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Religious Freedom and Parental Authority

Written by William C. Duncan

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Executive Summary

Faith and family are foundational to the United States' constitutional system because most Americans develop the moral values and cultural traditions that create the capacity for self-government in the home, the congregation, or both. Recent U.S. Supreme Court decisions protecting both the expression of faith and parents' authority to direct their children's upbringing are a reminder that families and religious institutions predate government. Legal protection of religious freedom and parental rights creates the necessary autonomy for faith and family to transmit the habits necessary for responsible citizenship to new generations of Americans.

Although the U.S. Constitution does not expressly mention parents or families, it contains several sources of protection for parental rights. Courts have most often relied on the Fourteenth Amendment's Due Process Clause, treating parental direction of children as a protected liberty. However, the Fourteenth Amendment's Privileges or Immunities Clause may provide a stronger historical and textual foundation. When parental decisions arise from religious obligations, the First Amendment's Free Exercise Clause supplies an additional, more explicit protection of family autonomy.

A series of U.S. Supreme Court decisions has established the basic contours of modern parental rights. *Meyer v. Nebraska* (1923) recognized constitutional protection for establishing a home, raising children, and worshipping according to conscience. *Pierce v. Society of Sisters* (1925) invalidated Oregon's attempt to require public-school attendance, affirming that children are not "mere creatures of the State" and that parents possess both a right and a duty to direct their education. *Wisconsin v. Yoder* (1972) combined parental authority with free-exercise protections, allowing Amish parents to withdraw children from formal schooling after eighth grade. *Parham v. J.R.* (1979) extended the principle into health care, recognizing a presumption that fit parents act in their children's best interests while allowing an appropriate role for independent medical judgment.

State constitutions, laws, and court rulings provide further protections. Utah jurisprudence treats family rights as natural rights retained by the people and emphasizes that parental autonomy preserves social pluralism. A Florida court ruled that the state cannot refuse to include a child's fit parents in important decisions for the child. State statutes demonstrate especially broad agreement that parents should influence public school instruction related to values important to a family. Most states provide parents some combination of advance notice of instruction in sensitive topics, curriculum review, and an opportunity to opt a child out of instruction – or a requirement that parents opt their child in – before participation.

Recent controversies have renewed the importance of these principles. In *Mahmoud v. Taylor* (2025), the U.S. Supreme Court concluded that a school district cannot prohibit parents from opting their

child out of public school instruction that does not align with their core values. The Court more recently overturned a lower court decision to prevent a law from going into effect that barred schools from informing parents about a child's gender transition. These cases have broader implications for consequential decisions about a child's education, identity, mental health, and medical care.

The legal history of protection for parental rights suggests three legal categories of parental rights: (1) core rights, (2) balanced interests (parental rights that must be balanced against other compelling interests), and (3) invalid claims.

Parents' Rights Policy Framework

Applying this three-tiered model of parental rights, state and local policies should:

- Adopt policies that assume parental authority rather than treating it as an exception
- Adopt robust notice requirements for parents in matters that affect their children
- Remove obstacles to parental participation in public programs based on the religious motivations of parents
- Give parents significant roles in developing public school curriculum and other policies affecting their children

CORE RIGHTS	BALANCED INTERESTS	INVALID CLAIMS
Parental unfitness prior to family separation	Parents' education choice vs. mandating education for children	Parental authority to abuse or neglect a child
Parent influence in a child's education, health, and development	Parents' education choice vs. available state resources	
Parents' right to know how schools/government interact with children	Parents' health care desires vs. professional medical judgments	
Facilitation of parent-child communication	Parental authority over children vs. child's age	
Influence in policies that impact children		
Parents' ability to share their faith with children		

Introduction

In 2025, the U.S. Supreme Court issued an important religious freedom decision, *Mahmoud v. Taylor*,[1] concluding that a Maryland school district could not prevent parents from opting their children out of classroom discussions about gender and sexuality. In the past decade, the Court had issued several decisions regarding constitutional protections of religious exercise, but this case was different because it involved overlapping issues of religious freedom and parental authority. In its decision, the Court relied on a 1972 case involving Amish families who had been forced to send their children to school even though doing so would be contrary to their religious beliefs.[2]

It is telling that the Court needed to look back more than 50 years to find a similar case.

