No. 124863

IN THE SUPREME COURT OF ILLINOIS

MATT SHARPE, Petitioner, v. CRYSTAL WESTMORELAND, Respondent-Appellee.	) On Appeal from the) Appellate Court of Illinois,) Fifth Judicial District, No.) 5-17-0321))))) There Heard on Appeal) from the Circuit Court of) the Third Judicial Circuit,) Madison County, Illinois,) No. 11-D-1210
GREGG SHARPE, Intervenor, and KRIS FULKERSON, Intervenor-Petitioner-Appellant.	))))))) The Honorable) MARTIN MENGARELLI,) Judge Presiding.

REPLY BRIEF OF INTERVENOR-PETITIONER-APPELLANT KRIS FULKERSON

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ARGUMENT

I. Introduction

As Intervenor-Petitioner-Appellant Kris Fulkerson explained in her opening brief, this Court should answer the certified questions in the affirmative and hold that a party to a civil union has standing as a step-parent to request visitation with and/or parental responsibilities for his or her deceased partner's child. The plain language of the Civil Union Act states that parties to a civil union are afforded all the same rights and responsibilities as married spouses across the breadth of Illinois law. This includes rights afforded married spouses under the Illinois Marriage and Dissolution of Marriage Act. Fulkerson's statutory interpretation analysis gives effect to this unambiguous statutory language, reads the Civil Union Act in harmony with the Marriage Act, and is faithful to the Civil Union Act's legislative history.

Respondent-Appellee Crystal Westmoreland offers no meaningful response to Fulkerson's statutory construction argument; rather, she improperly seeks to read an exception into unambiguous statutory language. Then, ignoring the certified questions presented, she tries to reframe the question before the Court as "whether nonparent individuals have superior rights [to] a natural parent to the care, custody, and control of his or her child." Westmoreland Br. 3. But there is no question that biological (or adoptive) parents possess superior rights in making decisions about their children—that is not the issue here. The question is whether civil union partners, like

nonparent spouses, have standing as step-parents to seek visitation and parental responsibilities.[1]

In fact, Westmoreland never challenges the statutes that permit step-parents (and others) to seek visitation or parental responsibility under certain narrowly defined circumstances. Nor does she explain why granting parties to a civil union the same step-parent status as parties to a marriage invades a biological or adoptive parent's superior rights, much less why granting step-parent status to civil union partners is any *more* disruptive of these rights than granting this status to married spouses (as the law unquestionably does). And she never tries to explain why a civil union partner of a child's parent has a less meaningful relationship to the child than a person married to the child's parent.

The law protects Westmoreland's rights by restricting when step-parents may petition for visitation or responsibility, creating presumptions in favor of the biological or adoptive parent's decisions, and requiring a

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[1] Westmoreland also accuses Fulkerson of a "lack of candor" because certain facts in her Statement of Facts are purportedly "baseless" and "not supported by evidence outside of [Fulkerson's] pleadings." *Id.* at 2. While Westmoreland may disagree with Fulkerson's allegations, Fulkerson in her opening brief plainly identified the factual averments at issue as allegations in her pleadings, at no point suggesting that the circuit court had found those facts after an evidentiary hearing. Fulkerson Opening Br. 3-4. Fulkerson also explained in her brief that Westmoreland objected to the pleadings and stated the relevant bases for the objections. *Id.* at 4. And as Westmoreland concedes, the standing issue presented on this appeal is a threshold question of law, and the merits of Fulkerson's petitions for visitation and parental responsibilities have yet to be addressed by the circuit court. Westmoreland Br. 2-3.

heightened showing by a step-parent—or sibling, grand-parent, or great grand-parent, for that matter—to obtain visitation rights or parental responsibilities over the objections of a biological or adoptive parent. In short, Westmoreland's constitutional concerns are a non-sequitur.

Stripped of Westmoreland's efforts to reframe the case to avoid the questions presented, this appeal is about whether a party to a civil union is a step-parent within the meaning of the Marriage Act so that she may have standing to seek visitation or parental responsibility along with others who meet the definition of step-parent. Based on the unambiguous language of the Civil Union Act, the answer to that question is "yes."

