



# The Conflict Over Parents' Rights



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**National Education Policy Center**

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## Executive Summary

Parents of children in public schools have long sought control over curricular and other elements of their children's educational experiences. As a result, several courts have determined the legal extent of their control. And those courts have largely rebuffed the parental challenges.

While the U.S. Supreme Court has held that the Constitution protects parents' right to choose educational settings, allowing them to enroll children in religious or other private schools, it has never held that the Constitution gives parents the right to dictate public school curricula or demand individualized exemptions. Further, lower federal courts have consistently denied parents' claims of greater control. In the overwhelming majority of cases, lower courts have rejected parents' challenges to school curricula and policies, including religiously grounded challenges. Instead, they have reasoned that to give parents such broad authority would result in an unworkable burden on school systems. And, while many states have enacted policies that do allow parents to exempt their children from specific requirements such as health or sex education, courts have consistently found there is no *constitutional entitlement* to such exemptions.

Recently, however, a vocal minority of parents have invoked "parents' rights" to demand curricular and policy changes that affect not only their own children, but *all* children in a school, locality, or state. They have, for example, sought to alter history curricula on slavery and race; to dictate how (and whether) schools teach about sexual orientation and gender identity; to remove books in school library collections; and to set school policies relating to transgender students.

The movement accelerated during the Covid-19 pandemic, when some parents grew frustrated by extended school closures, mask mandates, and vaccination requirements. Groups of parents, such as the conservative group *Moms for Liberty*, organized to campaign against such measures. Republican politicians tapped into their frustrations, recasting requirements

intended to contain the pandemic as government overreach. And right-leaning lawmakers fanned the flames of socially conservative parents' discomfort and began introducing legislation prohibiting the discussion of topics and the use of books that (primarily) conservative parents found objectionable. Proponents of such legislation invoked a purported need to prevent schools from indoctrinating children with progressive political messages. Interestingly, the most vocal parents taking part in campaigns for parents' rights tend to see themselves as standing against the state and its schools, instead of standing inside a democratic community that strives for inclusive participation, informed inquiry, and respectful deliberation among the members of the community.

What has been obscured in recent controversies, however, is that public schools are funded by the government to support broad societal goals, such as educating our entire multicultural, diverse population to participate fully in our democratic civic culture—because a democratic government cannot survive without the support and engagement of its full citizenry. Indeed, the Supreme Court has found not only that states have primary control of public education, but also that they bear the responsibility for teaching the nation's young the knowledge and skills necessary to understand and participate in such important government activities as voting after choosing rationally among candidates for office, or serving in government or as elected officials themselves. Additionally, public schools have a responsibility to cultivate understanding of and respect for individual differences necessary to allow tomorrow's adults to engage productively in both the increasingly diverse workplace and society at large.

That said, because parents do presumably have the welfare of children in mind when they lobby for or against elements of public schooling, policymakers should certainly listen to their concerns to make the most considered decisions possible. They should not, however, craft policy that undermines broad societal goals in order to appease a subset of parents. Instead, policymakers should work to find balance among competing stakeholder interests as productively as possible—without slighting government's legitimate interest in educating the citizenry on which it depends.

To assist policymakers as they work toward that end, it is recommended that:

State legislators:

- Repeal statutes that fail to balance student, parent, and state interests in the governance of schools by granting subsets of parents the ability to restrict the education of other parents' children and/or override the government's interest in educating a competent citizenry able to function productively in a democratic and diverse society.
- Enact legislation that explicitly requires that school responses to challenges to their educational program and practices take into account and reflect the need to balance student, parent, and state interests in public school governance.

State Departments of Education:

- Develop and disseminate guidance that explains:

- The balance of student, parent, and state interests in the governance of schools.
- That since schools must balance the interests of students, parents, and the state, curricular content cannot be determined solely on the basis of parental preference.



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## II. Introduction

Over decades, courts have determined that states have primary control over public education, although parents do maintain some control. For example, states can require that children receive an education, but because parents have a Constitutionally protected right to direct the upbringing and education of their children, the Supreme Court has held that they are entitled to choose whether their children will attend public or nonpublic schools, including religiously affiliated schools or schools where the language of instruction is not English.<sup>1</sup> Although some states and locales have allowed parents a bit more control—permitting them to exempt children from sex education, for example—the Constitution does not give parents such authority.

