IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

Case:05-2010-DP-00088

Joseph Kirk, Petitioner

And

Yvonne Howard, Respondent

Appeal of temporary custody decision 0n 5/2/2010

Re: Custody of Sierra Kirk in Reference to fit parent Joseph Kirk

We ask the custody agreement and parenting plan between mother and father be signed with prejudice and immediately be adopted by the court. As these proceedings bare no proof of unfit parent and are in direct violation of the 4th and 14th amendment and are deemed unconstitutional by the US Supreme Court. Joseph Kirk's right to due process has clearly been violated. This Notice has been filed first in the 18th judicial circuit as an appeal and also as a civil rights violation in supreme court. Joseph Kirk fully intends to preserve his constitutional rights in this matter and all matters concerning Sierra Kirk.

RE: Case : 05-2010-DR-026801-XXXX-XX

Re: Case : 05-2010-DR-032898-XXXX-XX

Re: Case : 05-2010-DR-00088-XXXX-XX

To Whom It May Concern,

The United States Supreme Court noted that a parent's right to "the companionship, care, custody and management of his or her children" is an interest "far more precious" than any property right. May v.Anderson, 345 U.S. 528, 533; 73 S.Ct. 840, 843, (1952).

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The Court (U.S. Supreme Court) stressed, "the parent-child relationship is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection." A parent's interest in the companionship, care, custody and management of his or her children rises to a constitutionally secured right, given the centrality of family life as the focus

for personal meaning and responsibility. Stanley v. Illinois, 405 U.S. 645, 651; 92 S.Ct. 1208,

(1972)

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Fundamental or 'Constitutional' rights are enumerated in the Bill of Rights, the further Amendments, and rights raised to that level by Supreme Court Case law. Supreme Court case law overrides all lower jurisdictional laws including family courts procedures.

The Supreme Court consistently upholds parental right as a fundamental constitutional right. And that's the parental right to determine what the best interest of the child shall be. And that should be the focus and bottom line of this case. CASE CLOSED!

The Supreme Court asserted that the 'liberty' protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Meyer v. Nebraska, 262 U.S. 390, 399, 401 (1923). So parenting includes both legal and physical custody of your children.

To deny a parental right requires constitutional due process that proves he's either unfit or a clear danger to his children - proven with 'clear and convincing' evidence. As such, Santosky v. Kramer 455 U.S. 745 (1982) emphasized to restrict a fundamental right of a parent to any extent, requires a showing of clear and convincing evidence that serious harm will come to the child. To date we are not aware of any allegations that Joseph Kirk is an unfit parent. Is it not clearly a violation to legally kidnap (yes, this is precisely what has been done to Sierra Kirk) a child for any random reason? We can only assume that this was done because the violators have the OPINION that it's in the best interest of the child to not be with her mother Christine Sellers. Where's the proof? Is this even the claim?

Family courts ignore all constitutional due process when they daily deny a fit father his right to physical and legal custody of his child – a right that every other fit parent has. Joseph Kirk is no doubt a fit parent. He is properly raising 3 other children.

Family Court claims to determining 'best interests of children' over fit fathers' rights are illegal in a presumably free republic. Only if there are no fit parents can the court invoke the 'best interest of the child' doctrine to assign custody. Sierra Kirk has ALWAYS had one fit parent – her FATHER! Now the State has allowed a third party with history of being an abuser have custody of a child who has a caring and fit parent that WANTS her!

In Parham v. J.R. et al 442 U.S. 584 (1979), the Supreme Court declared the 'best interest of the child' resides in the fit parent – not in the state: "Our constitutional system long ago rejected any notion that a child is a "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."

In the 1978 case of Quillon v Walcott, the Supreme Court ruled: "If a state were to attempt to force the breakup of a natural family, over the objection of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest," the Due Process Clause would clearly be violated.

Yvonne Howard's petition for custody as 3rd party extended family member of Sierra Kirk, unconstitutionally

infringes on parents' fundamental right to rear their children. The Federal Constitution permits a State to interfere with this right only to prevent harm or potential harm to the child, as applied to Joseph Kirk, what Yvonne Howard with the assistance of the States GAL is doing, violates his due process right to make decisions concerning the care, custody, and control of his daughter:There is also no reason to remand this case for further proceedings. The custody order clearly violated the Constitution, and the parties should not be forced into additional litigation that would further burden Joseph Kirk's parental right.It is my contention that all parties involved mediate rather than continue this in court, so that it is agreed and recognized that a fundamental right of parents to direct their children's upbringing resolves this case. Otherwise, the disagreeing parties are in violation of the infringements of fundamental rights. In this case, the State lacks a compelling interest in second-guessing a fit parent's decision regarding not giving up his parental rights by giving custody of his child to third party Extended family member.

Sierra Kirk has been brainwashed, lied to, and manipulated her whole life against her father and it didn't work. This is State sanctioned child abuse! Please put an end to this.

