that this case involves nothing more than a simple disagreement between the Washington Superior Court and Granville concerning her children's best interests. The Superior Court's announced reason for ordering one week of visitation in the summer demonstrates our conclusion well: 'I look back on some personal experiences .... We always spen[t] as kids a week with one set of grandparents and another set of grandparents, [and] it happened to work out in our family that [it] turned out to be an enjoyable experience. Maybe that can, in this family, if that is how it works out.' Verbatim Report 220-221. As we have explained, the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing 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 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.

"Because we rest our decision on the sweeping breadth of § 26.10.160(3) and the application of that broad, unlimited power in this case, we do not consider the primary constitutional question passed on by the Washington Supreme Court--whether the Due Process Clause requires all nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation. We do not, and need not, define today the precise scope of the parental due process right in the visitation context. In this respect, we agree with Justice KENNEDY that the

> constitutionality of any standard for awarding visitation turns on the specific manner in which that standard is applied and that the constitutional protections in this area are best 'elaborated with care.' Post, at 2079 (dissenting opinion). Because much state-court adjudication in this context occurs on a case-by-case basis, we would be hesitant to hold that specific nonparental visitation statutes violate the Due Process Clause as a per se matter. See, e.g., Fairbanks v. McCarter, 330 Md. 39, 49-50, 622 A.2d 121, 126-127 (1993) (interpreting best-interest standard in grandparent visitation statute normally to require court's consideration of certain factors); Williams v. Williams, 256 Va. 19, 501 S.E.2d 417, 418 (1998) (interpreting Virginia nonparental visitation statute to require finding of harm as condition precedent to awarding visitation)."

530 U.S. at 69-74 (emphasis added; footnote omitted). The above-emphasized portions from Troxel provide what I contend is the requisite missing link from the grandparent-visitation statute in question -- that the wishes of fit parent(s) concerning such requests must be given "material" and "substantial" weight.

It is due only to the statutory omission of language requiring that "special weight" be given to a fit parent's decision regarding grandparent visitation that I concur in the result herein that the Alabama Grandparent Visitation Act as

written is unconstitutional. Section 30-3-4.1(d)(6) requires that the trial court "shall determine if visitation by the grandparent is in the best interests of the child," yet it includes as a factor to consider "the wishes of any parent who is living" only at the end of a list of factors the trial court shall consider in determining the best interests of the child, without statutorily mandating that the trial court give any Troxel "special weight" to the fit parents' wishes.

The facts recited in the main opinion, as found by the trial court, are, to say the least, regrettable. The "fit parents" in this case created, nurtured, cultivated, and encouraged the special relationship between the children and the children's paternal grandparents. To say that these parents established a close and loving relationship between their children and the grandparents is the proverbial classic understatement. Then, in apparent retaliation for the grandparents' inability to continue to provide financial support and resources to the "fit parents," the parents

callously pulled the carpet of grandparental love out from under the feet of their own children.

I exhort the Alabama Legislature to again show that the subject of grandparent visitation, in an appropriate constitutional setting, is the favored policy of this State by providing legislation that takes into account the "special-weight" direction regarding the wishes of a fit parent that we have received from Troxel, albeit a plurality decision.

SHAW, Justice (concurring in the result).

I concur in the result reached by the main opinion.

I agree with the holding by the Court of Civil Appeals in J.W.J. v. P.K.R., 976 So. 2d 1035, 1040 (Ala. Civ. App. 2007), that, "[i]n order to meet the constitutional requirements set out in Troxel [v. Granville, 530 U.S. 57 (2000)], the [Alabama Grandparent Visitation Act ('the Act')[24]] must contain a presumption that the parent's wishes" are "in the child's best interests" when determining whether to order visitation by a grandparent. In R.S.C. v. J.B.C., 812 So. 2d 361 (Ala. Civ. App. 2001), the then existent version of the Act, which contained no presumption in favor of a parent's decision regarding grandparent visitation and instead provided a presumption in favor of awarding such visitation, was held to be unconstitutional as applied. The main opinion, which was a plurality, stated:

> "The fundamental right of a fit parent to decide the issue of unsupervised grandparental visitation, in the absence of harm or potential harm to the child

[24]Ala. Code 1975, § 30-3-4.1.

