ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of the Marriage of JOHN PAUL EPLER, Petitioner-Respondent, Respondent on Review, and ANDREA MICHELLE EPLER, nka, Andrea Michelle Walker, Respondent-Appellant, Petitioner on Review and KIMBERLY SUE GRAUNITZ, Third Party Respondent-Respondent, Respondent on Review,	Marion County Circuit Court No. 04C33678 Court of Appeals A148643 S061818

PETITIONER ON REVIEW'S REPY BRIEF (Corrected)

Appeal from the Decision dated September 11, 2013
In the Court of Appeals
Opinion: Hon. Rex Armstrong
Concurring Judges: Hon. Rebecca Duncan and Hon. Darleen Ortega

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INTRODUCTION

The Answering Brief of Respondent on Review (hereinafter Grandmother) contains bold, sweeping, and conclusory allegations unsupported by any statutes, case law or evidence in the record; or, when examined in their entirety, support the contention of Petitioner on Review (hereinafter Mother) that the trial court and Court of Appeals erred when it failed to afford Mother the *Troxel* parental presumption in this subsequent contested modification proceeding, after Mother previously consented to a custody order with Grandmother. *Troxel v. Granville,* 530 U.S. 57 (2000).

SUMMARY OF AGRUMENT

Mother has explained why her substantive and procedural due process guarantees under the U.S. Constitution have been denied by virtue of the trial court's refusal to apply the *Troxel* parental presumption in the custodial modification proceeding below. Grandmother has failed to address any of Mother's substantive and procedural due process arguments or analysis.

Grandmother misstates the change of circumstances rule, thereby minimizing the heavy burden placed upon Mother because of Grandmother's desire to employ the substantial, unanticipated change of circumstances rule to retain custody.

Grandmother erroneously asserts that the *Troxel* parental presumption has never been applied to an ORS 107 domestic relations hearing in Oregon.

Grandmother erroneously asserts that the parental presumption only applies to *custodial* parents. The parental presumption statutorily applies to *legal* parents. Case law holdings give special weight to the decision of fit parents.

The parental presumption, which would ordinarily have been applicable to Father in this case, does not apply here. It is uncontroverted that Father is not a fit parent and does not seek custody. The text and context of the applicable statutes, ORS 107.135(2)(b)(13), 109.119(2)(c), 109.103 and 109.056, demonstrate a clear legislative intent to preserve the parental presumption. The parental presumption is afforded to legal parents involved in custodial adjudicatory proceedings, where the third party initially seeks the assistance of the state to obtain or retain custody.

REPLY ARGUMENT

The parental presumption applies to the facts of this case, notwithstanding that the case was decided solely under ORS 107.135.

In the first instance, Grandmother characterizes the modification rule as one "which requires a change of circumstances; all a parent has to do is show a change of circumstances." (Answ Br 5-7, 11, 36 n 9). In taking such a

minimalist approach to the change of circumstance rule, Grandmother misstates the rule.

"The long-established rule is that a party seeking modification of custody must 'show a change of circumstances arising subsequent to the making of the last order respecting custody' and that changing custody would benefit the child." *DeWolfe v. Miller,* 208 Or App 726, 743, 145 P3d 338 (2006). The change in circumstances must be substantial or "material" and also "unanticipated" since the last order. *Id.* 744-746.

Grandmother fails to explain why the requirement, that Mother must prove a "substantial, unanticipated change of circumstances" before the court even considers the child's best interests, does not unduly burden the likelihood of this fit Mother ever regaining custody. A third party need utilize little imagination to argue that a parent's rehabilitation was anticipated by the parties when the parent initially consented to transfer of custody.[1]

Grandmother posits that the "change of circumstances" rule insures proper balance between the liberty interest of the parent and the child (Answ Br 49-52), asserting that employment of the *Troxel* presumption in the context of this case "threatens the stability of a child's placement" and increases "a significant risk of not developing a secure attachment." *Id.* at 52. In so doing,

[1] *See* discussion at Pet. for Review (Corrected) 14-18 (substantive due process); 18-25 (procedural due process); Mother's Br. on the Merits 25-28 (due process).

Grandmother bypasses Mother's discussion of the "perfectly balanced" (Answ Br 41) statutory preponderance of the evidence burden of proof requirement embedded within ORS 109.119(3)(a), protecting the child's liberty interest. (Mother's Br on the Merits 28 n 18). Grandmother also fails to address numerous cases which, when custody is changed from the third-party caretaker to the legal parent, provide for reunification or reintegration plans to allow the child an appropriate length of time to adapt to evolving intra family connections. *See* Pet. for Rev. (Corrected) 25.