(a) The Fourteenth Amendment's Due Process Clause has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests," Washington v. Glucksberg, 521 U.S. 702, 720, including parents' fundamental right to make decisions concerning the care, custody, and control of their children, see, e.g., Stanley v. Illinois, 405 U.S. 645, 651. Pp. 5—8.

(b) Virginia's breathtakingly broad statute effectively permitted a court to disregard and overturn the decision by a fit custodial parent concerning custody when a third party that was not affected by the decision filed a custody petition, based solely on the judge's determination of the child's best interest. How much more EVIDENCE is needed to show that Yvonne Howard's petition for custody is unconstitutional!? A parent's estimation of the child's best interest is accorded no deference.

A combination of several factors compels the conclusion that, as applied in the case of Yvonne Howard or The State or any of the other interfering parties , exceeded the bounds of the Due Process Clause. First, it has never been alleged, and no court has found, that Joseph Kirk is an unfit parent. There is a presumption that fit parents act in their children's best interests, Parham v. J. R., 442 U.S. 584, 602;there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children, see, e.g., Reno v. Flores, 507 U.S. 292, 304.

The problem here is not that the State intervened, but that when it did so, it gave no special weight to Joseph Kirk's determination of his daughters' best interests. More importantly, that court appears to have applied the opposite presumption, favoring 3rd party custody! In effect, it placed on Joseph Kirk the burden of proving that granting him custody of his daughter would be in her best interest and thus failed to provide any protection for his fundamental right. The court also gave no weight to Joseph Kirk asking to have his daughter handed over to him, even before the filing of the petition or subsequent court intervention. These factors, when considered with the fact that no concrete reason has been stated as to why Joseph is considered an unfit parent, show that this case involves nothing more than a simple disagreement between Yvonne Howard Grandmother of the child, Joseph Kirk, Christine Pendley and the State appointed GAL concerning Sierra Kirk's child's best interests, and that the custody order was an unconstitutional infringement on Joseph Kirk's right to make decisions regarding the rearing of his daughter. In fact that this is a private dependency shows this case is in direct violation of the U.S. Constitution.

(c) Because the instant decision that granted Yvonne Howard temporary custody of Sierra Kirk and its application here, there is no need to consider the question whether the Due Process Clause requires all nonparental custody statutes to include a showing of harm or potential harm to the child as a condition precedent to granting custody or to decide the precise scope of the parental due process right in the custody context.

A due-process violation occurs when a state-required breakup of a natural family is founded solely on a "best interests" analysis that is not supported by the requisite proof of parental unfitness. Quilloin v. Walcott, 434 U.S. 246, 255, (1978)

They substitute the State s judgment for the parent's judgment as to the best interest of his or her children. The challenged statutes do not mandate a review to determine if demonstrable harm exists to the children in determining the amount of support that the parent must provide.

The State is not permitted and lacks jurisdiction to determine care and maintenance, i.e. spending, i.e. child discipline, decisions of a fit parent based on his or her income in an intact marriage other than to prevent harm to a child. There is no basis for the State to have a statute that mandates a fit divorced parent should support their child to a different standard, i.e. the standard of the best interests of a child. Furthermore, the State must not so mandate absent a demonstration that the choice of support provided by the parent has resulted in harm to his or her children.

The U.S. Supreme Court has mandated that the standard for the State to intrude in parenting decisions relating to grandparent visitation is no longer best interests of the child. Troxel v. Granville, 530 U.S. 57; 120 S.Ct. 2054 (2000). This court should recognize the changed standard of State intrusion in parenting should also apply to the context of parents care, control, and maintenance, i.e. spending, i.e. child discipline decisions, on behalf of his or her children.

In conclusion, unless CPS and the Attorney General's Office can provide the requisite proof of parental unfitness, you're State, CPS, the Attorney General's Office and the Juvenile Courts can't make on behalf of the parents or for the child unless the parent is adjudicated unfit. And as long as there is one fit parent, CPS and the Attorney General's Office can not interfere or remove a single child.

"Decency, security and liberty alike demand that government officials shall be subject to the rules of conduct that are commands to the citizen. In a government of laws, existence of government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or ill, it teaches the whole people by example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for the law. It invites every man to become a law unto himself. It invites anarchy. U.S. v. Olmstead, 277 U.S. 438 (1928), Justice Brandeis.

We the people of the United States are ruled by law, not by feelings. If the courts allow states and their agencies to rule by feelings and not law, we become a nation without law that makes decisions based on subjectivity and objectivity.

The forced separation of parent from child, even for a short time, represents a serious infringement upon the rights of both. J.B. v. Washington county, 10th Cir. (1997) Parent's interest is of "the highest order." And the court recognizes "the vital importance of curbing overzealous suspicion and intervention on the part of health

care professionals and government officials." Thomason v. Scan Volunteer Services, Inc., 8th Cir. (1996)

The state may not interfere in child rearing decisions when a fit parent is available. Troxel v. Granville, 530 U.S. 57 (2000).

