No. _____

In The

Supreme Court of the United States

FRED S. PARDES,

Petitioner,

v.

ANDREW S. WIENICK, DARSHANN WIENICK,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of California, Fourth Appellate District, Division Three

PETITION FOR WRIT OF CERTIORARI

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In Pro per

September 8, 2020

QUESTIONS PRESENTED

Petitioner Fred S. Pardes (Pardes or Petitioner), is the maternal Grandfather who had a long pre-existing loving and bonded relationship with his two grandsons, N.W. and S.W. (the boys), from the date of their respective births, until the premature death of his daughter, Jennifer Pardes Wienick, just over five years ago, on June 27, 2015. Petitioner seeks to assert his constitutional rights regarding several issues of first impression, in the field of Grandparent Visitation law. He also seeks review and modification of this Court's harsh decision in the landmark case of *Troxel v. Granville* (2000) 530 U.S. 57.

This case raises Five critical issues of First Impression, ***of nationwide interest***, which would be of very substantial interest not only to the Grandparent and Family Law community, but would also promote and protect the emotional welfare of innocent minor Grandchildren throughout the United States, who are being wrongfully deprived of additional love and emotional support by an "Unfit Parent", during their tender years. They are:

1- Whether or not there exists a rebuttable presumption as a general rule, that Grandparent visitation is in the best interest of minor grandchildren, where there was a pre-existing loving and bonded Grandparent relationship, before one parent prematurely passes away during the Grandchild's minority?

QUESTIONS PRESENTED – Continued

2- Whether or not a Family Law Court is obligated to initially evaluate the "Emotional Fitness" of the surviving parent including the validity of the reasons and concerns for the surviving parents' objection to Grandparent visitation, before any analysis under any applicable Grandparent Visitation statutes?

3- Whether or not the lack of any Grandparent contact, from the time of the death of the natural mother up until the time of trial on the Grandparent Visitation Petition, due to the surviving parent's refusal to grant any Grandparent visitation or contact, can be used as a justification for denying Grandparent visitation?

4- Whether or not the surviving parent's punitive and unjustifiable interference with a pre-existing Grandparent-Grandchild loving and bonded relationship, after the premature death of the natural mother, constitutes "Grandparent Alienation" which invalidates the surviving parent's objection to Grandparent visitation, precluding the analysis otherwise required under any Family Law statutes or *Troxel*?

5- Whether or not a loving and bonding relationship can be established between a Grandparent and a Grandchild, when the time spent with the Grandparent and the Grandchild is only during the post divorce custodial time with the Natural Mother, before she passes away?

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings below are:

Petitioner Fred S. Pardes, is the father of the deceased natural Mother Jennifer Pardes Wienick, and Maternal Grandfather of the boys.

Respondent Andrew S. Wienick, is the ex-husband of Jennifer, and natural father of the boys.

Respondent Darshann Wienick, is the new wife of Wienick, who married Wienick shortly after the Wienick divorce became final.

CORPORATE DISCLOSURE STATEMENT

There are no corporations involved in this proceeding.

STATEMENT OF RELATED CASES

1- Fred S. Pardes, Petitioner v. Andrew S. Wienick, Darshann Wienick, Respondents Orange County Superior Court Case No. 16Fl000271

Honorable Judge Salvador Sarmiento

Statement of Decision on Non-Suit rendered September 10, 2018 (App. 31)

December 24, 2018 Judgment on Non-Suit denying Grandparent Visitation (App. 24)

STATEMENT OF RELATED CASES – Continued

2- Fred S. Pardes, Appellant/Petitioner v. Andrew S. Wienick, Darshann Wienick, Respondents Court of Appeal Case Number G057362

Court of Appeal Opinion issued March 11, 2020 (App. 1)

Court of Appeal Order denying Petition for Rehearing filed April 2, 2020 (App. 23)

3- Fred S. Pardes, Appellant/Petitioner v. Andrew S. Wienick, Darshann Wienick, Respondents

California Supreme Court Case Number S261936

California Supreme Court Order denying Petition for Review filed June 24, 2020 (App. 36)

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Orange County California Superior Court Case No. 16Fl000271
Statement of Decision Granting Non-Suit by Honorable Judge Salvador Sarmiento, filed on September 10, 2018 – No Citation

FRED S. PARDES, Petitioner v. ANDREW S. WIENICK,
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Judgment denying Grandparent Visitation filed on December 24, 2018 – No Citation

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Supreme Court of California, Order denying Petition for Review filed June 24, 2020 – No Citation

JURISDICTION

Petitioner asserts his constitutional right of a Grandparent to protect his Grandchildren from emotional harm, abuse, Grandparent alienation, and the improper upbringing of his Grandchildren by an "Unfit Surviving Parent". Pardes requests that this Court consider whether or not the California Statutes as cited in the lower Courts' decisions and rulings, ***as applied to Petitioner, violates the Federal Constitution.***

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." It should be self evident that a Grandparent's "liberty" is his right to love and protect his Grandchildren from emotional harm and abuse from an "Unfit Surviving Parent". Pardes asserts that his right to love and protect his Grandchildren from emotional harm is equal to the "liberty" interest of a "FIT" parent's right to control the custody and care of their children. Where an "Unfit" surviving parent is involved, emotionally harming his children,

a good and loving Grandparent should be allowed the right to intervene, and protect his Grandchildren.

On June 24, 2020, the Supreme Court of the State of California summarily denied Pardes' Petition for Review (App. 36), of the California Court of Appeal, Fourth Appellate District, Division Three's Opinion, Fred S. Pardes, Appellant/Petitioner v. Andrew S. Wienick, Darshann Wienick, Respondents, Court of Appeal Case Number G057362, Court of Appeal Opinion issued March 11, 2020. The California Court of Appeal summarily denied Pardes' Petition for Rehearing filed April 2, 2020. (App. 23).

