An Introduction to Parental Rights in the Education Setting

Elliot Engstrom[1]*, Shavonn Bennette*[2]*, and Felicia Hyde*[3]

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I. INTRODUCTION

The United States Supreme Court has repeatedly held that parents have a right, rooted in the Fourteenth Amendment's due process clause, to direct the education and upbringing of their children. This right runs to parents against the State and allows parents to, in certain situations, stop the government from mandating that their children do or refrain from doing certain things. It is important for parents to be informed on the nature and limitations of these rights before sending their children into a public school setting.

II. THE NATURE OF PARENTAL RIGHTS

The United States Supreme Court heard one of its first parental rights cases in 1923. *Meyer v. Nebraska*, 262 U.S. 390 (1923). The State of Nebraska had passed a law outlawing foreign language training for students. A teacher named Robert T. Meyer violated the law when he "unlawfully taught the subject of reading in the German language to Raymond Parpart, a child of 10 years." *Meyer* at 392. The issue before the United States Supreme Court was whether Meyer's

[1] Lead Counsel, Civitas Institute Center for Law and Freedom (CLF)
[2] CLF Law Clerk, Elon University School of Law Class of 2017
[3] CLF Law Clerk, University of North Carolina School of Law Class of 2016

conviction was unconstitutional under the Due Process Clause of the Fourteenth Amendment, which provides that "[n]o state shall deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1-Due Proc.

In reversing Meyer's conviction, the Court found that the Nebraska legislature had "attempted materially to interfere with...the power of parents to control the education of their own." *Meyer* at 401. It found this interference to be unconstitutional because "[Meyer's] right to teach and the right of parents to engage him so to instruct their children … are within the liberty of the [Fourteenth A]mendment." Id.

Two years later, the Court revisited the issue in *Pierce v. Soc'y of Sister*, 268 U.S. 510 (1925). There, it faced the question of whether the state of Oregon could forbid students from attending religious schools. The court held that it could not do so:

> The fundamental theory of liberty upon which all governments in this Union repose excludes 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, coupled with the high duty, to recognize and prepare him for additional obligations.

Pierce v. Soc'y of Sisters, 268 U.S. 510, 535 (1925) (emphasis added).

While *Pierce* centered on whether a state could forbid students from attending parochial schools, it also provided a launching point for jurisprudence regarding parental rights in relation to public education.

Two years after *Pierce*, the Court heard another challenge to a statute that outlawed foreign language education. In striking down a Hawaii law outlawing the teaching of the Japanese language to children, the Court made clear that a parent "has the right to direct the education of his own child without unreasonable restrictions." *Farrington v. Tokushige*, 273 U.S. 284, 298 (1927). Seventeen years later, the Court again affirmed 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." *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

The Court has since made clear that this right of the parent applies against not just the federal government, but also the states. *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965). It has also stated that parents have a "fundamental interest…to guide the religious future and education of their children," and that "[t]his primary role of the parents in the upbringing of their children is now established beyond debate an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

III. LIMITATIONS ON PARENTAL RIGHTS

Despite this wealth of case law, commentators have questioned whether the Court has ever truly espoused a fundamental right of parents to direct their child's education. For example, Jeffrey Shulman of the Georgetown University School of Law believes that the above-cited statements are mere dicta:

> "The right to parent as a matter of constitutional law is especially tenuous. In federal constitutional law, the right to parent would be considered an unenumerated right, protected from governmental interference by the Due Process Clauses of the Fifth and Fourteenth Amendments. The "liberty" of the Due Process Clauses safeguards those substantive rights "so rooted in the traditions and conscience as to be ranked as fundamental"…But no Supreme Court case has held that the right of parents to make [decisions concerning the care, custody, and nurture of their children] is a fundamental one."
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> Jeffrey Shulman, *Does the Constitution Protect a Fundamental Right to Parents?*, The Constitution Daily (July 8, 2014), http://blog.constitutioncenter.org/2014/07/does-the-constitution-protect-a-fundamental-right-to-parent/.

While it is true that the Supreme Court has consistently affirmed a parent's constitutional rights, it is also true that the Court's treatment on the issue has not been uniform. For example, whereas the *Yoder* Court referred to the parental right as a "fundamental interest," the *Farrington* Court simply held that parents have the

right to raise their child free of "unreasonable restrictions." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Farrington v. Tokushige*, 273 U.S. 284, 298 (1927).

In *Yoder*, the court found that "[t]he power of the parent, even when linked to a free exercise claim, may be subject to limitation under *Prince* if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." *Yoder* at 233-34. This despite the fact that the *Yoder* Court ultimately ruled in favor of the parents in that case. *Yoder* at 235-36.