The *Mahmoud* decision has given impetus to a number of challenges by parents to laws that they believe interfere with their ability to direct the religious upbringing of their children.[3]

This report will describe constitutional protections for parental authority. What are the sources for such protections? What claims have been recognized by the U.S. Supreme Court and the states? What are the current controversies? How can these controversies be understood and approached so as to secure the greatest appropriate protection of parents' opportunity to act consistently with their beliefs as they rear their children?

Some other important notes at the outset.

First, this is a preliminary report, so it is not comprehensive. There is more historical research to be done on these issues, particularly regarding state laws. We hope, however, that it can serve as an agenda for further research.

Second, this report does not deal with legal issues related to disputes between parents, such as divorce or child custody cases. These types of cases can sometimes involve constitutional issues, but are beyond the scope of this report.

Family at the Founding [4]

Family preexists government. The government does not create families but can recognize them in its laws.

Sensitive statesmen and observers of the early American experience recognized a fundamental paradox at the heart of the system – the success of its constitutional government would have to depend on resources the government itself could not produce. A free society needed traits like a disposition to comply with law, a willingness to make necessary sacrifices for the good of the community, tolerance of differences, etc., but these could not be conjured up by legislation or decrees.

These traits and other key virtues would need to be established as aspirations, modeled, and promoted by other institutions, the most important of which were the most foundational – family and religion. The close interactions of family and congregational life provided ideal opportunities to learn skills essential to maintaining the necessary balance of order and liberty. These institutions need not be perfect (indeed, the opportunity to interact with imperfect people was itself a valuable experience), but they needed a requisite amount of autonomy to successfully inculcate their essential lessons.

The qualities of responsible citizenship could be difficult to learn and practice. Here, too, families and congregations would be able to provide direct support through examples, counsel, and even direct assistance.

They provided something else that was essential – the identification and promotion of a scale of values that was timeless and independent of those that characterized much of political and commercial life, like power, popularity, and prestige.

In many ways, the legal treatment of family and religion reflects this essential paradox. Governments must give churches and families space to perform their essential work and also recognize their authority in constructive ways.

An important dissenting opinion by Justice Clarence Thomas carefully reviewed the history that illustrates this historical understanding.

The case involved a challenge to a California law that restricted the sale of violent video games to minors. The majority of the Court held that the restriction was based on the content of protected speech and that California had not demonstrated a compelling need that would justify that restriction.[5]

Justice Thomas focused on a more basic question – whether the First Amendment included "a right to speak to minors (or a right of minors to access speech) without going through the minors' parents or guardians." He argued that the original meaning of the First Amendment did not include such a right.[6]

Justice Thomas noted: "The historical evidence shows that the founding generation believed parents had absolute authority over their minor

children and expected parents to use that authority to direct the proper development of their children." [7] The "laws at the time [reflected] strong support for parental authority," coupled with a sense that children needed help in governing themselves.[8] This was necessitated by the Republic's need for "virtuous citizens, which necessitated proper training from childhood." [9]

Legal support for parental authority was strong. It was recognized in influential legal treatises, including the most influential, William Blackstone's *Commentaries on the Laws of England*.[10] Court decisions and state statutes reflected this understanding consistently during the early period of the Republic.[11] "Indeed, the law imposed age limits on all manner of activities that required judgment and reason." [12]

Summarizing, Justice Thomas explained that based on "views of childhood, the founding generation understood parents to have a right and duty to govern their children's growth. Parents were expected to direct the development and education of their children and ensure that bad habits did not take root." [13] In addition, "Laws reflected these concerns and often supported parental authority with the coercive power of the state." [14]

(Where) Is Parental Authority in the Constitution?

In his *Entertainment Merchant's* dissent, Justice Thomas surveys the historical legal treatment of parental authority to answer the argument that the First Amendment right of free speech includes a right of businesses to sell material to youth. That opinion does not, however, directly address the question of whether parental authority, as such, is itself protected as a constitutional right, and if so, what is the basis for that right.

Succeeding sections will describe cases on this question decided by the U.S. Supreme Court and state courts, but this section will first sketch out some possible sources for constitutional protection of parental authority to provide background for the discussion in those sections.

