



Committee: Committee on Human Services
Hearing Date/Time: Monday, March 8, 2010, 9:00 a.m.
Place: Room 329
Re: Testimony of the ACLU of Hawaii to Offer Comments on S.B. 2368,
Relating to Child Visitation

Dear Chair Mizuno and Members of the Committee on Human Services:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes to offer comments to S.B. 2368, relating to child visitation.

In 2007, the Hawaii Supreme Court struck down H.R.S. § 571-46.3, establishing grandparents visitation rights, and noted that legislative action was necessary to correct the statute’s unconstitutional provisions. *Doe v. Doe*, 116 Hawaii 323, 336 (2007). S.B. 2368 appears to be the Legislature’s attempt to address the issues raised by the court in that case. The ACLU of Hawaii acted as co-counsel in that case and, given our expertise with this issue, we hope this Committee will act upon our comments through amendment to S.B. 2368.

S.B. 2368 and its predecessor in law, H.R.S. § 571-46.3, were undoubtedly prompted by laudable goals. Indeed, innumerable children enjoy loving and beneficial relationships with grandparents (as well as other family members) who certainly contribute to the reservoir of nurturing and beneficial experiences, and unconditional love, that establish a sense of familial intimacy. The ACLU of Hawaii does not wish to detract from those relationships. But the question presented by this statute is whether, and under what standards, the state can override a parent’s determination regarding visitation by a grandparent. The lack of standards contained in S.B. 2368 may subject the bill to constitutional scrutiny for failure to include the necessary deference to a fit parent’s decision that is required to comport with that parent’s constitutional rights. *See Doe*, 334-336; *Troxel v. Granville*, 530 U.S. 57, 67 (2000).

We would suggest that S.B. 2368 be amended to articulate the following standards:

- 1) Clear and convincing evidence that denial of reasonable visitation rights would cause significant harm to the child;¹

¹ To be clear, the ACLU of Hawaii does not contend that all child-rearing decisions by fit parents are immune from all judicial inquiry. But for the State to establish a compelling interest sufficient to override parental discretion, the ACLU of Hawaii believes that, with respect to a request for visitation by a grandparent, a showing of significant

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- 2) What age the child must be in order for a grandparent to petition for visitation (age 1, e.g.);
- 3) Enumeration of factors:
 - the preference of the child, if the court finds the child is to be of sufficient maturity to make this decision
 - the mental and physical health of the child
 - the mental and physical health of the grandparent, great-grandparent or sibling
 - the length of the prior relationship between the child and the grandparent, great-grandparent, or sibling
 - the good faith of the party in filing the petition
 - the good faith of the person denying the visitation
 - the quantity of the visitation time requested and the potential for adverse impact the visitation would have on the child's customary activities
 - whether the child resided with the petitioner for at least six consecutive months with or without the current custodian present
 - whether the petitioner had frequent or regular contact or visitation with the child for at least twelve consecutive months
 - any other fact that establishes that the loss of relationship between the person bringing the action and the child is likely to harm the child's mental, physical, or emotional health, and
 - whether the grandparent, great-grandparent, or sibling was a primary caretaker of the child for a period no less than six consecutive months.²

These amendments would ensure that all parties' rights are maintained. While the fundamental rights of parents are the ACLU of Hawaii's immediate concern, we would also suggest that the Legislature consider extending familial rights to all Hawaii's families, particularly those lesbian

"harm" to the child must be made. Although the plurality in *Troxel* found it unnecessary to determine whether a finding of "harm" was required before a fit parent's decision regarding visitations can be overridden. 530 U.S. at 73. Requiring a finding of harm, however, would be completely consistent with the notion of special deference to the fit parent's decision. Furthermore, a finding that harm exists should be proved by the enhanced "clear and convincing evidence" standard that applies when individual constitutional interests are at stake. See e.g., *Santosky v. Kramer*, 455 U.S. 745 (1982) (requiring clear and convincing evidence of neglect to terminate parental rights); *V.C. v. M.J.B.*, 163 N.J. 200 (2000) (requiring clear and convincing evidence of harm to deny psychological parent visitation).

² The foregoing factors are taken from the Illinois statute on grandparent visitation and are included for guidance only. 750 ILCS 5/607.

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and gay parents and hanai families who are unable to exercise the same rights and responsibilities as those given to their "married" counterparts.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

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From: Raelene [raetenno@gmail.com]
Sent: Sunday, March 07, 2010 9:26 PM
To: HUSTestimony
Subject: testimony for SB2368

To Representative John Mizuno and members of the COMMITTEE ON HUMAN SERVICES

We at Parents for Righteousness, a Faith based organization, that has been recognized by the Senate, in dealing with issues surrounding DHS/CPS we strongly support SB2368 relating to visitation by grandparents.

I personally am labeled a disgruntled grandparent by DHS/CPS and do you know why? My husband and I were refused visitation to our grandchildren simply because we had no rights under the current law. The mother had given approval for visits. Being able to see our grandchildren would have helped the children at a time of desperate need to be connected to a familiar voice and face. We were also refused visitation as we did not call the Social Worker daily to inquire about the children. Having run a business my entire adult life, I find it mysterious as to why a Social Worker would want their days tied the phone or voice mail clogged with inquiries. They should be spending their time tending to the intricacies of why the children have been placed into their care.

I am not the only one in our organization that has been denied our rights as a grandparent. Some of our members were the primary caregivers for their grandchildren and it has been an incredible uphill battle to go thru all the red tape to see the children. I also add at this point that none of us were the perpetrators.

Again we, Parents for Righteousness support SB2368.

Thank you Representative Mizuno and members of the committee for your time in allowing me to testify today.

Raelene Tenno
Parents for Righteousnes

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