

**THE WINDING ROAD TO GRANDMA’S HOUSE:
GRANDPARENT VISITATION IN GEORGIA**

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INTRODUCTION	50
I. GRANDPARENTING	50
A. <i>Grandparents Defined</i>	50
B. <i>The Role of the Grandparent</i>	52
C. <i>The Effect of Grandparent Relationships</i>	55
II. GRANDPARENT VISITATION IN THE UNITED STATES	59
A. <i>Grandparent Rights versus Grandparent Visitation</i>	59
B. <i>Mediation Support in the ABA Model Rules</i>	60
C. <i>The Clash of Constitutional Rights and the Best Interest Standard</i>	61
D. <i>Other Jurisdictions</i>	64
III. GRANDPARENT VISITATION IN GEORGIA	66
A. <i>“Grandparents” as Defined in the Georgia Code</i>	66
B. <i>Georgia Public Policy</i>	69
C. <i>The Legal Framework of Georgia’s Grandparent Visitation Statute</i>	70
D. <i>Grandparent Visitation Compared to Child Custody Determinations in Georgia</i>	70
E. <i>Establishing Grandparent Visitation</i>	72

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Spring 2026]	<i>Grandparent Visitation in Georgia</i>	49
F.	<i>Modifying Grandparent Visitation</i>	74
G.	<i>The Evolution of Georgia's Grandparent Visitation Law</i>	75
IV.	CONCLUSION	94

INTRODUCTION

*Nana. Grandmother. Grandma. Mo. Grandmama. Gigi. Abuela. Grand-
mere. Oma. . .*

*Ditde. Papa. Boppa. Grandpa. Granddaddy, Gramps. Pops. Abuelo.
Grand-père. Opa. . .*

Grandparents have many nicknames, reflecting terms of endearment for elder relatives who may “occupy very special places in our lives, and in our hearts.”¹ To recognize grandparents and celebrate the special places they hold, Congress passed legislation in 1978 setting the first Sunday after Labor Day as Grandparents Day.² Now, American grandchildren and their parents purchase millions of Grandparents Day cards each year.³ To preserve the valuable relationship between grandparents and their grandchildren, all fifty states have enacted laws to permit a grandparent to petition for visitation with their grandchild in some form.⁴ Georgia’s grandparent visitation statute, O.C.G.A. § 19-7-3, has endured several iterations in response to evolving family dynamics and constitutional challenges. In Section I, we examine the characteristics of grandparents, their roles, and the effect of such relationships on grandchildren. In Section II, we explore the legal landscape regarding grandparent visitation in the United States, while Section III evaluates the structure, the application, and the evolution of Georgia’s legal framework for grandparent visitation.

I. GRANDPARENTING

A. Grandparents Defined

¹ Kate Hanson, “Grandparents Day 2024: When, Why and How to Celebrate This Holiday,” *Today*, Aug. 3, 2022, available at <https://www.today.com/parents/parents/when-is-grandparents-day-rcna40920>.

² “About – Grandparents Day,” available at <https://grandparentsday.org/grandparentsweek/about/>.

³ Smith, P.K., & Smith, P.K. (Eds.). *The Psychology of Grandparenthood: An International Perspective* (1st ed., Routledge 1991), available at <https://doi.org/10.4324/9780203359174>.

⁴ Sarah J.M. Cox, “Grandparent and Third-Party Visitation Rights: A 50 State Survey,” *CHILDREN’S LEGAL RIGHTS JOURNAL*, vol. 40, no. 2, art. 2 (2020); “Grandparent Visitation & Custody Laws: 50-State Survey,” available at <https://www.justia.com/family/child-custody-and-support/grandparent-visitation-custody-laws-50-state-survey/>.

“Grandchildren *create* grandparents.”⁵ Grandchildren, by their birth, create a new role for the parents of their parents⁶ and often bestow upon them a new alias—the grandparent nickname.⁷ Regardless of the moniker chosen or the name ultimately adopted,⁸ the demographics of grandparents are quite broad.⁹ For example, grandparents can vary significantly in age, from the thirties where there is teenage pregnancy, to over 100 years of age in cases of extreme longevity.¹⁰ Grandparents also vary by education level, race, and ethnicity.¹¹ Increases in divorce and remarriage have resulted in more blended families and step-grandparent relationships.¹² This includes not only the marital separation of the grandchild’s parents but also that of grandparents. Several recent articles address the rise of the gray divorce trend:

[T]hese separations are more common than ever before. Gray divorce — dissolutions of marriages occurring among adults older than 50 — doubled between 1990 and 2010,¹³ according to a 2022 study. These days, 36 percent of adults who get divorced in the US are 50 and older. Close to two-thirds of those separating in midlife had already been divorced at least once, according to the study’s lead author, Susan

⁵ Thompson, Susie Shy. *Mawmaw Got Run Over by a Combine: Grandparent Naming Practices in the Rural South*. University of Louisville. 176.pp. <https://www-s3-live.kent.edu/s3fs-root/s3fs-public/file/15-Thompson.pdf>.

⁶ *Id.* at 175.

⁷ *Id.*

⁸ *Id.* at 175-176.

⁹ Hagestad, G. O. (1985). *Continuity and connectedness*. In V. L. Bengtson & J. F. Robertson (Eds.), *Grandparenthood* 31–48. (Sage 1985).

¹⁰ *Id.*

¹¹ Bruno Arpino, et al. “Family Histories and the Demography of Grandparenthood.” *Demographic Research*, vol. 39, 2018, pp. 1105–50. Available at: <https://www.jstor.org/stable/26585363>.

¹² Giarrusso, Roseann, et al. “Family Complexity and the Grandparent Role.” *Generations: Journal of the American Society on Aging*, vol. 20, no. 1, 1996, pp. 17–23. Available at: <http://www.jstor.org/stable/44877325>.

¹³ Susan L Brown, I-Fen Lin, *The Graying of Divorce: A Half Century of Change*, *The Journals of Gerontology: Series B*, Volume 77, Issue 9, September 2022, Pages 1710–1720, <https://doi.org/10.1093/geronb/gbac057>.

Brown,¹⁴ a sociology professor at Bowling Green State University. While divorce rates among younger groups remain higher,¹⁵ that gap is shrinking as older adults continue to split, Brown says. (There is limited data on same-sex marriages in the United States, so many studies focus solely on heterosexual pairings.)¹⁶

While parents may feel pressure to stay together for their children,¹⁷ that pressure appears to dissipate for grandparents,¹⁸ especially for those adjusting to an empty nest.¹⁹ Still, if emotions are high, divorcing and divorced grandparents may need to apply co-parenting strategies to their grandparent role to prevent conflicts, such as switching off for family holidays or special occasions.²⁰ Regardless, as grandparents remain diverse and the categories of individuals considered to be grandparents have expanded, so has the grandparent role.²¹

B. *The Role of the Grandparent*

“Fifty years ago, nuclear families constituted 42% of all American households.²² Today, they account for only 22% [of all American

¹⁴ “Susan L. Brown,” available at <https://www.bgsu.edu/arts-and-sciences/sociology/people/susan-l-brown.html>.

¹⁵ “Age Variation in Divorce Rates, 1990-2021.” Available at <https://www.bgsu.edu/ncfmr/resources/data/family-profiles/westrick-payne-lin-age-variation-divorce-rate-1990-2021-fp-23-16.html>.

¹⁶ Allie Volpe, “The Astonishing Rise of Gray Divorce,” *Vox*, Oct. 1, 2024, available at <https://www.vox.com/the-highlight/372912/gray-divorce-after-50-trend-financial-social-consequences>.

¹⁷ “Gray Divorce: Why Late-Life Splits Are More Common Today,” *Newsweek*, available at <https://www.newsweek.com/gray-divorce-late-life-more-common-today-1838744>.

¹⁸ Jocelyn Elise Crowley, *Gray Divorce: What We Lose and Gain from Mid-Life Splits* (2018).

¹⁹ “Gray Divorce: Why Late-Life Splits Are More Common Today,” *Newsweek*, available at <https://www.newsweek.com/gray-divorce-late-life-more-common-today-1838744>.

²⁰ Kathryn Smerling, forthcoming, *Learning to Play Again: Rediscovering Our Early Selves to Become Better Adults* (add forthcoming publication date).

²¹ *Id.*

²² Carly Stern, “Will the American Nuclear Family Die Out?” *OZY*, Feb. 11, 2020, available at <https://www.ozy.com/news-and-politics/the-nuclear-family-is-in-de-cline-but-did-it-ever-represent-america/258493/>; Melanie Mears, “Comment, Revisiting Grandparent Rights

households], a decline by nearly half of what they were before.” As a result, the American nuclear family continues to diversify and grandparents take on greater involvement in their grandchildren’s lives.²³ “Factors such as divorce, economic hardship, single parenthood, teenage pregnancy, drug and alcohol addiction, incarceration, child abuse and neglect, and military employment have influenced this increase in involvement.”²⁴

The grandparent role has expanded during a time of demographic transition characterized by longer life expectancy, later childbearing years, and declining fertility rates, all of which have changed the structure of families.²⁵ Grandparents are on average healthier and have fewer grandchildren to support than their predecessors, creating the opportunity for development of the grandparent role.²⁶ Younger grandparents are more likely to be physically and mentally fit, which increases the likelihood of intensive childcare.²⁷ However, age defines a grandparent’s involvement in other roles, such as being an active member of the workforce, a position that may compete with the grandparent’s role.²⁸ Still, numerous studies conclude that

Across the United States,” 36 J. AM. ACAD. MATRIMONIAL L. (2023), available at <https://www.aaml.org/wp-content/uploads/9-MAT104.pdf>.

²³ See Hope Yen, “Grandparents Playing Larger Role in Raising Grandchildren,” *New Haven Reg.*, Aug. 25, 2011, available at <https://www.nhregister.com/news/article/Grandparents-playing-larger-role-in-raising-11570728.php>; Melanie Mears, “Comment, Revisiting Grandparent Rights Across the United States,” 36 J. AM. ACAD. MATRIMONIAL L. (2023), available at <https://www.aaml.org/wp-content/uploads/9-MAT104.pdf>.

²⁴ E.g., Id.; Tricia V. Argentine, Grandparents Act as the “National Guard” of Their Families—All Eager and Ready to Respond When in Need: A Call for Expansion of Grandparent Visitation Rights in North Carolina, 37 N.C. CENT. L. REV. 68, 69 (2014); Michael K. Goldberg, A Survey of the Fifty States’ Grandparent visitation statutes, 10 MARQ. ELDER’S ADVISOR 245, 246 (2009); Terry Turner, Taking Care of Yourself While Raising Your Grandchildren, RETIRE GUIDE (July 31, 2020), <https://www.retireguide.com/guides/self-care-raising-grandchildren/>; Melanie Mears, “Comment, Revisiting Grandparent Rights Across the United States,” 36 J. AM. ACAD. MATRIMONIAL L. (2023), available at <https://www.aaml.org/wp-content/uploads/9-MAT104.pdf>.

²⁵ Emre Sari, “Multigenerational Health Perspectives: The Role of Grandparents’ Influence on Grandchildren’s Wellbeing,” INT’L J PUB. HEALTH, 2023, 68: 1606292, published online Sept. 8, 2023. doi: 10.3389/ijph.2023.1606292.

²⁶ Arpino, et al., *supra* n.11.

²⁷ Hank and Buber, “Grandparents Caring for their Grandchildren: Findings from the 2004 Survey of Health, Ageing, and Retirement in Europe” JOURNAL OF FAMILY ISSUES 20(1):53-73 (2009).

²⁸ Arpino, et al., *supra* n.11.

grandparents find their role, which is largely shaped by individual, familial, socio-historical, economic, and demographic factors,²⁹ to be very satisfying.³⁰

Additionally, the age and number of grandchildren, along with geographical proximity, present a structure for interaction between the generations.³¹ The likelihood that a child in the United States will live with a grandparent has increased over time, with three-generation and grand family living arrangements being more prevalent among racial and ethnic minority groups.³² Children in multigenerational households receive substantial time investment from grandparents.³³ In addition, there are “skipped-generation” households where a grandparent and grandchild co-reside but no parent is present, as well as “three-generation shared-care households” where the grandparent claims primary responsibility for the grandchild.³⁴ In these scenarios, grandparents typically take on caregiving responsibilities.³⁵ Notably, while grandparents influence their grandchildren, that influence is bidirectional.³⁶ Despite the changing dynamics of families and society, the

²⁹ Kemp, Candace L. “The Social and Demographic Contours of Contemporary Grandparenthood: Mapping Patterns in Canada and the United States.” *Journal of Comparative Family Studies*, vol. 34, no. 2, 2003, pp. 187–212. Available at: <http://www.jstor.org/stable/41603872>.

³⁰ Thiele, D. M., and Whelan, T. A., “The Nature and Dimensions of the Grandparent Role,” *Marriage & Family Review*, vol. 40, no. 1, 2006, pp. 93–108, doi: 10.1300/J002v40n01_06.

³¹ Arpino, et al., *supra* n.11.

³² Amorim, Mariana, et al. “From 6.5% of children living with a grandparent in 1990 to 12% doing so in 2015”. *The Magnitude and Timing of Grandparental Coresidence during Childhood in the United States*, *Demographic Research*, vol. 37, 2017, pp. 1695–706. Available at: <http://www.jstor.org/stable/26332239>.

