

No. 93645-5

SUPREME COURT OF THE STATE OF WASHINGTON

ESMERALDA RODRIGUEZ,

Petitioner,

v.

LUIS DANIEL ZAVALA,

Respondent.

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

William H. Block, WSBA #7578
Cooperating Attorney for ACLU-
WA Foundation
Nancy L. Talner, WSBA #11196
ACLU OF WASHINGTON
FOUNDATION
901 Fifth Avenue, Suite 630
Seattle, Washington 98164
T: (206) 624-2184
wblock@msn.com
talner@aclu-wa.org

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.

By: 
William H. Block, WSBA #7578
*Cooperating Attorney for ACLU-WA
Foundation*
Nancy L. Talner, WSBA #11196
ACLU OF WASHINGTON
FOUNDATION
901 Fifth Avenue, Suite 630
Seattle, Washington 98164
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