Grandmother asserts that *Lear v. Lear,* 124 Or App 524, 527, 863 P2d 482 (1993), "continues to be controlling authority for the proposition that a change of circumstances is required as the threshold question in modification of custody cases - regardless of who has custody." (Answ Br 8). Yet, Grandmother fails to distinguish *Lear* from the within case: In *Lear*, the parent lost custody in a prior adjudication proceeding, *Lear*, 124 Or App at 527; in the within case, Mother *never* "lost" custody in an *initial* adjudication determination, as custody was voluntarily transferred by Mother to Grandmother.[2]

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[2] The *Lear* case was a pre-*Troxel* decision, and it, like other pre-*Troxel* cases cited by Grandmother, are of questionable persuasive value in that they do not address the constitutional standard enunciated in *Troxel*. While *Troxel* was neither a custody case nor a modification case, its ramifications must still be imported to the issues presented here. Mother reiterates her assertion that this case presents issues of first impression before this court.

Grandmother cites the case of *Underwood v. Mallory,* 255 Or App 183, 297 P3d 508 (2013) for the proposition that "where a custody or visitation judgment is obtained originally by *default* without a specific finding that the parental presumption had been overcome, *it is unclear* as to whether such presumption, under the U.S. Constitution, needs to be rebutted in modification or other subsequent proceedings." (Answ Br at 12-13; emphasis added). Grandmother's concession may be taken for this court to reach the next logical step: Where a custody judgment is obtained by *consent* without an *initial* specific finding that the parental presumption has been overcome, such presumption, under the U.S. Constitution, remains in place and needs to be rebutted in a modification or other subsequent proceeding. *Wilson and Wilson,* 184 Or App 212, 214, 55 P3d 1106 (2002), *vac'd and rem'd for recon,* 337 Or 327, 99 P3d 290 (2004), *on recon, rev'd and rem'd* 199 Or App 242, 110 P3d 1106 (2005).

Grandmother asserts that "The presumption does not apply in cases not brought under ORS 109.119 and there is no Oregon case where the parental presumption has been applied." (Answ Br 11). Grandmother further argues that Mother is not constitutionally entitled to the parental presumption in a proceeding under either ORS Chapter 107 or ORS Chapter 109. (Answ Br 14-18). Grandmother's assertions are belied by this Court's holding in *O'Donnell-Lamont and Lamont,* 337 Or 86, 91 P3d 721 (2004), *cert den* ___ US ___, 125

S Ct 867, 160 L Ed2d 770 (2005) and by the lower appellate court's decision in *Wilson,* 199 Or App at 244.

In *Wilson,* a divorce proceeding pursuant to ORS Chapter 107, the trial court initially granted custody of two children to husband: the older child " was the biological daughter of husband and wife; the younger child " was the biological daughter of wife and the stepchild of husband. In the Court of Appeals' initial decision, the trial court's judgment was reversed and remanded with regard to the custody judgment. The appellate court held that mother's parental presumption applied with regard to custody of " the stepdaughter, pursuant to ORS 109.119 (1997). *Wilson,* 184 Or App at 221-222.

Husband then filed a Petition for Review with this Court, which was granted. In light of *O'Donnell-Lamont,* the decision of the Court of Appeals was vacated and remanded for reconsideration. *Wilson,* 337 Or at 327. On reconsideration, the Court of Appeals reversed and remanded, adhering to its original decision. 199 Or App 242 (2005). With regard to husband's step-daughter " the Court of Appeals not only applied the *Troxel* parental presumption in favor of mother, but held, as well, that the parental presumption and rebuttal factors in ORS 109.119(4)(b) governed the custodial adjudication, with respect to the stepdaughter, even though this was a domestic relations case brought pursuant to ORS Chapter 107. *Wilson,* 199 Or App at 246, 252.

Next, Grandmother asserts that the parental presumption applies only to a *custodial* parent, i.e. a parent presently exercising primary physical custody, and that the case of *Harrington v. Daum,* 172 Or App 188, 198, 18 P3d 456 (2001), "confirms" that courts "must give significant weight [only] to a fit custodial parent's decision." This assertion does not assist Grandmother for the following reasons.

