Report of the
Virginia Bar Association, Virginia Family Law Coalition
Studying the Rights of Parents to Control the Care and Custody of their Children
without Infringement by Third Parties
To
Senator Ryan T. McDougle and Delegate Peter F. Farrell Richmond, Virginia
October, 2013

To: Senator Ryan T. McDougle
Delegate Peter F. Farrell, Patron of HJR 607

AUTHORITY FOR THE STUDY

Pursuant to Rule 20(o) of the Rules of the Senate of Virginia, the Senate Rules Committee referred the subject matter contained in House Joint Resolution No. 607 to the Virginia Bar Association for study and preparation of a written report to the Senate Rules Committee and the bill patron. This written report is provided pursuant to a letter dated February 28, 2013 from the Senate Rules Committee to the Virginia Bar Association, and includes a review of (i) Virginia's laws governing third-party custody and visitation and (ii) laws in other states regarding third-party custody and visitation.

VIRGINIA BAR ASSOCIATION, VIRGINIA FAMILY LAW COALITION

The Virginia Family Law Coalition is comprised of attorneys in private practice from all regions of the Commonwealth and is supported by the Virginia Bar Association and the Virginia Trial Lawyers Association. The Coalition, previously known as the VBA Coalition on Family Law Legislation, has participated in past studies requested by the Virginia General Assembly. The Coalition meets throughout the year to discuss pending legislation and to draft proposed legislation. The members of the Coalition are experienced practitioners who have represented men and women, as well as children in court as guardians *ad litem*. Coalition members have tried divorce cases, child support, custody and spousal support matters and have also participated in alternative dispute resolution of these same issues.[1]

INTRODUCTION

Va. Code § 20-124.2(B) provides that "[i]n determining custody, the court shall give primary consideration to the best interests of the child. . . . As between the parents, there shall be no presumption or inference of law in favor of either." A child's parents stand on equal footing before the trial court on matters of custody and visitation, and the burden on both parents is to prove by a preponderance of the evidence that the custody or visitation he or she is seeking is in the child's best interests. By contrast, when a third party petitions the court for custody or visitation, there are additional standards and higher burdens of proof which are tailored to promote natural parents as the best guardians for their own children.

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[1] The Virginia Family Law Coalition gratefully acknowledges the contributions by Hottell Keisler Family Law Group, in the preparation of this report. Although not a member of the Coalition, Hottell Keisler Family Law Group efforts were invaluable.

The need for laws providing for third-party custody and visitation arise when the natural parents are unable or unwilling to provide suitable custodial care or the third party has played such a vital role in the child's life that the child would suffer actual harm without visitation with the third party. Since Virginia courts are charged with protecting the Commonwealth's children, they must retain the ability to grant custody and visitation to a third party in necessitous circumstances. Virginia safeguards parents' Constitutional rights to raise their children, but its highest goal is to protect its children. Our statutory and case law accomplishes this and prevents interference with parents' rights absent extraordinary circumstances.

Va. Code § 20-124.2(B) establishes that "[t]he court shall give due regard to the primacy of the parent-child relationship but may upon a showing by clear and convincing evidence that the best interest of the child would be served thereby award custody or visitation to any other person with a legitimate interest." In order for a third party to even have standing to pursue custody and visitation, the third party must prove that he or she is a person with a legitimate interest.

As defined in Va. Code § 20-124.1, a "person with a legitimate interest" includes, but is not limited to, grandparents, stepparents, former stepparents, blood relatives and family members provided any such party has intervened in the suit or is otherwise properly before the court. The term shall be broadly construed to accommodate the best interest of the child. However, there are certain enumerated persons who are not persons with a legitimate interest, including parents whose parental rights have been terminated, and persons convicted of rape, child abuse or incest. Virginia appellate courts have also declined to apply the doctrine of *de facto* or psychological parent, which has been used in other states to rebut the presumption favoring natural parents set forth in Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054 (2000). See Stadter v. Siperko, 52 Va. App. 81, 91, 661 S.E.2d 494, 498-99 (2008). In Damon v. York, 54 Va. App. 544, 680 S.E.2d 354 (2009), the mother's girlfriend, who married the mother in Canada, petitioned the court for visitation with the child after her and the mother's relationship ended. Because the same-sex marriage in Canada was void under Virginia law, and because the girlfriend only lived with the child for 21 months beginning when the child was six years old, and did not have any contact with the child for about two years before filing her petition, the girlfriend was not a person with a legitimate interest and lacked standing to pursue visitation.

