



March 25, 1996

Dear Jan,

Enclosed you will find the materials I told you earlier. This month I would send about the Federal Parental Rights and Responsibilities Act (PPRA) introduced by Sen. Grassley and Rep. Dargatzis. "Parental rights" legislation is yet another manifestation of the Right's skill at taking a scary idea and making it look innocuous and even desirable to the casual observer. The PPRA is designed to give disgruntled parents the ability to challenge or second any child health, welfare or education law or government program with which they disagree by alleging that it "interferes with or usurps" the parents' right to "direct the upbringing" of their children. Programs or laws deemed to "interfere" with parental rights would be struck down unless the government could demonstrate by clear and convincing evidence that its action is "essential to accomplish a compelling government interest and is narrowly drawn or applied in a manner that is the least restrictive means of accomplishing the compelling interest." A large coalition of "ay-felks" is opposing the PPRA on the ground that it is a threat to minors' health, education and well-being.

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With respect to the Federal legislation, I have enclosed:

- a copy of the PPRA.

KGT to SK
Mar. 25, 1996

- A list of the PRRH's cosponsors as of 3/15/96.
- A list of organizations on record as opposing the Act. (This list will get longer as different groups' internal clearance processes conclude. For example, The Children's Defense Fund participates in the coalition but has not yet gone public with its opposition. (It is expected to do so).)
- A George Will column (1) opposing parental rights legislation.
- A statement by the National Education Association about the effect of The PRRH on public education.
- A factsheet prepared by the coalition about the health consequences of the PRRH.
- A factsheet prepared by the coalition about the ~~health consequences~~ ^{effect} of the PRRH on child protection laws and agencies (not that well written, but informative)
- A letter to Sen. Grassley from the National Child Abuse Coalition.

Parental rights legislation, including measures to amend state constitutions, has also been introduced in at least 15 state legislatures. It is also the subject of a ballot initiative drive in Colorado. Therefore, I have also enclosed a list summarizing state legislative activity and a factsheet distributed by Of the People, The right-wing group sponsoring the state constitutional amendments. (You will notice the gratuitous slap at you-know-who in said factsheet)

LG to JK

Mar. 25, 1996

(3)

Anyway, I'm sorry to add to the pile of paper you
no doubt have in your office, but I do think that
you will be interested in this stuff. If you have
any questions or need more information while
I am on vacation (Mar. 27-Apr. 4), Nicole
McLaughlin in my office (973-3514) or, of course,
CDF or any of the "folks" on the list of organ-
izations opposing the legislation should
be able to help.

I'll call you when I get back so we can do
lunch. In the meantime, you try not to
work too hard and I'll try not to break
anything on the slopes in Lake Tahoe. Have
a Happy Passover!

Yours,
Loren

1

H.R. 1946/S 984

[Amended without strikeouts.]

2/12/96

To protect the fundamental right of a parent to direct the upbringing of a child, and for other purposes.

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Parental Rights and Responsibilities
3 Act of 1995".

4 **SECTION 2. PROHIBITION ON INTERFERING WITH OR**
5 **USURPING RIGHTS OF PARENTS.**

6 No Federal, State, or local government, or any official of such a
7 government acting under color of law, shall interfere with or usurp the
8 right of a parent to direct the upbringing of the child of the parent.

9 **SEC. 3. STRICT SCRUTINY.**

10 No exception to section 2 shall be permitted, unless the
11 government or official is able to demonstrate, by clear and convincing
12 evidence, that the interference or usurpation is essential to accomplish a
13 compelling government interest and is narrowly drawn or applied in a

1 manner that is the least restrictive means of accomplishing the compelling
2 interest.

3 **SEC. 4. CLAIM OR DEFENSE.**

4 Any parent may raise a violation of this Act in an action in a
5 Federal or State court, or before an administrative tribunal, of appropriate
6 jurisdiction as a claim or a defense.

7 **SEC. 5. DOMESTIC RELATIONS CASES AND DISPUTES**
8 **BETWEEN PARENTS.**

9 This Act shall not apply to --

10 (1) domestic relations cases concerning the appointment of
11 parental rights between parents in custody disputes; and

12 (2) any other litigation between parents.

13 **SEC. 6. ATTORNEY'S FEES.**

14 Subsection (b) and (c) of section 722 of the Revised Statutes (42
15 U.S.C. 1988 (b) and (c)) (concerning the award of attorney's and expert
16 fees) shall apply to cases brought under this Act.

17 **SEC. 7. DEFINITIONS.**

18 As used in this Act:

19 (1) CHILD. -- The term "child" has the meaning provided
20 by State statute.

21 (2) PARENT. -- The term "parent" has the meaning
22 provided by State statute.

1 (3) DIRECT THE UPBRINGING OF A CHILD. --

2 (A) IN GENERAL. -- The term "direct the
3 upbringing of a child" includes, but is not
4 limited to the parent's --

5 (i) directing or providing for the education
6 of the child;

7 (ii) making a health care decision for the child;

8 (iii) disciplining the child, including reasonable
9 corporal discipline; and

10 (iv) directing or providing for the religious teaching
11 of the child.

12 (B) LIMITATIONS CONCERNING PARENTAL
13 DECISIONS ON HEALTH CARE. -- The term "direct the
14 upbringing of a child" shall include a parent's withholding
15 consent to any medical service or treatment except when
16 such care or treatment is necessary:

17 (i) to prevent or remedy serious harm to the child;
18 or

19 (ii) to prevent the withholding of medically indicated
20 treatment from children (including infants) with life
21 threatening conditions.

22 (C) NO APPLICATION TO ABUSE AND

1 NEGLECT. -- The term "direct the upbringing of a child"
2 shall not include child abuse and neglect as the terms are
3 defined in state statute.
4 (4) STATE. -- The term "State" includes the District of
5 Columbia, the Commonwealth of Puerto Rico, and each territory
6 and possession of the United States.

