### TROXEL V. GRANVILLE, 530 U.S 57 (2000)

This case is a challenge to the parental authority of a single mother by the father’s parents where the parents were never married, and where the father has died. The mother allowed Grandparent visitation but at a reduced amount from when the father lived with his parents and exercised his possession time from the Grandparent’s home. Here the Court made an important, definitive statement about Parental Rights being Fundamental, “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.” This opinion resulted in the Court agreeing with the Washington State Supreme Court that the law in question was unconstitutionally broad. The Court made it clear that States are required to justify any intrusion they make into the parent’s liberty to make decisions about the child. The Court did not state what standard should be used but simply stated that the Trial Court simply assumed its authority and made no effort to document any findings that would overcome a presumption in favor of the parent. The Trial Court’s imposition of a visitation schedule for the Grandparents in spite of the parent’s objections was overturned. What is important in this case is that The Court made it clear that Family Law Courts are subject to the Constitution just as all other Courts are. They can no longer assume that they have authority to do what they have been doing.

### MEYER V. NEBRASKA, 262 U.S. 390, (1923)

This case resulted from a criminal misdemeanor conviction of a private school teacher for the offense of teaching a foreign language to a child that had not yet passed the Eighth Grade. The Court found that the law infringed on the Fourteenth Amendment’s guarantee of Parental Liberties, particularly the right to direct the education of the child. The opinion contains a list of substantive liberties attributed to the Fourteenth Amendment that differs from many others,” While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.” The opinion also contains a statement that is helpful for countering the idea that best interest of the child trumps Fundamental Liberties, “a desirable end cannot be promoted by prohibited means.” Ultimately, the Court determined that a Fundamental Liberty was at issue, the law was overly broad, and the Court found no adequate foundation for the stated purpose of the statute.

### PIERCE V. SOCIETY OF SISTERS, 268 U.S. 510, (1925)

This case follows Meyer v. Nebraska in time and at issue is a State law in Oregon that required all children of a certain age to attend public schools. There were numerous Fundamental Liberty issues brought up, but the Court simply said that this case was sufficiently like Meyer that the Oregon law was therefore unconstitutional. There are some good quotes for Parental Rights to be found in this case and it is often cited in other cases. Some of those statements are: “rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state. “, “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.”

### PRINCE V. MASSACHUSETTS, 321 U.S. 158 (1944)

This is a Parental Rights, a First Amendment case, and a children’s rights case. At issue is the strength of Parental Rights and a child’s freedom of religion rights in the face of the State’s power to protect children in the form of child labor laws. Massachusetts introduced a child labor law that made it illegal for children of certain ages to be engaged in selling literature in public. One guardian and her child were engaged in providing religious literature on the public street in exchange for a donation. The State considered that a violation of the child labor law and fined the guardian. She appealed her conviction on parental and religious rights grounds. While the Court reiterated its strong stance in favor of Parental Rights and for the First Amendment, it also argued that the State’s parens patriae interest in child welfare in terms of child labor laws was also strong. This case is a great example of how these rights and responsibilities can conflict in the real world and how the Court seeks to resolve that conflict. In this case, the responsibility of the State edged out the other Liberties but the Court strongly warned that this ruling is fact specific and not necessarily a standard for future rulings. Even though Parental Liberties suffered in this specific instance, this case provides strong support for those rights in general. This is a rich case that says much about the difference between adult rights and children’s rights, such as, “the mere fact a state could not wholly prohibit this form of adult activity, whether characterized locally as a ‘sale’ or otherwise, does not mean it cannot do so for children… The state’s authority over children’s activities is broader than over like actions of adults. This is peculiarly true of public activities and in matters of employment… What may be wholly permissible for adults therefore may not be so for children, either with or without their parents’ presence.” Even though the State’s responsibility won out here, the Court reiterated parent’s and children’s rights, “The rights of children to exercise their religion, and of parents to give them religious training and to encourage them in the practice of religious belief, as against preponderant sentiment and assertion of state power voicing it, have had recognition here.” This case is strong evidence that children can be protected from the horror of having to choose one parent over the other in a divorce custody dispute.

