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Protecting Primary Parental Authority from Institutional Challenges

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KEY TAKEAWAYS

Legal analysis on parental rights has been flawed—whether on substantive due process and the Fourteenth Amendment generally or on more specific controversies.

The parameters of the fundamental parental right—both in constitutional and statutory law—would benefit greatly from Supreme Court review and clarification.

Today's parents must be vigilant in inquiring of medical and educational professionals on how decisions impacting their children are made.

> *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.*[1]

Parental rights—once understood to be preeminent in civic life—have become a flashpoint[2] in American politics and public discourse. In increasing measure, educational, medical, and child welfare institutions have begun to see parents as a hostile threat to their mission and the purported autonomy of minor children, rather than the best source of information on and care of those minor children.

Evolving cultural norms now see children as "community property," a perspective advanced publicly

in 2013 during a controversial MSNBC interview with political scientist Melissa Harris-Perry, who noted: "[W]e have to break through our kind of private idea that kids belong to their parents or kids belong to their families and recognize that kids belong to whole communities."[3] As recently as 2022, President Joe Biden echoed this sentiment, remarking at a "Teacher of the Year" ceremony that minor students are "all our children."[4] But a collectivist notion of who bears primary authority for the upbringing of children defies the fact that parental rights are both primary and pre-political.[5]

The notion that parents are the primary authority for their children's education and welfare is one rooted in biology, the nature of the parent–child relationship, and the centuries-old recognition of the family as the very foundation of a flourishing society.[6] In increasing measure, however, parental rights are threatened to an unprecedented degree.[7]

Modern challenges to the primacy of parents have resulted in outcomes more characteristic of a nanny state than a constitutional republic. In 2021, in Washington, DC, a 16-year-old autistic boy was hospitalized at Children's National Hospital after engaging in self-harm spurred by a contentious breakup with his girlfriend. While there, the hospital informed the family that the boy identified as a female and should be referred to using she/her pronouns going forward.[8] When the parents refused to permit his "transition," claiming that he had never before expressed such a desire, and that as a young man with autism, he was impressionable to outside forces and influences, the hospital reported the family to child protective services and placed the young man in the custody of non-binary hospital chaplain, Lavender Kelley.[9] The family has continued to fight for custody of their now 19-year-old son in court and is seeking $100 million in damages and legal fees.

In 2024, in New York, family court officials denied a divorced father the right to stop his eight-year-old son from taking life-altering hormones that would initiate his medical transition to a girl after the boy's mother began socially transitioning[10] him without the knowledge or consent of his father.[11] A year after the court's ruling, the young boy disavowed his female identity and is living as a "regular little boy," while the father has lost any say in medical decisions concerning his son, and has had his visitation rights limited to only a few hours per week.[12]

In 2023, Maryland's Montgomery County Public School System eliminated its policy of permitting parents to opt out their minor children from gender and sexuality curriculum for students in kindergarten through eighth grade.[13] The curriculum included references to gay pride parades, gender transitions, pronoun preferences, and classroom discussions on

concepts such as "intersex," "drag queen," and "non-binary" gender identities. A multi-faith coalition of parents sued, claiming that the inability to opt out their children from the curriculum interfered with their ability to direct the religious instruction of their children and the exercise of their faith, but both the trial court and appellate courts disagreed.[14] The case is now pending on a petition for review before the U.S. Supreme Court.[15]

In light of more frequent and high-profile encroachments on the primacy of the parental right, this *Legal Memorandum* will outline various specific legal protections for parents within federal statutes and more general parental rights guarantees as articulated by the U.S. Supreme Court under the Constitution. With a thorough analysis of these federally protected rights, readers will be better equipped to respond to challenges to their parental authority, specifically in the fields of education and health care.[16]

Parental Rights Under Constitutional Law

The principle that parents have primary authority regarding the upbringing and education of their children has ancient philosophical and legal roots. For example, in his work *Summa Theologica*, philosopher and theologian Thomas Aquinas wrote in the 13th century that "it would be contrary to natural justice, if a child...were to be taken away from its parents' custody, or anything done to it against its parents' wish."[17] English philosopher John Locke emphasized the same principle four centuries later in his Second Treatise on Government,[18] arguing that parental childrearing authority precedes and is independent of political authority. Sir William Blackstone, in his 1765 *Commentaries on the Laws of England*, wrote of the common-law duty of parents to provide for the maintenance, protection, and education of their children,[19] and argued that the duty to provide a suitable education for children had "the greatest importance of any."[20]

Blackstone's *Commentaries* ultimately set the framework for recognition of a parental right by way of the Constitution's Fourteenth Amendment. Such a right was rooted in its prohibition of a state's deprivation of "life, liberty, or property, without due process of law."[21] From this reference to "liberty," the Supreme Court's jurisprudence on parental rights was born.

The Fourteenth Amendment and Parental Rights Doctrine in the Courts. The method of judicial interpretation known as "substantive due process" arose by reaching past the Fourteenth Amendment's text and obvious focus on a state's "deprivation" of life, liberty, or property, and instead recognizing *new* constitutional rights by substantively defining "liberty." Often considered problematic for identifying rights that appear nowhere

in the Constitution's text,[22] the Supreme Court has hewn to some limiting principles to prevent a too-broad application of the Court's substantive due process analysis.

Among those, the Supreme Court has explained that the Fourteenth Amendment incorporated provisions of the Constitution's Bill of Rights—the first 10 Amendments of the Constitution—to make them enforceable against the states as well as the federal government because, the Court has said, these are rights that are "implicit in the concept of ordered liberty."[23] It has also said, though, that there must be "[a]ppropriate limits on substantive due process," including the requirement that newly defined "rights" be "deeply rooted in this nation's history and tradition."[24]

As a further guardrail against overbroad substantive due process analysis, the Court has said that the right being asserted must be carefully and specifically described.[25] Rights of this nature are considered "fundamental," and any government infringement thereon must survive "strict scrutiny," the highest tier of judicial review. Under this standard, state action is presumptively unconstitutional. The state must demonstrate a "compelling state interest" behind its action, and that action must be "narrowly tailored" to achieve that compelling interest, meaning that no less restrictive alternative exists to achieve that compelling objective.[26]

The Diminished Capacity of Minors. The Supreme Court has also repeatedly recognized the diminished capacity of minor children and upheld limitations on important matters that significantly affect their lives.[27] For example, the Court has affirmed that that "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. [Therefore], parents can and must make those judgments."[28]

The Court has written that:

> A child's "lack of maturity" and "underdeveloped sense of responsibility" lead to recklessness, impulsivity, and heedless risk-taking.... They "are more vulnerable...to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment...." And because a child's character is not as "well formed as an adult's," his traits are "less fixed."[29]

While, in general, children have the same constitutional rights as adults, notable limitations exist. When, for example, the exercise of an asserted "right" (1) exposes the vulnerability of children; (2) exposes their inability to make mature decisions; or (3) involves the importance of the parental role

in child rearing, limitations on the freedom and decision-making of minor children are always appropriate.[30] And because "[c]hildren, by definition, are not assumed to have the capacity to take care of themselves,"[31] 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."[32]

***Meyer*, *Pierce*, and Their Progeny.** Bearing these principles in mind, the next step is to examine the Supreme Court's initial affirmation of the natural parental duty and the corresponding parental right more than 100 years ago in *Meyer v. Nebraska* and, shortly thereafter, in *Pierce v. Society of Sisters*. From these landmark holdings has sprung a wealth of federal case law regarding the precise boundaries of parents' right within education.

Parental Right to Control a Child's Education. In *Meyer*, the Supreme Court overturned a state law requiring all public school instruction to be in English, holding that the law violated the Fourteenth Amendment. In so doing, the Court stated that "liberty" includes "those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men,"[33] and those included "the power of parents to control the education of their own."[34]

In *Pierce*, the Court invalidated an Oregon law that prevented parents from sending their children to private schools. Citing *Meyer*, the Court said that it was "entirely plain" that the law "unreasonably interferes with the liberty interest of parents and guardians to direct the upbringing and education of children under their control."[35] It went on to say:

> 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.[36]

Federal courts have further clarified the scope of parents' rights within education, holding that parental rights do not end at the "school house door,"[37] and that "public schools must not forget that 'in loco parentis' does not mean 'displace parents.'"[38] The parental right, however, as the author has previously written,[39] is not unlimited, absolute, or unqualified.[40]

Curriculum and Administration. Federal appellate courts have recognized some categories of educational decisions in which parents do not have a cognizable constitutional interest.[41] The parental right to control the

upbringing and education of their children, for example, is comparatively weaker when it comes to the development of a substantive curriculum or matters of school administration.[42]

As some have noted:

> Notwithstanding [its] near-absolutist pronouncements, the [Supreme] Court has also recognized that for some portions of the day, children are in the compulsory custody of state-operated school systems. In that setting, the state's power is "custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults."[43]

While parents, for example, have the right to determine "which school their children will attend,"[44] they cannot dictate "how a public school teaches their child."[45] Federal courts have routinely clarified that parents are afforded no right to determine curriculum, select textbooks, or control the in-class pedagogical methods of a school's teachers.[46] This is so because, as Chief Justice Warren Burger wrote in his majority opinion in *Milliken v. Bradley*: "No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process."[47]

However, within certain limited contexts, parents have a right to remove their children from classroom instruction that they find to be objectionable or a violation of their religious or moral beliefs.

