The Heritage Foundation
Issue Bulletin
214 Massachusetts Avenue, N.E. • Washington, D.C. • 20002-4999 • (202) 546-4400 • http://www.heritage.org/

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July 23, 1996

HOW CONGRESS CAN PROTECT THE RIGHTS OF PARENTS TO RAISE THEIR CHILDREN

INTRODUCTION

The United States Supreme Court noted many years ago that "The primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."[1] And President Bill Clinton, in his 1994 State of the Union speech, declared that "We cannot renew our country until we realize that governments don't raise children, parents do."[2]

Congress is poised to give legislative form to these sentiments. The Parental Rights and Responsibilities Act (S. 984 and H.R. 1946), introduced by Senator Charles Grassley (R-IA) and Representative Steve Largent (R-OK), would give parents the standing in law to protect their rights to direct the education and to protect and form the moral character of their children. In fact, it would give them superior standing over government and its agencies in these matters: The bill declares that parents' rights to direct the upbringing of their children are fundamental rights which government can curtail only under conditions of "compelling interest" and under "strict guidelines" of judicial procedure, legal terms which guide courts in their decisions.

Congressional proponents of the Parental Rights and Responsibilities Act contend that parental rights over the rearing of children are so basic that the Founders never even conceived of their being usurped by government. These rights, precisely because they are basic to the concept of liberty, should not be abridged

1 *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

2 Reiterating his earlier statement that "Governments don't raise children, parents do," made during his acceptance speech at the 1992 Democratic National Convention in New York City's Madison Square Garden.

by government except in the most unusual circumstances. They are liberty rights, protected by the Fifth Amendment. The bill would make this clear.

Parental rights concern the relationship between government—federal, state, and local—and parents in the raising of children. This area of civil liberties is the domain of Congress and the Supreme Court, with the Fourteenth Amendment clearly giving Congress the power to pass legislation to enforce such constitutional rights and protecting citizens against the abridgment of their rights by government:

> 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....[3]
>
> The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.[4]

The Erosion of Parental Authority

Over the years, widely scattered and repeated attacks on the fundamental rights of parents have come from state and local courts; from federal, state, and local government bureaucracies and officials; and from policy initiatives inspired by a number of the major professions dealing with children. Certain members of these professions seem more concerned with displacing parents than with aiding them. In fact, the bill is opposed by many liberal groups wishing to change the relationship between government and the family, including the NOW Legal Defense and Education Fund, the American Civil Liberties Union, and the National Education Association.

While critics say the bill would cause confusion in child abuse and domestic relations law and procedure, congressional sponsors argue that child abuse is not a parental right and that they explicitly left all child abuse and domestic relations concerns outside the scope of the bill. These clearly are within the proper scope of state authority.

WHAT THE BILL DOES

Section 4 of the bill clarifies and codifies the rights of parents already affirmed by the U.S. Supreme Court: "No Federal, State or local government, or any official of such a government acting under color of law, shall interfere with or usurp the right of a parent to direct the upbringing of the child of the parent."

3 Constitution of the United States, Amendment 14, Articles 2 and 5.
4 *Ibid.*

According to Section 3, the parent's right to direct the upbringing of a child includes the right to:

❶ **Direct or provide** for the education of the child;

❷ **Make** a health or mental health decision for the child, with exceptions;[5]

❸ **Discipline** the child, including reasonable corporal punishment as already defined by the Supreme Court; and

❹ **Direct or provide** for the religious and moral formation of the child.

It also makes clear the procedure the courts must follow when these rights are to be denied by the state. The standard to which the courts must hold all levels of government in any move to deny parents their rights is laid out simply in Section 5:

> No exception to [the right] shall be permitted, unless the government is able to demonstrate by clear and convincing evidence, that the interference or usurpation is essential to accomplish a compelling government interest and is narrowly drawn or applied in a manner that is the least restrictive means of accomplishing the compelling interest.

This would establish a clear standard of judicial review whenever a state challenges parents. The government or its agencies would have to demonstrate a compelling interest in the contravention of parental authority. "Compelling interest" is a standard that demands "strict scrutiny" or "clear and convincing evidence" of the government's compelling and narrowly drawn interest in removing parental authority in the case before the court. It is the highest standard that can be adopted in a civil issue and is the traditional standard used by all when reviewing all other fundamental rights issues. If parental rights are fundamental, therefore, the "strict scrutiny" and "compelling interest" tests ought always to follow.

Section 7 specifically puts certain areas outside the scope of the bill, either because they properly are subject to state law or because they are not parental rights. These areas include the abuse or neglect of a child; domestic relations conflicts between parents, such as divorce and child custody battles; and adoption proceedings.

Deference to States' Rights

In the United States, family law is made at the state level. The Parental Rights and Responsibilities Act therefore would uphold the role of the states in their relationship to families and parents by depriving no state of any power it retains under the federal Constitution. By clarifying the rights of parents, it would be a

5 The exceptions spelled out Section 2, part 3, subparagraph (b) of the bill are medical service or treatment that is necessary to prevent an imminent risk of serious harm or remedy serious harm to the child, or medically indicated service or treatment for a disabled infant with a life-threatening condition.

defense against intrusion into parental authority either by government (including legislatures, courts, and agency bureaucracies) or by professions acting as agents of government.

As noted, the bill delineates the areas of state law within which it does not apply. Because family law, as opposed to individual rights, is the domain of the states, the bill does not change definitions in state family law. "The term 'child' has the meaning provided by state domestic relations statute," for instance. "The term 'parent' has the meaning provided by state domestic relations statute.... The term 'direct upbringing of a child' shall not include abandonment, abuse and neglect as the terms have been defined in state statute."[6] Furthermore, "Nothing in this Act shall be construed to limit the ability of state or local governments from granting greater protection to parental rights."[7]

THE NATURE OF PARENTAL RIGHTS

Under American constitutional law, "fundamental rights" are inherent in the person, and government at any level can abridge them only in cases of compelling state interest. The Constitution spells out or provides the basis for a number of such fundamental rights: free speech, freedom of religious practice, freedom from racial discrimination, freedom of the press. Many of these rights are spelled out in detail in statutes enacted by Congress pursuant to the Constitution.

"Legal rights," by contrast, are not inherent in the person. They are granted by government and therefore can be altered or withdrawn by it. Social Security, Medicare, and welfare entitlements all are examples of legal rights.

