

# THE PARENTAL RIGHTS MOVEMENT

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## INTRODUCTION

The new push for parental rights and privatization of the family has spread throughout the United States, in individual state legislatures and in the federal arena. Proponents of the parental rights movement declare that parents need more protection against the intrusion of state agencies and more inclusion in the decisions affecting their children. Opponents claim that extra rights are not needed to protect good parents, and that the existence of express constitutional or statutory protection of parental rights will hamper the best interests of the child. This comment will explore these issues and their relationship to existing parental rights.

On November 5, 1996, Amendment 17, which was commonly known as the Parental Rights Amendment, appeared on the general election ballot in Colorado.<sup>1</sup> This proposal to amend the Colorado Constitution would have given parents the inalienable right to "direct and control the upbringing, education, values, and discipline of their children."<sup>2</sup>

Early polls indicated that the amendment would pass with resounding success.<sup>3</sup> However, Amendment 17 was eventually rejected by fifty-seven percent of voters in Colorado.<sup>4</sup> Today, the proposal and its surrounding debate are instructive as an illustration of the growing parental rights movement in the United States and can serve as a model for evaluating other prospective amendments at the state and federal levels.<sup>5</sup>

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1. See LEGISLATIVE COUNCIL OF THE COLORADO GENERAL ASSEMBLY, AN ANALYSIS OF 1996 BALLOT PROPOSALS 39 (1996) [hereinafter *BALLOT ANALYSIS*].

2. *Id.* at 70.

3. The *Rocky Mountain News* poll dated Sept. 9, 1996, found that 76% of Colorado's voters supported the Parental Rights Amendment and only 11% opposed it. See Michael Norton, *Which Way on Parental Rights?*, *DENV. POST*, Oct. 6, 1996, at 1D. This overwhelming support included 83% of Republicans and 72% of Democrats. See *id.*

4. See Thomas Huang, *Parental-Rights Issue Hits Close to Home; Fight Shapes up over Control of Kids' Lives*, *DALLAS MORNING NEWS*, Nov. 8, 1996, at 1A.

5. Despite the movement's defeat in Colorado, commentators expect lawmakers to introduce similar parental rights legislation in 28 states and in Congress. See *id.*

Although the Parental Rights Amendment was defeated in Colorado, the nationwide parental rights movement appears to be gaining strength.<sup>6</sup> Colorado's proposed amendment, and the debate that surrounded it, drew national attention because it was the first time that parental rights legislation had been put to a vote of the people.<sup>7</sup> One editorial stated: "Despite the defeat of the Colorado parental-rights amendment, supporters vowed to press for parental rights in other states. 'It's an issue that will resonate in American politics . . . . Colorado is the first round, not the end of the fight.'"<sup>8</sup>

Indeed, congressional advocates of the parental rights movement introduced such bills into the 104th Congress and have vowed to reintroduce similar legislation in the 105th session.<sup>9</sup> Similarly, legislative proposals for Colorado-type amendments or statutes exist in more than one-half of the states.<sup>10</sup> The movement's setback in Colorado was not a complete defeat; the Parental Rights Amendment and its supporters gained a national spotlight and widespread attention.

At times, the arguments behind the parental rights movement appear amiable and innocent. However, this comment argues that the express inclusion of these rights into state or federal legislation has the potential to cause great harm to the children involved. Existing legislation and constitutional case law are sufficient to protect the important interests at stake in this debate.

In support of this argument, this comment summarizes the issues that surround the parental rights debate on the state level as well as on the federal level. Part I of this comment concen-

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6. *See id.*

7. *See* AMERICAN POLITICAL NETWORK, ABORTION REP. (Nov. 11, 1996).

8. Huang, *supra* note 4 (citations omitted).

9. *See* Parental Rights and Responsibilities Act, H.R. 1946, 104th Cong. (1995); S. 984, 104th Cong. (1995). The Act is discussed in more detail, *infra*, Part I.B. of this comment. A new bill will be introduced in Congress this session entitled the Parental Integrity Act. *See* Telephone Interview with Courtney Atherton, Communications Chair, Of the People Foundation (Feb. 12, 1997).