A child has a constitutionally protected interest in the companionship and society of his or her parent. Ward v. San Jose (9th Cir. 1992)

Children have standing to sue for their removal after they reach the age of majority. Children have a constitutional right to live with their parents without government interference. Brokaw v. Mercer County (7th Cir. 2000)

The private, fundamental liberty interest involved in retaining custody of one's child and the integrity of one's family is of the greatest importance. Weller v. Dept. of Social Services for Baltimore (4th Cir. 1990)

A state employee who withholds a child from her family may infringe on the family's liberty of familial association. Social workers can not deliberately remove children from their parents and place them with foster caregivers when the officials reasonably should have known such an action would cause harm to the child's mental or physical health. K.H. through Murphy v. Morgan (7th Cir. 1990)

The forced separation of parent from child, even for a short time (in this case 18 hours); represent a serious infringement upon the rights of both. J.B. v. Washington County (10th Cir. 1997)

Absent extraordinary circumstances, a parent has a liberty interest in familial association and privacy that cannot be violated without adequate pre-deprivation procedures. Malik v. Arapahoe Cty. Dept. of Social Services (10 Cir. 1999)

Parent interest is of "the highest order," and the court recognizes "the vital importance of curbing overzealous suspicion and intervention on the part of health care professionals and government officials." Thomason v. Scan Volunteer Services, Inc. (8th Cir. 1996)

DUE PROCESS

Child's four-month separation from his parents could be challenged under substantive due process. Sham procedures don't constitute true procedural due process. Brokaw v. Mercer County (7th Cir 2000)

Post-deprivation remedies do not provide due process if pre-deprivation remedies are practicable. Bendiburg v. Dempsey (11th Cir. 1990)

Plaintiff's were arguable deprived of their right to procedural due process because the intentional use of fraudulent evidence into the procedures used by the state denied them the fight to fundamentally fair procedures before having their child removed, a right included in Procedural Due Process. Morris v. Dearborne (5th Cir. 1999)

When the state deprives parents and children of their right to familial integrity, even in an emergency situation, the burden is on the state to initiate prompt judicial proceedings for a post-deprivation hearing, and it is irrelevant that a parent could have hired counsel to force a hearing. K.H. through Murphy v. Morgan, (7th Cir. 1990)

Absent extraordinary circumstances, a parent has a liberty interest in familial association and privacy that cannot be violated without adequate pre-deprivation procedures. An ex parte hearing based on misrepresentation and omission does not constitute notice and an opportunity to be heard. Procurement of an order to seize a child through distortion, misrepresentation and/or omission is a violation of the Forth Amendment. Parents may assert their children's Fourth Amendment claim on behalf of their children as well as asserting their own Fourteenth Amendment claim. Malik v.Arapahoe Cty. Dept. of Social Services, (10th Cir. 1999)

Plaintiff's clearly established right to meaningful access to the courts would be violated by suppression of evidence and failure to report evidence. Chrissy v. Mississippi Dept. of Public Welfare, (5th Cir. 1991)

Mother had a clearly established right to an adequate, prompt post-deprivation hearing. A 17-day period prior to the hearing was not prompt hearing. Whisman V. Rinehart, (8th Cir. 1997)

Child removals are "seizures" under the Fourth Amendment. Seizure is unconstitutional without court order or exigent circumstances. Court order obtained based on knowingly false information violates Fourth Amendment. Brokaw v. Mercer County, (7th Cir. 2000)

Social workers (and other government employees) may be sued for deprivation of civil rights under 42 U.S.C. § 1983 if they are named in their 'official and individual capacity'. Hafer v. Melo, (S.Ct. 1991)

State law cannot provide immunity from suit for Federal civil rights violations. State law providing immunity from suit for child abuse investigators has no application to suits under § 1983. Wallis v. Spencer, (9th Cir. 1999)

If the law was clearly established at the time the action occurred, a police officer is not entitled to assert the defense of qualified immunity based on good faith since a reasonably competent public official should know the law governing his or her conduct. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)

Immunity is defeated if the official took the complained of action with malicious intention to cause a deprivation of rights, or the official violated clearly established statutory or constitutional rights of which a reasonable person would have known. McCord v. Maggio, (5th Cir. 1991)

Individuals aren't immune for the results of their official conduct simply because they were enforcing policies or orders. Where a statute authorizes official conduct which is patently violation of fundamental constitutional principles, an officer who enforces that statute is not entitled to qualified immunity. Grossman v. City of Portland, (9th Cir. (1994)

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]

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 judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments … 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." 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]

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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-determination—including 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.

Crawford v. Washington No. 02-9410. Argued November 10, 2003

Decided March 8, 2004

certiorari to the Supreme Court of Washington

Petitioner was tried for assault and attempted murder. The State sought to introduce a recorded statement that petitioner's wife Sylvia had made during police interrogation, as evidence that the stabbing was not in self-defense. Sylvia did not testify at trial because of Washington's marital privilege. Petitioner argued that admitting the evidence would violate his Sixth Amendment right to be "confronted with the witnesses against him." Under Ohio v. Roberts, 448 U. S. 56, that right does not bar admission of an unavailable witness's statement against a criminal defendant if the statement bears "adequate 'indicia of reliability,' " a test met when the evidence either falls within a "firmly rooted hearsay exception" or bears "particularized guarantees of trustworthiness." Id., at 66. The trial court admitted the statement on the latter ground. The State Supreme Court upheld the conviction, deeming the statement reliable because it was nearly identical to, i.e., interlocked with, petitioner's own statement to the police, in that both were ambiguous as to whether the victim had drawn a weapon before petitioner assaulted him.

