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Supreme Court of California
Honorable Chief Justice Ronald M. George
Office of the Clerk
350 McAllister Street
San Francisco, California 94102-4797

August 3, 2007

Re: *Amicus Curiae* Letter in Support of Petition to Review:
County of San Diego v. David Arzaga (2007) 152 Cal. App. 4th 1336
Court of Appeals of California, 4th Dist., Div. 1, No. D047798
Superior Court of San Diego County No. DF 184605

Dear Chief Justice Ronald M. George,

The Children's Advocacy Institute (CAI) is an academic center and statewide advocacy group focusing on the welfare of California's children. CAI, which is part of the University of San Diego School of Law, works to improve the status and well-being of children in our society by representing their interests and their right to a safe, healthy childhood. Among other things, CAI convenes the Children's Advocates Roundtable in Sacramento — an affiliation of over 300 organizations with an interest in child-related policy. Personally, I direct the Institute, hold the Price Chair in Public Interest Law, am author of *Child Rights and Remedies* (Clarity, 2002, 2006), and currently serve as Vice Chair of the Board of the National Association of Counsel for Children.

CAI respectfully requests that the California Supreme Court grant review of the *Arzaga* decision cited above. Neither CAI nor I have any financial interest in the matter, nor have we received any money or other consideration for making our request. Without your review or its depublication, this opinion will be a regrettable precedent for California's children.

This decision reverses the express factual finding at the trial level that Mr. Arzaga was the father of Karen by estoppel. Justice O'Rourke's opinion rather holds that *de facto* fatherhood status is not permitted where the alleged father thought he was the biological father, but then learns from a DNA test that he is not (performed rather belatedly — when she is 15 years old). The opinion describes this situation as "without precedent" to support estoppel. CAI respectfully suggests that judicial judgment — as with all human valuation — is substantially the product of empathy lines. Whose shoes is the court in when considering the facts and the law? This decision stands solely in the shoes of the alleged Dad, Mr. Arzaga. But the concept of fatherhood by estoppel involves detrimental reliance — not by the Mother, not just by the alleged father, but also *by the child*. And contrary to the comment of Justice O'Rourke, that aspect of estoppel not only has precedent, but is one of the bases for its definition as a form of presumed fatherhood under the Uniform Parentage Act.

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This father functioned as Karen's Dad since her birth in January of 1989. He so functioned for all fifteen years to 2004. The record includes communications between the two at age 8, 9, 12 and 13 where he addresses himself as "Daddy." And she calls him Papi. And there is substantial additional evidence — and virtually no contradictory facts in the record, or in this decision's recitation of the record. Indeed, if the trial court had *denied* paternal status, *that* decision would properly be reversed under these facts.

The Court ignores any reliance of the child. It was not an issue. It was not mentioned. But that is an important part of parenthood by estoppel. CAI agrees that if Mom deceives the alleged father, her reliance on his performance as a father may not constitute the *bona fide* detrimental reliance estoppel requires. But the appellate court misunderstood whose reliance is at issue here — it is also the child's. And this is an extreme case. It will radically alter definitions of parenthood against obligations to children, substantially undermining the Uniform Parentage Act's definition of "presumed parental status" where a parent holds himself out as the parent and so functions. The finder-of-fact has found Mr. Arzaga to be functioning as a father (not always living under the same roof, but performing the role of father and so regarded by Karen and all concerned). So if this Dad is not a father by estoppel simply because DNA shows him that another biological father exists — when she is 15 years old and a child support order is implicated — what remains of the estoppel concept for child protection?

CAI would ask the 4th District Court of Appeal panel the following question that now only this Honorable Court can answer: Even assuming all we care about is the equitable posture of the adults claiming to be parents, what happens if the situation was reversed and the biological father appeared when Karen was 15 (or 10 or 5), to supplant Mr. Arzaga's parental status? Assume he thought he was the biological father. He is not. He was wrong. If that is the critical factor — as this decision holds — what prevents him from losing Karen as a daughter? What prevents Karen from losing him as a father? CAI respectfully suggests that parenthood works both ways — its privileges and its obligations are coextensive. And reliance by the child matters.

Sincerely,



Robert C. Fellmeth
Price Professor of Public Interest Law
Executive Director, Children's Advocacy Institute

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *County of San Diego v. David Arzaga* (2007) 152 Cal.App.4th 1336
Appellate Case No.: D047798

I declare:

I am employed by the Children's Advocacy Institute of the University of San Diego, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age and older and not a party to this matter. I am familiar with the business practice at the University of San Diego for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the University of San Diego is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 3, 2007, I served the attached **AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the University of San Diego, addressed as follows:

Hon. Adam Wertheimer, Commissioner
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 3, 2007, at San Diego, California.

Elisa Weichel

Declarant's Name



Signature