³³ Kalil, Ariel, et al. “Time Investments in Children across Family Structures.” *The Annals of the American Academy of Political and Social Science*, vol. 654, 2014, pp. 150–68. Available at: <http://www.jstor.org/stable/24541737>.

³⁴ Mutchler, Jan E., and Lindsey A. Baker. “A Demographic Examination of Grandparent Caregivers in the Census 2000 Supplementary Survey.” *Population Research and Policy Review*, vol. 23, no. 4, 2004, pp. 359–77. Available at: <http://www.jstor.org/stable/40230866>.

³⁵ *Id.*

³⁶ Wong, ELY, Liao, JM, Etherton-Beer, C, Baldassar, L, Cheung, G, Dale, CM, et al. Scoping Review: Intergenerational Resource Transfer and Possible Enabling Factors. *Int J Environ Res Public Health*(2020) 17(21):7868. doi:10.3390/ijerph17217868; Sari *supra* n.25.

role of the grandparent continues to add value to those around them as “stress buffers, family watchdogs, roots, arbitrators, and supporters.”³⁷

C. *The Effect of Grandparent Relationships*

Grandparent relationships can be valuable for families. In many scenarios, grandparents add a layer of continuity,³⁸ stability, childcare, companionship, and financial and emotional support³⁹ that helps both young and adult grandchildren thrive.⁴⁰ Importantly, grandparents may lend support to both generations of parents and grandchildren.⁴¹ They can be great triangulators, serving as a grandchild’s second layer of guidance that shapes development⁴² beyond the boundaries of a nuclear family.⁴³ Grandparents may carry out family traditions that translate into precious memories, they may occasionally bend parent rules,⁴⁴ and they might share personal stories

³⁷ “Importance of Grandparents to Their Grandchildren,” available at <https://foreverfamilies.byu.edu/importance-of-grandparents-to-their-grandchildren>.

³⁸ Hagestad, G. O. *Continuity and connectedness*. In V. L. Bengtson & J. F. Robertson (Eds.), *Grandparenthood* 31–48 (Sage Publications, Inc. 1985).

³⁹ Kornhaber, Arthur, and Kenneth L. Woodward. *Grandparents/grandchildren: The vital connection*. Routledge, 2019.

⁴⁰ “Grandparenthood.” In B. H. Fiese, M. Celano, K. Deater-Deckard, E. N. Jouriles, & M. A. Whisman (Eds.), *APA handbook of Contemporary Family Psychology: Foundations, Methods, and Contemporary Issues Across the Lifespan* 557–574. (Am. Psychol. Ass’n 2019). Available at: <https://doi.org/10.1037/0000099-031>; Troll L. E. “Grandparents: The Family Watchdogs.” In T.H. Brubaker (Ed.), *Family Relationships in Later Life* 63-74 (Sage 1983).

⁴¹ Attias-Donfut C, Wolff FC. “The Redistributive Effects of Generational Transfers.” In Arbur S, Attias-Donfut C, editors. *The Myth of Generational Conflict: The Family and State in Ageing Societies* 22-46 (Routledge 2000); Soldo BJ. “Cross Pressures on Middle-Aged Adults: A Broader View.” *Journal of Gerontology: Social Sciences*, vol. 51, 1996, S217–S273.

⁴² Coall, David A., and Ralph Hertwig. “Grandparental Investment: A Relic of the Past or a Resource for the Future?” *Current Directions in Psychological Science*, vol. 20, no. 2, 2011, pp. 93–98. Available at: <http://www.jstor.org/stable/23045759>.

⁴³ Laura T. Kessler, “Community Parenting,” 24 WASH. U. J.L. & POL’Y 47 (2007).

⁴⁴ The Fun Seeker is a frequent pattern, one in which the grandparent-child relationship is characterized by “fun morality.” Neugarten, Bernice L., and Karol K. Weinstein. “The Changing American Grandparent.” *Journal of Marriage and Family*, vol. 26, no. 2, 1964, pp. 199–204. Available at: <https://doi.org/10.2307/349727>, accessed Oct. 1, 2024.

about events marked in history books,⁴⁵ and help children establish narrative identities.⁴⁶ Even as interactions between grandchildren and grandparents may become less frequent, such as during a grandchild's college years, grandchildren perceive their grandparents, particularly their grandmothers, as influential in their value development.⁴⁷

Grandparents may also influence their grandchild's physical health. For example, the bond between grandparents and their grandchildren has the potential to reduce risky behavior, such as smoking and drug use among teenagers.⁴⁸ A strong bond may also improve nutritional outcomes, reducing the likelihood of childhood obesity, and lead to better mental health in grandchildren.⁴⁹ This bond can also adversely affect grandchildren, *e.g.*, when grandparents indulge in unhealthy habits, such as smoking.⁵⁰

Co-residency with a grandparent is shown to influence their grandchildren. For example, in all 33 OECD⁵¹ member countries, co-residence with grandparents has been linked to adverse cognitive and non-cognitive outcomes, such as lower mathematics scores and changes in locus of control.⁵² However, race and living companions are factors in determining the impact of co-residency. For white children, living with a single mother

⁴⁵ Blundon, A. "The Role of Grandparents." In *Rural Transformation and Newfoundland and Labrador Diaspora* (Brill 2013), available at <https://brill.com/view/book/edcoll/9789462093027/BP000022.xml>.

⁴⁶ Green, Anna. "Grandparents, Communicative Memory and Narrative Identity." *Oral History*, vol. 47, no. 1, 2019, 81–91. Available at: <http://www.jstor.org/stable/45214451>.

⁴⁷ Karen A. Roberto, Ph.D., and Johanna Stroes, M.A., "Grandchildren and Grandparents: Roles, Influences, and Relationships," vol. 34, issue 3, available at <https://doi.org/10.2190/8CW7-91WF-E5QC-5UFN>.

⁴⁸ Sari *supra* n.25.

⁴⁹ Sadruddin, AFA, Ponguta, LA, Zonderman, AL, Wiley, KS, Grimshaw, A, and Panter-Brick, C. How Do Grandparents Influence Child Health and Development? A Systematic Review. *Soc Sci Med* (2019) 239:112476. doi:10.1016/j.socscimed.2019.112476.

⁵⁰ Duarte, R, Escario, JJ, and Molina, JA. Smoking Transmission in-Home Across Three Generations in-Home Across Three Generations. *J Subst Use* (2015) 21:1–5. doi:10.3109/14659891.2015.1018970.

⁵¹ The Organisation for Economic Co-operation and Development, <https://www.oecd.org/en/about.html>.

⁵² Sadruddin *supra* n.49; Radl, J, Salazar, L, and Cebolla-Boado, H. Does Living in a Fatherless Household Compromise Educational Success? A Comparative Study of Cognitive and Non-Cognitive Skills. *Eur J Popul* (2017) 33(2):217–42. doi:10.1007/s10680-017-9414-8.

and a grandparent is associated with increased cognitive stimulation and higher reading recognition scores, compared to living with a single mother alone.⁵³ However, for Black children, grandparent co-residence is associated with less cognitive stimulation.⁵⁴ Comparatively, three-generation co-residence scenarios have been associated with lower levels of expressive language for White, Asian, and Black children but more expressive language for Hispanic children.⁵⁵ “Co-residence was also associated with more externalizing behavior for White and American Indian/Alaskan Native children but less externalizing behavior for Hispanic and Black children.”⁵⁶ Thus, living with a grandparent may benefit children, but the pattern of results differs by race.⁵⁷

Additionally, the mental health histories of grandparents play an important role in the social and emotional wellbeing of young children.⁵⁸ Thus, healthy grandparents conveying to grandchildren that their lives as older adults are still full of possibilities and open to new growth is important to grandchildren’s mental health.⁵⁹ From the grandchild’s perspective, affectionate communication from grandparents has shown to be indirectly associated with less loneliness via heightened shared family identity, but only for grandchildren who judged grandparents’ futures as expansive.⁶⁰ Further, due to working parent responsibilities, grandmothers in particular increasingly take on childcare for preschool age grandchildren and their

⁵³ Emre Sari, “Multigenerational Health Perspectives: The Role of Grandparents’ Influence on Grandchildren’s Wellbeing,” *INT’L J PUB. HEALTH*, 2023, 68: 1606292, published online Sept. 8, 2023. doi: 10.3389/ijph.2023.1606292.

⁵⁴ *Id.*

⁵⁵ Pilkauskas, Natasha V. “Living with a Grandparent and Parent in Early Childhood: Associations with School Readiness and Differences by Demographic Characteristics.” *Developmental Psychology*, vol. 50, no. 12, Dec. 2014, pp. 2587-2599.

⁵⁶ *Id.*

⁵⁷ Dunifon, Rachel, and Lori Kowaleski-Jones. “The Influence of Grandparents in Single-Mother Families.” *Journal of Marriage and Family*, vol. 69, no. 2, 2007, pp. 465–81. Available at: <http://www.jstor.org/stable/4622450>.

⁵⁸ Hancock, K.J., Mitrou, F., Shipley, M. et al., “A Three Generation Study of the Mental Health Relationships Between Grandparents, Parents, and Children,” *BMC Psychiatry* 13, 299 (2013), available at <https://doi.org/10.1186/1471-244X-13-299>.

⁵⁹ Bernhold, Q. S., “Grandparents’ Affectionate Communication Toward Grandchildren and Grandchildren’s Mental Health Difficulties: The Moderating Role of Future Time Perspective,” *Health Communication*, vol. 35, no. 7, 2019, pp. 822–831, available at <https://doi.org/10.1080/10410236.2019.1593080>.

⁶⁰ *Id.*

mental health may impact grandchildren directly through frequent caregiving and indirectly through influencing their parents.⁶¹ Still, research suggests that children find unique acceptance in their relationships with grandparents, which benefits them emotionally and mentally.⁶² Grandparents can be a major support during family disruptions, such as during their parents' divorce, the birth of a sibling, the death of a loved one, incarceration, military duty, and more.⁶³

Conversely, not all grandparent relationships are healthy ones that serve a grandchild's best interests, and grandparents who exhibit toxic behaviors, such as consistently undermining parental authority, manipulating with guilt or shame, disregarding boundaries, and being verbally or physically abusive can negatively impact family dynamics.⁶⁴ In circumstances like these, parents may object to grandparents having relationships with their children.⁶⁵ Parents may also limit the amount of time their child sees their grandparents.⁶⁶ While grandparents can be a source of support, they can also be a source of conflict, such as after a change in family circumstances: a death in the family, incarceration, divorce, and drug abuse,⁶⁷ which may result in a grandparent's need to pursue legal avenues to protect their relationships with grandchildren in their own interests and that of their grandchildren.

⁶¹ Johnston, D.W., Schurer, S., and Shields, M.A., "Evidence on the Long Shadow of Poor Mental Health Across Three Generations." *IZA Discussion Paper*, vol. 6014 (2011), available at <https://www.econstor.eu/handle/10419/55107>.

⁶² "Importance of Grandparents to Their Grandchildren," available at <https://foreverfamilies.byu.edu/importance-of-grandparents-to-their-grandchildren>.

⁶³ *Id.*

⁶⁴ Ashley Austrew "How to Identify and Deal with Toxic Grandparents," September 11, 2025, available at <https://www.care.com/c/toxic-grandparents-warning-signs/>.

⁶⁵ Lauren F. Cowan, *There's No Places Like Home: Why the Harm Standard in Grandparent Visitation Disputes Is in the Child's Best Interests*, 75 *FORDHAM L. REV.* 3137, 3137 (2007). Available at: <https://ir.lawnet.fordham.edu/flr/vol75/iss6/16>.

⁶⁶ Clark, S.J., Freed, G.L., Singer, D.C., Gebremariam, A., & Schulz, S. (2020, August 17). "When parents and grandparents disagree." 36(5), 1-2. C.S. Mott Children's Hospital National Poll on Children's Health.

⁶⁷ *Id.* at 3138.

II. GRANDPARENT VISITATION IN THE UNITED STATES

A. Grandparent Rights versus Grandparent Visitation

According to Black's Law Dictionary, grandparent rights are "a grandfather's or a grandmother's rights in seeking visitation with a grandchild."⁶⁸ In other words, grandparent rights are only an individual grandparent's right to have standing to pursue visitation with a grandchild.⁶⁹ Conversely, the Black's Law Dictionary defines grandparent visitation as "a grandparent's court-approved access to a grandchild."⁷⁰ Thus, if a grandparent seeks visitation with their grandchild, they must first establish their rights through their relationship as a grandparent before a court may award visitation. Specifically, grandparents seeking to establish visitation with their grandchildren must first bear the burden of proving that they have standing to bring such a claim before the grandparent may prove that they should be granted visitation over a fit parent's objection.⁷¹ Importantly, grandparents have no right to visitation, but only a right to request the privilege of visitation:⁷²

[T]he right of a grandparent to visit with one's grandchild is never the issue before a court...the more fundamental right affected by grandparent visitation jurisprudence is *the child's right to a continuing relationship with his or her own family, namely, a grandparent*—usually over the objection of the child's own parent. Therefore... judges are often in the position of weighing the rights of parents versus the rights of the parents' own children.⁷³

⁶⁸ GRANDPARENT RIGHTS, Black's Law Dictionary (12th ed. 2024).