Curricular Opt-Out Rights. Curricular opt-out rights are set at the state, rather than federal, level, and state laws vary on instruction and topics from which parents may remove their children. The formal process for opting a child out of a particular type of instruction typically requires written notification or completion of an opt-out form (distributed by the school or school district) by that child's parents. These forms must be re-submitted each year.

Generally, state opt-out rights provide an opportunity to remove one's child only from instruction related to human sexuality. At present, there are 38 states, in addition to the District of Columbia, that require opt-out options for parents to remove their children from sex education curriculum.[48] Six additional states require a combination of opt-in and opt-out rights for parents to remove their children from classroom instruction on sex; four states require opt-ins from parents before instruction begins; and three more are silent on opt-out rights, but do not explicitly ban them.[49]

However, opt-out rights are often sporadically enforced at the local level, or largely limited to narrow categories of sex education.[50] For example,

some states—like Idaho,[51] Massachusetts,[52] and Missouri[53]—have opt-out laws related only to sex-ed instruction, whereas California expressly limits opt-outs to very narrow categories within the sex-ed curriculum itself.[54] Some states are even more restrictive and provide opt-outs for AIDS-prevention instruction only.[55] But in Iowa, opt-out rights apply more broadly to any health topic.[56]

In stark contrast to the remainder of the country, the Montgomery County School District (Maryland)—the largest in a state that otherwise protects opt-out rights to objecting parents for sex education–related instruction—explicitly bans notice and opt-outs for parents on radical gender identity and sexuality instruction altogether.[57] While the district's previous policies provided parental notification and opt-out rights for instruction related to gender transition, pride parades, intersexuality, prostitution, and pronoun preferences for children as young as four, that policy was rescinded in 2023.[58] As a result, a multi-faith coalition of parents sued to reinstate the former opt-out policy on the basis that its recission violated their religious convictions under the First Amendment's Free Exercise clause.

After losing in the district court, the parents' coalition appealed to the 4th Circuit, which affirmed the lower court, holding that parents have "no fundamental right" of opt-out based on religious objections to the teaching and construed the Supreme Court's seminal opinion in *Wisconsin v. Yoder*[59] to mean that there was no free-exercise burden because no one was forced "to change their religious beliefs or conduct." That case is now on appeal to the U.S. Supreme Court. The challengers have asked the Court to answer the following: Do public schools burden parents' religious exercise when they compel elementary school children to participate in instruction on gender and sexuality against their parents' religious convictions and without notice or opportunity to opt out?[60]

The 4th Circuit's ruling on curricular opt-out parts company with other federal courts that have held that parents must be permitted the opportunity to opt their children out of controversial sex and gender identity instruction when that instruction directly conflicts with their constitutional rights. For example, in *Tatel v. Mt. Lebanon School District*,[61] three parents of first-grade children sued a teacher, principal, school district, and members of the school board, alleging that the teacher, Megan Williams, taught their six- and seven-year-old children about gender dysphoria, transgender transitioning, and told them that "parents make a guess whether they're a boy or a girl. Sometimes parents are wrong." In so doing, and without providing an opportunity to opt their young children out of the instruction, the court determined that the parents' constitutional rights[62] had been violated.

In ruling for the parents on nearly every claim, Judge Joy Flowers Conti wrote:

> *A teacher instructing first-graders and reading books to show that their parents' beliefs about their children's gender identity may be wrong directly repudiates parental authority. Williams' conduct struck at the heart of Plaintiffs' own families and their relationship with their own young children.* The books read and Williams' instruction to her first-grade students taught that gender is determined by the child—not, in accordance with the Parents' beliefs, by God or biological reality....
>
> [The teacher's] *conduct showed intolerance and disrespect for the religious or moral beliefs and authority of the Parents*.... A reasonable jury could only find that conduct, without a compelling governmental interest being shown, in the elementary school violated the Parents' fundamental constitutional rights to control the upbringing of their young children.... Plaintiffs are not seeking a declaration that the transgender view of identity is wrong. Plaintiffs are not trying to change the curriculum or prevent the District from presenting transgender topics to other students. Plaintiffs seek the ability to exempt their young children from such instruction. Plaintiffs assert they are not trying to impose their religious or moral views on others, *but want to prevent Williams from abusing her position as a role model to impose the teacher's views upon the Parents' children that contradict the Parents' religious or moral views.*[63]

With the ever-increasing presence of gender-identity instruction in public school classrooms and the state's persistent creep into sensitive and controversial topics that were previously the sole purview of familial discussions, parents will need to be ever-vigilant in the examination of their minor children's school curriculum—a statutory right guaranteed to them and discussed in greater detail, below.

Troxel v. Granville. Prior to 2000, the Supreme Court's parental rights doctrine and analysis had been consistent and relatively unified. But the Court's holding in *Troxel v. Granville*[64] left a confusing legacy on parental rights and has thrown the lower federal courts into disarray on various iterations of that right.

Troxel v. Granville involved a challenge to a Washington State law allowing any person to petition a court for visitation rights whenever "visitation may serve the best interest of the child."[65] After the father of two girls died, their paternal grandparents petitioned for visitation rights over the mother's objection. The state supreme court determined that the statute had

violated the mother's Fourteenth Amendment right to rear her children, and the U.S. Supreme Court agreed, noting that under the "breathtakingly broad" visitation statute, "a parent's decision that visitation would not be in the child's best interest is accorded no deference."[66] But the *Troxel* Court yielded six separate opinions, none of which secured a five-vote majority.[67]

Certain principles emerged, however, from Justice Sandra Day O'Connor's plurality opinion for the Court. She noted the Court's extensive record of recognition of the parental right:

> *The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.* More than 75 years ago, in *Meyer v. Nebraska*...we held 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." Two years later, in *Pierce v. Society of Sisters*...we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in *Pierce* that "[t]he 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...." We returned to the subject in *Prince v. Massachusetts*...and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children.... *In light of this extensive precedent, it 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.*[68]

In all, the Supreme Court has issued 13 parental rights decisions. All have included a Fourteenth Amendment substantive due process analysis. Because of the problematic nature of that method of judicial interpretation, there is a pressing need for further clarification on the parameters of parental rights given the Supreme Court's fractured *Troxel* analysis and the propagation of state laws and conflicting lower court opinions on school gender policies, parental notification, parents' "bills of rights," curricular opt-outs, and more.

Parental Rights Under Statutory Law

In addition to the pronouncements of the Supreme Court and various federal courts on the right of parents to direct their children's upbringing

and education, various federal statutes guarantee certain parental rights.[69] Those statutes, together with judicial pronouncements on the general parental right under the Fourteenth Amendment, provide more robust legal footing for parents looking to protect the primacy of their child-rearing authority. This is especially so within education and health care settings.

Parental Rights: Education. What rights do parents have regarding their children's education?

Every Student Succeeds Act: Access and Participation. Among the federal statutes that protect parental rights in public education formats is the Every Student Succeeds Act (ESSA).[70] ESSA guarantees parents the right to participate in and receive access to their minor child's overall educational experience. For example, ESSA guarantees that schools hold parent–teacher conferences[71] and provides parents reasonable access to school staff[72] and the opportunity to volunteer and participate in (as well as observe) a minor child's classroom.[73] Under ESSA, parents also have the right to ask for the qualifications of their children's teachers[74] and to opt their children out of standardized exams.[75]

In many states, like California, parents have the right, provided by state statute, to be notified if the school is conducting medical, cognitive, and language screenings of children.[76] Parents can also appeal issues or speak in opposition to or support of various school initiatives to their school district's school board, which meets regularly and must provide an opportunity for public comment on agenda items and initiatives.[77] Additionally, parents of children with disabilities[78] are entitled to participate in meetings with respect to their children's evaluation and educational placement, and the development of a plan to provide their children a "free appropriate public education" as required under federal law.[79]

Family Educational Rights and Privacy Act: School Records. The Department of Education requires that all education associations at the state or local level that are recipients of federal funding adhere to student privacy laws that protect the confidentiality of student records, allow parental examination of curriculum, provide opt-out rights on school surveys, and more. Rights guaranteed by the two educational privacy laws discussed below are held by the parent of a minor child until that minor child turns 18, at which point, the privacy rights pass to the child.[80]

The first of these federal privacy laws, the Family Educational Rights and Privacy Act[81] (FERPA), gives parents the right to inspect their minor child's educational records at school, to have those records explained to them, if necessary, to request updates and corrections to those records if information is incorrect, and to have their children's education records

sent to another school in a timely manner if they wish to have the children transferred. Parents can also withhold consent to the disclosure of any information from a student's record to outside parties.[82]

FERPA's key provisions include:

- Parents have a right to the education records of their children, and a school must provide that information within no more than 45 days.[83]
- If a school has a policy of denying, or effectively preventing, parents of current or former students from inspecting and reviewing their children's educational records, that school forfeits federal funding.[84]
- If there is a discrepancy in a student record, parents can demand a hearing with the school to challenge the content of their student's educational records and request a correction or deletion of inaccurate data.[85]
- Parental consent is required to release any student record data, with limited exceptions such as compliance with judicial orders and subpoenas, evaluation of federally supported education programs, recordkeeping, or at the request of officials at another school when a parent seeks to enroll a child at that school.[86]
- Parents have a right to know who has obtained access to their student's record and the reason that they were permitted access.[87]
- When students turn 18, they have the right to direct who, including parents, has access to their education records and information.[88]

FERPA contains no private right of action for parents for violations of that law.[89] However, complaints for alleged violations of FERPA may be filed with the U.S. Department of Education's Student Privacy Policy Office (SPPO).[90] Such complaints must be filed within 180 days of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged privacy violation. All complaints for alleged violations of FERPA must be investigated by the SPPO.