> if such visitation is not allowed, requires more respect for the parent's initial decision than is achieved by allowing a trial court to decide what is in the 'best interests' of the child and then to substitute its decision for the parent's decision."

R.S.C., 812 So. 2d at 372.

Subsequently, in L.B.S. v. L.M.S., 826 So. 2d 178 (Ala. Civ. App. 2002) (plurality opinion), the main opinion, again a plurality, noted that the portion of the Act that presumed that visitation by a grandparent was in the child's best interest was unconstitutional on its face and due to be severed from the Act. Further, it noted that, under Troxel, "the determination that grandparent visitation will serve the best interest of the child is not alone sufficient to overcome the presumption in favor of a fit parent's fundamental right to rear his or her children." 826 So. 2d at 184. Although the Act failed to afford special weight to the parents' own determination regarding visitation of the child with the grandparent, the Court of Civil Appeals attempted to construe the Act in such a way as to remedy such defect:

> "Section 30-3-4.1(d), Ala. Code 1975, sets forth a number of factors for the court to consider in

> determining whether to award visitation to the petitioning grandparents. Most significantly, § 30-3-4.1(d)(6) provides for the consideration of '[o]ther relevant factors in the particular circumstances.' Although the factors listed in § 30-3-4.1(d) do not specifically mention the consideration of a parent's own determination with respect to the child, the factors also do not specifically exclude that factor as a consideration. We conclude that the requirement that the court consider 'other relevant factors' under § 30-3-4.1(d) allows the courts to give great weight, as it must, to a parent's decision regarding such visitation in determining whether to grant a grandparent visitation. This presumption in favor of a fit parent's decision regarding grandparent visitation will place a heightened burden of proof on the grandparent petitioning for visitation. Because the fundamental right of a parent is at issue, a grandparent seeking visitation bears the burden of showing, by clear and convincing evidence, that the best interest of the child is served by awarding grandparent visitation. ... We conclude that the language of § 30-3-4.1(d) allows the trial court, on a case-by-case basis, to constitutionally apply Alabama's grandparent-visitation statute within the limitations expressed in this opinion."

L.B.S., 826 So. 2d at 186-87 (citation omitted).

After the Court of Civil Appeals decided R.C.S. and L.B.S., the legislature undertook to amend the Act:

> "In 2003, the Legislature enacted Act No. 2003-383, Ala. Acts 2003, in response to the infirmities identified by this court in the aftermath of Troxel. First, in Act No. 2003-383, the Legislature removed

> the portion of § 30-3-4.1(e) that had provided that '[t]here shall be a rebuttable presumption in favor of visitation by any grandparent.' ... Second, the Legislature specifically amended § 30-3-4.1(d) so as to include 'the wishes of any parent who is living' among the factors to be considered in determining whether the best interests of a child would be served by awarding grandparental visitation, making explicit what the main opinion in L.B.S. had held to be implicit in the general direction in former § 30-3-4.1(d)(6) that trial courts are to consider '[o]ther relevant factors' in their best-interests calculus."

Dodd v. Burleson, 932 So. 2d 912, 919 (Ala. Civ. App. 2005) (plurality opinion).

A majority of the Court of Civil Appeals has subsequently affirmed this rationale and held that the 2003 amendment rectified any facial unconstitutionality found in the Act:

> "In 2003, the legislature amended the Grandparent Visitation Act. See Act No. 2003-383, Ala. Acts 2003. Among other changes, the legislature deleted the presumption in favor of grandparent visitation declared unconstitutional in R.S.C. [v. J.B.C., 812 So. 2d 361 (Ala. Civ. App. 2001),] and expanded subsection 30-3-4.1 to require the trial court to consider, when making its best-interests determination, '[o]ther relevant factors in the particular circumstances, including the wishes of any parent who is living.' (Emphasis added.) In Dodd v. Burleson, 932 So. 2d 912, 919 (Ala. Civ. App. 2005), a majority of this court construed the amended statute as having explicitly adopted the

presumption in favor of the parent's visitation decision first recognized in L.B.S. [v. L.M.S., 826 So. 2d 178 (Ala. Civ. App. 2002)].