Held: The State's use of Sylvia's statement violated the Confrontation Clause because, where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is confrontation. Pp. 5-33.

(a) The Confrontation Clause's text does not alone resolve this case, so this Court turns to the Clause's historical background. That history supports two principles. First, the principal evil at which the Clause was directed was the civil-law mode of criminal procedure, particularly the use of ex parte examinations as evidence against the accused. The Clause's primary object is testimonial hearsay, and interrogations by law enforcement officers fall squarely within that class. Second, the Framers would not have allowed admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify and the defendant had had a prior opportunity for cross-examination. English authorities and early state cases indicate that this was the common law at the time of the founding. And the "right … to be confronted with the witnesses against him," Amdt. 6, is most naturally read as a reference to the common-law right of confrontation, admitting only those exceptions established at the time of the founding. See Mattox v. United States, 156 U. S. 237, 243. Pp. 5-21.

(b) This Court's decisions have generally remained faithful to the Confrontation Clause's original meaning. See, e.g., Mattox, supra. Pp. 21-23.

(c) However, the same cannot be said of the rationales of this Court's more recent decisions. See Roberts, supra, at 66. The Roberts test departs from historical principles because it admits statements consisting of ex parte testimony upon a mere reliability finding. Pp. 24-25.

(d) The Confrontation Clause commands that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. Roberts allows a jury to hear evidence, untested by the adversary process, based on a mere judicial determination of reliability, thus replacing the constitutionally prescribed method of assessing reliability with a wholly foreign one. Pp. 25-27.

(e) Roberts' framework is unpredictable. Whether a statement is deemed reliable depends on which factors a judge considers and how much weight he accords each of them. However, the unpardonable vice of the Roberts test is its demonstrated capacity to admit core testimonial statements that the Confrontation Clause plainly meant to exclude. Pp. 27-30.

(f) The instant case is a self-contained demonstration of Roberts' unpredictable and inconsistent application. It also reveals Roberts' failure to interpret the Constitution in a way that secures its intended constraint on judicial discretion. The Constitution prescribes the procedure for determining the reliability of testimony in criminal trials, and this Court, no less than the state courts, lacks authority to replace it with one of its own devising. Pp. 30-32.

147 Wash. 2d 424, 54 P. 3d 656, reversed and remanded.

Scalia, J., delivered the opinion of the Court, in which Stevens, Kennedy, Souter, Thomas, Ginsburg, and Breyer, JJ., joined. Rehnquist, C. J., filed an opinion concurring in the judgment, in which O'Connor, J., joined.

THE CONSTITUTIONAL RIGHT TO BE A PARENT

Below are excerpts of case law from state appellate and federal district courts and up to the U.S. Supreme Court, all of which affirm, from one perspective or another, the absolute Constitutional right of parents to actually BE parents to their children.

The rights of parents to the care, custody and nurture of their children is of such character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and such right is a fundamental right protected by this amendment (First) and Amendments 5, 9, and 14. Doe v. Irwin, 441 F Supp 1247; U.S. D.C. of Michigan, (1985).

The several states have no greater power to restrain individual freedoms protected by the First Amendment than does the Congress of the United States. Wallace v. Jaffree, 105 S Ct 2479; 472 US 38, (1985).

Loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. Though First Amendment rights are not absolute, they may be curtailed only by interests of vital

importance, the burden of proving which rests on their government. Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976).

Law and court procedures that are "fair on their faces" but administered "with an evil eye or a heavy hand" was discriminatory and violates the equal protection clause of the Fourteenth Amendment. Yick Wo v. Hopkins, 118 US 356, (1886).

Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life; if anything, persons faced with forced dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. Santosky v. Kramer, 102 S Ct 1388; 455 US 745, (1982).

Parents have a fundamental constitutionally protected interest in continuity of legal bond with their children. Matter of Delaney, 617 P 2d 886, Oklahoma (1980). .

The liberty interest of the family encompasses an interest in retaining custody of one's children and, thus, a state may not interfere with a parent's custodial rights absent due process protections. Langton v. Maloney, 527 F Supp 538, D.C. Conn. (1981).

Parent's right to custody of child is a right encompassed within protection of this amendment which may not be interfered with under guise of protecting public interest by legislative action which is arbitrary or without reasonable relation to some purpose within competency of state to effect. Regenold v. Baby Fold, Inc., 369 NE 2d 858; 68 Ill 2d 419, appeal dismissed 98 S Ct 1598, 435 US 963, IL, (1977).

Parent's interest in custody of her children is a liberty interest which has received considerable constitutional protection; a parent, who is deprived of custody of his or her child, even though temporarily, suffers thereby grievous loss and such loss deserves extensive due process protection. In the Interest of Cooper, 621 P 2d 437; 5 Kansas App Div 2d 584, (1980).

