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## Troxel v. Granville 120 S. Ct. 2054 (2000)

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## TROXEL V. GRANVILLE

120 S. CT. 2054 (2000)

## INTRODUCTION

The United States Supreme Court has long addressed the question of Fourteenth Amendment<sup>1</sup> protection of parental interests.<sup>2</sup> The Court has generally determined that a parental right to raise their children as they see fit is fundamental and protected under the Constitution.<sup>3</sup> Traditionally, the Court has determined that a third party or state acting as *parens patriae*<sup>4</sup> may only interfere with a family, if there is a showing of harm and that the best interest of the child is at stake.<sup>5</sup> The question of parental rights to raise their children, and their limitation of visitation rights, was partially answered by the Supreme Court in *Troxel v. Granville*.<sup>6</sup> Unfortunately, the Court was unable to draw any bright line rule to determine if third parties can petition the court for visitation.<sup>7</sup>

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1. The Fourteenth Amendment states in pertinent part that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws.” U.S. CONST. amend. XIV, § 1.

2. See, e.g., *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (reiterating the recognition that “the freedom of family life is a protected fundamental liberty interest”); *Wisconsin v. Yoder*, 406 U.S. 205, 235-36 (1972) (holding that the Amish should be exempted from a law requiring children to attend school past the eighth grade); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (holding a law that denied unwed fathers custody of their children after the mother dies, to be unconstitutional); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (noting that “the custody, care and nurture of the child reside first in the parents”); *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534 (1925) (determining a law that requires parents to send their children to public school interferes with the parents’ liberty interest); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (stating that raising children is a fundamental liberty interest).

3. See *id.*

4. See BLACK’S LAW DICTIONARY 485 (6th ed. 1990) (defining *parens patriae* as “the state regarded as a sovereign”).

5. See *Meyer*, 262 U.S. at 399-400.

6. 120 S. Ct. 2054 (2000), *aff’g* Custody of Smith v. Stillwell, 969 P.2d 32 (Wash. 1998), *rev’g In re Troxel*, 940 P.2d 698 (Wash. Ct. App. 1997) (preceding the Supreme Court case, this case was known as *In re Troxel* at the Washington Court of Appeals and *In re Custody of Smith v. Stillwell* at the Washington Supreme Court).

7. *Id.* at 2064 (declining to answer the constitutional question of whether third party

## FACTS OF THE CASE

Tommie Granville and Brad Troxel had two children together.<sup>8</sup> After their relationship ended in 1991, Brad Troxel continued to visit his daughters and would bring them to his parents' house, where he lived, for weekend visitations.<sup>9</sup> In May of 1993, Brad Troxel committed suicide.<sup>10</sup> After his death, his parents continued to see their granddaughters on a regular basis.<sup>11</sup> However, in October 1993, Tommie Granville requested that visitation be limited to one visit per month.<sup>12</sup> The Troxels objected to the change in visitation,<sup>13</sup> and in December 1993, the Troxels filed a petition seeking court-mandated visitation under two Washington statutes, §§ 26.09.240 and 26.10.160(3).<sup>14</sup> Under the latter statute, "any person" could petition the court at any time for visitation.<sup>15</sup>

At the initial trial, the Troxels argued for two weekend visitations per month and two weeks of visitation over the summer.<sup>16</sup> Granville did not oppose any visitation, but rather preferred to limit visitation to once a month, with no overnight stay.<sup>17</sup> In its ruling, the Washington Superior Court determined that the Troxels should be entitled to one weekend visitation per month, one week over the summer, and part of the day (four hours) on both grandparents' birthdays.<sup>18</sup> Granville appealed to the Court of Appeals of Washington.<sup>19</sup> The case was then remanded back to the Superior Court to determine facts and conclusions of law.<sup>20</sup> On remand, the

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visitation statutes require a showing of harm).

8. *Id.* at 2057 (stating that Tommie Granville and Brad Troxel were the unmarried parents of two daughters, Isabelle and Natalie Troxel).

9. *Id.*

10. *Id.*

11. *See Troxel*, 120 S. Ct. at 2057.

12. *Id.* (noting that Granville wanted the visits to be short).

13. *See In re Troxel*, 940 P.2d at 699 (stating how the Troxels "declined" Granville's offer that her daughters visit them once a month).

14. *See* WASH. REV. CODE ANN. § 26.09.240 (West 1994 & Supp. 1996) (stating that "a person other than a parent may petition the court for visitation with a child at any time or may intervene in a pending dissolution, legal separation, or modification of parenting plan proceeding.") & § 26.10.160(3) (West 1994) (stating that "any person may petition the court for visitation rights at any time . . .").

