567. But, as the Court of Appeals subsequently observed in *J.A.B.*, the appellate court erred in the present case because "if a person is a de facto parent, he or she is not a 'nonparent.'" 146 Wn.App. at 424.

2. The *de facto* parent rule does not exclude cohabitants.

Respondent nevertheless asks this Court to narrow the *de facto* parent rule to exclude "any ex-spouse or cohabitant who ever shared a household with his partner's children." Resp. Supp. Br. at 6. Nothing in *L.B.* suggests such a limitation. To the contrary, Respondent's proposed exception would swallow the rule adopted by this Court in *L.B.* Co-habitation with the child and shared intent with the legal parent are two of the very factors identified in *L.B.* for determining *de facto* parenthood. 155 Wn.2d at 708. Petitioner's approach thus would exclude many *de facto* parents, including the cohabitating former partner in *L.B.* itself. This Court should reject Respondent's proposed limitations on the *de facto* parent doctrine. The holding of *L.B.* continues to provide an effective and flexible framework for determining whether a *de facto* parent-child relationship exists in individual cases.

Respondent also offers a "floodgates" argument, suggesting that applying the *de facto* doctrine to an "ex-spouse or cohabitant" will result in "multiple parenting plans." Resp. Supp. Br. at 6. But the "rigorous" test for *de facto* parenthood ensures that the doctrine applies only to those very few relationships in a child's life where the parties actually created a parent-child bond.

As a matter of practicality and judicial economy, it may be appropriate in many cases for parties to raise *de facto* parent status in connection with the dissolution of the parents' relationship with each other. However, the framework adopted in *L.B.* does not require *de facto* parents to combine their petition with any other action. 155 Wn.2d at 696. Nor would such an absolute requirement be appropriate in this case. Not only did Corbin's and Reimen's divorce occur before *L.B.* itself was decided, but Corbin's and M..F's relationship continued even after the divorce – with Reimen's consent.

The fact that for a period of time Corbin was married to M.F.'s mother, standing alone, does not make him a *de facto* parent – but it does not exclude him from *de facto* parenthood either. The Court of Appeals thus erred when it held as a matter of law that Corbin could not be a *de facto* parent under *L.B.* because he was M.F.'s "former stepparent." 141 Wn. App. at 563.

CONCLUSION

As this Court recognized in *L.B.*, the equitable common law doctrine of *de facto* parenthood is necessary to protect important family relationships that may not be specifically addressed by statutes or other legal rules. This case is about the existence of a ***parent-child*** bond between Corbin and M.F. The Court of Appeals erred because it looked instead at the former ***marital*** relationship between Corbin and Reimen, rather than examining the separate relationship between Corbin and M.F. This Court should reverse the decision of the Court of Appeals, and reaffirm that the *L.B.* rule provides the correct framework for determining on a case-by-case basis whether a *de facto* parent-child relationship exists.

RESPECTFULLY SUBMITTED this 9th day of February, 2009.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on February 9, 2009, I arranged for service of the foregoing BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON to the court and counsel for the parties to this action as follows:

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