SB 182

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 1/16/09
BILL NO. SB 182

willing to provide the Troxels some visitation with her children but not as much as the Troxels sought. The trial court granted the Troxels' petition, but the Washington Court of Appeals reversed that decision. The Washington Supreme Court affirmed the Court of Appeals, concluding that the visitation statute as written violated the United States Constitution. The United States Supreme Court affirmed the Washington Supreme Court under a different rationale. The plurality concluded that the statute–as applied to Granville, rather than as written–was unconstitutional, reasoning that: the language emphasized in the above quotation made the statute "breathtakingly broad," *Troxel*, 530 U.S. at 67, 120 S.Ct. at 2061, 147 L.Ed.2d at 57; the trial court failed to give any special weight to the fit parent's wishes, *Troxel*, 530 U.S. at 69, 120 S.Ct. at 2062, 147 L.Ed.2d at 58; and, the trial court improperly applied a "presumption in favor of grandparent visitation," *Troxel*, 530 U.S. at 72, 120 S.Ct. at 2063, 147 L.Ed.2d at 60. The plurality emphasized 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," *Troxel*, 530 U.S. at 66, 120 S.Ct. at 2060, 147 L.Ed.2d at 57, and concluded:

> [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. See, *e.g.*, *Flores*, 507 U.S. at 304.
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> The problem here is not that the Washington Superior Court intervened, but that when it did so, it gave no special weight at all to Granville's determination of her daughters' best interests. More importantly, it appears that the Superior Court applied exactly the opposite presumption.

Troxel, 530 U.S. at 68-69, 120 S.Ct. at 2061-62, 147 L.Ed.2d at 58.

¶14 The *Troxel* plurality opinion is consistent with our jurisprudence and helps guide our construction of the "best interest of the child" standard contained in Montana's grandparent contact statute. *Troxel* held that parents have a fundamental constitutional right "to make decisions concerning the care, custody, and control of their children," *Troxel*, 530 U.S. at 66, 120 S.Ct. at 2060, 147 L.Ed.2d at 57, and we have likewise held that "[i]t is well-established that a natural parent's right to care and custody of his or her child is a fundamental liberty interest ...." *In re C.R.O.*, 2002 MT 50, ¶ 10, 309 Mont. 48, ¶ 10, 43 P.3d 913, ¶ 10. Further, parents are presumed to act in their child's best interest. *Troxel*, 530 U.S. at 68, 120 S.Ct. at 2061, 147 L.Ed.2d at 58