

July 25, 2007

To the Honorable Ronald M. George, Chief Justice
and the Honorable Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-4797

**RE: Amici Curiae Letter in Support of Petition for Review in
In re Marriage of Jennifer L. Englehart and Justin Graham
(Supreme Court Case No. S153126; Court of Appeal Case
No. A114433)**

To the Honorable Chief Justice and Associate Justices:

Pursuant to Rule 28(g) of the California Rules of Court, the California Women's Law Center (CWLC) and the Coalition for Family Equity submit this *amici curiae* letter urging the Court to grant Jennifer Englehart's Petition for Review of the California Court of Appeal decision in *In re Marriage of Englehart*.

CWLC is a statewide policy and advocacy center dedicated to advancing the civil rights of women and girls. Since its inception, the CWLC has worked to ensure that life opportunities for women and girls are free from unjust social, economic and political constraints. As part of this mission, the CWLC works to ensure safety, equity and economic self-sufficiency for women and their children who are forced to flee domestic violence.

The Coalition for Family Equity, founded in 1988, is comprised of organizations and individuals committed to economic equity in marriage and divorce for women and dependent children. It lobbies in the legislature on behalf of women and children on issues such as child custody, child support and domestic violence. The Coalition also educates women's organizations and lawmakers on the impact of family law on the lives of women, particularly those with custody of children following divorce.

Amici have a compelling interest in this case because we strongly believe that protecting the best interests of children involved in custody disputes requires ensuring that family courts appoint child custody evaluators who are qualified and who fully consider relevant and appropriate factors that legally impact parents' custody rights. In *In re Marriage of Englehart*, the lower court adopted the recommendations of a court-appointed evaluator in making a custody/visitation order, despite evidence that

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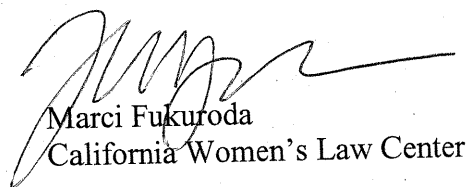
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the evaluator's report was faulty, the evaluator violated prevailing professional and ethical standards for conducting child custody evaluations, and the evaluator was not a licensed psychologist. Even the Court of Appeal in this case acknowledged that "it is not at all clear that [the court-appointed evaluator] meets these qualifications," referring to California Rule of Court 5.220(g), which contains detailed qualifications for child custody evaluators.¹ Child custody evaluators who do not have the requisite qualifications and expertise to conduct child custody evaluations, and who fail to follow established standards for conducting such evaluations, are extremely likely to render improper and even harmful custody recommendations to courts.

For example, a critical factor that should have been considered by the evaluator in *Englehart* is the potential presence of domestic violence in the family. Family Code Section 3044 establishes a presumption against awarding sole or joint legal or physical custody to a parent who has been found by the court to have perpetrated domestic violence against the other parent, the child, or the child's sibling within the past five years.² In the instant case, Ms. Englehart obtained a domestic violence restraining order against Mr. Graham, Ms. Englehart raised allegations that Mr. Graham threatened her, and a neighbor testified that Mr. Graham had a history of being verbally abusive to Ms. Englehart's older daughter (who was not at issue in the case). The evaluator failed to fully investigate these matters and, thus, the court did not have sufficient information to make a finding of domestic violence that would have affected the court's custody order. The evaluator's failure to properly investigate and consider allegations of domestic violence highlights the importance of having qualified people appointed in these positions.

Given the significant impact of child custody decisions on parents and children, child custody evaluators should be held to the same professional standards as other experts in legal proceedings. This includes requiring evaluators to use procedures and methodologies that will result in complete and accurate evaluations that take into account relevant factors, such as domestic violence. For these reasons, we respectfully request that this Court grant Ms. Englehart's Petition for Review in the above-referenced case.

Respectfully submitted,


Marci Fukuroda
California Women's Law Center


Bonnie Sloane
Coalition for Family Equity

¹ California Rule of Court 5.220(g) (2007).

² See Cal. Fam. Code § 3044(a) (2007).

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a citizen of the United States and employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 6300 Wilshire Blvd., Suite 980, Los Angeles, California 90048.

On July 25, 2007, I served the foregoing document described as **Amici Curiae Letter in Support of Petition for Review in *In re Marriage of Jennifer L. Englehart and Justin Graham***, on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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I caused such envelopes to be deposited in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 25, 2007 at Los Angeles, California.



Leslie Davis