This Court has jurisdiction to determine this case under 28 U.S.C. §1257(a), which states: "(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

Pardes asserts that Grandparents have legal rights and privileges under the United States Constitution, and the laws of the United States, including but not limited to the pursuit of life, liberty and the pursuit

of happiness. That includes the right to reasonable Grandparent Visitation, after the death of his child; and the right to protect his Grandchildren from emotional harm. Further, that the application of the California statutes below, as applied to Pardes, are repugnant to the United States Constitution and the laws of the United States.

The five issues raised herein address the validity and/or application of California Family Law Code sections 3102, 3103, and 3104, which as applied in this case, are repugnant to the U.S. Constitution and/or the laws of the United States. In addition, Pardes asserts that the validity and/or application of California Family Law Code sections 3102, 3103 and 3104, which as applied in this case, wrongfully deprive him of the rights and privileges, the right to Grandparent Visitation after the death of a deceased daughter, Jennifer, as claimed under the Constitution and laws of the United States; as well as the right to protect his Grandchildren from emotional harm.

In addition, this case seeks a clarification or modification or restriction, or overruling of this Court's decision in *Troxel v. Granville* (2000) 530 U.S. 57, which unfairly restricts or infringes on a Grandparents right to reasonable visitation; and/or protection of his Grandchildren from an Unfit Surviving Parent, engaging in Grandparent Alienation. *Troxel*, supra, does not define whether or not a parent wrongfully depriving his children of the additional love and emotional support of a Grandparent renders him an "Unfit Parent", and/or whether or not that emotional abuse constitutes

Grandparent Alienation, depriving him of any favorable presumptions in any Grandparent visitation dispute.

RELEVANT STATUTES

The relevant statutes to this case are:

California Family Law section 3102, which states:

> **"§ 3102. Deceased parent; visitation rights of close relatives; adoption of child**
>
> (a) If either parent of an unemancipated minor child is deceased, the children, siblings, parents, and grandparents of the deceased parent may be granted reasonable visitation with the child during the child's minority upon a finding that the visitation would be in the best interest of the minor child.
>
> (b) In granting visitation pursuant to this section to a person other than a grandparent of the child, the court shall consider the amount of personal contact between the person and the child before the application for the visitation order.
>
> (c) This section does not apply if the child has been adopted by a person other than a stepparent or grandparent of the child. Any visitation rights granted pursuant to this section before the adoption of the child

> automatically terminate if the child is adopted by a person other than a stepparent or grandparent of the child.

California Family Law section 3103, which states:

> **§ 3103. Grandparent's rights; custody proceeding**
>
> (a) Notwithstanding any other provision of law, in a proceeding described in *Section 3021*, the court may grant reasonable visitation to a grandparent of a minor child of a party to the proceeding if the court determines that visitation by the grandparent is in the best interest of the child.
>
> (b) If a protective order as defined in *Section 6218* has been directed to the grandparent during the pendency of the proceeding, the court shall consider whether the best interest of the child requires that visitation by the grandparent be denied.
>
> (c) The petitioner shall give notice of the petition to each of the parents of the child, any stepparent, and any person who has physical custody of the child, by certified mail, return receipt requested, postage prepaid, to the person's last known address, or to the attorneys of record of the parties to the proceeding.
>
> (d) There is a rebuttable presumption affecting the burden of proof that the visitation of a grandparent is not in the best interest of a minor child if the child's parents agree that the

grandparent should not be granted visitation rights.

(e) Visitation rights may not be ordered under this section if that would conflict with a right of custody or visitation of a birth parent who is not a party to the proceeding.

(f) Visitation ordered pursuant to this section shall not create a basis for or against a change of residence of the child, but shall be one of the factors for the court to consider in ordering a change of residence.

(g) When a court orders grandparental visitation pursuant to this section, the court in its discretion may, based upon the relevant circumstances of the case:

(1) Allocate the percentage of grandparental visitation between the parents for purposes of the calculation of child support pursuant to the statewide uniform guideline (Article 2 (commencing with *Section 4050*) of Chapter 2 of Part 2 of Division 9).

(2) Notwithstanding *Sections 3930* and *3951*, order a parent or grandparent to pay to the other, an amount for the support of the child or grandchild. For purposes of this paragraph, "support" means costs related to visitation such as any of the following:

(A) Transportation.

(B) Provision of basic expenses for the child or grandchild, such as medical expenses, day care costs, and other necessities.

> (h) As used in this section, "birth parent" means "birth parent" as defined in *Section 8512*.

California Family Law section 3104, which states:

> § 3104. Grandparent's rights; petition by grandparent; notice; protective order directed to grandparent; rebuttable presumptions; conflict with rights of non-party birth parent; change of residence of child; discretion of court.
>
> (a) On petition to the court by a grandparent of a minor child, the court may grant reasonable visitation rights to the grandparent if the court does both of the following:
>
> (1) Finds that there is a preexisting relationship between the grandparent and the grandchild that has engendered a bond such that visitation is in the best interest of the child.
>
> (2) Balances the interest of the child in having visitation with the grandparent against the right of the parents to exercise their parental authority.

NECESSITY FOR GRANTING CERTIORARI

Due to breakdown of family relationships in modern times, Grandparent Visitation disputes are increasing throughout the nation, at a large rate. Especially when a surviving hostile parent has total

control over visitation for the minor children, and abuses the right to reasonable control.

This emotional abuse by a surviving parent is a Nationwide problem. Not just in the State of California.

Due to abuse of the right to reasonable and beneficial control by surviving unfit parents, Grandparents are being unnecessarily forced to file Visitation Petitions, and expend large amounts of money on legal fees, expert fees and court costs, to protect their legal rights under the United States Constitution and various State Laws. Yet, there are few published Appellant cases which would give guidance to the Trial courts across the nation, which would help them evaluate those Grandparent visitation issues before them. A grant of review of this case is necessary to establish new law and/or settle critical questions of the rapidly expanding Grandparent Visitation law.