Protection of Pupil Rights Amendment (PPRA) – School Surveys and Curriculum. While curricular opt-out for particular subjects like sex-ed (and in certain limited circumstances, social emotional learning) are governed at the state level by state statute or local school district policy, the federal

Protection of Public Rights Amendment (PPRA),[91] like FERPA, permits parents to opt their children out of school surveys that implicate certain highly sensitive topics. First passed in 1974 and expanded several times since then,[92] the PPRA provides parental rights of curricular access, opt-out, and involvement related to school instructional and survey materials.

Now more than ever, the PPRA stands as a bulwark against the state's intrusion into private family affairs and sensitive topics farmed out to minor children through student surveys created by school districts, third-party vendors,[93] teachers, and government agencies. Some have noted "[t]he surveys and 'screeners' that students are increasingly asked to fill out at school look more like...[what] one would expect to see in a pediatrician's office, mental health facility, or gender clinic than what one might presume they would find in a...classroom."[94]

The PPRA applies to the programs and activities of a state educational agency, local educational agency, or other recipient of federal funds from the U.S. Department of Education. The PPRA governs the administration of any survey, analysis, or evaluation to any school student concerning one or more of the following eight areas:

- Political affiliations or beliefs of the student or the student's parent;
- Mental or psychological problems of the student or the student's family;
- Sex behavior or attitudes;
- Illegal, anti-social, self-incriminating, or demeaning behavior;
- Critical appraisals of other individuals with whom respondents have close family relationships;
- Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- Religious practices, affiliations, or beliefs of the student or student's parent; or
- Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).[95]

Not only may parents opt their minor children out of such surveys, but parents may also inspect all instructional materials, including teachers' manuals, films, tapes, or other supplementary material that will be used in connection with any survey, analysis, or evaluation.[96]

Under the PPRA, parents must also be informed of, and allowed to participate in, the creation of local policies that notify parents about surveys administered to students, as well as participate in the development of local policies pertaining to student privacy, parental access to information, and administration of certain physical examinations to minors.[97] The PPRA also guarantees a parent the right to have reasonable notice of a "substantive" change in any policy concerning federally funded surveys and to opt their student out of any of the following:

- Activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or selling that information (or otherwise providing that information to others for that purpose);
- The administration of any survey containing one or more of the topic areas described above; and
- Any non-emergency, invasive physical examination or screening that is:
    - Required as a condition of attendance;
    - Administered by the school and scheduled by the school in advance; and
    - Not necessary to protect the immediate health and safety of the student or of other students.[98]

Perhaps most importantly, the PPRA allows parents to examine all "instructional material" used as part of the school year curriculum.[99] The parent who wants to exercise this right must request the material; the school is not required to provide access to the material without first being asked. Parents should demand that schools disclose teacher training materials designed to affect or direct student instruction as "instructional material."

While the PPRA—like FERPA—does not convey a private right of action that permits parents to bring a legal claim against schools or school districts for alleged violations of the law,[100] parents can file privacy complaints for violation of the PPRA with the SPPO within 180 days of the date of the alleged violation.

School Gender Confidentiality Policies. School gender policies are proliferating in American educational outlets across the country. As of October 3, 2024, there are more than 1,131 school districts—representing more than 20,000 schools and an incredible 12,170,024 students—that are subject to these policies.[101] As one of the newest, but perhaps most pernicious, challenges to parental rights, these policies prohibit school officials from revealing a student's "transgender status" to his or her parents, and consider any such revelation without a student's express consent to be harassment, discrimination, a violation of federal privacy law, or any combination thereof.

As the author has previously written, these policies patently violate the rights of parents.[102] This is because parents are prevented from playing any role in the development of their children's ideological view on issues related to that child's core identity. The policies elevate "a child's gender-related choices to that of paramount importance, while excluding a parent from knowing of, or participating in, that choice."[103] Policies like these are "as foreign to federal constitutional and statutory law as [they are] medically unwise."[104]

In October 2020, for example, three parents with children in a Montgomery County, Maryland, high school sued[105] the Montgomery County Board of Education[106] over its gender-identity support plan guidelines, claiming that the guidelines—requiring confidentiality and non-disclosure to a student's parents regarding that student's transgender status—violated their fundamental rights to determine the care and upbringing of their children.

In relevant part, those guidelines state:

> It is critical that all MCPS [Montgomery County Public Schools] staff members recognize and respect matters of gender identity; make all reasonable accommodations in response to student requests regarding gender identity; and protect student privacy and confidentiality.... All students have a right to privacy. This includes the right to keep private one's transgender status or gender nonconforming presentation at school. Information about a student's transgender status, legal name, or sex assigned at birth may constitute confidential medical information. Disclosing this information to other students, their parents/guardians, or third parties may violate privacy laws, such as the federal Family Educational Rights and Privacy Act (FERPA).[107]

As with Montgomery County Schools, schools with gender confidentiality policies often cite FERPA as a putative basis for why a minor child's gender identity must be concealed from his or her parents. But as discussed above, this view relies on an erroneous understanding of FERPA's application, as it is the parent who has certain rights with respect to the child's educational record until the child reaches the age of 18.

Until they reach adulthood, children's rights are subordinated to those of their parents to raise and educate them, particularly when a child's asserted "right" exposes his or her vulnerability or inability to make mature decisions or when it involves an issue of critical importance in terms of the traditional parental role in raising a minor child.[108] It is incontrovertible that the asserted right of a minor to keep gender identity information concealed from one's parents fits within these criteria.

School confidentiality policies are specifically intended to interfere with the family relationship and therefore strike at the heart of the parents' right to raise their children.[109] In fact, as the 11th Circuit has recognized, a "parent's constitutional right to direct the upbringing of a minor is violated *when the minor is coerced to refrain from discussing with the parent an intimate decision such as…[when it] touches fundamental values and religious beliefs parents wish to instill in their children*."[110]

And although most school gender confidentiality policies articulate the "unsupportive" nature of families as the reason to maintain the privacy of gender non-conforming children, federal courts have stressed that the "state has no interest in protecting children from their parents unless it has some reasonable and articulable evidence giving rise to a *reasonable suspicion that a child has been abused or is in imminent danger of abuse*."[111]

A case that is nearly identical to the challenge against the Montgomery County School Board's gender confidentiality policy is currently pending on a petition for review at the U.S. Supreme Court.[112] The parents in that case are asking the Court to determine whether they have standing to challenge a school district that adopts an explicit policy to usurp parental decision-making authority over a major health-related decision—and to conceal it from the parents. The Supreme Court once again has the opportunity to clarify its parental rights doctrine and to restate in clearer terms the nature of the "fundamental" right to direct the education and care of one's own minor children.

Parental Rights: Health Care and Child Welfare

The Health Insurance Portability and Accountability Act. Parents have certain very limited rights when it comes to the health care of

their minor children. Under the federal Health Insurance Portability and Accountability Act (HIPAA),[113] for example, parents have the right to act as their children's personal representatives.[114] Nevertheless, HIPAA also allows minors to sometimes make autonomous health care decisions in states where consent is not required by law, where a court or other authorized party consents to the health care service requested, or where a parent or other party acting in place of a parent consents to an agreement of confidentiality with respect to a particular health care service. And largely due to the concerted efforts of proponents of the "child rights" movement, state legislatures are now passing laws permitting children to consent to a number of sensitive medical treatments—often without their parents' knowledge, let alone consent.

For example, the Centers for Disease Control and Prevention notes that as of 2022, every state and the District of Columbia explicitly allows minors of a particular age (with the age limits varying among the states) to give informed consent to receive diagnosis and treatment services for sexually transmitted diseases.[115] In some jurisdictions, a minor can now give his or her informed consent to receive specific services for HIV or sexually transmitted diseases, even if the law is silent on providing those services to minors.[116]

State laws run the gamut on the accessibility of medical treatment for minors without the involvement of their parents. These treatments include everything from dental care and immunizations to prenatal care, contraception, substance abuse treatment, and mental health care.[117] In 2017, for example, the Guttmacher Institute[118] performed a survey of state laws permitting children under the age of 18 to access certain medical tests and treatment.

It found the following:

- **Contraceptive Services.** Twenty-six states and the District of Columbia allow *all* minors (12 and older) to consent to contraceptive services; 20 states allow only certain categories of minors to consent to contraceptive services; and four states have no relevant policy or case law.

- **Sexually Transmitted Infection (STI) Services.** All states and the District of Columbia allow all minors to consent to STI services. Eighteen of these states allow, but do not require, a physician to inform a minor's parents that he or she is seeking or receiving STI services when the doctor deems it in the minor's best interests.

