

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
March 15, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:04 a.m. on Friday, March 15, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Peter Livermore, Assembly District No. 40



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Nancy Davis, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

Lucas Foletta, General Counsel and Policy Director, Office of the Governor
Peter C. Bernhard, Chair, Nevada Gaming Commission
Bo Bernhard, Executive Director, International Gaming Institute, University of Nevada, Las Vegas
Yvanna D. Cancela, Political Director, Culinary Workers Union, Local 226
Steve Hill, Executive Director, Governor's Office of Economic Development
Daniel K. O'Brien, representing Families United Now, Inc.
Gayle Farley, Private Citizen, Reno, Nevada
Kerri O'Brien, Private Citizen, Carson City, Nevada
Charity Cantalupo, Private Citizen, Reno, Nevada
Kim Ewart, Private Citizen, Fallon, Nevada
Lillie Phillips, Private Citizen, Sparks, Nevada
Kat Casey, Private Citizen, Reno, Nevada
Monica Baker, Private Citizen, Sparks, Nevada
Morgan Johansen, Private Citizen, Reno, Nevada
Carmen Cantalupo, Private Citizen, Reno, Nevada
Herbert Randall, President, Nevada Silver Haired Legislative Forum, and Silver Senator with the Nevada Delegation of the National Silver Haired Congress
Kimberly Surratt, representing Nevada Justice Association
Kristin Colburn, Private Citizen, Carson City, Nevada
Justin Colburn, Private Citizen, Carson City, Nevada
Barbara Dragon, representing Nevada Homeschool Network
Janine Hansen, Private Citizen, Elko, Nevada
Elissa Wahl, Private Citizen, Las Vegas, Nevada

Chairman Frierson:

[Roll called. Standing rules explained.] Today we have two bills on the agenda. I will open the hearing on Assembly Bill 7.

**Assembly Bill 7: Revises provisions relating to the Gaming Policy Committee.
(BDR 41-333)**

Lucas Foletta, General Counsel and Policy Director, Office of the Governor:

I am happy to be here to discuss Assembly Bill 7 today. There are some individuals in Las Vegas who will also be presenting this bill: Peter C. Bernhard, Chairman of the Nevada Gaming Commission and Dr. Bo Bernhard, who is the Director of International Gaming Institute. Assembly Bill 7 is a relatively straightforward piece of legislation. It came out of the deliberations of the Gaming Policy Committee. The Governor convened the Gaming Policy Committee, which had been dormant for some time. He convened the Committee to discuss several matters of significance for the gaming industry—the focus of the Gaming Policy Committee was most specifically the Internet gaming, assessing the landscape, and addressing the policy implications of Internet gaming as it relates to our state's most significant industry. The Gaming Policy Committee also addressed a number of other issues, including how to best maintain the state's position as a leader in the development of intellectual capital around gaming.

As many of you know, there are a number of institutions in our state that are responsible for developing management and workforce professionals that the gaming industry needs; for example, the University of Nevada, Las Vegas (UNLV) International Gaming Institute of the William F. Harrah College of Hotel Administration, and the Institute for the Study of Gambling and Commercial Gaming of the University of Nevada, Reno (UNR). There are a number of other institutions that also help develop the workforce, including the Culinary Academy of Las Vegas.

The Committee's deliberations resulted in several recommendations. One was to have the Governor as Chair of the Gaming Policy Committee convene a group of stakeholders that represent not only academia, but also the gaming industry to deal with alignment issues. In order to ensure that these various educational institutions in our state produce management workforce professionals, and to ensure that they are producing the people that the industry needs, the Governor would convene a committee of interested parties to assess the landscape, determine what it is we are producing now, what we may need to produce going forward in order to maintain our leadership position in this area, and what policy decisions and actions need to be taken in order to achieve what we need to achieve. This bill gives the Governor the authority to do that. It allows the Governor, as Chair of the Commission, to convene this group of interested stakeholders to do what is specifically identified in section 1, subsection 8, which is, among other things, evaluate all public gaming-related educational entities in this State in order to analyze the workforce and technology needs of

the gaming industry, study the potential for leveraging gaming competencies and technologies into other areas, and then to ultimately report any findings they make to the Gaming Policy Committee for evaluation by that Committee, other policy makers, including you, and the Nevada System of Higher Education Board of Regents.

The bill does one other thing, which is that it adds a member to the Gaming Policy Committee, specifically a representative of academia who has experience in the area of gaming. Without going into further detail, I would like to invite Chairman Bernhard to give a few comments.

Peter C. Bernhard, Chair, Nevada Gaming Commission:

As most of you know, the Gaming Policy Committee has not had much work to do during the past two decades. Governor Sandoval has revised the Committee to meet the functions for which it was intended. That includes bringing together a divergent group of interest-holders in a situation and context that we do not otherwise have within our state government. The Gaming Policy Committee includes two members, one from the Senate and one from the Assembly, that give us direct access to communicate with legislators about important issues that may come up that affect the gaming industry. During last summer's Gaming Policy Committee meetings, Assemblyman William Horne and retired-Senator Valerie Wiener represented the Legislature in our meetings. To get their perspectives was invaluable to us who are involved in the day-to-day regulation of the gaming industry. Many times we need the input of people like you to adopt and recommend policies that we need to follow to keep our industry in the preeminent position that it has held throughout history. We also have members of the general public who are on the Gaming Policy Committee. Although entitled to speak during public comment portions of our agendas, we rarely get the benefit of public insights from people out on the street, and what they think gaming policies should be. We also have representatives of the nonrestricted gaming licensees and restricted gaming licensees. The perspective we get from them is very valuable because it is not in the context of either a licensed application or a contested hearing in front of the Gaming Control Board or the Gaming Commission. They again can express the views of people in their positions with similar licenses in a context which is not dependent on the outcome of a particular matter before us. The Gaming Policy Committee serves a valuable function.

The second point I would like to make is that over the last 10 to 20 years we have seen an increasing sophistication of the gaming industry itself. We see people coming before us for licenses who have advanced degrees from some of the finest educational institutions in the world. We see our gaming licensees recruiting worldwide for people with the technical knowledge and expertise

in areas which are now vital to the success of the casino. We simply do not have a smoke-filled room with someone who has a notepad keeping track of what goes on within a casino. You need educated people in the workforce. This past summer the Gaming Policy Committee recommended that it be added as part of A.B. 7. Adding a person with an academic background as a voting member of the Gaming Policy Committee will allow the Committee to evaluate and bring input from that constituency. With this change, which we urge the Committee to support, we will have not only regulators, not only the Governor, not only legislators, not only representatives of the industry and the public, but we will have someone from the academic world, which is becoming more and more important as we see our industry mature and become more recognized throughout the world as an industry that requires an educated workforce. This applies to not just management, but also to lower-level positions within the industry. At this point I would like to proudly turn the podium over to my son, who has made a name for himself in the academic world, to explain what the academic aspects of the gaming industry are now and what this bill will help in terms of the interest of the State of Nevada.

Bo Bernhard, Executive Director, International Gaming Institute, University of Nevada, Las Vegas:

I would like to start with an expression of heartfelt gratitude for your support for education and the state more generally, and then proceed with the specific request that I believe really provides a foundation for leadership in this state for many years to come. I am a proud product of the Clark County School District. I then went back East to attend college at Harvard University where I earned a couple of honors degrees and did a final honors thesis on the gaming industry in Nevada. I then determined that the best place for me to pursue my graduate studies was in the Nevada System of Higher Education, which provides the finest gaming education on the planet. I came back here for my doctorate. In my role today, as someone who has had the privilege of lecturing on six continents, I can assure you that Nevada remains a global leader in the gaming industry, in gaming operations, gaming regulations, and academic pursuits relating to gaming. [Continued to read from prepared text ([Exhibit C](#)).]

Assemblywoman Spiegel:

In section 1, subsection 7, it seems that the subcommittee can be comprised of people who are not members of the committee. Am I reading that correctly?

Lucas Foletta:

Yes, the idea is that the subcommittee can be comprised of individuals who are not members of the committee. It may be that we need to clarify some of the language so that it is clear that individuals who are not currently members of the Gaming Policy Committee can serve on the subcommittee.

