The Troxel v. Granville Method
to Restore Equal Parental Rights to Non-Custodial Parents

By Bob Lewis

I. INTRODUCTION:

For those of you who know me, my primary and preferred method of parental and family rights advocacy is lawfare. That is, litigating lawsuits, specifically family law related, for the express purpose of changing the law and the culture. This is a method learned from being a leftist and they have been very successful over the last 80 years, especially in the realm of civil rights law.

While I appreciate that Federal Courts are highly politicized, I also understand that lobbying political figures, politicians as well as influencer pundits, is a long, arduous, and costly process that often provides diminishing returns. That is not to say that lobbying is ineffective, it can be very effective in limited circumstances. Today, states are passing equal-shared parenting laws. However, in states that have equal parenting laws, at present, we have no clue how often they're used or how effective they are. While there may be studies on this, I haven't seen or heard of them.

That said, the method included in this memo is very much an "in your face" attack that falls outside the scope of what many milquetoast conservatives may consider polite. However, as long as children's lives are being destroyed by the Family Courts' discrimination against their Fathers, in my view, it's not only entirely justified...but it's well within the four corners of the law.

II. THEORY:

The Troxel Case was decided in 2000 in the United States Supreme Court. The *Troxel* Court held that The Fourteenth Amendment's Due Process Clause has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests," (*citing* ***Washington v. Glucksberg***, 521 U.S. 702, 720, 138 L. Ed. 2d 772, 117 S. Ct. 2258) including parents' fundamental right to make decisions concerning the care, custody, and control of their children, (*citing* ***Stanley v. Illinois***, 405 U.S. 645, 651. Pp. 5-8, 31 L. Ed. 2d 551, 92 S. Ct. 1208.) *See* ***Troxel v. Granville***, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49, 2000 U.S. LEXIS 3767, 68 U.S.L.W. 4458, 2000 Cal. Daily Op. Service 4345, 2000 Daily Journal DAR 5831, 2000 Colo. J. C.A.R. 3199, 13 Fla. L. Weekly Fed. S 365

Further, the *Troxel* Court also stated that without a finding that the parent in question was unfit, there's a traditional presumption that fit parents act in the best interests of their children. Justice Clarence

Thomas, in his concurrence, stated the appropriate standard of review for the alleged infringement of fundamental constitutional rights was strict scrutiny, and the state lacked a legitimate interest in second-guessing a fit parent's decision regarding visitation with third parties.

The "Best Interests" Standard is Not Sufficient to Determine Sole Custody:

As most people involved in Family Court know, the vast majority of sole-custody court orders are made using the "Best Interests of the Child" standard without a finding that the non-custodial parent is unfit. In my view, the "best interests standard" or orders entered based on "preponderance of the evidence" are insufficient to determine sole custody. This is because under *Troxel*, fit parents have an unfettered 14th Amendment right to custody and control of their children free from government interference. To that point, in order to award sole custody, a Family Court is required, by definition, to deprive the other parent of custody...and the vast majority of the time, the Court does so without a finding the deprived parent is unfit.

Since these arguments can be applied to dissolution and paternity cases, any initial litigation will be a case of first impressions, which gives the litigants access the keys to the US Supreme Court for certiorari.

Now let's discuss findings of parental unfitness: In order for a Family Court to determine a parent is unfit, the Court should be required apply the "endangerment" standard and the standard of proof should be "clear and convincing" evidence, similar to what is often required around the country in Dependency/Neglect/Parental Rights termination proceedings. This is because the non-custodial parent cannot lawfully make legal, educational, medical, or religious decisions for their biological child. Further, the non-custodial parent cannot even act as next friend to sue on behalf of the child. This is because an award of sole custody in a paternity or dissolution proceeding is the functional equivalent of an open-adoption with visitation provisions and a child support order.

III. THE SOLUTION:

The solution here is pretty simple. It has a few necessary prerequisites.

Step One: Locate a Specific Type of Non-Custodial Parent

1. Locate a parent who doesn't have custody of their child based on the other parent being awarded sole custody.

2. The sole custody order cannot not have found the non-custodial parent unfit. This means no finding of Domestic Violence in either civil or criminal court. It also means the non-custodial parent cannot have a history of CPS involvement in a dependency/neglect/parental-rights termination proceeding. Obviously, a violent criminal history is also a non-starter.