⁶⁹ Daniel R. Victor, Keri L. Middleditch, "Grandparent Visitation: A Survey of History, Jurisprudence, and Legislative Trends Across the United States in the Past Decade," 22 J. AM. ACAD. MATRIMONIAL L. (2009), available at https://www.aaml.org/wp-content/uploads/MAT206_0.pdf.

⁷⁰ VISITATION, Black's Law Dictionary (12th ed. 2024).

⁷¹ *Troxel v. Granville*, 530 U.S. 57 (2000).

⁷² *Sachs v. Walzer*, 242 Ga. 742 (1978).

⁷³ Victor and Middleditch, *supra* n.69.

Interestingly, proponents of grandparent visitation legislation are often child advocates, rather than people who are “pro-grandparent,” who seek to protect children from the harm that follows a parent’s decision to eliminate a child’s contact with a family member with whom the child has a loving and emotionally bonded relationship.⁷⁴ The objective of such advocates is not to obtain visitation for the grandparent and the child, but to create an opportunity for the child’s disputing family members to convene and work to resolve their disputes.⁷⁵ While a parent and a grandparent can jointly agree to visitation and freely enter agreements permitting the same, high-conflict situations that do not support the best interests of the grandchild can be an influential factor for a court. Generally, in cases involving the issue of grandparent visitation, “a moderate amount of antagonism that does not have a major impact on the child will not preclude court-ordered visitation.” However, where the level of antagonism is too high, such as circumstances where a grandparent may use their visitation to undermine the child’s relationship with their parent, that could result in denial of visitation.⁷⁶

The national non-profit Grandparent Rights Organization, which has lobbied in all fifty states for grandparent legislation, has made it clear that, “just because you have a law does not mean you have to have a lawsuit.”⁷⁷ The threat of litigation can effectively bring feuding family members together, despite their differences, in the best interests of the minor child.⁷⁸

B. Mediation Support in the ABA Model Rules

The American Bar Association issued Model Rules for grandparent

⁷⁴ Melanie Mears, “Comment, Revisiting Grandparent Rights Across the United States,” *J. AM. ACAD. MATRIMONIAL L.* 393 (2023), available at <https://www.aaml.org/wp-content/uploads/9-MAT104.pdf>.

⁷⁵ *Id.*

⁷⁶ Jeff Atkinson, “The Rights of Grandparents,” Dec. 11, 2011, available at https://www.americanbar.org/groups/senior_lawyers/resources/voice-of-experience/2010-2022/rights-grandparents/.

⁷⁷ Todd C. Berg, “Grandparent Visitation Law Back on the Books: Provides Recourse When Visitation is Denied,” available at <http://www.grandparentsrights.org>, quoting Grandparents Rights Organization founder, Richard S. Victor (2005); Melanie Mears, “Comment, Revisiting Grandparent Rights Across the United States,” 36 *J. AM. ACAD. MATRIMONIAL L.* 393 (2023), available at <https://www.aaml.org/wp-content/uploads/9-MAT104.pdf>.

⁷⁸ Mears *supra* n.74.

visitation in 1989.⁷⁹ Notably, given the opportunity for antagonism in family law litigation, the rules encourage attorneys, court personnel and other professionals to refer parties involved in grandparent visitation disputes to participate in mediation before the filing of any court action, in an effort to “develop agreements between the disputants regarding grandparent visitation, to reduce acrimony between the parties and to minimize any trauma for the child involved.”⁸⁰ However, when mediation does not resolve the visitation issue, litigants are reliant on the changing legal landscape of grandparent visitation.

C. *The Clash of Constitutional Rights and the Best Interest Standard*

As grandparent rights advocates pushed for legislation that would allow grandparents to be involved in the lives of their grandchildren, they saw success by the end of the 1980s as all fifty states had enacted grandparent visitation statutes,⁸¹ although the District of Columbia did not follow.⁸² While opponents of third-party visitation laws attempted to frame the issue of grandparent visitation as contrary to a parent’s right to make decisions concerning the child versus a grandparent’s right to see their grandchild, a more accurate reflection of American jurisprudence highlights the competing rights of a parent versus the rights of the child.⁸³

As the Supreme Court of the United States has recognized that “the relationship between parent and child is constitutionally protected,⁸⁴ the Court addressed the constitutionality of Washington’s grandparent visitation statute in the landmark case of *Troxel v. Granville*, where the Court held that pursuant to the Due Process Clause of the Fourteenth Amendment of the U.S.

⁷⁹ “Grandparent Visitation,” *American Bar Association*, Nov. 16, 2017, available at https://www.americanbar.org/groups/public_interest/child_law/resources/attorneys/grandparent_visitation/.

⁸⁰ *Id.*

⁸¹ Mears *supra* n.74.

⁸² Jeff Atkinson, “The Rights of Grandparents,” Dec. 11, 2011, available at https://www.americanbar.org/groups/senior_lawyers/resources/voice-of-experience/2010-2022/rights-grandparents/.

⁸³ Daniel R. Victor, Keri L. Middleditch, “Grandparent Visitation: A Survey of History, Jurisprudence, and Legislative Trends Across the United States in the Past Decade,” 22 J. AM. ACAD. MATRIMONIAL L. 394 (2009), available at https://www.aaml.org/wp-content/uploads/MAT206_0.pdf.

⁸⁴ *Quilloin v. Walcott*, 434 U.S. 246, 255 (II) (A) (1978); *Patten v. Ardis*, 304 Ga. 140, 143 (2018).

Constitution, and absent special circumstances justifying interference, fit parents have a fundamental right to make decisions concerning the care, custody, and control of their children.⁸⁵ *Troxel* established “a presumption that fit parents act in the best interests of their children.”⁸⁶ On an interesting note, the Court stopped short of ruling that all third-party visitation statutes were unconstitutional.⁸⁷

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 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 violate the Due Process Clause as a per se matter.⁸⁸

Following *Troxel*, many state courts narrowed the circumstances in which third parties can obtain visitation.⁸⁹ As of 2023, at least 32 state supreme courts have ruled on the constitutionality of the states’ grandparent visitation statutes since *Troxel* was decided.⁹⁰ A majority of the states have held that the statutes or a portion of the statutes are constitutional, at least as applied in some circumstances.⁹¹ By 2024, at least eight states — Florida,⁹²

⁸⁵ *Troxel*, 530 U.S. at 66 (2000).

⁸⁶ *Barnhill v. Alford*, 315 Ga. 304, 312 (2022).

⁸⁷ Daniel R. Victor, Keri L. Middleditch, “Grandparent Visitation: A Survey of History, Jurisprudence, and Legislative Trends Across the United States in the Past Decade,” 22 J. AM. ACAD. MATRIMONIAL L. 394 (2009), available at https://www.aaml.org/wp-content/uploads/MAT206_0.pdf.

⁸⁸ *Troxel*, 530 U.S. at 73 (2000).

⁸⁹ 2 Modern Child Custody Practice § 9-13A (2024).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998) (holding that the State Constitution’s guarantee of privacy was violated by the state’s grandparent visitation statute mandating that if one or both parents are deceased, trial court shall order grandparent visitation upon grandparent’s petition, when in the best interest of the minor child, without first requiring proof of demonstrable harm to child).

Georgia,⁹³ Hawaii,⁹⁴ Idaho,⁹⁵ Illinois,⁹⁶ Iowa,⁹⁷ Michigan,⁹⁸ and Washington⁹⁹ — have held a version of their respective state statutes to be unconstitutional.

ABA Model Rules encourage state legislators to consider several factors in grandparent visitation, such as:

⁹³ *Brooks v. Parkerson*, 265 GA. 189 (1995) (holding that an earlier version of O.C.G.A. § 19-7-3 is unconstitutional in allowing grandparent visitation without a showing of harm to the child).

⁹⁴ *Doe v. Doe*, 116 Hawai'i 323 (2007) (holding that Hawaii's grandparent visitation statute HRS § 571-46.3 was facially unconstitutional because it did not include a "harm to the child" standard required by the right to privacy under the state's constitution).

⁹⁵ *Nelson v. Evans*, 170 Idaho 887 (2022) (holding that Idaho's grandparent visitation statute I.C. § 32-719 was facially unconstitutional because it was not narrowly tailored). *See also* *Murray v. Dalton*, 558 P.3d 1057 (2024) (reaffirming that the statute interfered with fundamental parental rights and was subject to strict scrutiny analysis).

⁹⁶ *See Wickham v. Byrne*, 199 Ill. 2d 309, 769 N.E.2d 1 (2002) (holding that the statute authorizing grandparent visitation, 750 ILCS 5/607(b)(1), (b)(3) or Section 607 of the Illinois Marriage and Dissolution of Marriage Act, was facially unconstitutional) and *Lulay v. Lulay*, 193 Ill.2d 455 (2000) (holding that the statute governing grandparent visitation privileges applied to this case, where the parents agreed that visitation by the grandmother should not occur, did not serve a compelling statute interest and thus unconstitutionally infringed on the parents' fundamental liberty interest in raising their children).

⁹⁷ *Santi v. Sant*, 633 N.W.2d 213 (2001) (holding that Iowa Code § 598.35(7) (1999) was unconstitutional, not because it fails to require a showing of harm, but because it does not require a threshold finding of parental unfitness before proceeding to the best interest analysis). *See also* *In Re Marriage of Howard*, 661 N.W.2d 183 (2003) (holding that the section of the statute permitting a petition for grandparent visitation when the parents of a child are divorced was facially unconstitutional); *Wurpts v. Iowa District Court, Sioux County*, 687 N.W.2d 286 (2004) (finding that the statute was unconstitutional for failing to comport with the Due Process Clause); and *Lamberts v. Lillig*, 670 N.W.2d 129 (2003) (consistent with prior rulings in *Santi* and *Howard*).

⁹⁸ *DeRose v. DeRose*, 469 Mich. 320 (2003) (holding that M.C.L.A. 722.27b was unconstitutional because it violated parents' liberty interests that are protected by due process guarantees).

⁹⁹ *In re Parentage of C.A.M.A.*, 154 Wash.2d 52 (2005) (holding that Washington's grandparent visitation statute, RCW 26.09.240, was unconstitutional because the statutory presumption that visitation with a grandparent was in the child's best interest upon showing of a substantial relationship infringed on fit parent's due process right to control visitation, and the unconstitutional portion of the statute was not severable, thus the entire statute was invalid).

- a) the nature and quality of the relationship between the grandparent and the child, including such factors as whether emotional bonds have been established and whether the grandparent has enhanced or interfered with the parent-child relationship;
 - b) whether visitation will promote or disrupt the child's psychological development;
 - c) whether visitation will create friction between the child and his or her parent(s);
 - d) whether visitation will provide support and stability for the child after a nuclear family disruption;
 - e) the capacity of the adults involved for future compromise and cooperation in matters involving the child;
 - f) the child's wishes, if the child is able to freely form and express a preference; and
 - g) any other factor relevant to a fair and just determination regarding visitation.
4. State legislation or court rules should require judges presiding in grandparent visitation cases to appoint qualified guardians ad litem for the children involved in such disputes.¹⁰⁰

Thus, the ABA advises states to incorporate specific aspects of family dynamics in the best interest standard as it pertains to a determination of grandparent visitation.

D. Other Jurisdictions

In 2021, the ABA published a survey on “*Nonparent*” *Custody and Visitation Statutes* summarizing the statutes in all fifty states, the District of Columbia, and Puerto Rico.¹⁰¹ While every state has at least one nonparent

¹⁰⁰ “Grandparent Visitation,” *American Bar Association*, Nov. 16, 2017, available at https://www.americanbar.org/groups/public_interest/child_law/resources/attorneys/grandparent_visitation/.