This case raises Five critical issues of First Impression, ***of nationwide interest***, which would be of very substantial interest not only to the Grandparent and Family Law community, but would also promote and protect the emotional welfare of Grandchildren throughout the United States. In addition, such rulings would significantly reduce the substantial emotional trauma suffered by all Grandchildren, caused by surviving hostile parents vindictive and punitive refusal to grant Grandparent visitation due to their hatred of the petitioning Grandparent. Such hatred has nothing to do with the best interests and/or welfare

and/or emotional needs of the Grandchildren. The innocent minor Grandchildren become pawns in a narcissistic parent's game of control and manipulation.

Grandparent-grandchildren visits, normally, as a general rule, bring lots of joy and happiness to all involved. A minor Grandchild has no ability to select who he can or cannot see. That is left up to the surviving parent. For various negative personal reasons (i.e. revenge and/or retribution for perceived slights), totally unrelated to the emotional welfare of the child, a surviving Parent does NOT always act in the best interests of his or her children.

It is conceded that sometimes a Grandparent or a surviving parent simply do not get along. Such a disagreement should not automatically preclude the right to Grandparent visitation. Especially, as in this case, there was a well established lifelong loving and bonded relationship between the Grandchildren and Grandparent, before the death of one of the natural parents. A relationship that Wienick terminated without any legal justification, for revenge and retribution of perceived slights.

Grandparents, especially surviving Grandparents, have a legal right to reasonably visit their Grandchildren. Surviving parents are mandated to act in a reasonable manner, as it relates to not only to the physical care of their children, but also their emotional health and welfare.

Grandparents have raised their children to become parents. "But for" the Grandparents, there would

be no parents or Grandchildren. Good and loving Grandparents, with a prior existing loving and bonded relationship, are entitled to visit their Grandchildren.

It is not uncommon for disputes to arise between children and parents. Those disputes become more complicated when it involves a surviving parent, who is an "In-Law". Yet those disputes, between a parent and his or her in law surviving parent, should not manipulated or abused to deprive a good and loving Grandparent from reasonably visiting his or her Grandchildren. Some credence should be given to the fact that the Grandchild, the essence of the dispute, wouldn't be on this planet but for the efforts and sacrifice of that Grandparent. This fact of ultimate conception creates rights and privileges to that Grandparent, under the Constitution, which should not be unreasonably interfered with, by an unreasonably disproving punitive surviving parent. The Grandchildren should not be used as a pawns of punishment or manipulation by the surviving "Unfit" parent. Guidelines should be instituted, to protect the Grandparents from the whims of a Hostile In Law surviving "Unfit" parent.

It is regretful but true that the legal system can be abused by a disreputable parent. Especially when that surviving parent wants to punish his Father-In-Law over perceived slights during the unsuccessful marriage.

A grant of Certiorari concerning these Five critical issues, most if not all of first impression, is necessary to give additional guidance to the Family Law Trial

Courts, throughout this nation, to settle important unresolved questions of Grandparent visitation. A ruling in this case will help protect the mental health and welfare of minor children, who are being wrongly deprived of additional love and emotional support of a Grandparent, who was once actively involved in their lives. This unlawful deprivation of love and emotional support is being caused by a surviving In Law parent, who has his own personal agenda of revenge and retribution, disregarding the mental health and emotional welfare of his children. Such an "Unfit" Parent should not be protected under the law.

A person's life expectancy is totally unknown. A Grandparent doesn't know how long they will remain alive after the birth of their Grandchildren. In the majority of cases, Grandparents will only have a very limited period of time left in their lives to see, establish, and enjoy any type of relationship with their Grandchildren, before they pass away. To lose any amount of that precious limited time and waste multiple years in a Courthouse, due to a punitive parent's game of control and manipulation is inherently unfair. This lost of valuable time causes irreparable harm to both Grandparents and Grandchildren.

Justice delayed is Justice denied.

It is inherently unfair for a loving Grandparent to waste three to five years, and tens of thousands of dollars, unnecessarily fighting an abusive surviving parent, in the Courtroom. Those three to five years are lost years which can never be replicated, causing

irreparable damage to the emotional and psychological needs of the Grandchild.

By granting Certiorari, this Court has an opportunity to prevent abusive misconduct by a surviving "Unfit parent", who puts his personal agenda of revenge and retribution before the best interests and emotional welfare of his children.

The purpose of this Petition is to acknowledge a Grandparent's constitutional right to protect one's Grandchildren, and advance a compelling governmental interest, to wit: protecting minor children against substantial irreparable harm, and rightfully establish and expand Grandparents legal rights. Especially, when one natural parent passes away at an early age, during the minority of the Grandchildren.

STATEMENT OF THE CASE

This case involves a nationwide common case of a highly contentious Grandparent (Father of deceased mother-Jennifer Pardes Wienick)-Surviving Parent (Ex-Husband Andrew Wienick) relationship, with problems over issues which have nothing to do with the best interests or welfare of the grandchildren. See Trial Exhibit 18 App. 38 and Trial Exhibit 19, App. 43. These two Trial Exhibits clearly show the extraordinary amount of hatred that Wienick bears towards Pardes, which precludes him from acting in a reasonable manner when it comes to his dealings with his Ex-Father in Law. Wienick wants revenge for past slights,

and to punish Pardes for his prior dealings, protecting his daughter Jennifer, which have nothing to do with the best interests of the boys. Such hatred and desires for revenge and retribution renders him an "Unfit" Parent, preventing him from legitimately objecting to visitation.

This extreme "In Law" hostility, with desires for revenge and retribution, is not an isolated instance. It is a common thread in many of the Grandparent Visitation cases, throughout the nation.

The Petition raises Five (5) novel issues of first impression involving Grandparent visitation, by Pardes, the father of the deceased Mother, Jennifer Pardes Wienick, seeking to continue his long standing pre-existing loving and bonded relationship that he had with his Grandsons, from the date of both of their births and up to Jennifer's untimely death at age Thirty-Eight (38). The Respondents Andrew and Darshann Wienick (Wienicks) effectively terminated that loving relationship for selfish, punitive and retaliatory reasons, for Pardes defending his emotionally vulnerable daughter (who suffered a nervous breakdown, shortly before the Wienick's separation and divorce in 2012) during highly toxic and contentious Divorce and Post Judgment custody battles. Wienick's alleged concerns about Pardes were not reasonable or remotely legitimate, having nothing to do with what is in the best interest of the emotional needs of the boys.