The need to identify such a source is foundational in our constitutional system. The legitimacy of the system is rooted in popular sovereignty, the principle that the people of a society are the ultimate authority. Professor Joel Alicea identifies a corollary principle: "In the American context, the only way to preserve the authority of the people is to understand their commands – as embodied in the Constitution as the people themselves understood those commands." He notes that popular sovereignty would be "meaningless" if the people's commands in the Constitution are construed "commands contrary to their original meaning."[15]

There is no explicit mention in the text of the constitution of parents or families. That does not mean other provisions are not relevant to the question of parental authority.

The provision that is thought to be most relevant is section 1 of the Fourteenth Amendment. That section provides:

> 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.

This provision is significant for two reasons. First, it applies specifically to the states. In our federal system, the vast majority of laws directly impacting parents and families are state laws. Second, it contains important limitations on state discretion that could provide room for parents to fulfill their responsibilities to their children without undue interference.

The clause that has been relied on most often by the courts is the guarantee of "due process." Courts have found that interference with parental authority abridges the "liberty" of parents to direct their children's upbringing. It requires a finding that an asserted right not enumerated in the constitution's text is consistent with the nation's history and tradition.[16]

Although this is the most commonly cited provision in the cases directly addressing parental authority, it is not without limitations. The language of the clause, such as the reference to "process," suggests the provision is primarily or solely directed to providing procedural safeguards in legal proceedings. It is thus not straightforwardly a source of substantive rights.[17]

The other relevant clause of Section 1 is the limitation on state actions that abridge the "privileges or immunities" of U.S. citizens. The phrase refers to constitutional rights and protections, such as the guarantees in the Bill of Rights.[18] The primary influence for this clause, according to some of the provision's Framers, was an opinion by Justice Bushrod Washington, acting in his capacity as a circuit court judge.[19] Justice Washington was describing the "privileges and immunities" clause in Article IV.[20] He defined privileges and immunities as matters "which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union."[21]

This provision is likely a better source for constitutional recognition of parental authority than the due process clause. As Justice Clarence Thomas has explained, the privileges or immunities clause was the provision in the Fourteenth Amendment that specified that citizens could not be deprived of constitutional rights by state governments.[22]

For many of the cases involving parental authority, there is another important textual protection, the protection of the free exercise of religion in the First Amendment. This provision is also more straightforward in its application. Many parents are seeking constitutional protection of their ability to direct their children's upbringing because they believe they have a religious responsibility to do so. In these instances, the relevant textual protection is the guarantee that states may not "prohibit[] the free exercise" of religion.[23]

Obviously, these protections are not exclusive, and a law that limits parents' capacity to influence their children's lives may violate more than one of them.

Parents in the U.S. Supreme Court

With this background, we can examine key U.S. Supreme Court cases involving parental authority.

The first major decision involved a Nebraska law that prohibited teaching in any language other than English (presumably enacted in the period of heightened tension following World War I). A parochial school teacher taught reading in German, the language of some of his students' families and the language used in their worship services, and was convicted of violating the law.[24]

The U.S. Supreme Court reversed the conviction. The Court concluded the prohibition violated the due process clause of the Fourteenth Amendment. Specifically, the Court said the liberty the amendment protects includes rights such as to "establish a home and bring up children" and "to worship God according to the dictates of his own conscience."[25]

The Court said 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. . . . 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.[26]

Contrasting ancient Greek notions of an ideal, homogenized society with the constitutional system, it said:

> Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a State without doing violence to both letter and spirit of the Constitution.[27]

Notably, although the background of the case implicated religion (the defendant taught at a parochial school and was partially motivated by helping students understand the religious services they attended), this was not a factor in the Court's decision.

Two years later, the Court heard a challenge to an Oregon law, approved by a ballot initiative, that made it illegal to send children to a private school. The law had been championed by groups (including the Ku Klux Klan) that opposed Catholic education in particular.[28]

The Supreme Court determined the law was unconstitutional. The key passage in the Court's ruling is instructive:

> Under the doctrine of *Meyer v. Nebraska*, 262 U.S. 390, 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.[29]



The Court recognizes that there is a sphere outside the "competency" of the government. Within this sphere lies the basic direction of children's education. The authority to provide this direction lies with the parents who "nurture" and "direct the destiny" of the children. Their authority is coupled with a duty to help the children take advantage of obligations.