Assemblywoman Spiegel:

Was there any contemplation of having the subcommittee be chaired by the representative from academia?

Lucas Foletta:

The Governor has not contemplated exactly who would chair this effort. It is entirely possible that the representative of academia on the Gaming Policy Committee could chair it.

Assemblywoman Spiegel:

So there is no guarantee that anyone on the subcommittee is also on the Committee?

Lucas Foletta:

The idea is that this is a group of interested stakeholders who are not necessarily part of the Committee, but who do have knowledge and experience in the area of gaming education who could come forward and do the type of analysis and report back to the Gaming Policy Committee with respect to the issues that the bill asks the gaming subcommittee to speak to.

Assemblywoman Diaz:

Who would be considered for appointment to this subcommittee?

Lucas Foletta:

The Governor has not contemplated exactly who would serve on this subcommittee. In general, a representative of academia would be someone like Dr. Bernhard, who clearly has the knowledge and background in this field. There are other individuals who serve on the faculty of UNR and UNLV who work in this area and possess the kind of knowledge and expertise that we would be looking for in connection with this effort.

Chairman Frierson:

I will now invite those here in support of A.B. 7 to come forward.

Yvanna D. Cancela, Political Director, Culinary Workers Union, Local 226:

We are thankful to the Governor for revitalizing the Gaming Policy Committee. It is an exciting time to be talking about gaming. We support this bill and have asked to make a small amendment in section 1, subsection 8, paragraph (a), where it lists the Institute for the Study of Gambling and Commercial Gaming, UNR and the UNLV International Gaming Institute of the William F. Harrah College of Hotel Administration. We would like the Culinary Academy of Las Vegas included in that section. When we talk about gaming education, we cannot exclude from that discussion the training of the workforce that

makes the casinos run. The Culinary Academy of Las Vegas, a joint partnership with gaming management and the Culinary Workers Union, Local 226, ensures that we have the very best workforce in our casinos. We are hopeful that you will consider this amendment ([Exhibit D](#)), and that component of gaming education is considered in these discussions moving forward.

Chairman Frierson:

What contact have you had with the Governor's office regarding your proposal?

Yvanna D. Cancela:

We have spoken with the Governor's office and it seems that everything is okay with this amendment. I spoke to Lucas Foletta yesterday.

Steve Hill, Executive Director, Governor's Office of Economic Development:

As mentioned earlier, the gaming industry is obviously the leading industry in our state. I think it is important to emphasize that. The industry has also been at the forefront of leading us out of the recent recession, and much of the job growth that we have seen in Nevada has been a result of the resurgence of the gaming industry. Over the last month or so, we have seen some exciting announcements for further development of the industry. In the past, our economic development efforts in this state have focused on diversification, away from gaming and mining. When the Legislature restructured economic development and we put out our state plan a year ago, we really changed that language. We think that we can diversify the economy in Nevada in partnership with our leading industry, not to the exclusion of our leading industry. This bill addresses that. We think this is the correct forum for a good part of the conversation regarding the diversification of Nevada based on the strengths that the gaming industry brings. The industry touches virtually every part of the economy, from technology to logistics to agriculture. It is a broad influence on the economy in Nevada. It brings expertise in all of these areas. We have seen exciting announcements in digital media, for example, which is largely led by the draw of the gaming industry. We certainly support this bill and feel the additions are an important part of our economic development efforts, and in doing so through the Gaming Policy Committee, we think that is a great forum to have that conversation.

Chairman Frierson:

Is there anyone here to testify in a neutral position? I see no one. Is there anyone in opposition? Seeing no one, I would invite Mr. Foletta to come forward with closing remarks.

Lucas Foletta:

I appreciate your time this morning and urge your support for this important piece of legislation. [The Gaming Policy Committee Final Summary and Recommendations was submitted ([Exhibit E](#)).]

Chairman Frierson:

With that, I will close the hearing on Assembly Bill 7 and open the hearing on Assembly Bill 203.

Assembly Bill 203: Revises provisions governing the granting of the right to visit a child to grandparents and great-grandparents of the child. (BDR 11-750)

Assemblyman Peter Livermore, Assembly District No. 40:

Thank you very much. I am here to present Assembly Bill 203. I present this bill in cooperation with a group called Families United Now (FUN). This bill is not new and has been presented before this Committee in past sessions.

The purpose of this bill is to expand the circumstances in which a court may grant visitation with any unmarried minor child, including a child whose parents are married to each other and not separated (intact family), if a parent of the child has denied a grandparent or great-grandparent visits with the child.

We would ask the Committee to accept minor amendments to change the proposed wording in section 1, subsection 1, paragraph (e) to read "Has denied or unreasonably restricted a great-grandparent or grandparent of the child visits with the child."

Additionally, we request the proposed wording in section 1, subsection 8, paragraph (c), subparagraph (2), to read, "If the petition is based on the provisions of paragraph (e) of subsection 1, after a parent of the child has denied or unreasonably restricted a great-grandparent or grandparent of the child visits with the child."

I would like to go on record and state that I am a grandparent and I have a picture of my grandchildren hanging in my office.

Daniel K. O'Brien, representing Families United Now, Inc.:

I am volunteering my time to assist with this matter today. First, I would like to thank Assemblyman Pete Livermore for being the primary sponsor for this bill. In addition, I would like to thank the 20 cosponsors of this bill for providing their support of Nevada grandparents, great-grandparents and future grandparents of Nevada. Many of you here today are young and yourself a parent,

who hopefully will be a grandparent in the future. Some of you are already grandparents. I would also like to note that I am not an attorney, I am a civil engineer. I have provided the Committee members with letters from numerous people who are in support of this bill. I have also provided you with copies of a case that I think is a good example of the constitutionality of grandparents visitation: *Troxel v. Granville*, 530 U.S. 57 (2000) ([Exhibit F](#)). [Continued to read from written testimony ([Exhibit G](#)).]

I know this is a difficult issue. Some parents are afraid that grandparents will control how they raise their children. Some parents want ultimate authority over their children. We all know that some parents do terrible things to their children, we hear about it all the time in the news. Some parents make bad decisions—some grandparents make bad decisions—but like parents, grandparents are not all bad. Everyone has a story, and there are two sides to every story. Both sides make mistakes. This bill retains all the protections that parents need for their children, and it gives no control of parenting to grandparents. Again, it just allows the grandparents to petition the court. Therefore, I ask the Committee to support A.B. 203.

Assemblywoman Dondero Loop:

I agree this is a very tough issue because, as you said, unfortunately we have parents and grandparents that make decisions based on their emotional thoughts; not the best interest of the children.

Assemblywoman Cohen:

I would like to refer you to section 1, subsection 3, which reads, "A party may seek a reasonable right to visit the child during the child's minority pursuant to . . . Paragraph (e) of subsection 1 only if a parent of the child has denied visits with the child." If the parent allows the grandparent to see the child but puts restrictions on it, such as the visit must be in the parent's home and supervised, does this come into play? Would that grandparent have a cause of action in court?

Daniel O'Brien:

The grandparents would not have cause to petition the court because they have not been denied access. Most of us agree that if the grandparent has some access to the child, then the intent has been met. Therefore, they would not have the authority to petition.

Assemblyman Duncan:

How does Nevada's proposed statute compare to other states? Also, I would like to discuss the idea of an intact family. It appears that if a grandparent is being denied visitation, he petitions the court. It seems that if there is an intact

family, it is a fundamental liberty interest in a parent being able to decide how they want to raise their children. The presumption is that they are able to make those kinds of decisions.

Daniel O'Brien:

I have done a lot of research, and have looked at the wording of statutes in other states, and they are different across the board. Most of them still require special factors and the presumption that the parents are fit and have made the proper decision for the child. In Nevada's statute, the provisions require that the grandparent or great-grandparent has to show that the parents have not done the right thing. Everyone will agree it is an uphill battle. Sometimes grandparents do not make the right decisions; sometimes parents do not make the right decisions. Ideally, if this bill passes, it will be a driving force that will allow the parents and grandparents to get together and work it out. Most grandparents that I have spoken to who have had problems have tried to work it out; sometimes personalities get in the way.