- **Prenatal Care.** Thirty-two states and the District of Columbia explicitly allow all minors to consent to prenatal care, and 13 of these states allow, but do not require, a physician to inform parents that their minor daughter is seeking or receiving prenatal care when the doctor deems it in the minor's best interests; an additional 13 states have no relevant policy or case law.

- **Adoption.** Twenty-eight states and the District of Columbia allow all minor parents to choose to place a child for adoption. In addition, five states require the involvement of a parent, and five states require the involvement of legal counsel. The remaining 12 states have no relevant policy or case law.

- **Abortion.** Two states and the District of Columbia explicitly allow all minors to consent to abortion services; 21 states require that at least one parent consent to a minor's abortion, while 12 states require prior notification of at least one parent; five states require both notification of and consent from a parent prior to a minor's abortion; and six additional states have parental involvement laws that are temporarily or permanently enjoined. Five states have no relevant policy or case law.

To ensure involvement in their children's medical care, parents will need to ask to be their children's personal medical representative whenever interacting with medical professionals. They will also need to determine for themselves what services are accessible to their minor children without parental consent.

General Right to Medical Care vs. "Gender Affirming" Care. Beyond statutory rights of access to a minor child's medical care and the opportunity to act as a minor child's medical representative secured by HIPPA, and despite state laws limiting parental consent for certain tests and procedures, federal courts have long recognized a parent's general constitutional right to direct the medical care of their children.

For example, the Supreme Court was tasked with determining the constitutionality of a Georgia mental health law in *Parham v. J. R.*[119] that permitted the involuntary admission of a minor child to a mental health hospital by his or her parents. Plaintiff children alleged that they had been deprived of their liberty without procedural due process, but the Court disagreed. In addressing claims that parents might abuse their minor children through the involuntary commitment process, the Supreme Court noted:

> We cannot assume that the result in *Meyer v. Nebraska*...and *Pierce v. Society of Sisters*...would have been different if the children there had announced a preference to learn only English or a preference to go to a public, rather than 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 parents' authority to decide what is best for the child.[120]

In *Bellotti v. Baird*,[121] which involved a challenge to a state law requiring parental consent for a minor to obtain an abortion, the Supreme Court recognized that "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them."[122] As a result, "parental notice and consent are qualifications that typically may be imposed by the State on a minor's right to make important decisions."[123] Similarly, in *H. L. v. Matheson*,[124] the Supreme Court acknowledged 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."[125] This authority "presumptively includes counseling [children] on important decisions."[126]

This parental right to direct a child's medical care is not unlimited, though. And, with the proliferation of "gender affirming" care requests for minors (the medical soundness of which is utterly unsupported by the clinical research[127]), parents across the country have begun to advance Fourteenth Amendment due process claims to direct and secure this precise type of medical care for their children. Those claims, however, directly contradict the pronouncements of both the Supreme Court and various federal courts on the state's role in protecting the welfare of minors when necessary—especially when minors may be harmed by the decisions of their custodians.

In *Prince v. Massachusetts*,[128] a Jehovah's Witness challenged her conviction under Massachusetts' child labor law for permitting her nine-year-old niece, over whom she had custody, to sell religious literature. She claimed that the law violated both her First Amendment right to exercise religion and, citing *Meyer*, her Fourteenth Amendment right to direct the upbringing of a child in her custody. The Supreme Court wrote that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare,"[129] and that "[t]he state's authority over children's activities is broader than over like actions of adults," but is not unlimited.[130] Put in more personal terms, "[p]arents may be free to become martyrs themselves. But it does not follow they are free...to make martyrs of their children before they have reached the age of full and legal

discretion when they can make that choice for themselves."[131] In this light, and with an eye toward the welfare of the child, the Supreme Court affirmed the conviction.

In *Abigail Alliance for Better Access to Developmental Drugs v. von Eschenbach*,[132] terminally ill patients claimed a Fourteenth Amendment right to access experimental drugs that had "passed limited safety trials but had not been proven safe and effective."[133] The U.S. Court of Appeals for the D.C. Circuit, sitting *en banc*, concluded that such a right is not deeply rooted in America's history and tradition. Rather, "our Nation has long expressed interest in drug regulation, calibrating its response in terms of the capabilities to determine the risks associated with both drug safety and efficacy."[134] The court concluded that "FDA [Food and Drug Administration] regulation of...drugs is entirely consistent with our historical tradition of prohibiting the sale of unsafe drugs."[135]

The drugs used in the practice of "gender-affirming" care—puberty blockers and cross-sex hormones—have *not* been approved by the U.S. Food and Drug Administration for treatment of gender dysphoria or gender identity disorder, whether for adults or minors.[136] This is significant, because the Supreme Court has never recognized a "general right to receive new medical or experimental drug treatments"[137] even for adults; therefore, "[t]here's little reason to think that a parent's right to make decisions for a child sweeps more broadly than an adult's right to make decisions for herself."[138]

In an even more recent pronouncement on the suitability of state restrictions on "gender affirming" care for minors, the 11th Circuit Court of Appeals wrote that "[t]he plaintiffs have not presented any authority that supports the existence of a constitutional right to 'treat [one's] children with transitioning medications subject to medically accepted standards.'"[139]

In light of these new challenges, the need for the Supreme Court to clarify the scope of this alleged parental right under the Fourteenth Amendment is more critical now than ever before.[140]

Questions for Educators and Health Care Professionals

Today's parents must be more vigilant than ever in inquiring of medical and educational professionals on how decisions impacting their children are made, what processes are in place to guarantee parental involvement, and how they can gain access to important records. With the increasing popularity of a collectivist view of child-raising, aggressive curricular expansions on gender identity and sexually graphic material, widespread provision of experimental "gender affirming" medical treatments for minors, and an

overall divestment of parental involvement in K–12 schools, the parental right is under threat to an unprecedented degree.

Watchful parents must be proactive in asking questions of professionals involved in their children's instruction and care, including:

- Can I examine my child's curriculum? If not, why?
- Does your medical practice object to my acting as my child's health care representative? If so, why?
- Will your practice require me to leave the room when my child is asked questions of a sensitive nature? If so, why? How does your practice handle parental refusals to do so?
- Can I examine my child's health care record? If not, why?
- What is your reason for excluding me from the examination room when my minor child is being questioned on his or her health?
- Will I be notified if my child is coming to the student health center or school nurse with specific requests for care? If not, why?
- How is the school's curriculum developed—and with whom? Specifically, what group or groups have been engaged to develop sex (and/or gender identity) curriculum?
- Am I able to opt my child out of sex and/or gender identity curriculum? If not, why? If yes, what is the process and how will parents be notified?
- Will you allow public comment during the school board meeting that discusses gender identity, illustrated pornography, "diversity" programming initiatives, among others? For how long? If not, why?
- Will you encourage viewpoint diversity in the classroom? Does the school's definition of "diversity" include viewpoint or religious diversity as well?
- Can I review my child's educational record? If not, why?

- Can I review the opt-out form that this school offers for surveys? If not, why? If there is not one, why? What surveys will be introduced this year? Who develops them? How will parents be notified of their right to opt-out?

- What is the school's diversity statement? Does it keep information on minor children's gender identity confidential from parents?

Conclusion

In conclusion,[141] the Supreme Court has not weighed in on the increasingly heated parental rights debate since its ruling more than two dozen years ago in *Troxel v. Granville*. There are several cases currently pending at the Supreme Court on petitions for review that directly or indirectly implicate the nature and extent of parental rights.[142] However, legal analysis on parental rights has been flawed—whether on substantive due process and the general Fourteenth Amendment right to direct a child's upbringing, or on more specific controversies such as curricular opt-out, so-called "gender affirming" care for minor children, or the viability of parents' free exercise rights when curriculum, school surveys, or policies conflict with their religious beliefs and those of their minor children. As a result, there is a split among the lower federal appellate courts on issues directly impacting parents and children across the country. And even statutory parental rights have been misinterpreted or misapplied.

The parameters of the "fundamental" parental right—both in constitutional and statutory law—would benefit greatly from Supreme Court review and clarification. Until then, and newly armed with a more comprehensive catalogue of their rights under federal law, parents must continue to oppose the attempted limitations of their right to direct the upbringing of their own children—the oldest of all the nation's fundamental rights, and the basis of all free and flourishing societies.