The next major parental authority case was decided in 1972 and also arose in the education context. The case involved a Wisconsin law imposing penalties on parents whose children did not attend school after age 16. The lawyers for Amish parents who were convicted of not sending their children to school after eighth grade argued that requiring school attendance violated their rights to free exercise. The Amish did not object to compulsory education until eighth grade, but high school teaches values "in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a 'worldly' influence in conflict with their beliefs." Specifically, "high school tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, worldly success, and social life with other students" while "Amish society emphasizes informal learning-through-doing; a life of 'goodness,' rather than a life of intellect; wisdom, rather than technical knowledge; community welfare, rather than competition; and separation from, rather than integration with, contemporary worldly society."[30]

> Formal high school education beyond the eighth grade is contrary to Amish beliefs, not only because it places Amish children in an environment hostile to Amish beliefs

> with increasing emphasis on competition in class work and sports and with pressure to conform to the styles, manners, and ways of the peer group, but also because it takes them away from their community, physically and emotionally, during the crucial and formative adolescent period of life. During this period, the children must acquire Amish attitudes favoring manual work and self-reliance and the specific skills needed to perform the adult role of an Amish farmer or housewife. They must learn to enjoy physical labor. Once a child has learned basic reading, writing, and elementary mathematics, these traits, skills, and attitudes admittedly fall within the category of those best learned through example and "doing" rather than in a classroom. And, at this time in life, the Amish child must also grow in his faith and his relationship to the Amish community if he is to be prepared to accept the heavy obligations imposed by adult baptism.[31]

The Court found that compulsory schooling after eighth grade would have severe effects on the religious practice of the Amish parents. For the majority, the case involved

> 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 American tradition.[32]

There is a sphere outside the "competency" of the government. Within this sphere lies the basic direction of children's education. The authority to provide this direction lies with the parents who "nurture" and "direct the destiny" of the children.

Referring to the parental "duty" mentioned in *Pierce*, the Court said it "must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship."[33] Since the case combined "the interests of parenthood" with "a free exercise claim," the state's interests in a few more years of compulsory education had to yield to the religious exercise and parental authority claims of the parents.[34]

The next case to include a significant discussion of parental authority arose in an entirely different context. In *Parham v. J.R.*, the Court was called upon to review the constitutionality of Georgia's procedures for involuntarily admitting minors for mental health care. The Court said the "high duty" of parents identified in *Pierce* includes a responsibility to "recognize symptoms of illness and to seek and follow medical advice." The Court reiterated the legal "presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions." Also, the legal presumption "that natural bonds of affection lead parents to act

in the best interests of their children." The fact that parents may fall short

> is hardly a reason to discard wholesale those pages of human experience that teach that parents generally do act in the child's best interests. . . . 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.[35]

In the context of mental health care, the Court concluded precedent permits "the parents to retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse, and that the traditional presumption that the parents act in the best interests of their child should apply." The Court did note, however, that this authority would be "subject to a physician's independent examination and medical judgment."[36]

State Protections for Parents

Of course, in our federal system, the U.S. Constitution is not the only source of protection for fundamental rights. The states' role is critical. In many ways, perhaps more critical since the government decisions most likely to impact families are made at the state level.

Thus, for instance, state constitutional provisions and state court decisions can provide recognition and protection of parental authority.

State Constitutions

A comprehensive description of every state's laws is beyond the scope of this report, but here are two examples of constitutional decisions from Utah and Florida.

The foundational case on the authority of parents in Utah was decided in 1982. Two years prior to the decision, the state had amended its laws to allow parental rights to be terminated if a juvenile court determined termination was in "the child's best interests." This replaced the prior requirement that a parent's rights could not be terminated unless a parent was unfit.[37]

Drawing on state and federal precedent, the court found:

> The rights inherent in family relationships – husband-wife, parent-child, and sibling – are the most obvious examples of rights retained by the people. They are 'natural,' 'intrinsic,' or 'prior' in the sense that our Constitutions presuppose them, as they presuppose the right to own and dispose of property.[38]

The court concluded,

> the right of a parent not to be deprived of parental rights without a showing of unfitness, abandonment, or substantial neglect is so fundamental to our society and so basic to our constitutional order . . . that it ranks among those rights referred to in Article I, § 25 of the Utah Constitution and the Ninth Amendment of the United States Constitution as being retained by the people.[39]

In an important passage, the court added:

> For example, family autonomy helps to assure the diversity characteristic of a free society. There is no surer way to preserve pluralism than to allow parents maximum latitude in rearing their own children. Much of the rich variety in American culture has been transmitted from generation to generation by determined parents who were acting against the best interest of their children, as defined by official dogma. Conversely, there is no surer way to threaten pluralism than to terminate the rights of parents who contradict officially approved values imposed by reformers