¹⁰¹ “Nonparent Custody and Visitation Statutes in 2020,” *Family Law Quarterly*, vol. 54, no. 4, 2021, pp. 365-376 (Am. Bar Ass’n), available at https://www.americanbar.org/content/dam/aba/publications/family_law_quarterly/nonparent-custody-and-visitation.pdf.

visitation statute, there are differences among them, including who has standing to seek visitation.¹⁰²

These visitation statutes highlight the growing diversity in American families. Specifically, the statutes differ regarding which nonparent relatives are expressly named to have standing to seek visitation. By comparison, Georgia's statute, by naming grandparents, great-grandparents, and siblings, is moderately inclusive to the other states' statutes.¹⁰³ Fifteen states limit visitation to grandparents only: Alabama, Alaska, Indiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, North Carolina, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming.¹⁰⁴ Twelve states limit visitation to grandparents and great-grandparents: Arizona, Colorado, Connecticut, Florida, Idaho, Iowa, Maine, Minnesota, Montana, New Mexico, Oklahoma, and Pennsylvania.¹⁰⁵ California offers a broader list by including grandparents, great-grandparents, siblings, aunts and uncles, stepparents, and former legal guardians, while also including an "order of preference" regarding custody.¹⁰⁶ Similarly, the Ohio statute lists grandparents and relatives, where a relative is defined as "[A]ny other person other than a parent."¹⁰⁷ Additionally, Louisiana's statute names grandparents, siblings, "any other relative," stepparents, and step-grandparents.¹⁰⁸ Oregon's visitation statute includes foster parents, while the Texas and Minnesota statutes exclude them. Washington's statute lists grandparents, stepparents, and extended family members which include "blood relatives" and stepsiblings.¹⁰⁹

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ "Nonparent Custody and Visitation Statutes in 2020," *Family Law Quarterly*, vol. 54, no. 4, 2021, pp. 365-376 (Am. Bar Ass'n), available at https://www.americanbar.org/content/dam/aba/publications/family_law_quarterly/nonparent-custody-and-visitation.pdf.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

III. GRANDPARENT VISITATION IN GEORGIA

A. “Grandparents” as Defined in the Georgia Code

While a “grandparent” in the traditional sense is “the parent of one’s father or mother,”¹¹⁰ the definition of “grandparent” varies significantly across the Georgia Code. The Georgia legislature expands this definition in O.C.G.A. § 19-7-3, Georgia’s Grandparent visitation statute, to a “parent of a parent of a minor child, the parent of a minor child’s parent who has died, and the parent of a minor child’s parent whose parental rights have been terminated.”¹¹¹ Elsewhere in the Georgia Code, the definition of a grandparent varies. For example, several definitions are relationship-focused that convey the connections between such family members:

“**relative**” in O.C.G.A. § 49-6-72 (10) (Ga. Social Services Code) and in O.C.G.A. § 39-4A-7 (Article II) (t) (Ga. Minors Code, O.C.G.A. Title 39);

“**family member**” in O.C.G.A. § 31-7-381 (6) (Ga. Health Code, O.C.G.A. Title 31), in O.C.G.A. § 38-4-15 (Ga. Military, Emergency Management, and Veterans Affairs Code, O.C.G.A. Title 38), and also in O.C.G.A. § 19-7-3 (a) (1) (Ga. Domestic Relations Code, O.C.G.A. Title 19);

“**immediate family member**” in O.C.G.A. § 34-1-10 (a) (4) (Ga. Labor and Industrial Relations Code, O.C.G.A. Title 34), in O.C.G.A. § 17-21-2 (4) (Ga. Criminal Procedure Code, O.C.G.A. Title 17), in O.C.G.A. § 48-5C-1 (a) (2) (Ga. Revenue and Taxation Code, O.C.G.A. Title 48), in O.C.G.A. § 7-1-1001 (a) (4) (Ga. Banking and Finance Code, O.C.G.A. Title 7), and in O.C.G.A. § 40-5-24 (b) (2) (C);

“**kinship caregiver**” in O.C.G.A. § 20-1-15 (3) (Ga. Education Code, O.C.G.A. Title 20);

one “**related to such candidate**” in O.C.G.A. § 21-2-385 (Ga. Elections Code, O.C.G.A. Title 21);

¹¹⁰ “Grandparent,” Merriam-Webster, available at: <https://www.merriam-webster.com/dictionary/grandparent>.

¹¹¹ O.C.G.A. § 19-7-3(a).

potentially part of a child's "**family and permanency team**" under O.C.G.A. § 15-11-2 (32.1) (Ga. Juvenile Code, O.C.G.A. Title 15, Chapter 11);

Other sections of the Code contain definitions that grant certain rights, permit a grandparent to take certain actions, or limit them in doing so, such as the following:

a "**person entitled to request a certificate of birth resulting in stillbirth**" in O.C.G.A. § 31-10-33 (h) (2) (Ga. Health Code, O.C.G.A. Title 31);

a "**person who may consent to surgical or medical treatment**" when certain conditions are met under O.C.G.A. § 31-9-2 (a) (6) (D) (Ga. Health Code, O.C.G.A. Title 31);

maternal grandparents of a fetus may be "**a party that may obtain relief in a civil action for a partial birth abortion if the mother has not attained 18 years of age at the time of the abortion**" in O.C.G.A. § 16-12-144 (c) (1) (Ga. Crimes and Offenses Code, O.C.G.A. Title 16); and

"**member of the minor's family... whether of the whole or half blood or by adoption**" in O.C.G.A. § 44-5-111 (10), one that is excluded from being a "**disinterested witness**" in O.C.G.A. § 44-5-141 (5), and a "**person who may make an anatomical gift of decedent's body or part**" in O.C.G.A. § 44-5-147 (Ga. Property Code, O.C.G.A. Title 44);

where a decedent lacks a will, as one "**in the fourth degree...who shall share the estate equally**" [if surviving the decedent] in O.C.G.A. § 53-2-1 (c) (6) (Ga. Wills, Trusts, and Administration of Estates Code, O.C.G.A. Title 53);

"**appointed conservator**" under certain conditions under O.C.G.A. § 29-3-81 (a) (3) or as an "**appointed successor guardian**" under O.C.G.A. § 29-2-41 (a) (2) (Ga. Guardian and Ward Code, O.C.G.A. Title 29);

while grandparents are not specifically named, they may serve as a "**conservator in a Wrongful Death action**" on behalf of a minor

child if there is no surviving spouse, pursuant to O.C.G.A. § 51-4-2 (b) (3) (A) (Ga. Torts Code, O.C.G.A. Title 51);

a **“person holding a degree of relationship in which marriage is prohibited”** in O.C.G.A. § 19-3-3 (a) (4) (Ga. Domestic Relations Code, O.C.G.A. Title 19);

a **“person excluded from appointment to the State Commission on Compensation”** under certain conditions under O.C.G.A. § 45-7-91 (b) (Ga. Public Officers and Employees Code, O.C.G.A. Title 45);

a **“person excluded from constituting an “athlete agent”**” under O.C.G.A. § 43-4A-2 (2) (Ga. Professions and Businesses Code, O.C.G.A. Title 43); and,

“a person excluded from compensation when the offender is the person’s grandchild” in O.C.G.A. § 28-5-104 (a) (2) (A) (Ga. General Assembly Code, O.C.G.A. Title 28).

Other statutes may refer to grandparents in a way that is outside traditional norms:

a **“farmer”** who is the **“owner of a commercial agricultural or silvicultural operation or an employee thereof,”** which includes a grandparent when their grandchild qualifies for the term under O.C.G.A. § 40-6-305 (a) (1) (Ga. Motor Vehicles and Traffic Code, O.C.G.A. Title 40);

“victim” when certain conditions are met under O.C.G.A. § 17-17-3 (4) or as a **“person to act in place of a victim during a physical disability”** if the victim is physically unable to exercise privileges and rights as listed in O.C.G.A. § 17-17-4 (Ga. Criminal Procedure Code, O.C.G.A. Title 17);

Notably, beyond the definitions of grandparents, the rights of grandparents also vary across the Georgia Code. However, exploration of such variations is beyond the scope of this work.

B. Georgia Public Policy

In Georgia, grandparents have a legally recognized interest in the welfare of their grandchildren,¹¹² and it is the public policy of the State to encourage that a minor child have continuing contact with parents and grandparents who have demonstrated the ability to act in the best interest of the child.¹¹³ Georgia's grandparent visitation statute was enacted to provide a mechanism for courts to grant grandparent visitation rights with his or her minor grandchild where a child's parent objects.¹¹⁴ At odds with a parent's constitutional right is the child's constitutional right to protection of his or her person and the state's compelling interest in protecting the welfare of children.¹¹⁵ In most scenarios, the legal right of the parent and the interest of the child are the same; however, through misconduct or other circumstances, the welfare of the child may require that the child be separated from its parent wherefore the *parens patriae* must protect the helpless and the innocent.¹¹⁶ Through the application of this doctrine under certain circumstances, "the legislature may enact statutes that permit a child's interest to prevail over a parent's constitutional right to custody."¹¹⁷

¹¹² *Scott v. Scott*, 308 Ga. App. 263, 265 (2011) (citing O.C.G.A. §§ 19-7-1 (b) (1) and 19-7-3 (b); seeking to be substituted as next friend in the grandchildren's civil suit against their defendant mother for the wrongful death of their father); See David A. Webster & Deborah A. Johnson, *Georgia Divorce, Alimony, and Child Custody* § 26:7 (Oct. 2024 Update).

¹¹³ O.C.G.A. § 19-9-3 (d); David A. Webster & Deborah A. Johnson, *Georgia Divorce, Alimony, and Child Custody* § 26:7 (Oct. 2024 Update); See *Stone v. Stone*, 297 Ga. 451, 452–453 (2015), (finding that in determining the issue of custody, O.C.G.A. § 19–9–3 (d) encourages contact with grandparents, and O.C.G.A. § 19–7–3 provides a mechanism for a grant of visitation rights to grandparents when necessary to ensure and preserve that contact.); *Sheffield v. Sheffield*, 338 Ga. App. 667 (2016); *Marks v. Soles*, 339 Ga. App. 380(2) (2016); *Stone v. Webb*, 335 Ga. App. 739 (2016); and *In re M.F.*, 298 Ga. 138(2) (2015).

¹¹⁴ *Leach v. Warner*, 360 Ga. App. 856 (2021).

¹¹⁵ *Clark v. Wade*, 273 Ga. 587, 597 (2001).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

C. The Legal Framework of Georgia's Grandparent Visitation Statute

Georgia's current Grandparent visitation statute,¹¹⁸ codified as O.C.G.A. § 19-7-3 and effective as of July 1, 2025, seeks to balance the rights of the parents, the interests of the child, and the wishes of an alienated grandparent.¹¹⁹ The statute is comprised of eight sections:

- (1) the individuals with standing to bring a claim;
- (2) the right to file an original action or intervene in an existing action;
- (3) the terms for filing an original action, the court's deference to the child's parent(s) regarding visitation,¹²⁰ and minimum visitation;¹²¹
- (4) the showing of harm required by a clear and convincing evidence standard;
- (5) guardian ad litem expenses and mediation;
- (6) the hearing;
- (7) the court's authorization beyond visitation; and,
- (8) priority for competing visitation claims.¹²²

D. Grandparent Visitation Compared to Child Custody Determinations in Georgia

Like similar grandparent visitation laws in other states, Georgia's Grandparent visitation statute protects a child's right to have a relationship

¹¹⁸ While the statute is "commonly referred to as the Grandparent visitation statute" or the "Grandparent Visitation Act," the title of the statute denotes its application to a broader audience: "§ 19-7-3. Grant of visitation rights to family members". See *Namdar-Yeganeh v. Namdar-Yeganeh*, 369 Ga. App. 700, 701 (2023), *cert. denied* (Apr. 16, 2024) and *Sheppard v. McCraney*, 317 Ga. App. 91, 92 (2012).

¹¹⁹ *Leach*, 360 Ga. App. 856 (2021).

¹²⁰ For example, "[i]n no case shall the granting of visitation rights to a family member interfere with a child's school or regularly scheduled extracurricular activities." O.C.G.A. § 19-7-3 (c) (4).

¹²¹ The minimum duration of visitation is noteworthy, as the statute provides "[v]isitation time awarded to a family member shall not be less than 24 hours in any one-month period," yet if there are competitive claims by more than one individual seeking visitation under this Code section, "the court shall determine the amount of time to award to each petitioner which shall not be less than 24 hours in any one-month period in the aggregate." O.C.G.A. § 19-7-3 (c) (5).

¹²² "When more than one family member files an action pursuant to this Code section, the court shall determine the priority of such actions." O.C.G.A. § 19-7-3 (h).

with her or her grandparent(s),¹²³ which may be violated when a parent of the child dies, is incarcerated, has their parental rights terminated, divorces,¹²⁴ or whenever the parent's minor child has been adopted by a blood relative or by a stepparent, notwithstanding the provisions of O.C.G.A. § 19-8-19.¹²⁵ In these scenarios, the “surviving or custodial parent is no longer related to one set of the child's grandparents” and the parent may not support the child's relationship with that set of grandparents such that the grandparents are alienated from the child.¹²⁶ Georgia's Grandparent visitation statute gives standing to the grandparents from whom the child is being alienated so that the child's rights can be brought to the attention of the court having jurisdiction over the child, as the child does not have standing to sue her or her own parent to seek such contact.¹²⁷

Importantly, the issue of grandparent visitation is distinct from the issue of child custody. For example, where a grandparent has been raising their grandchild for several years and the child has come to regard the grandparent as a primary paternal figure, the grandparent is likely to retain custody, even if the parents are considered fit.¹²⁸ In *Namdar-Yeganeh*, the Supreme Court of Georgia addressed the relationship between Georgia's custody statute, O.C.G.A. § 19-9-3 and the grandparent visitation statute, O.C.G.A. § 19-7-3:

¹²³ O.C.G.A. § 19-7-3 (b) permits “any family member” to intervene and seek visitation, which pursuant to the statute means any grandparent, great-grandparent, or sibling.

¹²⁴ In the case of divorce, the grandparent's adult child may have limited or no visitation rights. *See*

Kunz v. Bailey, 290 Ga. 361, 362 (2012) (holding that “by virtue of the limiting language in the last sentence of OCGA § 19-7-3 (b), grandparents may only file an original action for visitation when the parents are separated *and* the child is not living with both parents” (emphasis in original)); *Barnhill v. Alford.*, 315 Ga. 304, 309 (2022).

¹²⁵ O.C.G.A. § 19-7-3; *See Mears supra* n.74.

¹²⁶ *See Mears supra* n.74.

¹²⁷ *Id.*

¹²⁸ Jeff Atkinson, “The Rights of Grandparents,” Dec. 11, 2011, available at https://www.americanbar.org/groups/senior_lawyers/resources/voice-of-experience/2010-2022/rights-grandparents/. Georgia's Equitable Caregiver Statute, O.C.G.A. § 19-7-3.1, enacted in 2019, provides another avenue for third parties to obtain visitation rights; however, the Supreme Court of Georgia limited the statute on Constitutional grounds in *Dias v. Boone*, 320 Ga. 785 (2025). Further, as addressed by the Supreme Court of Georgia in *Dias*, unlike Georgia's grandparent visitation statute, O.C.G.A. § 19-7-3, “the Equitable Caregiver Statute contains no presumption that it is in the best interests of a child to be in the custody of her legal parent.” *See Dias* at 797. O.C.G.A. § 19-7-3.1 is outside the scope of this writing.