### STANLEY V. ILLINOIS, 405 U.S. 645, (1972)

Stanley is the case of an unwed father who maintained a relationship with his children and their mother. Upon her death he ensured that the children were cared for by a third party. The State then inserted itself and declared by statutory definition that unwed biological fathers were not legal parents and proceeded to remove his children from him. He appealed this as an equal protection argument. The Court determined that the State is prohibited from defining the term parent in a way that disenfranchised unmarried fathers. It declared that State laws must treat unmarried fathers equally to unmarried mothers or married couples to be constitutional under equal protection. Further the State may not deprive him of a Fundamental Liberty interest in his children without finding him unfit in a proper proceeding. The Court makes it clear that States may not assume a parent is unfit simply because it is easier for the State to do so. It is also addressed that the child has a liberty interest in association with the unwed father. The Court states clearly that if the State’s interest is in “the best interest of the child” then the State’s interest is spited when the State removes custody from a fit parent. (This is exactly what they do in divorce.) Of importance for Parental Rights in divorce is the statement that the State’s parens patriae interest is “de minimis” unless the State shows unfitness of a parent. The Court also makes it clear that even if most unwed fathers would be determined unfit, that fact does NOT allow the State to assume away all unwed fathers rights, without the opportunity for rebuttal. (This is an important issue for unwed fathers who do not legitimize their status early in a child’s life. They need to preserve their rights, generally, by doing so, or they do risk losing them under the Courts current reasoning.) The Court in this case makes it clear that Parental Rights are Fundamental Liberties deserving of strong protection, “The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children “come[s] to this Court with a momentum for respect.”

### WISCONSIN V. YODER, 406 U.S. 205, (1972)

This is a case where the State of Wisconsin attempted to require that Amish children attend public school until the age of sixteen. Typically, Amish children attend school until the end of eighth grade and then begin to learn a trade through apprenticeship. The Yoders refused to send their two children to public high school and were charged with a crime and fined. They then claimed that the State was interfering with their ability to manage the education and religious upbringing of their children and that attending formal public high school would interfere with their religious beliefs. This is another instance where the State claims that its parens patriae interests are stronger than the parent’s Fundamental Liberties. The argument of the Court is that children are generally unable to protect themselves and therefore are not able to exercise their rights fully. This requires that someone be the primary and first guardian of the children. The Court clearly states that the parents are the primary and first guardians of the child, not the State. However the State has a role in setting minimum standards that all parents must follow. The Court stated its strong feelings for protecting the First Amendment, “The values underlying these two provisions relating to religion have been zealously protected, sometimes even at the expense of other interests of admittedly high social importance.” The Court stated that if the purpose of a statute can be served by means other than violating the right to freedom of religion then it is unconstitutional. The Court also stated that religious conduct not just belief may also be protected. This is important because we are arguing that we have a right to educate (conduct) our children in our own moral and religious beliefs. The Court also states that a statute that seems equal on its face can still fail a constitutional challenge if its effect is to place an undue burden on the liberty. We are claiming the undue burden test applies in divorce as well. The Court also makes a strong statement that people may not be disenfranchised because they are different or strange. The Court also states that children have Fundamental Liberties. The Court states that when a Parental Liberty is tied to a First Amendment claim then it must receive enhanced scrutiny and that the State must show a danger to the child’s health or safety before it may intervene. The result is that the State’s parens patriae interests do not outweigh Parental and Religious Liberties guaranteed by the Constitution.

