The Constitutional Rights of Parents: Nearly A Century of Consistency in the U.S. Supreme Court

There are few issues on which the U.S. Supreme Court has spoken so eloquently--and so consistently--as that of parental rights. In 1923 the 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)--***

On June 5, 2000, the Court declared that:

"[I]t cannot now be doubted that 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. 2000, or 120 S.Ct. 2054, or also, 147 L.Ed.2d 49)**--

Fundamental Constitutional rights are accorded a special status in judicial review. The Fourteenth Amendment prohibits the state from depriving any PERSON of

'life, liberty, or property, without due process of law.' The Court has long recognized that the Due Process Clause 'guarantees more than fair process.' --***Washington v. Glucksberg, 521 U.S. 702, 719 (1997)***.--

It also includes a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests.' Id., at 720; see also --***Reno v. Flores, 507 U.S. 292, 301302 (1993***).--

The level of scrutiny required for state actions that infringe upon fundamental rights is 'strict scrutiny,' which requires the state to show that the infringement serves a 'compelling state interest' and that there is no Constitutionally less offensive way for the state to satisfy this compelling interest.

There are sweeping--though seldom appreciated--implications of recognizing parental rights as Constitutionally fundamental. Domestic relations courts routinely declare one parent a 'non-custodial parent' and, thereby, deprive him or her of 'the fundamental right of parents to make decisions concerning the care, custody, and control' of their children. This practice has 'a real and appreciable impact on, and constitutes a significant interference with,' the exercise of a fundamental

Constitutional right. Therefore, 'it cannot now be doubted that' such a determination interferes with a fundamental constitutional right.

As a result, the practice must receive the strict scrutiny guaranteed by the Due Process Clause of the Fourteenth Amendment. This is true regardless of whether the interference with the right is permanent or temporary, pendente lite. The Court has held that the deprivation of fundamental liberty rights 'for even minimal periods of time, unquestionably constitutes irreparable injury.' --***Elrod v. Burns, 96 S.Ct. 2673; 427 U.S. 347, (1976)***.--

Under the strict scrutiny standard, such a deprivation of rights must occur only when there is a compelling state interest served by interfering with these rights and there is no more Constitutionally benign way to achieve this compelling state interest.

While it is uncontroversial that, under the Parens Patria Doctrine, the state has a compelling interest in preventing harm to children, this interest is not sufficient to Constitutionally justify the infringement in question. The state must show that there is no method of achieving this state objective that is less offensive to the

Constitution than that of routinely depriving one parent of these fundamental rights. Where there is clear and convincing evidence that, in the specific case, the retention of parental rights by both parents would compromise a compelling state interest, the state may be justified in restricting the parental rights of one, or both, parents. However, where both parents are fit, there will normally be no reason for a state to deprive one of custodial rights.

As the Court declared in ***Troxel v. Granville:***

"So long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." --Troxel, op. cit.--

The implication of this is that, to be Constitutionally sound, state law must contain a strong legal presumption of joint legal custody of minor children upon the divorce of the parents

The complete history of the Court's rulings on the nature of parental rights includes also: ***Pierce v. Society of Sisters, 268 U.S. 510, 534535 (1925); Prince v. Massachusetts, 321 U.S. 158 (1944); Stanley v. Illinois, 405 U.S. 645, 651 (1972); Wisconsin v. Yoder, 406 U.S. 205, 232 (1972); Quilloin v. Walcott, 434 U.S. 246, 255 (1978); Parham v. J. R., 442 U.S. 584, 602 (1979); and Santosky v. Kramer, 455 U.S. 745, 753 (1982).***

In its order granting the Appellees' motion for summary judgment,

the district court began its analysis by setting forth the elements of a § 1983 claim against an individual state actor as follows:

(1) [the plaintiff] possessed constitutional right's of which (s)he was deprived;

(2) the acts or omissions of the defendant were intentional;

(3) the defendant acted under color of law; and

(4) the acts or omissions of the defendant caused the constitutional deprivation.

Estate of Macias v. Lopez, 42 F.

Supp.2d 957, 962 (N.D. Cal. 1999). The court also stated that, to establish

municipal liability, a plaintiff must show that

(1) [the plaintiff] possessed a constitutional right of which (s)he was deprived;

(2) the municipality had a policy or custom;

(3) this policy or custom amounts to deliberate indifference to [the plaintiff's] constitutional right; &

(4) the policy or custom caused constitutional deprivation.

