2022 NMSBA BOARD INSTITUTE

PARENTAL RIGHTS: THE CONSTITUTIONAL RIGHT OF PARENTS TO CONTROL THE EDUCATION OF THEIR CHILDREN AND PUBLIC SCHOOLS

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FEBRUARY 5, 2022

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PARENTAL RIGHTS

"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." Wisconsin v. Yoder

'I pay the school master but tis the school boys that educate my son.' Ralph Waldo Emerson

FOURTEENTH AMENDMENT, SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

HISTORY

- Parental rights not mentioned in the U.S. Constitution
- No public schools at the beginning of the republic
- Responsibility for child's education was entirely up to the parents and, if provided, was through private or religious schools.
- If you couldn't afford an education, you may not get one.
- Civil War/14th Amendment changed relationship with the States and U.S. Constitution.
- States get into the business of public education and to make it compulsory.
- Some states go very far in mandates.
- Courts step in to balance the interests of the States *vis* Families

STATE'S INTEREST IN EDUCATION

- Well educated citizenry
- Improve quality of life of citizens, physically, mentally, morally
- Foster American ideals and civic values that bolster a healthy democracy (and keep pernicious elements out).
- Provide education to children who wouldn't otherwise get it.
- Prevent oppressive child labor
- Expose students to larger, more diverse population.

FAMILY INTEREST

- Parents in the best position to know their children and determine course of action best suited to their needs
- Family one of most valuable institutions for individuals and society
- Religious freedom
- Basic freedom from government control.
- Parents have traditionally and naturally had these rights.
- Family encourages love, fidelity, and selflessness.
- Keep children from exposure to unhealthy or dangerous ideals, practices.
- WHAT ABOUT THE CHILD'S RIGHTS AND INTERESTS? WHAT IS THE PROPER BALANCE BETWEEN STATE AND FAMILY IN EDUCATION?

MEYER V. NEBRASKA (USSC; 1923)

Arose out of post WWI animosity against all things German

1919 Nebraska criminal law: "No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language."

Meyer taught at parochial school. DA observed 4th grade student reading from Bible in German. Meyer charged and convicted of violating the act. Conviction upheld by Nebraska Supreme Court. Appealed to USSC.

USSC stated that the "liberty" protected by the Due Process clause "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men".

MEYER V. NEBRASKA (USSC; 1923) CONT.

"[Meyer] taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the amendment."

"Evidently the Legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."

"That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution – a desirable end cannot be promoted by prohibited means."

PIERCE V. SOCIETY OF SISTERS (USSC; 1925)

Dealt with another post WWI law enacted out of concern about the influence of immigrants and foreign values. Oregon passed law requiring all children between age 8-16 to attend public school. Law aimed at eliminating parochial schools, including primarily catholic schools.

USSC unanimously held the law unconstitutional. "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 under their control: as often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. 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.

COMPULSORY SCHOOL ATTENDANCE? PARENTAL CONTROL OF CURRICULUM?

Meyer: "The power of the State to compel attendance at some school and to make reasonable regulation for all schools… is not questioned. Nor has challenge been made to the State's power to prescribe the curriculum for institutions which it supports."

Pierce: "No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require… that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare."

Epperson v. Arkansas: state has "undoubted right to prescribe curriculum for its public schools."

States' right to control curriculum is not absolute if it impinges on constitutional rights of citizens.

WISCONSIN V. YODER (USSC; 1971)

Amish parents convicted of violating Wisconsin's compulsory school attendance law by declining to send children to public or private school after 8th grade. Evidence showed that defendants had sincerely held religious belief that high school attendance was contrary to the Amish religion and endangered the student's salvation.

"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"

Held: The state's interest in universal education is not totally free from a balancing process when it infringes on other fundamental interests, like the free exercise clause of the 1st Amendment.

The Amish defendants demonstrated the sincerity of their belief and the adequacy of their alternative mode of continuing informal education as meeting the state's interest in compulsory education. The state could not compel attendance beyond 8th grade in these circumstances.

RUNYON V. MCCRARY (USSC; 1976)

- Parents sued Arlington, Virginia private school for policy of segregated nursery school program. Private school argued that it had constitutional rights to exclude students based on race. Among the constitutional defenses asserted was the parents right to direct the education of their children, as recognized in Meyer, Pierce, and Yoder.
- "It is clear that the present application of s 1981 infringes no parental right recognized in Meyer, Pierce, Yoder, or Norwood. No challenge is made to the petitioner schools' right to operate or the right of parents to send their children to a particular private school rather than a public school. Nor do these cases involve a challenge to the subject matter which is taught at any private school. Thus, the Fairfax-Brewster School and Bobbe's School and members of the intervenor association remain presumptively free to inculcate whatever values and standards they deem desirable. Meyer and its progeny entitle them to no more."