> empowered to determine what is in the "best interest" of someone else's child.[40]

A more recent example comes from Florida. The state court of appeals heard an appeal from a lower court decision denying a minor's application to get an abortion without notifying her parents. The court affirmed that decision.[41]

The court also addressed an issue raised by the Florida Attorney General who had intervened in the appeal. It explained that the federal constitution's Due Process Clause cannot "countenance a process whose entire function is to deprive presumptively fit parents of the most basic due-process guarantees – notice and opportunity to be heard – on the question whether they must forfeit an important parental right that the state and federal constitutions secure to them."[42] The court said the state must provide these guarantees "when it considers whether to deprive parents of 'the most fundamental liberty interest recognized in law: the fundamental right to care for and raise their daughter, to advise and counsel her regarding [the abortion] decision.'"[43] Depriving parents of these opportunities, the court concluded, can't "be justified by their children's asserted constitutional right to obtain an abortion (much less a secret abortion that cuts presumptively fit parents out of the decision)."[44]

State Statutes

In his opinion in *Brown v. Entertainment Merchants*, Justice Thomas noted that, "Although much has changed in this country since the Revolution, the notion that parents have authority over their children and that the law can support that authority persists today."[45]

Many state laws recognize the unique developmental vulnerabilities of children and, by coordination, the responsibility and authority of parents, including parents' religiously motivated direction of their children's upbringing.

The most obvious examples are laws that require parental permission before minors are allowed to make certain choices. All states have minimum ages for marriage, and most also provide that when a child seeks to marry before he or she reaches that minimum age, parents must give permission.[46] Similarly, many medical procedures that minors seek to undergo require parental permission.[47] Parents must give permission to their children to enlist in the military.[48]

Particularly relevant here is that all but three states specifically provide some legal means for parents to exempt their children from instruction on sexual issues.[49]

Parents' right to determine how their children are taught about controversial topics, particularly those involving sexual matters, should be accommodated.

The typical elements of laws protecting parents' ability to determine how their children will be taught about sexual topics are (1) a requirement that parents be given notice of the instruction, (2) a requirement that parents be allowed to review the proposed instruction and related materials, and (3) a requirement that parents be allowed to exempt children from the instruction. This latter element takes two forms. In most states, parents are given an opportunity to request their children be excused

from the instruction (opt-out). In others, schools cannot provide the instruction absent affirmative parental consent (opt-in).

The laws of 27 states and the District of Columbia contain all three of these elements, including the opt-out approach. Of these, all but Oregon use imperative commands (usually "shall" but Oregon uses "may") to describe the school's responsibilities.

Four other states include protection for a parental right to review curriculum and to an opt-out but do not specify a requirement for the school to provide notice of instruction. An additional 11 states only specify the requirement to allow an opt-out.

Eight states are even more protective of parents' influence, requiring notice, review, and that children cannot be taught without affirmative consent by the parent through an opt-in requirement.

The introduction of classroom discussions on topics like sexual orientation and gender identity is relatively new so many of these statutes are situated in the context of "sex education" instruction and do not specifically address these questions. Nine states, however, have specified that parental rights are not limited to the context of health education.

Four states specifically extend opt-out protection for instruction that covers "sexual orientation" or "gender identity" (Ohio's law refers to "gender ideology").

Nine states specify that the opt-out or opt-in provisions are intended to accommodate parents' religious beliefs.

Taken together, this survey of state laws demonstrates an extraordinarily broad consensus that parents' right to determine how their children are taught about controversial topics, particularly those involving sexual matters, should be accommodated.

Resurgence of Parent Issues

At the national level, there was a long period when the Supreme Court did not decide major parental authority cases.[50] That changed in 2025.