1 of 1 items

CQ's WASHINGTON ALERT 03/15/96

*** COSONSOR REPORT -- CURRENT COSPONSORS IN ALPHABETICAL ORDER ***

MEASURE: S984

SPONSOR: Grassley (R-IA)

BRIEF TITLE: Parental Rights and Responsibilities Act of 1995.

INTRODUCED: 06/29/95

COSPONSORS: 10 (Dems: 0 Reps: 10 Ind: 0)

CURRENT COSPONSORS:

Cochran (R-MS)	Helms (R-NC)	Simpson (R-WY)
Dole (R-KS)	Inhofe (R-OK)	Warner (R-VA)
Faircloth (R-NC)	Lott (R-MS)	
Frist (R-TN)	Mack (R-FL)	

1 of 1 items

CQ's WASHINGTON ALERT 03/15/96

*** COSPONSOR REPORT -- CURRENT COSPONSORS IN ALPHABETICAL ORDER ***

MEASURE: HR1946

SPONSOR: Largent (R-OK)

BRIEF TITLE: Parental Rights and Responsibilities Act of 1995.

INTRODUCED: 06/28/95

COSPONSORS: 131 (Dems: 8 Reps: 123 Ind: 0)

CURRENT COSPONSORS:

Allard (R-CO)	Funderburk (R-NC)	Parker (R-MS)
Armey (R-TX)	Goodlatte, R. (R-VA)	Paxon (R-NY)
Bachus, S. (R-AL)	Graham, L. (R-SC)	Peterson, C. (D-MN)
Baker, B. (R-CA)	Gutknecht (R-MN)	Petri (R-WI)
Baker, R. (R-LA)	Hancock (R-MO)	Pombo (R-CA)
Ballenger (R-NC)	Hastert (R-IL)	Porter (R-IL)
Barr, B. (R-GA)	Hastings, D. (R-WA)	Quillen (R-TN)

Barrett, T. (D-WI)	Hayworth (R-AZ)	Rahall (D-WV)
Bartlett, R. (R-MD)	Hefley, J. (R-CO)	Regula (R-OH)
Barton, J. (R-TX)	Heineman (R-NC)	Riggs (R-CA)
Bryant, E. (R-TN)	Herger (R-CA)	Roberts (R-KS)
Bunning, J. (R-KY)	Hilleary (R-TN)	Rohrabacher (R-CA)
Burr (R-NC)	Hoekstra (R-MI)	Rose (D-NC)
Callahan (R-AL)	Hostettler (R-IN)	Salmon (R-AZ)
Calvert (R-CA)	Hunter (R-CA)	Scarborough (R-FL)
Camp, D. (R-MI)	Hutchinson, T. (R-AR)	Seastrand (R-CA)
Chambliss (R-GA)	Inglis, B. (R-SC)	Sensenbrenner (R-WI)
Chenoweth (R-ID)	Istook (R-OK)	Shadegg (R-AZ)
Christensen (R-NE)	Jones (R-NC)	Shuster (R-PA)
Chrysler (R-MI)	Kasich (R-OH)	Skeen (R-NM)
Clement (D-TN)	Kim (R-CA)	Smith, C. (R-NJ)
Coble (R-NC)	Kingston, J. (R-GA)	Smith, Linda (R-WA)
Coburn (R-OK)	Knollenberg (R-MI)	Smith, Nick (R-MI)
Collins, M. (R-GA)	LaHood (R-IL)	Solomon (R-NY)
Combest (R-TX)	Latham (R-IA)	Souder (R-IN)
Cooley (R-OR)	Laughlin (R-TX)	Spence (R-SC)
Crane (R-IL)	Lewis, R. (R-KY)	Stearns (R-FL)
Crapo (R-ID)	Linder (R-GA)	Stenholm (D-TX)
Cubin (R-WY)	Lipinski (D-IL)	Stockman (R-TX)
Cunningham (R-CA)	Livingston (R-LA)	Stump (R-AZ)
Davis (R-VA)	McCollum (R-FL)	Tate (R-WA)
Deal (R-GA)	McCrery (R-LA)	Tauzin (R-LA)
DeLay (R-TX)	McHugh (R-NY)	Taylor, C. (R-NC)
Dickey, J. (R-AR)	McInnis (R-CO)	Thornberry (R-TX)
Doolittle (R-CA)	McIntosh (R-IN)	Tiahrt (R-KS)
Dornan, R. (R-CA)	Metcalf (R-WA)	Vucanovich (R-NV)
Dreier (R-CA)	Montgomery (D-MS)	Wamp (R-TN)
Duncan (R-TN)	Myrick (R-NC)	Watts, J. (R-OK)
Emerson (R-MO)	Neumann (R-WI)	Weldon, D. (R-FL)
Ewing (R-IL)	Ney (R-OH)	Weller (R-IL)
Fields, J. (R-TX)	Norwood (R-GA)	Wicker (R-MS)
Foley (R-FL)	Nussle (R-IA)	Wolf (R-VA)
Forbes (R-NY)	Oxley (R-OH)	Young, D. (R-AK)
Fox (R-PA)	Packard (R-CA)	

March 21, 1996

**ORGANIZATIONS THAT FORMALLY OPPOSE THE PARENTAL RIGHTS AND
RESPONSIBILITIES ACT AND URGE ITS DEFEAT**

Advocates for Youth
Advocates for Children and Youth, Inc.
American Academy of Child & Adolescent Psychiatry
American Academy of Pediatrics
American Association of School Administrators
American Association of University Women
American Civil Liberties Union
American Counseling Association
American Humane Association
American Professional Society on the Abuse of Children
American Psychological Association
American Public Health Association
Center for Reproductive Law & Policy
Child Welfare League of America
National Abortion Federation
National Abortion and Reproductive Rights Action League
National Association of Child Advocates
National Association of Counsel for Children
National Association of School Psychologists
National Association of Social Workers
National Committee to Prevent Child Abuse
National Council of Jewish Women
National Education Association
National Family Planning and Reproductive Health Association
National School Boards Association
National PTA
National Women's Law Center
NOW Legal Defense & Education Fund
Parents United (Giaretto Institute)
People for the American Way Action Fund
Women's Legal Defense Fund
Zero Population Growth

