

KLEINTOP, LURIA & MEDEIROS

A LIMITED LIABILITY LAW PARTNERSHIP

CHARLES T. KLEINTOP
TIMOTHY LURIA
DYAN M. MEDEIROS

DAVIES PACIFIC CENTER, SUITE 480
841 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE:
(808) 524-5183

FAX:
(808) 528-0261

NAOKO C. MIYAMOTO
CATHY Y. MIZUMOTO

EMAIL:
D.Medeiros@hifamlaw.com

TO: Representative Mele Carroll, Chair
Representative Bertrand Kobayashi, Vice-Chair
House Committee on Human Services

FROM: Dyan M. Medeiros
E-Mail: d.medeiros@hifamlaw.com
Phone: 524-5183

HEARING DATE: February 6, 2014 at 9:30 a.m.

RE: Testimony in Opposition to HB 1786 Relating to Child Visitation
(Grandparents' Visitation)

Good morning Representative Carroll, Representative Kobayashi, and members of the Committee. My name is Dyan Medeiros. I am a partner at Kleintop, Luria & Medeiros, LLP and have concentrated my practice solely in the area of Family Law for more than fifteen (15) years. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I am here today to testify against HB1786.

I oppose HB1786 related to grandparents' visitation rights.

I would like to state that on a personal level, I recognize the important contribution that grandparents can make in the raising of their grandchildren. After my mother passed away (when I was barely 2 years old), I was raised by a single father. His parents took my sister and I to school, picked us up from school, and helped with other child care. We were very close to our paternal grandparents and the influence they had on our lives was invaluable.

That being said, my father also felt it was important that I spend significant time with my maternal relatives. As a result, I visited them regularly until my early teens when I refused to visit with them due to their criticism and badmouthing of my father, something he never really knew about because as a child I couldn't explain it to him.

My point is that not all grandparents are the same and "someone" other than a Court should have the final say about who children ultimately spend time with. That "someone" should be a child's parent.

Both as a Family Law attorney and as an adult who has personally experienced the good and the bad of grandparent visitation, I simply cannot support this bill. It is an open invitation for increased litigation, something that is not usually in a child's best interest. It also has the potential to overburden the Family Court as potentially each of four (4) grandparents will now have the ability to initiate family court litigation for visitation.

Custody cases between parents are always highly emotional and often contentious. This bill would allow grandparents to become personally involved in an already contentious matter and simply put, make things worse. Although grandparents usually align themselves with their own children (i.e. "their" parent) in a custody battle, this isn't always the case. Even if it is, such involvement can polarize an already difficult situation. From a public policy perspective, this legislation seems to be encouraging or promoting the destruction of families rather than strengthening families.

While HB1786 purports to address the repercussions of *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000), it is potentially opening the floodgates to additional, unnecessary litigation. A parent's right to the care, custody and control of his or her child has been found to be a fundamental right under the Fourteenth Amendment.

This bill acknowledges that there is a "rebuttable presumption that the parent's decision regarding visitation is in the best interests of the child". However, the bill goes on to state that the presumption may be rebutted by only a "preponderance of the evidence that denial of reasonable visitation rights would cause significant harm to the child." If the Family Court awarded visitation to a grandparent over a parent's objection, it would be essentially overruling a parent's fundamental right to raise his or her children. Given the fundamental right at stake, I believe a "clear and convincing evidence" burden of proof is more appropriate.

The preamble of the bill argues that since the orders are "temporary" and subject to modification, a preponderance of the evidence standard is appropriate. Unfortunately, visitation orders are not as easily modified as the preamble seems to believe. Although all child-related orders are always subject to modification, that doesn't make them "temporary" orders. In fact, at the conclusion of custody or visitation cases, the Court issues "final orders" that can be modified in the future upon a showing that there has been a material change in circumstances and that a modification of the current order is in the best interests of the child. This is not a standard that is easy to meet.

Further, "significant harm to the child" is not defined in this bill. Instead, thirteen (13) factors are listed that the Court may consider. Although some of the factors appear to be similar to factors the Court considers in determining what is in a child's best interest, some are not. In fact, some factors seem to ignore what is in a child's best interest.

For example, Factor #6 is a financial factor that shouldn't matter when awarding visitation. If a grandparent has paid for child care but otherwise had little contact with a child, should that grandparent be awarded visitation over a parent's objection?

In addition, Factor #10 ignores the reality that a parent and grandparent can have an issue with each other that won't affect a grandparent's ability to "safely" care for a child but does impact the child. For example, grandparents badmouthing the other parent in front of children.

Moreover, this bill doesn't limit the ability to file a petition for visitation to grandparents who have no contact with their grandchildren. In other words, under this bill, a parent or parents could actually allow contact with grandparents but if the grandparents wanted more time with their grandchildren, they could file a petition for more visitation.

Lastly and most importantly, this bill is unnecessary as the Court can already allow third parties (including grandparents) to visit with children under Hawaii Revised Statutes Section 571-46(7):

"Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child"

Thank you.

TO: Representative Mele Carroll, Chair
Representative Bertrand Kobayashi, Vice-Chair
House Committee on Human Services

FROM: Jessi L.K. Hall
E-Mail: jhall@coatesandfrey.com
Phone: 524-4854

HEARING DATE: February 6, 2014 at 9:30 a.m.

RE: Testimony in Opposition to HB1786

Good day Representative Carroll, Representative Kobayashi, and members of the Committee. My name is Jessi Hall. I am an attorney who practices Family Law. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I am here today to testify against HB1786.

In general I recognize how close of a bond children have with grandparents and what an important relationship that is for children. But, as a parent I would not want anyone telling me who will see my children and when. That is something that is my right as a parent to decide.

Also as a Family law attorney, I cannot support this bill as it is an open invitation for increased litigation, tearing families apart, and further clogging the Family Court system as each grandparent will have the opportunity to now be a party to Family Court proceedings.

Custody cases are already highly contentious between parents, and often times, the litigation may be funded or emotionally fueled by extended family members. This Bill would allow grandparents to personally become involved in an already contentious matter and as such, grandparents would be directly at odds with their own children in litigation involving a grandchild. From a public policy perspective, this legislation seems to encourage or promote the destruction of families not strengthening of families.

More importantly, the Bill may be unconstitutional in light of *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000). The Fourteenth Amendment provides that no State shall deprive any person of life, liberty, or property, without due process of law. A parent's right as to the care, custody and control of a child is a fundamental right.

Here, this Bill states that there is a "rebuttable presumption that the parent's decision regarding visitation is in the best interests of the child". The presumption may be rebutted by a "preponderance of the evidence that the denial of reasonable visitation rights would cause ***significant harm to the child.***"

Significant harm to the child is not defined at all in the Bill; instead there are factors that the Court should consider in making its determination that "significant harm" may exist. Some of the factors appear to be similar to factors the Court considers in determining what is in a

child's best interest, but some are not. In determining visitation for parents, the court relies on the best interest of the child standard. There is no mention of that in the Bill and as such it appears grandparents have a different, possibly easier, standard.

Lastly, and most importantly, this bill is unnecessary as the Court is already afforded the opportunity to allow third parties to request visitation with children in Hawaii Revised Statutes Section 571-46(7):

“Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child”

Thank you for the opportunity to testify in opposition to HB1786.