"[T]he current Grandparent Visitation Act does not expressly state that the parent's visitation decision shall be presumed to be in the child's best interests. Rather, as written, the statute simply requires the trial court to consider the parent's wishes along with other factors without specifying that any particular factor should be given any greater weight. However, as stated in L.B.S.:

> "'Our supreme court has recognized that "[a] statute may be enacted without containing [a] provision for constitutional requirements but in such terms as not to exclude them and to justify the court in holding that it was intended to be subject to those requirements, which should then be treated as a feature of it." Almon v. Morgan County, 245 Ala. 241, 246, 16 So. 2d 511, 516 (1944).'

"826 So. 2d at 185. In order to meet the constitutional requirements set out in Troxel [v. Granville, 530 U.S. 57 (2000)], the statute must contain a presumption that the parent's wishes are presumed to be in the child's best interests. In L.B.S. and Dodd, this court has treated that presumption as an implied part of § 30-3-4.1(d)(6). Thus, the implied presumption is as much a feature of the statute as its plain language. Consequently, the statute is not unconstitutional on its face, as the father argues, for failing to expressly include a presumption in favor of a parent's visitation decisions."

J.W.J., 976 So. 2d at 1039-40.

To me, the dispositive issue in this case is whether the Act can be construed so as to give the proper weight to a parent's decision. I have struggled with the laudable attempts of the Court of Civil Appeals to do so.

In reviewing the constitutionality of an act, we presume its validity and seek to sustain it rather than strike it down. House v. Cullman County, 593 So. 2d 69, 71 (Ala. 1992). Further, it is this Court's duty "'to adopt the construction of a statute to bring it into harmony with the constitution,'" but only "'if its language will permit'" such a construction. Id. at 72 (quoting Alabama State Fed'n of Labor v. McAdory, 246 Ala. 1, 10, 18 So. 2d 810, 815 (1944)). That said, we "construe" a statute only when it is ambiguous; if it is unambiguous, then there is no room for the courts to do anything other than to give effect to the legislature's clearly expressed intent. DeKalb County LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 275 (Ala. 1998). This is so even if the unambiguous language renders the statute unconstitutional. See Budget Inn of Daphne, Inc. v. City of

Daphne, 789 So. 2d 154, 160 (Ala. 2000) ("This construction, the only one allowed by the unambiguous language of the statute, imposes constitutionally impermissible limitations on the use and enjoyment of nonconforming properties and stands against the great weight of legal authority."). As noted by R.S.C. and L.B.S., the language of the Act, before the 2003 amendment, included a presumption in favor of visitation by grandparents and afforded no presumption in favor of or special weight to be accorded a fit parent's decision in such matters. When the legislature undertook to amend the Act after the Court of Civil Appeals issued its decisions in R.S.C. and L.B.S., it corrected the constitutional infirmity created by the presumption allowing visitation, but it declined to include any language acknowledging the presumption afforded a fit parent's decision. Instead, a fit parent's decision, though acknowledged, was, by the plain language, simply relegated to one of many factors the trial court is allowed to consider. I can only conclude that the legislature intended what § 30-3-4.1 states on its face. There was no

room for further judicial construction after the 2003 amendment. Because the legislature, when it amended the Act, explicitly remedied only one of the constitutional defects identified above, and, although recognizing a fit parent's decision, gave that decision no more weight than any other factor, I cannot agree that the Act can be further construed so as to give a parent's decision the weight the legislature did not provide. I agree that the Act is unconstitutional on its face, and I therefore concur in the result.

Stuart, J., concurs.

MAIN, Justice (dissenting).

The Alabama Grandparent Visitation Act, § 30-3-4.1, Ala. Code 1975 ("the Act"), revolves around the relationship of three distinct groups of people: children, parents, and grandparents. In its present form, the Act is a legislative attempt, when visitation is contested, to determine the best interests of the children--not the parents or the grandparents. The main opinion has focused on the rights of the parents rather than on the best interests of the children.