Parental Rights As Fundamental Rights

It is the settled view of the U.S. Supreme Court that parental rights are fundamental rights. In 1943, for example, the Court said:

> Constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the upbringing of their children is basic in the structure of our society. It is cardinal with us that the custody, care, and nurture of the child reside first in the parents, whose primary functions and freedom include preparations for obligations the state can neither supply nor hinder.[8]

The Supreme Court repeatedly has affirmed the fundamental nature of these rights, including the right to marry; to establish a home and bring up children;[9] to raise these children in their own fashion[10] (whether the children like the way

6 Parental Rights and Responsibilities Act, Sections 4 (4) A and B.
7 *Ibid*., Section 9.
8 *Prince v. Massachusetts*, 321 U.S. 158, 166 (1943).
9 *Meyer v. State of Nebraska*, 262 U.S. 390, 399 (1923).
10 *Prince v. Massachusetts.*

they do it or not);[11] to direct the education of their children and to pass on to them their own principles, faith, and values;[12] to direct their children's religious and moral education;[13] to make medical decisions for their minor children;[14] and to inflict corporal punishment when it is deemed necessary.[15] In cases as far apart in time as 1925 and 1979, the Court has declared that:

> 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."
>
> 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 recognized that natural bonds of affection lead parents to act in the best interest of their children.
>
> That some parents "may at times be working against the interest of their child"... creates a bias for caution, but 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.[16]
>
> [P]arents and guardians, as part of their liberty, might direct the education of children by selecting reputable teachers and places.
>
> 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 a 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.[17]

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11 *Parham v. J.R. a Minor*, 422 U.S. 584, 602 (1979).
12 *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925).
13 *Doe v. Irwin*, 141 F. Supp. 1247 (W.D. Mich. 1977), Federal Dist. Ct. of Michigan.
14 *Parham v. J.R.*
15 *People v. Greene*, 155 Mich. 524, 532, 119 N.W. 1087, 1090 (1909).
16 *Parham v. J.R.*

> Simply because the decision of the parent is not agreeable to the child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state.... Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments.[18]

In 1972, the Supreme Court summed up its intent in these earlier rulings: "The primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."[19]

While parental rights are fundamental, however, they are not absolute. The Supreme Court has ruled repeatedly that states have the right to regulate the activities of family life for reasons of compelling state interest. Nonetheless, this governmental right is not unlimited. As the Court found in 1972, for example, "The state's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests."[20]

Complementary Roles of Congress and the Supreme Court

Fundamental rights under the U.S. Constitution are the domain of the federal government because they regulate the relationship between government—all government—and the citizen. Clarity on these rights results from their being spelled out in the Constitution, in Supreme Court rulings, in legislation passed by Congress, or in some combination of the work of these two branches of the federal government.

Redundancy of affirmation of fundamental rights is frequent between Congress and the Supreme Court. This has been the case in the last few decades, for instance, with the right to freedom from racial discrimination. There is a rich history of such clarification underlying the fundamental rights of U.S. citizens. At times, the Supreme Court will correct Congress, as it did in *Brown v. Board of Education* in 1954, clarifying the right to segregation-free education.[21] At other times, Congress will correct the Supreme Court, as it did with the Religious Freedom Restoration Act of 1993, clarifying the right to freedom of religious practice.

17 *Pierce v. Society of Sisters.*
18 *Parham v. J.R.*
19 *Wisconsin v. Yoder.*
20 *Ibid.*
21 *Brown v. Board of Education of Topeka et al.*, 349 U.S. 294, 75 S. Ct. 753 L.Ed. 1083 (1954).

Congress's responsibility to enforce the protection of fundamental rights is described in the Fourteenth Amendment of the U.S. Constitution:

> 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.... [22]
>
> The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.[23]

In the event of confusion over the nature of fundamental rights, it is the federal government's responsibility to clarify or protect them. Congress did this with the Civil Rights Act of 1964, and the Supreme Court did so in *Brown v Board of Education* in 1954. Both Congress and the Court also may act if one state upholds fundamental rights and another denies them (as happened in certain states which persisted in countenancing racial discrimination). With the Parental Rights and Responsibility Act of 1995, Congress would assume this task with respect to parents' rights.

THE NEED TO RESTORE THE PRIMACY OF THE FAMILY

The family is the indispensable institution of civil society; for it is the family that is primarily competent and responsible for developing the good character of children. When families are strong and function well, their children grow into adults who are truthful and responsible, and who practice private virtue and public citizenship. When families falter, their children grow into adults who can be vicious and irresponsible. Thus, because a free and civil society depends so utterly on the work of families, individuals take on extraordinary responsibilities when they become parents. As the bipartisan National Commission on Children observed in its final report in 1991:

> The family is and should remain society's primary institution for bringing children into the world and for supporting their growth and development throughout childhood.... Parents are the world's greatest experts on their own children. They are their children's first and most important caregivers, teachers, and providers. Parents are irreplaceable, and they should be respected and applauded by all parts of society for the work they do.[24]

22 Constitution of the United States, Amendment 14, Section 1.
23 Constitution of the United States, Amendment 14, Section 5.
24 National Commission on Children, Final Report, *Beyond Rhetoric: A New Agenda for Children and Families*, 1991.

As Urie Bronfenbrenner, professor of child psychology at Cornell University, has explained:

> In order to develop—intellectually, emotionally, socially, and morally—a child requires participation in progressively more complex reciprocal activity, on a regular basis over an extended period in the child's life, with one or more persons with whom the child develops a strong, mutual, irrational emotional attachment and who is committed to the child's well-being and development, preferably for life.[25]

It is parents—not teachers, child care providers, social workers, or a "village"—that are most likely to give this all-encompassing commitment to the welfare of the child. This is not to denigrate the important work done by teachers, child care providers, and social workers, but simply to acknowledge an important truth: Only parents can reasonably be expected to put the interests of their children above their own. Thus, government must assume that parents, not bureaucrats or politicians, are in the best position to make decisions about their children because only parents can be expected to have this overriding commitment to their children's welfare.

This does not mean that all parents will put their children's interests above their own at all times. Indeed, some parents—especially those who are under the influence of drugs like crack cocaine or alcohol—even abuse their children physically or sexually. In such cases, the state can act to curtail the right of an individual parent or couple to care for a child. But the state can never lawfully curtail the fundamental rights of parents as a class; its duty is to uphold these rights. In all areas of public policy, government should assume that because parents are best able to make decisions about the welfare of their children, they must retain the maximum decision-making authority when it comes to raising those children. This is the underlying assumption of the Parents' Rights and Responsibilities Act of 1995.

WHY PARENTS' RIGHTS NEED TO BE CODIFIED

There are four reasons for codifying parental rights in law, even though the Supreme Court has ruled clearly on the issue in the past. First, certain legislatures have transgressed against parents. Second, there is evidence that these rights have been violated in the courts at lower federal and state levels. Third, state government agency actions sometimes violate these rights. Fourth, an increasing hostility to the fundamental rights of parents is evident in the activities of certain prominent members of the very "humane professions" (education, law, medicine, social work, and psychology) that are supposed to aid parents in the work of raising children.