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Endnotes

1. Prince v. Massachusetts, 321 U.S. 158, 166 (1944).
2. So contentious is the notion of "parental rights," that in October 2021, U.S. Attorney General Merrick Garland released a memorandum calling on federal agencies to work with states on "strategies for addressing threats against school administrators, board members, teachers, and staff" in response to the increasing number of parents protesting the inclusion of, among other things, sexually graphic material in public schools. *See* Memorandum for Director, Federal Bureau of Investigations, Dir. of the Exec. Office for U.S. Att'ys, Assistant Att'y Gen. of the Crim. Div., and U.S. Att'ys (Oct. 4, 2021), https://www.justice.gov/ag/file/1170061-0/dl?inline=. That year, a group of parents based in Michigan and Virginia filed a lawsuit against the Department of Justice over the memo, arguing that the intention of the guidance was to censor parents—especially those espousing conservative views. The appeal reached the U.S. Supreme Court, but the Court declined to hear the case on October 7, 2024. *See also* John Fritze, *Supreme Court Won't Hear Case from Parents Fighting Justice Department Memo on School Board Threats*, CNN (Oct. 7, 2024), https://www.msn.com/en-us/news/other/supreme-court-won-t-hear-case-from-parents-fighting-justice-department-memo-on-school-board-threats/ar-AA1rPQnF?ocid=BingNewsSerp.
3. *MSNBC Ad: Kids Don't Belong to Their Parents, Kids Belong to Communities*, RealClear Politics (Apr. 8, 2013), https://www.realclearpolitics.com/video/2013/04/08/msnbc_ad_kids_dont_belong_to_their_parents_its_collective_responsibility.html.
4. Alec Schemmel, *"They're All Our Children": Biden Emboldens Teachers Amid Debate About Parental Rights*, Nat'l Desk (updated Apr. 28, 2022, 3:27 PM), https://thenationaldesk.com/news/americas-news-now/theyre-all-our-children-biden-emboldens-teachers-amid-debate-about-parental-rights.
5. *See* Melissa Moschella, *Parental Rights: A Foundational Account*, Heritage Found. Backgrounder No. 3568 at 4 (Dec. 2020), https://www.heritage.org/education/report/parental-rights-foundational-account.
6. *Id.*
7. For example, a recent law review article argues that the "new parents rights" movement has resulted in unrestricted parental authority over a child's education and that these rights allow parents to "indoctrinate" their children with anti-egalitarian views that harm democracy. The author further suggests that parental rights advocates should recognize the *collective role of the parent, educator, and state in a child's education and embrace their shared decision-making authority to promote and defend the public good*. *See* Kristine L. Bowman, *The New Parents' Rights Movement, Education, and Equality*, 91 U. Chi. L. Rev. 399 (2024) (emphasis added). The author continues that "although prioritizing parents as decision-makers fosters viewpoint diversity in the short term by enabling families to more easily pass along their worldviews to their children, *it also feeds polarization because the state's interests in creating a shared civic identity, incorporating a range of worldviews, and creating citizens that perpetuate democracy, are not part of decisions about children's education (or if they are, it is coincidental that parents share these interests).*" *Id.* at 400 (emphasis added). She concludes that she is "concerned…when parents' rights supplant the rights of the state, professional educators, and arguably students." *Id.* at 433. These are positions both ahistorical and wholly ignorant of the Supreme Court and federal courts' edicts on the primacy of the parental right.
8. Kevin Bell, *DC Family Loses Custody of Autistic Son Over Gender Transition Fight*, MSN (Jul. 27, 2024), https://www.msn.com/en-us/news/us/dc-family-loses-custody-of-autistic-son-over-gender-transition-fight/ar-BB1qJeZT#:~:text=The%20family%20lost%20custody%20of%20their%20autistic%20son.
9. Luke Andrews, *DC Family Lose Custody of Their Autistic Son, 16, After Refusing to Let Him Transition to a Girl*, Daily Mail (updated Jul. 26, 2024, 11:32 AM), https://www.dailymail.co.uk/health/article-13668663/Maryland-family-lost-custody-16-year-old-autistic-son.html.
10. "Social transition"—the facilitation of a child's desired bathroom, clothing, pronoun, or name use—is a clinically significant therapeutic intervention by a child's school, parent, caretaker, or other adult, and is "not a neutral act." *See* Edmo v. Corizon, Inc., 935 F. 3d 757, 770 (9th Circ. 2019) (acknowledging that the World Professional Association for Transgender Health's Standards of Care identify social transitioning as a "form of treatment" for those suffering from gender dysphoria). *See also* Independent Review of Gender Identity Services for Children and Young People: Interim Report 63 (Cass Rev. Feb. 2022), https://cass.independent-review.uk/wp-content/uploads/2022/03/Cass-Review-Interim-Report-Final-Web-Accessible.pdf.
11. Caitlin Tilley, *New York Father Loses Legal Battle to Stop His Son, 8, from Taking Puberty Blockers to Change Gender*, Daily Mail (updated Feb. 2, 2024, 3:09 PM), https://www.dailymail.co.uk/health/article-13030699/gender-transition-custody-battle.html.
12. *Id*.
13. Nate Raymond, *Maryland Parents Can't Opt Kids out of LGBTQ Book Curriculum, Court Rules*, Associated Press (May 15, 2024, 2:35 PM), https://www.reuters.com/legal/government/maryland-parents-cant-opt-kids-out-lgbtq-book-curriculum-court-rules-2024-05-15/#:~:text=May%2015%20(Reuters)%20-%20A%20divided%20federal%20appeals.
14. *Id*.
15. Mahmoud v. McKnight, 102 F.4th 191 (4th Cir. 2024), *petition for cert. filed*, (U.S. Sept. 12, 2024) (No. 24–297), https://www.supremecourt.gov/DocketPDF/24/24-297/325842/20240912175611643_Mahmoud%20v.%20Taylor%20Cert%20Petition%20FINAL.pdf. *See also* Kevon Dupree, *Parents Push for Montgomery County Public Schools to Restore Opt-outs, Ask Supreme Court to Hear Case*, DC News Now (Sept. 17, 2024, 6:06 PM), https://www.yahoo.com/news/parents-push-montgomery-county-public-230632299.html.
16. Across the country, state legislatures have enacted various laws either expanding or contracting the parental right, whether through parental "bills of rights," curricular opt-out provisions, health care regulations, or otherwise. Because a comprehensive analysis of all state laws in this field is beyond the scope of this *Legal Memorandum*, it will largely focus on federal provisions that secure or clarify parental rights.

17. Thomas Aquinas, Summa Theologiae, II–II, q. 10, a. 12. *See also* Moschella, *supra* note 5.
18. John Locke, Second Treatise of Government, Ch. VI, § 71 (1689).
19. 1 William Blackstone, Commentaries, Ch. 16, https://avalon.law.yale.edu/18th_century/blackstone_bk1ch16.asp. *See also* Robert A. Sedler, *From Blackstone's Common Law Duty of Parents to Educate Their Children to a Constitutional Right of Parents to Control the Education of Their Children*, Forum Pub. Pol. (2006), https://files.eric.ed.gov/fulltext/EJ1098491.pdf.
20. 1 Annals of Cong. 755 (1789).
21. U.S. Const. amend. XIV.
22. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 333 (2022) (Thomas, J., concurring) (Justice Clarence Thomas outlining several dangers of substantive due process that, he argues, "favor jettisoning the doctrine entirely.").
23. Palko v. Conn., 302 U.S. 319, 325 (1937). *See also* Wash. v. Glucksberg, 521 U.S. 702, 721(1997); *Dobbs*, 597 U.S. at 231.
24. Moore v. City of East Cleveland, 431 U.S. 494, 503 (1977) (plurality opinion); *see also* Troxel v. Granville, 530 U.S. 57, 100 (2000).
25. See Reno v. Flores, 507 U.S. 292, 302 (1993) (The Court "has always been reluctant to expand the concept of substantive due process" and has focused on "how [a] petitioner describes the [unenumerated] constitutional right at stake."). *See also* Collins v. City of Harker Heights, 503 U.S. 292, 302 (1993).
26. *See, e.g.*, San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 37–40 (1973) (Infringement of a "fundamental" right is subject to a heightened or "strict" level of judicial scrutiny, whereas an encroachment on other rights or liberties must be analyzed under "the traditional standard of review, which requires only that the [challenged state action] be shown to bear some rational relationship to legitimate state purposes."); *see also* Carey v. Population Services Int'l, 431 U.S. 678, 686 (1976).
27. For additional discussion of the diminished capacity of children, see Sarah Parshall Perry and Thomas Jipping, *Public School Gender Policies that Exclude Parents Are Unconstitutional* 4, Heritage Found. Legal Memo. No. 355 at 4 (June 2024), https://www.heritage.org/sites/default/files/2024-06/LM355.pdf.
28. Parham v. J. R., 442 U.S. 584, 603 (1979).
29. Miller v. Alabama, 567 U.S. 460, 471 (2012) (quoting Roper v. Simmons, 543 U.S. 551, 569, 570 (2005)).
30. Belotti v. Baird, 443 U.S. 622, 634–637 (1979). *See also* Ginsberg v. N.Y., 390 U.S. 629 (1968) ("illustrat[ing] well the Court's concern over the inability of children to make mature choices").
31. Schall v. Martin, 467 U.S. 253, 265 (1984).
32. Parham v. J. R., 442 U.S. 584, 602 (1979).
33. Meyer v. Neb., 262 U.S. 390 (1923).
34. *Id*. at 401.
35. Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–535 (1925).
36. *Id*. at 535.
37. C. N. v. Ridgewood Bd. of Educ., 430 F.3d 159, 185 (3d Cir. 2005).
38. Gruenke v. Seip, 225 F.3d 290, 307 (3d Cir. 2000) (*In loco parentis* means someone acting in the place of a parent.); *see also* C. N. v. Ridgewood, 430 F.3d at 183 (Schools are said to generally be acting *in loco parentis* when they are overseeing the education of minor children during the school day.); *see also* Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 684 (1986).
39. Sarah Parshall Perry & Thomas Jipping, *States May Protect Minors by Banning "Gender-Affirming Care*," Heritage Found. Legal Memo No. 344 at 3 (Dec. 2023), https://www.heritage.org/gender/report/states-may-protect-minors-banning-gender-affirming-care.
40. *See* Hodge v. Jones, 31 F.3d 157, 163–64 (4th Cir. 1994) ("The maxim of familial privacy is neither absolute nor unqualified, and may be outweighed by a legitimate governmental interest."); *see also* Vernonia Sch. Dist. v. Acton, 515 U.S. 646, 655 (1995) (noting that during the school day, the state's power is "custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults").
41. *See, e.g.*, Swanson v. Guthrie Indep. Sch. Dist., 135 F.3d 694 (10th Cir.1998) (school policy against part-time attendance did not violate parent's right to direct upbringing of child).
42. *See, e.g.*, Parker v. Hurley, 514 F.3d 87, 102 (1st Cir. 2008). In *Parker*, parents objected to their children being taught with books depicting same-sex families. The district refused to grant the children an exemption from the instruction, writing: "Defendants respond that plaintiffs' argument runs afoul of the general proposition that, while parents can choose between public and private schools, they do not have a constitutional right to 'direct how a public school teaches their child.'" Blau v. Fort Thomas Pub. Sch. Dist., 401 F.3d 381, 395 (6th Cir. 2005). That proposition is well-recognized. See, e.g., *Ridgewood*, 430 F.3d at 184 (recognizing a "distinction between actions that strike at the heart of parental decision-making authority on matters of the greatest importance and other actions that, although perhaps unwise and offensive, are not of constitutional dimension"); Leebaert v. Harrington, 332 F.3d 134, 141 (2d Cir. 2003) ("Meyer, Pierce, and their progeny do not begin to suggest the existence of a fundamental right of every parent to tell a public school what his or her child will and will not be taught."); Littlefield v. Forney Indep. Sch. Dist., 268 F.3d 275, 291 (5th Cir. 2001) ("It has long been recognized that parental rights are not absolute in the public school context and can be subject to reasonable