First, *Harrington* was a visitation, not a custody, case and the quoted language is dictum. (Answ Br 18). Second, the statutory presumption embodied by ORS 109.119(2)(a) applies to a *legal*[3] parent, not a *custodial* parent.

Third, when this Court summarized the U.S. Supreme Court's holding in *Troxel,* it concluded that due process "protects the fundamental rights of *parents*," not just custodial parents. *O'Donnell-Lamont,* 337 Or at 94; emphasis added.

Fourth, "special weight" afforded by the Constitution is given to the *fit* parent, not simply to the custodial parent. *Id.* at 100.

Fifth, parents retain fundamental guarantees even though they "*have lost temporary custody* of their children to the state." *Santosky v. Kramer,* 455 US 745, 753, 102 S Ct 1388, 71 L Ed 2d 599 (1982) (emphasis added). *See,* also,

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3 A "legal parent" is defined as the "biological or adoptive mother," or a man "who has adopted the child," or has established paternity under the law. See ORS 109.119(10)(d) and ORS 419A.004(16).

O'Donnell-Lamont, 337 Or App at 91, 102, 106 (even though father did not have custody, the parental presumption applied); *Burk v. Hall,* 186 Or App 113, 115, 62 P3d 394 (2003) (mother lost temporary custody to the child's adult half-sister and spouse in a guardianship; court held that ORS 109.119 applied to the case).

Grandmother's assertion that there must be a "custody prerequisite" (Answ Br 18) as a precondition for a parent to assert the presumption makes no sense. A "child-parent relationship," needed to establish standing for custody under the statute, means "a person having physical custody of a child or residing in the same household as the child ... ." ORS 109.119(10)(a) [emphasis added]. So if a person had established a child-parent relationship by, inter alia, demonstrating he or she had physical custody of a child, then, *ipso facto,* no parental presumption would inure to the legal parent and the requirements of ORS 109.119(3)(a) and (4)(b) would be superfluous.

In addition, if Grandmother's assertion is correct, then the statutory rebuttal factor at ORS 109.119(4)(b)(D) would also be superfluous -- once a finding was made that a legal parent had "consented to the relationship" with the third party. *O'Donnell-Lamont,* 337 Or at 115-116, 117 n. 13. In other words, the very reasons Grandmother claims to support the abolition of the presumption are the factors the legislature enacted and directed the court to use in applying the presumption.

Grandmother concedes that there was no state action -- hence, no state "injection" -- when Mother consented to transfer of custody and the court formalized the parties' agreement. (Answ Br 21). Grandmother asserts that "Mother wants the state to * * * inject itself now to save her from her own contract." *Id.* Again, this rationale conflicts with the *Wilson* decision. The *Wilson* court affirmed the principle that a parent's fundamental right "as against third parties * * * arises only when the state would give force to the wishes of a non parent." *Wilson,* 199 Or App at 249-50. In this case, for the first time, the state through the arbitrary power of the judge at the modification proceeding, injects itself. The state of Oregon is giving "force to the wishes of" Grandmother by the application of the substantial change of circumstance rule to enable Grandmother to retain custody.

Grandmother posits that if this Court gives special weight to Mother's parental preference, it should also give special weight to Father's decision and Grandmother's rights. (Answ Br 23). Grandmother argues that a "dilemma" results because the trial court "must choose which of the two natural parents receives the benefit of the special weight that *Troxel* directs." (Answ Br 23-24). Besides being a false dichotomy, this argument does not assist Grandmother.

It is evident from the record that Father's preference is for custody to remain with Grandmother. No presumption needs to be rebutted, as Father's preference is given no special weight at this stage. Father's parental

presumption cannot be assigned or transferred to a non-parent third party (Grandmother, here) to be used as a proxy presumption vis-a-vis a legal parent (Mother, here). In addition, the presumption belongs to *fit* parents. *O'Donnell-Lamont,* 337 Or App at 94, 100. This record demonstrates Mother to be a fit parent; Father, on the other hand, is presently unable to adequately care for the child, hence, is unfit.[4] Father has failed to accept responsibility for the child, even failing to pay child support. In such circumstance, "the Federal Constitution will not automatically compel a state to listen to his opinion of where the child's best interests lie." *P and P v. Children's Services Division,* 66 Or App 66, 71-72, 711 P2d 201 (1983).[5]

Rather than creating a dilemma regarding the weight to be accorded Father's preference, use of the *Troxel* presumption by Mother will give the court discretion to accord whatever weight to Father's position it deems appropriate. Grandmother, however, must rebut the parental presumption and findings must be made. ORS 109.119(2)(a)(b)(4)(b). The rebuttal factors are nonexclusive, so evidence of Father's position may be considered. For

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[4]*See* discussion in Pet'r. Br on the Merits at 6-7.