“O.C.G.A. § 19-9-3 encourages the continuation of established contact with grandparents in the context of a custody dispute between parents¹²⁹ whereas O.C.G.A. § 19-7-3 provides a mechanism for a grant of visitation rights to grandparents when necessary to ensure and preserve this contact.”¹³⁰

Thus, Georgia’s custody statute seeks to generally preserve an existing grandparent-grandchild relationship amid disputes between parents, while Georgia’s grandparent visitation statute seeks to establish specific visitation time for grandparents with their grandchild when there is a dispute between a parent and grandparents.

E. Establishing Grandparent Visitation

The freedom of personal choice in matters of family life is a fundamental liberty interest, protected by the United States Constitution and “[t]he right to the custody and control of one’s child is a fiercely guarded right in our society, which should be infringed upon only under the most compelling circumstances.”¹³¹ While this right may be fiercely guarded, over time, the custodial rights of parents have fluctuated, expanding and restricting through the evolution of the state’s statutory and case law impacting the issue of grandparent visitation. Recently, the Court of Appeals of Georgia recognized that the plain language of O.C.G.A. § 19-7-3 (b) (1) (A) permits grandparents to file an original action to establish visitation with grandchildren, provided, under O.C.G.A. § 19-7-3 (b) (2), the parents are separated and the grandchild is not living with both parents.¹³² A grandparent may file an original action¹³³ for visitation where the issue of custody is

¹²⁹ O.C.G.A. § 19-9-3 (d).

¹³⁰ *Stone v. Stone*, 297 Ga. 451, 455 (2015); *Namdar-Yeganeh*, 369 Ga. App. at 705 (2023).

¹³¹ *Watkins v. Watkins*, 266 Ga. 269, 270 (1996).

¹³² *Namdar-Yeganeh*, 369 Ga. App. at 704 (2023); O.C.G.A. § 19-7-3.

¹³³ As distinguished from an “original pleading.” See *Miller v. Rieser*, 213 Ga. App. 683, 690, 446 S.E.2d 233, 239 (1994) (where the action originated by the grandmother who sought visitation rights through an amendment to her petition, it is an “original action for visitation rights” within the meaning of O.C.G.A. § 19-7-3 (b)).

before the court.¹³⁴ Further, a custody question arises when grandparents seek a modification of a habeas corpus order denying the grandparents custody.¹³⁵ When custody questions are at issue, the grandparent visitation statute may be invoked.¹³⁶ In such circumstances, grandparents can intervene in certain existing proceedings.¹³⁷

Once a case involving grandparent visitation has commenced, grandparents could likely face an uphill battle in seeking a visitation award, as parents benefit from a presumption that they should retain or regain custody against the interests of a nonparent.¹³⁸ To overcome that presumption, grandparents must show by clear and convincing evidence that parental custody would result in harm to the child.¹³⁹ In a concurring opinion for a 2025 case before the Supreme Court of Georgia that upheld parental rights over a putative equitable caregiver, Chief Justice Peterson referenced Georgia's grandparent visitation law, noting that interference with the fit legal parent's decision-making "requires a showing by clear and convincing evidence that the child will suffer harm from a fit parent's *particular decision* regarding the child's contact with a third party, and that the trial court's remedy be tailored to the harm caused by that decision."¹⁴⁰ The Chief Justice continued, "we find that implicit in Georgia cases, statutory and constitutional law is that state interference with parental rights to custody and control of children is permissible only where the health or welfare of a child is threatened."¹⁴¹

In considering whether the health or welfare of the child would be harmed without an award of grandparent visitation, the court shall consider and may find that harm to the child is reasonably likely to result when, prior to the death, incapacitation, or incarceration of the child's parent, certain circumstances exist, such as: (1) the minor child resided with the grandparent for six months or more; (2) the grandparent provided financial support for the

¹³⁴ *Id.*

¹³⁵ *George v. Sizemore*, 238 Ga. 525 (1977).

¹³⁶ *Spitz v. Holland*, 243 Ga. 9 (1979); *Mead v. Owens*, 149 Ga. App. 303 (1979); *Murphy v. McCarthy*, 201 Ga. App. 101 (1991).

¹³⁷ *Id.* at 704; *See also* *Barnhill v. Alford*, 315 Ga. 304, 308-310 (2) (2022); *Pate v. Sadlock*, 345 Ga. App. 591, 594 (1) (b) (i) (2018).

¹³⁸ *Clark*, 273 Ga. at 544.

¹³⁹ *Id.*

¹⁴⁰ *See* *Venticinque v. Lair*, 924 S.E.2d 312, 316 (Ga. 2025) (citing *Dias*, 320 Ga. at 798 and *Patten*, 304 Ga. at 144-45).

¹⁴¹ *Id.* at 316-17.

basic needs of the child for at least one year; (3) there was an established pattern of regular visitation or child care by the grandparent with the child; or (4) any other circumstance exists indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted.¹⁴² The statute expressly states that “the mere absence of an opportunity for a child to develop a relationship with a grandparent shall not be considered as harming the health or welfare of the child when there is no substantial preexisting relationship between the child and such grandparent.”¹⁴³

In addition to carrying the burden to overcome a showing of harm to the child, grandparents must also show that an award of grandparent visitation would serve the child’s best interest.¹⁴⁴ Additionally, so long as the grandparent may bear the cost without unreasonable financial hardship, the court may appoint a guardian ad litem for the child, assign the issue of visitation rights for a grandparent for mediation, or set a hearing on the issue of grandparent visitation.¹⁴⁵ Regardless of whether a grandparent is awarded visitation with their grandchild, the court may still direct a parent, by court order, to notify the grandparent of “every performance of the minor child to which the public is admitted, including, but not limited to, musical concerts, graduations, recitals, and sporting events or games.”¹⁴⁶ In making such determinations, the court is required to make specific written findings of fact in support of its rulings.¹⁴⁷ Moreover, pursuant to O.C.G.A. § 19-7-3, “an original action requesting visitation rights shall not be filed by any grandparent more than once during any two-year period and shall not be filed during any year in which another custody action has been filed concerning the child.”¹⁴⁸

F. Modifying Grandparent Visitation

Once a grandparent’s visitation rights are established, a parent of the child may petition the court for revocation or amendment of such visitation rights for good cause shown, and the court, in its discretion, may grant or deny the request for same, provided that such a petition shall not be filed

¹⁴² O.C.G.A. § 19-7-3 (d) (1) (A-D).

¹⁴³ *Id.*

¹⁴⁴ O.C.G.A. § 19-7-3 (c) (1).

¹⁴⁵ O.C.G.A. § 19-7-3 (e-f).

¹⁴⁶ O.C.G.A. § 19-7-3 (g).

¹⁴⁷ O.C.G.A. § 19-7-3 (d) (1).

¹⁴⁸ O.C.G.A. § 19-7-3 (c) (2).

more than once during any two-year period.¹⁴⁹ The opportunity for grandparents to modify established visitation with their grandchild is new, as before the Georgia legislature passed Senate Bill 245 in 2025, discussed *infra*, grandparents lacked standing under Georgia law to petition to modify or revoke an existing order that awarded them visitation with their grandchild.¹⁵⁰ Thus, once grandparent visitation was awarded, grandparents essentially had one opportunity to establish a visitation plan that would sustain the growth, development, and changing circumstances for both the child and the grandparents, unless the parties involved could agree to a modification by consent, until Senate Bill 245 closed this gap.¹⁵¹

G. The Evolution of Georgia's Grandparent Visitation Law

At common law in Georgia, grandparents had no legal right of access to their grandchildren when the parents objected to such visitation.¹⁵² A grandparent's access to their grandchild stemmed from a "moral, rather than a legal obligation" of the parent to permit such visitation.¹⁵³ Georgia courts addressed issues regarding a grandparent's legal right to visit a minor grandchild in a series of earlier cases: *Churchill v. Jackson*,¹⁵⁴ *Davis v. Davis*,¹⁵⁵ and *Jackson v. Martin*.¹⁵⁶

¹⁴⁹ *Id.*

¹⁵⁰ *Namdar-Yeganeh*, 369 Ga. App. 700 (2023).

¹⁵¹ S.B. 245, 158th Ga. Assemb., 2025-2026 Reg. Session, available at <https://www.legis.ga.gov/legislation/70720>; See also by this author Case Summary: *Namdar-Yeganeh v. Namdar-Yeganeh et al.*, and Vice Versa, 17 JOHN MARSHALL L.J. 323 (2025).

¹⁵² See *Grandparents' Visitation Rights In Georgia*, 29 EMORY LAW JOURNAL 1083 (1980).

¹⁵³ *DOMESTIC RELATIONS Grandparents' Visitation Rights*, 2 GA. ST. U. L. REV. 189 (1986); *Grandparents' Visitation Rights in Georgia*, 29 EMORY L.J. 1083, 1083 (1980).

¹⁵⁴ *Churchill v. Jackson*, 125 Ga. 385, 53 S.E. 960 (1906) (granting the non-custodial grandparent with visitation rights under the best interest of the child standard); *DOMESTIC RELATIONS Grandparents' Visitation Rights*, 2 GA. ST. U. L. REV. 189 (1986).

¹⁵⁵ *Davis v. Davis*, 212 Ga. 217, 220 (1956) (concluding that the court could not interfere on a grandparent's behalf with the parent's right to custody and control of their minor child); *DOMESTIC RELATIONS Grandparents' Visitation Rights*, 2 GA. ST. U. L. REV. 190 (1986).

¹⁵⁶ *Jackson v. Martin*, 225 Ga. 170 (1969) (per curiam) (finding an abuse of discretion where a trial court qualified an award of custody to the parent by granting visitation rights to the grandparents); *DOMESTIC RELATIONS Grandparents' Visitation Rights*, 2 GA. ST. U. L. REV. 190 (1986).

1. Georgia's First Grandparent Visitation Statute

Thereafter, the Georgia legislature responded with Georgia's first grandparent visitation statute, enacted in 1976, which provided the trial court with discretion to grant reasonable visitation rights to the maternal and paternal grandparents of the child "whenever any court in this state shall have before it any question concerning the custody of or guardianship of [the] minor child."¹⁵⁷ Subsequently in *George v. Sizemore*, the Georgia Supreme Court limited the interpretation of this statute to allow only grandparents who were parties in a custody or guardianship action to seek visitation rights.¹⁵⁸ In 1977, the court addressed the impact of court-ordered grandparent visitation rights on stepparent adoption, upholding the adoptive parent's right to parent and denying visitation rights to the grandparents.¹⁵⁹

2. The Grandparents' Bill of Rights Act

Beginning in 1980, the statute — known then as the Grandparents' Bill of Rights Act¹⁶⁰ — was expanded through several amendments, which clarified the scope of grandparents rights.¹⁶¹ The 1980 amendment authorized the trial court to allow grandparents to intervene to seek visitation with their minor grandchild when questions of guardianship were before a court and also to file an original action when: (1) one parent dies; (2) one parent dies and the survivor remarries, regardless of whether the child has been adopted by the stepparent; or (3) the parental rights of one biological parent has been terminated.¹⁶² Following the 1980 amendment, the Court of Appeals clarified

¹⁵⁷ Code Ann. § 74–112 (1976) (Ga.L.1976, p. 247, § 1); *Houston v. Houston*, 156 Ga. App. 47, 48 (1980); *Brooks v. Parkerson*, 265 Ga. 189, 190 (1995) (fn 2).

¹⁵⁸ *George v. Sizemore*, 238 Ga. 525 (1977); "*DOMESTIC RELATIONS Grandparents' Visitation Rights*, 2 GA. ST. U. L. REV. 190 (1986).

¹⁵⁹ *George v. Sizemore*, 238 Ga. 525, 527 (1977); See, e.g., *Heard v. Coleman*, 181 Ga. App. 899, 900, 354 S.E.2d 164, 165 (1987) and "*DOMESTIC RELATIONS Grandparents' Visitation Rights*, 2 GA. ST. U. L. REV. 190 (1986).

¹⁶⁰ *DOMESTIC RELATIONS Grandparents' Visitation Rights*, 2 GA. ST. U. L. REV. 191 (1986).

¹⁶¹ 1980 Ga. Laws 936; 1986 Ga. Laws 1516; C. Henson, *DOMESTIC RELATIONS Parent and Child: Expand Scope of Grandparents' Visitation Rights*, 5 GA. ST. U. L. REV. Rev. 374 (1988). Available at: <https://readingroom.law.gsu.edu/gsulr/vol5/iss1/26>.

