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## *Troxel v. Granville:* The Supreme Court Again Affirms the Fundamental Right to Parent

By Traci Gladstone Corcoran

Reaffirming a citizen's fundamental right to parent, the U.S. Supreme Court held that a state statute's application violated the Due Process Clause of the U.S. Constitution in *Troxel v. Granville*, 120 S.Ct. 2054 (2000). The Supreme Court ruled that a statute providing any third party the right to petition the court for visitation, without a showing of harm or potential harm to the children, was a violation of a parent's fundamental right to rear their children. *Id.*

Tommie Granville ("Respondent") and Brad Troxel had two children together out of wedlock; however, in 1993, Brad Troxel committed suicide. Following the death of the father, the paternal grandparents, Jennifer and Gary Troxel, ("Petitioners") were originally granted regular visits by the Respondent. However, in October 1993, these visits were limited in both frequency and duration. Two months following the visitation restrictions, Petitioners filed for visitation in a Washington Superior Court under section 26.10.160(3) of the 1994 Washington Revised Code ("the statute"). *Id.* Section 26.10.160(3) provides:

"Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve

the best interest of the child whether or not there has been any change in circumstances."

In a 1995 oral ruling, the Washington trial court ordered that the Petitioners be granted visitation. The Washington Court of Appeals reversed, finding that a nonparent did not have standing to seek visitation. The Supreme Court of Washington affirmed the court of appeals on different grounds, finding the statute violated the U.S. Constitution. Upon petition, the U.S. Supreme Court granted certiorari.

In the plurality opinion, Justice O'Connor, joined by the Chief Justice, Justice Ginsburg and Justice Breyer, held that the application of the statute violated the Due Process Clause. *Id.* at 2056. Their analysis began by acknowledging that the traditional American family is substantially different today than it was in the past. *Id.* at 2059. Most significant is that 28% percent of minor children in the United States reside in single parent homes. *Id.* The Supreme Court pointed out that as a result of the alterations in the average family, "persons outside the nuclear family are called upon with increasing frequency to assist in the everyday tasks of child rearing." *Id.* Due to this societal shift in child-rearing, statutory rights now encompass "third party interests" in a minor child. *Id.* The Supreme

Court went on to advise that these types of statutes, enacted throughout the country, have the potential to place an enormous burden on "the traditional parent-child relationship." *Id.* Further, these statutes give rise to constitutional questions as presented in this case. *Id.*

Reviewing the 5th Amendment, as incorporated to the states through the 14th Amendment, Justice O'Connor explained that substantive due process, as discussed in *Washington v. Glucksberg*, "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.* at 2060 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 719, 117 S.Ct. 2258 (1997)). The fundamental liberty interest of parents to care for and be in control of their child was established some 75 years ago. *Id.* (Citing, *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, 43 S.Ct. 625 (1923) which held that parental rights to "establish a home and bring up children" and "to control the education of their own" was protected by the Due Process Clause).

Relying heavily on precedent, the Court reiterated that "it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning

the care, custody, and control of their children.” *Id.* at 2061. The Supreme Court described the application of the statute as “breathtakingly broad” because it essentially gave sole power to the judge in determining the child’s best interest, while giving no deference to parental opinions. *Id.* The statute allowed the court to eliminate any parental decision involving visitation when a third party petitions that court. *Id.*

Reaffirming the fundamental right to parent, the plurality examined the Washington statute. *Id.* at 2061. The court put a great amount of emphasis on the fact that the Respondent had never been deemed an unfit parent. Citing precedent, the Supreme Court held that “there is a presumption that fit parents act in the best interests of their child.” *Id.* (quoting *Parham v. J.R.*, 442 U.S. 584, 602 (1977)). Specifically at issue was the Supreme Court’s concern with the fact that no consideration was ever given to what the Respondent believed was in her children’s best interests. *Id.* at 2062. In fact, after quoting the superior court judge verbatim, the Supreme Court stated that the judge presumed the opposite. *Id.* The Court found that the trial court never considered this presumption of a right to parent, but rather held that the child’s best interest would be served by them. The trial court also did not address the adverse impact, thereby failing to protect the constitutional right of the Respondent to make choices concerning her children. *Id.* This

further meant that the burden of disproving “best interests” was placed on the Respondent. *Id.*

The mother never sought to completely eliminate the grandparents’ visitation. *Id.* at 2063. Rather, she sought only to limit it to one visit per month and “special holidays.” *Id.* The Court pointed out that even throughout the various court proceedings, the Respondent maintained her position that her goal was not to do away with visitation, but rather limit the visits. *Id.* The superior court’s interpretation of the statute “gave no weight to Granville’s having assented to visitation.” *Id.* Additionally, the Superior Court did not even consider a settlement “on middle ground.” *Id.*

For the foregoing reasons, the Supreme Court ruled in favor of parental rights when it held that the Washington statute was unconstitutional in its application. *Id.* at 2064. The Supreme Court declined the opportunity to consider whether “all non-parental visitation statutes” must require a showing of harm in order to pass the test of constitutionality in light of the Due Process Clause. *Id.*

Justices Souter and Thomas concurred in the judgment and both agreed that the fundamental right of parents to raise and nurture their children is protected by the Due Process Clause of the 14th Amendment. *Id.* at 2066, 2068. Justices Stevens, Scalia, and Kennedy dissented in the judgment. *Id.* at 2068-2079. Justice Scalia opined that raising children is an

“unalienable Right” granted by the Declaration of Independence. *Id.* at 2074. Justice Scalia further stated that this right comes under the purview of the 9th Amendment which states that enumerated rights granted by the Constitution “shall not be construed to deny or disparage.” *Id.* According to Justice Scalia, no power has been granted to him by the Constitution “to deny legal effect to laws that infringe upon what is an unenumerated right.” *Id.* Justice Kennedy believed that this matter should have been remanded because the Supreme Court of Washington never addressed the “specific visitation order the Troxels obtained.” *Id.* at 2079. Justice Stevens believed that the Court should have denied certiorari. *Id.*

There should be a required threshold standard for proving harm before an outsider can inject themselves into another family. The nuclear family is arguably no longer the predominant model due to the prevalence of divorce in our society. The continued conflict between family members makes it vital that the fundamental right of parents be protected. A showing of harm or potential harm to a child provides a state the constitutional means for intervention within its *parens patriae* function. The Supreme Court has now acted on behalf of fit parents throughout the country, possibly halting the devastating impact that broad third party visitation statutes may have on good and decent parents.

Maryland does not have a statute as broad as the one at issue

in this case. However, Maryland's most applicable statute, section 9-102 of the Family Law Article of the Annotated Code of Maryland lacks an explicit threshold standard. Therefore, the Supreme Court's decision in *Troxel v. Granville* may very well impact the state directly. Courts now must be conscientious of this ruling and conduct themselves accordingly. The Supreme Court plurality opinion in *Troxel* is unambiguous in its animus toward courts and judges that neglect the presumption that a parent acts in the best interest of their child absent a showing of harm or potential harm.

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