[5]Were Father to request sole custody either from Mother or Grandmother (which is not the case here), Father would be entitled to the parental presumption vis-a-vis Grandmother; Father's and Mother's parental presumptions vis-a-vis each other regarding custody would cancel each other out. *Wilson,* 199 Or App at 249-50.

example, the court may consider Father's testimony regarding the benefit of maintaining an existing bond with Grandmother, as one of the non-enumerated rebuttal factors. *O'Donnell-Lamont,* 337 Or at 103-104.

If the parental presumption is rebutted by Grandmother, the court considers the child's best interest pursuant to ORS 109.119(3)(a). In so doing, it may give whatever weight it deems appropriate to evidence and testimony of Father pertaining to the best interest criteria listed in ORS 107.137(1).

Finally, Grandmother argues that with regard to ORS 109.119(2)(c), this Court should defer to the express and unambiguous intent of the legislature, which precludes use of the parental presumption in third party modification proceedings, especially where the parent, in this case, waived her parental presumption. These assertions, again, are not well supported.

Looking first at the text of the statute, ORS 109.119(2)(c), in context with other statutes, it is to be examined to determine if the legislature's intended meaning has been expressed unambiguously. *PGE v. Bureau of Labor and Industries,* 317 Or 606, 610-12, 859 P2d 1143 (1993); *State v. Gaines,* 346 Or 160, 171-72, 206 P3d 1042 (2009). ORS 109.119(2)(c) provides:

> "(c) The [parental] presumption described in paragraph (a) of the section does not apply in a *proceeding* to modify an order *granting relief* under this section."

(Bracketed matter and emphasis added).

The statute expressly provides that the parental presumption does not apply in an adjudication "proceeding" to modify an order that has previously "grant[ed] relief" to Grandmother. Grandmother concedes that when Mother and Father executed the custodial MSA, the trial court's adjudicative discretion "did not come into play, there was no reason to apply the presumption." Grandmother agrees that there was no "dispute" to adjudicate or "relief" to be granted in any "proceeding." The state simply "formalize[d] the parties agreement" * * * "by entering the stipulated judgment of the parties." (Answ Br 21, 23). At the modification proceeding below, Grandmother, for the first time, seeks state interjection to give force to the wishes of Grandmother against Mother's wishes, and that the change of circumstance rule be applied. *Wilson,* 199 Or App 250. However, since Grandmother has conceded that Mother's parental presumption was never previously applied (Answ Br 21), arguably the modification proceeding before the trial court was, in essence, the *first or initial* proceeding to formally *adjudicate* — resolve a dispute — custody between Mother, the legal parent, and Grandmother.

Because the statutory provision is unambiguous, Grandmother wisely concludes that this Court "should draw no inferences from the legislative history and instead look only to the text of the statute." (Answ Br 44). The comment of a single legislator or several witnesses at a committee hearing (and particularly the comments of a non-legislator witness) do not reveal how the

legislature intended to resolve the issue of use of the parental presumption in *all* modification proceedings. *See, e.g., Patton v. Target Corp.*, 349 Or 230, 242-43, 242 P3d 611 (2010).

If, as Grandmother argues, ORS 109.119(2)(c) is tangentially involved as applying to third party modification proceedings under ORS 107.135, then ORS 109.119 must be examined within the context of other related statutes, such as ORS 109.103, 109.056 and 107.135(1)(a).

ORS 109.103(1) provides that "the provisions of ORS 107.094 to 107.449 that relate to custody * * * apply to the proceeding." As Grandmother argues, the change of circumstance rule applies to proceedings commenced under ORS 109.103. (Answ Br 45 n 15). However, ORS 109.119, unlike ORS 109.103, does not incorporate the provisions of ORS 107.094 to 107.449 that relate to custody.