3. The state the parent resides in must have sole custody codified in their statutes.

Once your parent has met these requirements, now you can move on to step two:

Step Two: File Your Complaint in Federal Court

Specifically, you're filing a federal complaint for declaratory judgment to declare that the sole-custody laws in the parent's state are unconstitutional "as applied" to your parent, due to the fact that the Court deprived him/her of custody in either a dissolution or paternity case without first finding your parent is unfit.

Further, at the same time you file the complaint, you also request a preliminary injunction, a permanent injunction, and a request for class action status.

Your class is defined as follows:

> Similarly situated individuals who have been determined to be non-custodial parents through a family law order, in a dissolution or paternity proceeding, awarding sole custody to the other parent without first finding the your parent unfit.

Your Preliminary Injunction specifically requests the Federal Court bars enforcement of any statute that awards sole custody to a parent without first finding the other parent unfit. Obviously, you want to cite the statute appropriate for your state.

Step Three: Prepare for the Appeal

When you file this, the response, to limit the description to professional terminology, is that the State in question will lose their shit. This means your pleadings will need to be tight and need to be pled with specificity. This means no "Notice Pleading." All pleadings need to in detail and plead all necessary elements for an "as applied" constitutional challenge.

This also means you need to be prepared for the feminist bigot hate machine and their power-cucked male allies to come out of the woodwork with amicus curiae briefs. (Those aren't insults or ad hom attacks, they're objective descriptions, just in case you were concerned.)

IV. THINGS TO CONSIDER:

1. Your goal is to protect the case at the trial court level primarily by preserving your client's defenses so they can be used on appeal and to eventually make it to the US Supreme Court if necessary. This means challenging the bench if they interrupt you or chastise you while you're making oral arguments. It also means being prepared for opposing counsel to make frivolous objections and condescending remarks in an effort to negatively impact your focus. Do not respond in kind and when its the Court that interrupts you...politely, but firmly, request the Court give you permission to finish litigating your position uninterrupted. This will let the Court know you understand their game. Their goal is to prevent you from making the record. If they're successful, then you won't be preserving your defenses, which will be fatal to your appeal.

2. Any attorney who claims to be a Father's/Men's/Family Rights advocate should do this case pro bono. This sort of case will not involve a trial and will likely be resolved at the Federal District trial court level at a motion hearing. It will not be labor or cost intensive. Even the appeal briefing will be somewhat short. I used a pro bono attorney when I sued Google. The entire suit from the original complaint to the Certiorari to the United States Supreme Court only cost approximately $10,000.00 and most of that was filing fees, the formatting of the petition to the Supreme Court and service of process.

3. Expect a F.R.C.P. 12(b) Motion to Dismiss...trust me...it's coming. This is as common in Federal cases as mom and apple pie. In this sort of case, the likely basis will be a challenge to your parent's standing, which is why the above prerequisites are important.

4. Your arguments are going to be brief...but expect any amicus brief to be very long and verbose...their goal is to overwhelm you in paper hoping you miss an argument. Call out any arguments that are non-responsive to your briefing as irrelevant or non-responsive. Most states have evidentiary rules regarding irrelevant evidence and argument. Use them to dismiss such idiocy. Skim and focus on evidentiary and procedural objections you can use to easily dispose of their arguments. Also, don't be intimidated if you get papered with amicus briefs. They will likely be filed by family law attorneys. Family attorney litigation skills, generally speaking, are often on par with the local homeless junkie in a city near you. As an attorney I used to work with always said, "you can teach a heroin-addicted monkey family law." If you're an attorney whose practiced in family court, you already likely know this to be true.

V. CONCLUSION:

I have a client, I have an attorney, and I'm in the process of writing the case with the attorney. It will be filed in Colorado, likely in September 2022, because we are required to provide the state 90 days notice for a constitutional challenge.

If you have a parent that fits the description above, but don't have an attorney, that parent may be able to join this case as a plaintiff and include your state as part of the jurisdictional ruling. However, you will need to provide the appropriate sole-custody statutes for your state, so the Colorado Federal Complaint can include them.

Also, if you know an attorney who wants to participate, let me know. However, there's no room for narcissists who envision themselves lead counsel. So pass on inviting any attorney whose ego exceeds their litigation skills.

If we get enough plaintiffs from different states, then we can request the preliminary and permanent injunctions as well as the class action status to be nationwide. If this happens and we eventually win, it will be the end of an era and a huge victory for equal-shared parenting across the nation.