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Nina Pace
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Dear Ms. Pace,

Please file this as additional information to supplement our previous response.

For your information the following cases may be of interest to you in showing that state courts have recognized parents who form private schools as appropriately educating their children at home. These are not exclusive, there are other states with similar case law. These cases are representative of reasoning by courts that have addressed the issue of private schools being formed by parents to comply with compulsory attendance laws.

Illinois – *People v. Levisen*, 404 Ill. 574, 90 N.E.2d 213 (1950) is a landmark case which held that a home school is a private school. A private school is “a place where instruction is imparted to the young ... the number of persons being taught does not determine whether a place is a school.” 404 Ill. at 576, 90 N.E.2d at 215. The Illinois Supreme Court emphasized the right of parents to control their children’s education: “Compulsory education laws are enacted to enforce the natural obligations of parents to provide an education for their young, an obligation which corresponds to the parents’ right of control over the child. (*Meyer v. Nebraska*, 262 U.S. 390, 400.) The object is that all shall be educated not that they shall be educated in any particular manner or place.” *Levisen*, 404 Ill. at 577, 90 N.E.2d at 215.

Indiana - The Indiana Appellate Court held that the Indiana compulsory attendance law allows the operation of home schools. *State v. Peterman*, 32 Ind. App. 665, 70 N.E. 550 (1904). Essentially, the Court said a school at home is a private

school. The Court defined a school as “a place where instruction is imparted to the young.... We do not think that the number of persons, whether one or many, make a place where instruction is imparted any less or any more a school.” *Peterman*, at 551. The court explained further: “Under a law very similar to ours, the Supreme Court of Massachusetts has held that the object and purpose of a compulsory educational law are that all the children shall be educated, not that they shall be educated in any particular way.” *Peterman*, at 551.

The Court concluded; “The result to be obtained, and not the means or manner of attaining it, was the goal which the lawmakers were attempting to reach. The [compulsory attendance] law was made for the parent who does not educate his child, and not for the parent who ... so places within the reach of the child the opportunity and means of acquiring an education equal to that obtainable in the public schools...” *Peterman*, at 552.

North Carolina - *Delconte v. State*, 329 S.E. 2d 636 (1985). In that case, the Court held that a “home school” met the definition of a “private school” and was therefore protected by the law. After reviewing many cases, the Court declared: “In summary, our sister jurisdictions, when faced with the question of whether home instruction is prohibited by school attendance statutes which specify various standards for nonpublic schools, have always analyzed the question not in terms of any meaning intrinsic to the word “school” but rather in terms of whether the particular home instruction in questions met the statutory standards ... we think this is the better approach to the problem.”

The North Carolina Supreme Court then analyzed their legislative history and found no attempt by the legislature to ever define the word “school.” The Court concluded: “The legislature has historically insisted only that the instructional setting, whatever it may be, meet certain standards which can be objectively determined and which require no subjective or philosophical analysis of what is or what is not a “school.””

Decisions of the United States Supreme Court Upholding Parental Rights as “Fundamental”

The Supreme Court of the United States has traditionally and continuously upheld the principle that parents have the fundamental right to direct the education and upbringing of their children. A review of cases taking up the issue shows that the Supreme Court has unwaveringly given parental rights the highest respect and protection possible. What follows are some of the examples of the Court’s past protection of parental rights.

In *Meyer v. Nebraska*,¹ the Court invalidated a state law which prohibited foreign language instruction for school children because the law did not “promote” education but rather “arbitrarily and unreasonably” interfered with “the natural duty of the parent to give his children education suitable to their station in life...”² The court chastened the legislature for attempting “materially to interfere... with the power of parents to control the education of their own.”³ This decision clearly affirmed that the Constitution protects the preferences of the parent in education over those of the State. In the same decision, the Supreme Court also recognized that the right of the parents to delegate their authority to a teacher in order to instruct their children was protected within the liberty of the Fourteenth Amendment.⁴

Furthermore, the Court emphasized, “The Fourteenth Amendment guarantees the right of the individual ... to establish a home and bring up children, to worship God according to his own conscience.”⁵

In 1925, the Supreme Court decided the *Pierce v. Society of Sisters*⁶ case, thereby supporting *Meyer's* recognition of the parents' right to direct the religious upbringing of their children and to control the process of their education. In *Pierce*, the Supreme Court struck down an Oregon compulsory education law which, in effect, required attendance of all children between ages eight and sixteen at *public* schools. The Court declared,

Under the doctrine of *Meyer v. Nebraska*, we think it entirely plain that the Act of 1922 unreasonably interferes with the **liberty of parents and guardians to direct the upbringing and education of children.**⁷ [emphasis supplied]

In addition to upholding the right of parents to direct the upbringing and the education of their children, *Pierce* also asserts the parents' fundamental right to keep their children free from government standardization.

