



**Parents' Constitutional Right to Parent Without
Government Interference:
*What Every Parent Needs to Know***

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In recent months, NCICL has fielded a host of questions from colleagues and friends about the rights of parents to *actually parent* their own children. Some people are surprised to learn that courts have long recognized that parents have a constitutionally protected right to parent their children. That is to say, parents get to decide how their children should be raised.

Most of the caselaw on the rights of parents concerns either the custodial rights of parents to their children or the rights of parents to shape the education and upbringing of their children. The constitutional framework for evaluating parental rights is important to understanding how much say the government has in myriad aspects of childrearing.

The “Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57 (2000). This parental liberty interest “is perhaps the oldest of the fundamental liberty

interests” the United States Supreme Court has recognized. *Id.* at 65. This interest includes the right of parents to establish a home and to direct the upbringing and education of their children. *Meyer v. Nebraska*, 262 U.S. 390 (1923). Indeed, the protection of the family unit is guaranteed not only by the Due Process Clause, but also by the Equal Protection Clause of the Fourteenth Amendment and possibly by the Ninth Amendment. *Stanley v. Illinois*, 405 U.S. 645, 661 (1972).

The rights of parents to raise their children does not fade into the background because someone else, even government, thinks he can do a better job raising the child. Reiterating a point of law it says it “stressed,” the North Carolina Supreme Court explained that parents’ rights prevail: “the Due Process Clause of the Fourteenth Amendment ensures that the government does not impermissibly infringe upon a natural parent’s paramount right to custody solely to obtain a better result for the child. *Owenby v. Young*, 357 N.C. 142, 148, (2003). The United States Supreme Court had previously expressed such a

view, writing, “the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a ‘better’ decision could be made.” *Troxel v. Granville*, 530 U.S. 57, 72-73 (2000).

As the North Carolina Supreme Court explained, “absent a finding that parents (i) are unfit or (ii) have neglected the welfare of their children, the constitutionally protected paramount right of parents to custody, care, and control of their children must prevail.” *Petersen v. Rogers*, 337 N.C. 397, 403-04 (1994). Thus, like other rights, the right to parent our children is not absolute. For example, courts can and do remove children from abusive homes, and provided constitutional protections of due process are satisfied, courts can do so. Also, the protected right is irrelevant in a custody proceeding between two natural parents, whether biological or adoptive, or between two parties who are not natural parents. *Adams v. Tessener*, 354 N.C. 57, 61 (2001) (citing *Price v. Howard*, 346 N.C. 68, 72 (1997)). In such instances, the trial court must determine custody. *Id.* See also N.C. Gen. Stat. § 50-13.5.

Several cases, stretching back over a century, show the reverence owed to parental rights and the respect paid by courts to that right. Below are a handful of observations and quotes from courts, mostly the United States Supreme Court, concerning the right of parents to control the upbringing of their children.

- **The liberty interest at issue in this case — the interest of parents in the**

care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57 (U.S. 2000) (The Court declared unconstitutional a Washington statute that authorized judges to order parents to permit more visitation between children and their grandparents than the parents desired.)

- The United States Supreme 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*, 262 U.S. 390, 399 (1923), “basic civil rights of man,” *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), and “rights far more precious . . . than property rights,” *May v. Anderson*, 345 U.S. 528, 533 (1953).
- “It is cardinal with us 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.” *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).
- “It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children ‘come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.” *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (quoting *Kovacs v. Cooper* 336 U.S.77,

95 (Frankfurter, J., concurring))(emphasis added).

- “[T]he importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in **‘promot[ing] a way of life’ through the instruction of children**, as well as from the fact of blood relationship. *Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816, 843 (1977) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 231-33 (1972)).
- “The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972)).

Right to Parent is “Fundamental”

The Constitution of the United States does not create rights. Rather, the U.S. Constitution recognizes that human beings have certain inalienable rights to which they are entitled, which rights arise as a matter of natural right. The most important of these rights are called “Fundamental Rights.”

- Fundamental Rights are rights that are so “implicit in the concept of ordered liberty” that “neither liberty nor justice would exist if they were sacrificed.” See *Palko v. Connecticut*,

302 U.S. 319, 325, 326, 58 S. Ct. 149, 152, 82 L. Ed. 288 (1937); *McKinney v. Pate*, 20 F.3d 1550, 1556 (11th Cir. 1994) (en banc).

- The Supreme Court has recognized that fundamental rights include those guaranteed by the Bill of Rights as well as certain liberty, associational and privacy interests implicit in the due process clause and the penumbra of constitutional rights. See *Glucksberg*, 521 U.S. at 720, 117 S. Ct. at 2267; *Paul v. Davis*, 424 U.S. 693, 712-13, 96 S. Ct. 1155, 1166, 47 L. Ed. 2d 405 (1976).
- These special “liberty” interests include “the rights to marry, to have children, **to direct the education and upbringing of one’s children**, to marital privacy, and to bodily integrity.” *Glucksberg*, 521 U.S. at 720, 117 S. Ct. at 2267.

NCICL hopes you find this overview helpful. Parents have the right to raise their children, prepare them for the world, and shape their future. That means guiding a child’s education, religious practices, and social interactions. It is a constitutionally protected right, one that comes with solemn responsibility and great joy, responsibility and joy known well by parents everywhere.

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About the Author

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“A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.”

Constitution of 197, art. I, §35
Constitution of 1868, art. I, § 29
Constitution of 1176, Declaration of Rights, § 21