Lower courts have routinely held that once parents choose to enroll their children in a public school, they may not dictate curricula or other elements of students' educational experience. To hold otherwise, courts have reasoned, would subject schools to unmanageable administrative burdens.<sup>2</sup>

Nevertheless, in recent years parent groups, advocacy organizations, and lawmakers have launched what has become a coordinated and well-funded campaign to influence public-school curricula and policies under the banner of "parents' rights." In 2020 and 2021, groups of mostly conservative parents organized to protest what they saw as unwarranted Covid-era measures, such as extended school closures and mask mandates. They were joined by like-minded advocates and by Republican lawmakers working to undermine the pandemic-related efforts of a Democratic administration. This new parental rights campaign gathered steam when the 2020 racial justice protests and Black Lives Matter movements provoked widespread discussions about race and racism, that spurred a range of justice-oriented reforms, including curricular reform.<sup>3</sup> However, the focus on race discomfited many White people, especially those on the political right; conservative groups and lawmakers effectively tapped into growing resentment and further amplified demands that schools adopt reforms they promoted.

The current campaign to expand parents' influence over public schools is unprecedented in U.S. history and is noteworthy in several respects. First, its proponents claim that parents' rights encompass a level of parental control over public education that far exceeds the scope of constitutional entitlement delineated by courts. Second, advocates do not seek merely to entitle parents to exempt their own children from otherwise applicable curricula developed by educators. Instead, they claim the right to shape school curricula and policies for *all* students outside the processes of electing like-minded school boards and of school board policymaking.

*The current campaign to expand parents' influence over public schools is unprecedented in U.S. history and is noteworthy in several respects.*

Third, the campaign reflects and advances the priorities of a minority of culturally conservative parents—curtailing, for example, instruction about race and aspects of U.S. history in the name of protecting “innocent” White children from “discomfort,” and prohibiting teaching about or even acknowledging sexual orientation or gender identity.<sup>4</sup> In that sense, the current parents' rights campaign is decidedly political. Among

other things, it ignores the preferences of parents who want their children to learn more about race and its role in U.S. history, who believe schools should accommodate and welcome LGBTQ and gender nonconforming students and families, and who believe that school libraries should contain the widest possible array of books and resources selected by educators (rather than parents or politicians) who have determined them to have literary and/or educational value.<sup>5</sup>

And finally, the campaigns seek the adoption of extraordinary measures to advance these interests. Measures, some of which have recently been enacted by Republican-controlled legislatures, have included granting parents the ability to inspect curricula and lesson plans and to object to library books—frequently by LGBTQ, Black, or other non-White authors—containing ideas and content this specific group of parents finds objectionable.<sup>6</sup> The intention and result are that teachers are constrained in their ability to address sometimes contentious topics and hindered in their ability to engage students, support their critical thinking skills, and help them develop the ability to take different perspectives and build empathy.<sup>7</sup>

Rarely discussed in the controversy is that public schools bear the responsibility of educating the young for participation in civic life in a diverse, multicultural society. Interestingly, the most vocal parents taking part in campaigns for parents' rights tend to see themselves as standing against the state and its schools, instead of standing inside a democratic community that strives for inclusive participation, informed inquiry, and respectful deliberation among the members of the community. Policymakers, then, face the challenge of charting a course for public schools in this volatile environment. The following discussion details relevant case law, the politicization of parents' rights, and specific rights and responsibilities of various stakeholders, and provides an example of how competing rights can be reasonably aligned in practice. Finally, it offers policy recommendations intended to advance states' goals with respect to public education while also accounting for parents', children's, and the public's interests.

### **III. Review of Caselaw: The Constitutional Scope of Parental Rights**

Conceptions of parental rights, including their source and scope—have transformed over time. Early law treated a father’s power over his household, including his wife and children, as divinely conferred and absolute. In the United States, the patriarchal family model evolved, becoming more egalitarian. And states, rather than granting parents full authority over children, asserted that they had an independent interest in ensuring children’s well-being.<sup>8</sup>

#### **Legal Origins and Evolution**

Early Greeks and Romans embraced the belief that men’s seed contained the life force necessary for procreation, making men givers of life. Early laws reflected and formalized this belief. Under Roman law, for example, fathers had absolute power over their households. Children were treated as chattel—a father could hire his children out as workers, sell them into slavery, or even kill them with impunity.<sup>9</sup> Domestic authority mirrored state governance in that patriarchs ruled over their families as sovereigns over their subjects.<sup>10</sup>

Similarly, England and the colonies embraced a property theory of paternal ownership and dominance over both wives and children. Children were “assets of estates in which fathers had a vested right . . . Their services, earnings, and the like became the property of their paternal masters in exchange for life and maintenance.”<sup>11</sup> While fathers possessed God-given authority over their families, they also had a duty to provide support. And in exchange for his support and protection, a father’s wife and dependent children owed him obedience and submission.

