

**Case No. 18-1354**

**IN THE SUPREME COURT OF THE UNITED STATES**

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**C.P. and J.P.**

*Petitioners,*

VS.

**C.A.,**

*Respondent,*

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**On Petition for a Writ of Certiorari to the Supreme Court  
of California**

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**SUPPLEMENTAL BRIEF BY PETITIONERS IN SUPPORT OF  
PETITION FOR A WRIT OF CERTIORARI**

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## **I. SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI**

Petitioners respectfully present this brief as a supplement to the Petition for a Writ of Certiorari filed April 22, 2019 in this Court. The purpose of this Supplemental Brief is to call the Court's attention to the law review article published in the April 2019 edition of the University of California, Davis Law Review, entitled *One Parent, Two Parents, Three Parents, More? California's Third Parent Law Should Go Back to the Floor.* This article is more properly cited as Catherine Reagan, Note, *One Parent, Two Parents, Three Parents, More? California's Third Parent Law Should Go Back to the Floor,* 52 U.C. Davis L. Rev. 2165 (2019).

## II. THE LAW REVIEW ARTICLE SUPPORTS A GRANT OF CERTIORARI

The law review article referenced herein highlights the unconstitutionality of California Family Code section 7612(c), the statute at issue in the underlying case from which certiorari is requested, C.A. v. C.P. et al., California Supreme Court case no. S253163, reported at 29 Cal.App.5th 27 (2018).

In that article, the author argues that California Family Code section 7612 subdivision (c) is unconstitutional for two main reasons. First, it violates the substantive due process clause of the Fourteenth Amendment because, among other things, it adopts the guardianship detriment standard from California Family Code section 3041 without its constitutional safeguards. Second, it violates the existing parents' due process rights because it does not presume fit parents are acting

in their child's best interest when they object to the addition of a third parent. *Id.* at 2173.

More specifically, the author argues,

California courts' interpretation of the detriment standard makes it too easy to become a third legal parent so long as the petitioner can establish a prior relationship with the child. Courts require a stricter showing of detriment (clear and convincing evidence) before awarding custody to a non-parent than they do granting parental rights to a third person (preponderance of the evidence). Until a court makes the required findings under section 7612 subdivision (c), the third person seeking parentage technically is a non-parent. For these reasons, the detriment standard does not adequately protect the existing parents' fundamental liberty interest in the care, custody, and control of their child.

*Id.* at 2194, fns omitted.

The author further asserts that, by failing to presume that fit parents will act in their child's best interests in restricting the rights of the third person regarding their child, California Family Code section 7612(c) is unconstitutional under this Court's prior case, *Troxel v. Granville*, 530 U.S. 57, 68-70 (2000). *One Parent, Two Parents, supra* at pp. 2195. As argued therein, "Without proper deference to the existing legal parents' wishes, adding a third legal parent violates their constitutional rights." *Id.* at 2198, fn. omitted.

The author concludes, "As currently enacted, California's Third Parent Law fails to adequately protect existing parents' liberty interests in the care, custody, and control of their children." *Id.* at 2201-2202. Although the author proposes certain ways in which the California courts and/or the California Legislature may address these constitutional problems, there is no indication that

either body is in the process of making these proposed changes. To the contrary, the instant underlying case only further entrenches the California courts in the unconstitutional interpretation of the statute.

### **III. CONCLUSION**

The law review article *One Parent, Two Parents, Three Parents, More? California's Third Parent Law Should Go Back to the Floor*, 52 U.C. Davis L. Rev. 2165 (2019) only further highlights why certiorari should be granted.

Dated: September 24, 2019

Respectfully submitted,

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