10. *See* Jonathon Kerr, *Conservative Groups Vouch for "Parental Rights" Bills in Congress, State Legislatures*, WEST'S LEGAL NEWS, May 13, 1996, at 4236, available in 1996 WL 265032. Kerr lists 26 of the 28 states in which legislation has been proposed: Alabama, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin. *See id.* Excerpts from the legislation of two other states are discussed *infra* Part I.C.

trates on a variety of proposed parental rights legislation, including Colorado's defeated Amendment 17,<sup>11</sup> the federal bill entitled the Parental Rights and Responsibilities Act of 1995,<sup>12</sup> and other states' proposed legislation on parental rights. Part II of this comment details the existing protections for parental rights, both on the Supreme Court constitutional law level and in state statutes. Part III lays out the arguments of both the supporters and the opponents of parental rights legislation. Part IV concludes the comment, suggesting some possible solutions to the legislative quandary that has arisen around parental rights issues.

## I. LEGISLATION ON PARENTAL RIGHTS

Proposed legislation on parental rights has taken a variety of forms. Some states, like Colorado,<sup>13</sup> have proposed amendments to state constitutions,<sup>14</sup> while others have introduced proposals in statutory form.<sup>15</sup> The United States Congress also introduced a parental rights bill in the last congressional session.<sup>16</sup>

One commentator stated: "It is no mystery to me why the parental rights movement has caught on like brushfire throughout the nation. Many parents . . . are deeply offended by the offhand . . . response to their very real and serious concerns. *That is why parental rights will be the civil rights movement of the decade.*"<sup>17</sup> To proponents of parental rights, such legislation is often seen as their last and only hope against unwanted state intrusion.<sup>18</sup>

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11. BALLOT ANALYSIS, *supra* note 1.

12. H.R. 1946, 104th Cong. (1995); S. 984, 104th Cong. (1995).

13. See BALLOT ANALYSIS, *supra* note 1, at 70; see also *supra* text accompanying note 1.

14. See Telephone Interview with Courtney Atherton, *supra* note 9; see also Kerr, *supra* note 10 (detailing which states have proposals in the form of constitutional amendments and statutes).

15. See Kerr, *supra* note 10.

16. See *supra* note 9 and accompanying text.

17. Josette Shiner, *Parents' Rights in Need of Protection*, WASH. TIMES, Feb. 8, 1997, at D3 (emphasis added).

18. See *id.*

A. *Proposed Colorado Legislation: Amendment 17*

Colorado's proposed Amendment 17 exemplifies parental rights legislation being proposed around the country. In 1996, 83,000 voters signed petitions in Colorado to put Amendment 17 on the ballot.<sup>19</sup> The ballot title read: "An amendment to the Colorado Constitution concerning parental rights, and, in connection therewith, specifying that parents have the right to direct and control the upbringing, education, values, and discipline of their children."<sup>20</sup>

If it had been enacted, Amendment 17 would have amended Article II, section 3 of the Colorado Constitution which is entitled "Inalienable Rights." This section currently reads, "All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness."<sup>21</sup> Amendment 17 would have added the following language to the end of that section: "and of parents to direct and control the upbringing, education, values, and discipline of their children."<sup>22</sup>

Michael Norton, former United States Attorney for Colorado and Chairman of the Coalition for Parental Responsibility, spoke for supporters of the amendment when he stated that the people of Colorado are excited by the opportunity to show that "parents can be trusted to have the best interests of their children at heart, that their public institutions can be trusted to accommodate parental interests prudently, and that Colorado's citizens can be

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19. See Norton, *supra* note 3. Colorado's vote on Amendment 17 was unique; most states proposing such legislation are forced to go through a lengthier legislative process. See Kerr, *supra* note 10. "The proposals in most states are before the respective state legislatures, which typically must approve such a measure before it can be submitted to voters for approval. But in some states, such as Colorado, the parental rights proposal is being submitted directly to voters through the initiative process." *Id.*

The Colorado amendment was put on the ballot after supporters obtained 83,000 signatures; this number was 28,000 more than required to put the amendment on the ballot. See David E. Rovella, *Colorado Child Abuse Trojan Horse Feared; Proposed "Parental Rights" Amendment Could Curb Abortion Rights As Well*, NAT'L L.J., Nov. 4, 1996, at A6.