My rights as a parents were violated:

The right of a parent to raise his children has long been recognized as a fundamental constitutional right, "far more precious than property rights." ***Stanley v. Illinois, 405 U.S. 645, 651 (1972)***, quoting ***May v. Anderson, 345, U.S. 528, 533 (1953); Skinner v. Oklahoma, 316 U.S. 535, 541, (1942); Meyer v Nebraska, 262 U.S. 390, 399 (1923), See, e.g. Castigno v Wholean, 239 Conn. 336 (1996); In re Alexander V., 223 Conn. 557 (1992). In Re: May V Anderson (1953) 345 US 528, 533, 73 S. Ct. 840, 843 97 L. Ed. 1221, 1226.***

10/18/2000 Gatliff v. Sisson, No. CA A102854

http://www.publications.ojd.state.or.us/A102854.htm

Criteria

1. Best Interest of Child

2. Must Show Harm

3. Prior Grandparent/Grandchild Relationship

4. Effect on Parent/Child Relationship

5. Any Marital Status of Parents

6. Parents are Deceased, Divorced and/or Unmarried.

United States Supreme Court Parental Rights Case law

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In the early 1920s, the United States Supreme Court first reviewed the rights,

liberties and obligations of parents to direct the

upbringing of their children. Two important decisions, Meyer v. Nebraska and

Pierce v. Society of Sisters, established a legacy

which was followed by a series of decisions holding that parenting is a fundamental constitutional right, and among "the basic civil rights of man." Choices about marriage, family life, and the upbringing of children are among those rights the Court has ranked as "of basic importance in our society," and as sheltered by the 14th Amendment against the State's unwarranted usurpation, disregard, or disrespect. Assembled here are a majority of those cases defining or reaffirming these fundamental rights. Links are provided to each case on the FindLaw Internet Legal Resources service. Each is in hypertext format, with links to related opinions of the court contained in the ruling.

The construction of a constitutional theory which will protect various aspects of family life under Section 1983 rightly continues
to command a good deal of judicial interest. The right of a parent to raise his children has long been recognized
as a fundamental constitutional right, "far more precious than property rights." Stanley v. Illinois, 405 U.S. 645, 651 (1972),
quoting ***May v. Anderson, 345, U.S. 528, 533 (1953); Skinner v. Oklahoma, 316 U.S. 535, 541, (1942); Meyer v Nebraska, 262 U.S. 390, 399 (1923), See, e.g.***

Castigno v Wholean, 239 Conn. 336 (1996); In re Alexander V., 223 Conn. 557 (1992). In Re: May V Anderson (1953) 345 US 528, 533, 73 S. Ct. 840, 843 97 L. Ed. 1221, 1226, This case involved a mother stripped of her rights without the right to utter a single word in her defense. The order was originally granted for 6 months in which the court allowed the mother to "fight" for her rights back, but kept getting delayed so that the child would incur more time with the father. This case was reversed upon appeal, and also gave rise to the statute citing that, Presumption (750 ILCS 5/603) "A court may consider the period of time that a child has spent with a parent by virtue of a temporary custody order but there is no presumption in favor of the existing custodian under 750 ILCS 5/602 as there is in modification cases under 750 ILCS 5/610. In Re ***Hefer, 282 Ill. App. 3d 73, 217 Ill. Dec 701, 667 N.E. 2nd 1094 (4 Dist. 1996)***. Obviously, the argument is that one parent may manipulate the system to prolong proceedings that he/she may think there is an automatic award of custody. The 602 standards still are mandated to be applied, one of them including the wishes of the children as well as other issues such as safety and well-being of the children (self-mutilation, in this case due to psychological

anM. L. B. v. S. L. J.

___ US ___, 117 S. Ct. 555 (1996)

Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as "of basic importance in our society," rights sheltered by the 14th Amendment against the State's unwarranted usurpation, disregard, or disrespect. This case, involving the State's authority to sever permanently a parent-child bond, demanded the close consideration the Court has long required when a family association so undeniably important was at stake.

Santosky v Kramer 455 US 745 (1982)

The fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the 14th Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. A parental rights termination proceeding interferes with that fundamental liberty interest. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

Lassiter v Department of Social Services 452 US 18 (1981)

The Court's decisions have by now made plain that a parent's desire for and right to "the companionship, care, custody, and management of his or her children" is an important interest that "undeniably warrants deference and, absent a powerful countervailing interest, protection." A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.

Quilloin v Walcott 434 US 246 (1978)

We have little doubt that the Due Process Clause would be offended "if a State were to attempt to force the breakup of a natural family, over the objections 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." Whatever might be required in other situations, we cannot say that the State was required in this situation to find anything more than that the adoption, and denial of legitimation, were in the "best interests of the child."