Historically, minor children and mentally incompetent persons have been treated differently from competent adults, both criminally and civilly. The state necessarily injects itself into the affairs of children and the mentally incompetent when they are in need of protection because their developmental differences and their environmental restraints render them more vulnerable than competent adults. Children do not make decisions in the same manner as do adults because children are not as neurologically developed and are not free to "escape" their environment. It is clear that the law

treats children differently than it treats adults; the question thus becomes: What is the appropriate standard in interpreting statutes concerned with children? As noted in the few examples that follow, Alabama statutes and caselaw from both this Court and the United States Supreme Court treat juveniles differently from adults in both civil and criminal matters.

(1) Juveniles are not eligible for the death penalty. See Ex parte Adams, 955 So. 2d 1106 (Ala. 2005), relying on Roper v. Simmons, 543 U.S. 551 (2005) (holding unconstitutional the imposition of the death penalty for capital-murder defendants when the murder was committed before the defendant had reached the age of 18).

(2) The United States Supreme Court recently held that imposing a penalty of life imprisonment without the possibility of parole on a juvenile was unconstitutional for offenses other than homicide offenses:

> "Roper [v. Simmons, 543 U.S. 551 (2005),] established that because juveniles have lessened culpability they are less deserving of the most severe punishments. 543 U.S., at 569. As compared

to adults, juveniles have a '"lack of maturity and an underdeveloped sense of responsibility"'; they 'are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure'; and their characters are 'not as well formed.' Id., at 569-570. These salient characteristics mean that '[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.' Id., at 573. Accordingly, 'juvenile offenders cannot with reliability be classified among the worst offenders.' Id., at 569. A juvenile is not absolved of responsibility for his actions, but his transgression 'is not as morally reprehensible as that of an adult.' Thompson [v. Oklahoma, 487 U.S. 815,] 835 [(1988)] (plurality opinion).

"No recent data provide reason to reconsider the Court's observations in Roper about the nature of juveniles. As petitioner's amici point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. See Brief for American Medical Association et al. as Amici Curiae 16-24; Brief for American Psychological Association et al. as Amici Curiae 22-27. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults. Roper, 543 U.S., at 570. It remains true that '[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a

> minor's character deficiencies will be reformed.' Ibid. These matters relate to the status of the offenders in question; and it is relevant to consider next the nature of the offenses to which this harsh penalty might apply.
>
> "....
>
> "It follows that, when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability. The age of the offender and the nature of the crime each bear on the analysis."

Graham v. Florida, ___ U.S. ___, ___, 130 S. Ct. 2011, 2026 (2010).

(3) A separate advisement of rights applies for juveniles than for adults with regard to Miranda v. Arizona, 384 U.S. 436 (1966), rights. See Ex parte Hall, 863 So. 2d 1079 (Ala. 2003), and § 12-15-202, Ala. Code 1975.

(4) An individual under a certain age may apply for treatment by the courts as a youthful offender. See § 15-19-1 et seq., Ala. Code 1975.

(5) Age-based restrictions exist as to when an individual is legally permitted to purchase and to consume alcohol products. See § 28-1-5, Ala. Code 1975. Additionally, adults

may face criminal charges with regard to providing alcohol to minors at open house parties. See 13A-11-10.1, Ala. Code 1975. See also Owens v. State, 19 So. 3d 252 (Ala. Crim. App. 2009) (parents convicted of violation of § 13A-11-10.1 for hosting party at their residence and on their property at which minors consumed alcohol).

(6) Age-based restrictions exist as to when an individual is permitted to lawfully operate motorized vehicles on the roadways. See §§ 32-6-3(a), 32-6-7, 32-6-7.2, 32-6-8, Ala. Code 1975.

(7) Age-based restrictions apply to the ability to contract to marriage: the minimum age at which a person may contract to marriage is 16 years, see § 30-1-4, Ala. Code 1975, and the consent of the parents or a guardian is required for individuals at least 16 years of age and under 18 years, see § 30-1-5, Ala. Code 1975.