Such punitive interference, without any legitimate or reasonable concerns as to the Pardes and the boys pre-existing loving and doting Grandparent relationship, ignoring the emotional well being of their children, renders them "UNFIT" parents. This "Unfit" classification precludes them from using the rebuttable presumption in the *Troxel* case, and Family Law Code section 3104, and significantly altering the evaluation of the legal issues in the case.

Since Grandparent Visitation has only recently become an area of vast public concern, there is little case law giving guidance to Trial Courts as to how to rule on the pertinent statutes Family law section 3102 and 3104. The Appellate Opinion (App. 1) did not rule on several previously undetermined critical points of law; and/or erroneously ruled on issues of law, based upon incorrect factual analysis, and/or the lack of any precedent on those issues.

Strong Public policy regarding the protection over the emotional well being of minor children warrants a closer look at the legal issues raised by this Petition.

REASONS FOR GRANTING CERTIORARI

1- THERE SHOULD EXIST A REBUTTABLE PRESUMPTION THAT AS A GENERAL RULE, GRANDPARENT VISITATION IS IN THE BEST INTERESTS OF MINOR GRANDCHILDREN, WHERE THERE HAS BEEN A PRE-EXISTING GRANDPARENT RELATIONSHIP, BEFORE ONE PARENT PREMATURELY PASSES AWAY DURING THEIR MINORITY.

It is true that Pardes is unable to cite any explicit case or statute supporting this contention. However, it is self evident. Neither the Wienicks nor either of the two Courts could find any authority specifically ruling that no such presumption exists. Many lower courts have made such findings in their trial level decisions. The lack of any Judicial precedent makes this issue a case of first impression, for which the lower Court was obligated to specifically rule upon, but chose not to do so, because of the lack of any prior precedent.

However, in several of the prior court Grandparent Visitation cases, the Trial Courts made some sort of finding that Grandparent visitation is beneficial to the well being of minor children. Such findings of huge benefits are supported by many family law experts.

It is undeniable that the continuance of a preexisting loving and beneficial relationship with Grandparents during Divorce proceedings can provide stable and dependable nurturing, the grandchild can continue to count on in the midst of a rift in the parental relationship. See *Stuard v. Stuard* (2016) 244 Cal. App.

4th 768, 784, as modified on denial of reh'g (Mar. 1, 2016). The same benefit is even more critical to the minor children, when the natural mother dies at a very young age, and the Maternal Grandparent seeks visitation with his Grandchildren, to continue his pre-existing relationship with them.

The reversal in *Zasueta v. Zasueta*, (2002) 102 Cal. App. 4th 1242 at p. 1253, was primarily based on the assumption by the Trial Court "that grandparent-grandchildren relationships ***always benefit children***." That is not what Pardes is advocating. Pardes is advocating that where there is evidence of a long established pre-existing loving and bonded Grandparent-Grandchild relationship, a rebuttable presumption is created in the Grandparents favor until proven to the contrary. Nothing in the Zasueta opinion precludes such a finding. It does show another Judge's opinion that Grandparent visitation is normally, as a general rule, beneficial to the Grandchildren, justifying imposition of such a rebuttable presumption in favor of the Grandparents.

Logic and reason dictate that having a loving doting Grandparent in a child's life is generally in the best interest of the child, ***unless proven to the contrary.*** There was no negative evidence on this issue at time of trial. Even the Wienick's stipulated after the first day of trial that Pardes had a pre-existing relationship with the boys at the time that Jennifer passed away.

At trial Pardes attempted to introduce the Expert Testimony to support this contention. In evaluating whether or not to allow the proposed trial testimony of well established and respected Family Law Custody Expert Leslie Drozd, Judge Sarmiento stated on the record:

> ***"That is the issue right now is what am I going to allow the petitioner to present? What am I not going to allow him to present? I've had Dr. Drozd in my courtroom on many other occasions.***
>
> ***She is highly respected by myself and other people. The problem is the relevancy in this proceeding where she hasn't spoken to the children, she hasn't spoken to the parents.***
>
> ***I know she is going to give me a lot of theory and a lot of examples in other situations wherein she believes that visitation with the grandparent is very positive.***
>
> ***The problem is, does it actually apply to this proceeding where she has spoken to no one?"***

(RT 142, l. 2-18).

After taking a recess to research the point, the Court denied Pardes' request to have Dr. Drozd, a licensed and vastly experienced 730 Examiner, testify on his behalf, (RT 144, l.11-145, l.1). Such comments clearly and unequivocally support the application of a

Rebuttal Presumption is favor of Grandparent Visitation.

In addition, there was the children's personal attorney's Attorney Diane Vargas' comments made during her Independent report to the Court, ***"As a Grandparent, I always think it's great to have grandparents. It's just good for kids to have grandparents if those Grandparents don't have . . . problems . . . :(RT 135 l. 19-22).*** There was no evidence of any problems with Pardes, as it pertains to his relationship with the boys.

Such evidence easily supports the imposition of such a rebuttable presumption. Especially when there was no evidence before the Court that Pardes did not have a loving relationship with the boys, until Jennifer passed away.

By analogy, there was no rebuttable presumption in favor of an objecting "FIT" parent before *Troxel v. Granville* (2000) 530 U.S. 57. As such, there is no reason not to impose a rebuttable presumption in favor of the benefits of Grandparent visitation, which is so clearly accepted and approved by many experts and society.

There was no evidence before the Trial Court that Pardes was not a loving or emotionally supporting grandparent; or that he mistreated the boys in any manner. There was substantial evidence of only positive interaction between Pardes and the boys. The Wienick's concerns for objecting to the Pardes visitation were not reasonable or credible but punitive and

retaliatory in nature (as explained below). Those bogus concerns were not remotely reasonable nor credible as it relates to the best emotional interests of the boys. As such, Pardes was entitled to this rebuttable presumption in favor of Grandparent visitation. The lower Courts failure to invoke the rebuttal presumption in favor of Grandparent visitation constitutes a violation of Pardes' constitutional rights.