Smith v Organization of Foster Care Families 431 US 816 (1977)

In this action, individual foster parents and a foster parents organization, sought declaratory and injunctive relief against New York State and New York City

officials, alleging that the statutory and regulatory procedures for removal of foster children from foster homes violated the Due Process and Equal Protection Clauses of the 14th Amendment. The ruling contains an analysis of the rights of natural parents as balanced against the rights of foster parents, as well as a comprehensive discussion of foster care conditions.

Moore v East Cleveland 431 US 494 (1977)

The Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. A host of cases, tracing their lineage to Meyer v. Nebraska and Pierce v. Society of Sisters have consistently acknowledged a "private realm of family life which the state cannot enter." When the government intrudes on choices concerning family living arrangements, the Court must examine carefully the importance of the governmental interests advanced.

Cleveland Board of Education v La Fleur 414 US 632 (1974)

The Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. There is a right "to be free from unwarranted governmental intrusion into

matters so fundamentally affecting a person as the decision whether to bear or beget a child."

Stanley v Illinois 405 US 645 (1972)

The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and protection. The integrity of the family unit has found protection in the Due Process Clause of the 14th Amendment, the Equal Protection Clause of the 14th Amendment, and the 9th Amendment.

Wisconsin v Yoder 406 US 205 (1972)

In this case involving the rights of Amish parents to provide for private schooling of their children, the Court held: "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."

Loving v Virginia 388 US 1 (1967)

In this case involving interracial marriage, the Court reaffirmed the principles set forth in Pierce and Meyers, finding that marriage is one of the basic civil rights of man, fundamental

to our very existence and survival. "The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State."

Griswold v Connecticut 381 US 479 (1965)

The 4th and 5th Amendments were described as protection against all governmental invasions "of the sanctity of a man's home and the privacies of life." The Court referred to the 4th Amendment as creating a "right to privacy, no less important than any other right carefully and particularly reserved to the people." Reaffirming the principles set forth in Pierce v. Society of Sisters and Meyers v Nebraska.

Prince v Massachusetts 321 US 158 (1944)

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. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.

Skinner v Oklahoma 316 US 535 (1942)

"We are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental

Pierce v Society of Sisters 268 US 510 (1925)

The liberty of parents and guardians to direct the upbringing and education of children was abridged by a proposed statute to compel public education. "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

Meyer v Nebraska 262 US 390 (1923)

"No state ... shall deprive any person of life, liberty or property without due process of law." "While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God

according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

The "liberty interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests" recognized by the U.S. Supreme Court. Troxel v. Granville, 527 U.S. 1069 (1999). Moreover, the companionship, care, custody, and management of a parent over his or her child is an interest far more precious than any property right. May v. Anderson,
345 U.S. 528, 533, (1952). As such, the parent-child relationship is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection. Lassiter v. Department of Social Services, 452 U.S. 18, 27 (1981).

The law has long recognized and respected the rights and duties of parents in the raising of children. The Supreme Court has been consistent in recognizing the importance of respecting Parents authority in the raising of their children. Ginsberg v. New York, 390 U.S. 629, 639 (1968). Furthermore, the United States Supreme Court has stated, "It is cardinal with us that the custody, care and nurture of the child reside first with 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).

A corollary to this fundamental principle is that parents have broad discretion in the disciplining of their children and are allowed to use corporal punishment. Under California state law, a parent has the right to reasonably discipline a child by physical punishment and may administer reasonable punishment without being liable for battery.

People v. Whitehurst, 9 Cal.App.4th 1045, 1050 (1992). In order to be considered disciplinary the punishment must be necessary (i.e. there must be behavior by the child deserving punishment), and the punishment must be reasonable (i.e. not excessive). Id. It is important to remember that the reasonableness of the punishment will be judged by a third party and it does not matter if the parent

believes the punishment was reasonable. The very existence and survival of the race." /or other abuse in

CRAWFORD v. WASHINGTON

SUPREME COURT RULES 9-0

ON MARCH 8, 2004, SUPREME COURT RULES THAT HEARSAY

EVIDENCE IN CHILD ABUSE/NEGLECT AND DOMESTIC VIOLENCE

CASES IS NOT ADMISSIBLE. PARENTS HAVE THE CONSTITUTIONAL

RIGHT TO CONFRONT THEIR ACCUSER UNDER THE 6TH AMENDMENT. COMPLY WITH THE 6TH AMENDMENT IN CHILD ABUSE/NEGLECT AND DOMESTIC VIOLENCE CASES.