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25 Urie Bronfenbrenner, "What Do Families Do?," *Family Affairs*, Institute for American Values, Winter/Spring 1991, p. 2. Or, as he stated, somewhat more colloquially, what is really needed to ensure a happy, healthy, and secure childhood is "someone who is crazy about that kid."

❶ **Legislative Threats.** State legislators have encroached on parents' rights. Though the courts or the people eventually have repelled these attacks, the very fact that such rights are subject to assault illustrates the danger. A few examples:

✗ **Oregon.** In the 1920s, when the state of Oregon passed a law banning private schools, the U.S. Supreme Court affirmed the fundamental right of parents to choose the type of education they desire for their children:

> 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 a 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.[26]

Nevertheless, a whole state government, including both chambers of the legislature, the governor, and the state judiciary, had attempted to violate the fundamental rights of parents as a group.

✗ **Utah.** In 1980, the Utah legislature, with the governor concurring, passed an Amendment to the Children's Rights Act which changed the test by which parents could be denied the right to custody of their child. The old criterion of "unfit or incompetent" was supplanted by a new one: "the best interest of the child." In 1982, however, the Utah Supreme Court rejected the new criterion because it would have allowed the state rather than the parent to determine what constitutes a child's "best interest":

> [T]he 1980 amendment did not merely *refine or elaborate* the requirement that the parent be found "unfit or incompetent" in order to terminate his or her parental rights. Instead it *replaced* that subsection, and in doing so deleted a statutory protection for the parental rights of fit parents....
>
> No court is warranted in applying the "polar star [guiding] principle" of the welfare of the infant until the natural parents' rights have been lawfully severed and terminated....
>
> We are not aware that this Court has ever espoused the view, and it is not our view, that the termination of parental rights can be decreed without giving serious consideration to the prior and fundamental right of a parent to rear his child; and concomitantly, of the right of the child to be reared by his natural parent.[27]

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26 *Pierce v. Society of Sisters.*

✗ **The U.S. Congress.** In February 1994, Representative George Miller (D-CA), long-standing chairman of the House Select Committee on Children, Youth, and Families, introduced an amendment to the Elementary and Secondary Education Act (H.R. 6) that would have required a home schooling parent to be teacher-certified in any subject before being able to teach that subject to his or her child. This measure would have deprived parents of the hard-won recognition of their freedom to educate their children at home. Once the legislative threat became known, constituent phone calls to Congress reached historic levels,[28] illustrating the growing level of parental sensitivity to such encroachments. Thanks in large part to this public outrage, the Miller amendment failed by a vote of 382 to 53.

❷ **Judicial Threats.** Parental rights also have been threatened by the courts.

✗ **Massachusetts.** In 1995, the Supreme Court of Massachusetts affirmed the decision of the School Board of Falmouth to deny parents the ability to "opt out" of sex education classes and condom distribution for their children. The court further claimed that the freedom of parents was not violated because the children were not forced to take the condoms, the parents were free to tell their children to avoid the classes in question, and the children were free to avoid the classes if they chose.[29]

The parents contended that the most critical and powerful element was missing from this formulation: the requirement that schools honor the parents' right to "opt out" even when their children did not want to do so. Thus, the ruling struck directly at parental authority. The court contended that the parents failed to demonstrate how their interests as parents were burdened by the school's condom or sex education programs. In other words, the state does not have to demonstrate "compelling state interest" when it decides to override the fundamental rights of parents; parents have to demonstrate unconstitutional interference by the state. The state is assumed to possess superior authority to direct the education and health of the child unless the parents can demonstrate otherwise.

This ruling directly contradicts many other state court rulings on the same issue.[30] Massachusetts parents thus do not have parental rights that are recognized in other states.

In another notable case, the Massachusetts Supreme Court moved against parents who sought advance notification from the school so that they could exercise the "opt-out" provision.[31] They contended that there was not much point in being able to "opt out" if they learned of the need only after the damage had taken place—in this case, an AIDS awareness

27 *In re J.P.*, Supreme Court of Utah, June 9, 1982; emphasis in original.
28 Chris Klicka, *The Right Choice: Home Schooling* (Greshen, Ore.: Noble Publishing, 1995), p. 404.
29 *Elizabeth G. Curtis and Others v. School Committee of Falmouth*, Sup. Ct. of Massachusetts, July 17, 1995.
30 See New York State appellate court ruling in *Alfonso v. Fernandez*, 195 A.D. 2d 46, 606 N.Y.S. 2d 259 (1993).
31 *Brown v. Hot, Sexy and Safer Inc.*, 68 F. 3d 525 (1st Cir. 1995).

program conducted for the children by an outside consulting firm, "Hot, Sexy and Safer Productions Inc.," which included demonstrating the use of condoms and discussing many sexual acts traditionally regarded by parents as perverse and immoral.

Both the federal district court and the federal circuit court found the Massachusetts parents' case to be without standing, and the U.S. Supreme Court refused to hear the case. As a result, Massachusetts parents have no recourse from rulings of the Massachusetts Supreme Court. Both state and federal courts, in effect, have denied the existence of the parents' fundamental rights, and there is no legal procedure by which these parents can protect themselves from this violation.

Both of these rulings illustrate the need for Congress to clarify a right deemed fundamental in many states but not in all.

✗ **Michigan.** In 1993, the Michigan Supreme Court issued two rulings on home schooling which illustrate that court's confusion with regard to parents' rights in education. According to the first, a set of parents has the right to home school their children because of their religious beliefs.[32] But according to the second, another set of parents does not have the same freedom because, not claiming religious liberty principles, their rights to educate their children are controlled by the state of Michigan.

In denying the "secular parents" their right to direct their children's education, the Michigan Supreme Court held "that a parent's Fourteenth Amendment right to direct a child's education is not one of those rights described by the United States Supreme Court as fundamental, and, thus, the strict scrutiny test is unwarranted."[33] Thus, "religious" Michigan parents have a freedom to direct the education of their children that "secular" Michigan parents do not have. Michigan appears to have established a religious test for home schooling.

✗ **Washington.**[34] In 1980, the Supreme Court of the State of Washington ruled that it was not a violation of parents' rights to remove an eighth grade girl from her family. The parents had grounded her because she wanted to smoke marijuana and sleep with her boyfriend. She did not like her parents' rules, even though they were reasonably enforced, and asked the local child welfare agency to place her elsewhere.[35] Rather than back the parents as the best way to correct the child's behavior, this agency honored the child's request that she be placed in someone else's home. One of the dissenting judges in the case described the situation:

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32 *People v. Mark and Chris DeJonge*, Supreme Court of Michigan, 501 N.W. 2d 127 (Mich. 1993).

33 *People v. John and Sandra Bennett*, Supreme Court of Michigan, 501 N.W. 2d 106 (Mich. 1993).