The **fundamental theory of liberty** upon which all governments in this Union repose excluded any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. **The child is not the mere creature of the state; those who nurture him and direct his destiny have the right and the high duty, to recognize and prepare him for additional obligations.**⁸ [emphasis supplied]

The Supreme Court uses strong language in asserting that children are *not* "the mere creature of the State." The holding in *Pierce*, therefore, preserves diversity of process of education by forbidding the State to standardize the education of children through forcing them to only accept instruction from public schools.

In *Farrington v. Tokushige*, the Court again upheld parental liberty by striking down legislation which the Court admitted would have destroyed most, if not all private schools.⁹ The Court noted that the parent has the right to direct the education of his own child without unreasonable restrictions.¹⁰ In support of this assertion the Court explained,

The capacity to impart instruction to others is given by the Almighty for beneficent purposes and its use may not be forbidden or interfered with by government — certainly not, unless such instruction is, in its nature, harmful to the public morals or imperils the public safety.¹¹

The parents' right to instruct their children clearly takes precedence over the state's regulatory interest *unless* the public safety is endangered.

Similarly, in *Prince v. Massachusetts*,¹² the Supreme Court admitted the high responsibility and right of parents to control the upbringing of their children against that of the State.

It is cardinal with us that the custody, care, and nurture of the child reside first in the *parents*, whose **primary function** and **freedom** include preparation for obligations the State can neither supply nor **hinder.**¹³ [emphasis supplied]

Twenty-one years later, the Supreme Court, in *Griswold v. Connecticut*, emphasized that the state cannot interfere with the right of a parent to control his child's education.¹⁴ The Court stated that the right to educate one's child as one chooses is guaranteed in the Bill of Rights and applicable to the States by the First and Fourteenth Amendments.¹⁵

Forty-eight years after *Pierce*, the U.S. Supreme Court once again upheld *Pierce* as "the charter of the rights of parents to direct the upbringing of their children."¹⁶ In agreement with *Pierce*, Chief Justice Burger stated in the opinion of *Wisconsin v. Yoder* in 1972:

This case involves the **fundamental interest** of parents, as contrasted with that of the state, to guide the religious future and education of their children. 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 tradition.** ¹⁷ [emphasis supplied]

This case involved a family of the Amish religion who wanted to be exempt after eighth grade from the public schools to be instructed at home. In its opinion the U.S. Supreme Court further emphasized that:

Thus a state's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on **fundamental rights** and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, **and the traditional interest of parents** with respect to the religious upbringing of their children . . . This case involves the fundamental and religious future and education of their children. ¹⁸ [emphasis supplied]

Consequently, it is clear the constitutional right of a parent to direct the upbringing and education of his child is firmly entrenched in the U.S. Supreme Court case history. Furthermore, a higher standard of review applies to fundamental rights such as parental liberty than to other rights. When confronted with a conflict between parents' rights and state regulation, the court must apply the "compelling interest test." Under this test, the state must prove that its infringement on the parents' liberty is essential to fulfill a compelling interest and is the least restrictive means of fulfilling this state interest. Simply proving the regulation is reasonable is not sufficient.

Below are excerpts from over a dozen United States Supreme Court cases where, primarily in dicta, the Court has declared parental rights to be fundamental rights which require a higher standard of review (i.e. the "compelling interest test").

1. *Paris Adult Theater v. Slaton*, 413 US 49, 65 (1973)

In this case, the Court includes the right of parents to rear children among rights "deemed fundamental."