(8) Courts may order medical treatment for a child in contravention of the parents' religious beliefs when the child's health is at stake. § 26-14-7.2, Ala. Code 1975.

(9) With regard to child support, different requirements and provisions apply for children under the age of 19 and those over the age of 19. See Ex parte Bayliss, 550 So. 2d 986 (Ala. 1989), and its progeny.

Furthermore, Alabama statutes and caselaw have historically governed certain aspects of the parent-child relationship, and the standard applied by our courts in these cases has consistently been the best interests of the child:

(1) In terminating parental rights, the overriding consideration is the best interests of the child. Ex parte J.R., 896 So. 2d 416 (Ala. 2004) (best-interests-of-the-child standard governs the termination of parental rights).

(2) In dependency proceedings, the appropriate standard to be applied is the best interests of the child. Ex parte D.B., [Ms. 2090831, January 21, 2011] ___ So. 3d ___, ___ (Ala. Civ. App. 2011) (applying § 12-15-314(a)(4), Ala. Code 1975, "allowing a juvenile court, after adjudicating a child dependent, to '[m]ake any other order as the juvenile court in

its discretion shall deem to be for the welfare and best interests of the child'").

(3) In many custody proceedings, the appropriate standard to be applied is the best interests of the child. Ex parte Bryowsky, 676 So. 2d 1322 (Ala. 1996) (best-interests-of-the-child standard applied in original custody determination); Ex parte Blackstock, 47 So. 3d 801 (Ala. 2009) (if prior judgment awarded joint physical custody, best-interests-of-the-child standard applies in subsequent custody-modification proceeding); Ex parte Murphy, 670 So. 2d 51 (Ala. 1995) (modification of prior custody award requires that party seeking modification prove not only a material change in circumstances, but also that the modification will materially promote the best interests of the child, thus offsetting the disruptive effect of uprooting the child).

(4) In adoption proceedings, the appropriate standard to be applied is the best interests of the child. §§ 26-10A-24 and -25, Ala. Code 1975.

(5) When a minor child seeks an abortion, the courts apply the best-interests-of-the-minor standard to determine whether the minor must first obtain parental consent. See § 26-21-4(f)(2), Ala. Code 1975.

The main opinion focuses on the liberty interest of the parents, almost as though the children were chattel. I would focus on the best interests of the child.

Moreover, it is a well settled rule of statutory construction that when this Court reviews the constitutionality of a statute, it should first seek to uphold the statute.

> "In Monroe v. Harco, Inc., 762 So. 2d 828, 831 (Ala. 2000), this Court restated the long-standing rules governing review of acts of the Legislature under constitutional attack:
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> > "'"In reviewing [a question regarding] the constitutionality of a statute, we 'approach the question with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of the government.'" Moore v. Mobile Infirmary Ass'n, 592 So. 2d 156, 159 (Ala. 1991) (quoting Alabama State Fed'n of Labor v. McAdory, 246 Ala. 1, 9, 18 So. 2d 810, 815 (1944)). Moreover, "[w]here the

> validity of a statute is assailed and there are two possible interpretations, by one of which the statute would be unconstitutional and by the other would be valid, the courts should adopt the construction [that] would uphold it." McAdory, 246 Ala. at 10, 18 So. 2d at 815. In McAdory, this Court further stated:
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> > "'"[I]n passing upon the constitutionality of a legislative act, the courts uniformly approach the question with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of the government. All these principles are embraced in the simple statement that it is the recognized duty of the court to sustain the act unless it is clear beyond reasonable doubt that it is violative of the fundamental law."
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> "'246 Ala. at 9, 18 So. 2d at 815 (citation omitted). We must afford the Legislature the highest degree of deference, and construe its acts as constitutional if their language so permits. Id.'"

Rice v. English, 835 So. 2d 157, 163-64 (Ala. 2002).

In E.H.G. v E.R.G., [Ms. 2071061, March 12, 2010] ___ So. 3d ___, ___ (Ala. Civ. App. 2010), the Alabama Court of Civil

Appeals upheld the Act against a constitutional challenge. However, the Court of Civil Appeals engrafted on the Act a standard of "harm" that is not found in the statute.