There is a presumption in Virginia that a child's best interest will be served when in the custody of his or her natural parent. "[T]he rights of the [natural] parents may not be lightly severed but are to be respected if at all consonant with the best interest of the child." Wilkerson v. Wilkerson, 214 Va. 395, 397, 200 S.E.2d 581, 583 (1973). As further explained below, the parental presumption may be rebutted under certain circumstances that have been delineated in our case law. Succinctly stated, in custody cases, the third party must rebut the parental presumption by clear and convincing evidence that (1) the natural parents are unfit, (2) a court previously granted an order divesting the parents of custody, (3) the parents voluntarily relinquished custody, (4) the parents abandoned the child, or (5) special facts and circumstances constitute extraordinary reasons to remove the child from the parents. If the third party meets this high burden, then the parent and third party stand equally before the court and the third party must prove by a preponderance of the evidence that it is in the child's best interests to be in the custody of the third party. In visitation cases, a third party seeking visitation over the united

objection of both natural parents must rebut the presumption by proving by clear and convincing evidence that the child would suffer actual harm to the child's health or welfare without such visitation. No visitation will be granted over the parents' united objection unless actual harm to the child without visitation is proven. If the third party meets this extraordinarily high burden, then the third party must prove that visitation is in the child's best interests. If one parent expressly requests that the third party have visitation with the child, then the third party needs to prove that visitation is in the child's best interests. See, Yopp v. Hodges, 43 Va. App. 427, 598 S.E.2d 760 (2004).

In both third-party custody and visitation cases, "[c]lear and convincing evidence involves that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established." Griffin v. Griffin, 41 Va. App. 77, 85, 581 S.E.2d 899, 903 (2003).

The Virginia Supreme Court and Court of Appeals of Virginia have developed a reasoned and thorough body of case law during the last 30 years that preserves the Constitutional rights of parents while protecting our children. Both the *Williams* and *Griffin* cases have not only met, but adopted, the protections afforded by the landmark *Troxel* case. A third party seeking custody or visitation is in a much less favorable position under the law than the child's natural parents, resulting in a third party obtaining custody or visitation only in extreme circumstances when the child is at risk. Our laws are being carried out as intended. We do not see any indication from Virginia case law or statutes that the rights of natural parents to control the care and custody of their children are being unnecessarily infringed upon by third parties.

THIRD-PARTY CUSTODY AND VISITATION CASES DISTINGUISHED

Virginia case law explains how third-party *custody* cases differ from third-party *visitation* cases in both the tests and manner in which the standards of proof are applied. The first step in any third-party custody or visitation case is that the petitioner must prove that he or she is a person with a legitimate interest in order to have standing. As discussed in more detail below, the next burden the petitioner must meet differs depending upon whether he or she is seeking custody or visitation. In custody cases, the petitioner must overcome the parental presumption by proving one of the five factors described above by clear and convincing evidence. In visitation cases, if both parents object, then the petitioner must prove "actual harm" to the child in the absence of visitation with the petitioner. If only one parent objects and the other supports the third party's request for visitation, then the petitioner must prove that visitation is in the child's best interest. The last step in any third-party custody or visitation case is to prove that the requested custody or visitation is in the child's best interests.

THIRD-PARTY CUSTODY

Since natural parents enjoy a strong parental presumption in their favor, the third party bears the initial burden of proving by clear and convincing evidence an extraordinary reason to transfer custody of a child from his or her natural parent. If the third party meets that high burden, then the parent and third party stand equally before the court and the third party must prove by a preponderance of the evidence that it is in the child's best interests to be in the custody of the third party.

In order to rebut the parental presumption, the third party must prove by clear and convincing evidence (1) parental unfitness, (2) a previous order of divestiture, (3) voluntary relinquishment, (4) abandonment, or (5) special facts and circumstances. Bailes v. Sours, 231 Va. 96, 340 S.E.2d 824 (1986).

