Section 12
Decisions Of The United States Supreme Court Upholding Parental Rights As "Fundamental"
Paris Adult Theater v. Slaton, 413 US 49, 65 (1973)

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

Our prior decisions recognizing a right to privacy guaranteed by the 14th Amendment included only personal rights that can be deemed fundamental or implicit in the concept of ordered liberty . . . This privacy right encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing . . . cf . . . Pierce v. Society of Sisters; Meyer v. Nebraska . . . nothing, however, in this Court's decisions intimates that there is any fundamental privacy right implicit in the concept of ordered liberty to watch obscene movies and places of public accommodation. [emphasis supplied]
Carey v. Population Services International, 431 US 678, 684-686 (1977)

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

The Court continued by explaining that these rights are not absolute and, certain state interests . . . may at some point become sufficiently compelling to sustain regulation of the factors that govern the abortion decision . . . Compelling is, of course, the key word; where decisions as fundamental as whether to bear or beget a child is involved, regulations imposing a burden on it may be justified only by a compelling state interest, and must be narrowly drawn to express only those interests. [emphasis supplied]
Maher v. Roe, 432 US 464, 476-479 (1977)

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

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

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

Although the Maher decision unquestionably recognizes parents' rights as fundamental rights, the Court has clearly indicated that private schools do not have a fundamental right to state aid, nor must a state satisfy the compelling interest test if it chooses not to give private schools state aid. The Parental Rights and Responsibilities Act simply reaffirms the right of parents to choose private education as fundamental, but it does not make the right to receive public funds a fundamental right. The PRRA, therefore, does not in any way promote or strengthen the concept of educational vouchers.
Parham v. J.R., 442 US 584, 602-606 (1979).

This case involves parent's rights to make medical decisions regarding their children's mental health. The lower Court had ruled that Georgia's statutory scheme of allowing children to be subject to treatment in the state's mental health facilities violated the Constitution because it did not adequately protect children's due process rights. The Supreme Court reversed this decision upholding the legal presumption that parents act in their children's best interest. The Court ruled:

Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is "the mere creature of the State" and, on the contrary, asserted that parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations." Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925) ... [other citations omitted] . . . The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has been recognized that natural bonds of affection lead parents to act in the best interests of their children. 1 W. Blackstone, Commentaries 447; 2 J. Kent, Commentaries on American Law 190. As with so many other legal presumptions, experience and reality may rebut what the law accepts as a starting point; the incidence of child neglect and abuse cases attests to this. That some parents "may at times be acting against the interests of their children" ... creates a basis for caution, but it is hardly a reason to discard wholesale those pages of human experience that teach that parents generally do act in the child's best interest ... The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition." [emphasis supplied]

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

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

Appellees' argument, however, sweeps too broadly. Simply because the decision of a parent is not agreeable to a child, or because it involves risks does not automatically transfer power to make that decision from the parents to some agency or officer of the state. The same characterizations can be made for a tonsillectomy, appendectomy, or other medical procedure. Most children, even in adolescence, simply are not able to make sound judgements concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgements ... we cannot assume that the result in Meyer v. Nebraska, supra, and Pierce v. Society of Sisters, supra, would have been different if the children there had announced or preference to go to a public, rather that a church school. The fact that a child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery does not diminish the parent's authority to decide what is best for the child (See generally Goldstein, Medical

Case for the Child at Risk: on State Supervention of Parental Autonomy, 86 Yale LJ 645, 664-668 (1977); Bennett, Allocation of Child Medical Care Decision Making Authority: A Suggested Interest Analyses, 62 Va LR ev 285, 308 (1976). Neither state officials nor federal Courts are equipped to review such parental decisions. [emphasis supplied]

Therefore, it is clear that the Court is recognizing parents as having the right to make judgments concerning their children who are not able to make sound decisions, including their need for medical care. A parent's authority to decide what is best for the child in the areas of medical treatment cannot be diminished simply because a child disagrees. A parent's right must be protected and not simply transferred to some state agency.
City of Akron v. Akron Center for Reproductive Health Inc., 462 US 416, 461 (1983)