20. BALLOT ANALYSIS, *supra* note 1, at 39.

21. COLO. CONST. art. II, § 3.

22. BALLOT ANALYSIS, *supra* note 1, at 70.

trusted to put limits on their state government for the benefit of parents, children and our communities."<sup>23</sup>

In contrast, opponents of Amendment 17 argued that, at best, the amendment presented an "attractively titled, immensely controversial import."<sup>24</sup> The broad language of the amendment caused concern about its uncertain application: "The words 'discipline,' 'values,' 'upbringing,' and even 'parent' are unclear. . . . Parents accused of criminal child abuse may claim in their defense that they were merely exercising their constitutional right to discipline their child."<sup>25</sup> In dependency and neglect cases, as well as child abuse cases, it was feared that the balance would shift from a "best interests of the child" standard towards the "rights of the parents."<sup>26</sup>

Concerns over the proposed amendment's broad language were actually litigated in Colorado's Supreme Court in April of 1996.<sup>27</sup> The claimants stated that the language of Amendment 17 was too broad and that the amendment unconstitutionally attempted to span four distinct subjects: upbringing, education, values, and discipline.<sup>28</sup> The court held against the claimants and ruled that the initiative embraced only a single subject and that the initiative title, ballot title, and submission clause were all adequate.<sup>29</sup>

The dissent, however, gave some interesting support for the opponents of the Parental Rights Amendment:

Although in a general sense the subjects of upbringing, education, values and discipline relate to relationships between parents and children, because each of those subjects itself encompasses varied subconcepts voters considering the

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23. Norton, *supra* note 3.

24. Gene Nichol, *Which Way on Parental Rights?*, DENV. POST, Oct. 6, 1996, at 1D. This reference to importation is due to the fact that most of the funding for Amendment 17 came from "Of the People," a five-year-old, Virginia-based foundation. See Rovella, *supra* note 19.

25. BALLOT ANALYSIS, *supra* note 1, at 41-42.

26. See Nichol, *supra* note 24. Courts are now required by Colorado state law to base their decisions on the best interests of the child. See COLO. REV. STAT. § 19-1-102 (1997). This same standard of best interests of the child is also used in adoption, juvenile delinquency, and child custody cases. See *id.* See, e.g., *People ex rel M.H.*, 855 P.2d 15, 17 (Colo. 1992).

27. See *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127 (Colo. 1996).

28. See *id.* at 1131.

29. See *id.* at 1132.

measure could not reasonably be expected to understand the scope of their vote to endorse the Initiative. . . . By a "yes" vote, a voter could inadvertently endorse widespread reform in four distinct areas of law. For example, the concept of "values" may govern matters as diverse as constitutional rights, civil liability, criminal responsibility, and conduct governed by the Children's Code. The broad concept of "the general relationship of parent and child" does not adequately address the sharply divergent subjects and subsubjects addressed by the Initiative.<sup>30</sup>

Although the dissent offered some insight into the amendment and new ammunition for opponents of parental rights legislation, the majority in the case upheld the ballot initiative, and it was subsequently put to a vote of the people.

The Colorado Parental Rights Amendment was defeated on November 5, 1996.<sup>31</sup> Despite its failure at the polls, the language of the Colorado Amendment remains illustrative of the proposed federal legislation and of proposed parental rights legislation in other states.

#### *B. Proposed Federal Legislation: The Parental Rights and Responsibilities Act of 1995*

In 1995, the Federal Parental Rights and Responsibilities Act ("PRRA") was introduced in the House and the Senate.<sup>32</sup> Both bills met with resistance and did not reach the floor of either chamber.<sup>33</sup> However, one proponent plans to reintroduce similar legislation in the next session.<sup>34</sup> Although the bills never made

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30. *Id.* at 1139 (Kirshbaum, J., dissenting).

31. Amendment 17 was rejected by 57% of voters in Colorado. *See supra* note 4 and accompanying text.

32. H.R. 1946, 104th Cong. (1995); S. 984, 104th Cong. (1995). Similar to proposed state legislation, the Federal PRRA's wording was drawn from literature developed by the Christian Coalition. *See* Barbara B. Woodhouse, *A Public Role in the Private Family: The Parental Rights and Responsibilities Act and the Politics of Child Protection and Education*, 57 OHIO ST. L.J. 393, 398 (1996).