II. A party to a civil union is a step-parent for purposes of rights granted by the Marriage Act.

In her opening brief (at 8-10), Fulkerson explained that the express purpose of the Civil Union Act is to "provide persons entering into a civil union with the obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses." 750 ILCS 75/5 (2018). Rather than amend every Illinois statute relating to spousal and family relationships, however, the General Assembly provided in the Civil Union Act that a "party to a civil union" means the same thing as "'spouse', 'family', 'immediate family', 'dependent', 'next of kin', and other terms that denote the spousal relationship, as those terms are used *throughout the law*." 750 ILCS 75/10 (2018) (emphasis added). Thus, "[a] party to a civil union is entitled to *the same* legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the

law of Illinois to spouses, whether they derive from statute, administrative rule, policy, common law, or any other source of civil or criminal law." 750 ILCS 75/20 (2018) (emphasis added).

Pursuant to these provisions, if Illinois law grants a benefit or protection or imposes an obligation or responsibility on someone in a "spousal relationship," those "same" benefits, protections, obligations, and responsibilities apply to a civil union partner. From this starting point, it follows inextricably that civil union partners can be step-parents just like married spouses. The Marriage Act's definition of "step-parent" states: "'[s]tep-parent means a person married to a child's parent, including a person married to the child's parent immediately prior to the parent's death." 750 ILCS 5/600(*l*) (2018); *see also* 750 ILCS 5/602.9(a)(3) (2018) (same). A "person married to a child's parent" is a "term[] that denote[s] a spousal relationship" under Section 10 of the Civil Union Act. 750 ILCS 75/10 (2018). Therefore, the Civil Union Act treats civil union spouses and married spouses the "same" in this context; this is the "express promise" in the Civil Union Act that Westmoreland contends is lacking. *See* Westmoreland Br. 4.

Westmoreland offers no meaningful analysis in response. *First*, she claims, without citation to any authority other than the appellate court's decision now on review, that "[w]hile civil unions and marriages provide many of the same rights, the specific benefits afforded to each form of commitment are not entirely the same." *Id.* at 6. There is an obvious reason why she does

not cite authority for this statement: the plain language of the Civil Union Act is directly to the contrary. That Act includes no limitations or exceptions to its broad statements that parties to a civil union have "the *same*" rights, protections, responsibilities, and obligations as spouses "*throughout the law*." 750 ILCS 75/10, 20 (2018) (emphases added).

For this reason, Westmoreland's statement (at 6)—again, unsupported by citation to authority—that spouses and parties to a civil union are "only … deemed equivalent for purposes of their own relationship"—is baseless. Her suggested limitation on the extent to which the rights of civil union partners are equivalent to married spouses has no basis in the Civil Union Act. On the contrary, the Act provides that the rights are equivalent "throughout the law." 750 ILCS 75/10 (2018). The phrase "throughout the law" is unqualified and therefore applies in all contexts.

In essence, Westmoreland invites this Court to recognize an exception to that broad grant of rights and responsibilities when the rights and responsibilities are "in relation to children." Westmoreland Br. 6. But it is axiomatic that the court may not read into a statute exceptions that the General Assembly did not provide. *People ex rel. Birkett v. Dockery*, 235 Ill. 2d 73, 81 (2009) ("It is a cardinal rule of statutory construction that we cannot rewrite a statute, and depart from its plain language, by reading into it exceptions, limitations, or conditions not expressed by the legislature.").

Westmoreland's argument also violates the legislative mandate that the Civil Union Act "be liberally construed and applied to promote its underlying purposes," which include "provid[ing] persons entering into a civil union with the obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses." 750 ILCS 75/5 (2018). And there can be no mistake that step-parent status is an obligation, responsibility, protection, or benefit recognized by Illinois to spouses because that status arises as a matter of law when a person "is married" to a parent. 750 ILCS 5/600(*l*) (2018); 750 ILCS 5/602.9(a)(3) (2018).

Second, Westmoreland claims that "[i]f marriages and civil unions are found to be *exactly* the same … there would be no reason for the State of Illinois to provide for both and, in fact, it would be redundant and confusing for both to exist under the laws of this State." Westmoreland Br. 7. She further asserts that the Civil Union Act and the Marriage Act "remain separate acts with separate purposes." *Id.*; *see id.* at 12 ("If the legal rights bestowed under the [Marriage Act] and the [Civil Union Act] were intended to be identical … this law would serve no purpose and there would be no reason for affording two identical forms of legal commitment.").

But this ignores the fact that an enumerated purpose of the Civil Union Act is to provide civil union partners with *the same* rights as spouses under Illinois law. 750 ILCS 75/5 (2018). Thus, when it enacted the Civil Union Act, the General Assembly intended to provide an alternative means of creating a

legally recognized relationship between two people, and while the means are different the rights, responsibilities, protections, and obligations are the same. *See* Fulkerson Opening Br. 16-18.