The Due Process Clause of the Fourteenth Amendment requires that severance in the parent-child relationship caused by the state occur only with rigorous protections for individual liberty interests at stake. Bell v. City of Milwaukee, 746 F 2d 1205; US Ct App 7th Cir WI, (1984).

Father enjoys the right to associate with his children which is guaranteed by this amendment (First) as incorporated in Amendment 14, or which is embodied in the concept of "liberty" as that word is used in the Due Process Clause of the 14th Amendment and Equal Protection Clause of the 14th Amendment. Mabra v. Schmidt, 356 F Supp 620; DC, WI (1973).

"Separated as our issue is from that of the future interests of the children, we have before us the elemental question whether a court of a state, where a mother is neither domiciled, resident nor present, may cut off her immediate right to the care, custody, management and companionship of her minor children without having jurisdiction over her in person. Rights far more precious to appellant than property rights will be cut off if she is to be bound by the Wisconsin award of custody." May v. Anderson, 345 US 528, 533; 73 S Ct 840, 843, (1952).

A parent's right to care and companionship of his or her children are so fundamental, as to be guaranteed protection under the First, Ninth, and Fourteenth Amendments of the United States Constitution. In re: J.S. and C., 324 A 2d 90; supra 129 NJ Super, at 489.

The Court stressed, “the parent-child relationship is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection.” A parent’s interest in the companionship, care, custody and management of his or her children rises to a constitutionally secured right, given the centrality of family life as the focus for personal meaning and responsibility. Stanley v. Illinois, 405 US 645, 651; 92 S Ct 1208, (1972).

Parent’s rights have been recognized as being “essential to the orderly pursuit of happiness by free man.” Meyer v. Nebraska, 262 US 390; 43 S Ct 625, (1923).

The U.S. Supreme Court implied that “a (once) married father who is separated or divorced from a mother and is no longer living with his child” could not constitutionally be treated differently from a currently married father living with his child. Quilloin v. Walcott, 98 S Ct 549; 434 US 246, 255^Q56, (1978).

The U.S. Court of Appeals for the 9th Circuit (California) held that the parent-child relationship is a constitutionally protected liberty interest. (See; Declaration of Independence –life, liberty and the pursuit of happiness and the 14th Amendment of the United States Constitution — No state can deprive any person of life, liberty or property without due process of law nor deny any person the equal protection of the laws.) Kelson v. Springfield, 767 F 2d 651; US Ct App 9th Cir, (1985).

The parent-child relationship is a liberty interest protected by the Due Process Clause of the 14th Amendment. Bell v. City of Milwaukee, 746 f 2d 1205, 1242^Q45; US Ct App 7th Cir WI, (1985).

No bond is more precious and none should be more zealously protected by the law as the bond between parent and child.” Carson v. Elrod, 411 F Supp 645, 649; DC E.D. VA (1976).

A parent’s right to the preservation of his relationship with his child derives from the fact that the parent’s achievement of a rich and rewarding life is likely to depend significantly on his ability to participate in the rearing of his children. A child’s corresponding right to protection from interference in the relationship derives from the psychic importance to him of being raised by a loving, responsible, reliable adult. Franz v. U.S., 707 F 2d 582, 595^Q599; US Ct App (1983).

A parent’s right to the custody of his or her children is an element of “liberty” guaranteed by the 5th Amendment and the 14th Amendment of the United States Constitution. Matter of Gentry, 369 NW 2d 889, MI App Div (1983).

Reality of private biases and possible injury they might inflict were impermissible considerations under the Equal Protection Clause of the 14th Amendment. Palmore v. Sidoti, 104 S Ct 1879; 466 US 429.

Legislative classifications which distributes benefits and burdens on the basis of gender carry the inherent risk of reinforcing stereotypes about the proper place of women and their need for special protection; thus, even statutes purportedly designed to compensate for and ameliorate the effects of past discrimination against women must be carefully tailored. The state cannot be permitted to classify on the basis of sex. Orr v. Orr, 99 S Ct 1102; 440 US 268, (1979).

The United States Supreme Court held that the “old notion” that “generally it is the man’s primary responsibility to provide a home and its essentials” can no longer justify a statute that discriminates on the basis of gender. No longer is the female destined solely for the home and the rearing of the family, and only the male for the

marketplace and the world of ideas. Stanton v. Stanton, 421 US 7, 10; 95 S Ct 1373, 1376, (1975).

Judges must maintain a high standard of judicial performance with particular emphasis upon conducting litigation with scrupulous fairness and impartiality. 28 USCA § 2411; Pfizer v. Lord, 456 F.2d 532; cert denied 92 S Ct 2411; US Ct App MN, (1972).

State Judges, as well as federal, have the responsibility to respect and protect persons from violations of federal constitutional rights. Gross v. State of Illinois, 312 F 2d 257; (1963).