Such a presumption, until properly rebutted by the surviving Parent, clearly is in the best interests of the Grandchildren. Such a rebuttable presumption would save a lot of valuable and limited trial time; expert and cost costs to the litigants.

2- COURTS SHOULD BE REQUIRED TO EVALUATE THE "EMOTIONAL FITNESS" OF THE SURVIVING PARENTS INCLUDING THE VALIDITY OF THE REASONS AND CONCERNS FOR THE SURVIVING PARENTS' OBJECTION TO GRANDPARENT VISITATION, BEFORE INVOKING THE REBUTTABLE PRESUMPTION OF THE *TROXEL* DECISION AND EVALUATION OF FAMILY CODE SECTIONS 3102 AND 3104.

Both lower Courts heavily used the *Troxel v. Granville (2000) 530 U.S. 57 (Troxel)* case as a major basis for their decisions denying visitation. *Troxel* speaks to the issue of the rebuttable presumption in favor of a "Fit Parent" to make reasonable and proper decisions concerning the physical upbringing of his/her children. However, the *Troxel* decision addresses the

issue of a Surviving Parent taking care of the ***physical needs*** of their children. It is silent on the issue of whether or not that "Fitness" also includes the ***emotional needs of the children*** are being protected by that Parent. The evidence presented at Trial overwhelmingly showed that the Wienicks were "Unfit Parents", as it pertains to the emotional needs of the boys. The basis for the Wienicks denial of Grandparent visitation was solely because they hated and despised Pardes, for irrelevant personal reasons other than the emotional well being of the boys. This extreme hatred arose because of Pardes' strong support for his emotionally vulnerable daughter Jennifer (who suffered a mental breakdown in March, 2012), just prior to the Wienick's separation and divorce in August, 2012.

As one would expect from a good and loving Father, during the toxic and extremely confrontational divorce proceedings and post Judgment custody battles, Pardes took Jennifer's side during the divorce and post Judgment custody battles. Afterwards, at Jennifer's Request, Petitioner represented Jennifer's boyfriend during a Civil Harassment lawsuit brought by Wienick against the boyfriend. Pardes won a non-suit against Wienick in that case. That victory angered Wienick to no end, and was an improper justification for denying visitation. (See App. 38 and 43)

The primary reason that the Wienicks give for terminating any Grandparent visitation is because they were concerned that Pardes was taking away the boys' small inheritance from their Mother, in seeking bona fide and ultimately successful claims against

Jennifer's small Estate. This "objection" is most absurd because the Wienicks are involved in parent alienation, and have tried to eliminate any memory of Jennifer from the boys. See Exhibits 18 (CT 779-780) and 19 (CT 782-783). See Appendix 38 and 43, respectively.

Another totally irrelevant reason to the visitation issue was that Wienick tried to use his leverage over visitation, to wrongfully extract concessions from Petitioner, in the ongoing Fred Pardes v. Michelle Pardes 2013 Divorce proceeding. Petitioner's divorce from his wife had no bearing on his relationship with the boys. Getting involved in a totally different divorce proceeding is absolutely irrelevant as to what is or is not in the best interests of the boys.

The Appellate Opinion does not accurately state the net effect of the *Troxel* ruling, and misapplies its ruling. The opinion frequently mentions "parent(s)", but the proper term is a "Fit Parent". The Court ultimately quotes *Troxel*, supra, ***"Thus so long as a parent adequately cares for his or her children (i.e is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the best decisions concerning the rearing of that parent's children"*** at pp 68-69. However, there are both physical and emotional needs for the proper upbringing of a child. The *Troxel* case does not make any such distinction, but should have.

Taking care of a child's physical needs is only one aspect as to whether or not a Parent is a "Fit Parent". The other part of the equation is whether or not the parent is properly satisfying the emotional needs of his children.

It is undisputed that Pardes was actively involved in the boys' life from the date of their births until Jennifer's untimely death. Keeping Pardes involved in the children's would only give them additional love and emotional support. But the Wienicks didn't care. They just wanted retribution and punishment for perceived "slights" against them, which had no bearing on the emotional welfare of the boys.

The Wienicks unjustifiable and punitive destruction of the stipulated long standing pre-existing loving Grandparent-Grandchild relationship between Pardes, the boys, clearly proves that they are not protecting the emotional needs of their children, which renders them "Unfit Parents".

What "Fit Parent" removes a loving Grandparent with a life long pre-existing loving relationship with his grandchildren from his children's lives? Does a "Fit Parent" terminate the continuation of this long existing loving relationship, depriving his children of additional emotional support after their mother's premature and unexpected death, because of his thirst for revenge and retribution. The Wienicks putting their thirst for punishment, revenge and retribution against Pardes, before the emotional needs of the boys, renders them "Unfit Parents", precluding the

application of any *Troxel* presumption, and eliminates the need for any analysis under Family Law Code Sections 3102 and 3104.

This Court must expand and/or modify its *Troxel* ruling, to require the lower Courts to initially evaluate the fitness of the parent(s) as to both the physical and emotional needs of the children, before applying the *Troxel* presumption or application of sections 3102 or 3104, or other similar statutes in other states. This mandates a review of the surviving parents reasons and concerns for any objection in denying grandparent visitation. Neither Court made any such evaluation.

The "clear and convincing" evidentiary burden required under *Rich v. Thatcher* (2011) 200 Cal. App. 4th 1176, 1180, can only come into play after the Court makes a specific ruling that the objecting parent was a "Fit Parent" ***as to both the physical and emotional needs of the children***. That the surviving Parent's reasons for objecting to Grandparent visitation were valid, reasonable and credible. The evidence before the Trial Court did not support a finding that the Wienicks were "Fit Parents" because they improperly ignored the emotional needs of the boys. Trial Exhibits 18 (App. 38) and 19 (App. 43), clearly show their objection to visitation and areas of concerns regarding Pardes' visitation were not valid, reasonable nor credible, as they negatively effected the best interests and emotional needs of the boys.