Our prior decisions recognizing a right to privacy guaranteed by the 14th Amendment included only personal rights that can be deemed **fundamental** or implicit in the concept of ordered liberty . . . This privacy right encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and **child rearing** . . . cf . . . *Pierce v. Society of Sisters*; *Meyer v. Nebraska* . . . nothing, however, in this Court's decisions intimates that there is any fundamental privacy right implicit in the concept of ordered liberty to watch obscene movies and places of public accommodation. [emphasis supplied]

2. *Carey v. Population Services International*, 431 US 678, 684-686 (1977)

Once again, the Court includes the right of parents in the area of "child rearing and education" to be a liberty interest protected by the Fourteenth Amendment, requiring an application of the "compelling interest test."

Although the Constitution does not explicitly mention any right of privacy, the Court has recognized that one aspect of the **liberty protected** by the Due Process Clause of the 14th Amendment is a "right of personal privacy or a guarantee of certain areas or zones of privacy . . . This right of personal privacy includes the interest and independence in making certain kinds of important decisions . . . While the outer limits of this aspect of privacy have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage . . . family relationships, *Prince v. Massachusetts*, 321 US 158 (1944); and **child rearing and education**, *Pierce v. Society of Sisters*, 268 US 510 (1925); *Meyer v. Nebraska*, 262 US 390 (1923)." [emphasis supplied]

The Court continued by explaining that these rights are not absolute and, certain state interests . . . may at some point become sufficiently compelling to sustain regulation of the factors that govern the abortion decision . . . Compelling is, of course, the key word; where decisions as fundamental as whether to bear or beget a child is involved, regulations imposing a burden on it **may be justified only by a compelling state interest**, and must be narrowly drawn to express only those interests. [emphasis supplied]

3. *Maher v. Roe*, 432 US 464, 476-479 (1977)

We conclude that the Connecticut regulation does not impinge on the fundamental right recognized in *Roe* ...

There is a basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy ...

This distinction is implicit in two cases cited in *Roe* in support of the pregnant woman's right under the 14th Amendment. In *Meyer v. Nebraska*. . . the Court held that the teacher's right thus to teach and the right of parents to engage in so to instruct their children were within the **liberty of the 14th Amendment** . . . In *Pierce v. Society of Sisters* . . . the Court relied on *Meyer* . . . reasoning that the **14th Amendment's concept of liberty** excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The Court held that the law unreasonably interfered with the **liberty of parents and guardians to direct the upbringing and education of the children under their control** ...

Both cases invalidated substantial restrictions of **constitutionally protected liberty interests**: in *Meyer*, the parent's right to have his child taught a particular foreign language; in *Pierce*, the parent's right to choose private rather than public school education. But neither case denied to a state the policy choice of encouraging the preferred course of action ... **Pierce** casts no shadow over a state's power to favor public education by funding it — a policy choice pursued in some States for more than a century ... Indeed in *Norwood v. Harrison*, 413 US 455, 462, (1973), we explicitly rejected the argument that *Pierce* established a “right of private or parochial schools to share with the public schools in state largesse,” noting that “It is one thing to say that a state may not prohibit the maintenance of private schools and quite another to say that such schools must as a matter of equal protection receive state aid” ... We think it abundantly clear that a state is not required to show a compelling interest for its policy choice to favor a normal childbirth anymore than a state must so justify its election to fund public, but not private education. [emphasis supplied]

Although the *Maher* decision unquestionably recognizes parents' rights as fundamental rights, the Court has clearly indicated that **private schools do not have a fundamental right to state aid**, nor must a state satisfy the compelling interest test if it chooses not to give private schools state aid. The Parental Rights and Responsibilities Act simply reaffirms the right of parents to choose private education as fundamental, but it does not make the right to receive public funds a fundamental right. The PRRA, therefore, does not in any way promote or strengthen the concept of educational vouchers.

4. *Parham v. J.R.*, 442 US 584, 602-606 (1979).

This case involves parent's rights to make medical decisions regarding their children's mental health. The lower Court had ruled that Georgia's statutory scheme of allowing children to be subject to treatment in the state's mental health facilities

violated the Constitution because it did not adequately protect children's due process rights. The Supreme Court reversed this decision upholding the legal presumption that parents act in their children's best interest. The Court ruled:

Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is "the mere creature of the State" and, on the contrary, asserted that **parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations."** *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) ... [other citations omitted] . . . **The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions.** More important, historically it has been recognized that natural bonds of affection lead parents to act in the best interests of their children. 1 W. Blackstone, Commentaries 447; 2 J. Kent, Commentaries on American Law 190.