The Constitution also protects "the individual interest in avoiding disclosure of personal matters." Federal Courts (and State Courts), under Griswold can protect, under the "life, liberty and pursuit of happiness" phrase of the Declaration of Independence, the right of a man to enjoy the mutual care, company, love and affection of his children, and this cannot be taken away from him without due process of law. There is a family right to privacy which the state cannot invade or it becomes actionable for civil rights damages. Griswold v. Connecticut, 381 US 479, (1965).

The right of a parent not to be deprived of parental rights without a showing of fitness, abandonment or substantial neglect is so fundamental and basic as to rank among the rights contained in this Amendment (Ninth) and Utah's Constitution, Article 1 § 1. In re U.P., 648 P 2d 1364; Utah, (1982).

The rights of parents to parent-child relationships are recognized and upheld. Fantony v. Fantony, 122 A 2d 593, (1956); Brennan v. Brennan, 454 A 2d 901, (1982). State's power to legislate, adjudicate and administer all aspects of family law, including determinations of custodial; and visitation rights, is subject to scrutiny by federal judiciary within reach of due process and/or equal protection clauses of 14th Amendment…Fourteenth Amendment applied to states through specific rights contained in the first eight amendments of the Constitution which declares fundamental personal rights…Fourteenth Amendment encompasses and applied to states those preexisting fundamental rights recognized by the Ninth Amendment. The Ninth Amendment acknowledged the prior existence of fundamental rights with it: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The United States Supreme Court in a long line of decisions has recognized that matters involving marriage, procreation, and the parent-child relationship are among those fundamental "liberty" interests protected by the Constitution. Thus, the decision in Roe v. Wade, 410 US 113; 93 S Ct 705; 35 L Ed 2d 147, (1973), was recently described by the Supreme Court as founded on the "Constitutional underpinning of … a recognition that the "liberty" protected by the Due Process Clause of the 14th Amendment includes not only the freedoms explicitly mentioned in the Bill of Rights, but also a freedom of personal choice in certain matters of marriage and family life." The non-custodial divorced parent has no way to implement the constitutionally protected right to maintain a parental relationship with his child except through visitation. To acknowledge the protected status of the relationship as the majority does, and yet deny protection under Title 42 USC § 1983, to visitation, which is the exclusive means of effecting that right, is to negate the right completely. Wise v. Bravo, 666 F.2d 1328, (1981).

FROM THE COLORADO SUPREME COURT, 1910

In controversies affecting the custody of an infant, the interest and welfare of the child is the primary and controlling question by which the court must be guided. This rule is based upon the theory that the state must

perpetuate itself, and good citizenship is essential to that end. Though nature gives to parents the right to the custody of their own children, and such right is scarcely less sacred than the right to life and liberty, and is manifested in all animal life, yet among mankind the necessity for government has forced the recognition of the rule that the perpetuity of the state is the first consideration, and parental authority itself is subordinate to this supreme power. It is recognized that: 'The moment a child is born it owes allegiance to the government of the country of its birth, and is entitled to the protection of that government. And such government is obligated by its duty of protection, to consult the welfare, comfort and interest of such child in regulating its custody during the period of its minority.' Mercein v. People, 25 Wend. (N. Y.) 64, 103, 35 Am. Dec. 653; McKercher v. Green, 13 Colo. App. 271, 58 Pac. 406. But as government should never interfere with the natural rights of man, except only when it is essential for the good of society, the state recognizes, and enforces, the right which nature gives to parents [48 Colo. 466] to the custody of their own children, and only supervenes with its sovereign power when the necessities of the case require it.

The experience of man has demonstrated that the best development of a young life is within the sacred precincts of a home, the members of which are bound together by ties entwined through 'bone of their bone and flesh of their flesh'; that it is in such homes and under such influences that the sweetest, purest, noblest, and most attractive qualities of human nature, so essential to good citizenship, are best nurtured and grow to wholesome fruition; that, when a state is based and build upon such homes, it is strong in patriotism, courage, and all the elements of the best civilization. Accordingly these recurring facts in the experience of man resulted in a presumption establishing prima facie that parents are in every way qualified to have the care, custody, and control of their own offspring, and that their welfare and interests are best subserved under such control. Thus, by natural law, by common law, and, likewise, the statutes of this state, the natural parents are entitled to the custody of their minor children, except when they are unsuitable persons to be entrusted with their care, control, and education, or when some exceptional circumstances appear which render such custody inimicable to the best interests of the child. While the right of a parent to the custody of its infant child is therefore, in a sense, contingent, the right can never be lost or taken away so long as the parent properly nurtures, maintains, and cares for the child. Wilson v. Mitchell, 111 P. 21, 25-26, 48 Colo. 454 (Colo. 1910)

CONCLUSION

The U.S. Supreme Court has consistently protected parental rights, including it among those rights deemed fundamental. As a fundamental right, parental liberty is to be protected by the highest standard of review: the compelling interest test. As can be seen from the cases described above, parental rights have reached their highest level of protection in over 75 years. The Court decisively confirmed these rights in the recent case of Troxel v. Granville, which should serve to maintain and protect parental rights for many years to come.