Assemblyman Duncan:

I think in some ways this could create a disincentive for parents and grandparents to come together. An adversarial proceeding can cause more tension and actually may disincentivize these families coming together in an amicable manner to try to resolve their disputes. Bringing it to court may ramp up emotions. The Supreme Court has given great deference to the fact that parents are deemed fit and know what is best for their children. I think there is a hesitancy that by having this proposed statute, we are basically questioning the judgment of fit, intact families.

Daniel O'Brien:

The presumption is that an intact family is fit, but it does not guarantee they are making the right decisions for the child. We see this all the time. People who are married and are abusing their children may be abusing their grandparents; they may be doing things that are definitely bad decisions. The whole issue of "intact" stymies me because the state statute already has a provision that if the child has resided with the grandparent for a period of time, then the grandparent can petition. There is an inconsistency there. One set of grandparents is being granted a right that the other set of grandparents is not being granted. This intact family issue is somewhat confusing. This would allow the grandparent to plead their case in front of a judge. If the judge finds that the family is fine, the child is not being harmed in any way, and the grandparents cannot prove there are any extraordinary circumstances, then visitation will not be granted. You can argue that there will be litigation generated because of this. I am looking at it as a factor that may cause the parents and grandparents to get together. It is costly, anywhere from \$200 to \$400 per hour for an attorney. Ideally, we

want to get the families together. In some cases, one party may refuse to sit down with the other party. Oftentimes, when they are willing to discuss it, they can work it out, especially through mediation.

Assemblyman Duncan:

There is nothing in this proposed statute showing that there has to be any harm to the child. Again, a grandparent can petition a court if they have philosophical differences with the way their grandchildren are being raised, so they are being denied visitation. Is that a fair assessment of the proposed statute?

Daniel O'Brien:

I do not believe that a philosophical difference on how the parent is raising the child would meet the criteria for the grandparent to petition the court. Grandparents may want to control how the child is being raised, but I do not believe they have any right to do that. Again, what we are looking for here is the ability to visit with the child. This is not granting grandparents the right to control how the child is raised.

Assemblyman Duncan:

If a parent has denied, for whatever reason, a visitation right to a grandparent, now there is a cause of action for grandparents. There is no harm that must be shown. I am trying to square that with the analysis in *Troxel* that basically says there is a great liberty interest in parents and we deem them an intact family and so deem them fit to make those decisions. I think there is a fear that this cause of action, if there is no showing of harm, will allow grandparents to have a cause of action. There is no harm threshold test in this proposed statute, and I think the consequence would be, if there is a denial of visitation, that immediately is a cause of action.

Assemblyman Hansen:

I have been married 32 years, I have eight children, seven grandchildren, and one on the way. I am the oldest of eight kids, and my mom has 46 grandkids. My perspective on this bill is that it is actually a family strengthening measure, because it actually tries to bring the extended family back into play. As far as the arguments about philosophy, all this does, that I can see, is give the grandparent or a great-grandparent, in the most extreme egregious circumstances, some kind of a window of opportunity to say the parents are being completely unreasonable. It is not like we are trying to change their religion or trying to force them to live a certain way. This is an opportunity to visit with the grandchild. I read all the paperwork and the *Troxel* decision seems like a completely reasonable thing to do. This is just extending a little bit of what is already in statute. In other states, have there been challenges

to those that have made it all the way to the Supreme Court? I know they have challenged state laws.

Daniel O'Brien:

There are numerous challenges. In most cases, it is because the lower court judges have not followed *Troxel*. They have basically not given deference to the parents. They have the parents trying to prove the case, rather than have the grandparents prove the case. Everyone has a story. What happens is the conditions are not always the same for every one of these appeals. Many times it is because the lower courts did not handle the case properly. Even in the *Troxel* case, the Troxels had visitation, they were just not satisfied with the amount of visitation they had. In my opinion, if they had visitation, they should have been satisfied with that. They could have watched their granddaughters grow up, seen them once in a while, and moved on.

Assemblyman Hansen:

It is too bad to see something so positive being such a huge negative and splitting families up. It is heartbreaking. It really is the good of the child that is paramount in this whole issue.

Assemblywoman Diaz:

Currently, there is an avenue by which grandparents can get visitation rights when they feel that the child is in danger or in harm's way and they need to be there to ensure that the child is being taken care of. My major concern is that families are suing each other. Is that the best way to resolve this issue, taking each other to court, using resources, and exhaustive litigation? Is that really what we want for Nevada families?

Daniel O'Brien:

This is not the best way, absolutely not. Who wants to sue their child? This really is a last resort, but we are asking to at least have that last resort. It would be great if we could add in a provision that would require the family to go to mediation. If the child is being hurt, I am sure there are other sections of statute, from child custody issues and Child Protective Services (CPS), which can take care of the issues of a child being harmed in some way. If anyone, grandparent or neighbor, feels a child is being abused, they can call CPS and ask for an investigation. There are grandparents that are only asking to see the child once a month, or be able to provide Christmas and birthday presents, but yet, this may be their only recourse.

Chairman Frierson:

I am now going to invite those here to testify in support of this measure to come forward.

Gayle Farley, Private Citizen, Reno, Nevada:

I have a 17-year-old grandson. My daughter was murdered when he was 3 1/2 years old. At the time of her death, my grandson's father and mother were separated and they had joint custody. From the time Dylan was a baby, he has always had a room in my home.

Through the years, his father remarried the babysitter. I would go to their home to get Dylan, and the living conditions were absolutely filthy, just awful. I would not say anything, I would just continue to get my grandson on the weekends. I am no peach; I said a few things I probably should not have over the years, and the relationship with Dylan's father started failing. Once when Dylan came to see me he had a very bad cut on his hand from a knife which had become infected. I took him to the hospital. He had a staph infection and has a very bad scar from it. A few years later, I called Dylan's father to make arrangements to pick him up, and I could hear Dylan crying in the background and was told he had hurt his leg. I said, "What is wrong with his leg?" They would not tell me, they just said he hurt his leg. I kept calling every day to find out if he was okay because Dylan is no baby, he is a baseball player, he plays six days a week. I found out they took him to the hospital—his femur bone had been broken. It had been two days before he was taken in for treatment. I was very upset and had an argument with his father. His father refused to let me see him.

So for two years I tried to see my grandson and was unable to see him. I finally had to go to court. When I went to court, because of the way this law is written, I really had no rights. Although they say that if there is a deceased parent, I have rights. I did not have any rights, none. I was treated like a pariah in that courtroom. The judge had ordered a family mediator to come in. They said I could have three visits with my grandson. Within six months I got to see him two hours at a time, three times. I had two hours, so I could meet him at McDonald's and we could have lunch, but there was nothing else we could do. There was no time to take him anywhere, so we would sit and talk. We were both very uncomfortable. My grandson and I had a very close relationship.

About a year later, we finally went to court and the judge had a letter from the mediator saying that Dylan had no interest in a relationship and he was very uncomfortable when we had lunch because there was nothing for him to do. I was devastated. So the judge had said, okay, you can see your grandmother every six months, no less than two hours. Two hours every six months, that is all I have seen my grandson since 2008. I have missed his baseball games, his junior high years, and his high school years because a judge made a decision

based on the fact that a man who met my grandson for one hour says that my grandson had no interest.

My grandson feels disloyal to his father for loving me. When I see my grandson on my visits, he waits for his father to drive out of the parking lot and runs to me, hugs me, tells me he loves me, and he misses me. He cannot do this in front of his father, because he feels disloyal. This tells me that the parents are making him feel guilty for loving me. Something needs to be changed in this law. For a mediator to come in and talk to my grandson for one hour is not fair.

I think something in this law needs to say a family mediator needs to come in and that all of us get together, just like Mr. Hansen said. This is a family problem; this is not just a grandchild problem. I understand that my son-in-law wants to forget my daughter was murdered, that he has a new wife and a new home and they have their own family, but my grandson is my blood. It is too late for me, but it is not too late for you to make a decision to help all these other grandparents that want to be a part of their grandkids' lives. A grandparent is a very important part of a child's life.