SANTOSKY V. KRAMER (USSC; 1982)

Under then existing New York law, the State may terminate, over parental objection, the rights of parents in their natural child upon a finding that the child is "permanently neglected." The law required that only a "fair preponderance of the evidence" support that finding.

State sought to permanently terminate parental rights of parents who had previously lost temporary custody for neglect. Parents challenged the "preponderance of evidence" standard.

A natural parent's desire for and right to 'the companionship, care, custody, and management of his or her children is an interest far more precious than any property. When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. If the State prevails, it will have worked a unique kind of deprivation. A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one

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. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures

TROXEL V. GRANVILLE (USSC; 2000)

Washington law permitted any person to petition a court for visitation rights at any time and authorizes a court to grant such visitation rights whenever visitation may serve the best interest of the child. Grandparents petitioned for visitation rights.

"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."

"Thus, in practical effect, in the State of Washington a court can disregard and overturn *any* decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition, based solely on the judge's determination of the child's best interests."

OLDFIELD V. BENAVIDEZ (NMSC; 1994)

Human Services Department removed child from home on an emergency basis without prior notice following investigation for abuse and neglect. Parents sued based on part on a violation of the right to familial integrity.

Court held that the right is not absolute, or unqualified. The State has a traditional and transcendent interest in protecting children from abuse. The prevention of abuse a government objective of surpassing importance

Although parents have certain rights regarding their children, the children also have certain fundamental rights which often compete with the parents' interests.

The Fourteenth Amendment right to familial integrity involves a weighing of the parents' rights against the interests of the child and the state.

The government has a compelling interest in the welfare of children, and the relationship between parents and their children may be investigated and terminated by the state, provided constitutionally adequate procedures are followed. The state has a right—indeed, duty—to protect minor children through a judicial determination of their interests in a neglect proceeding. In fact, it is well established that officials may temporarily deprive a parent of custody in emergency' circumstances without parental consent or a *prior* court order.

ARNOLD V. BOARD OF EDUC. (11TH CIR. 1989)

Parents alleged that school officials coerced a student into having an abortion and urged her not to discuss the matter with her parents. The Court held that in so acting, the school counselor interfered with the parents' right to direct the rearing of their child. *Id.* at 312.

The *Arnold* Court declined to hold that counselors are constitutionally mandated to notify parents when their minor child receives counseling about pregnancy, but nevertheless indicated, "[a]s a matter of common sense," counselors should encourage communication.

'Likewise, in this case we encounter a state intrusion on this parental right. Coercing a minor to obtain an abortion or to assist in procuring an abortion and to refrain from discussing the matter with the parents unduly interferes with parental authority in the household and with the parental responsibility to direct the rearing of their child. This deprives the parents of the opportunity to counter influences on the child the parents find inimical to their religious beliefs or the values they wish instilled in their children.'

GRUENKE V. SEIP (3D CIR. 2000)

Allegations that high school swim coach, who suspected that team member was pregnant, had requested that member take a pregnancy test, continued to intrude into matter after member refused to take test, and had failed to inform member's mother of his suspicions, but instead aided and abetted others in making matter a subject of gossip in community, stated claim against coach for violation of mother's due process right to manage the upbringing of her child.

SWANSON V. GUTHRIE INDEP. SCH. DIST. NO. I-L (10TH CIR.1998)

Annie Swanson was a 7th grade home-schooled student. Parents chose home-school to teach Christian principles excluded from public school curriculum but they wanted her to take some classes at public school. The wanted her to be able to take classes part time.

Because OK State Dept. of Ed. did not count part-time students as students for state aid purposes, Board policy required all students to attend full-time. The policy applied to everyone, not just those who home-schooled for religious purposes.

Swansons sued stating that policy violated their right to free exercise of religion and the parental right to direct the education of their children.

- "no colorable claim of infringement on the constitutional right to direct a child's education")

"The claimed constitutional right Plaintiffs wish to establish in this case is the right of parents to send their children to public school on a part-time basis, and to pick and choose which courses their children will take from the public school. Plaintiffs would have this right override the local school board's explicit decision to disallow such part-time attendance . However, decisions as to how to allocate scarce resources, as well as what curriculum to offer or require, are uniquely committed to the discretion of local school authorities."