The Federal PRRA was introduced in the House of Representatives on June 28, 1995, by Congressman Largent, a Republican from Oklahoma, and Congressman Parker, a Democrat from Mississippi. *See id.* at 396. Virtually identical legislation was introduced in the Senate by Republican Senators Grassley from Iowa, Lott from Mississippi, Helms from North Carolina, and Cochran from Mississippi. *See id.*

33. *See* Huang, *supra* note 4.

34. *See id.* A spokesperson for Of the People claimed that the name of this bill will be changed to the "Parental Integrity Act" when introduced this year. *See*

it out of committee, the debates and the proposals are on record and provide a good source of information on the parental rights movement and the views of its supporters.<sup>35</sup>

The PRRA was subtitled, "A Bill to protect the fundamental right of a parent to direct the upbringing of a child,"<sup>36</sup> and was portrayed by proponents as a summary of existing Supreme Court precedent protecting parental rights.<sup>37</sup> The bill opened with the following language: "Congress finds that the Supreme Court has regarded the right of parents to direct the upbringing of their children as a fundamental right implicit in the concept of ordered liberty within the 14th [A]mendment to the Constitution of the United States. . . ."<sup>38</sup>

The bill also stated that it recognized that parents today face many governmental intrusions into their legitimate parenting decisions.<sup>39</sup> The PRRA would have provided a federal cause of action for unreasonable governmental interference into the family.<sup>40</sup> An aggrieved party could bring suit in either state or federal court and could be awarded attorneys fees if the suit was successful. Child abuse and neglect were exempted from the bill;<sup>41</sup> however, parents would have had the right to subject their children to "reasonable corporal discipline."<sup>42</sup>

During the introduction of the PRRA to the Committee on the Judiciary, Senator Grassley, a proponent of the bill, stated:

The goal of the [PRRA is] to reaffirm the parental right to direct the upbringing of their children in four major areas:

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Telephone Interview with Courtney Atherton, *supra* note 9.

35. In the debates for the federal bill, one proponent of the PRRA stated one reason for the bill's necessity: "While most parents assume [their rights to direct the upbringing of their children are] protected, some lower courts and Government bureaucrats have acted to limit this basic freedom. The bill I am introducing will protect the family from unwarranted intrusions by the Government." *Protecting Parental Rights: Hearings on S. 984 Before the Senate Subcomm. on Admin. Oversight and the Courts of the Comm. on the Judiciary*, 104th Cong. S9427 (1995) (statement of Senator Charles E. Grassley).

36. H.R. 1946, 104th Cong. (1995).

37. See 141 CONG. REC. S9427 (daily ed. June 29, 1995) (statement of Sen. Grassley).

38. H.R. 1946, 104th Cong. § 2(a)(1) (1995) (citations omitted). Two of these Supreme Court cases, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), are discussed *infra* Part II.A.

39. See H.R. 1946, § 2(a)(5).

40. Woodhouse, *supra* note 32, at 397.

41. See H.R. 1946, § 3(4)(C).

42. H.R. 1946, § 3(4)(A)(iii).

First, [d]irecting or providing for the education of the child; [second], making health care decisions for the child; [third], disciplining the child, including reasonable corporal discipline; and four[th], directing or providing for the religious teaching of the child.<sup>43</sup>

The senator added that the PRRA would “accomplish[] this goal by . . . clarifying for [the] lower courts . . . that the proper standard to use in disputes between the Government and parents is the highest legal standard available. . . . ‘The Compelling Interest Standard.’”<sup>44</sup> Senator Grassley closed his introduction of the bill by stating that the bill “is critical to the proper balance of parents’ rights against the Government’s actions. Without the [PRRA], lower courts, Government bureaucrats, and administrative tribunals will continue to interfere needlessly in the parent-child relationship.”<sup>45</sup>