I do not feel like there was enough investigation, or that anyone ever took enough time to look at my case. I think that if they had, the decision made by Judge David Hardy would have been a lot different. There has never been any follow-up from the courts to see how we are doing. Child Protective Services has been called on these people twice. Nobody has ever gone out and looked at that house to see how they live. It is absolutely horrendous.

I am going to end with this: Herbert Spencer wrote, "There is a principle which is a bar against all information, which is proof against all arguments and which cannot fail to keep a man in everlasting ignorance—that principle is contempt prior to investigation." I really hope you will look at this law and not just think we are a bunch of crazy people trying to run our children's lives or trying to get at children we are mad at. It is a family situation; it is not just the grandchild. These families need to be healed, and there should be a procedure in this law that states a family mediator needs to be involved.

Chairman Frierson:

Is there anyone else to testify in support of A.B. 203?

Kerri O'Brien, Private Citizen, Carson City, Nevada:

I am in support of this bill. I have a story too, but I will not go into now. I feel for Gayle, and we also have a situation.

Chairman Frierson:

I am going to interrupt the hearing on A.B. 203. I have a bill draft request (BDR) that I need to have introduced. I am seeking a motion to introduce BDR 9-961.

BDR 9-961—Revises provisions governing real property. (Later introduced as [Assembly Bill 300](#).)

ASSEMBLYMAN CARRILLO MOVED TO INTRODUCE BDR 9-961.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Frierson:

Thank you for indulging me briefly.

Charity Cantalupo, Private Citizen, Reno, Nevada:

My husband Carmen and I are in support of this bill. We had CPS prove there was sexual abuse going on by the father of our grandchild, but because CPS did not have the manpower, after a year of not being able to see our grandchild, we had to submit to what the parents wanted so we could visit her. At this time, we are under their thumb, and we have to do whatever they want because CPS did not have the manpower to continue the investigation.

Kim Ewart, Private Citizen, Fallon, Nevada:

I am here in support of my sister and brother-in-law. We have been unable to see my nephews, who have previously lived with my sister and brother-in-law on and off for four years. They have not allowed any visitation to any family members; their entire family has been cut off. I just hope that this bill will help families come together.

Lillie Phillips, Private Citizen, Sparks, Nevada:

I am in support of this bill. It is very hard for me to speak in front of you, but I feel this is a very important matter. I have not seen two of my grandchildren for six years. I have felt the hurt, but I also worry about the hurt that my grandchildren have gone through. I worry about them crying at night, wondering what they have done wrong, that we do not get to see them anymore. I am listening here, and it does not seem that the children are the ones we are concerned about. What is wrong with a grandparent wanting to take their grandkid to a park or to read a book with them, or to just let them know they are loved, or their heritage? I do not understand this. Why parents and grandparents have to get into such a struggle that the kid suffers.

One of my grandchildren is 10 years old, the other is turning 15. They do not even know me. I feel the children should have a right. I have one granddaughter that I get to see. It is the greatest joy of my life when she wraps her arms around me and I see her smile. I bake with her and I play with her. Two of my grandchildren will never know that. I do not think it is fair.

Chairman Frierson:

Is there anyone else here in support of A.B. 203?

Kat Casey, Private Citizen, Reno, Nevada:

I am a future grandparent, and I am also a grandchild. Assuming that my parents were married to each other, that did not necessarily make them better parents just because we were an intact family. Without my grandparents on both sides, I would not be sitting here, because they were there for me. I was able to go see them; because of them I had an outlet. My home was not necessarily wonderful. To assume that just because somebody is married they are more fit is not correct. To assume because somebody, a mom or a dad, is not married is less fit is not correct either. As a future grandparent, I want to be involved in my children's life. I would like to know that this is in place so that when I have grandchildren, these things do not happen, and I will have an avenue to be able to see my grandchildren. Fortunately, I am not old enough to have kids yet.

Monica Baker, Private Citizen, Sparks, Nevada:

I am in support of this bill. I obviously do not have grandchildren yet, but my mother, Lillie, does. I have been through the pain with her side-by-side for the last six years, missing my nephews, having them ask me if, when they are 18, can they please come see us so we can work things out. On another note, I have a 2-year-old daughter, I live with my parents and her grandparents are the biggest part of her life. She would not be able to be who she is without them. I think grandparents are a huge part of a child's life. That is where they get to know their background, where they are from, stories they can share. For a grandchild not to have that, in my opinion, is very sad.

Morgan Johansen, Private Citizen, Reno, Nevada:

I have some very close friends who were grandparents. Their daughter got into drugs and alcohol, and because of that reason she chose not to let her parents see her daughter anymore. That child was subsequently murdered. I think that grandparents should have a right to be in their grandchildren's lives, even if it is just for a visit, just to check in to see how the child is doing. This child had a relationship with her grandparents and the mother denied any further contact. It was a very sad story and I do not want to see anything else like that happen. I think this could help prevent that from happening.

Chairman Frierson:

Is there anyone else here to testify in support of A.B. 203?

Carmen Cantalupo, Private Citizen, Reno, Nevada:

As my wife stated earlier, we could not see our granddaughter because of the situation that happened. As a pastor, I had to report the incident when our granddaughter told us that she was being sexually molested. It is really tough for all the witnesses who come up to testify; it is hard on both sides. I am in support of this bill. Thank you for your time.

Assemblyman Hansen:

Pastor, in your role as a leader of your religious community, this bill deals with an interesting thing—that is, currently, an intact family is one where the parents are married. This is going to allow the potential for grandparents to have visitation, which currently is much more difficult to allow. In your experience as a pastor, have you found that intact families have substantially fewer problems as far as their children interacting with their grandparents? I would assume the answer is yes.

Carmen Cantalupo:

Yes, but there are families who feel slighted because they want to buy a home, and the parents will not give them money. So they cut the grandchildren off from the grandparents.

Assemblyman Hansen:

What I am getting at is do you think it is a reasonable assumption that even though the parents are still married, there could be a reasonable opportunity for a judge to get involved in a situation like this? Nobody is challenging the existing statute. I think they are challenging the idea that with an intact family, this should not be allowed. Even though the parents are married, is it reasonable to allow a judge to say a grandparent could have visitation rights?

Carmen Cantalupo:

Yes.

Assemblyman Carrillo:

Hypothetically, say someone becomes a parent and then realizes he had suppressed a molestation incident that had happened when he was a child, and now the memory comes back. According to this bill, this person who has children would have to say, "I remember what you did to me, but now I am going to let you have my child and potentially do the same to that child."

Carmen Cantalupo:

As a personal experience, when I was 10 years old, I was molested by one of my brothers. I would never, ever let anybody touch anyone's children, let alone my own or my grandchildren. That hits home. I do not feel that me being molested when I was little would force me to go out and try to put that on someone else because nobody ever wants to be in that situation.

Assemblyman Carrillo:

I can understand that. My concern is if somebody is put in that situation and they have no control over where their children go in regard to their grandparents. I am not saying that is a situation that is prevalent everywhere, but it is a concern, if that individual, that parent, has no control. A lot of this is never reported; it is suppressed. Then one day, it comes back and rears its ugly head.

Carmen Cantalupo:

I never reported my situation to my parents. I was afraid to. Each case is so different; each individual case here is very different. Things do happen. I am a grandparent who loves his grandchild, and would read *Dora the Explorer* or *The Very Bumpy Bus Ride* to her for five hours at a time. You get such an attachment to the child that when a parent says you cannot see the child for any reason, which is wrong. I should not have to go to court to see my grandchild because I spent so much time with her every day, bringing her up. I should be able to see that child. Because the parents say no, for no reason, is wrong, unless the grandparents are detrimental to the child, then I agree they should not see the child. You are abusing the child along with the grandparents for not letting them see each other. This is elder abuse.

Chairman Frierson:

I think the concern is if you have a grandparent who is inappropriate, and you do not have documented history of it, but you know that the grandparent is inappropriate, it puts the burden on the parent to establish that.

Carmen Cantalupo:

If the parent knows this, then the parent should report it and say why they are not letting the grandparents see the child. That is the right thing to do. I do not want to see a child abused in any way, shape, or form. When you hold a grandchild back from the grandparents because they did not give you money, or whatever reason, that is wrong. In the case of the child being subjected to harm, no, I do not want that.