15. *See id.* § 26.10.160(3).

16. *See Troxel*, 120 S. Ct. at 2058; *In re Troxel*, 940 P.2d at 699.

17. *See Troxel*, 120 S. Ct. at 2058.

18. *See id.*

19. *See Troxel*, 120 S. Ct. at 2058 (noting that during this time she met and married Kelly Wynn, who later adopted Isabelle and Natalie).

20. *See id.*

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Superior Court judge determined that it was in the best interest of the children to have visitation with the Troxels because the Troxels came from a large, “loving family” and the children would benefit from the visits.<sup>21</sup>

Granville appealed to the Court of Appeals again, and this time the court ruled that the Troxels lacked standing because there was no pending custody action.<sup>22</sup> Since the Troxels now lacked standing, the Court of Appeals of Washington refused to examine any constitutional questions.<sup>23</sup> The Troxels appealed this decision to the Washington Supreme Court.<sup>24</sup>

The two issues before the Washington Supreme Court were whether a non-parent petitioning for visitation has standing and whether the request for visitation by a non-parent violates the parents’ fundamental constitutional right to raise their children as they see fit.<sup>25</sup> The Washington Supreme Court rejected the Court of Appeals determination that the parties lacked standing.<sup>26</sup> On the question of constitutionality, the State Supreme Court ruled that the statute should have required a showing of harm or potential harm to the child if the visitation was denied.<sup>27</sup> The court ruled the statute invalid on federal constitutional grounds.<sup>28</sup> The Supreme Court granted certiorari to hear the case.<sup>29</sup>

#### HOLDING

The U.S. Supreme Court affirmed the Washington high court

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21. *Id.* (stating that the “Troxels are part of a large, central, loving family, all located in this area and [they] can provide opportunities for the children in the areas of cousins and music. . .”).

22. *See In re Troxel*, 940 P.2d at 700 (examining the statutes’ legislative history in determining that the legislature intended to require a pending current action as a condition precedent to permitting visitation by third parties).

23. *See id.* at 701 (noting that custody proceeding must “be in effect before third parties could petition for visitation. Accordingly we hold that a petition for visitation must be either contemporaneous with or preceded by a proceeding for child custody.”).

24. *See Stillwell*, 969 P.2d at 23-24 (stating that the Troxels sought review of the Court of Appeals decision and the Washington Supreme Court agreed to hear their case along with two other visitation cases involving the same statute, *In re Custody of Smith v. Stillwell* and *Clay v. Wolcott*).

25. *Id.* at 24.

26. *See id.* (determining that the Court of Appeals misinterpreted the statute to require that a prior custody action must be pending in order for a third party to petition for visitation with a child).

27. *See id.* at 30 (arguing that the State cannot justify third party visitation on “quality of life” grounds when the child is not suffering from harm).

28. *See Stillwell*, 969 P.2d at 30 (citing the free exercise clause of the First Amendment).

29. *See Troxel*, 120 S. Ct. at 2059.

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decision, but for different reasons.<sup>30</sup> The Court also decided not to remand this case to the lower courts because of the significant amount of time and money expended by both parties.<sup>31</sup> The Court recognized the statute as “breathhtakingly broad,” however the Court did not affirm the decision on these grounds.<sup>32</sup> Rather, the Court concluded that Washington Statute § 26.10.160(3), as *applied*, violated the Due Process Clause of the Fourteenth Amendment.<sup>33</sup> The Court concluded that the Superior Court did not base its decision on any special reason that would support the state’s intervention with the privacy interest in raising one’s family.<sup>34</sup> Also, the Court found that the burden was shifted to Granville to prove that her daughters’ visitation with their grandparents would not be in the best interest of the children.<sup>35</sup> The plurality<sup>36</sup> placed special emphasis upon the fact that Granville never wanted to cut off visitation completely.<sup>37</sup> For this narrow reason, the Court affirmed the Washington Supreme Court’s decision that the statute was unconstitutional and thus invalid.<sup>38</sup> More importantly, the Court decided not to answer the question of whether all non-parent visitation statutes violate a parent’s fundamental right to raise their children, under the Due Process Clause.<sup>39</sup>

## CONCURRENCES

In very brief concurrences, Justices Souter and Thomas agreed with the plurality to affirm the lower court’s ruling.<sup>40</sup> However, Justice

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30. *Id.*

31. *Id.* at 2065. See also Marsha King, *Grandparents’ Law Tossed: Supreme Court Sides with Parents*, THE SEATTLE TIMES, June 6, 2000, at A1 (applauding Justice O’Connor for not remanding this case and inflicting further expenses upon both parties).