George F. Will

A Time to Let It Go

ATLANTA—Northeast of here, hard by the South Carolina border, in Toccoa, Ga., Waymon Earls, a tow truck driver, and his wife, Sharon, have started something that demonstrates the deep roots and strong sinews, but also some ambiguities, of today's conservatism. However, the Earls don't think they started the fight they are waging here with the help of the Southeastern Legal Foundation, a nonprofit public interest law firm spoiling for fights on behalf of conservative causes.

The Earls think, reasonably, that they are acting in self-defense. The aggressors who started the fight are the people in the school district who, without consulting the Earls, gave the Earls' daughters, ages 14 and 15, a bag of condoms, prescriptions for birth control pills, Pap smears and tests for AIDS.

Last June the Athens (Ga.) Banner-Herald quoted the Toccoa district school superintendent: "Schools are now taking over responsibilities that aren't being covered in the home. When parents won't do it, we have to." Won't do what—give their teenagers condoms? The Earls are seeking monetary damages for what they say were violations of school rules, state law and the state constitution.

Furthermore, they allege violations of their rights under the U.S. Constitution, including their First Amendment right to the free exercise of religion (which they say encompasses child rearing) and recognized 14th Amendment "due process" rights to parental sovereignty. The Earls say they are just trying to get policy to conform to precedents.

They cite a line of cases beginning with two from the 1920s. In one the Supreme Court

overturned a Nebraska law (passed as a result of World War I hysteria) prohibiting foreign language instruction to schoolchildren. The court said the prohibition impermissibly infringed parental child-rearing rights. In the other case, the court overturned an Oregon law requiring parents to send children to public schools. The court said the law unreasonably interfered with the liberty of parents "to direct the upbringing and education of children under their control."

These cases were examples of "substantive due process," which those conservatives who stress judicial restraint have generally considered a contradiction in terms. Such conservatives oppose wringing policy substance, even conservative substance, from a clause they say has merely procedural meaning. And a lawyer for the Southeastern Legal Foundation cheerfully says, "We are out to make bad law in order to provoke legislatures to repeal bad laws."

The foundation believes that for too long liberals have been defining the substance of substantive due process, so conservatives should get into the game. The foundation has been in the game for 20 years. Similar organizations practicing conservative judicial activism—yes, many conservatives do not consider that an oxymoron—have proliferated since the early 1970s, when the first of them was formed with the help of a California lawyer named Ed Meese.

One can sympathize entirely with the Earls and applaud the social policies organizations like the foundation advocate while regretting the zest with which some conservatives are succumbing to the temptation to seek judicial

relief from offensive policies. That often means judicial relief from the rigors of politics.

Consider the rapidly spreading movement to pass "parental rights amendments" to state constitutions. The most common formulation is: "The right of parents to direct the upbringing and education of their children shall not be infringed." Those 17 words are rich in potential for breeding litigation about matters that should be settled by legislation, or by processes of political persuasion.

Both politics and social accommodation are discouraged by casting issues in the brook-no-compromise language of rights. Is the parental right to "direct" the "upbringing and education" of children infringed by school curricula or texts or dress codes that parents disapprove? Do we want to turn every parent's grievance into grounds for suing?

Rep. Steve Largent, a freshman Republican from Oklahoma, has 125 co-sponsors for his "Parental Rights and Responsibilities Act," which says, among much else, that "no federal, state or local government . . . shall interfere with or usurp the right of a parent to direct the upbringing of the child of the parent." At first blush, that may seem unexceptional. And it is reasonable to execrate the many governmental provocations, from condom distributions to propagandizing curricula, that have moved Largent and other good people, including the Earls, to seek to codify parental rights.

However, there is a competing consideration: It is injurious to democracy to write into law language certain to breed litigation that will draw courts even deeper into the unjudicial business of reviewing and rearranging the details of social life.



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Statement of the National Education Association Regarding The Parental Rights and Responsibilities Act

The Parental Rights and Responsibilities Act (S. 984 and H.R. 1946) represents an unprecedented effort to impose *federal* control over *local* school affairs. This legislation is disruptive, intrusive, expensive, and unnecessary, and will wreak havoc in the public schools. We urge its defeat.

- ◆ The Parental Rights and Responsibilities Act ("PRA") will take away the authority of locally-elected school officials to make decisions regarding school curricula and local educational policy and give that authority to federal judges.
- ◆ PRA will give students the right to carry knives, guns, and other weapons to school.
- ◆ PRA will force schools "to cater a curriculum for each student," to provide special *alternative* curricula that promotes the race, culture, religion, or personal "values" of individual parents.
- ◆ PRA is an enormous, unfunded federal mandate. It will cost public school districts more than 3.3 billion dollars annually to implement PRA, plus an additional 1 billion dollars a year in attorneys' fees. Who's going to pay for this?
- ◆ PRA will give parents the right to sue teachers in federal court for money damages and attorneys' fees if the teacher says anything in class that the parent doesn't like.
- ◆ PRA will give parents the right to sue teachers for asking their children any question about possible child abuse or for counseling their children without prior parental consent.
- ◆ PRA will give parents the right to have their children "opt out" of any required course they don't like, including, e.g. English literature, algebra, or chemistry.
- ◆ If PRA is enacted, school districts will no longer be able to impose student dress codes, student grooming codes, "no pass/no play" requirements, mandatory drug and alcohol testing programs for student athletes, or mandatory graduation requirements.
- ◆ PRA will give parents the right to require school districts to admit their children to student honor societies and special programs for the gifted, even if the students don't meet admission requirements.
- ◆ PRA will give parents the right to force public school districts to pay private and sectarian school tuition so that parents can exercise their fundamental right to direct the education of their children by enrolling them in the private school of their choice.
- ◆ PRA will overturn state compulsory education laws and prohibit state regulation of home schools.