> "As presently drafted, the Act requires a trial court in a grandparent-visitation case to consider '[o]ther relevant factors in the particular circumstances....' Ala. Code 1975, § 30-3-4.1(d)(6). Since we hold that a showing of harm to the child resulting from the denial of visitation is a prerequisite to any award of visitation under the Act, we conclude that subsection (d)(6) necessarily encompasses that showing as a 'relevant factor' and that the Act is, therefore, facially valid. See L.B.S. [v. L.M.S.], 826 So. 2d [178,] 185 [(Ala. Civ. App. 2002)] (holding that the judiciary could adopt a construction of a statute that would uphold its constitutionality). We emphasize, however, that the showing of harm is not to be weighed along with the other factors in § 30-3-4.1(d)(6). Rather, ... a court considering a petition for grandparent visitation must first presume the correctness of the decision of a fit, natural, custodial parent as to grandparent visitation and then determine whether the petitioning grandparent has presented clear and convincing evidence that the denial of the requested visitation will harm the child. If so, the court may then weigh the other statutory factors to determine the mode and extent of grandparent visitation necessary to alleviate the harm to the child without further infringing on the fundamental rights of the parents."

___ So. 3d at ___ (emphasis added). That court thus applied a standard that did not exist at the time of trial as the

basis for reversing the trial court's judgment on a ground the trial court never considered, concluding that "[b]ecause the trial court awarded visitation to the paternal grandparents without the requisite showing of harm, the trial court unconstitutionally applied the Act to the parents." ___ So. 3d at ___. In rejecting the best-interests-of-the-child standard as written by the legislature into the Act and grafting onto it a standard of harm to the child, the Court of Civil Appeals chose to depart from its prior decisions in Dodd v. Burleson, 932 So. 2d 912 (Ala. Civ. App. 2005), and Dodd v. Burleson, 967 So. 2d 715 (Ala. Civ. App. 2007), both plurality decisions. Instead, the Court of Civil Appeals relied heavily on a case decided by the Supreme Court of Tennessee, Hawk v. Hawk, 855 S.W.2d 573 (Tenn. 1993), in which the court invalidated Tennessee's grandparent-visitation statute because it was inconsistent with Tennessee's constitution.

The Court of Civil Appeals' reasoning in E.H.G. was also grounded in Troxel v. Granville, 530 U.S. 57 (2000), a plurality opinion in which the United States Supreme Court

reviewed a Washington state statute that provided that any person could petition a court for visitation with a child at any time, and that the court could award visitation rights to any person when such visitation "may serve the best interest of the child." § 26.10.160(3), Revised Code of Washington. The plurality found the Washington state nonparental-visitation statute overly broad and concluded that it unconstitutionally infringed on the petitioner's fundamental parental right to make decisions regarding the care, custody, and control of her children. The problem, the plurality stated, was not that the court had intervened, "but that when it did so, it gave no special weight at all to [the parent's] determination of her daughters' best interests." 530 U.S. at 68. The plurality opinion in Troxel did not establish a "harm" standard and, in fact, did not consider it.

> "Because we rest our decision on the sweeping breadth of § 26.10.160(3) and the application of that broad, unlimited power in this case, we do not consider the primary constitutional question passed on by the Washington Supreme Court--whether the Due Process Clause requires all nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to

> granting visitation. We do not, and need not, define today the precise scope of the parental due process right in the visitation context. In this respect, we agree with Justice KENNEDY that the constitutionality of any standard for awarding visitation turns on the specific manner in which that standard is applied and that the constitutional protections in this area are best 'elaborated with care.' Post, at [101] (dissenting opinion). Because much state-court adjudication in this context occurs on a case-by-case basis, we would be hesitant to hold that specific nonparental visitation statutes violate the Due Process Clause as a per se matter."

530 U.S. at 73 (footnote omitted).

In his dissent in Troxel, Justice Stevens not only noted that it was unnecessary for the Court to consider a "harm" standard in that case, but also concluded that a showing of harm is not required for a grandparent-visitation statute to pass constitutional muster.