In addition, under Family Code section 3104(f), if the surviving parent asserts the "rebuttable presumption affecting the burden of proof that the visitation of a grandparent is not in the best interests of a minor child if the parent . . . with whom the child resides . . . objects to visit by the grandparent", the reasons for the parent's objection to visitation must be fully examined and explored, before the Court can impose the adverse rebuttable presumption. If the Parent's objections are not valid, reasonable, or credible, as they relate to both the physical and emotional needs of their children, the surviving parent can ***not*** properly object, and the Court can not impose the presumption against Grandparent Visitation.

In addition, if the surviving parent is proven to be unfit as to meeting either the physical or emotional needs of the minor child, this Court must expand/modify the *Troxel* ruling, to mandate that an improperly objecting parent loses the right to object to Grandparent visitation; and there need not be any analysis or application of either sections 3102 or 3104, or any other similar State statutes.

Where the trial court found that the father's objections to visitation did not arise out of a genuine concern for the best interest of the children, the due process rebuttable presumption that father was acting in the best interest of the children was overcome. See *Hoag v. Diedjomahor* (App. 4 Dist. 2011) 199 Cal.App.4th 1321, 200 Cal.App.4th 1008, as modified, review denied. Clearly, Exhibits 18 and 19 preclude

application of any such rebuttable presumption in favor of the Wienicks.

The Hoag Appellate court found ***the father's objection to visitation was "a desire to retaliate against the grandmother for her attempt to take the children away from him."*** (*Hoag, supra*, 199 Cal. App. 4th at p. 1018.) His desire for retaliation and her purported disrespect of him were not in the children's best interest but punished them ***"for the sins of the grandmother."*** (*Ibid.*)

Those facts are exactly on point as to Pardes' protection of his emotionally vulnerable daughter, Jennifer, from Wienick' abusive tactics in their divorce proceedings and post-judgment custody battles. Wienick's termination of the Grandparent relationship was clearly in retaliation for Pardes in doing so; and for having the audacity in standing up for his legitimate claims against Jennifer's Estate and disagreeing with Wienick's opinion about Jennifer's boyfriend. That was not the intent of this Court when rendering its *Troxel* Decision.

Review of the emotional needs of a Grandchild, and the validity of the surviving Parents reasons and concerns for denying visitation, i.e. are they retaliatory or punitive in nature, are critical evaluations, which must be made in every Grandparent Visitation Petition, before there can be any application or analysis under Family Law code sections 3102 and 3104. If the objections are retaliatory or putative, this Court must rule that no further evaluation need be made, and that

the Grandparent is automatically entitled to reasonable visitation.

3- THE LACK OF ANY GRANDPARENT CONTACT, FROM THE TIME OF THE DEATH OF THE NATURAL MOTHER UP UNTIL THE TIME OF TRIAL ON THE GRANDPARENT VISITATION PETITION, DUE TO SURVIVING PARENT'S PUNITIVE REFUSAL TO GRANT ANY GRANDPARENT VISITATION OR CONTACT, SHOULD NOT BE USED AS A JUSTIFICATION FOR DENYING GRANDPARENT VISITATION

Pardes concedes that he has had virtually no contact with the boys, since Jennifer's untimely death over five years ago on June 27, 2020, through the several dates of Trial, and even until the date of this Petition. However, the Court should examine why there was no contact between the Grandparent and the Grandchildren.

Did Pardes not even bother to see his Grandchildren? Not so in this case. Or was he prevented from seeing his Grandchildren through the punitive and retaliatory actions of the surviving parent? That clearly applies to this case. Wienick rejected all efforts by Pardes to reconcile their differences, and see his Grandchildren.

Contrary to the lower Court's ruling, the lack of any Grandparent contact due to the interference of the surviving parent should not be held against the

Grandparent, where the lack of post death contact was through no fault of his own. That the lack of any contact was because of the surviving parents unjustified interference with visitation.

The Wienicks used a typical tactic in their Grandparent Alienation scheme, by abusing their control over the Grandparent visitation issue. They have and continuously maliciously interfered with and prevented any and all types of contact and visitation between Pardes and his Grandchildren. Their desire was to destroy the Grandparent relationship between Pardes and the boys; to have the Grandparent (Pardes) totally disappear from their minor children's memories, by preventing any type of contact or maintenance of any pre-existing relationship. This improper interference should be held against the surviving parent. There is no legitimate reason for a petitioning Grandparent to be denied visitation, because he is unable to maintain his pre-existing loving relationship, due to the intentional and punitive interference by the surviving parent, who is engaging in Grandparent alienation.

Even the Wienicks conceded at trial that Pardes had a pre-existing loving relationship with both the boys before Jennifer died. What did the Wienicks intend to accomplish by terminating that prior loving Grandparent relationship? By preventing any contact, and destroying the prior loving relationship, they wanted to eliminate Pardes from the boys' young and not fully developed memories, so they can later argue that the boys are not harmed in any way, as a result of a

relationship that no longer existed. Allowing the Wienick's to benefit from their own wrongdoing is inherently unconscionable and unfair, and violated Pardes' constitutional rights.

Where the trial court found that the father's objections to visitation did not arise out of a genuine concern for the best interest of the children, and the due process presumption that father was acting in the best interest of the children was overcome. See *Hoag v. Diedjomahor* (App. 4 Dist. 2011) 199 Cal.App.4th 1321, 200 Cal.App.4th 1008, as modified, review denied.

Reason and fairness dictate that a surviving parent should not be allowed to benefit from malicious and punitive efforts to interfere with and/or terminate all Grandparent contacts and visitation with his Grandchildren. It is inherently unfair for a surviving parent to maliciously prevent the continuation of a pre-existing and loving grandparent-grandchild relationship, and then claim that the lack of any post death contact/relationship is grounds for denying future Grandparent visitation.