¹⁶² 1980 Ga. Laws 936-937; *Brooks v. Parkerson*, 265 Ga. 189, 190 (1995) (n. 2); *Smith v. Finstad*, 247 Ga. 603 (1981) (upholding the constitutionality of the retroactive application of the 1980 statute); Kean Decarlo, *Parent and Child Relationship Generally: Provide Requirements and Judicial Standards for Original Actions for Visitation Rights or*

in *Houston v. Houston* that grandparents were permitted to file an original action for visitation rights after an adoption was granted.¹⁶³ The Court of Appeals of Georgia found that the trial court correctly ruled that “standing was lacking in the absence of any issue as to custody.”¹⁶⁴ However, twelve days after the trial court entered its orders in the case, the Grandparents’ Bill of Rights Act was amended,¹⁶⁵ and the Court of Appeals “conclude[d] that the amendment applies retroactively.”¹⁶⁶

a reviewing court should apply the law as it exists at the time of its judgment rather than the law prevailing at the rendition of the judgment under review, and may therefore reverse a judgment correct at the time it was rendered and affirm a judgment that was erroneous at the time, where the law has been changed in the meantime and where such application of the new law will impair no vested right under the prior law. *City of Valdosta v. Singleton*, 197 Ga. 194, 208, 28 S.E.2d 759 (1944); *Osteen v. Osteen*, 244 Ga. 445, 260 S.E.2d 321 (1979).¹⁶⁷

This timely outcome was a win for grandparents seeking to establish visitation following the adoption of their minor grandchild.¹⁶⁸

3. The 1981 Statutory Expansion

In 1981, the statute was modified to expand a grandparent’s right to intervene when the parents of a minor child filed a divorce or custody

Intervention; Provide for Revocation or Amendment of Visitation Rights, 13 GA. ST. U. L. REV. 148, 149 (1996).

¹⁶³ *Houston v. Houston*, 156 Ga. App. 47, 48 (1980).

¹⁶⁴ *Id.*

¹⁶⁵ The amendment clarified that the statute provides that the “parent of a minor child's parent who has died shall have the right to file an original pleading, but not more than once during any calendar year, to obtain visitation rights to said minor child.” (Ga.L. 1980, pp. 936, 937); *Houston v. Houston*, 156 Ga. App. 47, 48 (1980).

¹⁶⁶ *Houston*, 156 Ga. App. at 48.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

action.¹⁶⁹ Additionally, the Georgia General Assembly provided that grandparents could also file an original action if the grandchild's parents were already divorced, although it limited the number of times a grandparent could file such original action to once during any two-year period (deviating from the once per calendar year limitation under 1980 Ga. Laws 936).¹⁷⁰

4. The Issue of Standing and the Nonmarital Grandchild in *Welch v. Suggs*

In 1985, the Court of Appeals of Georgia addressed in *Welch v. Suggs* whether paternal grandparents whose grandchildren were born out of marriage have standing.¹⁷¹ The trial court concluded that the petitioners lacked standing to seek visitation rights on the basis that the father had not legitimized the child and pursuant to O.C.G.A. § 19-7-25: “[o]nly the mother of an illegitimate child is entitled to his custody, unless the father legitimates him as provided in Code Section § 19-7-22.”¹⁷² Thus, appellees argued and the trial court agreed that “the putative father has no parental rights upon which *his* parents can base their prayer for either custody or visitation”¹⁷³ However, the Court of Appeals disagreed, drawing a parallel to a similar issue in an adoption case decided by the Supreme Court of Georgia.¹⁷⁴ The Supreme Court, in *Nelson v. Taylor*, addressed whether the paternal grandparents were “relatives” such that the mother could voluntarily relinquish her parental rights to them pursuant to the earlier version of O.C.G.A. § 19-8-3 (a) (5).¹⁷⁵ The Supreme Court held that the putative father “has some parental rights” in his nonmarital child, and therefore the paternal grandparents constitute “relatives” under the applicable statute¹⁷⁶ Thus in *Welch*, the Court held that the grandparents’ claim for visitation rights was

¹⁶⁹ 1981 Ga. Laws 1318; Kean Decarlo, *Parent and Child Relationship Generally: Provide Requirements and Judicial Standards for Original Actions for Visitation Rights or Intervention; Provide for Revocation or Amendment of Visitation Rights*, 13 Ga. St. U. L. Rev. 148, 149 (1996).

¹⁷⁰ 1981 Ga. Laws 1318; Kean Decarlo, *Parent and Child Relationship Generally: Provide Requirements and Judicial Standards for Original Actions for Visitation Rights or Intervention; Provide for Revocation or Amendment of Visitation Rights*, 13 GA. ST. U. L. REV. 148, 149 (1996).

¹⁷¹ *Welch v. Suggs*, 175 Ga. App. 233 (1985).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Nelson v. Taylor*, 244 Ga. 657, 658 (1979).

properly before the court and should have been heard,¹⁷⁷ paving the way for biological paternal grandparents of grandchildren born out of wedlock to have standing under O.C.G.A. § 19-7-3.

5. The 1988 and 1993 Statutory Amendments

Additional amendments to the statute followed in 1988 and 1993.¹⁷⁸ The 1988 amendment greatly expanded grandparents' rights such that they were permitted to file an original action and intervene in any action "concerning the custody of a minor child, a divorce of the parents . . . (or) a termination of the parental rights of either parent. . . ." *regardless* of whether the issues of custody or guardianship were before the court, as well as seek visitation rights when the child was adopted by a blood relative.¹⁷⁹ The 1988 provision regarding a child's adoption by a blood relative repealed the portion of the 1980 amendment that allowed a grandparent to seek visitation when the grandchild had been adopted by a stepparent.¹⁸⁰ This issue was resolved in the Georgia legislature's 1993 amendment, which added adoption by a stepparent to the list of actions in which grandparents had a legal right to intervene and petition for visitation with their grandchild.¹⁸¹ Furthermore, the 1993 amendment "allow(ed) a grandparent to bring an action for visitation under *any* circumstances . . . except that an original petition may not be filed more than once in any two-year period."¹⁸²

¹⁷⁷ *Welch*, 175 Ga. App. at 233.

¹⁷⁸ 1988 Ga. Laws 864; 1993 Ga. Laws 456.

¹⁷⁹ Kean Decarlo, *Parent and Child Relationship Generally: Provide Requirements and Judicial Standards for Original Actions for Visitation Rights or Intervention; Provide for Revocation or Amendment of Visitation Rights*, 13 GA. ST. U. L. REV. 148, 149 (1996).

¹⁸⁰ *Id.*

¹⁸¹ 1993 Ga. Laws 456, S 1, at 457 (formerly found at O.C.G.A. S 19-7-3(b) (Supp. 1995)); Kean Decarlo, *Parent and Child Relationship Generally: Provide Requirements and Judicial Standards for Original Actions for Visitation Rights or Intervention; Provide for Revocation or Amendment of Visitation Rights*, 13 GA. ST. U. L. REV. 150 (1996).

¹⁸² *Brooks v. Parkerson*, 265 Ga. 189, 190 n.2, 454 S.E.2d 769, 770-71 n.2 (1995) (emphasis added); Kean Decarlo, *Parent and Child Relationship Generally: Provide Requirements and Judicial Standards for Original Actions for Visitation Rights or Intervention; Provide for Revocation or Amendment of Visitation Rights*, 13 GA. ST. U. L. REV. 148, 150 (1996).

6. The Issue of Constitutionality in *Brooks v. Parkerson*

Given the extensive variables unique to domestic relations that may impact a minor child, the fact dependent nature of such cases, and a court's wide discretion on such issues, Georgia has continued to wrangle with the intersection of the parental rights and a grandparent's right to seek visitation, especially as the structure of families continue to evolve and constitutional issues remain.¹⁸³ Georgia's Grandparent Visitation Act has faced constitutional scrutiny, and ¹⁸⁴ case law confirms constitutional protections for parental rights:

[T]here can scarcely be imagined a more fundamental and fiercely guarded right than the right of a natural parent to its offspring. *Nix v. Dept. of Human Resources*, 236 Ga. 794, 795, 225 S.E.2d 306 (1976). See also *Wisconsin v. Yoder*, 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."); *In re Suggs*, 249 Ga. 365, 367, 291 S.E.2d 233 (1982) ("The right to the custody and control of one's child is a fiercely guarded right in our society and in our law. It is a right that should be infringed upon only under the most compelling circumstances.");¹⁸⁵

In the 1995 case of *Brooks v. Parkerson*, the Supreme Court of Georgia Court held that the Grandparent Visitation Act of 1988 was unconstitutional because it authorized courts to award child visitation to a grandparent over the objection of fit parents and without a clear and convincing showing of harm to the child.¹⁸⁶ Specifically, the Court found the statute "does not clearly promote the health or welfare of the child and does

¹⁸³ *Crary v. Clautice*, 318 Ga. 573, 577, 899 S.E.2d 98, 102 (2024) ("dismiss[ing] as moot the portion of Appellant's appeal challenging the trial court's denial of Appellant's request for a declaration that the grandparent visitation statute is unconstitutional" on the basis that the standards fail to protect parents' "fundamental liberty interests" in "the care, custody, and control of their children." *Troxell v. Granville*, 530 U.S. 57, 65 (11) 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000)).

¹⁸⁴ *Leach*, 360 Ga. App. 856 (2021).

¹⁸⁵ *Elmore v. Clay*, 348 Ga. App. 625, 627–28 (2019).

¹⁸⁶ *Brooks v. Parkerson*, 265 Ga. 189 (1995).

not require a showing of harm before state interference is authorized,”¹⁸⁷ parents have a constitutionally protected interest in raising their children without undue state interference,¹⁸⁸ and as a result of the “protection of the family unit under the due process and equal protection clauses of the Fourteenth Amendment, and under the privacy aspect of the Ninth Amendment,” the statute is unconstitutional.¹⁸⁹

7. The 1996 Amendment and Subsequent Cases

The legal landscape for grandparent visitation continued to evolve, and additional amendments to the statute followed in 1996.¹⁹⁰ Following the 1996 amendment, the statute provided that “the court may grant any grandparent of the child reasonable visitation rights if the court finds the health or welfare of the child would be harmed unless such visitation is granted, *and* if the best interests of the child would be served by such visitation.”¹⁹¹ The statute also provided that “due process requires that evidence supporting mandated visitation rights must meet the clear and convincing standard of proof.”¹⁹²

In *Elmore v. Clay*, a 2019 case, the Court of Appeals of Georgia emphasized the importance of the harm requirement by holding that “inability to tell if trial court exercised its discretion to find clear and convincing evidence of harm required remand.”¹⁹³ Thus, it is not enough that a child’s visitation with a grandparent would be in the child’s best interest, as the grandparent seeking visitation must prove by clear and convincing evidence that the lack of visitation would be harmful to the child.

¹⁸⁷ *Id.* at 194 (1995); Kean Decarlo, *Parent and Child Relationship Generally: Provide Requirements and Judicial Standards for Original Actions for Visitation Rights or Intervention; Provide for Revocation or Amendment of Visitation Rights*, 13 GA. ST. U. L. REV. 148, 150 (1996).

¹⁸⁸ *Brooks*, 265 Ga. at 191 (1995); Kean Decarlo, *Parent and Child Relationship Generally: Provide Requirements and Judicial Standards for Original Actions for Visitation Rights or Intervention; Provide for Revocation or Amendment of Visitation Rights*, 13 GA. ST. U. L. REV. 148, 150 (1996).

¹⁸⁹ *Brooks*, 265 Ga. at 191 (1995) (citing *Stanley v. Illinois*, 405 U.S. 645, 651-52 (1972)).

¹⁹⁰ Enacted Legislation Laws 1996, p. 1089, § 1.

¹⁹¹ *Ormond v. Ormond*, 274 Ga. App. 869, 870 (2005).

¹⁹² *Id.*

¹⁹³ *Elmore*, 348 Ga. App. at 625.

In the 2005 case of *Ormond v. Ormond*,¹⁹⁴ the Court of Appeals found that the trial court “found by clear and convincing evidence that the best interests of the children would be served by granting visitation to the grandparents, the court expressly did not find by clear and convincing evidence that the children or their health or welfare would be harmed unless visitation was granted.”¹⁹⁵ Thus, *Ormond* reinforces the requirement of a showing that grandparent visitation is the child’s best interest and the health or welfare of the child would be harmed unless such visitation is granted.

8. Parental Military Obligations in *Luke v. Luke*

The Court of Appeals found in *Luke v. Luke* that a grandparent would not be provided visitation on the grounds that a parent’s military obligations curtailed a grandparent’s visitation opportunities with a grandchild.¹⁹⁶ Notably, “any detrimental impact to the grandparents through the loss of visitation opportunities with a grandchild, whether due to the death or divorce of a child’s parents, relocation of the family, or other unfortunate circumstances, is irrelevant to the court’s determination” on the issue of granting grandparent visitation.¹⁹⁷ However, where a court finds “by clear and convincing evidence that the minor children would suffer actual emotional harm unless visitation is granted,” the court is authorized to grant visitation under Georgia’s grandparent visitation statute.¹⁹⁸

9. The Issue of Adoption in *Kunz v. Bailey*

In the 2012 case of *Kunz v. Bailey*, the court considered the complexities of blended families and adoption under the statute. In *Kunz*, the biological paternal grandparents petitioned for visitation rights pursuant to O.C.G.A. § 19-7-3 (b) after their son (the child’s father) terminated his parental rights to the child, the mother married the child’s stepfather, the stepfather adopted the child, and the grandparents were subsequently denied access to the child.¹⁹⁹ In the trial court, the child’s mother and adopted father moved to dismiss the action, arguing that the child lived with them and the

¹⁹⁴ *Ormond v. Ormond*, 274 Ga. App. 869 (2005).

¹⁹⁵ *Id.* at 870.

¹⁹⁶ *Luke v. Luke*, 280 Ga. App. 607 (2006).