That year, the U.S. Supreme Court ruled that a Maryland School District must ensure notice of instruction related to sensitive sexual topics to parents of children in elementary school and that parents have the opportunity to excuse their children from this instruction.[51]

The Court held that a "government burdens the religious exercise of parents when it requires them to submit their children to instruction that poses 'a very real threat of undermining' the religious beliefs and practices that the parents wish to instill."[52] Noting that "for many people of faith across the country, there are few religious acts more important than the religious education of their children," the Court explained that the First Amendment protection is "not merely a right to teach religion in the confines of one's own home. Rather, it extends to the choices that parents wish to make for their children outside the home. It protects, for example, a parent's decision to send his or her child to a private religious school instead of a public school" and in "limits on the government's ability to interfere with a student's religious upbringing in a public school setting."[53]

In this instance, "the [School] Board's introduction of the 'LGBTQ+-inclusive' storybooks – combined with its decision to withhold notice to parents and to forbid opt outs – substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise that *Yoder* found unacceptable."[54]

More recently, the Court addressed a California law that prohibited schools from notifying parents when the parents' child identifies as transgender at school. The Court reversed a Ninth Circuit decision to allow the law to go into effect while it was being challenged by the parents.[55]

The per curiam opinion concluded, "that the parents who seek religious exemptions are likely to succeed on the merits of their Free Exercise Clause claim." In fact, "the intrusion on parents' free exercise rights here – unconsented facilitation of a child's gender transition – is greater than" the situation in *Mahmoud*.[56]

Three justices joined a separate opinion to explain the unique circumstances of the case:

> California prohibits its public schools from informing parents of their child's gender transition at school unless the child consents. The record in this case indicates that the State's non-disclosure policy applies even if parents expressly ask for information about their child's gender identification. One set of parents learned of their child's transition at school only after

> the child attempted suicide. Strikingly, even after this tragic event, school administrators continued to withhold information about the student's gender identification. California's nondisclosure policy thus quite obviously excludes parents from highly important decisions about their child's mental health . . . and is unlikely to satisfy heightened scrutiny. Our resolution of the parents' likelihood of success on this claim is dictated by existing law.[57]

At the close of the Court's 2025 term, the Court announced it would hear a case, *International Partners for Ethical Care, Inc. v. Ferguson*, challenging a Washington policy that interferes with parents' ability to help their vulnerable children. Washington State has a policy that when children who have run away from home are in the state's custody, it will notify the parents unless there is reason to believe the parents pose a threat to the child. More recently, the state adopted an exception. It now assumes that a parent should not be given notice when their child runs away and identifies as transgender, even if the parent is fit.[58]

This case could provide the Court an opportunity to clarify that caring and conscientious parents should not be excluded from their child's life just because the government has a different idea about how those children should be raised.

What's Next?

The principles underlying protection of parental authority have only been outlined by existing cases and statutes, and largely in the context of education, the site where parents and government are most likely to come into contact. These principles also have implications for health care and for a host of online activities like access to apps, harmful material, social media, and gambling.

Adapting a figure from an important analysis of religious freedom,[59] the protections of parental authority (particularly those that overlap with religious freedom) can be illustrated with a figure of concentric circles. The core represents the most critical protections; the next layer includes claims for protection that must be balanced with other interests; and the outside circle represents claims for parental authority that may be legitimately limited in significant ways or even denied.

Core Protections

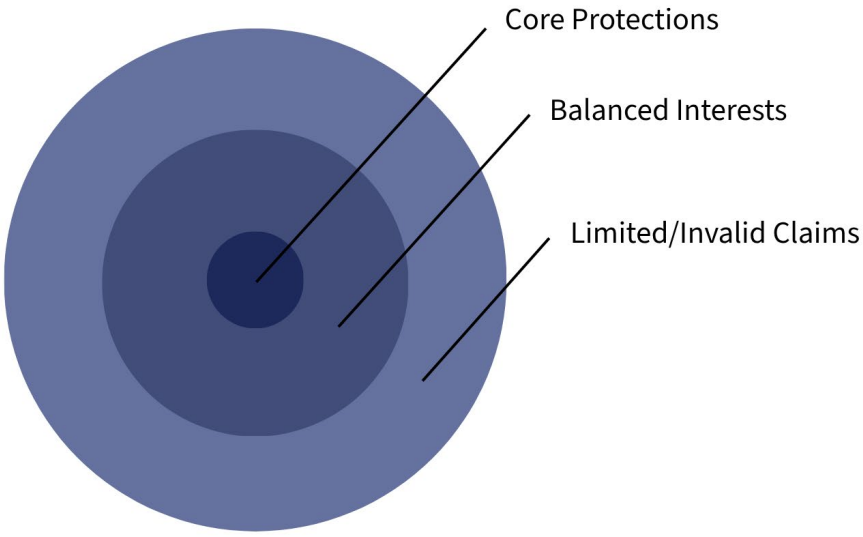
1. The appropriate standard for removing children from parents is parental unfitness.

