

March 3, 2021

Submitted Electronically

Oregon Legislature  
House Judiciary Committee on Civil Law  
Attn: Committee Chair  
900 Court Street NE  
Salem, Oregon 97301

Dear Committee Chair:

I write to object to the passage of House Bill 2948, which would allow trial court judges the discretion to award joint legal custody over the objection of a parent. I am a family law attorney who has focused my career assisting families in trauma and transition. Many cases have involved high-conflict parents and always at the forefront is protecting a child's welfare.

Custody refers to decision-making about major life decisions for a child, such as residence, education, health care and religious training. In Oregon, we do not use the term "physical custody" but instead "parenting time." One parent can have sole legal custody, yet the parents share 50-50 parenting time. Non-custodial parents have broad statutory rights as detailed in ORS 107.154, including consulting with school and medical providers.

Joint custody means parents share decision-making authority regarding a child. For joint custody to be successful, parents must be able to engage in open communication and on-going cooperation, notwithstanding the dissolution of the parents' own relationship and the family unit.

The best evidence that establishes joint custody will not work is when a parent opposes joint custody. This parent is essentially taking the position that "I am unwilling to communicate and cooperate with the other parent" or, alternatively, "the other parent is not truly willing to communicate and cooperate with me in deciding the best interests of my child."

Decisions such as vaccinations, hybrid or distance learning, and mental health counseling, all require quick decisions to maintain a child's welfare. Who breaks the stalemate with a joint custody arrangement?

Passage of this bill will overwhelm the court with additional litigants needing immediate court rulings about disagreements with joint custody. There is usually not enough time for parents to return to court to obtain an order granting one parent sole custody and authority to make the final decision. Courts are over-burdened and under-resourced. There is an access to justice crises in Oregon. All of this continues to be further exacerbated by the COVID-19 virus and social

distancing requirements. It is expensive and time consuming to get an issue in front of a judge. Children are harmed by delays in decision making.

It is important for legislatures to take note that many family law cases involve domestic violence and complex power and control dynamics between parents. This legislation fails to address this issue. If parents are judicially mandated to share joint custody, a perpetrator of domestic violence may use the right to be involved in all major-life decisions for a child to continue to contact, control, and focus on the victim. Many survivors of domestic violence do not reveal the fear of their own safety because of personal shame, concerns of victim blaming, or because they are concerned they will not be believed because they are being perceived as using their abuse to gain an advantage. It is wrong to allow a judge to order a survivor to make joint decisions about a child with an abuser.

If this legislation passes with Section 3 as written, there may be an increase in modification matters filed. A parent already awarded sole legal custody may be at risk for the other parent seeking to force joint custody, causing additional litigation and parental conflict to a child who has been living under a consistent custody order up to that point.

Allowing a judicially imposed joint custody order invites further litigation, parental conflict, and children are negatively impacted. It blindly presumes that an order of joint custody will result in true joint decision making. Please allow parents who can already work together to do so by agreeing to joint custody. And when that is not an option, please allow courts to continue to determine which parent will act in the child's best interests on major life decisions in accordance the factors of ORS 107.137.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Maxine Tuan', with a long horizontal flourish extending to the right.

Maxine Tuan