32. See *Troxel*, 120 S. Ct. at 2061 (describing the Washington statute).

33. *Id.* at 2064 (emphasis added); U.S. CONST. amend. XIV, § 1.

34. See *id.* at 2063 (stating that the Superior Court only made two findings of fact; one, that the Troxels are part of a large “loving family” and two, the child would benefit from spending time with the Troxels).

35. See *Troxel*, 120 S. Ct. at 2062 (noting that the Washington Superior Court did not give special weight at all, to Granville’s determination of her daughters’ best interests).

36. *Id.* at 2056. The plurality decision was written by Justice O’Connor, with Chief Justice Ginsburg and Justice Breyer joining in affirming the decision. Justices Souter and Stevens concurred in the judgment, in separate opinions. See *id.* at 2056.

37. See *id.* at 2062-63.

38. See *id.* at 2063 (explaining that the Superior Court erred in its decision because there was no finding that Granville was an unfit parent and that there was no special weight given to Granville’s beliefs about what was in her daughters’ best interests).

39. See *id.* at 2064 (noting that there is no need to define the precise scope of the parental due process right in the visitation context).

40. See *id.* at 2065, 2067.

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Souter's opinion reiterated the discussion in *Meyers v. Nebraska*<sup>41</sup> and other relevant Supreme Court cases to argue that the decision of the Washington Supreme Court should be affirmed in its entirety.<sup>42</sup>

Justice Thomas argued that strict scrutiny should be used in deciding this case.<sup>43</sup> Applying this standard, Justice Thomas concluded that the State of Washington failed to prove any governmental interest in allowing non-parent visitation with the child.<sup>44</sup>

#### DISSENTING OPINIONS

Along with the three majority decisions, there were three separate dissenting opinions.<sup>45</sup> The dissenting Justices agreed with the plurality in refusing to reject the statute as unconstitutional on its face. Justice Stevens argued that this case should never have been granted certiorari.<sup>46</sup> He continued his dissent by stating that the statute sweeps too broadly by allowing "any person" to request visitation of the child.<sup>47</sup> However, Stevens does conclude that previous case law has limited a parent's supposed fundamental liberty interest.<sup>48</sup>

In recommending reversal of the State Supreme Court decision, Justice Scalia was the only Justice to argue that parents are not guaranteed protection under the Constitution to raise their child free from government intervention.<sup>49</sup> In hearing this case, Justice Scalia stated that he was not willing to extend past case law protecting parents' privacy rights to this case.<sup>50</sup> Concluding his dissent, Scalia determined that this issue is best decided in state courts rather than

41. 262 U.S. 390 (1923).

42. See *Troxel*, 120 S. Ct. at 2066-67 (supporting his opinion by discussing the *Meyer* case, 262 U.S. at 399, which held that parents have the right to raise their children free from government interference).

43. *Id.* at 2068 (stating that since the right to rear children is a fundamental right, the Court should apply a strict scrutiny standard to the Washington statute).

44. See *id.* (noting that there was no compelling interest in second guessing a fit parent's decision regarding visitation with third parties).

45. The dissents in this decision were delivered by Justices Scalia, Stevens, and Kennedy.

46. See *Troxel*, 120 S. Ct. at 2068 (arguing that the statute was poorly written and should not be a matter for the Court).

47. *Id.* at 2070 (offering examples of how former caregivers, intimate partners, and foster parents would be able to petition the court for visitation).

48. See *id.* at 2072 (citing previous case law that limits the rights of parents).

49. See *id.* at 2074 (stating that parental authority over child rearing is an unenumerated right and a proper concern for legislators and elected officials, but outside the judicial authority granted by the Constitution).

50. See *Troxel*, 120 S. Ct. at 2074 (noting that he is not willing to extend the types of protection previously granted, to this particular fact pattern).

federal courts.<sup>51</sup>

In the final dissent, Justice Kennedy argued that the Washington Supreme Court erred in requiring a showing of harm to the child if visitation was denied.<sup>52</sup> Justice Kennedy argued that the State Supreme Court rejected the best interest standard because it incorrectly assumed that the parents have always been the “primary caregivers” of the child and third parties have no “established relationship with the child.”<sup>53</sup> He also argued that the best interest of the child standard should be used in cases regarding visitation with third parties.<sup>54</sup> Finally, rather than rejecting this statute on its face, Justice Kennedy suggested that this question is better answered by the state courts.<sup>55</sup>