34 This case, though not within the purview of the Parental Rights and Responsibilities Act, illustrates the thinking in some courts that easily undermines the parent's fundamental rights.

35 *In re the Welfare of Sheila Marie Sumey*, 94 Wash. 2d 757, 621 P. 2d 108.

> They [the parents] asked their 15-year-old daughter not to use drugs, or associate with those who had furnished drugs, that she not use alcohol, that she not be sexually active, and that she be in at a reasonable hour. Because of the daughter's unwillingness to follow these obviously reasonable standards, these parents are summarily deprived of custody and the best opportunity to resolve these problems within the family.[36]

At no time did the state's lawyers contend that the parents' rules and their enforcement of them were unreasonable. Nor did they argue that the parents abused or neglected the child. The child simply wanted to avoid these restrictions, and the local child welfare agency and the courts backed her rather than her parents. Subsequently, the child's teenage and early adult years were extraordinarily troubled. Now an adult and mother herself, she sees the wisdom of her parents' approach and says that she wishes the local and state authorities had backed them instead of her.[37]

Though the majority of the Washington Supreme Court denied the parents' rights (and in doing so differed clearly from both the Utah Supreme Court and the West Virginia Supreme Court), the three dissenting judges wrote:

> There is no claim or proof [by the state] of unfitness or neglect by the parents. There was no claim of proof of any imminent threat of harm or danger to this 15-year-old.... Petitioning juvenile was asked at the court hearing the following: Q. "Could you please tell us why you believe there is a conflict in that home?" A. "I just feel that there's a communication gap there."... That is the sum and substance of the petitioner's testimony upon which she was taken from her parents' custody over their objections.... The court's justification for this extensive deprivation of fundamental parental rights consisted merely of conclusory findings of fact which met the unconstitutionally vague and inadequate standards of the statute.[38]

The Washington court's ruling was possible because of the lack of clear procedural legal guidelines for the denial of parental rights. This would not have happened if the court had been required to use the "compelling

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36 *In re J.P.*

37 Testimony before Subcommittee on Administrative Oversight and the Courts, Committee on the Judiciary, U.S. Senate, December 5, 1995.

38 Judge Brachtenbach, dissenting, *In re the Welfare of Sheila Marie Sumey, A Minor Child*, Supreme Court of Washington, En Banc, December 4, 1980.

interest of the state" standard of review required by the Parental Rights and Responsibilities Act now before Congress.

- **Threats from Boards and Bureaucrats.** Perhaps more than anything else, what has made parents increasingly aware of their fundamental rights is the frequent violation of these rights by state and local government officials.

  - **New York City.** The violation of parental rights can lead to confrontation. In 1992, one such dramatic and widely reported confrontation between parents and education authorities occurred over the teaching of "gay sex" in New York City's proposed "Rainbow Curriculum." Despite hearings attended by hundreds of parents (and the declared opposition of tens of thousands more), the Board of Education pressed forward with its plans. While the voters ousted the offending board members shortly thereafter, the incident highlighted the depth of opposition to the fundamental right of parents to direct the education of their children, even in the area of intimate family-generating behavior.

  - **Virginia.** Sometimes the irony of this opposition escapes bureaucrats. In 1995, during a debate in Fairfax, Virginia, at a local school board meeting convened to vote on sex education, there was standing room only for parents, most of whom wanted something different from what the board intended to give them. School Superintendent Robert Spillane, annoyed with this supposed parental interference, complained: "You can see why parents should not be involved in family life education."[39]

  - **Maryland.** In 1996, a similar hearing in Montgomery County, Maryland, on the issue of "gay sex" in the public school curriculum evoked similar outrage from parents at open school board meetings. Again, the school board decided to disregard the parents' concern and go forward with the curriculum change. Maryland parents and students are not permitted to "opt out" of sexual education courses.

  - **Texas.** Many officials simply discount parental rights. One recent case involved a disagreement between parents and the Texas Board of Education on parents' access to standardized state test materials. When the lower court ruled in favor of the parents, the Texas Attorney General appealed the ruling. Though many might side with the school board on the particulars of the case, it is disturbing that the State Attorney General based his appeal on a rejection of the fundamental right of parents to direct the education and upbringing of their children.[40]

  - **North Carolina.** In 1995, the county of Durham, North Carolina, drew up its own guidelines for judging the presence of child abuse. Though most of these "Minimum Standards of Care" make sense as indicators of potential child abuse, a number of them indicate a dangerous overreach by bu-

39 Greg D. Erken, "Symposium: Does the U.S. need a parental-rights amendment?" *Insight*, May 15, 1995, p. 18.
40 *Texas Education Agency v. Maxwell*, C-14-95-474-CV, Court of Appeals, 14th Dist. TX, June 19, 1995.

reaucrats, who can claim authority to come into any home to check the suitability of parents. For instance, a parent may be investigated for "child abuse" if he confines a child to his room or violates any of a number of detailed government standards governing the supervision, nutrition, clothing, cleanliness, and even the bedtime of children. According to the Durham County Department of Social Services:

> The document reflects, to the extent possible under state law, the standards of care which the Durham community deems to be minimally acceptable for its children.... The period of supervision (baby-sitting by minors) must not extend beyond a reasonable bedtime: 9:00 p.m. for 12-14 year olds and midnight for 15-17 year olds.... Parent or caretaker insures proper hygiene by providing care, instruction, or necessary items for cleanliness (water, soap, toothbrush etc.).[41]

These guidelines, undoubtedly drafted with the best of liberal intentions by the Department of Social Services, nonetheless reflect a desire to police parents. They are an excellent illustration of a trend described by Dr. Ed Zigler, Professor of Developmental Psychology at Yale University: the growing tendency to classify parental behaviors as abusive. "It's a terrible problem," says Professor Zigler. "I see an expansion of parental behaviors that are classified as abuse.... The whole area has become too subjective."[42]

❹ **Threats from Professionals.** Within the major professions of education, medicine, psychology, social work, and school counseling, there is increasing evidence that too many people and associations think they are more qualified than parents to judge what is good for particular children. There also is increasing evidence that they assume their professional judgment is superior and therefore can be exercised independently of parental judgment.