In the mid-19<sup>th</sup> century, the law began moving away from the idea that parental authority was divinely conferred and absolute. Court opinions instead asserted that the legal status of parents and parental authority derived from, and could thus be regulated by, the state. And states imposed upon parents the obligation to safeguard children’s interests. In a 1905 opinion, for example, a federal court rejected a father’s claim that the state lacked authority to interfere with his constitutional rights to parental custody; the court’s opinion noted pointedly that “there is no parental authority independent of the supreme power of the state.”<sup>12</sup>

The evolution of the concept of parental rights reflected larger political and legal shifts. Viewing parental rights as state-conferred rather than God-given reflected a commitment to the ideals of a democratic government ruled by the people rather than by a divinely appointed sovereign. And the states asserting an interest in child well-being rather than deferring nearly absolutely to parental authority reflected a commitment to individuals’—including children’s—liberty.<sup>13</sup>

#### **The Constitutional Scope of Parents’ Rights: U.S. Supreme Court Decisions**

Beginning with a pair of cases decided in the 1920s, the U.S. Supreme Court announced that



parents have a fundamental right to direct the upbringing and education of their children, including the right to choose public or private schools. And parents also have considerable authority over children's day-to-day lives. Indeed, government intervenes in intact families in only limited situations—typically only those involving serious threats to the physical or mental health of children.<sup>14</sup>

The Court has held that the 14<sup>th</sup> Amendment's Due Process Clause guarantees parents' right to direct the care, custody, and control of their children. In *Meyer v. Nebraska*,<sup>15</sup> the Court held that a state could not prohibit parents from engaging teachers to instruct their children in foreign languages. In *Pierce v. Society of Sisters*,<sup>16</sup> it struck down a state law that required all children to attend public schools and held that parents instead had a right to choose to enroll their children in nonpublic schools. Making clear that major decisions over children's upbringing rest primarily with their parents, the Court stated that 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."<sup>17</sup>

More recently, in *Troxel v. Granville* (2001), the Court considered the constitutionality of a statute that permitted courts, without giving any deference to parents' preferences, to grant grandparents visitation with their grandchildren. The Court invalidated the statute and re-emphasized that "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."<sup>18</sup>

The Court has also suggested that when parents assert challenges on the grounds of both 1<sup>st</sup> Amendment free exercise of religion as well as 14<sup>th</sup> Amendment parental rights, state action will be subject to even more stringent review. In *Wisconsin v. Yoder*, the Supreme Court exempted Amish families from a compulsory high school attendance law, holding that "when the interests of parenthood are combined with a free exercise claim, . . . more than merely a 'reasonable relation to some purpose within the competency of the State' is required to sustain the validity of the State's requirement under the First Amendment."<sup>19</sup>

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While the Court has in some cases required states to defer to parental authority, it has also affirmed the state's independent interest in safeguarding children's welfare. In *Prince v. Massachusetts*, for example, a guardian challenged a state law that prohibited her from allowing her child to accompa-

ny the guardian to proselytize in public. The guardian argued that the law violated her parental, religious free exercise, and equal protection rights. The Court rejected the guardian's claim and instead upheld the enforcement of the state law, which sought to restrict child labor. The Court reaffirmed that "the custody, care and nurture of the child reside first in the parents," but it held that the state's obligation to protect children's welfare entitled it to supersede parental authority.<sup>20</sup>

The Court has also consistently reiterated states' broad power to regulate education. Even in the *Meyer* and *Pierce* cases, where the Court invalidated state laws as unduly infringing on parents' (and educators') rights, it reaffirmed state authority over education. Thus in *Meyer*,

the Court observed that the “power of the State to compel attendance at some school and to make reasonable regulations for all schools . . . is not questioned.”<sup>21</sup> And in *Pierce*, the Court again affirmed states’ broad power over children’s education, noting that

[n]o question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school . . . that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.<sup>22</sup>

And in the *Yoder* case, a key element of the finding explicitly limited it to “a free exercise claim of the nature revealed by this record . . . [and] one that probably few other religious groups or sects could make” because the Amish plaintiffs—living in a culture that is purposefully removed from modern society—had demonstrated that the law threatened their community’s very way of life.<sup>23</sup> Other parents trying to extend the *Yoder* finding to exempt their children from requirements have been unsuccessful by failing to demonstrate similarly extreme outcomes.