As long as CPS is allowed to have an exaggerated view of their power andis allowed by state officials and the courts to exploit that power and abuse it against both children and parents, they will both be continually harmed. The constitution is there for two primary reasons, 1) to restrict the power of the government and 2) to protect the people from the government, not the government from the people. And the constitution is there to prohibit certain activity from government officials and that prohibition does not apply to one type or kind of official but to ANY government official whether it is the police, CPS or FBI.

ARE SUPERVISORS LIABLE FOR HIS OR HER CULPABLE ACTION OR INACTION IN THE SUPERVISION, OR CONTROL OF HIS OR HER SUBORDINATES; FOR HIS OR HER ACQUIESCENCE IN THE CONSTITUTIONAL DEPRIVATION OR

FOR CONDUCT THAT SHOWED A RECKLESS OR CALLOS INDIFFERENCE TO THE RIGHTS OF OTHERS?

Section 1983 places liability on ANY person who "subjects, or causes to be subjected" another to a constitutional deprivation. See 42 U.S.C. § 1983. This language suggests that there are two ways a defendant may be liable for a constitutional deprivation under § 1983: (1) direct, personal involvement in the alleged constitutional violation on the part of the defendant, or (2) actions or omissions that are not constitutional violations in themselves, but foreseeably leads to a constitutional violation. The Court of Appeals for the Ninth Circuit offered a most cogent discussion of this issue in Arnold v. International Bus. Machines Corp., 637 F.2d 1350 (9th Cir. 1981):

A person 'subjects' another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made…. Moreover, personal participation is not the only predicate for section 1983 liability. Anyone who "causes" any citizen to be subjected to a constitutional deprivation is also liable. The requisite causal connection can be established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury. Id. at 1355 (emphasis added) (quoting Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978)).

A supervisor is liable under § 1983 if s/he "does an affirmative act, participates in another's affirmative acts, or omits to perform an act which [s/]he is legally required to do." Causing constitutional injury. Johnson v. Duffy, 588 F. 2d 740, 743-44 (9th Cir. 1978). A supervisor is liable for "his own culpable action or inaction in the training, supervision, or control of his subordinates; for his acquiescence in the constitutional deprivation …; for conduct that showed a reckless or callous indifference to the rights of others." Watkins v. City of Oakland, 145 F. 3d 1087, 1093 (9th Cir. 1997)

A supervisor can be liable in his individual capacity if "he set in motion a series of acts by others, or knowingly refused to terminate a series of acts by others, which he knew or reasonably should have known would cause others to inflict the constitutional injury." Larez v. City of Los Angeles, 946 F. 2d 630, 646 (9th Cir. 1991). "Supervisory indifference or tacit authorization of subordinates' misconduct may be a causative factor in constitutional injuries they inflict." Slakan v. Porter, 737 F. 2d 368, 373 (4th Cir. 1984). "We have explained the nature of the causation required in cases of this kind in Johnson v. Duffy, 588 F. 2d 740 (9th Cir. 1978). There, we held that for purposes of § 1983 liability the requisite causal chain can occur through the 'setting in motion [of] a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury.' Id. at 743-44. There is little question here that Cooper and Roderick should have known that falsely placing the blame for the initial Ruby Ridge incident on Harris would lead to the type of constitutional injuries he suffered." Harris v. Roderick, 126 F. 3d 1189 (9th Cir. 1997).

CAN A PRIVATE CITIZEN BE HELD LIABLE UNDER § 1983 EVEN THOUGH PRIVATE CITIZENS CANNOT ORDINARILY BE HELD LIABLE UNDER § 1983?

While a private citizen cannot ordinarily be held liable under § 1983 because that statute requires action under color of state law, if a private citizen conspires with a state actor, then the private citizen is subject to § 1983 liability. Brokaw v. Mercer County, 235 F.3d 1000 (7th Cir 2001) quoting Bowman v. City of Franklin, 980 F.2d 1104, 1107 (7th Cir. 1992) "To establish § 1983 liability through a conspiracy theory, a plaintiff must demonstrate that: (1) a state official and private individual(s) reached an understanding to deprive the plaintiff

of his constitutional rights, and (2) those individual(s) were willful participants in joint activity with the State or its agents." Fries v. Helsper, 146 F.3d 452, 457 (7th Cir. 1998) (internal quotation and citations omitted). Not only did both Bonnie Maskery and the state Defendants conspire to harm Mrs. Dutkiewicz because she practiced Wicca, Maskery continued to conspire with state Defendants by manufacturing evidence and lying in order to deny the Plaintiffs their due process rights to a fair trial. Plaintiff told state Defendants in writing and over the phone that Maskery was a fraud and impersonating a therapist prior to submitting the petition to the court yet the state Defendants willfully filed the fraudulent petition.

