



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Matt Heilman

District 7
5501 Flatrock Drive
Bismarck, ND 58503-8929
mheilman@ndlegis.gov

COMMITTEES:
Education
Political Subdivisions

January 30, 2023

Chairman Weisz and Members of the Human Services Committee,

I am state Representative Matt Heilman from district seven. I am here before you today to testify on behalf of my parental rights bill, House Bill 1403. This bill will protect the parents in our state by ensuring their fundamental rights are protected, and if infringed, are allowed to receive appropriate relief. House Bill 1403 was modeled after Montana's bill.

In the special session of 2021, the legislature passed HCR 3049 stating that parents are the primary caretakers and guardians of their children. The resolution also states that parents are the primary stakeholders in their children's futures. HCR 3049 also says it is necessary to restore the balance of respect and power between parents and the government for the benefit of children by recognizing parents as the chief stakeholders of children's futures. This bill will do that by reinforcing the boundaries between government and parents.

Section one of this bill lists the fundamental rights as upbringing, education, health care and mental health. The bill goes on to say a government entity may not interfere with these rights unless there is a compelling government interest. I will elaborate more on the "compelling government interest" shortly.

Section two of this bill goes on to say a parent may be able to obtain appropriate relief against that government entity. The bill ends with saying that the prevailing party is entitled to reasonable attorney fees and costs.

The “compelling government interest” is word for word form the Strict Scrutiny Test. The Strict Scrutiny Test is one of three tests used to determine the constitutionality of laws that has been used going back to the 1940’s. The three tests are the rational basis test, intermediate scrutiny, and strict scrutiny. Strict Scrutiny is the hardest of the three tests.

First, let us cover what “fundamental rights” means. Fundamental rights, as mentioned in the bill, are the upbringing of a child, education, health care, and mental health. The U.S. Constitution, Bill of Rights, and Due Process (5th and 14th amendment) also are included. However, fundamental rights also established by the Supreme Court include marriage, privacy, contraception, interstate travel, procreation, voting, and custody of one’s child(ren).

Just for the sake of refreshing the mind, the 5th amendment says that an individual cannot be compelled by the government to provide incriminating information about themselves. This is often referred to as the right to remain silent or “pleading the fifth.”

The 14th amendment has a few components to it as well. One of them being Due Process and the Equal Protection Clause. To quote from the 14th amendment “(Due Process) no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; (Equal Protection Clause) nor deny to any person within its jurisdiction the equal protection of the laws.”

One of the earliest examples of Strict Scrutiny was *Skinner v. Oklahoma* (1942). In this Supreme Court case, it was decided that the state cannot sterilize convicted criminals. This helped establish procreation as a fundamental right. Another was *Loving v. Virginia* (1967) where the Supreme Court struck down a state law banning interracial marriage. Strict Scrutiny is not limited to the U.S. Supreme Court, these are just more notable cases where it was used.

The process of the Strict Scrutiny Test is not terribly complicated. The main purpose is to determine the constitutionality of a law. There are two factors: the first being what is the government's purpose and the second is how the law accomplishes the purpose.

When talking about purpose, there are three purposes. 1. A legitimate purpose (rational basis test) where there is a rational relationship between government and the law passed. 2. The other is the important purpose (intermediate test) where there is a substantial purpose between government and the law that was passed. 3. The last one is the compelling purpose (Strict Scrutiny Test) where relationship between government and the law has to be narrowly tailored or least restrictive to meet that compelling interest. In that respective order, each one is harder than the other with Strict Scrutiny being the hardest.

As you can see, it is used when there is discrimination against race, religion, freedom of speech and other fundamental rights. This legislation is crucial to pass to ensure the fundamental rights of parents are protected. Let us build off the past resolution by passing this parental rights bill. Together we can ensure the parents in our state will have their fundamental rights protected. I respectfully ask for a due pass recommendation and I will stand for any questions.