Chairman Frierson:

I do not think that anyone would suggest that any grandparent would want that. Nobody would suggest that a grandparent would want a child to be put in harm's way. I think Mr. Carrillo's question was more, if it is something that happened 20 years ago, it pretty much is one person's word against another. Then you are asking the court to make a decision about something that was unreported for 20 years, and you run the risk of the court not knowing who to believe, so he allows visitation. I think that is the concern. We are all concerned about the best interest of the children, and we are concerned about how to navigate through that scenario to not risk the court making a decision based on something that was not reported. This is a very subjective issue.

Assemblyman Hansen:

For you, pastor, I assume it would be reasonable to reject a grandparent's visit if in fact there was a history of molestation that could be brought up in a case. It seems to me that the reasonable factor needs to be brought in here. Obviously, we have situations like that, and you have to have the gift of Solomon to be a family court judge. This simply gives grandparents another option, to where maybe they have one last sliver of hope that a court could give them to spend two hours every six months with their grandkid.

Herbert Randall, President, Nevada Silver Haired Legislative Forum, and Silver Senator with the Nevada Delegation of the National Silver Haired Congress:

As a quick refresher, I would like to say that the Nevada Silver Haired Legislative Forum was created by the Legislature in 1997. The purpose of the forum is to identify and make recommendations on issues of importance to aging persons. The forum submits a report containing recommendations for legislative action to the Legislative Commission and the Governor in each even-numbered year. In our summary report for 2008, one of the recommendations to the Legislative Commission and the Governor for consideration during the 75th Session of the Nevada Legislature was that the forum support grandparents' visitation rights in the best interest of the senior and the child.

I myself am a grandfather, or as Caitlyn calls me, Opa, and having had the job for 12 years, I can say, unequivocally, that it is the best, most enjoyable, and possibly the most important job I have ever had. It is absolutely unfathomable to me to think that I would not be allowed to see Caty. My wife, who is called Oma, and I have a wonderful relationship with Caty's parents, our son and daughter-in-law. Thus, I am very fortunate to be able to believe that it will not happen to me, but it does happen, as we know, and as we have definitely heard here today.

It happened to people that I know. They had to go to court to regain the right to visit with their grandchild. For most grandparents, this turns out to be an excruciating experience—not to mention expensive. In *Another Country*, Dr. Mary Pipher writes, "Most grandparents love their grandchildren totally for who they are and not what they do." She goes on to say, "We all need at least one person who is absolutely about us and thinks we are splendid." That is what grandparents do. So, please pass A.B. 203.

On behalf of all of the members of the Nevada Silver Haired Legislative Forum, as President, I would like to thank Assemblymen Livermore, Ellison, Hickey, and Hambrick for initiating A.B. 203, and the other sponsors as well. I would also like to express our appreciation for all of your efforts and ask for your continued support.

Chairman Frierson:

Are there any questions? I see none. Is there anyone else to speak in support of A.B. 203? [There was no one.] Is there anyone here to testify in opposition?

Kimberly Surratt, representing Nevada Justice Association:

I am a family law attorney in Reno where I have a practice with four attorneys who practice exclusively in this area of law. We, on behalf of the Nevada Justice Association, have a domestic committee made up of multiple domestic attorneys who reach out in many areas, especially to the entire family law section of the state bar and research any bills that come forward on domestic issues. We take a look at it in our practice. We do not really have a true position that we often take where it is staunchly for mother's rights, staunchly for father's rights, or for grandparent's rights. Children are the forefront.

In this case, fundamental constitutional rights are at the forefront. It is really a legal issue that we are looking at today. The Nevada Justice Association has opposed this bill in the past; you are already aware of that testimony that was provided in 2007 for Senate Bill No. 204 of the 74th Session. I can tell you that 2007 was not the only year this was brought up. This continues to be an issue that pops up its ugly head.

It is easy to give you a lot of sad stories. I could give you a million stories from a family law attorney's perspective. The curse on family law is that there is always another side to a story. There is always the parent's, the grandparent's, and the child's perspective. It is hard to come up with a be all, end all that works for everybody in these situations. *Troxel* is the leading case. The issue today is whether or not we can expand the rights for grandparents to come after intact families.

I can tell you that I think in the reading of *Troxel* and in the reading of the statute, and a very in-depth knowledge of the history of the statute, that the way it is written today was a compromise. It was a compromise to bring us as close to compliance with *Troxel* as we could be. *Troxel* does have an element of unfit parents. There is no such thing in our current statute. Our statute provides that if you are a non-intact family, grandparents can petition if they have been cut off from visitation.

There was an amendment proposed to add some additional language to the chapter regarding unreasonably restrictive visitation. I think that may be in violation of *Troxel*. If you read the history behind *Troxel*, the family involved was a non-intact family when they started out. During the middle of the case, the mother got married and her new husband adopted the children, which changed the course of the case.

We are not alone in this. We are one of many, many states that have decided to use the differentiation of intact versus non-intact. There is a difference in what I saw in the research and what the prior testimony was to this Committee. The prior testimony to this Committee was that 31 states allow you to petition and have standing on grandparent's visitation if it is an intact family. I showed it was 24 when I did my research. Without doing it state by state and pulling the actual statute, who knows which research is accurate. What it comes down to is *Troxel* said to the states, we are not going to analyze each state statute individually to determine at what point you violate someone's fundamental constitutional right to rear your children as you see fit. What they said is that it is a case-by-case basis. They did not want to make the analysis because they wanted to leave the flexibility up to the states to determine at what point you want to allow somebody to pierce that veil, to pierce that constitutional right. You can make some of those decisions on your own. There is a point where you are going to get in trouble for violating that constitutional right if you have allowed too much. We are not going to tell you that when you have cut off that right, or made it stricter, that is a problem because you are protecting that constitutional right.

Before *Troxel*, Nevada had already adopted this policy and distinction in our state of intact versus non-intact families; it was already in place. With the advent of *Troxel*, a lot of discussion came into play about the presumptions and about what is in the best interest of the child. All of that was done intentionally to bring us into compliance with *Troxel*. It is still questionable whether we are actually in compliance with *Troxel*; it just has not been appealed to our Supreme Court to know the answer to that. The most recent case that brought a similar issue on grandparents' rights up to the Nevada Supreme Court was *Rennels v. Rennels*, 127 Nev. Adv. Op. 49, 257 P.3d 396 (2011). It was on

a very different issue. The issue was really that of, once a court had made a determination that a grandparent gets visitation, what are the standards for modification of that visitation post that decision? It is not quite on point, but what that case does is reintroduce *Troxel*, restate that *Troxel* is the standard that we need to be complying with, and be stringent about making our determinations.

That is not to say, as a family law attorney, that I do not sympathize with all the grandparents that came up here. I hear these stories day in and day out. I can tell you though, with a majority of these stories, when they are not in compliance with the statute, it rarely has anything to do with the intact versus the non-intact. It really just had to do with a difference in opinions about how to raise the children. That is what we are protecting here. The parents get to make those decisions on how to raise their children. The differences that come up are with things such as homeschooling. The parents want to homeschool, the grandparents do not agree, or vice versa. Or corporal punishment. The parents have decided not to use corporal punishment; the grandparents disagree with that, or vice versa. You hear a lot of these intrinsic rights that are part of the fundamental right as a parent to make those decisions on behalf of your children. That is what grandparents are angry about, that is what they want to involve themselves in.

Unfortunately, a majority of the people who came up here in favor of this bill, I can issue-spot almost every one of them and tell you what the other remedy is within Nevada law, within other chapters, within the guardianship chapter, within the adoption chapter, or the termination of parental rights chapter. We have a lot of areas in law that already give preference to grandparents, whether it is within the third degree of consanguinity, or sometimes within the fifth degree of consanguinity, which means it goes well beyond grandparents and relatives.