1. PRA is anti-democratic. Supreme Court Chief Justice Warren Burger has cogently explained the uniquely democratic nature of decision-making in public education:

[L]ocal control of education involves democracy in a microcosm. In most public schools in the United States, the *parents* have a large voice in running the school. Through participation in the election of school board members, the parents influence, if not control, the direction of their children's education. A school board is not a giant bureaucracy far removed from accountability for its actions; it is truly "of the people and by the people." ... If the parents disagree with the educational decisions of the school board, they can take steps to remove the board members from office.¹

Supporters of PRA cannot tell you what this legislation will actually accomplish; that is left up to the courts to decide on a case-by-case basis. At a minimum, however, PRA will take away the authority of locally-elected school officials to make decisions regarding school curricula and local educational policy and give that authority to federal judges. In a very real sense, enactment of PRA will result in school administration by judges rather than by local school officials elected by -- and accountable to -- the people.

Proponents claim that PRA is needed because, for the last 70 years, the lower courts have misconstrued the doctrine of "parental rights" first recognized by the Supreme Court in 1923. This legislation purports to correct the holdings in "hundreds" of such cases by recognizing "parental rights" as a *fundamental* constitutional right and by requiring the state to prove a "compelling governmental interest" to justify any alleged infringement on that right.

In fact, the Supreme Court has never recognized parental rights as fundamental, and the lower courts consistently have refused to apply a compelling state interest test to such claims. As a federal appellate court recently held, "the Supreme Court has yet to decide whether the right to direct the upbringing and education of one's children is among those fundamental rights whose infringement merits heightened scrutiny."²

This bill does not "codify" existing law; it creates a new fundamental right and will have dire consequences for this country's public schools.

2. PRA will create a threat to school safety. Application of the compelling state interest test to parental claims against the public schools will have unintended and disastrous results. No case better illustrates this point than Cheema v. Thompson,³ decided just four months ago. In that stunning decision, the U. S. Court of Appeals for the Ninth Circuit actually upheld a federal court injunction requiring California school officials to allow children to carry 7-inch knives with them to school each day. While this case involved a claim of religious freedom, the court utilized the same legal test set forth in the PRA in deciding that the school's ban on weapons violated the parents' rights. This case suggests that, if PRA is enacted, parents nation-wide will be able to obtain similar court injunctions allowing their children to bring knives, guns, or any other weapons to school.

3. PRA will force schools to provide a special "designer" curriculum for each individual student.

Proponents of PRA would freely admit that this legislation will give individual parents the right to dictate what their children are taught, both by insuring the right to opt out of any course or class the parent finds objectionable and by requiring the school to provide alternative instruction acceptable to the parent's personal tastes. Courts routinely have rejected the argument that the Constitution gives parents this right.⁴ Last October, for example, the First Circuit Court of Appeals rejected parents' claims that a Massachusetts school district violated their parental rights by requiring their children to attend a 90-minute AIDS awareness program. The court held that "parental rights" is not a fundamental right under the Constitution and went on to observe:

If all parents had a fundamental right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school's choice of subject matter. We cannot see that the Constitution imposes such a burden on state educational systems.⁵

PRA will impose such a burden on state educational systems. In fact, PRA supporters cite this court decision as proof that PRA is needed because the lower courts have misapplied the parental rights doctrine.

In another recent case, African-American parents sued the New York City public schools claiming that the school district's curriculum was racially-biased. As a remedy, the parents asked the federal court to order the school board to adopt "a revised curriculum which includes the existence, true participation and contributions of African-Americans and other non-whites." The court refused.⁶ In an earlier case, a group of Alabama parents actually convinced a federal judge to ban 44 textbooks from the state's schools because they did not adequately credit the "role of Christianity in the United States and the world." That decision was reversed on appeal.⁷

While the parents lost these three cases, enactment of PRA will overturn these court decisions and force schools "to cater a curriculum for each student." PRA will require every school district in the country to provide special alternative curricula that promotes the race, culture, religion, or "values" of individual parents. In a very real sense, PRA will give certain parents "special rights" to make a claim for expanded government benefits. *Who's going to pay for this?*

4. PRA is an enormous, unfunded federal mandate. This proposed legislation is perhaps the most outrageous example of an unfunded federal mandate that Congress has ever considered. Given the option, every parent would love a judicially enforceable right to design their child's course of instruction. That may explain why PRA has received a great deal of initial support. Depending on how widely parents exercise this new fundamental right, however, the costs to school districts of providing such "designer" curricula will be exorbitant. If, for example, PRA forces school districts to hire just one extra teacher for each school, the annual cost will be \$3,346,330,650.⁸ That's 3.3 billion dollars.

But how are school districts supposed to fund these special accommodations? The proposed legislation includes no federal appropriations to pay for implementation of the law; it simply creates a right and a remedy and tells school districts to pay for it. That's an unfunded federal mandate. Perhaps Congress intends federal judges to order school districts to raise taxes to pay for the

additional staff and instructional materials. After all, the Supreme Court has actually held that federal judges have the constitutional power to order local school officials to levy taxes in excess of limits set by state law in order to provide the funds necessary to remedy constitutional violations.⁹

Then there is the matter of attorneys' fees. It will take years of litigation to define the exact parameters of "parental rights," including what constitutes a "compelling governmental interest" and the "least restrictive means." If just two parents in each public school district file suit to enforce their new fundamental rights, then school districts will have to spend over a billion dollars just to pay their own lawyers.¹⁰ If the districts lose those lawsuits, they will have to shell out another billion dollars in attorneys' fees to the parents' lawyers. This isn't a "Parental Rights" bill; this is a "Lawyers' Full Employment" bill.