As with so many other legal presumptions, experience and reality may rebut what the law accepts as a starting point; the incidence of child neglect and abuse cases attests to this. That some parents "may at times be acting against the interests of their children" ... creates a basis for caution, but it is hardly a reason to discard wholesale those pages of human experience that teach that parents generally do act in the child's best interest ... The statist notion that governmental power should supersede parental authority in **all** cases because **some** parents abuse and neglect children is repugnant to American tradition." [emphasis supplied]

Parental rights are clearly upheld in this decision recognizing the rights of parents to make health decisions for their children. The Court continues by explaining the balancing that must take place:

Nonetheless, we have recognized that a state is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized (See *Wisconsin v. Yoder*; *Prince v. Massachusetts*). Moreover, the Court recently declared unconstitutional a state statute that granted parents an absolute veto over a minor child's decisions to have an abortion, *Planned Parenthood of Central Missouri v. Danforth*, 428 US 52 (1976), Appellees urged that these precedents limiting the traditional rights of parents, if viewed in the context of a liberty interest of the child and the likelihood of parental abuse, require us to hold that parent's decision to have a child admitted to a mental hospital must be subjected to an **exacting constitutional scrutiny**, including a formal, adversary, pre-admission hearing.

Appellees' argument, however, sweeps too broadly. Simply because the decision of a parent is not agreeable to a child, or because it involves risks does not automatically transfer power to make that decision from the parents to some agency or officer of the state. The same characterizations can be made for a tonsillectomy, appendectomy, or other medical procedure. Most children, even in adolescence, simply are not able to make sound judgements concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgements ... we cannot assume that the result in *Meyer v. Nebraska*, supra, and *Pierce v. Society of Sisters*, supra, would have been different if the children there had announced a preference to learn only English or preference to go to a public, rather than a church school. The fact that a child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery does not diminish the parent's authority to decide what is best for the child (See generally Goldstein, *Medical Case for the Child at Risk: on State Supervention of Parental Autonomy*, 86 Yale LJ 645, 664-668 (1977); Bennett, *Allocation of Child Medical Care Decision — Making Authority: A Suggested Interest Analyses*, 62 Va LR ev 285, 308 (1976). Neither state officials nor federal Courts are equipped to review such parental decisions. [emphasis supplied]

Therefore, it is clear that the Court is recognizing parents as having the right to make judgments concerning their children who are not able to make sound decisions, including their need for medical care. A parent's authority to decide what is best for the child in the areas of medical treatment cannot be diminished simply because a child disagrees. A parent's right must be protected and not simply transferred to some state agency.

5. *Santosky v. Kramer*, 455 US 745, 753 (1982)

This case involved the Appellate Division of the New York Supreme Court affirming the application of the preponderance of the evidence standard as proper and constitutional in ruling that the parent's rights are permanently terminated. The U.S. Supreme Court, however, vacated the lower Court decision, holding that due process as required under the 14th Amendment in this case required proof by clear and convincing evidence rather than merely a preponderance of the evidence.

The Court, in reaching their decision, made it clear that parents' rights as outlined in *Pierce* and *Meyer* are fundamental and specially protected under the Fourteenth Amendment. The Court began by quoting another Supreme Court case:

In *Lassiter* [*Lassiter v. Department of Social Services*, 452 US 18, 37 (1981)], it was "not disputed that state intervention to terminate the relationship between a parent and a child must be accomplished by procedures meeting the requisites of the Due Process Clause". . . The absence of dispute reflected this Court's historical recognition that freedom of personal choice in matters of family life is a **fundamental liberty** interest protected by the 14th Amendment ... *Pierce v. Society of Sisters* ... *Meyer v. Nebraska*.

The **fundamental liberty interest** of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the state ... When the state moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. [emphasis supplied]

6. *City of Akron v. Akron Center for Reproductive Health Inc.*, 462 US 416, 461 (1983)

This case includes, in a long list of protected liberties and fundamental rights, the parental rights guaranteed under *Pierce* and *Meyer*. The Court indicated a compelling interest test must be applied.