Like proponents of the Colorado Parental Rights Amendment, proponents of the Federal PRRA also cited cases that exemplified their fears of governmental intrusion. Two of the cited cases were *In re Sampson*,<sup>46</sup> in which a court ordered a blood transfusion without parental consent to allow surgery on a disfigured fifteen-year-old child, and *E.Z. v. Coler*,<sup>47</sup> in which a court, over parental objections, permitted emergency searches of a home following hotline reports of child abuse. The supporters also cited cases involving alleged abuse and neglect. These cases were “characterized as removing children from their parents because of disagreements over house rules or parenting philosophies.”<sup>48</sup>

Barbara Woodhouse, the author of an article critiquing the PRRA, testified in opposition to this legislation before the House Judiciary Committee’s Subcommittee on the Constitution. She stated that the proponents of the bill had presented a misleading

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43. 141 CONG. REC. S9428 (daily ed. June 29, 1995) (statement of Sen. Grassley).

44. *Id.* Grassley clarified that this standard “means that before the Government can interfere in the parent-child relationship, it must demonstrate that there is a compelling interest to protect and that the means the Government is using to protect this interest is the least restrictive means available.” *Id.*

45. *Id.*

46. 278 N.E.2d 918 (N.Y. 1972).

47. 603 F. Supp. 1546 (N.D. Ill. 1985), *affirmed sub nom.* Darryl H. v. Coler, 801 F.2d 893 (7th Cir. 1986), *cited in* Woodhouse, *supra* note 32, at 402.

48. Woodhouse, *supra* note 32, at 403.

account of the cases cited, and she argued that "it was a mistaken response to a few cases with great shock value."<sup>49</sup>

As noted above, the Federal PRRA failed to make it out of committee in the summer of 1995.<sup>50</sup> Reports state that similar legislation will be reintroduced by some of the same proponents in the 105th Congress.<sup>51</sup> For this reason, as with state legislation, the parental rights movement in the federal arena cannot be discounted as of yet. A comparison of the federal legislation with its state counterparts demonstrates that these proposals are made by the same groups with the same interests.<sup>52</sup>

### C. Other States' Proposed Legislation on Parental Rights

Supporters of the parental rights movement have introduced legislation in twenty-eight different states around the nation,<sup>53</sup> either as statutes or, as in Colorado, as amendments to state constitutions.<sup>54</sup> Not surprisingly, most of this proposed legislation looks very similar to the language proposed in Colorado.<sup>55</sup> A representative from Of the People, the group that sponsored Colorado's Parental Rights Amendment, stated that Of the People was formed for:

the sole purpose of . . . advocating the adoption of parental rights amendments in all fifty (50) states. [Of the People] does not exist solely to obtain passage of a parental rights amendment in the state of Colorado. It exists to advocate at the national level the general idea that a parental rights amendment should be passed in each of the states.<sup>56</sup>

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49. *Id.* at 405.

50. See Huang, *supra* note 4.

51. See *id.* This act will most likely be reintroduced as the "Parental Integrity Act" this year in Congress. See Telephone Interview with Courtney Atherton, *supra* note 9.

52. Of the People, the group that sponsored Colorado's Parental Rights amendment, provides "national language" for enactment of parental rights legislation. See Telephone Interview with Courtney Atherton, *supra* note 9; see *infra* note 58 and accompanying text (describing the national wording proposed by Of the People).

53. See *supra* notes 4-5 and accompanying text.

54. See *supra* note 10 and accompanying text for a list of the states where parental rights legislation is proposed. The article in note 10 also lists which of these proposals are constitutional or statutory in form.

55. See *supra* note 22 and *infra* note 61 and accompanying text for Colorado's language.

56. James Rouse, Attorney, Of the People, quoted in Michelle D. Johnston, *Of the People Faces Hearing on Election Law; Parent Rights Group Drilled About*

Of the People suggested a "national wording" for successful passage of the legislation in the states.<sup>57</sup> "The right of parents to direct the upbringing and education of their children is a fundamental right. The state maintains a compelling interest in investigating, prosecuting, and punishing child abuse and neglect as defined by statute."<sup>58</sup> This language has been researched, formulated, and revised by constitutional scholars advising Of the People.<sup>59</sup>