5. PRA will give parents the right to sue teachers for saying anything in the classroom that the parents don't like. In recent years, parents all over the country have inundated school districts with "parental rights" form letters demanding that "my child be involved in NO school activities or material [including] curricula, textbooks, audio-visual materials, or supplementary assignments [involving] the topics listed below" without my prior "written consent." The form letter promoted by the Eagle Forum lists 94 taboo topics, including "divorce," "witchcraft," and "roles of males and females." Another popular form letter identifies 111 such topics, including "suicide," "creative problem solving," and "team management."

If PRA is enacted, then any teacher who disobeys this kind of parental order, for example, by teaching Romeo and Juliet (suicide) or Macbeth (witchcraft), can be sued in federal court for money damages and attorneys' fees. And parents don't even have to put teachers on notice that certain issues are off-limits. If, for example, a biology teacher discusses Darwin's theory of evolution in class, then parents who do not want their children taught about evolution will be able to sue the teacher for violating their parental rights.

6. PRA will give parents the right to sue teachers for asking their children any question about possible child abuse. One intended purpose of PRA is to rein in state workers -- including teachers -- who are responsible for reporting and investigating suspected child abuse. In a recent Pennsylvania case, parents unsuccessfully sued two school employees for asking their daughter questions about possible abuse at home.¹¹ And in another case cited by PRA proponents, parents unsuccessfully sued a guidance counselor for providing counseling services to their son without prior parental consent.¹² If PRA is enacted, parents would win those cases. As a result, teachers will simply stop investigating or reporting suspected child abuse, and school counselors will cease providing counseling services to troubled or despondent youth.

7. PRA will give parents the right to have their children opt-out of any required courses they don't like. If supporters of PRA are to be believed, this legislation is needed because children all over the country are forced to attend sex and AIDS education courses. Nothing could be further from the truth. According to a recent survey of state laws, only 22 states and the District of Columbia require schools to provide both AIDS and sex education, and all but four of those states have a parental opt-out provision.¹³ If parents in the few states that do not have an opt-out provision want this option, then they should appeal to their *state* legislatures rather than the U. S. Congress.

As drafted, PRA does not limit the parent's "opt-out" right to courses on AIDS and sexuality. This legislation will give parents the right to have their children excused from any required courses they don't like, including, e.g., algebra, biology, Spanish, or P.E. Of course, if the student is dismissed from school for refusing to take a required course, the parents will be able to sue for damages and attorneys' fees. Indeed, the Illinois Supreme Court has held that parents can recover damages from a teacher for expelling their daughter from school for refusing to take a required course in book-keeping that the parents did not want her to take.¹⁴

8. PRA will give parents the right to overturn a wide range of school district policies and practices. Parents frequently sue teachers and school districts, often over trivial matters. Because the parent's right to "direct the education of the child" has not been recognized as a fundamental right, the courts have not hesitated to grant school officials wide discretion in deciding issues relating to school administration. For example, courts have rejected parental challenges to: (1) student hair and dress codes,¹⁵ (2) "no pass/no play" rules,¹⁶ (3) mandatory drug and alcohol testing of student athletes,¹⁷ (4) mandatory graduation exams,¹⁸ (5) the decisions of school officials to deny students admission to the National Honor Society and the Beta Club,¹⁹ (6) teachers' decisions to give students poor grades,²⁰ (7) school decisions to deny a student admission to advance placement courses,²¹ and (8) school policies requiring students to perform "community service" as a condition for graduating.²²

Although the parents lost all of these cases, they will win when they sue under PRA. That is because the school districts will have to prove that their policies and actions (which some parents may disagree with) are justified by a "compelling governmental interest" and are the "least restrictive means" of accomplishing that purpose, not merely that their rules are "reasonable" or serve "legitimate pedagogical" purposes.

9. PRA will give parents the right to obtain court-ordered, private school vouchers and to strike down any state restrictions on home schools. The proponents of PRA have a hidden agenda: they hope to use this legislation (1) to force public school districts to pay for the costs of sending their children to sectarian and other private schools, (2) to strike down any and all state regulation of home schooling, and (3) to prohibit states from enforcing compulsory education laws.

According to the publication Focus on the Family Citizen, PRA was not drafted by members of Congress or their staff. It was drafted by none other than Michael Farris, head of the Home School Legal Defense Association.²³ Farris is a leading "parental rights" attorney, and one of his most famous cases is Mozert v. Hawkins County Public Schools.²⁴

In Mozert, fundamentalist parents objected to the public school curriculum and demanded that the school provide their children with an alternative education program. When the school refused, the parents pulled their children out of the public schools and enrolled them in private religious schools or taught them at home. With Farris' help, the parents then sued the school district for damages claiming a violation of their parental right "to direct the upbringing and education of [their] children," as well as their right to religious freedom. The trial court ruled that the school district had violated the parents' constitutional rights and awarded them more than \$50,000 in damages, mostly as reimbursement for private school tuition.

The Sixth Circuit Court of Appeals reversed that decision, but there likely will be a different result if PRA is enacted because PRA creates a "fundamental right" of the parent to direct the education of the child. Since Mr. Farris drafted this legislation, it is fair to assume that he hopes to use PRA to argue -- as he did in Mozert -- that the doctrine of parental rights requires public school districts to pay for private schooling, if that is the kind of education parents choose for their children.

As head of the Home School Legal Defense Association, Mr. Farris has spent the better part of the last ten years suing states and school districts over home school regulations. Undoubtedly, he also hopes to use PRA to put an end to any state restrictions on home schools.

