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VIA ELECTRONIC MAIL (riley.keaton@wvhouse.gov)

January 20, 2022

The Honorable Riley Keaton
Assistant Majority Whip
West Virginia House of Delegates
Room 219E, Building 1
State Capitol Complex
Charleston, WV 25305

RE: Opposition to H.B 3099, regarding Grand Parent Visitation

Dear Delegate Keaton:

On behalf of our thousands of supporters in West Virginia, we write to you today to express our strong opposition to your bill, H.B. 3099 for the following reasons.

1. H.B. 3099 proposes to change West Virginia law in a manner that unconstitutionally interferes with the fundamental right of loving parents to direct the education, upbringing, nurture, and care of their minor children. This right has long been protected by the U.S. Supreme Court[1] and by the West Virginia Supreme Court of Appeals.[2]

[1] *See, e.g., Meyer v. Nebraska,* 262 U.S. 390, 399, 401 (1923) (the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own."); *Pierce v. Society of Sisters,* 268 U.S. 510, 534-535, (1925) (the " "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control. ... "the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."); *Prince v. Massachusetts,* 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."); *Wisconsin v. Yoder,* 406 U.S. 205, 232, (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."); *Parham v. J. R.,* 442 U.S. 584, 602, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course.").

[2] *See, e.g., In re Simmons Children, 177 S.E.2d 19, 24 (W.Va. 1970); In re Willis,* 207 S.E.2d 129, 136-137 (W.Va. 1973); *In re J.S.,* 758 S.E.2d 747, 754 (W.Va. 2014).

2. H.B. 3099 is directly contrary to the U.S. Supreme Court's decision in *Troxel v. Granville,* 530 U.S. 57 (2000), a case that dealt with grandparents using a Washington state law similar to proposed H.B. 3099 to seek visitation of their two granddaughters over the parent's wishes. In that case, the U.S. Supreme Court struck down Washington's nonparent visitation law as unconstitutional. Washington's law that was at issue in *Troxel* was extraordinarily similar to proposed H.B. 3099. As the U.S. Supreme Court stated:

> "The Washington nonparental visitation statute is breathtakingly broad. According to the statute's text, "*any person* may petition the court for visitation rights *at any time*," and the court may grant such visitation rights whenever "visitation may serve *the best interest of the child*." § 26.10.160(3) (emphases added). That language effectively permits any third party seeking visitation to subject any decision by a parent concerning visitation of the parent's children to state-court review. Once the visitation petition has been filed in court and the matter is placed before a judge, a parent's decision that visitation would not be in the child's best interest is accorded no deference. Section 26.10.160(3) contains no requirement that a court accord the parent's decision any presumption of validity or any weight whatsoever. Instead, the Washington statute places the best-interest determination solely in the hands of the judge. Should the judge disagree with the parent's estimation of the child's best interests, the judge's view necessarily prevails. Thus, in practical effect, in the State of Washington a court can disregard and overturn any decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition, based solely on the judge's determination of the child's best interests."[3]

The U.S. Supreme Court went on to strike down Washington's law as unconstitutional:

> "As we have explained, the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a "better" decision could be made. Neither the Washington nonparental visitation statute generally -- which places no limits on

[3] *Troxel,* at 67.

> either the persons who may petition for visitation or the circumstances in which such a petition may be granted -- nor the Superior Court in this specific case required anything more. Accordingly, we hold that § 26.10.160(3), as applied in this case, is unconstitutional."[4]

Were H.B. 3099 to be passed into law – and we will do all we can to ensure that does not happen – there is no question that it would be immediately struck down by the courts as an unconstitutional violation of the fundamental right of parents.

Thank you for your consideration of this letter. We respectfully urge you to withdraw H.B. 3099 from consideration. H.B. 3099 is unnecessary, as West Virginia law already establishes a process for grandparents to use in order to seek visitation of their grandchildren. And this process as established in current law does not violate the fundamental right of parents.

Please do not hesitate to reach out to me for any reason. I can be reached via phone at 540-751-1200, or via email at will@parentalrights.org.

Very truly yours,

William A. Estrada
President
ParentalRights.org

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[4] *Id.,* at 72-73.