Initially, Of the People allowed states to alter this suggested national wording to fit their own constitutions or laws.<sup>60</sup> Note the important difference between the suggested "national language" and the language proposed in Colorado's Amendment 17: the word "discipline" was included in Amendment 17.<sup>61</sup> A spokesperson from Of the People claims that this word was never suggested by their group; it was an addition made by the proponents in Colorado.<sup>62</sup> After the amendment's defeat in Colorado, Of the People now claims that it will no longer give such leeway in allowing states to alter the suggested wording.<sup>63</sup>

Excerpts from parental rights proposals of different states demonstrate their uniformity in ideals. The following is California's "Parental Rights Act" proposed in 1995: "The Legislature declares that the right of parents to direct the upbringing and education of their children shall not be infringed."<sup>64</sup> This language is very similar to that in Of the People's proposed national wording.<sup>65</sup>

An excerpt from Iowa's proposed bill reads as follows:

2. The general assembly acknowledges and reaffirms that parents, being endowed by their creator with certain

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*Funding*, DENV. POST, Nov. 14, 1996, at B1.

57. See Telephone Interview with Courtney Atherton, *supra* note 9.

58. Of the People, Parental Rights Amendment to State Constitutions (Draft Wording) (Jan. 1997) (unpublished document, on file with author). See Interview with Courtney Atherton, *supra* note 9.

59. See Telephone Interview with Courtney Atherton, *supra* note 9.

60. See *id.*

61. Recall that the ballot title of Amendment 17 stated the following: "[P]arents have the right to direct and control the upbringing, education, values and discipline of their children." BALLOT ANALYSIS, *supra* note 1, at 70 (emphasis added).

62. See Telephone Interview with Courtney Atherton, *supra* note 9.

63. See *id.* (Of the People can control this language because of their role in funding the legislation).

64. A.B. 1439, 1995-96 Assembly, Reg. Sess. (Cal.).

65. See *supra* note 58 and accompanying text.

unalienable rights established long antecedent to the formation of governments, have inherent, fundamental, and pre-eminent rights and responsibilities means including, but not limited to, to direct and control the upbringing of their unemancipated children, through means including, but not limited to, the establishing of standards upon which those children are reared, supervised, disciplined, attended to medically, grounded religiously, and educated.

3. The legislative, executive, and judicial branches of state government and any of the agencies or employees of state government including, but not limited to, public educational institutions, shall not take any action under color of law which would interfere with, infringe upon, deny, or disparage the rights and responsibilities of parents, if lawfully exercised.<sup>66</sup>

The Iowa and California bills are just two examples of proposed state legislation regarding parental rights. These states, like Colorado, obviously deviated from the suggested "national wording" that Of the People supplies;<sup>67</sup> California departing less than Iowa. This may not be as easy to do in future proposals, due to the Colorado defeat.<sup>68</sup>

#### *D. South Carolina's Innovative Solution: A Possibility for Future States' Legislation*

One recent state enactment provides an innovative solution that may guide other states. South Carolina has recently enacted a bill that commentators claim will protect children while preserving family unity and parental rights.<sup>69</sup> The Child Protection Reform Act was signed into law on June 18, 1996.<sup>70</sup>

This legislation was motivated by a report that 45,572 children were abused or neglected in South Carolina in 1995.<sup>71</sup> In reaching the compromise that the legislation is alleged to provide, the committee had to confront the opposing views that all states,

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66. H.F. 2253, 76th Gen. Assembly, 2d Sess. (Iowa).

67. See *supra* note 58 and accompanying text.

68. See Telephone Interview with Courtney Atherton, *supra* note 9.

69. See 1996 S.C. Acts 450 (H.B. 4614) (codified in scattered sections of the Code of Laws of South Carolina); see also Jonathan Kerr, *South Carolina: Bill Protects Children While Preserving Parents' Rights*, WEST'S LEGAL NEWS, May 17, 1996, at 4462, available in 1996 WL 265188.