#### IMPLICATIONS AND ISSUES

The Court offered no bright line answer regarding the constitutionality of third party visitation statutes.<sup>56</sup> Although the Court reinforced the notion that parents’ wishes should be taken into consideration, the Court allowed the state legislatures and courts to determine for themselves whether state third party visitation statutes were valid.<sup>57</sup> This narrow decision offered by the Court leaves the states to attempt to write better laws that will allow visitation to third parties and not infringe on parents’ Constitutional rights.<sup>58</sup> After this decision, third parties can still petition for visitation as long as the statute is applied correctly and drawn to meet the Court’s standards as vaguely outlined in *Troxel*. The benefit of this decision is that non-parent visitation is not denied outright, nor is its scope limited solely to grandparents.<sup>59</sup> Both the plurality and dissent acknowledged that

51. See *id.* at 2075 (reasoning that state courts are able to correct judicial errors faster than federal courts).

52. *Id.* (explaining that the State Supreme Court incorrectly assumed that the Constitution does not require a best interest standard with regards to the child in visitation proceedings).

53. *Id.* at 2077 (observing that the traditional notion of a nuclear family is not the standard in every family).

54. See *Troxel*, 120 S. Ct. at 2078 (arguing that courts should examine whether or not to apply the best interest standard before rejecting it as the State Supreme Court did).

55. See *id.* at 2079 (holding that more guidance is needed in order to expand the constitutional protection afforded parents).

56. See *id.* at 2064.

57. See David G. Savage, *High Court Limits Visitation Rights of Grandparents Family: Judges Must Give ‘Special Weight’ to Parent’s Wishes in Suits over Children, Justices Say in 6-3 Ruling*, L.A. TIMES, June 6, 2000, at A1 (stating that states are now on notice regarding the validity of their statutes).

58. See Kim Cobb, *Visitation Ruling Goes Against Grandparents*, HOUSTON CHRON., June 6, 2000, at 1 (reporting on how legal analysts believe that this decision will require state legislatures to examine their statutes to see if those statutes are too broad).

59. See Susan Nielsen, *State’s High Court Does Better with*

the traditional nuclear family is no longer the norm in society.<sup>60</sup> This decision could potentially allow for future statutes regarding third party visitation to include same sex-partners, step-parents, caregivers, and extended family members, not just grandparents.<sup>61</sup> Justice O'Connor's concern over the statute was not who requested visitation, but rather whether the Court applies the burden of proof to the correct party.<sup>62</sup>

#### CONCLUSION

*Troxel v. Granville*<sup>63</sup> examines the question of how far the Constitution extends to protect a parent's decision regarding who their child should be required by the courts to visit.<sup>64</sup> However, *Troxel* also acknowledges the change in the traditional family model and how non-nuclear family members play an important role in child-rearing.<sup>65</sup> The Court refused to tackle the tough issue of whether non-parents can constitutionally request visitation.<sup>66</sup> State legislatures are now given the task of re-evaluating their state statutes and determining if any changes need to be made.<sup>67</sup> As for the courts, this decision offers little guidance on who can request visitation of children, and to what extent parents' rights to raise their children are constitutionally protected under the Due Process Clause of the Fourteenth Amendment.<sup>68</sup>

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'Grandparents' Rights', THE SEATTLE TIMES, June 8, 2000, at B6 (acknowledging that the standard enunciated by the Court could allow petition by same-sex partners who have "close familial bonds" with the children of their partners and former partners).

60. *Id.* at 2059, 2077 (determining that in both Justice O'Connor's and Justice Kennedy's decisions the traditional family model is not the standard).

61. *See id.* at 2077 (noting the progression of the law over time). In the 19th Century, there was no legal right to visitation, while in the 20th Century—and court—ordered visitation has appeared. *Id.*

62. *See Troxel*, 120 S. Ct. at 2061 (stressing that the State Superior Court shifted the burden of proof to the parent and placed no weight to the mother's wishes on who and how often relatives can visit with her children).

63. 120 S. Ct. 2054, 2059 (2000).

64. *See Troxel*, 120 S. Ct. at 2064; *see also supra* text accompanying note 7.

65. *See id.* at 2059, 2077.

66. *See id.* at 2076 (noting that "our Nation's history, legal traditions, and practices" do not give us a clear and definite answer).

67. *See Cobb*, *supra* note 57 (citing legal analysts' comments that the decision will require legislatures nationwide to reexamine their grandparent visitation statutes); *see generally Troxel*, 120 S. Ct. at 2064 (noting that every state guarantees some form of grandparent visitation).

68. *See Cobb*, *supra* note 57 (noting that the Supreme Court struck down Washington's law on grandparent visitation, but not the other states' similar laws).