SANTOSKY v. KRAMER, 455 U.S. 745 (1982), "a) The fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. A parental rights termination proceeding interferes with that fundamental liberty interest. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. Pp. 752-754."

SANTOSKY v. KRAMER, 455 U.S. 745 (1982), "Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence. A "clear and convincing evidence" standard adequately conveys to the fact finder the level of subjective certainty about his factual conclusions necessary to satisfy due process."

SANTOSKY v. KRAMER, 455 U.S. 745 (1982), "the Due Process Clause of the Fourteenth Amendment demands more than this. Before a State may sever the rights of parents in [455 U.S. 745, 748] their natural child, due process requires that the State support its allegations by at least clear and convincing evidence."

SANTOSKY v. KRAMER, 455 U.S. 745 (1982), "In Lassiter, it was "not disputed that state intervention to terminate the relationship between [a parent] and [the] child must be accomplished by procedures meeting the requisites of the Due Process Clause." Id., at 37 (first dissenting opinion); see id., at 24-32 (opinion of the Court); id., at 59-60 (STEVENS, J., dissenting). See also Little v. Streater, 452 U.S. 1, 13 (1981). 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 Fourteenth Amendment.

Quilloin v. Walcott, 434 U.S. 246, 255 (1978); Smith v. Organization of Foster Families, 431 U.S. 816, 845 (1977); Moore v. East Cleveland, 431 U.S. 494, 499 (1977) (plurality opinion); Cleveland Board of Education v. LaFleur, 414 U.S. 632, 639 -640 (1974); Stanley v. Illinois, 405 U.S. 645, 651 -652 (1972); Prince v.

Massachusetts, 321 U.S. 158, 166 (1944); Pierce v. Society of Sisters, 268 U.S. 510, 534 -535 (1925); Meyer v. Nebraska, 262 U.S. 390, 399 (1923)." he Pe

SANTOSKY v. KRAMER, 455 U.S. 745 (1982), "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. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to [455 U.S. 745, 754] destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures."

SANTOSKY v. KRAMER, 455 U.S. 745 (1982), Lassiter declared it "plain beyond the need for multiple citation" that a natural parent's "desire for and right to `the companionship, care, custody, and management of his or her children'" is an

interest far more precious than any property [455 U.S. 745, 759] right. 452 U.S., at 27 , quoting Stanley v. Illinois, 405 U.S., at 651 . "When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end
it. "If the State prevails, it will have worked a unique kind of deprivation A parent's interest in the accuracy and justice of the
decision to terminate his or her parental status is, therefore, a commanding one." 452 U.S., at 27.

SANTOSKY v. KRAMER, 455 U.S. 745 (1982), "At such a proceeding, numerous factors combine to magnify the risk of erroneous fact finding. Permanent neglect proceedings employ imprecise substantive standards that leave determinations unusually open to the subjective values of the judge. See Smith v. Organization of Foster Families, 431 U.S., at 835. Raising the standard of proof would have both practical and symbolic consequences. Cf. Addington v. Texas, 441 U.S., at 426 . The Court has long considered the heightened standard of proof used in criminal prosecutions to be "a prime instrument for reducing the risk of convictions resting on factual error." In re Winship, 397 U.S., at 363 . An elevated standard of proof in a parental rights termination proceeding would alleviate "the possible risk that a

factfinder might decide to [deprive] an individual based solely on a few isolated instances of unusual conduct [or] . . . idiosyncratic behavior." Addington v. Texas, 441 U.S., at 427 . "Increasing the burden of proof is one way to impress the fact finder with the importance [455 U.S. 745, 765] of the decision and thereby perhaps to reduce the chances that inappropriate terminations will be ordered. Ibid. The court's theory assumes that termination of the natural parents' rights invariably will benefit the child. Yet we have noted above that the parents and the child share an interest in avoiding erroneous termination. Even accepting the court's assumption, we cannot agree with its conclusion that a preponderance standard fairly distributes the risk of error between parent and child. Use of that standard reflects the judgment that society is nearly neutral between erroneous termination of parental rights and erroneous failure to terminate those rights. Cf. In re Winship, 397 U.S., at 371 (Harlan, J., concurring). For the child, the likely consequence of an erroneous failure to terminate is preservation of [455 U.S. 745, 766] an uneasy status quo. For the natural parents, however, the consequence of an erroneous termination is the unnecessary destruction of their natural family.