

119TH CONGRESS
1ST SESSION

S. _____

To protect the right of parents to direct the upbringing of their children
as a fundamental right.

IN THE SENATE OF THE UNITED STATES

Mr. SCOTT of South Carolina introduced the following bill; which was read
twice and referred to the Committee on _____

A BILL

To protect the right of parents to direct the upbringing
of their children as a fundamental right.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Families’ Rights and
5 Responsibilities Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF**
7 **PURPOSES.**

8 (a) FINDINGS.—Congress finds the following:

1 (1) The nature of the parent-child relationship
2 endows parents with the primary responsibility and
3 obligation to care for their child.

4 (2) From these responsibilities and obligations
5 comes the pre-political, natural right of parents to
6 care for their children.

7 (3) The role of parents in the raising and
8 rearing of their children is of inestimable value and
9 deserving of both praise and protection by all levels
10 of government.

11 (4) This right as recognized in the traditions of
12 western civilization recognizes that parents have the
13 responsibility to love, nurture, raise, and protect
14 their children.

15 (5) The right encompasses the authority of par-
16 ents to direct the upbringing, education, and health
17 care of their children according to the dictates of
18 their conscience, to direct the upbringing, education,
19 and health care of their children in their own beliefs
20 and religion, and to be the primary decision maker
21 for their child until the child reaches adulthood.

22 (6) The Supreme Court has consistently recog-
23 nized the primary role of parents in caring for chil-
24 dren, concluding the following:

1 (A) “[T]he child is not the mere creature
2 of the state; those who nurture him and direct
3 his destiny have the right, coupled with the
4 high duty, to recognize and prepare him for ad-
5 ditional obligations.” *Pierce v. Soc’y of the Sis-*
6 *ters of the Holy Names of Jesus & Mary*, 268
7 U.S. 510, 535 (1925).

8 (B) “[I]t is the natural duty of the parent
9 to give his children education suitable to their
10 station in life.” *Meyer v. Nebraska*, 262 U.S.
11 390, 400 (1923).

12 (C) “It is plain that the interest of a par-
13 ent in the companionship, care, custody, and
14 management of his or her children comes to
15 this Court with a momentum for respect lacking
16 when appeal is made to liberties which derive
17 merely from shifting economic arrangements.”
18 *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

19 (D) “The history and culture of Western
20 civilization reflect a strong tradition of parental
21 concern for the nurture and upbringing of their
22 children. This primary role of the parents in the
23 upbringing of their children is now established
24 beyond debate as an enduring American tradi-

1 tion.” *Wisconsin v. Yoder*, 406 U.S. 205, 232
2 (1972).

3 (E) “Our jurisprudence historically has re-
4 flected Western civilization concepts of the fam-
5 ily as a unit with broad parental authority over
6 minor children. Our cases have consistently fol-
7 lowed that course.” *Parham v. J. R.*, 442 U.S.
8 584, 602 (1979).

9 (F) “We have recognized on numerous oc-
10 casions that the relationship between parent
11 and child is constitutionally protected.” *Quilloin*
12 *v. Walcott*, 434 U.S. 246, 255 (1978).

13 (G) The Supreme Court has explained that
14 the liberty specially protected by the Due Proc-
15 ess Clause includes the right “to direct the edu-
16 cation and upbringing of one’s children.” *Wash-*
17 *ington v. Glucksberg*, 521 U.S. 702, 720 (1997).

18 (H) “[W]e have recognized the funda-
19 mental right of parents to make decisions con-
20 cerning the care, custody, and control of their
21 children . . . In light of this extensive precedent,
22 it cannot now be doubted that the Due Process
23 Clause of the Fourteenth Amendment protects
24 the fundamental right of parents to make deci-
25 sions concerning the care, custody, and control

1 of their children.” *Troxel v. Granville*, 530 U.S.
2 57, 66 (2000) (plurality op.).

3 (I) “[T]he Due Process Clause does not
4 permit a State to infringe on the fundamental
5 right of parents to make child rearing decisions
6 simply because a state judge believes a ‘better’
7 decision could be made.” *Troxel*, 530 U.S. at
8 72–73 (plurality op.).

9 (7) Some decisions of Federal courts have failed
10 to recognize the fundamental right of parents, re-
11 sulting in an improper standard of judicial review
12 being applied to government conduct that adversely
13 affects parental rights and prerogatives.

14 (8) Government agencies have increasingly
15 intruded into the legitimate decisions and preroga-
16 tives of parents in situations that do not involve
17 abuse or neglect but simply an agency’s disagree-
18 ment with parenting choices based on decent and
19 honorable religious or philosophical premises.

20 (9) Government’s involvement in parenting
21 should prioritize the parent’s role as the child’s pri-
22 mary educator and should support, not supplant, the
23 parent’s rights and responsibilities.

1 (10) Government should not interfere in the de-
2 cisions and actions of parents without compelling
3 justification.

4 (11) The strict scrutiny test used by courts to
5 evaluate cases concerning fundamental rights is the
6 correct standard of review for government actions
7 that interfere with the right of parents to direct the
8 upbringing, education, and health care of their chil-
9 dren, and it appropriately balances the interests of
10 parents, children, and government.