Finally, all state compulsory education laws will be overturned if PRA is enacted. The fundamental right of the parent to direct the education of the child, includes the right *not* to educate the child, if that is what the parent desires.

February 1996

¹Board of Education v. Pico, 457 U.S. 853, 891, (1982) (dissenting) (emphasis in original).

²Brown v. Hot, Sexy & Safer Productions, Inc., 68 F.3d 525, 533 (1st Cir. 1995), cert. pending 64 U.S.L.W. 3511 (Jan. 19, 1996) (emphasis supplied); accord Immediato v. Rye Neck School District, ___ F.3d ___, 1996 WL 5547 (2nd Cir. 1996) ("The Supreme Court, however, has never expressly indicated whether this 'parental right,' when properly invoked against a state regulation, is fundamental, deserving strict scrutiny, or earns only a rational basis review. Our reading of the appropriate caselaw convinces us that rational basis review is appropriate.")

³67 F.3d 883 (9th Cir. 1995).

⁴Brown v. Hot Sexy & Safer Production, supra, n. 2; Immediato v. Rye Neck School District, supra, n. 2; Mozert v. Hawkins County Bd. of Educ., 827 F.2d 1058 (6th Cir. 1987); Aubrey v. School District of Philadelphia, 437 A.2d 1306 (Pa. 1981).

⁵Brown v. Hot Sexy & Safer Production, supra, 68 F.3d at 534 (emphasis supplied).

⁶Grimes v. Sobol, 832 F. Supp. 704 (S.D.N.Y. 1993), aff'd, 37 F.3d 857 (2d Cir. 1994).

⁷Smith v. Board of Sch. Comm'rs of Mobile County, 827 F.2d 684 (11th Cir. 1987).

⁸This figure was derived by multiplying the number of K-12 public schools in the United States (87,110) by the average teacher's salary for 1994-95 (\$38,415).

⁹Missouri v. Jenkins, 495 U.S. 33 (1990).

¹⁰This figure was based on an estimated cost of \$35,000 in attorneys' fees to defend a lawsuit in federal court and the fact that there are 14,881 public school districts in the country (1993-94).

¹¹Picarella v. Terrizzi, 893 F. Supp. 1292 (M.D. Pa. 1995).

¹²Newkirk v. East Lansing Public Schools, 57 F.3d 1070 (6th Cir.), cert. denied, 116 S. Ct. 380 (1995).

¹³NARAL Foundation, Sexuality in America: A State-by-State Review (1995).

¹⁴Rulison et al. v. Post, 79 Ill. 567 (1875).

¹⁵E.g., Bivens by Green v. Albuquerque Public Schools, 899 F. Supp. 556 (D.N.M. 1995); Karr v. Schmidt, 460 F.2d 609 (5th Cir. 1972) (en banc); Olesen v. Bd. of Educ. of School Dist. No. 228, 676 F. Supp. 820 (N.D. Ill. 1987).

¹⁶E.g., State ex rel., Bartness v. Board of Trustees of School District No. 1, 726 P.2d 801 (Mont. 1986); Thompson v. Fayette County Public Schools, 786 S.W.2d 879 (Ky. App. 1990); Rousselle v. Plaquemines Parish School Bd., 527 So.2d 376 (La. App. 4 Cir. 1988).

¹⁷E.g., Vernonia School Dist. 475 v. Acton, ___ U.S. ___, 115 S. Ct. 2386 (1995).

¹⁸E.g., Williams v. Austin Independent School Dist., 796 F. Supp. 251 (W.D.Tex. 1992).

¹⁹E.g., Price v. Young, 580 F. Supp. 1 (E.D. Ark. 1983); Karnstein v. Pewaukee School Board, 557 F. Supp. 565 (E.D. Wis. 1983); Moore v. Hyche, 761 F. Supp. 112 (N.D. Ala. 1991).

²⁰E.g., Raymon v. Alvord Indep. School Dist., 639 F.2d 257 (5th Cir. 1981); Obersteller v. Flour Bluff Indep. School Dist., 874 F. Supp. 146 (S.D. Tex. 1994).

²¹E.g., Student Roe By Roe v. Commonwealth of Pennsylvania, 638 F. Supp. 931 (E.D. Pa. 1986).

²²E.g., Immediato v. Rye Neck School Dist., ___ F.3d ___, 1996 WL 5547 (2d Cir. 1996); Steirer by Steirer v. Bethlehem Area School Dist., 987 F.2d 989 (3rd Cir.), cert. denied, 114 S. Ct. 85 (1993).

²³Focus on the Family Citizen 6 (Sept. 18, 1995).

²⁴647 F. Supp. 1194 (E.D. Tenn. 1986), aff'd, 827 F.2d 1058 (6th Cir. 1987).

HEALTH CONSEQUENCES OF THE PARENTAL RIGHTS AND RESPONSIBILITIES ACT (S. 984 / H.R. 1946)

This legislation would give individual parents the right to challenge -- in state or federal court -- any government policy, program or action promoting the health or well-being of children. Thus, the PRRA would have profound consequences for the health of children, adolescents and the general public:

1. The PRRA would hurt children and adolescents in crisis:

- Abused children might be kept in dangerous situations as their abusive parent(s) sue state workers trying to protect the child. (Under the guarantees of the U.S. Constitution, state laws already provide safeguards for parents when a state seeks to remove a child from the home.)
- Children whose parents refuse consent to needed medical care might suffer additional, harmful delays in treatment as the parent(s) bring separate lawsuits to challenge court-ordered medical care.

2. The PRRA would make it difficult for teens to get guidance and health care: By undermining long-standing state laws permitting mature minors to obtain medical care for sensitive problems without parental consent, the law would discourage adolescents from seeking such services and providers (including private providers) from offering these services to teens.