Central among these protected liberties is an individual's freedom of personal choice in matters of marriage and family life ... *Roe* ... *Griswold* ... *Pierce v. Society of Sisters* ... *Meyer v. Nebraska* ... But restrictive state regulation of the right to choose abortion **as with other fundamental rights subject to searching judicial examination, must be supported by a compelling state interest.** [emphasis supplied]

7. *Lehr v. Robertson*, 463 US 248, 257-258 (1983)

In this case, the U.S. Supreme Court upheld a decision against a natural father's rights under the Due Process and Equal Protection Clauses since he did not have any significant custodial, personal, or financial relationship with the child. The natural father was challenging an adoption. The Supreme Court stated:

In some cases, however, this Court has held that the federal constitution supersedes state law and provides even greater protection for certain formal family relationships. In those cases ... the Court has emphasized the paramount interest in the welfare of children and has noted that the rights of the parents are a counterpart of the responsibilities they have assumed.

Thus, the **liberty of parents to control the education of their children that was vindicated in *Meyer v. Nebraska ... and Pierce v. Society of Sisters ...*** was described as a “right coupled with the high duty to recognize and prepare the child for additional obligations” ... The linkage between parental duty and parental right was stressed again in *Prince v. Massachusetts ...* The Court declared it a cardinal principle “that the custody, care and nurture of the child reside **first** in the parents whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” In these cases, the Court has found that the relationship of love and duty in a recognized family unit is an interest in **liberty entitled to Constitutional protection** ... “State intervention to terminate such a relationship ... must be accomplished by procedures meeting the requisites of the Due Process Clause” *Santosky v. Kramer ...* [emphasis supplied]

It is clear by the above case that parental rights are to be treated as fundamental and cannot be taken away without meeting the constitutional requirement of due process.

8. *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 US 747 (1986)

The U.S. Supreme Court declared, “Our cases long have recognized that the Constitution embodies a promise that **a certain private sphere of individual liberty will be kept largely beyond the reach of government** ... *Griswold v. Connecticut ... Pierce v. Society of Sisters ... Meyer v. Nebraska.*”

By citing *Pierce*, the Court included parental liberty in that protected sphere.

9. *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 US 537 (1987)

In this case, a Californian civil rights statute was held not to violate the First Amendment by requiring an all male non-profit club to admit women to membership. The Court concluded that parents’ rights in child rearing and education are included as fundamental elements of liberty protected by the Bill of Rights.

The Court has recognized that the freedom to enter into and carry on certain intimate or private relationships is a **fundamental element of liberty protected by the Bill of Rights** ... the intimate relationships to which we have accorded Constitutional protection include marriage ... the begetting and bearing of children, **child rearing and education.** *Pierce v. Society of Sisters ...* [emphasis supplied]

10. *Michael H. v. Gerald*, 491 U.S. 110 (1989)

In a paternity suit, the U.S. Supreme Court ruled:

It is an established part of our constitution jurisprudence that the term liberty in the Due Process Clause extends beyond freedom from physical restraint. See, e.g. *Pierce v. Society of Sisters ... Meyer v. Nebraska ...* In an attempt to limit and guide interpretation of the Clause, **we have insisted not merely that the interest denominated as a “liberty” be “fundamental”** (a concept that, in isolation, is hard to objectify), **but also that it be an interest traditionally protected by our society.** As we have put it, the Due Process Clause affords only those protections “so rooted in the traditions and conscience of our people as to be ranked as **fundamental**” *Snyder v. Massachusetts*, 291 US 97, 105 (1934). [emphasis supplied]

The Court explicitly included the parental rights under *Pierce* and *Meyer* as “fundamental” and interests “traditionally protected by our society.”

11. *Employment Division of Oregon v. Smith*, 494 U.S. 872 (1990)

One of the more recent decisions which upholds the right of parents is *Employment Division of Oregon v. Smith*, which involved two Indians who were fired from a private drug rehabilitation organization because they ingested “peyote,” a hallucinogenic drug as part of their religious beliefs. When they sought unemployment compensation, they were denied because they were discharged for “misconduct.”