BROWN V. HOT, SEXY, AND SAFER PRODUCTIONS, INC. (1ST CIR. 1995)

Mandatory high school AIDS awareness assembly with very explicit 90 minutes of skits, monologues, and student participation.

Parents alleged the defendants violated their privacy right to direct the upbringing of their children and educate them in accord with their own views.

In *Brown,* the First Circuit assumed for the purpose of its analysis that "the right to rear one's children is fundamental."

"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.

BROWN V. HOT, SEXY, AND SAFER PRODUCTIONS, INC. (1ST CIR. 1995)

"We think it is fundamentally different for the state to say to a parent, "You can't teach your child German or send him to a parochial school," than for the parent to say to the state, "You can't teach my child subjects that are morally offensive to me." The first instance involves the state proscribing parents from educating their children, while the second involves parents prescribing what the state shall teach their children. If all parents had a fundamental constitutional right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school's choice of subject matter. We cannot see that the Constitution imposes such a burden on state educational systems, and accordingly find that the rights of parents as described by *Meyer* and *Pierce* do not encompass a broad-based right to restrict the flow of information in the public schools."

PARKER V. HURLEY (D. MASS. 2007)

Massachusetts law prohibits discrimination in public schools based on sex or sexual orientation. It also requires that public school curricula encourage respect for all individuals regardless of, among other things, sexual orientation. Massachusetts Department of Education issued standards which encourage instruction for pre-kindergarten through fifth grade students concerning different types of people and families.

Kindergarten and 1st grade students. One given book that depicted various forms of families including same gender parents. Other student read a book about a prince who married another prince. Their parents had sincerely held religious beliefs that homosexuality is immoral and marriage is between a man and a woman. They wanted prior notice and an opportunity to opt-out but school denied request as not practical.

Parents sued alleging a violation of their free exercise of religion rights and for a violation of their right to direct the moral upbringing of their children and the rights of the minor children to such upbringing."

PARKER V. HURLEY (D. MASS. 2007), CONT.

"under the Constitution public schools are entitled to teach anything that is reasonably related to the goals of preparing students to become engaged and productive citizens in our democracy. Diversity is a hallmark of our nation. It is increasingly evident that our diversity includes differences in sexual orientation.

"It is reasonable for public educators to teach elementary school students about individuals with different sexual orientations and about various forms of families, including those with same-sex parents, in an effort to eradicate the effects of past discrimination, to reduce the risk of future discrimination and, in the process, to reaffirm our nation's constitutional commitment to promoting mutual respect among members of our diverse society. In addition, it is reasonable for those educators to find that teaching young children to understand and respect differences in sexual orientation will contribute to an academic environment in which students who are gay, lesbian, or the children of same-sex parents will be comfortable and, therefore, better able to learn.

PARKER V. HURLEY (D. MASS. 2007), CONT.

"Parents do have a fundamental right to raise their children. They are not required to abandon that responsibility to the state. The [parents] may send their children to a private school that does not seek to foster understandings of homosexuality or same-sex marriage that conflict with their religious beliefs. They may also educate their children at home. In addition, the plaintiffs may attempt to persuade others to join them in electing a Lexington School Committee that will implement a curriculum that is more compatible with their beliefs. However, the [parents] have chosen to send their children to the Lexington public schools with its current curriculum. The Constitution does not permit them to prescribe what those children will be taught… or to permit [parents] to exempt their children from teaching about homosexuality and same-sex marriage."

LEEBAERT V. HARRINGTON (2ND CIR. 2003)

Parents of 7th grader informed school that they were exercising their 14th amendment right to opt student out of mandatory health education program. School offered to allow them to opt out of the family –life and AIDS education parts of the class but not the rest of the class. Student did not attend class and school failed him. Parent sued based on parental right to direct upbringing and education of child.

[T]here is nothing in *Troxel* that would lead us to conclude from the Court's recognition of a parental right in what the plurality called "the care, custody, and control" of a child with respect to visitation rights that parents have a fundamental right to the upbringing and education of the child that includes the right to tell public schools what to teach or what not to teach him or her.

IMMEDIATO V. RYE NECK SCHOOL DIST. (2ND CIR. 1996)

District instituted a mandatory community service program as part of the high school curriculum. Under the program, in order to earn their diplomas all students must complete forty hours of community service sometime during their four high-school years. They must also participate in a corresponding classroom discussion about their service. The program has no exceptions or "opt-out" provisions for students who object to performing community service.

Students free to choose what organizations they serve. May work for not-for-profit corporations, charities, political organizations or public agencies.