This bill and the changes to it are not going to change deficiencies in CPS, deficiencies in how someone feels a judge handled their case, or deficiencies in what kind of legal counsel they did or did not get. Unfortunately, that is a lot of what you heard when you heard the very sad, gut-wrenching stories that came before you in support of this bill. The intact versus non-intact is not going to change that. It is not going to fix those problems. That is a whole other intrinsic area of our makeup of family law that probably does need to be worked on, in other bills, other chapters, or other areas of support. For example, the guardianship chapter is probably the most widely utilized chapter for these problems. Most of the grandparents that come to me for consultation easily fit within the guardianship chapter. They can file for guardianship with the court and ask for assistance. If their children are not fit and are not making the

decisions that are in the best interest of the children, truly, versus just a difference in opinion, the guardianship chapter is going to apply. We get guardianships for grandparents all the time; it has nothing to do with intact or non-intact families.

The provision within our statute, as it stands today, intact versus non-intact, acts as a major screen to many cases that would be filed that will never go anywhere and will cause a significant amount of financial hardship on these families. I know there are plenty of people in this building who do not like lawyers, do not like our hourly rate, do not like what we charge people, but it is not cheap to do these cases. It is extremely expensive. It will cause financial hardship, not just for the grandparents but for the parents. Imagine cases where there is already a divorce action going, perhaps the divorce has not started yet, but they are not getting along, and they are already consulting with lawyers. You are going to add on several other layers of custody actions, which are really visitation actions with the grandparents. Some of these families have four sets of grandparents because their parents divorced and remarried, and you can have four separate custody actions that you have to deal with. It is tremendous, and the way our statute is built today creates somewhat of an initial screening that prevents them from filing. Without that screening, it leaves the statute much more open to a violation of *Troxel*. If you take out the intact versus the non-intact, you have to figure out how to protect that fundamental right to be a parent and to rear your children the way you see fit under due process, under the Fourteenth Amendment. In order to do that, you have to take much more stringent positions about fit versus not fit, who pays attorney's fees, et cetera. I am here for you as a family law attorney to answer any questions about how the process may work.

Assemblyman Ohrenschall:

When an intact family decides to split up and there is a custody fight, is that something that is normally resolved quickly, or does it routinely drag on for months?

Kimberly Surratt:

It is the goal of our family law bar to attempt to make cases more efficient, through case management conferences, et cetera, because we know the longer it goes on, the harder it is on everybody. Typically, though, they are not efficient. It can be six months to a year, sometimes longer. Keep in mind, until those children turn 18, the court keeps jurisdiction over them. It can last the entire child's minority, with different petitions and modifications. We see them stretch out for a good amount of time. When you have an actual grandparent visitation case where they meet the statutory requirements and you are in court, the timing is not any less than a regular custody case. You still have to file the

motion, an opposition, a reply, go to hearing, collect evidence, and do mediation. You have to go through all the standard steps; it does not shorten anything just because it is grandparents versus parents.

Assemblyman Ohrenschall:

If A.B. 203 passes in its current form, and grandparents have a new avenue toward intact families, do you see parents and their children suddenly being tied up in the tentacles of the family court system, month after month, and having it disrupt normal life for the family?

Kimberly Surratt:

Absolutely. I think the *Rennels* case demonstrates exactly that. These modifications continue to be filed, it becomes an open door for them to fight over all of the decision-making and what they think is a decent amount of time for a phone call, or the right park to have the visitation in. It absolutely opens the door; it causes a great amount of litigation and cost to everybody. The court is going to see a massive influx of cases, which I greatly doubt many will qualify for grandparent visitation by making the change in this bill.

Assemblywoman Dondero Loop:

You referenced the amount of funds that it takes for one of these cases. I was wondering, is that due to the amount of hours and time you litigate, or is that due to the amount of attorney's fees in this kind of court case? Also, is there a way for parents or grandparents who cannot afford those kinds of fees to still have an avenue to get some help?

Kimberly Surratt:

If you are doing a custody motion, you have to put the same amount of work into it as you do a grandparent visitation motion. There is not any difference. The problem with family law is that a huge amount of the evidence that your clients come forward with is a lot of "he said, she said." If I could reference back to Assemblyman Carrillo's comment in the support part of the testimony about someone who has a latent memory of abuse and something that was not substantiated, but they need to put their best foot forward to prove that these grandparents should not have any visitation with this child. That is going to take some serious amount of work, evidentiary work, perhaps experts, or mental health professionals. Whatever it takes, because you are going to have a parent sitting in front of you who has a fundamental constitutional right to make a decision as to who their children see and visit, especially if they believe that person is an abuser, and now you have to prove it. You are put in a position where this evidence that is a latent memory and was never brought forth to the police, or maybe not documented, you have to find a way to prove

that it is not in the best interest of this child to be around those grandparents. That can be extremely expensive.

You ask if there are ways to do it in a less expensive way; yes, we have self-help centers and self-help forms. I cannot speak specifically to Clark County, but Washoe County has grandparent visitation forms. What I see in the grandparent arena, and because of the complex constitutional issues, many get denied because they were not properly filled out, and insufficient evidence was provided to the court to do anything. Although the opportunity is there to use the self-help forms, that is difficult to accomplish.

We have many agencies in our state, such as Washoe Legal Services and Nevada Legal Services. We have several other organizations that assist people who are low-income with either pro bono or reduced fee legal services in the family law arena specifically. Sometimes you can seek assistance there, but you must qualify. Your income has to be low enough. With litigation, many times people's income is at an amount where they do not qualify for pro bono. It is difficult to just suddenly come out tomorrow and have a \$10,000 retainer available for an attorney. Many times, that is what it takes—\$5,000 to \$10,000 retainers—to start an action like this. You are talking about parents who are going about their way doing what they have a fundamental constitutional right to do, making decisions for their own children; and now they are stuck in a position where they have to fight these cases. We have one small minor screen in place. We probably should have additional screens in place in order to come in compliance with *Troxel* to deal with a finding or clear and convincing evidence sufficient to say they are an unfit parent before you can bring that petition. That is not proposed today, we are talking about making it less in compliance with *Troxel* than actually bringing it forward.

Assemblyman Hansen:

I do agree that you need case-by-case flexibility. Right now, with a non-intact family, these laws apply. So what we are talking about is for the intact families. When I look at the statistics in Nevada on intact families, approximately half of the parents are not married, so by law they are not intact. Of the half who do marry, about half divorce. My parents were married for 36 years and divorced. What I can tell is we are broadening the current protections for grandparents to have visitation rights to intact families. I am trying to follow where granting them this visitation is unconstitutional. I do not see where the constitutional factor comes in. If it is constitutional to have these rights for a non-intact family, why is it suddenly a constitutional protection if you are married?

Kimberly Surratt:

Troxel says there is a fundamental right that as a parent you get to make these decisions, the end. However, we are going to allow a little bit of tiptoeing into that area, and we will allow states to create a little bit of grandparent visitation if they are very careful not to tromp on that right. I think Nevada statutes are too broad. I absolutely think that intact versus non-intact is not enough. I think we should take it further and make it even stricter. It is a small line between intact versus non-intact, and I think it is only a starting point in order to be in compliance with *Troxel*. Each state, under *Troxel*, has the ability to say how they are going to go about protecting that constitutional right, that fundamental right to make decisions for your own children without the interference of government. *Troxel* says to the states, you make the decision as to how strict you are going to make this. There is a point of no return where you have made it too broad and you have tromped on that constitutional right. If you narrow it too much, you will not get in trouble if you just say grandparents do not have the same constitutional right. There is not a constitutional right for the grandparents that we are trying to protect. Going from intact versus non-intact is a small leap, but it is one of the few screens we have in place in the statute that takes us that much closer to *Troxel* and being in compliance, mainly to protect that constitutional right. If you are going to protect that constitutional right, grandparents should not have the right to come in and utilize the visitation statute. They should have to use a guardianship chapter and show that the parents are not fit in order to get protection for those children.

Assemblyman Hansen:

We are all entitled to our opinion, and that is yours, but there is no constitutional law saying what we are doing here is unconstitutional.

Kimberly Surratt:

There is no law saying it is unconstitutional and there is no law that says the way we have it drafted with intact versus non-intact is not constitutional either.

Assemblyman Hansen:

Correct, so it is up to us in Legislature to be able to try to do these things, and then someone like you could challenge it later on. Currently, what I am getting at is, even under *Troxel*, this would qualify as something that we, as a Legislature, could bring forward to try to remedy. Your opinion may vary, but currently there is no constitutional law that says what we are doing here is clearly unconstitutional.