Parental Unfitness. Parental unfitness has been proven in Virginia when a parent was "guilty of anti-social, immoral and illegal conduct." Commonwealth v. Hayes, 215 Va. 49, 51, 53, 205 S.E.2d 644, 647 – 48 (1974); see also Forbes v. Haney, 204 Va. 712, 133 S.E.2d 533 (1963). In Walker v. Fagg, 11 Va. App. 581, 400 S.E.2d 208 (1991), the natural father's unfitness was proven by evidence that he was under indictment for the murder of his wife and had "a history of alcohol abuse, spousal abuse, unemployment and general family neglect." Id. at 583, 400 S.E.2d at 210.

Order of Divestiture. A temporary custody order without a hearing on the merits is not an order of divestiture. See Ferris v. Underwood, 3 Va. App. 25, 328 S.E.2d 18 (1986); Wilkerson v. Wilkerson, 214 Va. 395, 200 S.E.2d 581 (1973). A temporary or final custody order with a hearing on the merits, and a final consent custody order, that provides custody to a third party is an order of divestiture. See Albert v. Ramirez, 45 Va. App. 799, 613 S.E.2d 865 (2005); McEntire v. Redfearn, 217 Va. 313, 227 S.E.2d 741 (1976).

Relinquishment. Relinquishment is a near complete surrender of parental rights shown by clear and convincing evidence, such as when a parent willingly agrees to having their child placed in the custody of a nonparent. See Shortridge v. Deel, 224 Va. 589, 299 S.E.2d 500 (1983). The Virginia Court of Appeals does not recognize a principle of partial relinquishment by which a third party who is permitted to perform child-rearing functions can satisfy this burden. Stadter, 52 Va. App. at 93-94, 661 S.E.2d at 500.

Abandonment. In Patrick v. Byerley, 228 Va. 691, 325 S.E.2d 99 (1985), abandonment by the natural mother was proven through evidence that she had left the child with his father when the child was approximately 4½ months old and the mother began living with a married man. When the child's natural parents divorced, the father was awarded custody of him, and the child developed a loving relationship with his stepmother. Following one of the stepmother's visits, the father failed to return for the child and the father's whereabouts remained unknown. The natural mother in this case had "bec[o]me a total stranger to her son," and custody was awarded to the child's stepmother. Id. at 695, 325 S.E.2d at 101.

Special Facts and Circumstances. Special facts and circumstances must "constitut[e] an extraordinary reason for taking a child from its parent, or parents." Florio v. Clark, 277 Va. 566, 571, 674 S.E.2d 845, 847 (2009) (quoting Bailes, 231 Va. at 100, 340 S.E.2d at 827). The court must look at the totality of the circumstances when considering this factor. In Florio, the special facts and circumstances justifying an award of custody to the child's aunt and uncle included that the natural father had agreed to the natural mother having sole custody of the child, the father sought custody of the child for the first time after the mother's death when the child was six years old, the father had previously visited the child very rarely, the father paid no child support, he had an extensive criminal record, his driver's license was revoked, the child had special needs, the father did not have his own home, he did not have health insurance, and he did not show an ability to care for the child's emotional, educational, and health needs. The child's aunt and uncle had supported and cared for the child continuously for approximately seven years, during which time they had been attentive to his emotional, educational, and health needs.

By contrast, in Mason v. Moon, 9 Va. App. 217, 385 S.E.2d 242 (1989), the Court of Appeals reversed the trial court's decision granting custody to the child's paternal grandmother, holding that the grandmother had not proven by clear and convincing evidence extraordinary circumstances that were sufficient to deprive the natural mother of custody. In that case, the natural mother's boyfriend shot and killed the child's natural father during an exchange of the child when she was three years old. The mother, who was a fit parent, married her boyfriend 13 days later and filed a petition seeking custody of the child. The child's then-stepfather was acquitted of murdering her father based on self-defense. The Court of Appeals opined that "the trial court's concern about possible adverse psychological effects upon the child from living with a stepfather who killed her natural father was not clear and convincing evidence sufficient to deprive [the mother] of the presumption that she was entitled to custody." Id. at 222, 385 S.E.2d at 245.

THIRD-PARTY VISITATION

A third party seeking visitation over the united objection of both natural parents must prove by clear and convincing evidence that the child would suffer actual harm to the child's health or welfare without such visitation. Absent a showing of actual harm to the child without visitation, then no visitation will be granted over the parents' united objection. The same test applies when one parent is deceased and the living parent objects to visitation with the third party. If the third party meets this burden, then the third party must prove that visitation is in the child's best interests. If one parent expressly requests that the third party have visitation with the child, then the third party needs to prove that visitation is in the child's best interests.