If the legislature, after debating the amendments to ORS 109.119(2)(c), intended to abolish the parental presumption for *all* modification cases, it would have explicitly so stated with words to the effect: The parental presumption does not apply to any modification of an award made pursuant to a proceeding under ORS 109.119(2)(a), including a stipulated agreement awarding custody to a third party. However, ORS 109.119(2)(c) is completely silent with respect to whether or not the parental presumption disappears if there is no *initial* adjudicatory proceeding. In the absence of explicit language to the contrary, as

mentioned above, the presumption is presumed to continue until such time as an *initial* adjudicatory proceeding is held.

Grandmother cites this Court to ORS 109.056 for the proposition that Mother could, but did not, choose to invoke this statute to give temporary custody to Grandmother without invoking the change of circumstance rule. (Answ Br 31). This assertion misses the mark. Grandmother assumes, without citation to any testimony in the record, that Father would have agreed to use this temporary delegation of custody "for a period not exceeding six months." *Id.*; ORS 109.056(1).

Grandmother's suggestion, instead, highlights the undue burden placed upon Mother as a consequence of agreeing to a custodial transfer through an ORS 107 MSA procedure rather than through another temporary, nonbinding procedure. Nothing in this record suggests that Mother was aware of such a procedure, that Grandmother or Father agreed to such a procedure, or that they made such a procedure known to Mother before Mother signed her consent.

Indeed, the legislature's enactment of ORS 109.056 (see App. 1) is a further indication that the it intended all legal parents, who wish to voluntarily consent to transfer custody to third persons, be able to do so while still retaining the parental presumption. At the expiration of six months, the legal parent may regain custody automatically. In another statute, ORS 107.135(13), by contrast, the change of circumstances rule was specifically contemplated by the

legislature in a situation where a service-member custodial parent places the child with a noncustodial parent and a modification of custody is later adjudicated (see App. 1).

Finally, Grandmother argues that Mother waived her parental presumption expressly by signing the MSA, or impliedly by somehow behaving in a way inconsistent with her right to assert the presumption. (Answ Br 20, 22 n 4, 28-34).[6]

Although a waiver of Mother's constitutional parental presumption may be expressed through the contract terms of an MSA, those terms must clearly indicate an intention to renounce a known privilege or power. *Association of Oregon Corrections Employees v. State,* 353 Or 170, 180 n 10, 295 P3d 38 (2013). Grandmother must prove waiver -- the intentional relinquishment of a known right -- by a clear, unequivocal and decisive act by Mother showing such a purpose. *Id.* at 183.

Here, the fact that Mother and Father executed an MSA does not, as Grandmother argues, bring the agreement exclusively within the scope of ORS

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6 Grandmother glibly asserts "statutory rights ... are easily waived." (Answ Br 33). While certain rights of a parent are contained in the statute, ORS 109.119, Mother is asserting the protection of her fundamental liberty interest, and the liberty interest of her child, guaranteed by the U.S. Constitution, which the statute intends to do.

107.104(1).[7] Insofar as Grandmother is concerned, this statute applies to parties to a dissolution, not to third parties. The MSA does not express a clear, unequivocal and decisive act by Mother showing a purpose to waive her parental presumption, as Grandmother seems to argue. (Answ Br 33-38).

Grandmother has the burden to demonstrate a waiver on the part of Mother. There is not a scintilla of evidence in this record demonstrating that Mother agreed to custody with knowledge of the effect of her act. (Answ Br 22 n. 4, 23). When Mother signed the document, she "had mental and emotional problems," *Epler and Epler*, 258 Or App 464, 469, 309 P3d 1133 (2013); further the MSA included no provision expressly preserving or waiving Mother's parental presumption. *Id.* at 467, 485. Indeed, the MSA itself infers that Mother preserved, rather than waived, her parental rights. It required "reasonable adjustments" and "flexibility" ... in administering the parenting plan, reserving to Mother "continuing contact with" the child, *Id.* at 499 n 3, to foster the child's best interests.