Lawsuit alleged, among other things, violation of parental rights.

The Supreme Court has indicated that the state has a "compelling" interest in educating its youth, to prepare them both "to participate effectively and intelligently in our open political system," and "to be self-reliant and self-sufficient participants in society." The state's interest in education extends to teaching students the values and habits of good citizenship, and introducing them to their social responsibilities as citizens.

Because the District's mandatory community service program is reasonably related to the state's legitimate function of educating its students, we hold that the program does not violate Daniel's parents' Fourteenth Amendment rights.

see also *Herndon v. Chapel Hill–Carrboro City Board of Education*, 89 F.3d 174, 176 (4th Cir.1996) (holding that requiring high school students to perform public service does not violate parents' right to control the education of their children).

C.N. V. RIDGEWOOD BD. OF ED. (3RD CIR. 2006)

District administered a survey to students in the 7th through 12th grades. The survey sought information about students' drug and alcohol use, sexual activity, experience of physical violence, attempts at suicide, personal associations and relationships (including the parental relationship), and views on matters of public interest. The survey itself was designed to be voluntary and anonymous. Survey results were designed to be and actually were released only in the aggregate with no identifying information.

[W]hile it is true that parents, not schools, have the primary responsibility "to inculcate moral standards, religious beliefs, and elements of good citizenship," [*Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir.2000)], a myriad of influences surround middle and high school students everyday, many of which are beyond the strict control of the parent or even abhorrent to the parent. We recognize that introducing a child to sensitive topics before a parent might have done so herself can complicate and even undermine parental authority, but conclude that the survey in this case did not intrude on parental decision-making authority in the same sense as occurred in *Gruenke.* A parent whose *middle or high school* age child is exposed to sensitive topics or information in a survey remains free to discuss these matters and to place them in the family's moral or religious context, or to supplement the information with more appropriate materials. *School Defendants in no way indoctrinated the students in any particular outlook on these sensitive topics;* at most, they may have introduced a few topics unknown to certain. We thus conclude that the survey's interference with parental decision-making authority did not amount to a constitutional violation.

FIELDS V. PALMDALE SCHOOL DIST. (9TH CIR. 2005)

Another school survey case; same outcome

Parents have a right to inform their children when and as they wish on the subject of sex; they have no constitutional right, however, to prevent a public school from providing its students with whatever information it wishes to provide, sexual or otherwise, when and as the school determines that it is appropriate to do so.

LITTLEFIELD V. FORNEY (5TH CIR. 2001)

District adopted a mandatory uniform policy applicable to all students. Purpose is to improve learning environment, promote school spirit and school values, promote decorum and respect for authority, decrease socioeconomic tensions, increase attendance, reduce drop-out rates, increase safety by reducing gang and drug related activity. Allowed for an opt-out for religious purposes.

Families objected on variety of grounds including Parental Rights to teach their children to be guided by one's own conscience in making decisions, to understand the importance of appropriate grooming and attire, to understand the importance of one's own individuality, and to respect the individuality of others. The Parents argue that the implementation of mandatory uniforms presumes that parents are either incapable or unwilling to act in the best interests of their children.

District argued that while parents may have a fundamental liberty interest in their children's upbringing, this interest cannot usurp the state's role in determining appropriate behavior at public schools, including the role of determining appropriate dress codes in the district.

Applying the rational-basis test, Court concluded that the Uniform Policy is rationally related to the state's interest in fostering the education of its children and furthering the legitimate goals of improving student safety, decreasing socioeconomic tensions, increasing attendance, and reducing drop-out rates. Parent rights are not absolute and can be subject to reasonable regulation.

Blau v. Fort Thomas Public School District, 401 F.3d 381, 395–96 (6th Cir.2005) (parent does not have a right to exempt his child from a school dress code);

MURPHY V. STATE OF ARK. (8TH CIR. 1988)

Arkansas law required that students be educated through age sixteen, which could be at public, private, paraochial, or home school. The Home School Act required parents who intended to home school to give notice to the local superintendent each year, including the curriculum, schedule, and qualifications of the teacher. Standardized tests required each year and a minimum performance test at age 14, under the supervision of a state test administrator.

"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."

No violation of parental rights

SUMMARY

- States generally cannot restrict what parents teach children or the languages that they teach in.
- States may mandate compulsory education but not compulsory public education.
- States may not interfere too deeply into private relationships between families and children without sufficient cause.
- Parents generally have no Constitutional right to dictate what children are taught in public schools or to opt out of elements of the curriculum.
- States may reasonably regulate private and home schools.

QUESTIONS

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