In *Troxel*, while requiring courts to give some amount of deference to parents’ preferences, the Court did not subject the state law to strict scrutiny (the standard typically applied when state action infringes upon fundamental rights) but instead directed lower courts considering a parent’s decision regarding visitation to give only an “unspecified ‘special weight’ to the parent’s interest.”<sup>24</sup>

## Parents’ Constitutional Rights in the Context of Public Education

Lower courts have further clarified the nature of parents’ constitutional rights in the context of public education. Courts have consistently held that “[w]hile parents may have a fundamental right to decide *whether* to send their child to a public school, they do not have a fundamental right generally to direct *how* a public school teaches their child.”<sup>25</sup>

Whether it is 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.<sup>26</sup>

Thus, appellate courts have found nothing in Supreme Court precedent that supports the conclusion that “parents have a *fundamental* right to the upbringing and education of the child that includes the right to tell public schools what to teach or what not to teach him or her.”<sup>27</sup>

Federal courts have also held that the parental right to direct the upbringing and education of children does not include a right to exempt a child from school curricular requirements, including sex education requirements.<sup>28</sup> While many states have enacted laws or policies that allow parents to exempt their children from such requirements, courts have consistent-

ly found there is no *constitutional* entitlement to such exemptions.

Even when parents' objections include a claim that curriculum requirements infringe on their free exercise of religion, courts have consistently upheld schools' requirements. In *Leebaert v. Harrington*, for example, a Connecticut law permitted parents to excuse their children from the portion of a health-education curriculum devoted to AIDS and "family life" instruction (family planning, human sexuality, etc.).<sup>29</sup> A parent sought, however, to excuse his child from the entire health-education curriculum. When the school advised him that the curriculum was mandatory except for the family life/AIDS awareness opt-out, the parent challenged the school policy, claiming that it conflicted with both his parental rights and religious beliefs. A federal appellate court rejected his challenge, holding that the fundamental right to parent does not include a right to demand a child be exempted or excused from otherwise mandatory public school classes.<sup>30</sup>

The court in *Leebaert* also held that *Yoder* did not require that the court subject the mandatory attendance policy to higher scrutiny based on the parent's claim that the curriculum violated his 1<sup>st</sup> Amendment free exercise rights. The court noted that its approach was consistent with that taken by other appellate courts, observing that while other courts have noted that language in Supreme Court precedent seemed to "mandate[] stricter scrutiny for hybrid situations than for a free exercise claim standing alone, . . . no circuit has yet actually applied strict scrutiny based on this theory."<sup>31</sup> The *Leebaert* court followed existing precedent and also declined to subject the mandatory curriculum to more stringent scrutiny.

Like *Leebaert*, other courts have denied that parents with children in public school have a fundamental right to select which courses their children will or will not take.<sup>32</sup> As noted earlier, courts have found that giving parents broad authority to challenge school policies or exempt their children from various requirements would result in an unworkable burden on school systems:

The *Meyer* and *Pierce* cases . . . evince the principle that the state cannot prevent parents from choosing a specific educational program—whether it be religious instruction at a private school or instruction in a foreign language . . . We do not think, however, that this freedom encompasses a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children . . . . If all parents had a fundamental constitutional right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school's choice of subject matter. We cannot see that the Constitution imposes such a burden on state educational systems.<sup>33</sup>

Federal appellate courts have also rejected parents' objections to school dress codes and uniform policies, with one court stating that while "[p]arents may have a fundamental right in the upbringing and education of their children, this right does not cover the [p]arent's objection to a public school Uniform Policy."<sup>34</sup> Another federal appeals court rejected parents' challenge to a school district's "administering a psychological assessment questionnaire containing several questions that referred to subjects of a sexual nature." The court acknowledged the existence of parents' constitutional rights under *Meyer* and *Pierce* but

stated that parents' rights do not include the "right to restrict the flow of information in the public schools," and instead that educational content is a "matter for the school boards, not the courts, to decide."<sup>35</sup>

