The Battle Over Fundamental Parental Rights: History, Tradition, and Current Conflicts

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Session Summary: Parents' right to direct the upbringing, education, and care of their children is "perhaps the oldest of the fundamental liberty interests recognized by" the Supreme Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.). Yet the foundation and scope of that right are now matters of major debate and substantial litigation. This workshop examines the history and tradition of parental rights, surveys the key cases, and anticipates the battles ahead.

I. The Supreme Court's Recognition of Fundamental Rights

A. The Constitutional Framework:

i. The Fourteenth Amendment "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Troxel*, 530 U.S. at 65 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997)); *see Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

ii. The government may not infringe fundamental liberty interests "unless the infringement is narrowly tailored to serve a compelling state interest." *Glucksberg*, 521 U.S. at 721(quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

iii. For a right to be fundamental, it must be rooted in this Nation's "history and tradition." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 240 n.22 (2022).

B. The Analytical Framework:

i. Start with "a careful description of the asserted fundamental liberty interest." *Dep't of State v. Muñoz*, 602 U.S. 899, 909–10 (2024) (citation modified).

ii. Determine whether it is "deeply rooted in this Nation's history and tradition." *Id.* (quoting *Glucksberg*, 521 U.S. at 721).

iii. Ask whether the challenged government action "infringe[s]" that right. *Flores*, 507 U.S. at 302 . If so, apply strict scrutiny. *Muñoz*, 602 U.S. at 910–11.

C. Alternative Constitutional Foundations: Privileges or Immunities Clause; Ninth Amendment. *See Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 836 (2011)

(Thomas, J., dissenting); *McDonald v. City of Chicago,* 561 U.S. 742, 806 (2010) (Thomas, J., concurring).

II. The History and Tradition of Parental Rights

A. Natural and Common Law Foundations: America imported its principles for education from the common law, which recognized parents as the primary educators of their children.

B. Samuel Pufendorf, *The Whole Duty of Man According to the Law of Nature* (1673): "[T]he duty of parents consists chiefly in this, that they maintain their children handsomely, and that they so form their bodies and minds by a skillful and wise education, as that they may become fit and useful members of human and civil society."

C. Blackstone and the Common Law Tradition: Parents must give their children "an education suitable to their station in life" and may "delegate part of [their] parental authority ... to the tutor or schoolmaster, of [the] child; who is then *in loco parentis*." 1 William Blackstone, *Commentaries on the Laws of England* 450, 453 (1765); *see Glucksberg*, 521 U.S. at 712.

D. American Jurisprudence: Kent and Wilson

i. James Wilson, *Lectures on Law* (1790): A child's education should be entrusted to his parents; parents may delegate authority via in loco parentis. *See Morse v. Frederick*, 551 U.S. 393, 413 (2007) (Thomas, J., concurring).

ii. James Kent, Commentaries on American Law: Parents' natural duties "consist in maintaining and educating" children because "the voice of nature has pointed out the parent as the most fit and proper person." 2 James Kent, *Commentaries on American Law* *188–90.

E. State Court Recognition of Parental Rights Post Ratification

i. *People ex rel. O'Connell v. Turner*, 55 Ill. 280, 284–85 (1870): "The parent has the right to the care, custody and assistance of his child. The duty to maintain and protect it, is a principle of natural law. ... Before any abridgment of the right, gross misconduct or almost total unfitness on the part of the parent, should be clearly proved."

ii. *Morrow v. Wood*, 35 Wis. 59, 64 (1874): The law "gives the parent the exclusive right to govern and control the conduct of his minor children."

iii. *Sch. Bd. Dist. No. 18 v. Thompson*, 103 P. 578, 582 (Okla. 1909): Courts should "presume ... that the request of the parent was reasonable and just."

III. The Supreme Court's Key Parental Rights Cases

A. *Meyer v. Nebraska*, 262 U.S. 390 (1923): The Foundation

i. The liberty "guaranteed ... by the Fourteenth Amendment" includes "[w]ithout doubt" the right "to marry, establish a home and bring up children." *Id*. at 399.

ii. "[I]t is the natural duty of the parent to give his children education suitable to their station in life." *Id*. at 400.

iii. Rejected statist models of education (Plato's Republic; Ancient Sparta): Such measures could not be imposed "without doing violence to both letter and spirit of the Constitution." *Id*. at 402.

B. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925): "The Child is Not the Mere Creature of the State"

i. Struck down Oregon's Compulsory Education Act, which required parents to send children to public schools.

ii. "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." *Id*. at 535.

iii. The Enduring Vitality of *Meyer* and *Pierce*: Every Supreme Court decision touching parental rights—including those reversing other Lochner-era decisions—has reaffirmed *Pierce*. The state's role is subsidiary to that of parents. *See* 2 Joseph Story, *Commentaries on Equity Jurisprudence* § 1341 (2d ed. 1839).

C. Parental Rights and Limited Government: "Recognizing and respecting that the family ... is an authoritative community with the right to direct its own internal affairs is an essential and crucial feature of limited government." Melissa Moschella, *Defending the Fundamental Rights of*

Parents: A Response to Recent Attacks, 37 Notre Dame J.L. Ethics & Pub. Pol'y 397, 411 (2023).

IV. The Later Parental Rights Cases

A. "[T]he custody, care and nurture of the child reside first in the parents." *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)

B. "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*, 406 U.S. 205, 232 (1972). High school education contrary to Amish beliefs "because it places Amish children in an environment hostile to Amish beliefs," including "pressure to conform to the styles, manners, and ways of the peer group." *Id*. at 211.

C. Parents have the right to make "life's difficult decisions" regarding their children. "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." *Parham v. J.R.*, 442 U.S. 584, 602 (1979).

D. Parents have the preeminent "guiding role" in "important decisions" concerning the child. *H.L. v. Matheson*, 450 U.S. 398, 410 (1981)

E. The "fundamental right of parents to make decisions concerning the care, custody, and control of their children" is "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel*, 530 U.S. at 65-66. Constitutional "presumption that fit parents act in the best interests of their children." *Id*. at 68.

V. Supreme Court's Recent Decisions—*Mahmoud* and *Mirabelli*

A. *Mahmoud v. Taylor*, 606 U.S. 522 (2025). School district's use of LGBTQ+ storybooks—coupled with refusal to permit opt-outs—violated the Free Exercise Clause. *Id*. at 565 (not decided on substantive due process grounds).

   i. When "government policies ... substantially interfere with the religious development of [the plaintiff parents'] children," strict scrutiny applies. *Id*. at 546 (citation modified)

   ii. Public education is a public benefit, and the government cannot "'condition' its 'availability' on parents' willingness to accept a burden on their religious exercise." *Id*. at 561 (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017)).

iii. Fact-intensive inquiry considers: (1) specific religious beliefs asserted; (2) age of children; (3) nature of educational requirement; (4) context; and (5) "pressure to conform." *Id*. at 550.

B. *Mirabelli v. Bonta*, 146 S. Ct. 797 (Mar. 2, 2026). Schools transitioning children without parental notice or consent.

i. Parents likely to succeed on challenges to California public schools' policy of facilitating "a child's gender transition" without parental notice and consent *Id.* at 802.

ii. Government cannot assert "a compelling interest in student safety and privacy" if it "cut[s] out the primary protectors of children's best interests: their parents." *Id.*

VI. Other Cases Pending

A. *Wailes v. Jefferson County Public School District* (10th Cir., No. 25-1341, argued on May 12, 2026) (Pending). Challenge to school policy permitting students to be roomed with students of the opposite sex on overnight trips—without parental notice or consent.

B. *Mead v. Rockford Public School District* (WD Mich., No. 1:23-cv-01313). Challenging the school district's unconsented gender transition of the Meads' daughter.

C. *Vitsaxaki v. Skaneateles School District* (2nd Cir., No. 25-952, argued on December 2, 2025) (Pending). Challenging the school district's unconsented gender transition of the Vitsaxaki's daughter.

VII. The Future of Parental Rights: Where We Go from Here

A. Enforcing and expanding upon *Mahmoud* and *Mirabelli*

B. Parental Rights Beyond Private Schooling: Parental rights include the right to certain exemptions and accommodations within public schools

C. Access to medical / health records

D. Establishing limited scope of school authority