2. Parents must be able to make (or at least influence, as children get older) basic decisions about a child's education, mental and physical health, and development.

3. Parents must be kept apprised of how schools, other government entities, and third parties supervised by the state are interacting with their children.

4. States should facilitate rather than circumvent parent-child communication.[60]

5. Parents should be given real opportunities to influence decisions about policies that impact children.



6. Parents must be able to share their faith with their children.

Balanced Interests

1. While parents must be allowed to choose educational options for their children, including those outside the public school system, it is reasonable for the state to mandate that children receive an education.

2. Facilitation of parental choice can legitimately be limited based on accessibility of resources, though religious options cannot be excluded directly or by regulation.

3. Governments can legitimately balance some parental choices about health care with medical judgments of professionals.

4. As children age, parents' role can appropriately be expected to shift from sole decision-making to influence.

Limited/Invalid Claims

1. Parental authority cannot legitimately be used to justify abuse or neglect of a child.

Policy Recommendations

These principles obviously have many implications for a range of policy choices. Ideally, interested organizations would conduct "audits" of how state and federal laws respect or transgress these principles. Those audits would identify appropriate policies not mentioned here, but this section will provide four general proposals that are relevant to most states. These recommendations are based on the basic principle that states should proactively accommodate parental exercises of religious faith and similar efforts to help their children.

First, states should adopt policies that assume parental authority rather than treating it as an exception. For instance, most states allow parents to opt their children out of instruction about sensitive issues in public schools (like sex education), but a more protective policy would be to assume that parents will exercise their responsibility to direct their children's education. Thus, an opt-in policy is more appropriate. This means that schools would require affirmative consent from parents before addressing these subjects rather than shifting the onus to the parents to speak up. This could apply to other circumstances, like medical decision-making and children's use of technology.

Second, states should adopt robust notice requirements for parents in matters that affect their children. This is relevant to instruction about sexual topics in schools, but more broadly to all areas of the curriculum. Again, it is necessary in the medical and technology contexts as well.

Third, states must make every effort to remove obstacles to parental participation in public programs based on the religious motivations or decisions of the parents. This will require, in some instances, amending state constitutions. This is not a particular stretch, since these provisions are at odds with the free exercise clause of the First Amendment.

Fourth, parents should be given significant roles in developing curriculum and other policies affecting their children. Additionally, parents could be given formal and leading roles in committees to develop school curriculum (in both sensitive and more prosaic topics). Perhaps particularly sensitive policies could be subject to popular approval by parents in a community.

Two additional considerations should be noted. While broad statements of principle are important, specific statutory protections are essential to avoid parents having to litigate, an expensive and time-consuming process that can effectively be off limits to most. Second, these types of protections are especially critical at local levels where conflicts are more likely to occur and where local preferences can be accommodated.

Endnotes

[1] 606 U.S. 522 (2025).

[2] *Wisconsin v. Yoder*, 406 U.S. 205 (1972)

[3] See *International Partners for Ethical Care, Inc. v. Ferguson*, No. 24-3661 (9th Cir. 2025); *Regino v. Staley*, No. 23-16031 (9th Cir. 2025).

[4] Portions of this section were prepared for presented at a conference, *Bridging Continents: Transatlantic Dialogue on Family Policy* sponsored by the European Union and International Affairs Office of The Church of Jesus Christ of Latter-day Saints and Sutherland Institute and held March 12, 2026.

[5] *Brown v. Entertainment Merchants* Ass'n, 564 US 786 (2011).

[6] Id. at 834 (Thomas, J., dissenting).

[7] Id. at 822.

[8] Id. at 824.

[9] Id. at 828.

[10] Id. at 832-833.

[11] Id. at 833-834.

[12] Id. at 834.

[13] Id. at 828.

[14] Id. at 835.

[15] J. Joel Alicea, "The Moral Authority of Original Meaning" 98 Notre Dame Law Review 1, 44-45 (2022) (citing Keith E. Whittington, Constitutional Interpretation: Textual Meaning, Original Intent, and Judicial Review 156 (1999)).

[16] *Washington v. Glucksberg*, 521 U.S. 702, 710 (1997).

[17] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 330-336 (2022).

