

**SENATOR JEFF WENTWORTH**

SENATE DISTRICT 25

AUSTIN

Capitol Building, Room 1E.9  
P. O. Box 12068  
Austin, Texas 78711  
(512) 463-0125  
Toll-Free (888) 824-6984  
FAX (512) 463-7794  
Dial 711 for Relay Calls

INTERNET E-MAIL

jeff.wentworth@senate.state.tx.us

SAN ANTONIO

1250 N. E. Loop 410, Suite 720  
San Antonio, Texas 78209  
(210) 826-7800  
FAX (210) 826-0571



**The Senate of  
The State of Texas**

April 27, 2004

COMMITTEES

Jurisprudence, Chairman  
Government Organization, Vice Chairman  
Administration  
Infrastructure Development and Security  
Intergovernmental Relations

COUNTIES IN  
SENATE DISTRICT 25

Bexar (north) Hays  
Comal Kendall  
Guadalupe Travis (south)

RECEIVED

APR 29 2004

OPINION COMMITTEE

**RQ-0215-GA**

The Honorable Greg Abbott  
Attorney General of Texas  
Attn: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-43664-04  
I.D. # 43664

Re: Is the Texas grandparent access statute, Section 153.433 of the Texas Family Code, unconstitutional based on the United States Supreme Court ruling in Troxel v. Granville, 530 U.S. 57 (2000).

Dear General Abbott:

The purpose of this letter is to request an opinion on whether Section 153.433 of the Texas Family Code is unconstitutional based on the United States Supreme Court ruling in Troxel v. Granville, 530 U.S. 57 (2000).

Section 153.433 of the Texas Family Code provides that a court shall order reasonable access to a grandchild by a grandparent if at least one biological or adoptive parent of the child has not had that parent's parental rights terminated, and access by the grandparent is in the best interest of the child, and at least one of six specific fact situations is present. The statute was originally permissive but in 1997, the 75th Legislature made the provision mandatory, requiring a court to order access if the prescribed factors are present.

In the case of Troxel v. Granville, the United States Supreme Court found the grandparent access statute in Washington unconstitutional because the statute's language violated the Due Process Clause of the Fourteenth Amendment. The Court referred to the statute as "breathtakingly broad" and found that the



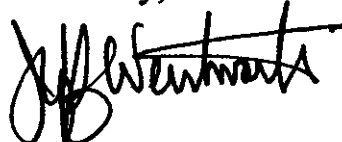
The Honorable Greg Abbott  
April 27, 2004  
Page Two

statute, as applied to Granville, unconstitutionally infringed on the fundamental right of parents to make decisions regarding the care, custody, and control of their children. The Court did specifically limit its holding to the application of the Washington statute to the facts of that case. See Troxel, 530 U.S. at 73.

Since 2000, several Texas appellate courts have considered cases involving challenges to the constitutionality of Section 153.433, Family Code. Although the courts have reached somewhat different conclusions, no decision has directly held the statute to be unconstitutional. In re C.P.J., No. 05-02-01639-CV (Tex. App - Dallas 2003).

I respectfully request an opinion on whether the Texas grandparent access statute, Section 153.433 of the Texas Family Code, is unconstitutional based on the United States Supreme Court ruling in Troxel v. Granville, 530 U.S. 57 (2000).

Sincerely,



Jeff Wentworth

Chairman

Senate Jurisprudence Committee

JW/ml