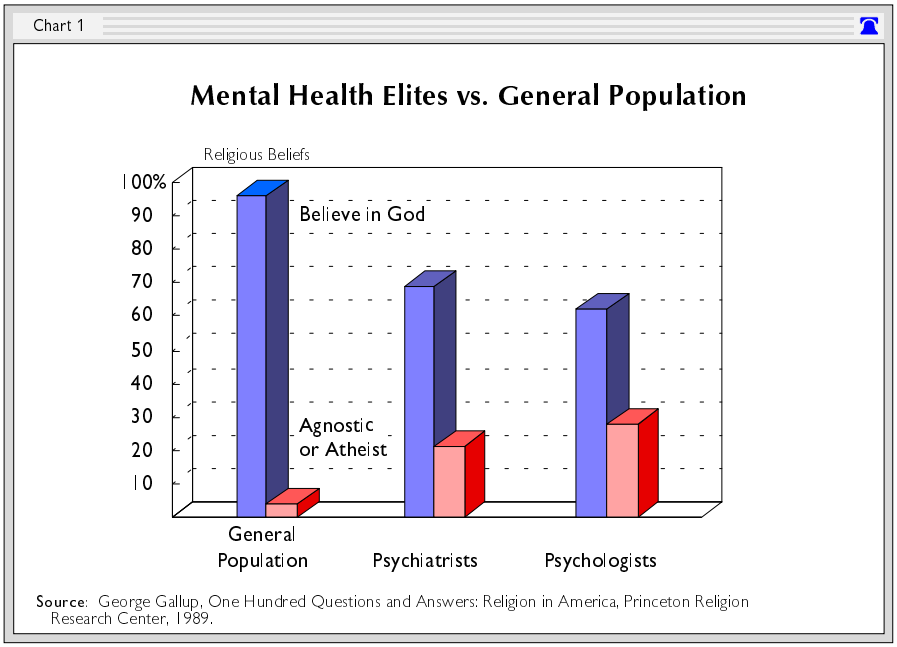
The conception of the relationship between state and family held by many professionals is wholly unlike that held by most parents. The big contest is over the sexual morality of children. The work of Stanley Rothman and Richard Lerner, professors of sociology at Smith College and experts on the sociology of America's elites, points to a vast difference on matters related to sexual morality. Aside from wide discrepancies over the morality of abortion, Rothman and Lerner find "very large differences in the two groups' views regarding homosexuality, extra-marital and premarital sex, divorce, the ideal number of children in a family, voluntary suicide, and euthanasia."[43] Differences between the therapeutic professions and the general population like-

41 Durham County Department of Social Services, "Minimum Standards of Care Related to NC General Statutes Regarding Child Abuse, Neglect and Dependency," 1995.

42 Shaun Assael, "Child Abuse: Guilty until proven innocent?" *Parents*, July 1995.

43 *Ibid.*

wise are often stark. For instance, 72 percent of people generally describe religion as the most important influence in their lives,[44] while religion is much less important in the lives of the "mental health" elites.



In effect, the divisive politics of "family values" is basically a contest between most Americans and a relatively small elite whose members, because their ideology is estranged from the views of Americans generally, do not want parents to have the legal power to resist their attempts to impose on America's children a set of beliefs sharply different from those of their parents.

✗ **Medicine.** In East Stroudsburg, Pennsylvania, about 60 girls recently underwent a physical examination, including examination of the genitalia by a school nurse and doctor, without the permission of many of their parents. All the girls were 11 and 12 years old. Several objected, some started crying, and others asked to inform their parents. One of the girls said, "We tried to get out the windows but they pulled us back."[45] Parents, understandably, were outraged.

Instead of operating according to a straightforward policy of obtaining written parental consent, the school simply assumed the right to conduct invasive medical examinations as long as there was nothing in writing to the contrary. And instead of seeing themselves as assisting parents in the work of raising children, school officials saw themselves as the locus of primary responsibility for the medical examination of other people's children. Rather than live by the Supreme Court's ruling that parents have the fundamental right to direct the upbringing of their children, these officials apparently assumed the right was theirs. Pennsylvania law protects the school in its conduct of these examinations. In New York, however, a state health education teacher, contrasting the East Stroudsburg incident

44 Princeton Religious Research Center, *Religion in America 1993-1994* (Princeton, N.J.: Bergin and Jensen, 1994).
45 "Parents Angry Over Physicals," *The Morning Call*, March 26, 1996, p. B1.

with practices in her school, said, "No child is ever touched without a permission slip. How dare they do this."[46]

- ✗ **School Counseling.** Under the code of conduct for professional psychologists, those in private practice may not offer mental health services without the prior, informed consent of the child's parents.[47] The law in this instance recognizes that no matter how much training a psychologist may have, he cannot substitute his judgment, arbitrarily and presumptively, for that of the child's parents. But school counselors have a very different situation: "The authors are not aware of any state or federal statutes requiring school counselors to obtain parent permission to counsel minors of any age.... "[48]

- ✗ **Librarians.** By the nature of its work, the American Library Association is in the forefront in educating children. But the Association apparently sees the need to protect children from parents as a group, and stands firmly against parents' rights to direct the education of their children. Consider the following extract from the "ALA's Library Bill of Rights" discussing R-rated and X-rated videos:

> Policies which set minimum age limits for access to videotapes... with or without parental permission, abridge library use for minors. MPAA [Motion Picture Association of America] and other rating services are private advisory codes and have no legal standings.... [T]o attempt to enforce such ratings through circulation policies or other procedures constitutes labeling, "an attempt to prejudice attitudes" about the material, and is unacceptable.[49]

In some states, officials also have moved to undermine the right of parents to monitor and control their children's reading material. If a child has a library card, the state forbids library staff to answer parents' questions on what books their children have taken out of the library, no matter what the child's age. For example, Maryland state law declares that "a custodian shall prohibit inspection, use, or disclosure of a circulation record of a public library or other item, collection, or grouping of information about an individual...."[50] This is reinforced elsewhere in the Maryland code: "a free association, school, college or university library in this State shall prohibit inspection, use or disclosure of any circulation record or other item, collection or grouping of information about an individual...."[51] The code

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46 *Ibid.*

47 American Psychological Association, Code #4.02, "Ethical Principles of Psychologists and Code of Conduct," December 1992.

48 Mark M. Salo and Stephen G. Shumate, "Counseling Minor Clients," Legal ACA Series, American Counseling Association, 1993.

49 American Library Association, "Library Bill of Rights," adopted June 18, 1948.

50 *Maryland Register*, SG 10-616.

then lists the exceptions, none of which involves any recognition of the parents' right to direct the education of their minor children.

Safeguarding the confidentiality of library patrons is important to anyone concerned with the rights of individuals. But it is significant that in the development of reading by minors—an area in which parents are the key players, recognized by the Supreme Court as the agents with the fundamental right to direct the education of their children—libraries make no accommodation for parents and jealously guard against any parental intrusion. This has led to a bizarre situation in which parents, still financially responsible for books their children lose, are frustrated when they try to learn the names of these books so that they can search for them at home. Maryland public librarians may not tell them. But much more is at stake than this ludicrous inconvenience.