> Without a finding of harm to the child, a court may not impose its subjective notions of "best interests of the child" over the united objection of the child's parents without violating the constitutional rights of those parents. . . . Code § 20-124.2(B) requires a finding that harm or detriment to a child's health or welfare would result without visitation, before visitation can be ordered over the united objection of the child's parents . . . .

Williams v. Williams, 24 Va. App. 778, 785, 485 S.E.2d 651, 654 (1997). The actual harm test cannot be satisfied by a showing that it would be "better," "desirable," or "beneficial" for a child to have visitation with a non-parent. Id. at 784, 501 S.E.2d at 654.

THE BEST INTERESTS OF THE CHILD MUST ALWAYS BE CONSIDERED

The final determination to be made in any third-party custody or visitation case is the best interests of the child. The General Assembly enacted Virginia Code § 20-124.3 to provide guidance to its courts by delineating 10 factors in determining a child's best interests.

In a seminal case concerning best interests, Keel v. Keel, 225 Va. 606, 303 S.E.2d 917 (1983), the Supreme Court of Virginia clearly stated the goal of any change in custody case:

> The overall aim of a court in a change of custody case must be to determine which home is "best" for the children. But by "best," we do not necessarily mean the most expensive home, or the one with the prettiest furnishings, or the one with the greatest number of "creature comforts." For we are firmly of the view that a house is not a home, that a home is more than bricks and mortar. "Best" to us is the home that will provide the children the greatest opportunity to fulfill their potential as individuals and as members of society.

Id. at 613, 303 S.E.2d at 922 (emphasis added). Without our body of law providing for third-party custody, there would be circumstances where the natural parents are unfit or unavailable to care for the children and the only option would be for the children to become wards of the Commonwealth and placed in foster care. Undoubtedly, foster care is not the best long-term solution for our children.

LAWS OF OTHER STATES

In our study of the laws of other states, we looked at the statutes of surrounding states – Kentucky, Maryland, North Carolina, Tennessee, and West Virginia – as well as the District of Columbia, and Georgia and Pennsylvania, two additional nearby sizeable states. Below is a synopsis of those states' laws concerning third party custody and visitation.

Kentucky:

General Third-Party: Kentucky allows for a person to be a "de facto custodian," if it is shown by clear and convincing evidence that the person has been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six months or more if the child is less than three years old and for a period of one year or more if the child is three years old or older. These time periods do not include any period of time after a parent seeking to

regain custody has commenced legal proceedings. Parenting the child alongside the natural parent does not meet the de facto custodian standard. The court must determine custody in accordance with the best interests of the child and equal consideration must be given to each parent and to any de facto custodian. If the court grants custody to a de facto custodian, then that person shall have legal custody. KRS § 403.270. A "person acting as a parent" also has standing to bring a custody action. "Person acting as a parent" means a person who has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding, and has been awarded legal custody by a court or claims a right to legal custody under Kentucky law. KRS § 403.800(13). In Mullins v. Picklesimer, 317 SW3d 569 (Ky. 2010), the former girlfriend of the child's mother was granted parental rights even though she was not a de facto custodian, because the evidence showed the mother's intent to confer parental rights on her former girlfriend and her actions served as a waiver of her superior right to sole custody.

Grandparents: The circuit courts of Kentucky "may grant reasonable visitation rights to either the paternal or maternal grandparents of a child and issue any necessary orders to enforce the decree if it determines that it is in the best interest of the child to do so." KRS § 405.021. The Supreme Court of Kentucky rendered an opinion on October 25, 2012, Walker v. Blair, which addressed the issue of how Troxel v. Granville impacted the interpretation of its grandparent visitation statute, KRS § 405.021(1). The Court held that "[a] grandparent petitioning for child visitation contrary to the wishes of the child's parent can overcome this presumption [that a fit parent acts in the best interest of the child] only with clear and convincing evidence that granting visitation to the grandparent is in the child's best interest." The Court specifically stated that showing harm to the child is not the only way that a grandparent can rebut the presumption in favor of the child's parents.