This case includes, in a long list of protected liberties and fundamental rights, the parental rights guaranteed under Pierce and Meyer. The Court indicated a compelling interest test must be applied. Central among these protected liberties is an individual's freedom of personal choice in matters of marriage and family life ... Roe ... Griswold ... Pierce v. Society of Sisters ... Meyer v. Nebraska ... But restrictive state regulation of the right to choose abortion as with other fundamental rights subject to searching judicial examination, must be supported by a compelling state interest. [emphasis supplied]
Santosky v. Kramer, 455 US 745, 753 (1982)

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

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

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

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the state ... When the state moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. [emphasis supplied]
Lehr v. Robertson, 463 US 248, 257-258 (1983)

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

In some cases, however, this Court has held that the federal constitution supersedes state law and provides even greater protection for certain formal family relationships. In those cases ... the Court has emphasized the paramount interest in the welfare of children and has noted that the rights of the parents are a counterpart of the responsibilities they have assumed. Thus, the liberty of parents to control the education of their children that was vindicated in Meyer v. Nebraska ... and Pierce v. Society of Sisters ... was described as a "right coupled with the high duty to recognize and prepare the child for additional obligations" ... The linkage between parental duty and parental right was stressed again in Prince v. Massachusetts ... The Court declared it a cardinal principle "that the custody, care and nurture of the child reside first in the parents whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." In these cases, the Court has found that the relationship of love and duty in a recognized family unit is an interest in liberty entitled to Constitutional protection ... "State intervention to terminate such a relationship ... must be accomplished by procedures meeting the requisites of the Due Process Clause" Santosky v. Kramer ... [emphasis supplied]

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

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

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

The Court has recognized that the freedom to enter into and carry on certain intimate or private relationships is a fundamental element of liberty protected by the Bill of Rights ... the intimate relationships to which we have accorded Constitutional protection include marriage ... the begetting and bearing of children, child rearing and education. Pierce v. Society of Sisters ... [emphasis supplied]
Michael H. v. Gerald, 491 U.S. 110 (1989)

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

The Court explicitly included the parental rights under Pierce and Meyer as "fundamental" and interests "traditionally protected by our society."
Employment Division of Oregon v. Smith, 494 U.S. 872 (1990)

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

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

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

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

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

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

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

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

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

The family has a privacy interest in the upbringing and education of children and the intimacies of the marital relationship, which is protected by the Constitution against undue state interference. See Wisconsin v Yoder, 7 406 US 205 ... The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition."

Parham, 442 US, at 603, [other citations omitted]. We have long held that there exists a "private realm of family life which the state cannot enter." Prince v Massachusetts ...

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

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

The Court leaves no room for doubt as to the importance and protection of the rights of parents.
H.L. v. Matheson, 450 US 398, 410 (1991)

In this case, the Supreme Court recognized the parents' right to know about their child seeking an abortion. The Court stated: In addition, constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society.

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

This Court clearly upholds the parent's right to know in the area of minor children making medical decisions.
Vernonia School District 47J v. Acton, 132 L.Ed.2d 564, 115 S.Ct. 2386 (1995)

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

Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determinationincluding even the right of liberty in its narrow sense, i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians. See Am Jur 2d, Parent and Child § 10 (1987).
Troxel v. Granville, 530 U.S. 57 (2000)

In this case the United States Supreme Court issued a landmark opinion on parental liberty. The case involved a Washington State statute which provided that a "court may order visitation rights for any person when visitation may serve the best interests of the child, whether or not there has been any change of circumstances." Wash. Rev. Code § 26.10.160(3). The U.S. Supreme Court ruled that the Washington statute "unconstitutionally interferes with the fundamental right of parents to rear their children." The Court went on to examine its treatment of parental rights

in previous cases:

In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children...Wisconsin v. Yoder, 406 U.S. 205, 232, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and This case clearly upholds parental rights. In essence, this decision means that the government may not infringe parents' right to direct the education and upbringing of their children unless it can show that it is using the least restrictive means to achieve a compelling governmental interest.