✗ **The Education Establishment.** The gradual erosion of parents' standing in the eyes of the nation's powerful educational establishment is already far advanced, notwithstanding Supreme Court rulings to the contrary. Sammy Quintana, President of the National School Boards Association (NSBA), for example, denies the fundamental right of parents to direct the education of their children:

> None would argue that active parental involvement in the care, upbringing, and education of our children is the cornerstone of a strong, healthy society.... This legislation could place federal judges in the position of requiring the school district to implement policy in conflict with the state's requirements. This is in direct disregard of the constitutionally recognized education function of the state.[52]

In testimony on the bill before the House Committee on the Judiciary, Vicki Rafel, representing the National Parent Teacher Association, stated the NPTA's views on the relationship between parents, teachers, and other professions with similar bluntness:

> These institutions are not just part of a local community. They are also part of a total system of services and accountability that must be intertwined to provide an optimum environment for all children. Decisions affecting children should be made in a collaborative effort involving all the stakeholders including parents, educators, health care givers, and government bodies.[53]

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51 *Maryland Register*, SG 32-415.

52 Testimony on behalf of the National School Boards Association before Subcommittee on Administrative Oversight and the Courts, Committee on the Judiciary, U.S. Senate, December 5, 1995, p. 1.

53 *Ibid.*, p. 2.

Rafel's testimony is striking because of what it does not affirm:

> Since parents are their children's first teacher, we believe firmly that parents must be involved in every facet of their children's education. However, both the state and federal governments have responsibilities for the education of children. Parents and schools, working together as partners, make the best decision for children in the field of education.... From constitutional and historical perspectives, the states are primarily responsible for education. Under state laws, local school boards have a central role in providing education services with support from other governments.[54]
>
> We do not believe that any one single entity, operating outside of the collaborative framework [federal government, states, local school boards, and parents] can adequately address the educational needs of children....[55]

In other words, the National School Boards Association believes parents may be "involved" but that government officials enjoy the fundamental rights in education, and the National Parent Teacher Association denies the primary and fundamental right of parents in directing the education of their own children—part of the same right the Supreme Court has described as "beyond debate as an enduring American tradition."

INTERNATIONAL BUREAUCRATIC INTRUSIVENESS

On February 23, 1995, President Clinton signed the United Nations Convention on the Rights of the Child, which now awaits the advice and consent of the United States Senate. This Convention states that providing for the well-being of children is primarily the right of government. Article 3 establishes legal opposition between parent and child: "State Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

With respect to the rights and duties of parents, Article 5 declares that "State Parties shall respect the responsibilities, rights and duties of parents... to provide... appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention." In other words, parents have the right to guide their children's exercise of rights enumerated by the Convention. According to Article 3, for example, "The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart informa-

54 *Ibid.*, p. 4.
55 *Ibid.*

tion and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice." In addition, "States recognize the rights of the child to freedom of association and to freedom of peaceful assembly."

The right of a minor to free association makes sense when it has parental sanction. But the universal right to free association outside of parental sanction leaves minor children open to exploitation by others, including those who challenge the right of parents to direct the upbringing of their children. Nowhere in the Convention is the right of the parent to direct such activity acknowledged. To the contrary, Article 15 states: "No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." Thus, under the U.N. Convention, only the state may restrict the right of assembly of minors, as a group or as individuals.

The idea of a child's right to privacy also has merit, especially when threats to this privacy come from outside the home. But given the clear responsibility of parents to direct their children's upbringing, the right to privacy articulated in the Convention is a threat to parental authority. While the overall themes of the Convention and many of its specific articles may be laudable, they are vitiated by the absence of any clear articulation of the rights of parents to direct the upbringing of their children. Worse, the Convention's language gives children a right superior to the rights of their parents: "States Parties [governments and government agencies] shall respect the responsibilities, rights and duties of parents... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention."

With its detailed elaboration of the rights of the child, coupled with the absence of any legal protection for the rights of parents against intrusive action by the state in the upbringing of children, the U.N. Convention is incompatible with traditional Western conceptions of the liberty of parents and with the U.S. Supreme Court's settled view of parental rights as "beyond debate." Worse, the state is the only other entity whose rights are made clearly superior to the domestic life of the family as an institution.

Parents should be very concerned over the dangerously intrusive impact of the U.N. Convention on the Rights of the Child. The reasons for this concern are indicated by a 1995 evaluation report from the United Nations to the government of Great Britain, a signatory to the Convention:

> In relation to the implementation of article 12, the Committee is concerned that insufficient attention has been given to the right to the child to express his/her opinion, including in cases where parents in England and Wales have the possibility of withdrawing their children from parts of the sex education programmes in schools. In this as in other decisions, including exclusion from school, the child is not systematically invited to

express his/her opinion and those opinions may not be given due weight, as required under article 12 of the Convention.[56]

While the Parental Rights and Responsibilities Act does not specifically address the U.N. Convention on the Rights of the Child, and Senator Jesse Helms (R-NC), Chairman of the Senate Foreign Relations Committee, so far has blocked consideration by the Senate, this treaty is nonetheless a significant illustration of the thinking on the family among elites in government and the humane professions.

QUESTIONS RAISED BY THE BILL

Q: **Would the bill establish a new right?**

A: No. The right of parents to raise their children is not new. It is a basic liberty issue for all parents everywhere, in all times, and under all political conditions and regimes. The Supreme Court affirmed this ancient tradition in the jurisprudence of Western civilization over 70 years ago.

Q: **Would the bill grant ambiguous rights to parents?**

A: No. It denies ambiguous rights to government and to others acting on behalf of government. By applying the "compelling interest" clause to parents' rights, as is done with all other fundamental rights recognized under the Constitution, the bill curtails the ability of government officials to be ambiguous or arbitrary in their dealings with parents. When "overriding" the fundamental rights of parents (as it can, for parents' rights are not absolute), the state must do so in a very narrowly defined and defensible fashion. The same principle holds for all other groups and professions in their relations with parents and children.

Q: **Would the bill violate the "rights of the child?"**

A: No. The rights of children and parents are complementary. Children have the right to be formed as competent human beings by those who brought them into the world, and parents have the right to develop these capacities in their children. Parents give their children life and continue to influence the development of their children's individuality through their actions as parents. In developing this individuality, which includes intellectual and moral capacities, parents are fulfilling natural rights and responsibilities that not only are an essential component of the Western concept of the individual liberty of the parent, but also are recognized as fundamental under the federal Constitution. Parental exercise of these rights does not violate the child's rights; it fulfills them.

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56 Committee on the Rights of the Child, Eighth Session, *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*, CRC/C/15/Add.34, Convention on the Rights of the Child, United Nations, February 15, 1995.

Q: Would the bill eliminate the "best interest of the child" criterion in public policy?