Maryland:

General Third-Party: First, the third party seeking custody must show by a preponderance of the evidence that both parents are unfit or extraordinary circumstances rendering parental custody significantly detrimental to the child. Once the parental presumption has been overcome, the court will apply the best interest standard.

Grandparents: Grandparents are included as third parties and have the same burdens of proof to obtain custody. To obtain visitation, grandparents must prove either parental unfitness or exceptional circumstances indicating that the lack of grandparental visitation has a significant deleterious effect upon the child, and then must prove that visitation is in the child's best interest. MD Code § 9-102. There is a rebuttable presumption that the parental decision concerning visitation is in the child's best interests. Koshko v. Haining, 398 Md. 404, 921 A.2d 171 (2007).

North Carolina:

Grandparents: The North Carolina statute regarding custody and visitation rights of grandparents provides that a custody order shall award custody "to such person, agency, organization or institution as will best promote the interest and welfare of the child." N.C.G.S § 50-13.2(a). It further provides that a custody order "may provide visitation rights for any grandparent of the child as the court, in its discretion, deems appropriate." N.C.G.S § 50-13.2(b1). N.C.G.S § 50-13.5(j) also provides that in any action in which the custody of a child has been determined, a grandparent can file a motion to modify the current order by showing a change in circumstances, and "the grandparents of the child are entitled to such custody or visitation rights as the court, in its discretion, deems appropriate."

Tennessee:

General Third-Party: In a suit for annulment, divorce or separate maintenance, where the custody of a minor child or children is at issue, the court may award the care, custody and control of such child or children "to some suitable person, as the welfare and interest of the child or children may demand." T.C.A. § 36-6-101(a)(1). The court "shall have the widest discretion to order a custody arrangement that is in the best interest of the child." T.C.A. § 36-6-101(a)(2)(A)(i).

Grandparents: In considering a petition for grandparent visitation, the court must first determine that there is a "danger of substantial harm to the child." This finding of substantial harm may be based upon cessation of the relationship between the child and the grandparents if the court determines that:

a. The child had such a significant existing relationship with the grandparent that loss of the relationship is likely to occasion severe emotional harm to the child;

b. The grandparent functioned as the primary caregiver such that cessation of the relationship could interrupt provision of the daily needs of the child and thus occasion physical or emotional harm; or

c. The child had a significant existing relationship with the grandparent and loss of the relationship presents the danger of other direct and substantial harm to the child.

The statute explicitly states that the grandparent may establish that there is a significant existing relationship or that the loss of the relationship is likely to cause severe emotional harm to the child without expert testimony. Upon an initial finding of danger of substantial harm to the child, the court must then determine whether grandparent visitation would be in the best interest of the child. T.C.A. § 36-6-306.

West Virginia:

Grandparents: In grandparent visitation cases in West Virginia, "the best interests of the child or children are the paramount consideration." W. Va. Code § 48-10-101. West Virginia identifies a list of factors to consider in making a determination regarding grandparent visitation. W. Va. Code §48-10-502. Among these factors are: the relationship between each of the child's parents or the person with whom the child is residing and that grandparent; the effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing; whether the child has, in the past, resided with the grandparent for a significant period or periods of time, with or without the child's parent or parents; whether the grandparent has, in the past, been a significant caretaker for the child, regardless of whether the child resided inside or outside of the grandparent's home; and the preference of the parents with regard to the requested visitation. West Virginia law permits the award of custody to a "parental figure" or "psychological parent."

Georgia:

Grandparents: In Georgia, a grandparent has the right to file an original action for visitation rights to a child, except when the child's parents are not separated and the child is living with both parents. Ga. Code Ann. § 19-7-3(b). A grandparent also has the right to intervene in and seek to obtain visitation rights in any action in which there is a question concerning custody, a divorce of the parents or a parent of the child, a termination of the parental rights of either parent, or visitation rights concerning the child, or if the child has been adopted by the child's blood relative or by a stepparent. Id.

The court may grant any grandparent reasonable visitation if the court finds that the child's health or welfare would be harmed if such visitation was not granted and that the child's best interests would be served by such visitation. Ga. Code Ann. § 19-7-3(c)(1).