- Adolescents struggling with emotional problems, including conflicts with their parents, would be discouraged from seeking help from a teacher, guidance counselor, or mental health worker.
- Adolescents with questions about drugs or problems with substance abuse would be discouraged from seeking information or assistance.
- Adolescents with sexually transmitted diseases would be discouraged from getting treatment. Untreated, these diseases can cause death, blindness, and infertility. The PRRA would undermine long-standing laws in 49 states that now permit such treatment based on well-founded principles of public health.
- Adolescents concerned about their reproductive health would be discouraged from seeking information or services.

3. The PRRA could invalidate state laws protecting adolescents from parentally coerced sterilization or termination of pregnancy.

4. The PRRA would divert tax dollars to litigation, undermining health agencies and institutions: By diverting scarce public funds and employee time to litigation, the legislation would undermine the work of public health departments, public hospitals, community health centers, school health clinics, child protective services agencies, and other such agencies, limiting their ability to serve children in need and other members of the public.

5. The PRRA would create a "chilling effect" on public servants and agencies, due to the threat of litigation: Any government employee who deals with children could be subjected to a costly lawsuit for "interfering with" or "usurping" parental rights, including pediatricians, emergency room personnel, family practitioners, nurses, and other health care workers; guidance counselors, school nurses and psychologists, teachers, and other public school personnel; social workers; and law enforcement officers. The threat of litigation expenses for these individuals and agencies could inhibit them from reporting or investigating suspected cases of child maltreatment or from providing services or guidance to children and adolescents.

6. The PRRA could invalidate many state child labor laws and child safety laws, such as those requiring the use of infant car seats, seat belts or bicycle helmets.

NARAL Promoting Reproductive Choices



1996 STATE PARENTAL RIGHTS LEGISLATION

State	Bill Number	Year Introduced	Status
CA	SB 20	1995	Dead
CA	SCA 5	1995	Senate Education
CA	AB 1439	1995	Dead
CA	AB 2820	1996	Not Assigned to Committee until 3/24
FL	SB 1072	1996	Senate Health and Rehabilitative Services
FL	HB 1253	1996	House Child Abuse & Neglect
GA	SR 167	1995	Dead
GA	HB 752	1995	Dead
IL	HJR CA31	1995	House Rules
IN	HB 1346	1996	Passed House 2/1; Passed Senate 2/28; Signed by Governor 3/21
MI	SB 271	1995	Senate Education
MN	SF 105	1995	Senate Education
MO	SJR 33	1996	Senate Aging, Families & Mental Health
NE	LR 280CA	1996	Dead
NH	SB 653	1996	Passed Senate 3/6; House Education
NH	CACR 37	1996	Dead
OH	SUB HB 89	1995	On House Calendar
PA	HB 475	1995	House State Government
PA	HB 2105	1995	House Education

*National Abortion
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SC	SJR 120	1995	Senate Education
SC	HB 4628	1996	House Judiciary
VA	SJR 98	1996	Carried Over to 1997
VA	HJR 188	1996	Carried Over to 1997
WA	SJR 8208	1996	Dead
WA	HJR 4203	1996	Dead
WA	HB 2216	1996	Passed House 2/13; Dead
WA	HB 2442	1996	Passed House 2/13; Dead
WA	HB 2937	1996	Dead

3/21/96

THE PARENTAL RIGHTS AND RESPONSIBILITIES ACT: HARMFUL TO CHILDREN

The Parental Rights and Responsibilities Act (S.984 and H.R. 1946) would create serious barriers to the protection of abused children. The legislation is unnecessary and, if enacted, would impair the ability of child protective services (CPS) to investigate reports of abuse and neglect and to ensure the safety of children.

1. PRRA is unnecessary and duplicative. State and federal statutes and case law already establish legal remedies and procedures to protect parents' rights. The bill, by encouraging unnecessary lawsuits, duplicates existing processes. It creates an overlapping judicial procedure in federal court for parents to appeal decisions made by CPS agencies, with the same litigants in separate courts.

A parent involved in a child abuse case in juvenile court could force the local CPS agency to defend on two fronts, by filing an action in federal court. Rather than create a separate cause of action in federal court, appeals are best left to state and local courts better suited to handle family matters.

The bill promotes litigation as a first recourse with no focus on improving imperfect systems or deserving programs. Because PRRA focuses on establishing a new legal cause of action for individuals who feel they were wrongly accused of child abuse, the legislation would create problems and complications for the judicial process already in place for handling parental appeals of CPS decisions. Rather, attention should be paid to current efforts at improving court procedures and the ability of the judiciary to handle child protection cases.

2. PRRA will cast a chilling effect on local efforts to protect children. The bill would create serious legal and administrative barriers to the protection of abused children. Parents could impede the investigation of reports of child maltreatment and efforts to ensure the safety of children, increasing the risk that children will remain in dangerous situations. The threat of lawsuits would deter reporting of suspected child maltreatment and wreak havoc with local efforts to protect children.

Currently, CPS proceedings are divided into investigation, adjudication, disposition and permanency phases, often with different rules and standards of proof. The bill introduces a change in the evidentiary standard applied to these proceedings that would make it more difficult for CPS agencies to investigate abuse charges.

While supporters of the PRRA claim that it exempts abuse and neglect cases from its scope, it does not. The bill's reference to corporal punishment as a parent's right raises the child abuse issue. It forces courts to decide whether child abuse applies and opens a wedge to challenge and re-litigate issues of child maltreatment in a separate cause of action apart from the original case. The PRRA would result in more protection for abusive parents.

3. PRRA will divert scarce financial resources from the effort to protect children. By promoting costly litigation, the bill represents an unfunded mandate with a fiscal impact which will hamper community efforts to protect the safety of children at risk of harm. The problem of child abuse is real. The U.S. Advisory Board on Child Abuse and Neglect reports that 5 children every day die from abuse or neglect. Deaths from abuse and neglect of children age 4 and under outnumber those from falls, choking on food, suffocation, drowning, residential fires, and motor vehicle accidents.