A: No. It would make the parent the arbiter of the child's best interest. This also is the position of the United States Supreme Court. The community can affect parents' conception of what is in their children's best interest, but children are the progeny of their parents, brought into existence by them, and naturally subject to the parent's conception of what is in their best interest.

Q: Would the bill breach the confidentiality of professional counseling relationship in school settings?

A: No. There is a difference between establishing a professional-minor relationship and preserving the confidentiality of that relationship once established. The bill would do nothing to alter the confidentiality of professional relationships. Confidentiality is a *sine qua non* of a therapeutic relationship and is widely understood as such. The bill would clarify the process through which such a confidential relationship is established: No professional could enter into such a relationship with a minor without the express permission of the parent, for it is the parent's right, not the professional's, to decide what is in the best interest of the child. The bill would make no difference to many of the therapeutic professions, including psychology and psychiatry, for this already is their established ethic.

Other professions, however, are less explicit in their ethics or professional guidelines. According to the American Counseling Association's professional code of ethics, "When counseling minors or persons unable to give voluntary informed consent, counselors act in the client's best interest."[57] By contrast, consider the guideline of the American Psychological Association: "When persons are legally incapable of giving informed consent, psychologists obtain informed permission from a legally authorized person, if such a substitute consent is permitted by law."[58] There is a very big difference between the two: Psychologists defer to parents as the arbiters of their children's best interests in establishing the relationship; school counselors try to claim that right for themselves.

Parents send their children to school to be taught, not to be counseled one-on-one in private professional settings guarded by the rules of confidentiality, unless these relationships are expressly established in cooperation with the parent. Any relationship with a minor that is guarded by confidentiality should be contingent upon the prior written permission of the parent. The very presence of a confidentiality requirement is a signal that there is a need for the express permission of the parent. Under the laws of certain states, older children who also are unemancipated minors may enter into such confidential relationships without their parents' permission. But state laws often

57 American Counseling Association, Code A.3(c), "Code of Ethics and Standards of Practice."
58 American Psychological Association, "Ethical Principles of Psychologists and Code of Conduct."

prescribe the ages and describe the situations in which these minors may do so.

Q: Would the bill violate the principle of federalism?

A: No. The Fourteenth Amendment grants Congress explicit authority to legislate to protect the fundamental rights of citizens. Congress and the Supreme Court are the two venues in which this legal clarification takes place. It cannot be done at the state or local level.

Q: Does the bill not threaten and weaken parental rights by involving Congress and the federal courts in family issues?

A: No. The liberty of parents increasingly is being violated by government agencies and professions acting under government agency authority and protection. Congress and the Supreme Court are the only two institutions which can articulate parental rights in ways that bind all levels of government. Moreover, Congress has the constitutional ability to correct the Supreme Court. Though the Court has articulated parents' fundamental rights, these rights still need to be operationalized by the clear articulation of "compelling interests, narrowly drawn" when the rights of parents are to be set aside. This is not currently the criterion, and its absence is the main reason for the erosion of parents' liberty in the moral formation of their children.

Q: Would this legislation impose an unfunded mandate on the states?

A: No. Guaranteeing the fundamental rights of citizens is not an unfunded mandate. It is a fundamental duty of each state's judicial system. Section 422 of the Unfunded Mandates Reform Act of 1995 states clearly that "this part shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress that (1) enforces constitutional rights of individuals...." Furthermore, the state and its bureaucracies, as the main violators of these rights, can avoid such costs simply by not infringing on the fundamental rights of parents.

Q: Would codifying the fundamental rights of parents allow parents to sue in both federal and state court systems?

A: Yes. As a fundamental right, it can be violated at any level, including the federal. Also, violations at the state court level (and there are many instances of these) are properly appealable at the federal court level, as are violations of all other fundamental rights under the federal Constitution.

Q: Would the codification of parents' fundamental rights be a bonanza for trial lawyers?

A: No. By clearly defining these fundamental rights and establishing a compelling interest test, the bill would reduce the number of cases moving to litigation. It is the absence of this clarity that contributes to the current flood of litigation in local, state, and federal courts.

Q: Would the cost of enforcement be prohibitive?

A: No. The National Education Association, which openly defends violations of the fundamental rights of parents, says the Parental Rights and Responsibilities Act would cost $3.3 billion per year. Even if the NEA's exaggerated estimates were correct, however, such a demand for fiscal conservatism is odd coming from the NEA. According to one recent estimate, the NEA's own legislative agenda would cost the American taxpayer $700 billion.[59]

Q: Could parents use codification to challenge welfare reform?

A: No. Welfare entitlements are legislative grants, not fundamental individual rights. The state may attach requirements to such grants, but only insofar as they do not violate fundamental rights.

Q: Would the bill permit parents to use child labor to supplement family income?

A: No. The U.S. Supreme Court has established the right of the state to regulate parents in the matter of child labor, an evil against the child. This bill would do nothing to contravene this state right; nor would it allow parents to deprive their children of the minimum of education required by the state. According to the Supreme Court, "It is cardinal... that the custody, care and nurture of the child reside first with the parents.... [T]he family itself is not beyond regulation in the public interest.... [L]egislation appropriately designed to reach such evils [as child labor] is within the state's police power."[60]

Q: Would defining parents' fundamental rights hinder states in their task of protecting children from child abuse?

A: No. No parent has a right to abuse a child. When such abuse happens, the state, acting on the child's behalf, has a duty to protect the child. The truth is that this bill would reinforce the right of states to protect children from abuse. A much greater threat to the state's ability to protect abused children is the "family preservation philosophy" in child care social work, which leads to repeated efforts to reunite the child with an abusive family in the hopes that eventually the parents will improve. By failing to heed the evidence of abuse, this approach frequently places the child in grave danger. In 1992, in New York City, 21 children were killed by a parent or a mother's boyfriend after the Child Welfare Administration had intervened. Both Arizona and Oregon have instituted special units to investigate severe child abuse situations to help the courts move quickly to terminate the parental rights of such abusing parents, and to rescue the children.[61] This bill would pose no threat to

59 Alexis de Tocqueville Institution, "The Fiscal Impact of the NEA's Legislative Agenda," March 4, 1996.

60 *Prince v. Massachusetts.*

61 See Patrick F. Fagan, "Promoting Adoption Reform: Congress Can Give Children Another Chance," Heritage Founation *Backgrounder* No. 1080, May 6, 1996.

such action by states or local governments, but by the clarity of its statements on child abuse could be cited in support of such actions.

Q: Would codifying the fundamental rights of parents endanger the right of states to guarantee public health by such means as school vaccinations and other public health interventions?

A: Not at all. The Supreme Court has established the role of the states in safeguarding public health.

Q: Wouldn't people who suspect child abuse be disinclined to report their suspicions?

A: Far from it. The bill makes clear that no one acting to protect a child from abuse can be subjected to a lawsuit based on such action.