Civil Code § 3517 provides: ***"No one can take advantage of his own wrong".*** By terminating all Grandparent visitation, by a Grandparent to which they stipulated to at trial had a pre-existing relationship with their children, without any just legal cause, the Wienicks' are trying to do just that.

Permitting the Wienicks and similarly situated "Unfit" punitive parents to abuse their parental position

and exclusive control as a surviving parent, and then take advantage of their wrongdoing, by claiming there is no post death relationship, constitutes a violation of Pardes constitutional rights.

4- THIS COURT SHOULD RECOGNIZE THE LEGAL CONCEPT OF GRANDPARENT ALIENATION, AND AUTOMATICALLY PERMIT GRANDPARENT VISITATION, WHERE SURVIVING PARENTS EXHIBIT SUCH ALIENATION PRACTICES

The Wienick's stipulated at trial that there was a long standing pre-existing relationship between Pardes and his Grandsons N.W. and S.W., from their respective births until Jennifer's death. Yet, they denied Pardes, any type of visitation or contacts, without any legal justification, after Jennifer's death.

The Forty-Seven Photographs produced at trial show a loving, devoted, active, and fun actively involved relationship between Fred, N.W. and S.W., up until Jennifer's death. That relationship was suddenly terminated as of Jennifer's death, once the Wienicks assumed full custody of the boys. The reason for that disruption of that relationship is due to and as a result of the Wienicks' "Grandparent Alienation".

The Wienicks have argued that there is no such legal concept. That is not true. Courts have long recognized the concept of Parental Alienation. It is not a reach to extend that concept to the Grandparent-Grandchild relationships.

In 1985, the late American psychiatrist, Richard Gardner, introduced the term "parental alienation syndrome" (PAS), defining it as: The parental alienation syndrome (PAS) is a disorder that arises primarily in the context of child custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the *combination* of a programming (brainwashing) parent's indoctrination and the child's own contribution to the vilification of the target parent. When true parental abuse and/or neglect are present, the child's animosity may be justified, and so the parental alienation syndrome explanation for the child's hostility is not applicable (p. 61).

Gardner placed particular emphasis on three contributing factors: "parental 'brainwashing,' situational factors and the child's own contributions." The diagnosis of PAS is dependent on eight primary factors identified in the child: (1) campaign of denigration; (2) weak, frivolous or absurd rationalizations for the deprecation; (3) lack of ambivalence; (4) the "independent thinker" phenomenon (child claims these are their own, and not the alienating parent's beliefs); (5) reflexive support of the alienating parent in the parental conflict; (6) child's absence of guilt over cruelty to, or exploitation of, the alienated parent; (7) presence of borrowed scenarios; and (8) spread of rejection to extended family and friends of the alienated parent. See Barbara Jo Fidler, Nicholas Bala, *Children Resisting Postseparation Contact with A Parent: Concepts,*

Controversies, and Conundrums (2010) 48 Fam. Ct. Rev. 10, 12.

Baker (2005a) identifies five general strategies alienating parents use to turn children against the other parent and the extended family (some or all may be used), with levels of severity and explicitness ranging within each of these categories. In another study, Baker and Darnall (2006) identify as many as 1,300 actions, categorized into 66 strategies. These strategies are summarized into seven groups, plus a catch-all miscellaneous group:

> (1) Badmouthing (e.g., qualities, portrayed as dangerous, mean, abandoning; using the rejected parent's first name with the child instead of "Mom" or "Dad", etc.);
>
> (2) Limiting/interfering with parenting time (e.g., moving away, arranging activities during scheduled time with rejected parent, calling during contact; giving child "choice" about whether to have contact, etc.);
>
> (3) Limiting/interfering with mail or phone contact (blocking, intercepting, or monitoring calls and mail, etc.);
>
> (4) Limiting/interfering with symbolic contact (limiting mentioning, no photographs, having child call someone else "Mom" or "Dad"; changing child's name, etc.);
>
> (5) Interfering with information (e.g., refusing to communicate, using child as messenger

> not giving important school and medical information, etc.);
>
> (6) Emotional manipulation (e.g., withdrawing love, inducing guild, interrogating child, forcing child to choose/express loyalty or reject, rewarding for rejection, etc.);
>
> (7) Unhealthy alliance (e.g., fostering dependency, child having to spy, keep secrets, etc.); and
>
> (8) Miscellaneous (e.g., badmouthing to friends, teachers, doctors, interfering with child's counseling, creating conflict between child and rejected parent, etc.)

The alienated child becomes highly attuned to the aligned parent's neediness and dependency on the child for love and acceptance. Quickly, the child comes to know that it is impossible to show love for both parents; showing love for and receiving love from the rejected parent is tantamount to betraying the alienating parent. A child's loyal behavior is rewarded with warmth, attention love and even material goods. Disloyal behavior is negatively reinforced with punishing looks, anger, withdrawal and abandonment, a risk the child cannot take having already "lost" one loving and loved parent. See Barbara Jo Fidler, Nicholas Bala, *Children Resisting Postseparation Contact with A Parent: Concepts, Controversies, and Conundrums* (2010) 48 Fam. Ct. Rev. 10, 19.

The concept of Parental Alienation has been accepted by many California Courts, including most

recently *In re M.M.* (Cal. Ct. App., Dec. 14, 2015, No. B259253) 2015 WL 8770107, where the Court held that the Mother's prior attempts to alienate the child from father, her continuing failure to acknowledge any wrongdoing and an expert's testimony that the alienating conduct was likely to continue were sufficient to support the juvenile court's finding that removing the child from mother's custody was the only reasonable means of ensuring the child's protection.

In agreement is *In re Marriage of Nair* (Cal. Ct. App., June 10, 2010, No. C061097) 2010 WL 2330204, where the Court ruled:

> ***"So, I think there should be an incentive-this is a special circumstance in this case.***
>
> ***I think there should be an incentive for both parents to promote frequent and continuing contact between the children and the other parent and that incentive in this case, I believe, can be served in not rewarding the alienating parent with an award of child support but instead to indicate to the parent that, No. That's not right. That's not appropriate."***

The circumstances and misconduct are the same, even though the names are changed. It is just alienation by just another name.