regulation."); *Swanson*, 135 F.3d at 699 ("The case law in this area establishes that parents simply do not have a constitutional right to control each and every aspect of their children's education."). Indeed, Meyer and Pierce specified that the parental interests they recognized would not interfere with the general power of the state to regulate education, including "the state's power to prescribe a curriculum for institutions which it supports." Meyer v. Nebraska, 262 U.S. 390, 402 (1923). *See also* Fields v. Palmdale Sch. Dist., 427 F.3d 1197, 1206 (9th Cir. 2005) ("[O]nce parents make the choice as to which school their children will attend, their fundamental right to control the education of their children is, at the least, substantially diminished.").

43. Gruenke v. Seip, 225 F.3d 290, 304 (3d Cir. 2000) (quoting Vernonia Sch. Dist. v. Acton, 515 U.S. 646, 655 (1995)).
44. The U.S. Court of Appeals for the Ninth Circuit has expressed a limited view of the parental right within the context of education, as noted in *Fields*, *supra* note 42. In *Fields*, it affirmed the dismissal of an action against a public school district for distributing a survey to elementary-age students that included questions about sex, holding that "there is no fundamental right of parents to be the exclusive provider of information regarding sexual matters to their children, either independent of their right to direct the upbringing and education of their children or encompassed by it." *Id.* at 1200. The court went on to add that "[p]arents have a right to inform children when and as they wish on the subject of sex; they have no constitutional right, however, to prevent a public school from providing its students with whatever information it wishes to provide, sexual or otherwise." *Id.* at 1206. However, the Ninth Circuit's analysis in *Fields* has been expressly repudiated by other federal courts. *See* Tatel v. Mt. Lebanon Sch. Dist., 637 F. Supp. 3d 295 (W.D. Pa. 2022), *clarified on denial of reconsideration*, 675 F. Supp. 3d 551 (W.D. Pa. 2023).
45. *See* Blau v. Fort Thomas Pub. Sch. Dist., 401 F3d 381, 395–96 (6th Cir. 2005). Matters in this second category include "the school curriculum, the hours of the school day, school discipline, the timing and content of examinations, the individuals hired to teach at the school, the extracurricular activities offered at the school or…a dress code." These "issues of public education are generally committed to the control of state and local authorities." *Id.*
46. Conward v. Cambridge School Comm., 171 F.3d 12, 23 (1st Cir. 1999).
47. Milliken v. Bradley, 418 U.S. 717, 741 (1974).
48. *See* Becket Found., *Parental Opt-Out Policies for Sex Education Across the United States* (Oct. 10, 2024), https://becketnewsite.s3.amazonaws.com/20240913134507/MoCo-Map-Graphic_.pdf.
49. *Id*.
50. Some local education associations, including school districts and individual schools, permit opt-outs for "social emotional learning" or SEL, a non-academic category of instruction focusing on the political education and thought reform of children by emphasizing emotional "development" and social skills—while broaching topics such as oppression, white privilege, and abuse—that are better left to parents and guardians to discuss with their children. SEL rose to new prominence after passage of the Every Student Succeeds Act (ESSA), the federal education law that allows states to use one nonacademic measure for accountability, in addition to the required academic measures. *See* discussion of ESSA, *infra* p. 12. *See also* James Lindsay, *Social Emotional Learning (SEL)*, YouTube (Nov. 10, 2022), https://www.youtube.com/watch?v=08v5C5DvR14. *See also* Libby Stanford & Arianna Prothero, *What 1 State's Saga Shows About the Status of Social-Emotional Learning*, Educ. Wk. (Oct. 31, 2023), https://www.edweek.org/leadership/what-1-states-saga-shows-about-the-status-of-social-emotional-learning/2023/10. *See also* Zara Abrams, *Teaching Social-Emotional Learning Is Under Attack*, Amn. Psych. Ass'n (Sept. 1, 2023), https://www.apa.org/monitor/2023/09/social-emotional-learning-under-fire.
51. *See* Idaho Code §§ 33–1611 (1970).
52. *See* Mass. Gen. Laws ch. 71, § 32A.
53. *See* Mo. Rev. Stat. § 170.015 (2018).
54. *See* Cal. Edu. Code § 51938 (2016).
55. *See Sex and HIV Educ.*, Guttmacher Inst. (as of Sept. 1, 2023), https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education.
56. *See* Iowa Code § 256.11 (2018).
57. Becket Found., *supra* note 48.
58. *See* Haley Strack, *Maryland Parents Petition Supreme Court to Reinstate Parental Right to Opt Out of Gender, Sexuality Lessons*, Nat'l Rev. (Sept. 13, 2024), https://www.nationalreview.com/news/maryland-parents-petition-supreme-court-to-reinstate-parental-right-to-opt-out-of-gender-sexuality-lessons/.
59. In *Wisconsin v. Yoder* (406 U.S. 205 (1972)), defendant parents had been found guilty of violating compulsory state education law. On appeal to the Supreme Court, the Court ruled that the First and Fourteenth Amendments prevented the state from compelling Amish parents to send their children to formal high school until they reached the age of 16. The values and programs of secondary school, the Court wrote, were "in sharp conflict with the fundamental mode of life mandated by the Amish religion," and an additional one or two years of high school would not produce the benefits of public education cited by Wisconsin to justify violating the parents' religious liberty rights. *Id.* at 217.
60. Mahmoud v. McKnight, 102 F.4th 191 (4th Cir. 2024), *petition for cert. filed*, (U.S. Sept. 12, 2024) (No. 24–297), *supra* note 15.
61. Tatel v. Mt. Lebanon Sch. Dist., 637 F. Supp. 3d 295 (W.D. Pa. 2022), *clarified on denial of reconsideration*, 675 F. Supp. 3d 551 (W.D. Pa. 2023).
62. *Id.* The parents claimed violations of their substantive due process, procedural due process, free exercise of religion, equal protection, and familial privacy constitutional rights, as well as their rights under the Pennsylvania school code.