¹⁹⁷ *Id.* at 610.

¹⁹⁸ *Id.*

¹⁹⁹ *Kunz v. Bailey*, 290 Ga. 361 (2012).

grandparent's action was unsustainable under the plain language of O.C.G.A. § 19-7-3 (b):²⁰⁰

Except as otherwise provided in this subsection, any grandparent shall have the right to file an original action for visitation rights to a minor child or to intervene in and seek to obtain visitation rights in any action in which any court in this state shall have before it any question concerning the custody of a minor child, a divorce of the parents or a parent of such minor child, a termination of the parental rights of either parent of such minor child, or visitation rights concerning such minor child or whenever there has been an adoption in which the adopted child has been adopted by the child's blood relative or by a stepparent, notwithstanding the provisions of Code Section 19-8-19. This subsection shall not authorize an original action where the parents of the minor child are not separated and the child is living with both of the parents.²⁰¹

The trial court denied the parents' motion to dismiss however, the Court of Appeals reversed, relying on the tenants of statutory construction and reasoning that the term "parent," as used in O.C.G.A. § 19-7-3 (b), included a "legal father" as found in the adoption statute and therefore the term "parent" included adoptive parents, in addition to natural parents.²⁰² Because the child resided with both the parent and adoptive parent, the Court of Appeals concluded that the grandparents' original action for visitation was not permitted by O.C.G.A. § 19-7-3 (b).²⁰³

Next, the Supreme Court of Georgia granted the grandparents' petition for certiorari to resolve whether the Court of Appeals correctly concluded that the limiting language of O.C.G.A. § 19-7-3 (b)—forbidding original actions for grandparent visitation if the parents are together and living with the child—includes adoptive parents.²⁰⁴ The Supreme Court

²⁰⁰ *Id.*; *Fielder v. Johnson*, 333 Ga. App. 658, 659 (2015).

²⁰¹ O.C.G.A. § 19-7-3(b) (2011); *Kunz*, 290 Ga. at 361.

²⁰² *Bailey v. Kunz*, 307 Ga. App. 710, 712-713 (2011); *Kunz*, 290 Ga. at 362.

²⁰³ *Kunz*, 290 Ga. at 362 (2012).

²⁰⁴ *Bailey*, 307 Ga. App. at 710; *Kunz*, 290 Ga. at 362.

upheld the Court of Appeals holding, expressly rejecting the grandparents' argument that the statute's use of the term "parents" included only biological parents (and not adoptive parents) of the child.²⁰⁵ The Court reasoned that the limiting language in O.C.G.A. § 19-7-3(b) provided that grandparents may only file an original action for visitation when the parents are separated and the child is not residing with both parents.²⁰⁶ Further, the Court reasoned that congruent with their holding in *Brooks v. Parkerson* in finding Georgia's Grandparent visitation statute unconstitutional,²⁰⁷ the statute "does not otherwise allow grandparents, by court action, to intrude upon the "constitutionally protected interest of parents to raise their children.""²⁰⁸ Therefore, the grandparents had "no basis to file an original action under the statute" because the mother's husband was the child's parent at the time the grandparents filed their original action for visitation, the parents were not separated, and the child was living with the parents.²⁰⁹

²⁰⁵ *Fielder v. Johnson*, 333 Ga. App. 658, 660-61 (2015).

²⁰⁶ *Id.* at 660.

²⁰⁷ *Brooks v. Parkerson*, 265 Ga. 189 (1995) ("The U.S. Supreme Court has long recognized a constitutionally protected interest of parents to raise their children without undue state interference.... Parents have comparable interests under our state constitutional protections of liberty and privacy rights. The right to the custody and control of one's child is a fiercely guarded right in our society and in our law. It is a right that should be infringed upon only under the most compelling circumstances." *Id.* at 191, 192(2)(a), 454 S.E.2d 769 (citations and punctuation omitted)). Notably, Presiding Justice Benham, joined by Justice Hunstein, dissented: "I believe the majority has ignored long-standing rules of statutory construction and, in so doing, has placed Georgia in the vanguard of a minority of one." *Brooks v. Parkerson*, 265 Ga. 189, 197 (1995). In a footnote, Justice Benham noted that "No state has declared a grandparent visitation statute violative of the U.S. Constitution. Tennessee, the only other state to find its grandparent visitation statute unconstitutional, based its holding on the Tennessee Constitution alone. *Hawk v. Hawk*, 855 S.W.2d 573, 582 (Tenn.1993)." Justice Benham argued "Our statute is a legitimate exercise of the General Assembly's power to balance the competing interests of children, their parents, and their grandparents... For over 80 years the appellate courts of Georgia have recognized the authority of a trial court to exercise its discretion and provide for visitation between grandparents and grandchildren when it was in the best interest of the children involved... As I cannot join my colleagues in second-guessing the legislature, I dissent from their holding that the Grandparent visitation statute is not constitutional."

²⁰⁸ *Fielder*, 333 Ga. App. at 660.

²⁰⁹ *Id.* at 660-61.

10. The 2012 Amendment

Following *Kunz v. Bailey*²¹⁰ addressed *infra*, the Georgia legislature amended O.C.G.A. § 19-7-3 and, among other revisions, added subsection (d) that authorizes courts to award child visitation in certain circumstances to a grandparent over the objection of a fit parent and without a clear and convincing showing of harm to the child:

Notwithstanding the provisions of subsections (b) and (c) of this Code section, if one of the parents of a minor child dies, is incapacitated, or is incarcerated, the court may award the parent of the deceased, incapacitated, or incarcerated parent of such minor child reasonable visitation to such child during his or her minority if the court in its discretion finds that such visitation would be in the best interests of the child.²¹¹

While this provision applies to fewer cases than the statute that was held unconstitutional in *Brooks* and authorized awards of visitation to “any grandparent,” the Supreme Court of Georgia addressed the constitutionality of the provision in *Patten v. Ardis*.²¹²

11. Grandparent Visitation on a Temporary Basis in *Van Leuvan v. Carlisle*

The Court of Appeals of Georgia confirmed the trial court’s authority to issue a temporary grandparent visitation order in *Van Leuvan v. Carlisle*.²¹³ In this 2013 case, the maternal grandmother petitioned for visitation with the minor grandchild, and the trial court found that the grandmother had met the standard required under O.C.G.A. § 19-7-3 (c) (1), thus, awarding her with visitation in the child’s best interest.²¹⁴ In addition to raising other enumerations of error, mother argued that Georgia’s Grandparent visitation statute does not expressly authorize the trial court’s issuance of a “temporary”

²¹⁰ *Kunz v. Bailey*, 290 Ga. 361 (2012).

²¹¹ Ga. L. 2012, p. 862, § 1. *See also* *Barnhill v. Alford*, 315 Ga. 304 at n.11 (2022); *Patten v. Ardis*, 304 Ga. 140, 140 (2018) (citing O.C.G.A. § 19-7-3 (d)).

²¹² *Patten v. Ardis*, 304 Ga. 140 (2018).

²¹³ *Van Leuvan v. Carlisle*, 322 Ga. App. 576 (2013).

²¹⁴ *Van Leuvan*, 322 Ga. App. at 576.

order granting visitation to the grandmother and by granting such relief, “the trial court ignored the rules of statutory construction, impermissibly expanded the scope of the statute, and improperly altered the status quo between the parties.”²¹⁵ However, the Court of Appeals disagreed, finding that the trial court was authorized to issue a temporary grandparent visitation order pursuant to the authorization of temporary orders in custody proceedings under O.C.G.A. § 19-9-3 (a) (1) and (a) (6), paired with the definition of a “child custody determination” O.C.G.A. § 19-9-41 (3): “A judgment, decree, or other order of a court providing for the legal custody, physical custody, or *visitation* with respect to a child”, including a “permanent, *temporary*, initial, and modification order.”²¹⁶ Therefore, the court upheld the trial court’s temporary order providing grandparent visitation in the case.²¹⁷

12. The Issue of a Deceased Parent in *Fielder v. Johnson*

The 2015 case of *Fielder v. Johnson* followed *Kunz*, where the maternal grandparents of the child’s deceased mother filed a petition seeking visitation under O.C.G.A. § 19-7-3, and the defendant father filed a motion to dismiss the action on the basis that the grandparents lacked standing.²¹⁸ Father’s argument was based upon a series of events that following his divorce from the child’s mother: he was awarded sole physical custody of the child, he married another woman, the child’s mother died, his wife adopted the child, and that since father’s remarriage the couple had not separated, the child consistently lived with the couple, and neither the father or his wife were incapacitated or incarcerated.²¹⁹ Given these circumstances, father argued that O.C.G.A. § 19-7-3 (b) and *Kunz* made clear that the grandparent’s petition could not be sustained since it was filed as an original action.

13. The 2016 Amendment

Georgia Legislators amended O.C.G.A. § 19-7-3 in 2016 by extending minor visitation to great-grandparents and siblings of parents while retaining such rights for grandparents.²²⁰ Importantly, this amendment

²¹⁵ *Id.* at 583.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Fielder*, 333 Ga. App. at 658.

²¹⁹ *Id.* at 658-59.

²²⁰ H.B. 229, 153rd Gen. Assemb., Reg. Sess. (Ga. 2016),

<http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/229>.

provided these additional family members with standing to bring an original visitation action when the custodial parent refuses to allow them visitation to the child.²²¹

14. The Issue of Constitutionality in *Patten v. Ardis*

In the 2018 case of *Patten v. Ardis*, the Supreme Court of Georgia struck down language in Georgia's Grandparent Visitation Rights Act of 2016 that allowed Georgia courts to grant grandparent visitation in circumstances involving the death, incapacitation, or incarceration of a parent, if a grandparent could prove such visitation would be in the child's best interest.²²² More specifically, the Court noted that "a child may suffer very real harm in those circumstances when the custodial parent refuses to permit visitation with a grandparent."²²³ However, the Court could not "conclude that harm is so inherent in the limited circumstances in which O.C.G.A. § 19-7-3 (d) applies that proof by clear and convincing evidence of actual or threatened harm to the child is constitutionally unnecessary."²²⁴ Thus, the Court found the Georgia statute to be an unconstitutional infringement on parent's rights because the statute allows a court to set aside a fit parent's decisions about what is best for his or her child, "without clear and convincing proof that those decisions have harmed or threaten to harm the child, and based simply on the conclusion of a judge that he knows better than the parent what is best for the child."²²⁵ Therefore, in alignment with the Court's holding in *Brooks*, the Supreme Court of Georgia ruled in *Patten* that statute "violates the right of parents to the care, custody, and control of their children, as that fundamental right is guaranteed by the Constitution of 1983."²²⁶

²²¹ Teresa Gohlke, *House Bill 229: Domestic Relations; Grandparent Rights to Visitation and Intervention to Great-Grandparents and Siblings of Parents; Expand*, 10 JOHN MARSHALL L.J. 213, 221-222 (2017).

²²² *Patten*, 304 Ga. at 140.

²²³ *Id.* at 145.

²²⁴ *Id.*

²²⁵ *Id.* at 140.

²²⁶ *Id.*; See also *Brooks* at 192 (2) (a) and *Clark v. Wade*, 273 Ga. 587, 596 (IV) (2001) (Fletcher, P.J.) (Parents have a constitutional right under the United States and Georgia Constitutions to the care and custody of their children.).

15. The Issue of Constitutionality in *Leach v. Warner*

In the 2021 case of *Leach v. Warner*, the child's mother asserts "that a portion of the grandparent visitation statute, O.C.G.A. § 19-7-3 (c), is unconstitutional."²²⁷ However, as the trial court did not address any constitutional claim, Leach's constitutional argument was not preserved for appellate review. Accordingly, the court cited *Lucas v. Lucas* in holding that it will "not rule on a challenge to the constitutionality of a statute unless the issue has been raised and ruled on in the trial court."²²⁸

The *Leach* court also highlighted the deference given to parental decisions, noting that a "parent's decision shall not be conclusive when failure to provide family member contact would result in emotional harm to the child."²²⁹ Further, the court found that when there is a preexisting relationship between the child and the family member, the child may suffer some emotional injury that is harmful to the child's health when that child is denied any contact with his or her family member.²³⁰

16. The 2022 Amendment

In response to *Patten* and following *Fielder v. Johnson*,²³¹ the statute was again amended in 2022²³² through Senate Bill 576, which requires grandparents to show "by clear and convincing evidence that the health or welfare of the child would be harmed unless that such visitation is granted"²³³ and outlined possible circumstances in which a court may find such a showing of harm.²³⁴ Notably, the statute confirms that the "mere absence of an opportunity for a child to develop a relationship with a family member" is insufficient to show harm to the health or welfare of the child "when there is no substantial preexisting relationship between the child and such family member."²³⁵ Further, the custodial parent's judgment as to the best interests

²²⁷ *Leach*, 360 Ga. App. at 856 (2021).

²²⁸ *Lucas v. Lucas*, 273 Ga. 240, 242 (3) (2000).

²²⁹ *Leach*, 360 Ga. App. at 859.

²³⁰ *Id.*

²³¹ 222 Ga. App. 658 (2015); *See also* Ga. L. 2022, p. 749, § 1 and *Barnhill v. Alford*, 315 Ga. 304 at n.11 (2022).

²³² Enacted Legislation Laws 2022, Act 866, § 1, eff. July 1, 2022.