> "The second key aspect of the Washington Supreme Court's holding--that the Federal Constitution requires a showing of actual or potential 'harm' to the child before a court may order visitation continued over a parent's objections--finds no support in this Court's case law. While, as the Court recognizes, the Federal Constitution certainly protects the parent-child relationship from arbitrary impairment by the State, see infra this page and [88-89,] we have never held that the parent's liberty interest in this relationship is so

> inflexible as to establish a rigid constitutional shield, protecting every arbitrary parental decision from any challenge absent a threshold finding of harm."

530 U.S. at 85-86 (Stevens, J., dissenting) (emphasis added). Justice Kennedy came to a similar conclusion in his dissent in Troxel. 530 U.S. at 93 (Kennedy, J., dissenting).

Because Troxel was a plurality decision and because seven of nine Justices found it unnecessary to address the application of a harm standard, Troxel cannot be considered the source of any holding that a grandparent-visitation statute can be considered constitutional only if it requires proof that a denial of visitation would harm the child. The flaw in the Washington state statute pointed out by the plurality in Troxel was that "a parent's decision that visitation would not be in the child's best interest [was] accorded no deference." 530 U.S. at 67.

The main opinion emphasizes "[t]he substantive fundamental right of parents to make decisions regarding the 'care, custody, and control' of their children." ___ So. 3d at ___ (quoting Troxel, 530 U.S. at 66). The main opinion

concludes that the Act is unconstitutional in its entirety because no part of the Act "defers to the fundamental right of the parent or to the presumption in favor of a parent's decisions regarding grandparent visitation." __ So. 3d at ___. I disagree. I would hold that the Act is not unconstitutional on its face and that a determination regarding whether visitation with a grandparent would be in a child's best interests should be made on a case-by-case basis. The Act, as originally enacted in 1999, provided, in pertinent part:

> "(d) Upon the filing of an original action or upon intervention in an existing proceeding pursuant to subsections (b) and (c), the court shall grant any grandparent of the child reasonable visitation rights if the court finds that the best interests of the child would be served by the visitation. In determining the best interest of the child, the court shall consider the following:
>
> "....
>
> "(6) Other relevant factors in the particular circumstances.
>
> "(e) The court shall make specific written findings of fact in support of its rulings. There shall be a rebuttable presumption in favor of visitation by any grandparent. ..."

§ 30-3-4.1, Ala. Code 1975. Effective September 1, 2003, the legislature amended the Act. Pursuant to the 2003 amendment, the above-quoted portion of the Act now provides:

> "(d) Upon the filing of an original action or upon intervention in an existing proceeding pursuant to subsections (b) and (c), the court shall determine if visitation by the grandparent is in the best interests of the child. Visitation shall not be granted if the visitation would endanger the physical health of the child or impair the emotional development of the child. In determining the best interests of the child, the court shall consider the following:
>
> "....
>
> "(6) Other relevant factors in the particular circumstances, including the wishes of any parent who is living.
>
> "(e) The court shall make specific written findings of fact in support of its rulings. ..."

§ 30-3-4.1, Ala. Code 1975. The 2003 amendment was responsive to many of the factors discussed in the plurality decision in Troxel. For example, the amendment added to § 30-3-4.1(d) a prohibition against grandparental visitation if that visitation would endanger the child's physical health or

impair the child's emotional development.[25] The amendment also provides that the trial court is to consider the parent's wishes among the other factors for the court's consideration in determining whether grandparent visitation is in the child's best interest. Additionally, the amendment removed the rebuttable presumption in favor of grandparent visitation from § 30-3-4.1(e).

For the foregoing reasons and in the face of existing precedent from this Court and from the Court of Civil Appeals and the lack of a requirement that courts consider a harm standard in evaluating the grandparent-visitation issue, I see no need to declare the Act unconstitutional. I agree with Judge Pittman, who, in his dissent in E.H.G., stated:

> "I dissent. The main opinion represents a complete departure from the analytical framework I espoused in the main opinion in Dodd v. Burleson, 932 So. 2d 912 (Ala. Civ. App. 2005), appeal after

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[25]I recognize the distinction between the refusal to grant visitation if visitation would harm the child and the granting of visitation against the parent's wishes if the deprivation of visitation would cause harm to the child. The amendment to the Act is couched in terms of the former, whereas the discussion in Troxel and its progeny addresses the latter.