70. See 1996 S.C. Acts 450.

71. See Kerr, *supra* note 69.

including Colorado, have tried to come to grips with: "On one side were those who felt more needed to be done to intervene in cases where children were being abused or neglected. On the other were critics of the state's Department of Social Services ("DSS"), who told horror stories of children being separated from their families."<sup>72</sup>

Among other things, the South Carolina Act has:

- Expanded the list of persons required to report child abuse occurrences;
- Established procedures for law enforcement officers to take in assisting the Department of Social Services in bringing a child into emergency custody;
- Authorized a hospital or doctor to detain a child in emergency physical custody;
- Established a presumption that a newborn is abused if certain evidence of substance abuse is present;
- Established criminal immunity for parents of incorrigible seventeen-year-olds.<sup>73</sup>

Creators of the original South Carolina bill stated that it had "the support of Republicans and Democrats, liberals and conservatives, blacks and whites, Christians and atheists. . . . [I]t accomplishes everybody's goals of streamlining the process to give authorities the powers they need, but also to be friendlier to parents and keep kids in the family whenever possible."<sup>74</sup>

Once the South Carolina legislation is in place long enough to determine how it will be applied, it will be interesting to see if it can maintain a proper, albeit precarious, balance between protecting children and preserving parental rights. As one commentator noted, "South Carolina's efforts, if successful, might well be worth a close look by other states."<sup>75</sup>

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72. *Id.*

73. 1996 S.C. Acts 450.

74. Kerr, *supra* note 69.

75. *Id.*

## II. EXISTING PROTECTIONS FOR PARENTAL RIGHTS

Despite the lack of enacted parental rights legislation, there are existing protections for parents in other laws of the several states and in the constitutional rights recognized by the United States Supreme Court. These protections may make the need for parental rights legislation superfluous. The Supreme Court has held that parental rights deserve constitutional protection because they have been deemed "fundamental rights."<sup>76</sup> The following summary of Supreme Court case law and the laws of the several states, especially those from Colorado, will illustrate these existing protections. This summary will also help to frame the argument that no additional protections are needed for parents.

### A. *Supreme Court Protections for Parental Rights*

Since the early 1900s, Supreme Court case law has reaffirmed parental rights. The following Supreme Court cases illustrate the rights that parents have enjoyed.

*Meyer v. Nebraska*,<sup>77</sup> decided by the Supreme Court in 1923, is the first in the line of "parental rights" cases. This case involved the constitutionality of a statute that prohibited the teaching of any foreign language to a child before the eighth grade. The Court found that the statute infringed on one of the liberties guaranteed by the Fourteenth Amendment.<sup>78</sup> In defining the liberties guaranteed by the Constitution, the Court held, "Without doubt, [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."<sup>79</sup> The Court went on to hold that this liberty cannot be interfered with, "under the guise of protecting the public interest, by legislative action which

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76. See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

77. 262 U.S. 390 (1923).

78. See *id.* at 399. The portion of the Fourteenth Amendment that the Court cited is: "No state . . . shall deprive any person of life, liberty or property without due process of law." U.S. CONST. amend. XIV, § 1. The *Meyer* Court was concerned about the "liberty" portion of the Fourteenth Amendment. See *Meyer*, 262 U.S. at 399.

79. 262 U.S. at 399.

is arbitrary or without reasonable relation to some purpose within the competency of the State to effect."<sup>80</sup> The Court stated, "it is the natural duty of the parent to give his children education suitable to their station in life."<sup>81</sup>

In *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*,<sup>82</sup> the Court again addressed the rights of parents concerning their children. This case dealt with the constitutionality of a state statute prohibiting children from attending any schools but public schools. The Court held that the statute conflicted with the right of parents to choose schools where their children will receive training. The Court stated: "Under the doctrine of *Meyer v. Nebraska* . . . we think it entirely plain that the [state statute involved] . . . unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."<sup>83</sup> The Court went on to hold that: "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."<sup>84</sup>

As both *Meyer* and *Pierce* illustrate, the Supreme Court has given parents great latitude in directing the education and upbringing of their children. These two cases identify a parent's right to custody and control of his or her children as a "fundamental substantive right protected by the Fourteenth Amendment."<sup>85</sup> This right has become so entrenched in American jurisprudence that it has led at least one critic to caution: "There is a dark side of *Meyer* and *Pierce*, which promotes a view of the child as the parent's private property, existing essentially outside the domain of social concern or legitimate state authority."<sup>86</sup> This critic goes on to claim that courts that cite *Meyer* and *Pierce* tend to treat biological parents' rights as absolute, outweighing children's needs for responsible parenting.<sup>87</sup> Supporters of enhanced parental rights counter with the factual claim that neither *Meyer*

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80. *Id.* at 400.