Courts have thus held that parents' constitutional right to direct children's education is "limited in scope"; those courts considering various challenges have found that "parents have no right to exempt their children from certain reading programs the parents found objectionable, or from a school's community-service requirement, or from an assembly program that included sexually explicit topics."<sup>36</sup> Even in the context of homeschooling and nonpublic schools, courts have upheld states' rights to ensure that children are receiving appropriate education. Courts have thus upheld requirements that homeschooled children submit to standardized testing, even over their parents' objections,<sup>37</sup> and that teachers in private religious schools be certified by the state.<sup>38</sup>

In sum, in the words of one federal appellate court, 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 and oust the state's authority over the subject."<sup>39</sup>

#### **IV. Recent Developments—The Politicization of Parental Rights**

As noted earlier, parents have historically invoked "parents' rights" to argue that the Constitution protected their authority to control aspects of their children's educational experiences—but the current iteration of the parents' rights movement seeks to go further. Employing the rhetoric of "parents' rights," the movement seeks to give parents unprecedented access to and influence over school curricula and enshrine into law educational content that reflects not educators' judgment about appropriate curricula, but instead distinctly conservative cultural values and beliefs.

The following discussion describes current efforts to use "parents' rights" as part of a coordinated campaign to curtail efforts to teach students about race, the enduring effects of the nation's history with slavery, and sexual orientation and gender identity. In giving voice and power to a vocal minority of conservative parents, politicians have cynically seized on an issue—sheltering innocent White children from the uncomfortable racial past and present, and perpetuating medically discredited conceptions of non-heterosexuality as deviant—intended to both appease and galvanize culturally conservative voters.<sup>40</sup>

#### **Campaign Against Teaching About Race and "Divisive Concepts" in Public Schools**

When the "Black Lives Matter" movement sparked a range of justice-oriented reforms,<sup>41</sup> institutional actors, including corporations and government agencies, pledged solidarity with racial minorities and committed to reforming institutional cultures.<sup>42</sup> Corporations pledged billions of dollars to advance antiracism efforts. More than a dozen states expanded race-inclusive curricula, adding new courses or expanding existing courses by incorporating mate-

rial about race and people of color.<sup>43</sup> And schools across the nation issued antiracist statements and adopted antiracist curricula.<sup>44</sup>

Backlash soon followed. Despite the documented existence of widespread social disparities created by centuries of racial oppression, many people continue to believe that the formal legal equality that replaced Jim Crow-era policies had succeeded in transforming the United States into a colorblind society where all enjoy equal opportunity.<sup>45</sup> They consider any race consciousness—whether to advance racial equity or to oppress—as racist and thus objectionable. And even if initially sympathetic to the Black Lives movement, some White people took offense to some of its claims, including that they might be benefiting from unearned racial privileges or might harbor unexamined racist sentiments themselves.<sup>46</sup> As protests continued into the summer of 2020, some erupted into violence. The Trump administration broadcast footage of chaotic scenes. Support for the racial justice movement waned, particularly among White Republicans.<sup>47</sup>

Not surprisingly, then, the campaign against teaching about race and racism galvanized conservative parents and advocates, who coalesced around opposition to the purported teaching of Critical Race Theory (“CRT”) in workplaces and schools. While the academic concept theory is absent from workplace and school curricula, journalist Christopher Rufo, working with conservative think tanks, seized on the term CRT and recast it as an expedient catch-all phrase to refer to all manner of progressive ideas, calling it “the perfect villain,” sufficiently capacious to encompass “the entire range of cultural constructions that are unpopular with Americans.”<sup>48</sup> Rufo’s strategy was effective. The Trump administration seized on his idea, and then-President Trump issued an Executive Order prohibiting antiracist instruction or training to federal employees and contractors.<sup>49</sup> While President Biden rescinded the Executive Order when he assumed office,<sup>50</sup> the idea and strategy had taken hold, and the campaign against teaching about race and diversity spread.