The Indians appealed to the Oregon Court of Appeals who reversed on the grounds that they had the right to freely exercise their religious beliefs by taking drugs. Of course, as expected, the U.S. Supreme Court reversed the case and found that the First Amendment did not protect drug use. So what does the case have to do with parental rights?

After the Court ruled against the Indians, it then analyzed the application of the Free Exercise Clause generally. The Court wrongly decided to throw out the Free Exercise Clause as a defense to any “neutral” law that might violate an individual’s religious convictions. In the process of destroying religious freedom, the Court went out of its way to say that the parents’ rights to control the education of their children is still a fundamental right. The Court declared that the “compelling interest test” is still applicable, not to the Free Exercise Clause alone:

[B]ut the Free Exercise Clause in conjunction with other **constitutional protections** such as ... the **right of parents**, acknowledged in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), **to direct the education of their children**, see *Wisconsin v. Yoder*, 406 U.S.205 (1972) invalidating compulsory-attendance laws as applied to Amish parents who refused on religious grounds to send their children to school.¹⁹ [emphasis supplied]

In other words, under this precedent, parents’ rights to control the education of their children is considered a “constitutionally protected right” which requires the application of the compelling interest test. The Court in *Smith* quoted its previous case of *Wisconsin v. Yoder*:

Yoder said that “The Court’s holding in *Pierce* stands as a charter for the rights of parents to direct the religious upbringing of their children. And when the interests of parenthood are combined with a free exercise claim ... **more than merely a reasonable relationship** to some purpose within the competency of the State is required to sustain the validity of the State’s requirement under the First Amendment.” 406 U.S., at 233.²⁰ [emphasis supplied]

Instead of merely showing that a regulation conflicting with parents’ rights is reasonable, the state must, therefore, reach the higher standard of the “compelling interest test,” which requires the state to prove its regulation to be the least restrictive means.

12. *Hodgson v. Minnesota*, 497 U.S. 417 (1990)

In *Hodgson* the Court found that parental rights not only are protected under the First and Fourteenth Amendments as fundamental and more important than property rights, but that they are “deemed essential.”

The family has a privacy interest in the upbringing and education of children and the intimacies of the marital relationship which is protected by the Constitution against undue state interference. See *Wisconsin v Yoder*, 7 406 US 205 ...

The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition.” *Parham*, 442 US, at 603, [other citations omitted]. We have long held that **there exists a “private realm of family life which the state cannot enter.”** *Prince v Massachusetts* ...

A natural parent who has demonstrated sufficient commitment to his or her children is thereafter entitled to raise the children free from undue state interference. As Justice White explained in his opinion of the Court in *Stanley v Illinois*, 405 US 645 (1972) [other cites omitted]:

“The court has frequently emphasized the importance of the family. The **rights** to conceive and to **raise one’s children have been deemed ‘essential,’** *Meyer v Nebraska*, ... ‘basic civil rights of man,’ *Skinner v Oklahoma*, 316 US 535, 541 (1942), and ‘[r]ights far more precious ... than property rights,’ *May v Anderson*, 345 US 528, 533 (1953) ... The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, *Meyer v Nebraska*, supra.” [emphasis supplied]

The Court leaves no room for doubt as to the importance and protection of the rights of parents.

13. *H.L. v. Matheson*, 450 US 398, 410 (1991)

In this case, the Supreme Court recognized the parents’ right to know about their child seeking an abortion. The Court stated:

In addition, constitutional interpretation has consistently recognized that the parents’ claim to authority in their own household to direct the rearing of their children is basic in the structure of our society.

Ginsberg v. New York, 390 US 629 (1968) ... We have recognized on numerous occasions that the relationship between the parent and the child is Constitutionally protected (*Wisconsin v. Yoder*, *Stanley v. Illinois*, *Meyer v. Nebraska*) ... “It is cardinal with us that the custody, care, and nurture of the child reside first in the parents, whose primary function and freedom includes preparation for obligations the state can neither supply, nor hinder.” [Quoting *Prince v. Massachusetts*, 321 US 158, 166, (1944)]. See also *Parham v. J.R.*; *Pierce v. Society of Sisters* ... We have recognized that parents have an important “guiding role” to play in the upbringing of their children, *Bellotti II*, 443 US 633-639 ... which presumptively includes counseling them on important decisions.