### QUILLOIN V. WALCOTT, 434 U.S. 246, (1978)

This is a case where an unwed father sought to block adoption of his son by a stepfather, who had assumed full responsibility for the child with the mother, when Mr. Quilloin had not supported his child or ever exercised custody. Mr. Quilloin did not seek custody, only some visitation and to block the adoption. This is a somewhat troubling case for several reasons. First, I would have to say that this case is very fact specific and hardly provides a guide as to how a divorced parent can be lawfully treated. The father in this case accepted paternity and was listed on the birth certificate but never sought legitimation under State law. However, the Court excluded this from their reasoning partially because testimony indicated that he was unaware of this requirement until the adoption request was filed. Second, the Trial Court bent over backwards to give Mr. Quilloin a full and complete hearing and there was no challenge to the level of scrutiny applied. Although, an equal protection claim was made it didn’t include discrimination based on sex but instead contested that Mr. Quilloin was treated differently than a separated or divorced father would have been, indicating that they would have greater preference given to their rights. The Court said that [in this fact specific instance] Mr. Quilloin’s circumstances were readily distinguishable from separated or divorced fathers and therefore equal protection was not violated. Much was made of the fact that Mr. Quilloin was not seeking actual custody, which seemed to work against his argument as he didn’t seem committed to the welfare of the child while the mother and stepfather clearly were. I believe the fact that the Trial Court went out of its way to provide a fair hearing worked against Mr. Quilloin in this case. Even though he was not found unfit, I believe that he was seen as being “unwilling” and sought only to be a spoiler in this case. I believe that this case can be seen as a conflict of Fundamental Liberties between the mother and the father where the disparity shown in exercising responsibility was great. I believe that the child’s rights also came into play in terms of ability to inherit from the stepfather and to assume his name as part of a family unit and that provided the extra lift needed in this case. It would have been preferable had the Court framed it in these terms instead of in “best interest” terms; but that was the standard framing at the time. It seems clear that the arguments that worked against Mr. Quilloin in this case can NOT be applied more broadly to parents in divorce. So while this case is informative of the Courts thinking at the extreme of unwed and uninvolved fathers, it does not impact the mainstream issue of fit involved parents in divorce.

### PARHAM V. J. R., 442 U.S. 584, (1979)

This case involves Parent’s Rights as they relate to their child’s rights and the responsibility of the State under parens patriae and in loco parentis [the State acting as parent, e.g. ward of the State]. Specifically, this case involves the Due Process requirements for placing a child into a State run mental health institution. While there is nothing new or ground breaking here, the Court goes into significant detail in outlining these issues. The Court specifies the approach used in testing Due Process claims when Fundamental Liberties are at stake. The Court reiterates its strong support of Parental Rights but also states that a child has strong liberty interest in this case which warrants additional protection. The Court protects the child by requiring, not only, parental consent, but also, medical necessity determined by an admitting physician. The Court also protects the parent-child relationship by NOT requiring an adversarial hearing, pitting child against parent. The Court goes into detail about its views that minors’ rights are necessarily limited and provides great examples. “Simply because the decision of a parent is not agreeable to a child, or because it involves risks, does not automatically transfer the power to make that decision from the parents to some agency or officer of the state.” The Court mentions the issue of an Undue Burden of too much procedure causing harm, although not by that name. The same issue is addressed with natural parents and when the State as in loco parentis acts as the parent, e.g. wards of the State.

### SANTOSKY V. KRAMER, 455 U.S. 745, (1982)

This case deals with standards of evidence that may be used to terminate a parents Fundamental Liberty Interest in their child. The State of New York used a “fair preponderance of the evidence” standard. The Court held that this was insufficient and that a “clear and convincing” standard was the minimum standard to which States were to be held. “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.” “The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” The Court states that the parents and the child share an interest in avoiding an erroneous termination of parental rights. This is the same interest as in divorce. “Yet while there is still reason to believe that positive, nurturing parent-child relationships exist, the parens patriae interest favors preservation, not severance, of natural familial bonds.” “We cannot believe that it would burden the State unduly to require that its fact finders have the same factual certainty when terminating the parent-child relationship as they must have to suspend a driver’s license.” “The individual should not be asked to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the state.” This opinion gives us additional ammunition in our fight for Parental Rights in divorce. It also brings up another issue not addressed in this book, that of evidentiary standards used in divorce. Although not addressed here, this is a vital element in our battle that will be developed more on our website and in additional books.