> remand, 967 So. 2d 715 (Ala. Civ. App. 2007). As I made clear in Dodd, Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000), does not stand for the proposition that states must adopt a harm standard in order for their grandparent-visitation statutes to conform with due-process guaranties afforded by the Fourteenth Amendment. Since Troxel was decided, courts in a number of states have determined--consistent with the main opinion in Dodd--that harm to a child is not a constitutionally required prerequisite for a grandparent-visitation award contrary to the wishes of fit parents. In re Adoption of C.A., 137 P.3d 318, 326-27 (Colo. 2006); Vibbert v. Vibbert, 144 S.W.3d 292, 294-95 (Ky. Ct. App. 2004); Rideout v. Riendeau, 761 A.2d 291, 300-01 (Me. 2000); Harrold v. Collier, 107 Ohio St. 3d 44, 52, 836 N.E.2d 1165, 1172 (2005) ('nothing in Troxel suggests that a parent's wishes should be placed before a child's best interest'); and Hiller v. Fausey, 588 Pa. 342, 363-66, 904 A.2d 875, 888-90 (2006)."[26]

I would hold that the child's best interests, not the "interests" of the parents, is the determinative standard for deciding whether to award visitation between a grandparent and a grandchild in the face of the contrary wishes of fit parents. The Act contains both a determination that a court

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[26]According to a summary in the grandparents' reply brief, 18 states utilize the harm standard. A number of other states have rejected the harm standard or utilize the best-interests-of-the-child standard.

should not require visitation with a child's grandparents if the child would be physically or emotionally harmed by the visitation, § 30-3-4.1(d), and a requirement that the trial court in deciding whether to order visitation consider "the wishes of any parent who is living," § 30-3-4.1(d)(6). Therefore, in my view, the Act is constitutional. In the case before us, the trial court reviewed all the factors in § 30-3-4.1(d), including the factors that protect the right of the parents and the factors that determine the best interests of the children. The trial court considered the wishes of the parents, both of whom are living, and found that visitation would not endanger the physical health of the children or impair their emotional development. Moreover, the guardian ad litem appointed for the children submitted a written report finding that continued alienation from the grandparents was not in the best interests of the children. Pursuant to the Act, the trial court then ordered visitation between the grandparents and the children.

I agree that a parent's right to the care, custody, and control of his or her child is fundamental. However, that right is not absolute. As Justice Bolin, writing for the Court, so aptly stated in Ex parte M.D.C., 39 So. 3d 1117, 1128 (Ala. 2009):

> "A parent has a fundamental liberty interest in the care, custody, and management of his or her child. Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). However, this interest is not absolute; it 'is limited by the compelling government interest in the protection of children--particularly where the children need to be protected from their own parents.' Croft v. Westmoreland County Children & Youth Servs., 103 F.3d 1123, 1125 (3d Cir. 1997)."

As described heretofore, courts do intervene to protect the rights of children who, unlike adults, cannot protect themselves. The government has no role whatsoever in the relationship between parents and grandparents and has no right to interfere with their behavior, because they are adults. The government does have a role protecting a child if an adult has disregarded his or her responsibility toward that child. Unlike the main opinion, I do not conclude that the Act is unconstitutional on its face. I believe the focus in

grandparent visitation, as it is in other areas of juvenile and domestic-relations law in Alabama, should be on the children and that the appropriate standard is the best interests of the child.

I would affirm that portion of the judgment of the Court of Civil Appeals that concludes that the Act is not unconstitutional. I would reverse that portion of the judgment that judicially engrafted a harm standard into the Act and reversed the judgment of the trial court, and I would remand the case to the Court of Civil Appeals for that court to affirm the trial court's judgment awarding visitation to the grandparents. Therefore, I respectfully dissent.

Cobb, C.J., concurs.