THE CONSTITUTIONAL RIGHT TO BE A PARENT
U.S. SUPREME COURT DECISIONS

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Loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. Though First Amendment rights are not absolute, they may be curtailed only by interests of vital importance, the burden of proving which rests on their government. Elrod v. Burns, 96 S.Ct. 2673; 427 U.S. 347, (1976).

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

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

The U.S. Supreme Court implied that "a (once) married father who is separated or divorced from a mother and is no longer living with his child" could not constitutionally be treated differently from a currently married father living with his child. Quilloin v. Walcott, 98 S.Ct. 549; 434 U.S. 246, 255-56, (1978).

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

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

Parent's right to custody of child is a right encompassed within protection of this amendment which may not be interfered with under guise of protection public interest by

legislative action which is arbitrary or without reasonable relation to some purpose within competency of state to effect. Reynold v. Baby Fold, Inc., 369 NE 2d 858; 68 Ill 2d 419, appeal dismissed 98 S.Ct. 1598, 435 U.S. 963, Il, (1977)

Parent's rights have been recognized as being "essential to the orderly pursuit of happiness by free man." Meyer v. Nebraska, 92 S.Ct.1208, (1972)

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

Legislative classifications which distributes benefits and burdens on the basis of gender carry the inherent risk of reinforcing stereotypes about the proper place of women and their need for special
protection; thus, even statutes purportedly designed to compensate for and ameliorate the effects of past discrimination against women must be carefully tailored... the state cannot be permitted to classify on the basis of sex. Orr v. Orr, 99 S.Ct. 1102; 4340 U.S. 268 (1979)

The United States Supreme Court held that the "old notion" that "generally it is the man's primary responsibility to provide a home and its essentials" can no longer justify a statute that discriminates on the basis of gender. No longer is the female destined solely for the homes and the rearing of the family, and only the male for the marketplace and the world of ideas. Stanton v. Stanton, 421 U.S. 7, 10; 95 S.Ct. 1373, 1376 (1975)

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

COMPELLING STATE INTEREST

The following Supreme Court decisions were cited in a published opinion by Chief judge Norman K. Moon of Court of Appeals of Virginia June 3, 1997 in the case Williams and Williams v. Williams and Williams. 24 Va. App. 778; 485 S.E. 2d 651 (June 3, 1997)

Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life; if anything, persons faced with forced dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. The Supreme Court noted its "historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by
the Fourteenth Amendment." Santosky v. Kramer, 102 S.Ct. 1388; 455 U.S. 745, (1982).

In applying the protection of the Fourteenth Amendment, the United States Supreme Court has held that "[w]here certain fundamental rights are involved... regulation limiting these rights may be justified only by a 'compelling state interest' ...and ...legislative enactments must be narrowly drawn to express only the legitimate state interests at stake. State interference with

a fundamental right must by justified by a "compelling state interest." Roe v. Wade. 410 U.S. 113, 155 ; 93 S.Ct.
705; 35 L Ed 2d 147, (1973).

State's power to legislate, adjudicate and administer all aspects of family law, including determinations of custodial and visitation rights, is subject to scrutiny by federal judiciary within reach of due process and/or equal protection clause of 14th Amendment... fourteenth Amendment applied to states through specific rights contained in the first eight amendments of the Constitution which declares fundamental personal rights... Fourteenth Amendment encompasses and applied to states
those pre-existing fundamental rights recognized by the Ninth Amendment. The Ninth Amendment acknowledged the prior existence of fundamental rights with it: " The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. "The United States Supreme Court in a long line of decisions, has recognized that matters involving marriage, procreation, and the parent-child relationship are among those fundamental "liberty" interests protected by the Constitution. Thus, the decision in Roe v. Wade, as recently described by the Supreme Court as founded on the "Constitutional underpinning of... a recognition that the "liberty" protected by the Due Process Clause of the 14th Amendment includes not only the freedoms explicitly mentioned in the Bill of Rights, but also a freedom of personal choice in certain matters of marriage and family life."

While this court has not attempted to define with exactness the liberty thus guaranteed [by the Fourteenth Amendment] ... Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.
Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

In addition to recognizing as a fundamental liberty interest the right of parents to raise their children, the Supreme Court has also established that the Constitution's guarantee to fundamental privacy rights also embodies a fundamental right to parental autonomy in child rearing. The Court acknowledged a "private realm of family life which the state cannot enter." Prince v. Massachusetts, 3210 U.S. 158, 166 (1944); Moore v. City of East Cleveland, 431-U.S. 494 (1977).

The Supreme Court has clearly established that to constitute a compelling interest, state interference with a parent's right to raise his or her child must be for the purpose of protecting the child's health or welfare. Wisconsin v. Yoder, 406 U.S. 205, 230 (1972).

Father enjoys the right to associate with his children which is guaranteed by this amendment (First) as incorporated in Amendment 14, or which is embodied in the concept of "liberty" as that word is used in the Due Process Clause of the 14th Amendment and Equal Protection Clause of

the 14th Amendment. Mabra v. Schmidt, 356 F Supp 620: D.C., WI (1973).

SUPPORTING FEDERAL DISTRICT COURT DECISIONS

The rights of parents to care, custody and nurture of their children is of such character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and such right is a fundamental right protected by this amendment (First) and Amendments 5, 9, and 14. Doe v. Irwin , 440 F Supp 1247; U.S.D.C. of Michigan, (1985).

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

A parent's right to the preservation of his relationship with his child derives from the fact that the parent's achievement of a rich and rewarding life is likely to depend significantly on his ability to
participate in the rearing of his children. A child's corresponding right to protection from interference in the relationship derives from the psychic importance to him of being raised by a loving, responsible,
reliable adult. Franz v. U.S., 707 F 2d 582, 58-95-599; U.S. Ct. App. (1983).