"In this case, C.A. alleged just such a conspiracy between Weir and Karen, and Deputy Sheriff James Brokaw. Specifically, C.A. asserted that Weir and Karen conspired with James, who was a deputy sheriff, in July 1983 to file false allegations of child neglect in order to cause the DCFS to remove C.A. from his home and to thereby cause C.A.'s parents to divorce, because of the religious beliefs and practices of C.A's family. [FN 12] While Weir and Karen claim that C.A.'s allegations are too vague to withstand dismissal under 12(b)(6), C.A has alleged all of the necessary facts: the who, what, when, why and how. No more is required at this stage." Brokaw v. Mercer County, 235 F.3d 1000 (7th Cir 2001)

"Alternatively, Weir and Karen seek cover in the various proceedings instituted as a result of their complaint: a formal petition for adjudication of wardship, a court hearing, investigatory conferences held by the DCFS, adjudication of wardship by the court, and a dispositional hearing by the court, seemingly arguing that because a court determined that C.A. should remain in foster care, that demonstrates that their complaints of neglect were justified. But, assuming that Weire, Karen and Deputy Sheriff James Brokaw knew the allegations of child neglect were false, then these proceedings actually weaken their case because that means they succeeded in the earlier stages of their conspiracy –they created upheaval in C.A's family by having him removed from his home and by subjected his family to governmental interference. Moreover, as we have held in the criminal context, '[i]f police officers have been instrumental in the plaintiff's continued confinement or prosecution, they cannot escape liability by pointing to the decisions of prosecutors or grand jurors or magistrates to confine or prosecute him.' Jones v. City of Chicago, 856 F.2d 985, 994 (7th Cir.1988)." Brokaw v. Mercer County, 235 F.3d 1000 (7th Cir 2001)

IS WICCA / WICCAN A CONSTITUTIONALLY PROTECTED RELIGION?

Government recognition

Wiccan and other Neopagan groups have been recognized by governments in the US and Canada and given tax-exempt status. Wiccan priests and priestesses have been given access to penitentiaries in both countries, and the privilege of performing handfastings/marriages. On March 15, 2001, the list of religious preferences in the United States Air Force Personnel Data System (MilMod) was augmented to include: Dianic Wicca, Druidism, Gardnerian Wicca, Pagan, Seax Wicca, Shamanism, and Wicca.

Judge J. Butzner of the Fourth Circuit Federal Appeals Court confirmed the Dettmer v Landon decision (799F 2nd 929) in 1986. He said: "We agree with the District Court that the doctrine taught by the Church of Wicca is a religion." Butzner J. 1986 Fourth Circuit. A case was brought in 1983 in the U.S. District Court in Michigan. The court found that 3 employees of a prison had restricted an inmate in the performance of his Wiccan rituals. This "deprived him of his First Amendment right to freely exercise his religion and his Fourteenth Amendment right to equal protection of the laws." Dettmer vs. Landon: concerns the rights of a Wiccan inmate in a penitentiary. Lamb's chapel v. Center Moriches Union Free School District: concerns the rental of school facilities after hours

by a religious group. It is abundantly clear that none of the State Defendants can claim that one's First Amendment right was not clearly established.

ARE "MANDATED REPORTERS" STATE ACTORS?

"As the district court correctly found, insofar as the Hospital was acting in the latter capacity – as part of the reporting and enforcement machinery for CWA, a government agency charged with detection and prevention of child abuse and neglect – the Hospital was a state actor." "[C]onduct that is formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action . . . In certain instances the actions of private entities may be considered to be infused with 'state action' if those private parties are performing a function public or governmental in nature and which would have to be performed by the Government but for the activities of the private parties. Perez v. Sugarman, 499 F2d 761, 764-65 (2d Cir. 1974)(quoting Evans v. Newton, 382 U.S. 296, 299 (1966)" Mora P. v. Rosemary McIntyre, (Case No.: 98-9595) 2nd Cir (1999).

CAN THE STATE SHIELD A "STATE ACTOR" FROM LIABILITY UNDER SECTION 1983?

No they cannot. State-conferred immunity cannot shield a state actor form liability under § 1983. See Martinez v. California, 444 U.S. 277, 284 n. 8 (1980) ("Conduct by persons acting under color of state law which is wrongful under 42 U.S.C. § 1983 … cannot be immunized by state law.") [cite omitted]. Indeed, a regime that allowed a state immunity defense to trump the imposition of liability under § 1983 would emasculate the federal statute.

Section 1983 imposes liability on anyone who, under color of state law, deprives a person of any rights, privileges, or immunities secured by the Constitution and laws. K & A Radiologic Tech. Servs., Inc. v. Commissioner of the Dep't of Health, 189 F.3d 273, 280 (2nd Cir 1999) (quoting Blessing v. Freestone, 520 U.S. 329, 340 !997). "[T]he core purpose of § 1983 is 'to provide compensatory relief to those deprived of their federal rights by state actors'." Hardy v. New York City Health & Hosps. Corp., 164 F.3d 789, 795 (2nd Cir. 1999) (quoting Felder v. Casey, 487 U.S. 131, 141 (1988)). "The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." Id. (quoting, inter alia, West v. Atkins, 487 U.S. 42, 49 (1988)) (other citations and internal quotation marks omitted)