11 (b) PURPOSES.—The purposes of this Act are—

12 (1) to protect the right of parents to direct the
13 upbringing of their children as a fundamental right;
14 and

15 (2) while protecting the right of parents, to ac-
16 knowledge that the rights involve responsibilities and
17 specifically that parents have the responsibility for
18 the education, nurture, and upbringing of their chil-
19 dren as specified by the Supreme Court in *Meyer v.*
20 *Nebraska*, 262 U.S. 390, 400 (1923), *Wisconsin v.*
21 *Yoder*, 406 U.S. 205, 232 (1972), and *Washington*
22 *v. Glucksberg*, 521 U.S. 702, 720 (1997), and have
23 the high duty to recognize and prepare their children
24 for additional obligations as specified by the Su-
25 preme Court in *Pierce v. Soc’y of the Sisters of the*

1 *Holy Names of Jesus & Mary*, 268 U.S. 510, 535
2 (1925).

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) GOVERNMENT.—The term “government”
6 includes a branch, department, agency, instrumen-
7 tality, and official (or other person acting under
8 color of law) of the United States, the District of
9 Columbia, the Commonwealth of Puerto Rico, and
10 each territory and possession of the United States.

11 (2) PARENT.—The term “parent” means a bio-
12 logical parent of a child, an adoptive parent of a
13 child, or an individual who has been granted exclu-
14 sive right and authority over the welfare of a child
15 under State law.

16 (3) CHILD.—The term “child” means an indi-
17 vidual who has not attained 18 years of age.

18 (4) SUBSTANTIAL BURDEN.—The term “sub-
19 stantial burden”—

20 (A) means any action that directly or indi-
21 rectly constrains, inhibits, curtails, or denies
22 the right of parents to direct the upbringing,
23 education, and health care of their child or
24 compels any action contrary to the right of par-

1 ents to direct the upbringing, education, and
2 health care of their child; and

3 (B) includes withholding benefits, assess-
4 ing criminal, civil, or administrative penalties or
5 damages, or exclusion from governmental pro-
6 grams.

7 **SEC. 4. PROTECTION OF PARENTAL RIGHTS.**

8 (a) IN GENERAL.—

9 (1) FUNDAMENTAL RIGHT.—The liberty of par-
10 ents to direct the upbringing, education, and health
11 care of their children is a fundamental right.

12 (2) LIMITS ON GOVERNMENT INTER-
13 FERENCE.—Government shall not substantially bur-
14 den the fundamental right of parents to direct the
15 upbringing, education, and health care of their chil-
16 dren without demonstrating that the infringement is
17 required by a compelling governmental interest of
18 the highest order as applied to the parent and the
19 child and is the least restrictive means of furthering
20 that compelling governmental interest. The funda-
21 mental rights protected include, without limitation,
22 the following rights and responsibilities:

23 (A) To direct the education of the child.

24 (B) To direct the moral or religious up-
25 bringing of the child.

1 (C) To access and review all medical
2 records of the child and to make and consent
3 to all physical and mental health care decisions
4 for the child.

5 (3) EFFECT OF THIS ACT ON OTHER RIGHTS.—

6 Unless legally waived or legally terminated, parents
7 have inalienable rights that are more comprehensive
8 than those listed in this section. This Act does not
9 prescribe all rights of parents, nor does it preempt
10 or foreclose claims or remedies in support of paren-
11 tal rights that are available under any other Federal
12 law, State law, the United States Constitution, or a
13 State constitution.

14 (b) EXCEPTIONS.—This section does not apply to a
15 parental action or decision that would result in serious
16 physical injury to the child or that would end life.

17 (c) JUDICIAL REMEDY.—Any parent may raise a vio-
18 lation of this Act as a claim or a defense in an action
19 in a Federal or State court or before an administrative
20 tribunal and obtain appropriate relief against a govern-
21 ment. Standing to assert a claim or defense under this
22 section shall be governed by the general rules of standing
23 under article III of the Constitution.

1 **SEC. 5. ATTORNEYS FEES.**

2 (a) JUDICIAL PROCEEDINGS.—Section 722(b) of the
3 Revised Statutes (42 U.S.C. 1988(b)) is amended by in-
4 serting “the Families’ Rights and Responsibilities Act,”
5 before “title VI of the Civil Rights Act of 1964”.

6 (b) ADMINISTRATIVE PROCEEDINGS.—Section
7 504(b)(1)(C) of title 5, United States Code, is amended
8 by striking “the Religious Freedom Restoration Act of
9 1993” and inserting “any adjudication under the Reli-
10 gious Freedom Restoration Act of 1993 or the Families’
11 Rights and Responsibilities Act”.

12 **SEC. 6. APPLICABILITY.**

13 (a) IN GENERAL.—This Act applies to each Federal
14 law, and the implementation of any such law, whether
15 statutory or otherwise, and whether adopted before or
16 after the date of enactment of this Act.

17 (b) RULE OF CONSTRUCTION.—

18 (1) ADDITIONAL RIGHTS.—The protections of
19 the fundamental right of parents to direct the up-
20 bringing, education, and health care of their children
21 afforded by this Act are in addition to the protec-
22 tions provided under Federal law, State law, and the
23 State and Federal constitutions.

24 (2) BROAD PROTECTION.—This Act shall be
25 construed in favor of a broad protection of the fun-

1 damental right of parents to direct the upbringing,
2 education, and health care of their children.

3 (3) NO GOVERNMENT BURDEN.—Nothing in
4 this Act shall be construed to authorize any govern-
5 ment to burden the fundamental right of parents to
6 direct the upbringing, education, and health care of
7 their children.

8 (4) SUBSEQUENTLY ENACTED LAWS.—Federal
9 statutory law adopted after the date of the enact-
10 ment of this Act is subject to this Act, unless such
11 law explicitly excludes such application by reference
12 to this Act.