[18] Michael Zuckert, "On the Fourteenth Amendment: A Textual Analysis" Perspectives on Political Science 48(4):246-251 (2019).

[19] Kurt T. Lash, "The Privileges or Immunities Clause" in The Heritage Guide to the Constitution 739 (Josh Blackman & John G. Malcolm eds., 3d ed. 2025).

[20] U.S. Constitution, article IV, section 2, clause 1.

[21] *Corfield v. Coryell*, 6 F. Cas. 546, 551, 4 Wash. C. C. 371 (1823); see also Gerard N. Magliocca, "Rediscovering *Corfield v. Coryell*" 95 Notre Dame Law Review 701 (2019).

[22] *McDonald v. City of Chicago*, 561 U.S. 742, 806 (2010).

[23] The First Amendment is directed to Congressional actions, but the Fourteenth Amendment extended its reach to the actions of State governments.

[24] Ross Benes, "From a Small, Rural Schoolhouse, One Teacher Challenged Nativist Attacks Against Immigration" Smithsonian Magazine (January 14, 2021), https://www.smithsonianmag.com/history/small-rural-schoolhouse-one-teacher-challenged-nativist-attacks-against-immigration-180976757/.

[25] *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

[26] Id. at 401.

[27] Id. at 402.

[28] Paula Abrams, "The Little Red Schoolhouse: Pierce, State Monopoly of Education and the Politics of Intolerance" 20 Constitutional Commentary 61 (2003).

[29] *Pierce v. Society of Sisters*, 268 U.S. 510,534-535 (1925).

[30] *Wisconsin v. Yoder*, 406 U.S. 205, 210-211 (1972).

[31] Id. at 211.

[32] Id. at 232.

[33] Id. at 233.

[34] Id. at 234.

[35] 442 U.S. 584, 602-603 (1979).

[36] Id. at 604.

[37] In re *JP*, 648 P. 2d 1364 (Utah 1982). Justice Thomas Lee provided a valuable discussion of this decision in In re *Adoption of J.S.*, 358 P.3d 1009 (Utah 2014).

[38] Id. at 1373.

[39] Id. at 1375.

[40] Id. at 1376.

[41] *Doe v. Uthmeier*, 407 So.3d 1281 (Fla. Ct. App. 2025).

[42] Id. at 1290.

[43] Id. (quoting Doe 23-B, 377 So. 3d 1211, 1219 (B.L. Thomas, J., concurring)).

[44] Id.

[45] Brown at 836 (Thomas, J., dissenting).

[46] Tahirih Justice Center, Statutory Text Compilation: Minimum Marriage Age and Exceptions across the United States (September 30, 2025), https://www.tahirih.org/wp-content/uploads/2016/11/2025-Statutory-Text-Compilation.pdf.

[47] Marianne Sharko, et al., "State-by-State Variability in Adolescent Privacy Laws" Pediatrics 149(6): e2021053458 (June 2022).

[48] 10 U.S. Code § 505.

[49] This information comes from Sutherland Institute's brief in *Mahmoud v. Taylor*, No. 24-297 (March 10, 2025), https://www.supremecourt.gov/DocketPDF/24/24-297/351579/20250310122359003_24-297%20Amicus%20BrIef%20of%20Sutherland%20Institute.pdf, which contains the specific citations.

[50] "A possible exception might be *Troxel v. Granville*, 530 U.S. 57 (2000), in which the Court invalidated a Washington law that provided "any person" could seek visitation of children, even over the objection of parents. There was no majority opinion, only a plurality opinion joined by four justices, with two others agreeing only with the result. The upshot was that the law was unconstitutional.

[51] *Mahmoud v. Taylor*, 606 U.S. 522, 145 S.Ct. 2332 (2025).

[52] Id. at 2342.

[53] Id. at 2351.

[54] Id. at 2353.

[55] *Mirabelli v. Bonta*, 607 U.S. 800 (2026).

[56] Id. at 802.

[57] Id. at 804 (Barrett, J., concurring).

[58] No. 25-840 (2026).

[59] See Robert T. Smith, "The Importance of Religious Freedom" Public Square Magazine (June 5, 2026), https://publicsquaremag.org/politics-law/religious-freedom/the-importance-of-religious-freedom/ (citing Lance B. Wickman).

[60] This was part of the concern addressed by the *Meyer* decision described above which allowed children to be taught in the language spoken by their parents.



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