And while Westmoreland questions the legislature's wisdom in maintaining different means to the same end, calling it "confusing," it is not the province of this Court to second guess that judgment. *See Crusius v. Ill. Gaming Bd.*, 216 Ill. 2d 315, 332 (2005) ("It is not our place to second guess the wisdom of a statute that is rationally related to a legitimate state interest, no matter how contentious that statute may be."). Indeed, putting aside the fact that people may draw cultural, faith-based, or even political distinctions between marriages and civil unions, nothing prohibits the General Assembly from recognizing two parallel relationships with the same rights, particularly where, as here, legislators announce that purpose in the statute. *See Shields v. Judges' Ret. Sys.*, 204 Ill. 2d 488, 497 (2003) ("It is the dominion of the legislature to enact laws and it is the province of the courts to construe those laws.").

Third, Westmoreland's reliance on legislative history is equally unpersuasive. As a threshold matter, resort to aids of statutory construction is proper only if the statutory language is ambiguous, *Wingert by Wingert v. Hradisky*, 2019 IL 123201, ¶ 43, and the Civil Union Act is unambiguous. In any event, Westmoreland's legislative history argument consists of her recitation of isolated statements from the debates about the Civil Union Act

that do not expressly mention rights in connection with children. Westmoreland Br. 8-9. None of those statements suggests that the Act was not intended to provide partners with rights regarding the couple's children—that simply was not the subject being discussed in those passages.

Nor does Westmoreland offer any response to legislators' statements cited in Fulkerson's opening brief (at 17), which focused on the importance to the entire family of recognizing civil unions, including to any children the couple was raising. As Senator Steans explained, the General Assembly intended to provide "equal access to nearly six hundred and fifty rights" so as to preserve "family relationships" and "loving household[s]." S. Transcripts of Debate, 96th Gen. Assem. (Dec. 1, 2010) at 84. There was no legislative intent to limit the scope of rights provided by the Civil Union Act, and Westmoreland cites nothing to the contrary.

She also claims that "none of the commentary offered during the debate suggested that parties of a civil union would have *identical* rights under the Illinois law as partners to a marriage." Westmoreland Br. 8 (emphasis in original). But again, this ignores the repeated statements throughout the debates that the act provided "the same" and "equal" rights to civil union partners as married spouses. *See* Fulkerson Opening Br. at 9-10, 16-17.

Fourth, Westmoreland's emphasis on the Marriage Act ignores the Civil Union Act and the need to construe the two laws harmoniously. Westmoreland asserts that "this is a case only about the interpretation of the [Marriage Act]."

Westmoreland Br. 9. In fact, however, the certified questions ask the court to construe the relevant Marriage Act provisions in light of the Civil Union Act. *See* Fulkerson Opening Br. 2. Further, Westmoreland offers no response to the point that Fulkerson's interpretation of the Civil Union Act and the Marriage Act construes them harmoniously so that no provisions are rendered inoperative, as basic principles of Illinois statutory construction require. *See id*. at 13.

Westmoreland then relies on subsequent amendments to the Marriage Act adding explicit references to civil union partners. Westmoreland Br. 10-12. But she only rehashes her argument below, offering no response to Fulkerson's treatment of those same amendments in her opening brief. As Fulkerson explained, the General Assembly had no need to change the provisions of the Marriage Act to add civil union language because legislators made clear that the rights granted by the Civil Union Act apply "throughout the law." That categorical directive avoided the need to amend hundreds of statutory provisions, and the addition of civil union language here and there in later amendments to the Marriage Act simply clarified what the Civil Union Act already codified. Fulkerson Opening Br. 19-23.

In sum, Westmoreland merely restates the appellate court's reasoning, without explaining why Fulkerson's interpretation of the Civil Union and Marriage Acts is incorrect. There is good reason for that. Fulkerson's interpretation is faithful to the plain statutory language, reads the two

statutes together without doing violence to either, avoids constitutional entanglements caused by irrationally treating similarly situated groups differently, and finds support in the legislative history. When the General Assembly passed the Civil Union Act, it expressly guaranteed parties to a civil union all the same rights and responsibilities married spouses enjoy under Illinois law. One such right and responsibility held by spouses, and therefore afforded to parties to a civil union, is step-parentage.

III. Affording Fulkerson standing does not violate Westmoreland's due process rights.

Westmoreland claims that allowing Fulkerson standing as a step-parent to petition for visitation or allocation of parental responsibilities violates Westmoreland's constitutional rights. Westmoreland Br. 13-15. This theory fails as a matter of law.

