A young girl with brown hair in a ponytail, wearing a white shirt and a dark vest, is walking and smiling. She is carrying a colorful backpack and a red folder. Next to her is the back of an adult wearing a white patterned shirt. They are walking on a paved path in a park with green grass and trees in the background. The scene is bathed in warm, golden light, suggesting late afternoon or early morning.

THE PARENTAL RIGHTS MOVEMENT: WHAT SCHOOL BOARD MEMBERS NEED TO KNOW

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AGENDA

- **Legal Foundations/Historical Development**
- **Parental Rights in Existing Laws**
- **Key Features of New Parental Rights Legislation**



A POLITICAL ISSUE

From the Left

" . . .the point of this movement . . . is to undermine public education through a thousand little cuts, each meant to weaken public support for teachers and public schools, and to open the floodgates to policies that siphon funds and resources from public institutions and pump them into private ones."

Jamelle Bouie, "What the Republican Push for 'Parents' Rights is Really About" New York Times.
<https://www.nytimes.com/2023/03/28/opinion/parents-rights-republicans-florida.html>

From the Right

"The education system has long been a tool for the far left to indoctrinate children with their radical political agenda. Now, as school boards, teachers' unions, and elected officials try to take parents out of their children's education and force woke curriculum on our children, parents need to know how to most effectively fight back."

<https://www.heritage.org/education/impact/heritage-and-heritage-action-fight-parental-rights-education>



FOUNDATIONAL CASES

MEYER V. NEBRASKA (1923)



Nebraska law prohibiting the teaching of any language other than English to Elementary School student violated the 14th amendment to the US Constitution

14th amendment - "No state . . . shall deprive any person of life, **liberty** or property without out due process of law. . ."

Liberty under 14th Amendment includes rights of parents to provide an education for their children and to choose a specific educational program, such as instruction in a foreign language.

FOUNDATIONAL CASES

PIERCE V. SOC'Y OF THE SISTERS OF THE HOLY NAMES OF JESUS & MARY (1925)



Oregon law requiring every child between the ages of 8 and 16 to attend public (not private) school violated the 14th Amendment

The law “unreasonably interfere[d] w/ liberty of parents and guardians to direct upbringing and education of children under their control.”

“The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled w/ the high duty, to recognize and prepare him for additional obligations.”

FOUNDATIONAL CASES

WISCONSIN V. YODER (1972)



"There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education.

"a State's interest in universal education . . . is not totally free from a balancing process when it impinges on . . . the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of Pierce, 'prepare (them) for additional obligations.'"

FOUNDATIONAL CASES

WISCONSIN V. YODER (1972)



"Our holding in no way determines the proper resolution of possible competing interests of parents, children, and the State in an appropriate state court proceeding in which the power of the State is asserted on the theory that Amish parents are preventing their minor children from attending high school despite [the child's] expressed desires to the contrary."

FOUNDATIONAL CASES

RUNYON V. MCCRARY (1976)



Citing *Meyer*, *Pierce* and *Yoder*: "The Court has repeatedly stressed that while parents have a constitutional right to send their children to private schools and a constitutional right to select private schools that offer specialized instruction, they have no constitutional right to provide their children with private school education unfettered by reasonable government regulation."

OTHER PARENTAL RIGHTS COURT CASES



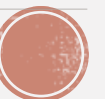
Curriculum and Instruction



Covid/Masks



LGBTQ Issues





FUNDAMENTAL LIBERTY INTEREST

- A parents right to make decisions regarding the care, custody, and control of their children is a “fundamental liberty interest,” which includes the right to “direct the upbringing and education of children under their control.”
- “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.”

Troxel v. Granville (2000)



LIMITATIONS ON THE FUNDAMENTAL LIBERTY INTEREST

- While parents may have a fundamental right to decide whether to send their child to a public school, they do not have a fundamental right generally to direct how a public school teaches their child. Whether it is the school curriculum, the hours of the school day, school discipline, the timing and content of examinations, the individuals hired to teach at the school, the extracurricular activities offered at the school or...a dress code, these issues of public education are generally committed to the control of state and local authorities.

Blau v. Fort Thomas Pub. Sch. Dist. (6th Cir. 2005)



PARENTAL RIGHTS IN EXISTING FEDERAL LAW

- **Individuals with Disabilities in Education Act (IDEA)**
- **The Family Educational Rights and Privacy Act (FERPA)**
- **The Protection of Pupil Rights Amendment (PPRA)**



PARENTAL RIGHTS IN EXISTING SC LAW

- **S.C. Code § 59-65-10** – parent may opt child out of kindergarten
- **S.C. Code § 59-32-50** - Notice to parents; right to have child exempted from comprehensive health education program classes.
- **S.C. Code § 59-1-460** - Excused school attendance for religious instruction.
- **S.C. Code Regs. §61-8** Vaccination, Screening and Immunization Regarding Contagious Diseases includes medical and religious exemptions
- **Health Screenings Opt Outs**



KEY FEATURES OF NEW PARENTAL RIGHTS LEGISLATION

- **Codifies parental rights from Supreme Court cases**
 - Right to choose public, private, religious or home schools
 - Direct the moral and religious training of the child
 - Clarifies that Strict Scrutiny analysis should apply
- **Creates private right of action**
 - Injunctive relief
 - Damages
 - Attorneys' fees



KEY FEATURES OF NEW PARENTAL RIGHTS LEGISLATION

- **Increase Parent Involvement through procedures to allow:**
 - Right to inspect instructional materials and learn about source of supplemental materials
 - Parent objection to materials and activities and allow for student opt out
 - Parents to learn about afterschool clubs and to withdraw students from clubs
 - Creates FOIA-like procedure for requesting this information and giving a District certain deadlines to respond; and if no response, appeal to board



KEY FEATURES OF NEW PARENTAL RIGHTS LEGISLATION

- **No Secrets**
 - Right to access and review all school records related to child
 - Prohibits district employees from encouraging or coercing child to withhold information from the parent
 - Prohibits district employees from withholding information about the child
- **Opt Outs**
 - Opt out of Comprehensive Health Education, including 7 days' notice prior to the class
 - Opt out of "any specific activity, class, or program where "objectionable activity or material" is used





QUESTIONS



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