Assemblyman Duncan:

Are there any equal protection problems with grandparents who, under this statute, are granted rights to petition for non-intact versus this right that we are

trying to give to petition for intact families? Is there any distinction in law to talk about the different subsets of grandparents?

Kimberly Surratt:

There are some scholarly materials out there, law review articles, which have assessed the equal protection issue as it relates to grandparents' rights. In the states where they have had intact versus non-intact and assessing equal protection between the two, they go into the differentiation between the different fundamental rights that you are protecting. Familial status is not a protected class. It is not strict scrutiny in order to comply with that. To protect a fundamental right of a parent is strict scrutiny. The analysis comes into balancing the two of those issues. You have much higher standards, much higher requirements to protect the fundamental right of the parents than you do on a statutory, discriminatory basis on equal protection having to do with the status of familial, or intact versus non-intact. It is about 50/50 on how you read the different interpretations of that, whether it is an equal protection issue or not. In the times where they decided it was a violation of equal protection, those statutes have a much stronger, more stringent compliance with *Troxel* on the fit versus unfit and other screening mechanisms to prevent improper litigation, costs, and expenses associated with it.

Assemblyman Duncan:

In section 1, subsection 3, paragraph (a), where it states unreasonably restricted visit with the child, does that run afoul of *Troxel*? If there was an amendment that removed that portion, would that make us more in line with *Troxel*, or is it still your opinion that this bill is just running afoul of the fundamental right of parents?

Kimberly Surratt:

Troxel speaks directly to that issue as a potentially reasonable term for a state to enact in order to bring it closer to being in compliance so that the state is not tromping on that fundamental right. *Troxel* is very careful not to come in and say, here is the standard that all states must comply with. They pretty much leave the door open so there are many ways for a state to be in compliance and not violate that due process clause and violate that parent's constitutional rights. One of the examples they give is similar to either an absolute denial of visits versus an unreasonable restriction. The problem with unreasonable restriction from a family law attorney's perspective is what does that mean? What is unreasonable? We are back to a parent getting to decide what is reasonable versus unreasonable. For example, one phone call a month, does the parent get to decide if that is reasonable or not? Much of this has to do with what the grandparent's contact was before versus now. If before, when they were seeing the child, and without all of the issues, if they were only

receiving one phone call a month, then one phone call a month suddenly sounds reasonable because that is all they ever had. They never really developed a relationship with the child. If they were living with the child on a continual basis, and acting as a primary caretaker of that child and now they are only receiving one phone call a month, then you need to look at all the other factors: are they abusers or are they using drugs? What are the grandparents doing? I do not necessarily think that is a good idea to take out the denial of visitation because I think you are really leaping away from the protection of the constitutional rights.

Assemblyman Duncan:

In the circumstance where a grandparent may have been living with a child and had a relationship, under current law, they have the ability to petition the court, correct?

Kimberly Surratt:

Yes, Section 1, subsection 2 states, "If the child has resided with a person with whom the child has established a meaningful relationship, the district court in the county in which the child resides also may grant to that person a reasonable right to visit the child during the child's minority, regardless of whether the person is related to the child." That very typically has to do with stepparents who have lived with the child for years. It also has to do with domestic partnerships, or all of the other various family structures we see these days.

Assemblywoman Cohen:

Regarding the intact versus non-intact families, my understanding has always been that the reason why there is a difference in statute is because with any family you presume the visitation is going to go from grandparent to parent, so a parent has a child who has a child and they are going to have the visitation that way. If the family is not intact because someone is dead, or is out of the picture, or has no custodial rights, that is why you need to have the intact versus non-intact issues.

Kimberly Surratt:

Yes, I would agree. What happens when you have an intact family is you have two adults who are completely fit. Their family unit is operating in a normal regular daily routine, making decisions in unison for the child. As soon as there is a death, divorce, separation, or they were never married and they are not cohabitating anymore, that is when chaos arises. That often is when grandparents get ostracized. It is very unique to have an intact family with grandparents that are denied rights, and the grandparents do not have other issues. There are normally a lot of other demons and reasons they are denied.

The intact family rule makes it a very distinguished, easy method for a family law attorney to say this is when you have standing and this is when you do not.

Assemblywoman Cohen:

The difference is in the parents and grandparents, not in the children. We are not saying children of intact families are different than children of non-intact families.

Kimberly Surratt:

No, we are not distinguishing that the children are different. It is merely a standing issue of when you can petition and cause chaos and expense on a family.

Assemblyman Martin:

I find myself on the fence on this discussion between the rights of one party versus another, and using the law to legislate something like this. Is there a family mediation section of the family court that maybe this dispute can be worked out in another manner prior to going to a courtroom situation involving that kind of expense?

Kimberly Surratt:

Each district is different. In our rural counties, typically not. Washoe County has a mediation center that is available to petitioners within the court. There are a significant number of private mediators and groups that provide mediation services both in Washoe County and Las Vegas for that purpose. We have a statutory provision within custody cases that are mandatorily sent out to mediation. Mediation is always a great option, and in fact you see a lot of language in *Troxel* where the U. S. Supreme Court Justices talk about things such as what a great relationship they have with their kids and that really the true solution here is to mend ways with your children. There is always a better solution; therapy, mental health professionals, and mediation are much better routes. Those services are available to people in the community. Everyone has to come to the table; that is the leading force of mediation. I am a firm believer in alternative dispute resolution. I do a significant amount of it in my practice, but you have to have buy-in.

Assemblyman Ohrenschall:

In examples where a grandparent has gone to court for visitation with a non-intact family, has your experience been that it has led to mending the family relationship, or has it created more discord?

Kimberly Surratt:

No, it has not. I have never seen it work out well in the end. What it becomes is a very intense litigation battle. It becomes, oftentimes, supervised visitation. It does not become the happy, great relationship with the grandparents where there is normal visitation. In many cases there is other dysfunction going on.

Chairman Frierson:

Are there any other questions? I see none.

Kristin Colburn, Private Citizen, Carson City, Nevada:

I am a mother of two children and I am an advocate for parental rights. I am urging the state to preserve, respect, and defend the family unit. Grandparents should not have the power to supersede a fit parent's decision and passing this bill sets the stage to harm intact families, such as financial burdens, authority confusion for our children, and increased caseloads for our already overburdened district courts. I am asking you to please oppose this bill.

Justin Colburn, Private Citizen, Carson City, Nevada:

I am here to express my opposition to A.B. 203. First, the outcomes of this bill will infringe on the constitutional rights of fit parents. I have sent each of you my excerpts of *Troxel*.

Second, this bill will place a clear financial burden on fit families. Rest assured that fit parents will be petitioned via this bill and will have to make a financial decision around college tuition, extracurricular activities, and protecting their rights and protecting their children. This bill will also allow grandparents and great-grandparents to petition the court and financially burden fit families with immunity. On a personal note, we spend 20 percent of our income as fit parents who had not denied visitation to grandparents to protect our rights. Not every family in Nevada is in a position to do that.

Third is time. We live in a world today where seconds are milliseconds and days are minutes. As parents, we have to fight social media, technology, smartphones, and the Internet for our kids' attention. Now the State of Nevada is asking us to justify our decisions around where our time is spent. I do not think this is the place or the time. If anything has changed since 2007, that is it.

Finally, the complex modern family unit. More and more families are made up of second and third marriages, stepkids interacting with intact parents' kids. We have to deal with multilayer family units, grandparents, stepgrandparents, aunts, uncles and cousins. This is the reality. This, too, is what has changed

since 2007. The bill was not passed in 2007, nor shall it go in 2013, because going forward, it is only going to get more complex.

I would like to close by saying, generally speaking, grandparents' rights are a good idea. On this bill and on this issue, where you stand is clearly a position of where you sit. It is hard to imagine that any grandparent would support extending the ability of a third party to petition a fit family. To be petitioned as parents is pretty unimaginable to me. Please do not support this bill that has the potential to trample parents' fundamental rights to make decisions about their kids.