Data released in late 1995 by the Department of Health and Human Services (HHS) showed that, from 1986 to 1993, the number of children who were seriously injured from abuse or neglect in this country nearly quadrupled, from 143,000 to more than 572,000. In 1994, according to the annual fifty-state survey of the National Committee to Prevent Child Abuse, an estimated 3,140,000 children were reported to CPS as alleged victims of child maltreatment.

The added fiscal burden of litigation costs likely to be borne by CPS as a result legislation would decimate the resources in a community to safeguard children and support families, and put more children at risk of abuse and neglect. Already, CPS case workers in some states spend as much as half their time at hearings. Time spent unnecessarily in court has a negative effect on the ability of CPS agencies to handle cases and to provide treatment for children who are abused or neglected.

For more information, please contact Tom Birch, National Child Abuse Coalition (202/347-3666).

NATIONAL CHILD ABUSE COALITION

733 15th Street NW • Suite 938 • Washington • DC 20005 Phone 202 • 347-3666

January 22, 1996

Honorable Charles E. Grassley
135 Hart Building
U.S. Senate
Washington, D.C. 20510

Dear Sen. Grassley,

As members of the National Child Abuse Coalition, we are writing to express our concern that enactment of S.984, the Parental Rights and Responsibilities Act, would create serious barriers to the protection of abused children. We concur with testimony presented at House and Senate hearings last year that the legislation is unnecessary and, if enacted, would impair the ability of child protective services (CPS) to investigate reports and ensure the safety of children.

We agree that laws must strike a balance between protecting the right of parents to raise their children without undue government interference and the compelling government interest to protect children from abuse. In sharing your concerns about unwarranted investigations and inappropriate interventions in suspected cases of child abuse and neglect, we believe that amendments made to the Child Abuse Prevention and Treatment Act (CAPTA) in S.919 this year would protect parental rights in ways that are more appropriate than those proposed in S.984.

We support S.919, which protects parents rights in a number of ways, such as provisions which require 1) prompt state expungement of false reports from records that are accessible to the general public, 2) creation of a state appellate process for parents to challenge a state's finding of child maltreatment, and 3) immunity from prosecution only for reports of abuse or neglect that are made in "good faith." In addition, S.919 establishes a clear federal leadership role in helping states do a better job of protecting children and safeguarding parental liberties, through support for research, training, and the development of appropriate procedures.

Rather than create a cause of action in federal court as S.984 proposes, we recommend that appeals be left to state and local courts better suited to handle family matters, and without mandating a change in the evidentiary standard that would hamper the ability of CPS agencies to investigate abuse charges. We also are concerned that, by maintaining a static definition of child abuse and neglect, S.984 ignores the fact that the understanding of the nature of abuse that requires intervention may well change over time.

Because S.984 focuses on establishing a new legal cause of action for individuals who feel they were wrongly accused of child abuse, we believe that the legislation would create problems and complications for the judicial process already in place for handling parental appeals of CPS decisions. Rather, attention should

Senator Grassley
January 22, 1996
Page 2

be paid to current efforts at improving court procedures and the ability of the judiciary to handle child protection cases.

We solicit your support of changes to federal law which protect children from harm and recognize the rights of parents to choose how to raise their children, but we urge withdrawing the approach proposed in S.984.

Sincerely,

American Academy of Pediatrics
American Humane Association
American Professional Society on the Abuse of Children
American Psychological Association
Bazelon Center for Mental Health Law
Child Welfare League of America
Children's Defense Fund
Family Service America
National Association of Child Advocates
National Association of Counsel for Children
National Association of Homes and Services for Children
National Association of Social Workers
National Committee to Prevent Child Abuse
National Council of Jewish Women
National Education Association
National Exchange Club Foundation for Prevention of Child Abuse
National Network of Children's Advocacy Centers
National Network for Youth
National PTA
Parents Anonymous

OF THE PEOPLE

Jeffrey Bell
Chairman

Greg D. Erken
Executive Director

Ralph Benko
President

The Parental Rights Amendment

(actual wording)

- 1. The right of parents to direct the upbringing and education of their children shall not be infringed.*
- 2. The legislature shall have power to enforce, by appropriate legislation, the provisions of this article.*

The Parental Rights Amendment is expected to have impact in three major areas of public policy: education, health, and the integrity of the family.

Education: The Amendment would give parents better standing to challenge topics or methods of instruction in public schools that subvert the right of the parents of a community to have the primary role in forming their children. The public schools are and always have been a democratic institution, governed and funded by the community as a whole. Curricula and methods of study that ignore or actively oppose community values are an abuse of democracy, and a growing one. The Parental Rights Amendment, if enacted, would underline that the parents of a community have a special concern and standing in the formulation and carrying out of public education. It would give parents increased ability to challenge courses of academic and moral instruction that go against community standards. The Amendment would also enhance parents' standing to send their children to the public school of their choice.

Health: The Parental Rights Amendment would more firmly establish the role of parents as the central decision-makers as to the health of their children within socially acceptable norms. It is designed to prevent such practices as the distribution of condoms to and abortions on minors without parental consent.

Family Integrity: Recent developments in the courts and elsewhere have brought into question the legal status of the family. A state with a Parental Rights Amendment in its constitution would give parents added standing in asserting their role as the primary shapers of family decisions. It would counter the growing trend of giving children (in reality, lawyers) the right to challenge parental decisions on such previously private matters as homework, household chores, cosmetic surgery, and the like. While in no way reducing legal safeguards against child abuse or neglect, it would reassert the primacy of parents (including adoptive parents) in family life. It would counter trends like children suing parents for "divorce," a right implicit in the writing of Hillary Rodham Clinton, among others.

For further information contact Of The People, the national grassroots lobby sponsoring the Parental Rights Amendment:

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