This Court clearly upholds the parent’s right to know in the area of minor children making medical decisions.

14. *Vernonia School District 47J v. Acton*, 132 L.Ed.2d 564, 115 S.Ct. 2386 (1995)

In *Vernonia* the Court strengthened parental rights by approaching the issue from a different point of view. They reasoned that children do not have many of the rights accorded citizens, and in lack thereof, parents and guardians possess and exercise those rights and authorities in the child’s best interest:

Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians. See Am Jur 2d, Parent and Child § 10 (1987).

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

In this case the United States Supreme Court issued a landmark opinion on parental liberty. The case involved a Washington State statute which provided that a "court may order visitation rights for any person when visitation may serve

the best interests of the child, whether or not there has been any change of circumstances." Wash. Rev. Code § 26.10.160(3). The U.S. Supreme Court ruled that the Washington statute "unconstitutionally interferes with the fundamental right of parents to rear their children." The Court went on to examine its treatment of parental rights in previous cases:

In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children... *Wisconsin v. Yoder*, 406 U.S. 205, 232, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (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"); *Quilloin v. Walcott*, 434 U.S. 246, 255, 54 L. Ed. 2d 511, 98 S. Ct. 549 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Parham v. J. R.*, 442 U.S. 584, 602, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); *Santosky v. Kramer*, 455 U.S. 745, 753, 71 L. Ed. 2d 599, 102 S. Ct. 1388 (1982) (discussing "the fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Glucksberg, supra*, at 720 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the right ... to direct the education and upbringing of one's children" (citing *Meyer* and *Pierce*)). In light of this extensive precedent, **it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents** to make decisions concerning the care, custody, and control of their children. [emphasis supplied]

This case clearly upholds parental rights. In essence, this decision means that the government may not infringe parents' right to direct the education and upbringing of their children unless it can show that it is using the least restrictive means to achieve a compelling governmental interest.

Conclusion

The U.S. Supreme Court has consistently protected parental rights, including it among those rights deemed fundamental. As a fundamental right, parental liberty is to be protected by the highest standard of review: the compelling interest test.

As can be seen from the cases described above, parental rights have reached their highest level of protection in over 75 years. The Court decisively confirmed these rights in the recent case of *Troxel v. Granville*, which should serve to maintain and protect parental rights for many years to come.

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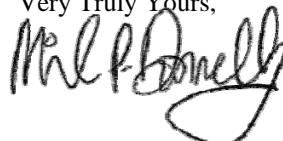
Footnotes

1. 262 U.S. 390 (1923).
2. *Id.*, at 402.
3. *Id.*, at 401. Also see *Bartles v. Iowa*, 262 U.S. 404 (1923) where the Court reached a similar conclusion.

4. *Meyer*, 262 U.S. 390 at 400.
5. *Id.*, at 403.
6. *Pierce*, 268 U.S. 510 (1925)
7. *Ibid* at 534.
8. *Pierce*, 268 U.S. 510 at 535.
9. *Farrington v. Tokushige*, 273 U.S. 284 (1927) at 298.
10. *Id.*, at 298.
11. *Farrington v. Tokushige*, (9 cir.) 11 F.2d 710 at 713 (1926), quoting Harlan, J., in *Berea College v. Kentucky* 211 U.S. 45, 29 S. Ct. 33, 53 L. Ed. 81.
12. *Prince v. Massachusetts*, 321 U.S. 158 (1944).
13. *Ibid* at 166.
14. *Griswold v. Connecticut*, 381 U.S. 479, (1965) at 486.
15. *Ibid.*
16. *Yoder*, 406 U.S. 205 at 233.
17. *Ibid* at 232. Burger further admonishes, “and when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a ‘reasonable relation to some purpose within the competency of the State’ is required to sustain the validity of the State’s requirement under the First Amendment.” (*Yoder*, at 233).
18. *Id.*, at 214.
19. *Id.*, 881.
20. *Id.*, 881, fn. 1.

Again our position is that the State board to leave these regulations UNCHANGED.

If I may be of further service please do not hesitate to contact me at 540-338-5600.

Very Truly Yours,


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