MEMO IN OPPOSITION TO AMENDMENT TO NYS'S GRANDPARFENT VISITATION STATUTE S.5252/A.1544

S.5252/A.1544 is strongly opposed by the NYS KinCare Coalition. The bill is regressive and antagonistic to the best interests of children and families. It is in conflict with the standards suggested by the United States Supreme Court in Justice O'Connor's seminal opinion in *Troxel v. Granville,* by attempting to reinstate a standard of review rejected by the U. S. Supreme Court and by the New York State Court of Appeals.

Not only does this bill attempt to create an undue burden on petitioning grandparents by invoking the "harm" standard, it piles on other onerous penalizing requirements that would cause grandparents who are of modest or low income not to seek to obtain visitation.

Examples of instances when this onerous bill would preclude actionable petitions include:

- When a grandparent has cared for a child for an extended period of time and then a parent reassumes care;
- When a grandparent's child dies, and the surviving parent seeks to exclude the grandparent from a child's life;
- When a grandparent's child has suffered domestic violence and is no longer able or present to care for a child and the domestic violence perpetrator seeks to exclude the victim's family from continuing contact;
- When a grandparent has a long standing relationship with a grandchildren but lacks the monetary resources to risk liability for the parent's attorney fees.

In particular, the current Domestic Relations Law section 72(1) reflects the long standing view of New York's courts and legislature that the bond between grandparents and children should be preserves so long as the law as applied does not constitutionally infringe on the rights of parents to make decisions for their children.

The law has been affirmed by the NYS Court of Appeals in *E.S. v. P.D.,* 8 N.Y.3d 150, where the Court expressly affirmed that it conformed to the constitutional standards asserted in *Troxel v. Granville*, 530 U.S. 57 (2000).

Troxel's plurality decision rejected the necessity of finding substantial harm to the child and instead posited that so long as some "special weight" was applied in consideration of the parent or parents' liberty interest, grandparent visitation statutes are constitutionally valid.

The bill requires that a "child would experience significant harm to his or her health, safety, or welfare if visitation were denied." While it is obvious that in such instances, visitation is warranted, the elimination of the requirement for visitation if a parent is deceased or "where equity would see fit to intervene" eliminates many circumstances when it is in the best interests of children to continue contact with grandparents and ties the hands of courts by reducing their opportunity to consider the best interests of children.

The current statute exists to permit visitation for grandparents and grandchildren when a parent is acrimoniously excluding that relationship. Invoking the harm standard will support those parents whose purposes are not the best interests of their children but the exclusion of family.

Since the statue requires a preliminary finding related to standing, and then a best interests analysis, where the parent's decisions are presumed to be in the a child's best interest, the current law, as applied, provides sufficient protections for parents while protecting children from loss of family caused by parental discord.

The additional circumstantial requirements for investigations that are stated in the bill are spurious. Current case law already indicates that courts must ascertain the fitness of a grandparent and the health of their relationship with a grandchild.

Case law has established that Courts have interpreted "equity would see fit to intervene" to mean when grandparents have previously had a relationship with their grandchildren or have been prevented by the parents from having such a relationship. The court may look at many factors, including: (1) the strength of the family and the nature and bias of the parents' objection to visitation, (2) the nature and extent of the grandparent grandchild relationship, (3) whether the grandparents have a "sufficient existing relationship" with the child (or have at least made a sufficient effort to establish one). These requirements are sufficient and should not be replaced by the a list that already considered in the current requirements as set forth in the Court of Appeals decision, *Emanuel S. v. Joseph V.,* 78 N.Y.2d 178 (1991).d

For these reasons, this bill should be rejected.

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