In 2021 and 2022, federal, state, and local lawmakers introduced or enacted more than 560 measures restricting efforts at race-related education in public schools and workplaces; over 90% of the measures addressed K-12 education; of these, 44% were adopted.<sup>51</sup>

Scholars have argued that conservative politicians have worked with parents’ rights groups to effectively “racialize” parental rights.<sup>52</sup> Although the parents’ rights movement, like the anti-CRT campaign, is ostensibly race-neutral, invocation of colorblindness and the emotional fragility of innocent White children aims to serve majority White goals and entrench existing racial hierarchies.<sup>53</sup>

## **Expansion of the Campaign for Parents’ Rights in, and Over, Schools—and Curricula**

Despite the circumscribed extent of parental rights in the context of public education articulated by the courts, existing and newly formed groups have grown rapidly, insisting that they have a right to significantly greater control than they’ve had.<sup>54</sup> Well-organized and well-funded, they have been effective at every level of government. At the state and local levels, they have formed political action committees and supported conservative candidates.

Their quest for greater parental control is “about protecting the innocence of our children, and letting the parents decide what the child gets rather than having government schools indoctrinate our kids,” according to Keith Flaugh, a co-founder of the conservative Florida Citizens Alliance, which focuses on education.<sup>55</sup>

The campaign to curtail instruction on the legacy of slavery and race and the nation’s racial history rapidly expanded to encompass restrictions on teaching about, or even mentioning, sexuality and gender; soon, it evolved into a still broader effort to eradicate so-called “woke,” or progressive, ideology from school curricula. Florida, for example, recently enacted legislation entitled the “Parental Rights in Education Act,” which prohibits instruction on sexual orientation or gender identity for students in pre-K through the eighth grade.<sup>56</sup> While the law permitted instruction on these issues in high schools “according to state standards,” Florida’s education officials have amended the standards to effectively prohibit all instruction about sexual orientation and gender identity. In 2021, Glenn Youngkin ran a successful campaign for Virginia governor under the banner of “Parents Matter.” On his first day in office, he signed an Executive Order prohibiting the teaching of “inherently divisive concepts, including critical race theory” and set out to overhaul policies regarding transgender students.<sup>57</sup>

Between 2020 and 2022, lawmakers in at least 34 states introduced parents’ rights bills that sought to give parents unprecedented access to and influence over school classrooms and curricula. While the bills vary, provisions include requiring schools to allow parents to inspect curricula at any time and to exempt children from aspects of them. Several of the bills go so far as to permit parents to record classroom sessions and view teachers’ lesson plans.<sup>58</sup>

While education is largely a state issue, federal lawmakers have taken notice of its ability to galvanize voters. “Parents’ rights” thus became the focus of Republicans’ 2022 midterm election campaign. And in March 2023, Republicans in the U.S. House of Representatives passed a bill—the “Parents’ Bill of Rights Act”—that would have affirmed parents’ ability to examine school budgets, meet with educators, and speak at school board meetings. It also would have required schools to provide lists of all books and reading materials in their libraries.<sup>59</sup> Amendments added to the bill would have required schools to report whether transgender girls would be permitted to use girls’ restrooms or locker rooms, and if any transgender girl joined a girls’ athletic team. Elementary and middle schools would also have been required to obtain parents’ consent before changing a student’s gender designation, pronouns, or name. The bill’s proponents said the measure would ensure that “parents will have a say in their kids’ education.”<sup>60</sup>

However, the bill died in the Democratic-controlled Senate. Critics warned that it would advance a far-right movement that threatened the safety of transgender and LGBTQ students, lead to book bans, and ensure turbulent school board meetings.<sup>61</sup>

## V. Discussion and Analysis

As case law makes clear, parents do have significant rights over their children—who themselves have constitutional rights, even within schools. It is important to remember, however,

that the Supreme Court has clearly established that control of public education rests states primarily with states. As a government-funded institution, public education has important goals intended to promote the welfare of both the state and the public. Sensitive and strategic policymaking must take into account the competing interests of these multiple stakeholders.

### **Parent-Constituent Interests**

The law recognizes that parents have liberty interests in how their children are raised—and that children benefit when they are entrusted to caretakers particularly invested in their welfare. As a result, and as noted earlier, parents maintain the constitutional authority to oversee children’s day-to-day lives, including religious upbringing and medical care. In relation to education, however, it is important to remember that case law has clearly established that parents have the right to control only the setting of their children’s education, notably either a public or private setting, and not such component parts as curriculum and dress code. Where parents do wield greater authority, it is because a state has chosen to extend parents’ rights to other areas.