### WASHINGTON V. GLUCKSBERG, 521 U.S, (1997)

This is a case involving the right or lack thereof to physician assisted suicide. It is extremely instructive in terms of how the Court approaches determining what is and is not a Fundamental Liberty protected by the Fourteenth Amendment. There is also significant discussion on how the Court came to the conclusion that it has authority to conduct substantive Due Process reviews. There isn’t much here that is directly applicable to Parental Rights in divorce, but if you want to really understand how the Court thinks about Substantive Due Process issues, this case is very informative.

### **The Simple Argument is this:**

My fundamental parental rights and my child’s fundamental rights can not depend on the marital status of the parents. Where divorce statutes create two unequal classes of parent or two unequal classes of child they violate the Fourteenth Amendment’s Equal Protection Clause. Where the divorce court asserts child custody jurisdiction solely on the basis of a divorce between parents, the court fails the constitutional test of showing a “compelling state interest” that is “necessary” to achieve a permissible state policy.

States are simply NOT authorized under our Constitution to create two unequal classes of people in this manner particularly where the rights being deprived are fundamental rights regardless of what any state law or state divorce court judge might say to the contrary.

The United States Supreme Court made clear in Troxel v. Granville that parents rights are fundamental:

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.

The Court in Troxel also made clear that the Trial Court was required to produce an individualized finding supporting its jurisdiction to act and to give special weight to the determination of the fit parent:

As we have explained, the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a “better” decision could be made. Neither the Washington nonparental visitation statute generally—…—nor the Superior Court in this specific case required anything more. Accordingly, we hold that § 26.10.160(3), as applied in this case, is unconstitutional.

### **In Griswold v. Connecticut, 381 US 479 (Supreme Court 1965), the Court said that a state’s laws MUST be necessary to achieving a permissible state policy:**

In a long series of cases this Court has held that where fundamental personal liberties are involved, they may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose. **“Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling,”** Bates v. Little Rock, 361 U. S. 516, 524. **The law must be shown “necessary, and not merely rationally related, to the accomplishment of a permissible state policy.”** McLaughlin v. Florida, 379 U. S. 184, 196. See Schneider v. Irvington, 308 U. S. 147, 161.

Where the rights of parent and child have no rational relationship or dependency upon the marital relationship of the parents, the dissolution of a marriage between parents can provide no compelling state interest or permissible state policy to justify infringing on those rights. Further, infringement of those rights is NOT necessary to protect the child.

What this means is that the State cannot establish jurisdiction to significantly encroach upon the parent’s rights in a divorce action without some compelling interest other than the best interests of the child.

This argument is incredibly powerful and so amazingly simple that any parent of average intelligence can make the argument. This simple argument is really all it takes for most people to make the point that divorce courts are systematically denying the equal protection rights of children and parents.

#### WE HAVE BEEN CONDITIONED TO BELIEVE THAT OUR RIGHTS AS PARENTS ARE DEPENDENT ON OUR MARRIAGES.

#### THIS IS A COMPLETE AND TOTAL LIE!

If you are one of those people who want to understand the details then this remaining section will provide many of those details.

One of the core principles of the equal protection clause is that when a classification is made based on something outside of a person’s control and it bears no relation to their ability to contribute to society such as a person’s race, sex, or the marital status of their parents, that classification is invidious and can-NOT stand in the face of the Equal Protection Clause.

It is clear that parents and children have familial rights respective to each other. It is also clear that these rights are fundamental in nature, they are part of our First Amendment rights, and they are privacy rights. Under the equal protection clause, when a fundamental liberty is being infringed, the strictest standard of review is imposed. This standard of review forces the State or your ex to prove that what they are trying to do is constitutional. It puts them on the defensive, not you, if they are trying to deprive you or your child of fundamental rights. (For a detailed explanation of these rights and legal concepts see our book: NOT In the Child’s Best Interest, or our website www.FixFamilyCourts.com)

### **There are numerous Supreme Court cases establishing that parental rights are INDIVIDUAL rights not dependent on marriage that deserve constitutional protection under the Equal Protection Clause.**

### **Some of those cases are:**

**Lehr v. Robertson, (1983)**, (The intangible fibers that connect parent and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty, and flexibility. It is self-evident that they are sufficiently vital to merit constitutional protection in appropriate cases. … When an unwed father demonstrates a full commitment to the responsibilities of parenthood by “com[ing] forward to participate in the rearing of his child,” Caban, 441 U. S., at 392, his interest in personal contact with his child acquires substantial protection under the Due Process Clause… We have held that these statutes may not constitutionally be applied in that class of cases where the mother and father are in fact similarly situated with regard to their relationship with the child.)

