The Truth about "TROXEL"

Taken Out of Context

THE PROPOSED GUARDIANSHIP BILL PERTAINS *ONLY TO* PARENTS WHO HAVE BEEN DECLARED "UNFIT" BY THE COURTS

THE TROXEL CASE CONCERNED ONLY A "FIT" PARENT

AND..."The Superior Court's order was not founded on any 'special factors' that might justify the State's interference with Granville's fundamental right to make decisions concerning the rearing of her two daughters"...such as: child abandonment; abuse and neglect; history of severe mental illness; history of perpetration of domestic violence; criminal activity, particularly as it relates to habitual drug use, distribution and, or drug addiction.

AND... equally relevant, the court also found "no evidence of a 'child-parent-like' relationship existing between the children and the paternal grandparents"... thus, the "standard of harm" to the children was not met regarding the limitation of the grandparents' visitation.

Both parents were actively involved in the raising of the children and were by definition "fit".

[S]o long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.

THERE IS NO COMPARISON

Frequently, the reference to "Troxel" arises when discussing the issue of the *"best interest of a child" v. "a parent's fundamental right to make decisions concerning the care, custody and control of their children."*

To be clear, and for the purpose of defining the bill's intent, the **"best interest of a child"**, refers to *the safety and the physical, emotional, and psychological well-being of a child.* **"Harm to a child"** *means significant adverse effect on a child's physical, emotional, or psychological well-being.* We do not wish to confuse the term "the child's best interests" in a subjective context ... such as "should a child be raised in an affluent family vs. and impoverished family", or "raised by intelligent parents rather than people of average intelligence", or, "raised in a conventional life style rather than an unconventional life style" or "placement of children with the *worthiest* members of society"...Again, the *sole purpose* of this children's bill is to protect the child by passing a common sense law, focusing on and prioritizing *the safety and physical, emotional, and psychological well-being of the child...and by doing so, preventing harm and detriment to the child...a compelling state interest!*

It is crucial to clarify the facts involved in the 2000 "Troxel v. Granville" United States Supreme Court case and to understand the context in which the decision was rendered.

The Troxels, the paternal grandparents, did not allege "unfitness" of the biological mother, Tommie Granville, nor was there ever a suggestion of unfitness, nor was there ever a ruling by any court, at any time, that Tommie Granville was "unfit." Of course, there is a presumption that "fit" parents act in their children's best interest and should then maintain their *"fundamental right to make decisions concerning the care, custody, and control of their children."*

This case involves the paternal grandparents, the Troxels, and their petition to have certain prescribed visitation rights after their son committed suicide; and, the mother, a "fit" parent, exercising her right to limit the visitation time, acting within a "fit" parent's presumptive right to *"make decisions concerning the care, custody and control of their children".*

> Tommie Granville and Brad Troxel, an unmarried couple, had two daughters together. Tommie and Brad separated in 1991. After the separation, Brad lived with his parents, Jenifer and Gary Troxel, the paternal grandparents of the two little girls. Brad committed suicide in May, 1993. The Troxels continued to see the children after their son's death on a regular basis. However, in October, 1993, the children's mother, a "fit" mother, informed the Troxels that she wanted to limit their visitation. The case went back and forth through the various court systems until it finally reached the Supreme Court. The Supreme Court upheld the mother's *"right to make decisions concerning the care, custody, and control of her daughters".*

The Troxel case lacks applicability for the Wyoming children currently in involuntary guardianship proceedings. Tommie Troxel had never been ruled unfit, nor was there ever a court 'finding' that a "psychological parent" relationship existed between the grandparents and the two children; thus, the "harm to the child" compelling interest standard did not apply.

The Troxel reference continues to surface, taken out of context, and unfairly capitalized to justify the failure to pass a law protecting the safety and welfare of so many children.

When biological parents have been legally declared "unfit" in a court of law, it's serious; not an inconsequential finding by any measure. We know that over 90% of the estimated 11,000 children in Wyoming currently being raised by grandparents *and other family members,* are in this precarious set of circumstances because their "blood" parents have neglected, abandoned, and oftentimes abused them, are actively involved in ongoing drug use and associated criminal behaviors.

Why shouldn't a parent that has been found "unfit" by the court, as a direct result of long-term engagement in debilitating behaviors, be required to bear the burden to prove their fitness…preventing further damage to the child guarding against future endangerment to the child? Why shouldn't these parents be required to demonstrate to the court with *clear and convincing evidence* that they are now "fit" when deciding to return to "claim" the child years later???

We ask our legislators who vote "NO" to please explain *exactly* why they believe these safeguards, indoctrinated in the statutes of now twenty-eights states are "UNCONSITUTIONAL"? Should the physical, emotional, and psychological welfare of a Wyoming child be ignored because of the "Troxel" reference? Is that the intent of our Supreme Court? We don't think so. "A parent's constitutional rights, must be balanced against the state's interest in protecting children." Supreme Courts around our country, including the US Supreme Court, recognizes the well-established doctrine of protecting children who have formed parent-child relationships with psychological parents. Maintaining such bonds clearly protects the best interests of such children. The Unites States Supreme Court decision in Troxel does not change this legal position. In fact, The Court in Troxel recognized that "special factors" may justify court action to protect such children.

We look to a judicial framework that recognizes and enforces the constitutional and other rights of all the parties involved.

We came across this statute.

Wyoming Ann. Stat. § 14-3-201 The purpose of §§ 14-3-201 through 14-3-216 is to delineate the responsibilities of the State agency, other governmental agencies or officials, professionals, and citizens to intervene on behalf of a child suspected of being abused or neglected, to protect the best interests of the child, to further offer protective services when necessary in order to prevent any harm to the child or any other children living in the home, to protect children from abuse or neglect that jeopardize their health or welfare, to stabilize the home environment, to preserve family life whenever possible, and to provide permanency for the child in appropriate circumstances. The child's health, safety, and welfare shall be of paramount concern in implementing and enforcing this article

TO WHICH CHILDREN DOES THIS EXISTING STATUTE APPLY?

Does this statute apply only to children involved in child welfare cases as opposed to guardianships? Unequitable treatment?