"The superior rights doctrine is a presumption that parents have the superior right to the care, custody, and control of their children." *In re R.L.S.*, 218 Ill. 2d 428, 432 (2006). This doctrine is of a "constitutional magnitude," and the "superior right" of a parent to make child care decisions is protected by the Due Process Clause. *In re Scarlett Z.-D.*, 2015 IL 117904, ¶ 35; *see Troxel v. Granville*, 505 U.S. 57, 65-66 (2000). Based on this doctrine, Illinois law limits the circumstances in which nonparents may petition for visitation or allocation of parental responsibilities. *See* 750 ILCS 5/601.2(b)(4) (2018) (outlining circumstances that must exist before step-parent may petition for allocation of parental responsibilities); 750 ILCS 5/609.2(c) (2018) (enumerating

circumstances that must exist before step-parent may petition for visitation). In this way, Illinois law safeguards parents' "superior rights."

Westmoreland does not, and cannot, contend that either the parental responsibility or the visitation statute violates her due process rights. *See* Westmoreland Br. 13 (discussing 750 ILCS 5/601.2 (2018) and 750 ILCS 5/602.9 (2018)). Rather, she complains that her rights will be "undermined by expanding the narrow categories of non-parents entitled to seek visitation and parental responsibilities beyond the plain language of the statutory definition" of step-parent. *Id*. at 15. But she makes no effort to explain why defining step-parent to include parties to a civil union is unconstitutional, other than to insist that the definition should be "narrow." *See id*. at 13-15. Her argument fails for the simple reason that there is no basis to distinguish between civil union partners and married spouses in this regard, where Illinois law gives them the same rights, protections, obligations, and responsibilities in all contexts. *See* 750 ILCS 75/5, 75/10, 75/20 (2018). She does not challenge the right of married spouses who are step-parents to seek visitation or parental responsibility in appropriate circumstances, so there is no basis to challenge the right of a civil union partner in the same position.

Westmoreland fears that adopting Fulkerson's understanding of the statutes will "open the floodgates of litigation for non-parents who have developed a relationship with a child." Westmoreland Br. 5. But that is not true because Fulkerson's position does not expand the categories of nonparents

who may seek visitation or allocation of responsibilities beyond what is currently provided in the statutes. Thus, Fulkerson's argument is narrow: due to the specific language of the Civil Union Act, "step-parent"—a category of individuals who already have statutory standing—includes parties to a civil union, and there is no valid basis in light of the relevant statutory language to consider married spouses, but not parties to a civil union, to be step-parents.

Indeed, this is the basis of the equal protection argument Fulkerson raised in her opening brief. Fulkerson Opening Br. 14-15. On appeal, Westmoreland mischaracterizes this argument as "one of equal protection for same-sex and opposite-sex couples," Westmoreland Br. 9, claiming that the "*only* constitutional rights being challenged here" are hers, *id*. at 14 (emphasis in original). These arguments miss the point. There is no rational basis to provide that a person who is married under the Marriage Act may be a step-parent—who, again, merely enjoys standing to seek certain parental rights under defined conditions—while a partner in a civil union under the Civil Union Act may not.

CONCLUSION

For these reasons and those in Fulkerson's opening brief, this Court should reverse the appellate court's decision, answer the certified questions in the affirmative, and remand the matter to the circuit court for further proceedings.

Dated: February 26, 2020

Respectfully submitted,

s/ *Michael A. Scodro*

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Supreme Court Rule 341(c) Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and those matters appended to the brief under Rule 342(a) is 13 pages.

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NOTICE OF FILING OF REPLY BRIEF OF INTERVENOR-PETITIONER-APPELLANT KRIS FULKERSON

PLEASE TAKE NOTICE that on February 26, 2020, the undersigned electronically filed the Reply Brief of Intervenor-Petitioner-Appellant Kris Fulkerson in the above-captioned case with the Clerk of the Supreme Court of Illinois using OdysseyIL eFile. A copy is hereby served upon you.

Dated: February 26, 2020

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I, Michael Scodro, an attorney, hereby certify that on February 26, 2020, I caused a **Notice of Filing** and the **Reply Brief of Intervenor-Petitioner-Appellant Kris Fulkerson** to be electronically filed with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. I further certify that I will cause one copy of the above-named filings to be served upon counsel listed below via electronic mail on February 26, 2020.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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