By parallel analysis, Grandmother's argument that Mother impliedly waived her right to assert the parental presumption also fails. (Answ Br 33-34). An implied waiver of a known right must be manifested in terms or by such conduct as clearly indicates an intention to renounce a known privilege or

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[7] While the legislature encourages and makes enforceable settlement agreements, domestic relations orders concerning custody, among other issues, are never final – that's why we have ORS 107.135.

power. *Johnson v. Swaim,* 343 Or 423, 172 P3d 645 (2007). Not a scintilla of evidence exists in this record to demonstrate that Mother manifested a clear intention to renounce her parental presumption.[8]

Grandmother refers this Court to the case of *Pollock and Pollock,* 259 Or App 230, 246, 313 P3d 367 (2013) for the proposition that a party "can waive a statutory right by behaving in a way inconsistent with that right." (Answ Br 33). Whatever relevance this assertion may have to the facts of this case, the *Pollock* case is now under review by this Court. *Rev. allowed* 355 Or 317 (2014).[9] Further, Grandmother points to no evidence or testimony in this record indicating an implied waiver by Mother of her parental presumption by behaving in a way inconsistent with her parental presumption. On the contrary, Mother asserted her desire for the child just one or two months after her departure, followed by her other rehabilitative behavior, demonstrating her express desire to exercise her parental rights. (Pet'r Br. 5-6, 7-8).

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8 Grandmother infers that Mother consulted with an attorney in the course of signing the MSA. She did not. Specifically she was asked: "Did you have any consultation with an attorney regarding your signing of those documents?" Her answer was "No." (Tr 144:23-24).

9 Grandmother also cites the Tennessee case of *Blair v. Badenhope*, 77 SW3d 137 (2002). This case actually supports Mother's position. It held that a parent could assert his or her "superior parental rights to modify a valid custody order," if the parent relinquished custody without "knowledge of the effect of that act," or was "afforded an opportunity to assert" the parental preference. *Id.* at 147-148.

CONCLUSION

Mother prays for relief as requested in her Brief on the Merits.

RESPECTFULLY submitted this 19th day of May, 2014.

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ORS 107.135

(13) In a proceeding under this section to reconsider provisions in a judgment relating to custody, temporary placement of the child by the custodial parent pursuant to ORS 109.056 (3) with the noncustodial parent as a result of military deployment of the custodial parent is not, by itself, a change of circumstances. Any fact relating to the child and the parties occurring subsequent to the last custody judgment, other than the custodial parent's temporary placement of the child pursuant to ORS 109.056 (3) with the noncustodial parent, may be considered by the court when making a change of circumstances determination.

ORS 109.056 Delegation of certain powers by parent or guardian; delegation during period of military service. (1) Except as provided in subsection (2) or (3) of this section, a parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of the powers of the parent or guardian regarding care, custody or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.

1. (2) A parent or guardian of a minor child may delegate the powers designated in subsection (1) of this section to a school administrator for a period not exceeding 12 months.

(3)(a) As used in this subsection, "servicemember-parent" means a parent or guardian:

(A) Who is:

(i) A member of the organized militia of this state;

(ii) A member of the Reserves of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States;

(iii) A member of the commissioned corps of the National Oceanic and Atmospheric Administration; or

(iv) A member of the Public Health Service of the United States Department of Health and Human Services detailed by proper authority for duty with the Army or Navy of the United States; and

(B) Who is required to enter and serve in the active military service of the United States under a call or order by the President of the United States or to serve on state active duty as defined in the Oregon Code of Military Justice.

(b) A servicemember-parent of a minor child may delegate the powers designated in subsection (1) of this section for a period not exceeding the term of active duty service plus 30 days.

(c) Except as provided in paragraph (d) of this subsection, if the minor child is

living with the child's other parent, a delegation under paragraph (b) of this subsection must be to the parent with whom the minor child is living unless a court finds that the delegation would not be in the best interests of the minor child.

(d) When the servicemember-parent has joint custody of the minor child with the child's other parent or another individual, and the servicemember-parent is married to an individual other than the child's other parent, the servicemember-parent may delegate the powers designated in subsection (1) of this section to the spouse of the servicemember-parent for a period not exceeding the term of active duty service plus 30 days, unless a court finds that the delegation would not be in the best interests of the minor child. [Formerly 126.030; 2005 c.79 §4; 2007 c.250 §1; 2012 c.106 §2; 2013 c.81 §22]

CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief [as described in ORAP 5.05(2)(a)] is 3,997 words.

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

May 19, 2014.

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CERTIFICATE OF SERVICE BY MAIL
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I hereby certify that I am one of the attorneys for Petitioner on Review; that I caused service of the foregoing Petitioner on Review's Reply Brief on the following:

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by placing two true copies thereof, duly certified to be such by me, as such attorney, in a sealed envelope, postage fully prepaid, and depositing the same in the U. S. Post Office at Salem, Marion County, Oregon, on May 19, 2014.

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