²³³ S.B. 567, 2024 Gen. Assem., Reg. Sess. (Ga. 2024) available at <https://www.legis.ga.gov/legislation/62467>.

²³⁴ *Id.*

²³⁵ O.C.G.A. § 19-7-3 (c)(1).

of the child regarding visitation shall be given deference by the court but shall not be conclusive and in considering whether the health or welfare of the child would be harmed without such visitation, the court shall consider and may find that harm to the child is reasonably likely to result when, prior to the death, incapacitation, or incarceration of the child's parent:

(A) The minor child resided with the grandparent for six months or more;

(B) The grandparent provided financial support for the basic needs of the child for at least one year;

(C) There was an established pattern of regular visitation or child care by the grandparent with the child; or

(D) Any other circumstance exists indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted.²³⁶

Thus, in Georgia, the right of a fit parent to parent their child supersedes a grandparent's right to visitation with their grandchild, unless the grandparent with an existing relationship with their grandchild can show that the child would be harmed without visitation and that the visitation serves the child's best interests.

17. The Issues of Standing and Constitutionality in *Barnhill v. Alford*

In *Barnhill v. Alford*, Georgia courts resolved the issue of a biological grandparent's standing when their daughter (the biological mother) was deceased and the grandchild was adopted by the father's wife (the child's step-mother).²³⁷ In *Barnhill*, the Supreme Court of Georgia addressed "whether a grandmother's action for visitation rights to her biological granddaughter (the minor child of her deceased daughter) under OCGA § 19-

²³⁶ O.C.G.A. § 19-7-3 (d) (1) (A-D).

²³⁷ *Fielder v. Johnson*, 333 Ga. App. 658 (2015); *Barnhill v. Alford*, 315 Ga. 304 (2022).

7-3...was precluded by the adoption of the child by her stepmother,” the wife of the biological father.²³⁸ Several months after the grandmother filed her petition for grandparent visitation, the child’s stepmother filed a petition for adoption of the child, without providing the trial court of the maternal grandmother with notice.²³⁹ While the biological father and the adoptive parent argued that the grandmother lacked standing, the Supreme Court of Georgia disagreed as her standing was established as the “parent of a minor child's parent who has died.”²⁴⁰

Additionally, the constitutionality issue of the grandparent visitation statute was again before the Supreme Court of Georgia *Barnhill*.²⁴¹ The Court rejected the Barnhills’ argument that “O.C.G.A. § 19-7-3 (c) (1) creates a presumption in favor of family member visitation²⁴² that directly contravenes the presumption that fit parents will act in the best interests of their children,” and asserts that “this paragraph [of the statute] is unconstitutional.”²⁴³ The Court reasoned that the plain language of this provision places the burden of proof upon the family member seeking visitation and requires the trial court to use its discretion to award visitation only upon clear and convincing evidence that the child’s health and welfare would be harmed without visitation and that the child’s best interests would be served by visitation, which does not unconstitutionally interfere with the parent-child relationship and is not unconstitutional on its face or as applied to the grandmother’s petition for visitation.²⁴⁴ Further, the Court held that the provision did not create a presumption in favor of family member visitation but instead provided factors²⁴⁵ that the court “shall” consider in making that determination.²⁴⁶ Lastly, the Court awarded visitation to the grandmother on the basis that the grandmother proved, by clear and convincing evidence, that the grandchild would suffer harm without visitation and that such visitation was in the grandchild’s interest.²⁴⁷

²³⁸ *Barnhill*, 315 Ga. at 304.

²³⁹ *Id.* at 304–05. The child’s stepmother subsequently moved to be added as a party-defendant to the grandparent visitation action following her adoption of the child, and the motion was granted.

²⁴⁰ *Barnhill*, 315 Ga. at 308.

²⁴¹ *Id.*

²⁴² Citing *Davis*, 356 Ga. App. at 878 (Coomer, J., concurring).

²⁴³ *Barnhill*, 315 Ga. at 312.

²⁴⁴ *Id.* at 313.

²⁴⁵ O.C.G.A. § 19-7-3 (c) (1) (A-D).

²⁴⁶ *Barnhill*, 315 Ga. at 313; See O.C.G.A. § 19-7-3 (c) (1).

²⁴⁷ *Id.* at 315.

18. The Issue of Modifications of an Existing Order

*Pate v. Sadlock*²⁴⁸ analyzed whether a grandparent was permitted to file a *counterclaim* in response to a parent's properly filed modification action under O.C.G.A. § 19-7-3 (c) (2) and "did not hold that a grandparent has the statutory right to *initiate* an action to modify an existing visitation order."²⁴⁹ Pate also reinforced that standard that courts may grant grandparent visitation if it is proven by clear and convincing evidence that the child's health or welfare would be harmed without such visitation and that the visitation is in the best interest of the child.²⁵⁰ By reinforcing this standard, the court ensures that state interference with parental rights is only justified when necessary to protect the child, aligning with the constitutional requirements of the statute.²⁵¹

The issue of a grandparent's right to modify an existing visitation order under O.C.G.A. § 19-7-3 again arose in *Namdar-Yeganeh*,²⁵² where the Court of Appeals held that the grandparents lacked standing to petition the court to modify an existing visitation order that provided them with visitation with their grandchildren. After *Namdar-Yeganeh*, grandparents seeking visitation with their grandchild via an original action or via consent must consider potential future modifications and strive to incorporate those provisions in their order since they were unable to bring a modification action.²⁵³ As addressed *infra*, Senate Bill 245 provided grandparents with greater flexibility in modifying an existing award of visitation.

²⁴⁸ Under the grandparent visitation statute, grandparents had authority to seek, and trial court had authority to grant, temporary modification of grandparents' visitation rights provided in original consent order entered into between mother and father; statute provided no limitation on how often grandparents could intervene in an existing qualifying action, nor did it limit grandparents' ability to counterclaim for a modification of visitation in response to an action by a parent, and grandparents sought modification in response to mother's action in which she requested that the grandparents' visitation rights be revisited, reviewed, and modified on a temporary and permanent basis, and that grandparents' summer visitation rights be suspended pending further investigation of the court. *Pate v. Sadlock*, 2018, 345 Ga. App. 591, 814 S.E.2d 760.

²⁴⁹ *Namdar-Yeganeh*, 369 Ga. App. at 705–06.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Namdar-Yeganeh*, 369 Ga. App. 705 (2023). See this author's Case Summary: *Namdar-Yeganeh v. Namdar-Yeganeh et al., and Vice Versa*, 17 JOHN MARSHALL L.J. 323 (2025).

²⁵³ *Id.*

19. The Issue of Constitutionality in *Crary v. Clautice*

In 2024, the issue of the constitutionality of O.C.G.A. § 19-7-3 was yet again before the Supreme Court of Georgia in *Crary v. Clautice*.²⁵⁴ In *Crary*, the trial court granted Mother's petition to set aside and revoke a final consent order, which had granted grandparent visitation rights under O.C.G.A. § 19-7-3 to Appellee maternal grandparents.²⁵⁵ On appeal, Appellant challenged an order from the revocation proceeding and sought to declare unconstitutional the grandparent visitation statute,²⁵⁶ and the court dismissed as moot "the portion of Appellant's appeal that challenges the constitutionality of the grandparent visitation statute."²⁵⁷

20. Visitation, Mental Injury, and Constitutionality in *Pinkerton v. Nichols*

The Court of Appeals considered a grandparent's established pattern of regular visitation with their grandchild before and after the father's untimely death, and whether the subsequent lack of grandparent visitation would constitute harm to the minor child sufficient to grant an award of grandparent visitation.²⁵⁸ The court considered the testimony of the parties and the guardian ad litem, along with evidence of the grandmother's regular visitation and care of the children and the child's need for extended family, as considered by the court in *Davis v. Cicala*, and found sufficient evidence supporting the visitation award.²⁵⁹ Further, the appellate court found that the trial court was not required to find evidence of mental injury to the children, as mother had relied on the code section for dependency cases in asserting that error.²⁶⁰ Moreover, the Court of Appeals declined to consider mother's argument that the O.C.G.A. § 19-7-3 was unconstitutional because the trial court did not directly rule on this constitutional challenge and because Georgia's Supreme court, who would have exclusive jurisdiction over the issue, had not ruled on same.²⁶¹

²⁵⁴ *Crary v. Clautice*, 318 Ga. 573 (2024).

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Pinkerton v. Nichols*, 375 Ga. App. 245 (2025).

²⁵⁹ *Id.*; *Davis v. Cicala*, 356 Ga. App. 873 (2020)(children would be harmed by lack of grandparent visitation given historical pattern of regular visitation and consideration of the children's need for extended family).

²⁶⁰ *Pinkerton*, 375 Ga. App. at 245.

²⁶¹ *Id.*

21. Postadoption Change of Relationship in *Interest of A. G. Q.*

The Court of Appeals confirmed that an adoption decree changes a parent's relationship with their biological child such that the natural parent has no legal rights to visit with the child and is thus a legal stranger, a characterization which fails to meet the "family member" definition provided by O.C.G.A. § 19-7-3.²⁶² Therefore, in *In the Interest of A.G.Q., a Child.*, the appellate court held that pursuant to Georgia's grandparent visitation statute, the trial court was not authorized to grant visitation to a biological mother following the child's adoption.²⁶³

22. S.B. 245 (2025) Amends O.C.G.A. § 19-7-3

As the legal landscape for grandparent visitation continues to evolve in Georgia, constitutional issues, among others, still exist for Georgia families. In response to the "gap in the law"²⁶⁴ preventing grandparents with an existing visitation order to modify or revoke such visitation, as was the case in *Namdar-Yeganeh*, Georgia legislators proposed Senate Bill 245, which adds the following proposed language to the bill, among other modifications to the statute:

After such visitation rights have been granted to any parent of the deceased, incapacitated, or incarcerated parent of the minor child, such parent **may petition the court for revocation or amendment of such visitation rights** for good cause shown, which the court, in its discretion, may grant or deny; provided, however, that such a petition shall not be filed more than once during any two-year period.²⁶⁵

²⁶² *In the Interest of A. G. Q.*, A25A1315, 921 S.E.2d 52 (2025).

²⁶³ *Id.*

²⁶⁴ Georgia Senator John Kennedy's description regarding O.C.G.A. § 19-7-3 being silent on the issue of a grandparent's standing to petition to modify an existing visitation order. See Senate Legislative Day 28 (pt. 2) – 2025 Session - 3/6/25, *Georgia State Senate*, VIMEO, <https://vimeo.com/showcase/11527921/video/1063364389>.

²⁶⁵ S.B. 245, 158th Ga. Assemb., 2025-2026 Reg. Session, available at <https://www.legis.ga.gov/legislation/70720>.

The Georgia Senate unanimously voted in favor of the bill on March 6, 2025,²⁶⁶ and the bill passed and was adopted by substitute in the Georgia House of Representatives on March 28, 2025 by a 160 to one vote.²⁶⁷ The bill was signed by Governor Brian Kemp and became effective as of July 1, 2025, thereby providing grandparents with an existing visitation order with standing to bring a modification action in Georgia, albeit not more than once in any two-year period.²⁶⁸ This amendment places grandparents on a similar playing field as parents and children,²⁶⁹ who are also subject to the two-year limitation in modification of custody, absent a showing of the change in circumstances requirement. Further, while this amendment eases the burden for grandparents who would previously need to foresee potential modifications to any visitation agreement and incorporate those provisions in the original order, parents may now be more likely to follow the ABA's recommendation to mediate or possibly enter into a consent order granting grandparents visitation given the grandparent's additional leverage resulting from this change in the law.

IV. CONCLUSION

While *Troxell* confirmed that under the Due Process Clause of the U.S. Constitution's 14th Amendment, fit parents have a fundamental right to make decisions concerning the care, custody, and control of their children, and as the case established a presumption that fit parents act in the best interest of their child,²⁷⁰ the pendulum continues to swing between the rights of a parent and those of a grandparent seeking to establish or modify visitation with their grandchild. Georgia's grandparent visitation statute, O.C.G.A. § 19-7-3, was enacted to provide a mechanism for courts to grant grandparents visitation with their minor grandchild when the child's parent objects, and to codify a standard to balance the rights of the parents, the wishes of a grandparent, and the interests of the child.²⁷¹ However, the ongoing evolution of this area of law in Georgia, paired with the unique facts of each case and the wide discretion provided to family court judges, presents a risk for parents seeking to hold onto their constitutional right to parent their child in their

²⁶⁶ See *id.* and Senate Legislative Day 28 (pt. 2) – 2025 Session - 3/6/25, *Georgia State Senate*, VIMEO, <https://vimeo.com/showcase/11527921/video/1063364389>.

²⁶⁷ S.B. 245, 158th Ga. Assemb., 2025-2026 Reg. Session, available at <https://www.legis.ga.gov/legislation/70720>.

²⁶⁸ *Id.*

²⁶⁹ O.C.G.A. § 19-9-3; *Elder v. Hedden*, 344 Ga. App. 628 (2018).

²⁷⁰ *Troxel*, 530 U.S. at 66.

²⁷¹ *Vincent v. Vincent*, 333 Ga. App. 902 (2015).

child's best interest. As Senate Bill 245 expanded the statute to include the revocation or modification of a grandparent's visitation rights, and as the constitutionality of the 2025 version of the statute has not yet been addressed by Georgia's highest court, it is clear that the road will continue to wind for grandparent visitation law in Georgia.