Lehr offers some significant points. It discusses “intangible fibers that connect parent and child” both “parent” and “child” are stated in the singular supporting the idea of an individual parental unit between each parent and each child. It talks of an infinite variety of connections, excluding rights only for traditional nuclear families. It discusses how “unwed” fathers can ensure that their “individual” rights to their children are affirmed or recognized in order to receive constitutional protection. (The reason the unwed father must affirm his parenthood is that it isn’t always clear who the father actually is.) Finally, Lehr clearly says that the equal protection clause prohibits discrimination between parents who are “similarly situated.” The only thing that legally matters in determining similarly situated in divorce is that the parents are fit and have established a relationship with the child.

**Gomez v. Perez, (1973)**, (We therefore hold that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother.)

Gomez may be the best stated case for our purposes here. Let me explain by simply changing a few words from the quote above, “We therefore hold that once a constitutional right to parental association on behalf of children with their parents is posited there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father is not married to its mother.”

**Stanley v. Illinois, (1972)**, (Nor has any law refused to recognize those family relationships unlegitimized by a marriage ceremony… children cannot be denied the right of other children. … It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children comes to this court with a momentum for respect… It follows that denying such a hearing to Stanley and those like him while granting it to other Illinois parents is inescapably contrary to the Equal Protection Clause.)

The important parts of this statement are a reference to cases overturning bastardy laws, “relationships unlegitimized by a marriage ceremony” and the clear statement that “children cannot be denied the right of other children” and the use of the singular form “parent” when describing the importance of parental rights and finally the statement that treating single parents differently from married parents is “inescapably contrary to the Equal Protection Clause.”

**Eisenstadt v. Baird, (1972)**, (If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusions)

Eisenstadt is very important because it states that privacy rights are individual in nature and cannot depend on marital status. Parental rights are often described by the United States Supreme Court as privacy rights, most notably in Planned Parenthood v. Casey, which Eisenstadt says cannot depend on marital status.

**Meyer v. Nebraska, (1923)**, (Without doubt, it [liberty] denotes not merely freedom from bodily restraint, but also the right of the individual… to marry, establish a home and bring up children… and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men…)

Meyer is very important in that it better defines the element of “liberty” that applies to the right to “establish a home and bring up children” and clearly states that this is an “individual” right. Certainly, the right to equally associate with one’s children is an essential element of “the orderly pursuit of happiness by free men…”

This set of cases are the cases that finally did away with bastardy laws across the entire United States and set the standard for when illegitimacy is a legitimate classification and when it isn’t:

* **New Jersey Welfare Rights Organization v. Cahill**, 411 US 619 – Supreme Court 1973
* **Weber v. Aetna Casualty & Surety Co.**, 406 US 164 – Supreme Court 1972
* **Richardson v. Davis**, 409 U. S. 1069 (1972)
* **Richardson v. Griffin**, 409 U. S. 1069 (1972)
* **Levy v. Louisiana**, 391 U. S. 68 (1968)

Contra legem facit qui id facit quod lex prohibit; in fraudem vero qui, salvis verbis legis, sententiam ejus circumvenit. A person acts contrary to the law who does what the law prohibits; a person acts in fraud of the law who, without violating the wording, circumvents the intention. Dig. 1.3.29. Semper in dubiis id agendum est, ut quam tutissimo loco res sit bona fide contracta, nisi quum aperte contra leges scriptum est. Always in doubtful cases that is to be done by which a bona fide contract may be in the safest condition, except when it has been drawn up clearly contrary to Law.