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IN THE MICHIGAN SUPREME COURT
Appeal from the Michigan Court of Appeals

Carrie Pueblo,
Plaintiff-Appellant,

MSC Case No. 164046
COA Case No. 357577
LC No. 2020-6382-DC

vs.

Rachel Haas,
Defendant-Appellee

Corrected
Motion to Supplement and Clarify Amicus Brief in Response to Oral Argument

The Family Law Section of the State Bar of Michigan files this motion to supplement and clarify the position set out in its amicus brief in response to arguments made in the oral argument concerning the position of amicus. Amicus believes that this supplemental material – contained below – may be of assistance to this Court.

A constitutional basis for construction of the term "parent" or "natural" parent in the Child Custody Act is a sounder foundation for addressing standing than the expansion of the equitable parent doctrine.

The equitable parent doctrine is flawed beyond the fact that it is not codified. It is a "novel" judicially-constructed doctrine based on general notions of equity, applied intermittently on a case-by-case basis to a variety of situations. As noted in the amicus brief, standing cannot be based on equity. *Bowie v Arder*, 441 Mich 23, 55 (1992), citing *Ruppel v Lesner*, 421 Mich 559, 565 (1984); *In re Clausen*, 442 Mich 648, 682 (1993)(citing *Bowie* and rejecting third party standing based on general equitable claims such as the child's having resided with the third party). Michigan addresses the best interests and welfare of children within a statutory framework, including providing for standing.

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There is a significant concern that an expansion of equitable parent status could go beyond third-person statutory standing enacted by the legislature and create unconstitutional results. See e.g. *Bowie, supra*. The sample of cases from other jurisdictions in the amicus brief reveals a variety of bases for *Obergefell*-triggered standing concerning custody or parenting time but not the equitable parent doctrine.

Here, the application of equal protection and due process principles derived from the long line of United States Supreme Court cases discussed in the brief[1] goes to the crux of this case and applies to the circumstances before this Court. The parties are similarly situated to opposite-sex partners based on both *impossibility* (i.e. legal and of both parties having a genetic link to a child) and *intention*: intention in creating a committed relationship, an intentional decision to have and raise a child within the context of this relationship, intentionally holding themselves out as parents to the world and to the child, and parenting the child.

[1] *See e.g. Troxel* v Granville, 530 US 57, 120 S Ct 2054, 2060; 147 L Ed 2d 39 (2000), reviewing the long history of the rights related to marriage and being a parent, including the decision to have a child, and the right to raise that child and make the educational, religious, and associational decisions a parent deems is in their child's best interests. The U.S. Supreme Court recognized the right to establish a home and bring up children as a fundamental liberty interest under the Fourteenth Amendment. *Meyer v Nebraska*, 262 US 390 (1923). And, "those who nurture [a child] and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce v Society of Sisters*, 268 US 510, 535 (1925). See also *Obergefell v Hodges,* 576 US 644 (2015) (discussing the constellation of rights related to marriage).

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Relief

Amicus requests that this Court grant this motion containing material supplementing the amicus brief in response to arguments made during oral argument.

Respectfully submitted

/s/ Anne Argiroff
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April 6, 2023