"While a parent's decision regarding grandparent visitation shall be given deference by the court, the parent's decision shall not be conclusive when failure to provide grandparent contact would result in emotional harm to the child. A court may presume that a child who is denied any contact with his or her grandparent or who is not provided some minimal opportunity for contact with his or her grandparent may suffer emotional injury that is harmful to such child's health. Such presumption shall be a rebuttable presumption." Ga. Code Ann. § 19-7-3(c)(3).

Pennsylvania:

General Third-Party: Any third party who stands in *loco parentis* may file for any form of physical or legal custody. In any action regarding the custody of a child between a parent and a non-parent, there shall be a presumption that custody shall be awarded to the parent. The presumption in favor of the parent may be rebutted by clear and convincing evidence. 23 Pa.C.S.A. § 5327(b)

Grandparents: A grandparent of the child who is not in *loco parentis* to the child may file an action for any form of physical or legal custody if (i) the grandparent's relationship with the child began either with the consent of a parent of the child or under a court order; (ii) the grandparent assumes or is willing to assume responsibility for the child; and (iii) when one of the following conditions is met: (A) the child has been determined to be a dependent child under 42 Pa. C.S. Ch. 63 (relating to juvenile matters); (B) the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; or (C) the child has for a period of at least 12 consecutive months resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case the action must be filed within 6 months after the removal of the child from the home.

Grandparents and great-grandparents may file an action for *partial* physical custody or supervised physical custody if (a) the child's parent is deceased, the parent or grandparent of the deceased parent may file an action; (b) the child's parents have been separated for a period of at least six months or have commenced and continued a divorce proceeding; or (c) the child has, for a period of at least 12 consecutive months, resided with the grandparent or great-grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents. The action must be filed within six months after removal of the child from the home. 23 Pa.C.S.A. § 5325. In ordering partial physical custody or supervised physical custody under the situations set forth in (a) and (b) above, the court shall consider the amount of personal contact between the child and the third party prior to the filing of the action, whether the award interferes with any parent-child relationship, and whether the award is in the best interest of the child. 23 Pa.C.S.A. § 5328(c)(1). In ordering partial physical custody or supervised physical custody under the situation set forth in (c) above, the court shall consider whether the award interferes with any parent-child relationship, and whether it is in the best interest of the child. 23 Pa.C.S.A. § 5328(c)(2).

<u>District of Columbia</u>:

General Third-Party: Under D.C. law, a third party can seek custody of a child in one of four situations: (1) the parent agrees; (2) the third party has lived with the child for four of the last six months (unless the child is younger than six months old) and has taken on important parental responsibilities; (3) the third party is a "de facto parent"; or (4) the third party lives with the child and custody is necessary to prevent harm to the child. People hired by the child's parents as caregivers, such as nannies, are excluded from qualification. D.C. Code § 16-831.01, et seq. To determine that the presumption favoring parental custody has been rebutted, the court must find by clear and convincing evidence one or more of the following factors: (1) That the parents have abandoned the child or are unwilling or unable to care for the child, (2) that custody with a parent is or would be detrimental to the physical or emotional well-being of the child, or (3) that exceptional circumstances support rebuttal of the presumption favoring parental custody. D.C. Code § 16-831.07. If the parental presumption is rebutted, then the court must determine whether granting custody to the third party is in the child's best interests. D.C. Code § 16-831.08.

RECOMMENDATION

The Family Law Coalition of the Virginia Bar Association believes that the existing statutes and extensive body of case law developed over the last 30 years by the Virginia Supreme Court and Court of Appeals of Virginia on the issues of third-party custody and visitation sufficiently address the very limited circumstances in which the courts may award custody or visitation to a third party. By placing high burdens of proof on third party petitioners, our judiciary is well-equipped to safeguard our children, while protecting the fundamental liberty interest of parents in the care, custody, and control of their children as mandated by Troxel v. Granville. The burdens of proof on third parties seeking custody and visitation appear to be more stringent in Virginia than most, if not all, of the other states considered in this study. The Coalition is unaware of any Virginia appellate case where the Constitutional rights or statutory custodial rights of a parent have been eroded or improperly divested based on the existing standards. Virginia statutes and case law developed over the years are achieving these two vitally important goals of protecting both our children and their parents and do not improperly infringe on the rights of natural parents to control the care and custody of their children.

Respectfully submitted,

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