### **Children’s/Students’ Interests**

During the prolonged period of childhood and into adolescence, children are dependent on others for their care. But even as they remain dependent on others for their care, children are distinct persons and deserve consideration as such. Scholars have thus explained that children have separate and independent interests—in establishing and maintaining relationships, receiving developmentally appropriate education, and to the extent they are capable, exercising agency.<sup>62</sup> Thus, children have an interest in making decisions for themselves when they have the capacity to do so, even while they may be otherwise dependent on adults.

Children are also citizens as well as future adults. Therefore, in a democratic nation that prioritizes individual liberty, political theorists have argued that government must ensure that children reach adulthood having at least attained “minimal autonomy,” which political theorist Robert Reich defines as “the minimal degree of autonomy necessary to provide them with options other than that into which they have been born; they must have an effective right of exit.”<sup>63</sup> Other political theorists have advanced the similar concept of children’s “right to an open future.”<sup>64</sup> That right would prevent others from determining a child’s important life choices before the child is capable of making those choices for themselves.

Some scholars caution against the state (through its educational actors) aggressively promoting such universal autonomy.<sup>65</sup> A truly pluralistic society, they argue, would also respect and accommodate individuals whose belief systems embrace faith and obedience over individual autonomy. At the same time, these theorists agree that the state has an obligation to create conditions that allow its citizens to reach their own determinations about the belief systems to which they will adhere, and about what constitutes the good life.<sup>66</sup>

At the very least, government has an obligation during children’s dependency to safeguard

their welfare (entrusted to parents) while also respecting children's distinct personhood and agency.<sup>67</sup> An important implication here is that government has an obligation to ensure that children receive an education that equips them, upon reaching adulthood, to make meaningful choices about the course of their lives.<sup>68</sup>

Thus, states are responsible for accounting for parents' significant liberty interests in raising their children while also ensuring that parents' entitlement to self-determination does not extend into the unacceptable realm of "other-determination." In other words, states should not extend to parents authority of such a nature that it becomes "other-determining."

## **State/Public Interests**

A crucial point often ignored in discussions of parents' and students' rights is that for nearly two centuries, public education (the education *of* the public) has been recognized as essential to sustaining the U.S. democracy. The diverse individuals, families, and groups living in the United States form a single political democratic community. To function, democratic governments require some level of public participation. At a minimum, democracies require elected officials qualified to govern and an informed public to elect them and evaluate their work.

Political theorists and other scholars have identified several goals for the education of tomorrow's adult citizens. These include: protecting both the welfare and the autonomy of the young; enabling them to make their own life choices as and after they mature; ensuring that as adults they will have the capacity to meaningfully participate in the democratic government serving a diverse, multicultural population; and, preparing them to enter the workforce capable of sustaining the private and public institutions necessary to a flourishing civil society.<sup>69</sup>

To make good choices both for themselves and as participants in public life, young people need to develop a broad set of skills required for deliberative decision-making. These include, as political philosopher Amy Gutmann explains, "literacy, numeracy, and critical thinking, as well as contextual knowledge, understanding, and appreciation of other people's perspectives."<sup>70</sup> At a minimum, democracies require elected officials qualified to govern and an informed public to elect them and evaluate their work. In addition, members of democracy who choose not to participate must accept the results reached by their fellow, participating citizens. To the extent that higher levels of participation can be nurtured, results of elections and government policies will better reflect the collective will of the governed. And, because the U.S. is so diverse both geographically and demographically, education for citizenship entails introducing students to information, ideas, and views with which their parents may not be familiar.

Education for citizenship also includes preparing young people for the workplace (or, in recent decades, for college) so that they can support both their own needs and the national economy. Education for work today looks very different than it has in the past because globalization and technological advances have moved the U.S. economy away from agricultural and industrial production. Today's workers require higher degrees of education to attain the skills necessary to obtain well-paying work in sectors that dominate the modern economy.



In addition, the racial and cultural diversity within U.S. workplaces and the global nature of economic activity require that workers be able to interact with people of diverse cultures and nationalities. While not every citizen will participate in the workplace—parents of young children may opt out, for example—government’s obligation is to ensure that citizens who choose not to work are exercising a meaningful choice. That is, public schools must help students develop skills for the workplace, but autonomy means that as adults, the former students decide whether and how to use them.