Q: Would parents be able to impede investigations of child abuse by the state?

A: No. The bill specifically leaves all state child abuse state laws unaffected. The states would retain the duty to protect children who are being abused.

Q: Wouldn't the corporal punishment clause give parents a license to abuse their children or encourage them in the use of abusive punishment?

A: No. All states currently allow "reasonable corporal discipline," and the Supreme Court has ruled that even school authorities may use "such corporal punishment as is reasonably necessary for the proper education and discipline of the child."[62] Thus, both state law and the Supreme Court have affirmed that parents and schools may use reasonable corporal punishment.

Q: Would defining fundamental parents' rights overturn state compulsory education laws and prohibit state regulation of home schooling?

A: No. The Supreme Court has ruled that the state has an interest in establishing compulsory attendance laws and regulating education.[63] The Court also has stated that parents must demonstrate to the state that their alternative education is appropriate, both in standards of literacy and in terms of the child's eventual self-sufficiency, and has reaffirmed that states may set educational standards for children within their borders.

Q: Would this bill pit school boards and parents against each other?

A: No. The essence of the American tradition of control by local school boards is to encourage parents to play a full role in the direction of their schools. All this bill would do is create an official atmosphere more sensitive to parents' views. Where these views cannot be accommodated, especially in cases in-

62 *People v. Greene,* op. cit., and *Ingraham v. Wright,* 430 U.S. 651 (1977).
63 *Prince v. Massachusetts* and *Wisconsin v. Yoder.*

volving sensitive moral issues, parents would have the freedom to withdraw their children from controversial classes.

Q: Would the bill require schools to provide individual tuition or curricula whenever a student's parents disagree with curriculum content?

A: No. The Supreme Court has ruled that local school boards have the right to set curricula, and the federal courts have held that for the federal judiciary to intervene on behalf of parents, those parents must establish that their constitutional rights have been violated.[64]

Q: Wouldn't the bill require alternative curricula for each race or religion, overturn curriculum decisions, overturn decisions on textbooks, remove free inquiry from the classroom, and forbid mandatory graduation requirements?

A: No. Establishing the fundamental right of parents to direct the education of their children, as well as their religious and moral formation, does not diminish the right of the community, as represented in its local school board, to act on all these issues. The Supreme Court recognized these local community rights in 1988,[65] affirming the school's right to teach even curricula opposed to the beliefs or values of parents. According to the Court, this does not violate the parents' rights; at the same time, however, for the school board to require the student to act on these values would violate the student's rights.

Q: Wouldn't codifying these fundamental parental rights lead people to use the courts as a solution of first rather than last resort, and cause money to be diverted from the classroom to the courtroom?

A: No. With the passage of the Religious Freedom Restoration Act of 1993, religious parents gained the heightened scrutiny standard of "compelling state interest." Under the Parental Rights and Responsibilities Act, all parents would benefit from this standard. There has been no diversion of discussion and energy from classroom to courtroom under the Religious Freedom Restoration Act; rather, official sensitivity and discussion increase when these issues arise. If parents raised ridiculous claims under the Parental Rights and Responsibilities Act, their cases would be thrown out of court. The Supreme Court has established school board rights as well. Frivolous litigation would be costly for parents and of no benefit to them.

Q: Would codifying the fundamental rights of parents force local bodies to pay for private or sectarian tuition?

64 *Epperson v. Arkansas*, 393 U.S. 97 at 104, 21 L.Ed. 2d 228, 89 S. Ct. 266 (1968).

65 *Mozert v. Hawkins County Bd. of Ed.*, 827 F. 2d. 1058 (1987); Cert. denied, 484 U.S. 1066 (1988).

A: No. Repeated Supreme Court decisions show that the state does not have to pay either for services a person may freely choose in law or for services (such as private education and health care) to which the law may not deny access.

Q: **Wouldn't the bill move authority over education to the federal government?**

A: No; quite the opposite. By codifying the fundamental nature of parental rights, it would strengthen the hand of parents in dealing with government, whether federal, state, or local. It also would increase dialogue at the local level and ensure greater sensitivity to parents' rights on the part of government officials.

Q: **Does the bill threaten the rights of girls to receive education on contraception and abortion?**

A: Parents have the fundamental right to direct the moral formation of their children. They also have the right to protect their children from behavior that is immoral in their eyes. In a society deeply divided on what is moral and what is immoral, mainly in the area of sexual morality, either school officials would refrain from entering this area of moral teaching (as they do already with respect to religious teaching), or parents would have the clear right to opt out from the official imposition of "values" hostile to their beliefs.

The bill would give parents on both sides of these and other sensitive issues the ability to exercise their right and duty to direct the moral formation of their children as they see fit. Government officials have no right to form moral beliefs in children that contradict the beliefs of parents. According to the Supreme Court government officials are not obliged to teach the sexual morality that parents want taught, but neither do they have any right to teach children a sexual morality opposed to that of their parents.

CONCLUSION

The rights of parents as a group are disregarded or endangered all too frequently by government officials. The Parental Rights and Responsibilities Act would codify a fundamental right already articulated by the Supreme Court. It is needed because of repeated threats to parents' rights from the legislative, executive, and judicial branches of government at all levels—federal, state, and local—and from the humane professions. The bill is consistent with a tradition of freedom long recognized by the Supreme Court. It also is appropriate to the federal legislative process, because it articulates a fundamental right that applies to all American citizens in relation to all levels of government.

There has been a disturbing pattern over the past century. Child rearing in America increasingly has come to be viewed as a public matter, a matter for the national "village." As early as 1901, the Indiana State Supreme Court, in a ruling upholding the state's compulsory education law, stated that "The natural rights of a parent to the custody and control of his children are subordinate to the power of the state."[66] In 1960, writing in the professional journal *Child Welfare*, one social worker noted that "daycare can offer something valuable to children

because they are separated from their parents."[67] Today, believing that government is in the best position to ensure the well-being of children, many take it for granted that government should have great authority over their upbringing.

Because of the persistent danger to the fundamental rights of parents from state court rulings, professional associations, government bureaucracies, the educational establishment, and international agencies and bodies, it is clear that these rights need codification in law. The Parental Rights and Responsibilities Act, sponsored by Senator Grassley and Representative Largent, would do just that, erecting a barrier against the mounting erosion of these rights. In an increasingly fragmented and hostile culture, American parents deserve to have their liberty and legitimate rights established as clearly in law as they were in the assumptions of those who founded the American Republic.

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66 *State of Indiana v. Bailey,* 157 Indiana 324 (1901).

67 Quoted in Margaret O'Brien Steinfels, *Who's Minding the Children?: The History and Politics of Day Care in America* (New York, N.Y.: Simon & Schuster, 1973), p. 78.

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