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

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

The parent-child relationship is a liberty interest protected by the Due Process Clause of the 14th Amendment. Bell v. City of Milwaukee, 746 F 2d 1205, 1242-45; U.S. Ct. App 7th Cir. WI.

No bond is more precious and non should be more zealously protected by the law as the bond between parent and child. Carson v. Elrod, 411 F Supp 645, 649; DC E.D. VA (1976)

The non-custodial divorced parent has no way to implement the constitutionally protected right to maintain a parental relationship with his child except through visitation. To acknowledge the protected status of the relationship as the majority does, and yet deny protection under Title 42 USC Section 1983, to visitation, which is the exclusive means of effecting that right, is to negate the right completely. Wise v. Bravo, 666 F 2d 1328, (1981)

The rights of parents to parent-child relationships are recognized and upheld. Fantony v. Fantony, 122 A 2d 593, (1956); Brennan v. Brennan, 454 A 2d 901, (1982).

On Fundamental Rights & Mocking The Constitution

We have included the following excerpts from Sup. Ct. decisions for your education. It would seem that the Constitution is violated more than it is honored in matters involving domestic relations.

ROE v. WADE, 410 U.S. 113 (1973)

410 U.S. 113

ROE ET AL. v. WADE, DISTRICT ATTORNEY OF DALLAS COUNTY
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS No. 70-18.

Argued December 13, 1971 Reargued October 11, 1972
Decided January 22, 1973

...Where certain "fundamental rights" are involved, the Court has held that regulation limiting these rights may be justified only by a "compelling state interest," Kramer v. Union Free School District, 395 U.S. 621, 627 (1969); Shapiro v. Thompson, 394 U.S. 618, 634 (1969), Sherbert v. Verner, 374 U.S. 398, 406 (1963), and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake. Griswold v. Connecticut, 381 U.S., at 485; Aptheker v. Secretary of State, 378 U.S. 500, 508 (1964); Cantwell v. Connecticut, 310 U.S. 296, 307-308 (1940); see [410 U.S. 113, 156] Eisenstadt v. Baird, 405 U.S., at 460, 463-464 (WHITE,
J., concurring in result)....

MR. JUSTICE STEWART, concurring. ...Several decisions of this Court make clear that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. Loving v. Virginia, 388 U.S. 1, 12; Griswold v. Connecticut, supra; Pierce v. Society of Sisters, supra; Meyer v. Nebraska, supra. See also Prince v. Massachusetts, 321 U.S. 158, 166; Skinner v. Oklahoma, 316 U.S. 535, 541. As recently as last Term, in Eisenstadt v. Baird, 405 U.S. 438, 453, we recognized "the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally
affecting a person [410 U.S. 113, 170]....

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U.S. Supreme Court

SANTOSKY v. KRAMER, 455 U.S. 745 (1982)
455 U.S. 745

SANTOSKY ET AL. v. KRAMER, COMMISSIONER, ULSTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.
CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, THIRD JUDICIAL DEPARTMENT.
No. 80-5889.

Argued November 10, 1981
Decided March 24, 1982

...In Lassiter.... The absence of dispute reflected this Court's
historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment. Quilloin v. Walcott, 434 U.S. 246, 255 (1978); Smith v. Organization of Foster Families, 431 U.S. 816, 845 (1977); Moore v. East Cleveland, 431
U.S. 494, 499 (1977) (plurality opinion); Cleveland Board of Education v. LaFleur, 414 U.S. 632, 639-640 (1974); Stanley v. Illinois, 405 U.S. 645, 651-652 (1972); Prince v. Massachusetts, 321 U.S. 158, 166 (1944); Pierce v. Society of Sisters, 268 U.S. 510, 534-535 (1925); Meyer v. Nebraska,
262 U.S. 390, 399 (1923)....

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U.S. Supreme Court

HARRIS v. McRAE, 448 U.S. 297 (1980)

448 U.S. 297

HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES v. McRAE ET AL.
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.
No. 79-1268.

Argued April 21, 1980.
Decided June 30, 1980.

...It is well settled that, quite apart from the guarantee of equal protection, if a law "impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional." Mobile v. Bolden, 446 U.S. 55, 76 (plurality opinion). Accordingly, before turning to the equal protection issue in this case, we examine whether the Hyde Amendment violates any substantive rights secured by the Constitution....

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U.S. Supreme Court

COOPER v. AARON, 358 U.S. 1 (1958)

358 U.S. 1

COOPER ET AL., MEMBERS OF THE BOARD OF DIRECTORS OF THE LITTLE ROCK, ARKANSAS, INDEPENDENT SCHOOL DISTRICT, ET AL. v. AARON ET AL.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.Fn No. 1.
Argued September 11, 1958.
Decided September 12, 1958.

Opinion announced September 29, 1958.

...Article VI of the Constitution makes the Constitution the "supreme Law of the Land." In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of Marbury v. Madison, 1 Cranch 137, 177, that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever

since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Every
state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3, "to support this Constitution." Chief Justice Taney, speaking for a unanimous Court in 1859, said that this requirement reflected the framers' "anxiety to preserve it [the Constitution] in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a State . . .." Ableman v. Booth, 21 How. 506, 524.

No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. Chief Justice Marshall spoke for a unanimous Court in saying that: "If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery . . . ." United States v. Peters, 5 Cranch 115, 136. A Governor who asserts a [358 U.S. 1, 19] power to nullify a federal court order is similarly restrained. If he had such power, said Chief Justice Hughes, in 1932, also for a unanimous Court, "it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal Constitution upon the exercise of state power would be but impotent phrases . . . ." Sterling v. Constantin, 287 U.S. 378, 397-398....