Barbara Dragon, representing Nevada Homeschool Network:

We have submitted a letter ([Exhibit H](#)); however, I want to say that I am here representing parents who choose to homeschool their children. We have a legal right to do so in Nevada. In fact, I just reviewed our homeschool freedom bill that was passed in 2007. In NRS 392.700, when parents submit a notification of intent to homeschool, they sign that they are taking full responsibility for the education of the child while they are homeschooled. That was asked of us at the time, because the State wanted to be assured that the parent understood that they were taking full responsibility. We felt that was a reasonable request, so we included that. How does that tie to today? What often happens to the homeschool family when two parents choose to homeschool, they are almost always married, and oftentimes grandparents object to the homeschooling out of fear.

I personally have homeschooled all three of my sons from kindergarten through twelfth grade. My oldest is a civil engineer, my second son is in law school, and my third son is an environmental engineer. When my oldest was in kindergarten, my mother came to me and said she objected to our intent to homeschool and was very upset. I love my mother dearly, but she did foster my five-year-old's concerns about not getting to go to real school. We asked her, "Please, would you give us two years to do this experiment?" She was a schoolteacher, so we said at the end of two years, if you do not see progress in our son, we will reconsider our decision. At the end of two years, my mother did not say anything. At the end of another two years, she came to me and said, "You have made a good decision for your child."

Of course we would never deny visitation with my mother, and she respected our wishes and only talked positively about the homeschooling experience with our son. I am always grateful. She passed away when my oldest son was 12, so she never got to see the success of all three of my sons. My father saw some of the college graduations before he passed away. They did come

to support homeschooling, but it took a long time because it was such a new concept in the '80s when we started this.

Nevada Homeschool Network strives to defend the rights of parents to decide how they educate their child. This law could actually hinder parents' decision process. Oftentimes, grandparents do not think parents are making the right decision and will go through other means to stop the homeschooling. This law would hinder homeschooling; therefore, we are opposed to A.B. 203. I would also like to note that we have tracked this bill back as far as 2001, with Senate Bill No. 25 of the 71st Session when the original bill was passed for intact and non-intact families. In 2001, Senator O'Connell had the intact family clause in the original bill; however, by the end of the process, the intact family portion of the bill was removed. I was unable to find testimony as to why that happened, I just noticed when you read the introduced bill, and all the amendments, the final version is where the intact family language was removed. In 2005, Assembly Bill No. 45 of the 73rd Session was another bill to allow visitations with regard to intact families. That was different language and it did not go anywhere. In 2007, Senate Bill No. 204 of the 74th Session had the exact same language as A.B. 203. Therefore, Nevada Homeschool Network, on behalf of our homeschooled families in Nevada, wishes you would vote no on A. B. 203.

Assemblyman Hansen:

I am a big advocate of homeschooling. Of my eight kids, six of them were homeschooled. Frankly, I do not see the connection here. Can you show a case where a judge has actually said, "You will grant grandparents visitation rights because you are a homeschooler?"

Barbara Dragon:

No, there have not been any cases, but you have to remember that, as a network, parents call us. In fact, four months ago I received an email from a great-grandparent living in Washington State whose granddaughter had two children by one person, was living in California, had two more children by another person who is now in jail. She came to Nevada and is living with an aunt and uncle and is homeschooling. This great-grandparent emailed me and asked what can you do to stop the homeschooling? We get questions all the time from grandparents and parents. Sometimes parents have denied visitation with the grandparent because the grandparent is so negative on the schooling choice that the parent has made. If this bill were to pass, those grandparents could seek the visitation that the homeschooled family has denied just because of the homeschooling situation.

Assemblyman Hansen:

I have a hard time seeing a judge saying, "Because you are a homeschooler, you are unreasonable in denying visitation to grandparents." I think we are dealing with apples and oranges here.

Janine Hansen, Private Citizen, Elko, Nevada:

It gives me great pain to be here because I feel with great compassion the pain of the grandparents who have spoken. I have 11 grandchildren and they are the light of my life and give meaning to all I do. However, I want to share an experience which happened under current law. My concern with this law is one of the things that Ms. Surratt said about the chaos and expense that this can cause. My daughter had a child out of wedlock. As a result of that, there were long custody battles. My little Willa is now seven years old. My daughter has been married for over five years. They have spent over \$50,000 for lawyers in a custody battle. Just this last week she told me that the grandmother, for the third time, has requested to go to court to get rights as a grandmother. Under the current law, she certainly has the right to do that. This is the third time. I know what my daughter's financial situation is. In fact, in January I had to send her money to pay for her phone and utilities. I know what her financial situation is and with the third challenge to have visitation by the grandparents, she was absolutely frantic when I talked to her. They are looking at their options, but the expense has been incredible. The background is interesting; the father is still unable to pass a drug test. He had worn out his year of supervised visitation with the county, and he has to pay someone for supervised visitation. The grandmother withdrew the original petition for visitation because her husband, the stepgrandfather had actually submitted false information to Child Protective Services, trying to prove that my daughter was an unfit parent. He submitted pictures from the Internet of children who had been abused that were not my granddaughter. My daughter and her husband were completely cleared on all of those allegations. The judge in the case did determine that the stepgrandfather would not be allowed to see the child because of filing false charges against them.

However, this is the third time that the grandmother has filed a petition to have access to the child. I have great sympathy for her and I have often encouraged my daughter to have compassion and sympathy for her knowing what I know myself. I have experienced times when I have been denied access to my grandchildren. Through prayer and patience, that has all been resolved. So I testify with great feelings on both parts, but this will do nothing but cause greater expense for families who cannot afford it, like my daughter who is now at the end of her rope with this. Once again she is going to have to spend more money.

Nevertheless, we can see this played out in court where parents who are struggling to feed and clothe their children will not be able to financially balance the resources of grandparents who are already in a position financially of much greater resources than young struggling families with regard to this. I encourage you to deal with this compassionately, but realize that we will have more and more cases, expenses, and chaos. I appreciated what Ms. Surratt said about how these lawsuits did not resolve the problems, and I can see how that can cause lifetime problems, which I have seen in my own family. In any case, I am very concerned about the incredible expense and the repeated times that they can challenge for custody and visitation.

Elissa Wahl, Private Citizen, Las Vegas, Nevada:

I am testifying today as a concerned citizen. I do not have any emotional stories to share with you. My concern is more of where our state is headed and where our nation is headed. I am a very strong supporter of parental rights. We have heard all the testimony and we all agree that *Troxel* shows that we have fundamental parental rights. If you pass this bill, it is not going to change any constitutionality about grandparents' rights. What it is going to change is our parental rights. I am not in support of this bill because of that. You have heard testimony already that currently we have a small window with the non-intact families to breach our parental rights. If you pass this, that will make a bigger window to trample on our parental rights. We are in a place where parental rights are not at the forefront of people's minds. We really need to strengthen families and get back to parental rights. With that, I am opposed to A.B. 203.

Chairman Frierson:

Are there any questions? I see none. Is there anyone else here to testify in opposition to A.B. 203? I see no one. Is there anyone wishing to testify in the neutral position? I see no one. I will invite Mr. Livermore back up for closing remarks.

Assemblyman Livermore:

I would like to thank the Committee for enduring this period of time. I would like to state that my wife and I have been married for 52 years. I have had a wonderful life. I have had a wonderful experience with my four grandchildren and they are worth every dollar I have in the bank, and I would give them the breath of life and the breadth of my experience, whatever it takes. You have heard today how Nevada families are trying to find solutions. One thing is for sure, we will always have our share of lawyers and our share of opinions. I thank you for hearing this bill and hopefully, through your deliberation, you will see fit to adopt Assembly Bill 203.

Chairman Frierson:

I will now close the hearing on A.B. 203 and open up public comment. Is there anyone here who would like to provide public comment? I see no one. I will now adjourn today's meeting [at 10:36 a.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 15, 2013

Time of Meeting: 8:04 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 7	C	Dr. Bo Bernhard	Prepared Testimony
A.B. 7	D	Yvanna Cancela	Proposed Amendment
A.B. 7	E	Lucas Foletta	Gaming Policy Committee Final Summary and Recommendations
A.B. 203	F	Daniel K. O'Brien	Troxel v. Granville
A.B. 203	G	Daniel K. O'Brien	Prepared Testimony
A.B. 203	H	Barbara Dragon	Letter of Support