The First Circuit Court expanded on those limitations on parent's rights in *Brown v. Hot, Sexy and Safer Productions*, 68 F.3d 525 (1995). There, it limited the *Meyer* and *Pierce* cases to their particular facts:

> The Meyer and Pierce cases, we think, evince the principle that the state cannot prevent parents from choosing a specific educational program—whether it be religious instruction at a private school or instruction in a foreign language. That is, the state does not have the power to "standardize its children" or "foster a homogenous people" by completely foreclosing the opportunity of individuals and groups to choose a different path of education. We do not think, however, that this freedom encompasses a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children.
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> *Brown v. Hot, Sexy and Safer Productions*, 68 F.3d 525, 533 (1995).

In 2000, the United States Supreme Court had the opportunity to clarify the exact nature of parental rights in *Troxel v. Granville*, 530 U.S. 57 (2000). Unfortunately, it did no such thing, but instead issued a plurality opinion featuring no clear majority and an unprecedented legal standard for evaluating parental rights. The Court did find that there is a "fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel* at 66. However, when articulating the legal standard, the Court did not use the compelling interest test normally associated with fundamental rights. Rather, it articulated a rule providing for a presumption in favor of a parent's decision regarding their child:

> [S]o 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 rearing of that parent's children.
> *Troxel* at 68-69.

This lack of clarity is exacerbated by the lack of a majority. Three justices concurred in the opinion with two others concurring in the result. Justice Scalia dissented entirely, holding that parental rights have no basis in the Constitution. He further stated that "[t]he sheer diversity of today's opinions persuades me that the theory of unenumerated parental rights…has small claim to *stare decisis*

protection." *Troxel v. Granville*, 530 U.S. 57, 92 (2000)(Scalia, J., dissenting).

Against this backdrop, the Ninth Circuit revisited the issues of parental rights in 2005 in *Fields v. Palmdale*, 427 F.3d 1197 (2005). There, the plaintiffs argued that the "right to control the upbringing of their children by introducing them to matters of and relating to sex in accordance with their personal and religious values and beliefs is encompassed within their constitutional right to privacy with respect to intimate decisions." *Fields* at 1207. The court explained:

> Although the right to privacy provides a different source for the right the parents seek to assert than does *Meyer–Pierce*, like *Meyer–Pierce* it does not encompass that right. The Supreme Court has identified at least two constitutionally protected privacy interests: the right to control the disclosure of sensitive information and the right to "independence when making certain kinds of important decisions."
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> *Fields* at 1207.

The court further reasoned that "[m]aking intimate decisions and controlling the state's determination of information regarding intimate matters are two entirely different subjects." *Fields* at 1208. The court reasoned that the only constitutional provision prohibiting the dissemination of information to children or adults is the treason clause, which did not apply in that case. *Fields* at 1208.

However, there has been little discussion from the Court on rights for parents in non-nuclear families. The Seventh Circuit briefly addressed

noncustodial parental limitations in *Crowley v. McKinney*, 400 F.3d 965 (2005). A noncustodial Indiana father named Daniel Crowley claimed his fundamental rights to participate and control in his children's education, under *Meyer* and *Pierce*, was infringed when the elementary school his children attended would not allow him to participate as a playground monitor or obtain school records. The Seventh Circuit found that rights of divorced parents and nonnuclear families differ because "[t]he school does not know what rights each of the parents has." Crowley at 969. The court reasoned that a school knows "which parent has custody, because that parent's address is the student's address, but unless it consults the divorce decree it won't know what rights the other parent has." *Crowley* at 969. The court further reasoned that schools have a legitimate interest in controlling the activities of the noncustodial parents, and it therefore disagreed with the noncustodial parents' claim of control. Judge Richard Posner explained:

> It is one thing to say that parents have a right to enroll their children in a private school that will retain a degree of autonomy and thus be free to teach a foreign language, or evolution, or human sexual biology, without prohibition by the state. It is another thing to say that they have a constitutional right to school records, or to be playground monitors, or to attend school functions. Schools have valid interests in limiting the parental presence—as, indeed, do children, who in our society are not supposed to be the slaves of their parents.
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> *Crowley* at 969.

IV. CONCLUSION

Ultimately, the confusion surrounding parental rights should be of no surprise. These rights are not clearly enumerated in the Constitution, but are instead "implied" rights under the Fourteenth Amendment. This leaves them susceptible to substantial interpretation and revision over time. Further, the case law on parental rights largely centers around two issues: (1) private schooling and (2) custody rights. There is less precedent on issues affecting parents and families today, such as data collection and standardized testing.

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