



MEMORANDUM

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Parental Rights in Education

The ACLJ fights to protect parents' constitutional right to direct the moral and educational upbringing of their children. Because so many parents do not have any option other than to send their children to the public schools, it is critical that parents know and understand their constitutional rights regarding public education.

The Supreme Court has time and again affirmed the well-established principle that parents possess a right to control the upbringing of their children: "The custody, care and nurture of the child resides first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). This fundamental liberty interest of parents to direct the upbringing and education of their children has been reaffirmed by the Supreme Court twice in just the last fifteen years. *See Washington v. Glucksberg*, 521 U.S. 702 (1997); *Troxel v. Granville*, 530 U.S. 57 (2000). The general notion of parental rights is rooted in the Due Process Clause of the Fourteenth Amendment. However, a number of additional constitutional as well as statutory provisions lend further support to parental rights in general, and a parent's right to opt his or her child out of objectionable classroom activities in particular.

In 1978, Congress enacted the Protection of Pupil Rights Act ("PPRA"). The PPRA permits parents to inspect classroom materials and requires parental consent before psychiatric or psychological testing or treatment can be administered to students. This Act provides only limited protection, however, because it only applies to programs funded by the U.S. Department of Education. Several states have passed "opt-out" statutes that protect a parent's right to protect

their child from objectionable content found in sex or health education courses. *See, e.g.*, N.Y. Educ. Law § 3204(5) (McKinney 1992)(permitting religiously motivated parents to have their children excused from “the study of health and hygiene”); N.J. Ann. Stat. § 18A: 35-4.7 (West 1989)(same); Cal. Educ. Code § 51240 (West 1996) (same). But, not all states have such protections, and “opt-out” laws vary from state to state.

A parent’s right to remove a child from objectionable classroom instruction and activity is grounded in three constitutional provisions: the Fourteenth Amendment Due Process Clause and the First Amendment Free Speech and Free Exercise Clauses. Which provision offers the strongest support for a parental challenge will vary slightly depending on the particular scenario. The potential scenarios faced by Christian parents typically fall into two basic categories—those that involve some degree of student coercion, and those that involve mere “exposure” to objectionable or offensive ideas. An example of the first scenario would be a school curriculum requiring students to participate in mock homosexual wedding ceremonies. Such an activity can be challenged on First Amendment free speech grounds because such a compulsory ritual forces children to endorse speech to which they are morally opposed. Although some lower courts have been unreceptive to recent parental challenges to school curricula, the constitutional underpinnings of parental rights in this area are well established. The First Amendment Free Speech and Free Exercise Clauses, combined with the Fourteenth Amendment's fundamental liberty interest of parents to direct the education and upbringing of their children, form a strong foundation upon which parents can assert their right to opt their children out of objectionable school material or activities. The higher the degree of coercion on students to participate in, or otherwise endorse the classroom activity, the stronger the constitutional argument in favor of a parental opt-out right.

By contrast, a situation involving mere exposure to offensive materials would be better challenged by initiating and maintaining an open dialogue with school administrators on this issue. Parents can serve as a grassroots catalyst for educational reform and should also consider running for school board and becoming involved in school policy decision making. In taking such affirmative steps at the local level, parents can influence school curriculum and encourage the adoption of opt-out policies.

For information on laws regarding parental rights related to home schooling, visit <http://www.hslda.org/laws/default.asp>.