63. *Tatel*, 637 F. Supp. 3d at 58, 61–62, 90–91 (emphasis added). *See also* Haley Strack, *Pennsylvania Court Rules in Favor of Parental Right to Opt Out of Gender-Identity Lessons*, Nat'l Rev. (Oct. 9, 2024), https://www.nationalreview.com/news/pennsylvania-court-rules-in-favor-of-parental-right-to-opt-out-of-gender-identity-lessons/.
64. Troxel v. Granville, 530 U.S. 57 (2000).
65. Wash. Rev. Code § 26.10.160(3).
66. *Troxel*, 530 U.S. at 67.
67. For example, Justice Antonin Scalia argued that parents have no constitutionally protected rights whatsoever, and by noted contrast, Justice Thomas countered that parental rights should receive the same high standard of protection as other "fundamental" rights.
68. *Troxel*, 530 U.S. at 65–66 (internal citations omitted) (emphasis added).
69. This *Legal Memorandum* focuses on positive rights held individually by the parents of minor school children. But students themselves possess various constitutional and statutory rights within public education. As minors, these rights are enforced by their custodial parents or guardians until they reach the age of 18. Among those rights are: (1) the right to be free from discrimination (Civil Rights Act of 1964, Pub. L. No. 88–352, 78 Stat. 241(1964), the Rehabilitation Act of 1973, Pub. L. No. 93–113, § 504, 87 Stat. 416 (1973) (codified as amended at 34 C.F.R. 104); Americans with Disabilities Act, Pub. L. No. 101–336, Title II, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. §§ 12131–12134, 28 C.F.R. 35); (2) the right to a free public education (Plyler v. Doe, 457 U.S. 202, 205 (1982); (3) the right of children with disabilities to a free and appropriate public education (Individuals with Disabilities in Education Act, Pub. L. No. 101-476, 104 Stat. 1103 (1990) (codified as amended at 20 U.S.C. §§ 1400–1482); (4) the right to freedom of speech and religious expression (*see* Carson v. Makin, 596 U.S. 767 (2022)), West Virginia v. Barnette, 319 U.S. 624 (1943)); and (5) the right to English language services for non-English speakers (Civil Rights Act of 1964, 42 U.S.C. § 2000(d)).
70. Every Student Succeeds Act, Pub. L. No. 114–95, 129 Stat. 1802 (2015) (codified as amended in 20 U.S.C. ch. 28 § 1001 et seq.) (hereinafter ESSA). In 2015, the ESSA replaced President George W. Bush's No Child Left Behind Act, enacted in 2002.
71. *Id.*, § 1112(e), 129 Stat. 1859 (2015) (codified as amended at 20 U.S.C. § 6312(e)).
72. *Id.*, § 1010, 129 Stat. 1868–71 (codified as amended at 20 U.S.C. § 6318).
73. *Id.*
74. *Id.*, § 1112(e), 129 Stat. 1857 (codified as amended at 20 U.S.C. § 6312(e)(1)(A)).
75. *Id.*, § 1112(e), 129 Stat. 1857 (codified as amended at 20 U.S.C. § 6312(e)(2)).
76. *See, e.g.*, Cal. Edu. Code § 51101(a)(13) (2004). *See also* similar opt-out provisions in the codes of Texas and Virginia at Tex. Edu. Code §§ 26.006, 26.009 (2009) and VA. Code §§ 22.1-279.3 (2023), 22.1–207.2:1 (2019), 22.1-207.2 (2020).
77. A school board that opens the floor to public comment during its meetings must provide an opportunity for all speakers to comment, regardless of viewpoint, as school board meetings are considered "limited public forums" in which viewpoint discrimination is unconstitutional. This precept was just reinforced by the decision of the 11th Circuit Court of Appeals in *Moms for Liberty v. Brevard Public Schools*, No. 23–10656 (11th Cir. Oct. 8, 2024), which ruled recently in favor of the Brevard County, Florida, chapter of Moms for Liberty in their case challenging school board policies that had chilled their speech at public meetings. The court determined that the school board policies targeting "abusive," "obscene," and "personally directed" speech violated the First Amendment rights of parents and community members who sought to speak up at school board meetings. It wrote: "[T]he government has relatively broad power to restrict speech in limited public forums—but that power is not unlimited. Speech restrictions must still be reasonable, viewpoint-neutral, and clear enough to give speakers notice of what speech is permissible. The Board's policies for public participation at Board meetings did not live up to those standards." *Id.* at 26–27.
78. The rights of students with disability diagnoses—whether mental, emotional, physical, or learning-related—are governed by the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, P.L. 114–95, as amended; ESSA (Dec. 2015); and § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. Under these laws, all students who qualify for special education services are entitled to free, individually designed instruction programs.
79. See this provision within the Individuals with Disabilities in Education Act, § 203, 104 Stat. 1112–1116 (codified as amended at 20 U.S.C. §§ 1401(9), 1412).
80. *See* U.S. Dep't of Educ., Family Educational Rights and Privacy Act (FERPA) (2022), https://studentprivacy.ed.gov/topic/family-educational-rights-privacy-act-ferpa; *see also* U.S. Dep't of Educ., Protection of Pupil Rights Amendment (PPRA) (2022), https://studentprivacy.ed.gov/topic/protection-pupil-rights-amendment-ppra.
81. Family Educational Rights and Privacy Act, Pub. L. No. 93–380, § 513, 88 Stat. 571 (1974) (codified as amended at 20 U.S.C. § 1232g; 34 C.F.R. Part 99) (hereinafter FERPA).
82. *Id.* at § 513, 88 Stat. 572 (codified as amended at 20 U.S.C. § 1232g(b)(1)).
83. *Id.* at § 513, 88 Stat. 572 (codified as amended at 20 U.S.C. § 1232g(a)(1)(A)).
84. *Id.* at § 513, 88 Stat. 572–73 (codified as amended at 20 U.S.C. §§ 1232g(a)(1)(A) & (B)).
85. *Id.* at § 513, 88 Stat. 572 (codified as amended at 20 U.S.C. § 1232g(a)(1)(D)(2)).
86. *Id.* at § 513, 88 Stat. 572–73 (codified as amended at 20 U.S.C. §§ 1232g(b)(1)(A)–(L)).

87. *Id.* at § 513, 88 Stat. 573 (codified as amended at 20 U.S.C. §§ 1232g(b)(4)(A)–(B)).
88. *Id.* at § 513, 88 Stat. 573 (codified as amended at 20 U.S.C. § 1232g(e)). Different postsecondary educational institutions further direct what rights, if any, are afforded to the parent of a child who is 18 years or older. Often, schools will permit the student to make the choice as to whether a parent can access their education records, and then so designate by filling out a form provided by the college or university.
89. In *Gonzaga University v. Doe* (536 U.S. 273 (2002)), the Supreme Court held that FERPA's nondisclosure provisions created no personal rights to enforce under 42 U.S.C. § 1983. In so holding, the Court abrogated *Falvo v. Owasso Independent School Dist. No. I–011* (233 F.3d 1203 (10th Cir. 2000)), and *Brown v. Oneonta* (106 F.3d 1125 (2nd Cir. 1997)).
90. *See* U.S. Dep't of Educ., Student Privacy Policy Office, Privacy Technical Assistance Center, Protecting Student Privacy, File a Complaint (2024), https://studentprivacy.ed.gov/file-a-complaint.
91. Protection of Pupil Rights Amendment, Pub. L. No. 93–380, § 514(a), 88 Stat. 574 (1974) (codified as amended at 20 U.S.C. § 1232h, 34 C.F.R. § 98) (hereinafter PPRA).
92. FERPA and the PPRA were both amended by the No Child Left Behind Act. *See* Pub. L. No. 107–110, Title X, § 1062(3), 115 Stat. 2088 (2002) (FERPA), *id.* at § 1061, 115 Stat. 2083 (PPRA).
93. Survey developers and administrators like Panorama Education, Inc., have exacerbated parents' fears of student privacy violations through politically charged surveys. Panorama—a vendor that pledges a commitment to "dismantling systemic racism" and directing its impact toward mental health, diversity and inclusion, and social-emotional learning—was founded by U.S. Attorney General Merrick Garland's son-in-law. Adam Andrzejewski, *Panorama Education, Co-Founded by U.S. AG Merrick Garland's Son-In-Law, Contracted with 23,000 Public Schools & Raised 76M From Investors*, Forbes (Oct. 12, 2021) (Approximately 30 New York school districts paid $12.1 million to Panorama, the Department of Education in Iowa paid $2.4 million to Panorama, 76 school districts paid approximately $1 million to Panorama, and one school district in Florida even paid Panorama $364,000.). General Garland instructed the FBI to investigate parents who were in vocal opposition to school policies at public school board meetings. *See supra* note 2.
94. Erika Sanzi, *Make Intrusive School Surveys "Opt-in" Rather Than "Opt-Out,"* Am'n Enter. Inst. (Mar. 9, 2022), https://www.aei.org/research-products/report/make-intrusive-school-surveys-opt-in-rather-than-opt-out/.
95. Educate America Act, Pub. L. No. 103–227, § 1017, 108 Stat. 268 (1994) (amending the Protection of Pupil Rights Act of 1974, codified as amended at 20 U.S.C. §§ 1232h(c)(1)(B)–(F)).
96. PPRA, *supra* note 91, at § 514(a), 88 Stat. 574 (1974) (codified as amended at 20 U.S.C. § 1232h(a)).
97. Educate America Act, § 1017, 108 Stat. 268 (amending the Protection of Pupil Rights Act of 1974, codified as amended at 20 U.S.C. §§ 1232h(c)(1)(A)(i)–(ii)).
98. No Child Left Behind Act, Pub. L. No. 107–110, § 1061, 115 Stat. 2083–87 (2002) (amending the Protection of Pupil Rights Act of 1974, codified as amended at 20 U.S.C. § 1232h(c)(2)(C)).
99. *See* No Child Left Behind Act, § 1061, 115 Stat. 2087 (codified as amended at 20 U.S.C. § 1232h(c)(6)(A), which defines "instructional material" as any material "provided to a student, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet)…[but] does not include academic tests or academic assessments.")
100. *See* Lynn M. Daggett, *Student Privacy and the Protection of Pupil Rights Act as Amended by No Child Left Behind*, 12 U.C. Davis J. Juv. L. & Pol. 51–131 (2008) (discussing PPRA amendments and enforcement).
101. *See* Parents Defending Education, *List of School District Transgender–Gender Nonconforming Student Policies* (updated Oct. 3, 2024), https://defendinged.org/investigations/list-of-school-district-transgender-gender-nonconforming-student-policies/.
102. *See* Perry & Jipping, *supra* note 27.
103. *See Mirabelli v. Olson*, No. 3:23–CV–00768–BEN–WVG, 2023 WL 5976992, at 4 (S.D. Cal. 2023).
104. *Id.* at 9.
105. After losses at both the trial court and before the Fourth Circuit Court of Appeals, the parents appealed to the Supreme Court, but their petition for review was denied. *See* John and Jane Parents 1 v. Montgomery Cnty. Bd. of Educ., 78 F 4th 622 (4th Cir. 2023), *cert. denied sub nom.* Jane Parents 1 v. Montgomery Cnty. Bd. Of Educ., 144 S. Ct. 2560 (2024).
106. State officials (teachers, school principals, school administrators, or school board members, for example) are generally protected by qualified immunity—the judicially created legal principle that protects government officials from legal liability for actions taken within the course of their official duties. There are notable exceptions to that general protection, however, when public officials exercise power irresponsibly. Specifically, government officials are only shielded for legal liability if their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Federal courts have determined that violation of fundamental rights—something clarified by the Supreme Court in *Troxel v. Granville* that includes the parental right as among the "oldest of the fundamental liberty interests recognized"—is sufficient to pierce the veil of qualified immunity for public officials and subject them to individual liability. Mack v. Yost, 63, F.4th 211, 221 (3d Cir. 2023).
107. Montgomery Cnty. Pub. Schs., 2022–2023 Guidelines for Student Gender Identity (2023), https://www.montgomeryschoolsmd.org/siteassets/district/compliance/0860.22_genderidentityguidelinesforstudents_web.pdf.

