



**Testimony by William A. Estrada, Esq., President, ParentalRights.org and the Parental Rights Foundation**

**In Support of S.B. 2260, Parental rights and responsibilities - Fundamental rights.**

**March 21, 2023**

Chair Weisz, Vice Chair Rohr, Members of the House Human Services Committee, thank you for your service, and for taking the time to read my testimony, and thank you for conducting a hearing on this critical bill.

By way of introduction, our organization, the Parental Rights Foundation, and our parent organization, ParentalRights.org, have worked nationwide and in the fifty states for the last 16 years to protect children by empowering parents. We are grateful for this opportunity to submit written testimony in support of S.B. 2260, Parental rights and responsibilities - Fundamental rights.

S.B. 2260 is a commonsense bill that is premised on 100 years of U.S. Supreme Court precedent. S.B. 2260 recognizes that parents are a child's first, best, and strongest protection, and that the best way to protect children is by empowering parents.

S.B. 2260 codifies that parental rights are a fundamental right, the highest right recognized in our nation's legal structure.

The U.S. Supreme Court has long recognized that parental rights are a fundamental right. *See, e.g., Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Troxel v. Granville*, 530 U.S. 57 (2000).

Passage of S.B. 2260 would make North Dakota the 16<sup>th</sup> state in the nation to codify parental rights as a fundamental right in state law. The 15 states that have already done this are West Virginia prior to 1931, Kansas and Michigan in 1996, Texas in 1999, Utah in 2000, Colorado in

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2003, Arizona in 2010, Nevada and Virginia in 2013, Oklahoma in 2014, Idaho in 2015, Wyoming in 2017, Florida and Montana in 2021, and Georgia last year.<sup>1</sup>

In these 15 states that specify in state code that parental rights are fundamental, abuse of children and neglect of children are still prosecuted. Parental rights are still terminated when the government shows that it has a compelling state interest to do so and there is no less restrictive means to protect the best interests of the child. Parents are not allowed to disrupt teachers during the school day. The public schools are still strong. Laws governing the education of children at home, compulsory attendance laws, and other common-sense laws governing the parent-child relationship exist as they did prior to the passage of the fundamental parental rights legislation.

If S.B. 2260 is enacted into North Dakota state law, it will provide parents with the highest level of legal protection. It will codify in North Dakota state law that parents have the fundamental right to raise their children, educate their children, care for their children, make medical decisions for their children, and raise their children, while still allowing the North Dakota state government to protect children when necessary, and to still provide public education. The Legislature is charged with protecting the rights of the people, so this belongs in the North Dakota State Code.

So, what is a fundamental right? Let's start 100 years ago, with the U.S. Supreme Court's 1923 decision in *Meyer v. Nebraska*. The U.S. Supreme Court stated "[T]he individual has certain fundamental rights which must be respected." And then speaking about the U.S. Constitution's 14<sup>th</sup> Amendment's Due Process Clause, the U.S. Supreme Court continued "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."

Two years later, in 1925, the U.S. Supreme Court made this clearer in *Pierce v. Society of Sisters*: "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who

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<sup>1</sup> West Virginia (W. Va. Code § 44-10-7, as extended by *In re Willis*, 157 W.Va. 225, 207 S.E.2d 129 (WV 1973); see also W. Va. Code § 49-1-1(a) and W. Va. Code § 49-6D-2(a)); Kansas (Kan. Stat. Ann. § 38-141(2)(b); see also Kan. Stat. Ann. § 60-5305(a)(1)); Michigan (Mich. Comp. Laws § 380.10); Texas (Texas Family Code § 151.003); Utah (Utah Code Ann. § 62A-4a-201; see also Utah Code Ann. § 30-5a-103); Colorado (Colo. Rev. Stat. § 13-22-107(1)(a)(III)); Arizona (Ariz. Rev. Stat. § 1-601); Nevada (Nevada Rev. Stat. Ann. § 126.036); Virginia (Va. Code Ann. § 1-240.1); Oklahoma (Okla. Stat. tit. 25, § 2001—2005); Idaho (Idaho Code § 32-1012 – 1013); Wyoming (Wyo. Stat. Ann. § 14-2-206); Florida (Fla. Stat. § 1014.03); Montana (Mont. Code Ann. § 40-6-701); Georgia (Ga. Code Ann. § 20-2-786).

nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”

In 1972, the U.S. Supreme Court held in *Wisconsin v. Yoder*: “[T]his case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”

In 2000, the U.S. Supreme Court held in *Troxel v. Granville*: “The liberty interest at issue in this case -- 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.” The U.S. Supreme Court then spent several paragraphs discussing all the cases establishing parental rights as a fundamental right, and concluded, “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.”

S.B. 2260 is a commonsense bill that protects the fundamental, Constitutional rights of all parents in North Dakota, rich and poor, Black and white, urban and rural, Republican and Democrat. I respectfully urge that it be passed into law in the state of North Dakota.