As such, there is no reason not to extend that Parental Alienation concept for Grandparent alienation, based upon similar criteria. Similarly, the relief to be

granted due to the Grandparent alienation should be the total disregard of the parental objection, and granting of reasonable Grandparent visitation.

The same wrongful discouragement of Grandparent Alienation should be the automatic granting of reasonable visitation of monthly visitation to the Grandparent, and preclusion of the application of sections 3102 and 3104, or any other similar State Statutes across the country.

Termination of Grandparent visitation without reasonable or just cause, for retaliatory reasons not in the child's best emotional interests, is a classic act of Grandparent alienation.

Unfortunately, Grandparent Alienation has become nationwide problem in today's society that it has lead to the creation in 2011 of an entity called Alienated Grandparents Anonymous (AGA), which is based in Florida. Pardes' situation is not unique, as there are many Grandparents and families are grappling with the phenomenon.

"No one can take advantage of his own wrong". See Civil Code §3517.

The Wienicks should not be rewarded for their obvious intentional, malicious and retaliatory misconduct. To allow the Wienicks to do so violates Pardes constitutional rights.

The facts of this case more than justify expanding the *Troxel* ruling to hold that Grandparent Alienation

renders a surviving objecting parent, who unreasonably denies Grandparent Visitation, an UNFIT parent, and totally unable to exercise his/her presumptive parental rights under *Troxel*. In addition, it allows the Court to rule, without any further examination, that upon seeing such Grandparent alienation, granting of monthly visitation would be in the best emotional interests of the Grandchildren, and that no further analysis is required under Family Law code sections 3102 and 3104, and other similar statutes across the nation.

5- A LOVING AND BONDING RELATIONSHIP CAN BE ESTABLISHED BETWEEN A GRANDPARENT AND A GRANDCHILD, EVEN WHEN THE VISITATION TIME SPENT WITH THE GRANDPARENT AND THE GRANDCHILD IS DURING THE POST DIVORCE CUSTODIAL TIME WITH THE NATURAL MOTHER, BEFORE SHE PASSES AWAY

The Wienicks objected to the fact that the only time Pardes spent with N.W. and S.W., during and after the divorce, was in the physical presence of Jennifer. Query, so what??? Pardes was constantly helping Jennifer, and was actively involved in the boys lives.

What kind of personal contact does it take to establish, develop and maintain a loving and bonded relationship between a Grandparent and a Grandchild? Can a loving and bonded relationship be established where a Grandparent actively spends time with the

Grandchildren only in the presence of the parent? Absolutely.

Does a Grandparent need to spend time alone, as suggested by the lower Courts, without a parent being present, to develop the requisite bonded and loving relationship to satisfy the burden in Family Code Section 3102 or 3104? Absolutely not!!!

The issue becomes what happens during those custodial visits? Is the Grandparent actively involved with the Grandchildren, fully engaging with them in different activities, during that time spent together? Or is the Grandparent sitting aside from the children reading the newspaper during the Soccer game?

The Forty-seven Photographs produced at trial showed Pardes actively engaged with the children in numerous different activities. The photographs showed the boys laughing, joking and having fun with Pardes. Can the Court hold that because Jennifer was nearby that Pardes was unable to establish a loving and bonded relationship with the boys? The answer is no.

The Appellant Court cited and affirmed the Trial Court's erroneous finding on page 5, line 20-21 of the Opinion:

> ***"(8) Pardes' evidence showed his only prior contacts with the Grandchildren were "during their Mother's Custodial time."***

There was no factual analysis as to why the custodial visits as shown in the Forty-Seven Photographs, and the Pardes and Alice Nelson trial testimony, could not develop a loving and bonded relationship. There was no legal analysis as to why a Grandparent, as a matter of law, could not develop the requisite relationship merely because the time that he spent with his Grandchildren, was in the presence of their Mother, who only had Fifty Percent custody of the children.

The lower courts totally ignored the Pardes explanation that Jennifer was recovering from a mental breakdown, she was emotionally vulnerable, that Wienick was physically and emotionally abusive, that Wienick's strategy was to get Jennifer to have a relapse, so he could have 100% custody of the boys. That there were toxic divorce and post judgment custody battles between Jennifer and the Father, Wienick. That she had only 50% of the time with the children, and Jennifer wanted to spend every possible minute of her limited time with her children.

Under these circumstances, there was no extra time for Pardes to spend time with the Grandchildren, separate and apart from Jennifer. Pardes had to honor Jennifer's wishes.

The Courts also ignored the fact that Pardes was actively and emotionally engaged with the boys, from the moment of their births until Jennifer's untimely death.

Such a "Custodian Time Only" finding totally ignores the significance and bonding effects of family

gatherings during holidays such as Christmas, Thanksgiving, Easter, Passover, Chanukah, Jewish High Holidays, etc.. If these valuable and loving relationships were not established, developed and maintain during those family visits, why do so many Americans track back home to see ALL their family members. They do so because it is important to establish that Grandparent relationship.

Any time positively and actively spent directly with a Grandchild, such as shown in the Forty-Seven (47) Photographs introduced and testified at trial, only enhances the bond between Grandparent and Grandchild, even if that time is spent together with other family members. Otherwise, why do American families continue to spend family time together, during such holidays.

It is self evident that time spent together in a positive and active manner, even in the presence of the parent, can only establish and reinforce a Grandparent-Grandchild's loving and bonded relationship. To rule otherwise is contrary to law, and constitutes an abuse of discretion, justifying reversal of the lower Court's ruling denying Grandparent visitation.

CONCLUSION

For the reasons set forth above, that Pardes constitutional rights as a Grandfather have been violated, it is respectfully requested that the Court grant review

on these Five important Grandparent issues in this case.

Dated: September 8, 2020 Respectfully submitted,

FRED S. PARDES, IN PRO SE