108. Belotti v. Baird, 443 U.S. 622, 634–637 (1979).
109. Gorman v. Rensselaer Cnty., 910 F.3d 40, 48 (2d Cir. 2018).
110. Arnold v. Bd. of Educ. of Escambia Cnty., Ala., 880 F.2d 305, 312 (11th Cir. 1989) (emphasis added) (holding that parents sufficiently alleged a cause of action under 42 U.S.C. § 1983 for violation of their Fourteenth Amendment right to direct the upbringing of their children against two school officials who allegedly coerced a minor female into undergoing an abortion and then keeping it secret), *overruled on other grounds by* Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit, 507 U.S. 163 (1993).
111. Croft v. Westmoreland Cnty. Child & Youth Servs., 103 F.3d 1123, 1126 (3d Cir. 1997) (emphasis added). *See also* Doe v. Heck, 327 F.3d 492, 521 (7th Cir. 2003) (finding a violation of parents' rights when state actors "not only failed to presume that the plaintiff parents would act in the best interest of their children, they assumed the exact opposite.").
112. Parents Protecting Our Child. UA v. Eau Claire Area Sch. Dist., Wisconsin, 95 F.4th 501 (7th Cir. 2024), *petition for cert. filed*, (U.S. Jun. 7, 2024) (No. 23–1534).
113. Pub. L. 104–191 § 110 Stat. 1939–55 (1996), *see* 42 C.F.R. § 164.502(g)(3) (parental rights provisions).
114. 45 C.F.R. § 164.502(g)(3).
115. Ctrs. for Disease Control, *State Laws that Enable a Minor to Provide Informed Consent to Receive HIV and STD Services* (Oct. 25, 2022), https://www.cdc.gov/hiv/policies/law/states/minors.html.
116. *Id*.
117. Marianne Sharko *et al*., *State-by-State Variability in Adolescent Privacy Laws*, 149 Pediatrics 6

(June 2022), https://renaissance.stonybrookmedicine.edu/system/files/State%20by%20State%20Laws.pdf.

118. *Overview of Consent to Reproductive Health Services by Young People*, Guttmacher Inst. (as of Aug. 30, 2023), https://www.guttmacher.org/state-policy/explore/overview-minors-consent-law.
119. Parham v. J. R., 442 U.S. 584 (1979).
120. *Id.* at 603–04.
121. Belotti v. Baird, 443 U.S. 622 (1979).
122. *Id*. at 635 (opinion of Powell, J.).
123. *Id*. at 640.
124. H. L. v. Matheson, 450 U.S. 398 (1981).
125. *Id.* at 410 (quoting Ginsberg v. New York, 390 U.S. 639 (1968)).
126. *Id.*
127. *See* Independent Review of Gender Identity Services, *supra* note 10. *See also* Independent Review of Gender Identity Services for Children and Young People: Final Report (Cass Rev. Feb. 2024), https://cass.independent-review.uk/home/publications/final-report/. *See also* Lisa Littman, *Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners*, 50 Arch. Sex. Behav. 8, 3353–69 (2021), https://pubmed.ncbi.nlm.nih.gov/34665380/.
128. Prince v. Massachusetts, 321 U.S. 158 (1944).
129. *Id.* at 166–167.
130. *Id.* at 168.
131. *Id*. at 170.
132. Abigail All. For Better Access to Dev'l Drugs v. von Eschenbach, 495 F.3d 695 (D.C. Cir. 2007) (en banc).
133. *Id*. at 697.
134. *Id.* at 703.
135. *Id*. at 706.
136. *See* Kristof Chwalisz, *Clinical Development of the GnRH Agonist Leuprolide Acetate Depot*, 4 F&S Reps. 33, 33–39 (Supp., June 2023), https://doi.org/10.1016/j.xfre.2022.11.011.
137. L. W. By & Through Williams v. Skrmetti, 83 F.4th 460 (6th Cir.), *cert. dismissed in part sub nom*. Doe v. Kentucky, 144 S. Ct. 389, 217 L. Ed. 2d 285 (2023), and *cert. granted sub nom*. United States v. Skrmetti, 144 S. Ct. 2679 (2024).
138. *Id*. at 418. *See also* PJ *ex rel*. Jensen v. Wagner, 603 F.3d 1182, 1197 (10th Cir. 2010) (The Court held that parents do not have a clearly established constitutional right to direct their children's specific medical care; to the contrary, "states have a compelling interest in and a solemn duty to protect the lives and health of the children within their borders.").
139. Eknes-Tucker v. Governor of Alabama, 80 F.4th 1205, 1210 (11th Cir. 2023).

140. In the 2024 October term, the Supreme Court will determine whether the state of Tennessee's ban on "gender affirming" medical interventions for minors discriminates on the basis of sex or gender identity in violation of the Constitution's Equal Protection clause. *See Skrmetti*, 83 F.4th 460 (6th Cir.), *cert. dismissed in part sub nom.* Doe v. Kentucky, 144 S. Ct. 389, 217 L. Ed. 2d 285 (2023), and *cert. granted sub nom.* United States v. Skrmetti, 144 S. Ct. 2679 (U.S. Jun. 24, 2024) (No. 23–477). Although raised by the parent petitioners at the lower court level in the primary litigation (*L.W. v. Skrmetti*), the Supreme Court did not take up the question relative to the parents' claimed Fourteenth Amendment constitutional right to secure gender-related medical interventions for their minor children.

141. While this *Legal Memorandum* has focused exclusively on positive rights, parents decidedly *lack* certain distinct rights within the context of their children's education and health care, as well. For example, parents do not have the right to opt their children entirely out of a compulsory education (though they are not required to send their children to public school and may choose private school or homeschooling instead); corporal punishment (legal in 19 states); mandatory school vaccine requirements (with certain narrow exceptions for religious reasons); or subject their children to experimental medical treatment. *See, e.g.*, Hank Pellissier, *8 Rights Parents Don't Have In American Public Schools*, Great Schs. (updated Aug. 23, 2023), https://www.greatschools.org/gk/articles/right-or-wrong-8-rights-you-dont-have-at-your-childs-school/; *see also* Perry & Jipping, *supra* note 39.

142. *See, e.g.*, Boston Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Boston, 89 F.4th 46 (1st Cir. 2023) *petition for cert. filed*, (U.S. Apr. 17, 2024) (No. 23–1137) (parents' challenge to racially motivated alteration of competitive public school's admission criteria intended to reduce the number of Asian-American and white students); Parents Protecting Our Children UA v. Eau Claire Area Sch. Dist., Wis., 95 F.4th 501 (7th Cir. 2024), *petition for cert. filed*, (U.S. Jun. 7, 2024) (No. 23–1534) (parents' challenge to public school's secret gender transition policy); Maras v. Mayfield City Sch. Dist. Bd. of Educ., No. 22–3915, 2024 WL 449353 (6th Cir. Feb. 6, 2024), *cert. denied sub nom.* Maras v. Mayfield Bd. of Ed., No. 23–1203, 2024 WL 4426589 (U.S. Oct. 7, 2024) (parents' challenge to school COVID masking requirement); Mahmoud v. McKnight, 102 F.4th 191 (4th Cir. 2024), *petition for cert. filed* (U.S. Sept. 12, 2024) (No. 24–297) (parents' challenge to compulsory public school indoctrination of elementary students with gender ideology, with no notice or opportunity to opt out); and Doe v. Franklin Square Union Free Sch. Dist., 100 F.4th 86 (2d Cir. 2024), *petition for cert. filed*, (U.S. Sept. 23, 2024) (No. 24-340) *cert. denied sub nom.* Doe v. Franklin Square Union Sch. Dist., No. 24–340, 2024 WL 4805912 (U.S. Nov. 18, 2024) (parents' challenge to imposition of school mask mandate upon student with asthma).