### **How Might Schools Honor Competing Perspectives?**

With various stakeholders having varied rights and interests, government needs to find a reasonable level of balance among them. State lawmakers may generally enact education policy without constitutional obligation to accommodate individual parents’ preferences. Still, it is reasonable for lawmakers and other policymakers to attend to the preferences of the parent-citizens they represent. And, of course, the rights of children-citizens themselves must be taken into account. Thus the challenge becomes how to honor parent and student rights and preferences while also ensuring that policy aligns with the government’s goals for educating the diverse citizenry as a whole. Policy that is too restrictive, for example, can violate the government’s responsibility to protect students’ autonomy, limiting their future life choices.

Consider, for example, the topic of gender.<sup>71</sup> To remove it from the curriculum can very early begin to narrow students’ horizons. Every person, including children, expresses gender in some way—dress, hairstyle, activity preferences, and so on. Even young children absorb early beliefs about gender norms (“girls like dolls, boys like trucks,” or “girls like reading, boys like science”). And children, naturally seeking acceptance, may feel pressure to conform to these norms, sometimes to their detriment.<sup>72</sup> They may feel constrained from exploring certain activities or interests—a young girl, for example, may feel reluctant to develop her love of math or science. Such constraints limit children’s ability to explore nascent interests and may even limit their future educational or professional choices. Therefore, conversations about gender expression can be appropriate even in the early grades.

However, if a state’s official curriculum guidelines include the topic of “gender,” some parents may protest because they object to discussion of sexual orientation or non-normative gender identities that they find unacceptable. But such topics can be avoided while curriculum still allows age-appropriate discussions of gender expression.<sup>73</sup> For example, classroom discussions of such simple concepts as “toys are toys” or “every school subject is for every student” may empower children to explore their interests without the interference of gender stereotypes. Moreover, exposure to variety in individuals’ gender expression (“some boys have long hair,” “some girls play football”) can help lay a foundation of comfort with, and respect for, difference. Presenting difference as a norm can help facilitate participation in workplaces and in a broader society with diverse populations. Such lessons can help equip even young children to exercise some agency and ensure that their future life choices are not unduly constrained without ignoring parents’ concerns; concurrently, they also advance the government’s larger interests in educating a workforce and citizenry.

The relative weight given to competing rights among various stakeholders will reasonably change as context changes. For example, once children reach adolescence, their maturing cognitive abilities might make more comprehensive and sophisticated educational content appropriate. By mid-adolescence, young people are unlikely to be confused by exposure to ideas or values that differ from those of their parents.<sup>74</sup> While parental preference may continue to be relevant, it should not receive the same level of deference or consideration it might have in the earlier years of children's education.

Importantly, however, honoring parents' preferences does not extend to allowing any one subset of parents to unreasonably restrict the education of other parents' children or to impede the government's right to educate a competent citizenry able to function productively in a democratic and diverse society. Insisting that a topic such as gender be removed from the curriculum rather than handled sensitively by professional educators would interfere with such goals.

## **VI. Recommendations**

To assist policymakers as they work to appropriately balance the rights of various stakeholders—without slighting government's legitimate interest in educating the citizenry on which it depends—it is recommended that:

State legislators:

- Repeal statutes that fail to balance student, parent, and state interests in the governance of schools by granting subsets of parents the ability to restrict the education of other parents' children and/or override the government's interest in educating a competent citizenry able to function productively in a democratic and diverse society.
- Enact legislation that explicitly requires that school responses to challenges to their educational program and practices take into account and reflect the need to balance student, parent, and state interests in public school governance.

State Departments of Education:

- Develop and disseminate guidance that explains:
  - The balance of student, parent, and state interests in the governance of schools.
  - That since schools must balance the interests of students, parents, and the state, curricular content cannot be determined solely on the basis of parental preference.

## Notes and References

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- 1 This case held that parents have the right to send their children to nonpublic schools: *Pierce v. Society of Sisters*, 269 U.S. 510 (1925).  
  
This case held that parents have the right to enlist teachers to instruct their children in languages other than English: *Meyer v. Nebraska*, 262 U.S. 390 (1923).  
  
This case granted parents a religious exemption from requirements that children attend later grades when such attendance was inconsistent with religiously dictated way of life: *Wisconsin v. Yoder*, 406 U.S. 205 (1972).
- 2 *Pierce v. Society of Sisters*, 268 U.S. 510, 534 (1925). See also *Mahanoy Area School District v. B.L.*, 141 S. Ct. 976 (2021).
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