81. *Id.*

82. 268 U.S. 510 (1925).

83. *Id.* at 534-35.

84. *Id.* at 535.

85. Woodhouse, *supra* note 32, at 394.

86. *Id.*

87. *See id.*

nor *Pierce* have ever been successfully used as a defense against legitimate charges of child abuse or child neglect.<sup>88</sup>

*Prince v. Massachusetts*,<sup>89</sup> decided in 1944, put a narrow limitation on the right of parental control established by the previous cases. In this case, a mother was arrested for having her child illegally sell Jehovah's Witness materials on street corners. She defended herself by claiming that the law violated her right to bring up her child as she saw fit, "which for appellant means to teach him the tenets and the practices of their faith."<sup>90</sup> The Supreme Court recognized that "the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."<sup>91</sup> Nevertheless, it held that "the family itself is not beyond regulation in the public interest . . . [N]either rights of religion nor rights of parenthood are beyond limitation."<sup>92</sup> The Court further stated: "Acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways."<sup>93</sup> The Court upheld the application of the statute that did not permit children to sell materials on the street.<sup>94</sup>

Despite the limitations introduced in *Prince*, the Supreme Court does endow parents with many powers over their children. Having never been overturned, *Meyer* and *Pierce* are still good law today.

More recently, *Santosky v. Kramer*,<sup>95</sup> decided in 1982, gave parents even more protection in the dependency and neglect arena concerning termination of parental rights. Before this case, states were allowed to terminate parental rights by a minimal standard of a "fair preponderance of the evidence."<sup>96</sup> In *Santosky*, the Supreme Court held that, "the 'fair preponder-

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88. See Norton, *supra* note 3.

89. 321 U.S. 158 (1944).

90. *Id.* at 164.

91. *Id.* at 166.

92. *Id.*

93. *Id.*

94. See *id.*

95. 455 U.S. 745 (1982).

96. See *id.* at 747; see also HOMER H. CLARK, JR. & CAROL GLOWINSKY, DOMESTIC RELATIONS 413 (5th ed. 1995).

ance of the evidence' standard . . . violates the Due Process Clause of the Fourteenth Amendment."<sup>97</sup> The Court concluded that in order to terminate parent and child legal relations, a "clear and convincing evidence" standard of proof is needed.<sup>98</sup> Before the Court addressed the proper standard to use in termination proceedings, it again recognized the weight given to parental rights:

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.<sup>99</sup>

The Supreme Court has continued to recognize that parents have a fundamental liberty interest in the parenting of their children. This right has been protected in case law from the 1920s to today. It is well founded in our common-law tradition and is not likely to be undermined any time soon. Cases such as *Meyer*, *Pierce*, *Prince*, and *Santosky*, have been used in arguments on both sides of the parental rights movement. Proponents of parental rights legislation justify their position by reference to the existing rights that parents enjoy.<sup>100</sup> Such proponents claim that parental rights legislation is simply a restatement of Supreme Court case law.<sup>101</sup> Opponents of such legislation argue that because of the existing protections that parents enjoy, no extra protection is needed in the rigid form of statutes or state constitutional amendments.<sup>102</sup>

Despite the differing views on the merits of Supreme Court protections for parental rights, these protections are sound precedent and secure in the federal constitutional law. As the

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97. 455 U.S. at 768.

98. *Id.* at 769.

99. *Id.* at 753.

100. See Norton, *supra* note 3. This argument and similar arguments for and against parental rights legislation will be further explored in Part III.

101. See *id.*

102. See Nichol, *supra* note 24.

next section will demonstrate, the states have generally followed the lead of the Supreme Court in protecting parental rights. This next section will also address a similar question of whether state laws are sufficient without the added protection that parental rights legislation may provide.

### *B. State Statutory Protections for Parental Rights*

As well as Federal Constitutional law, state laws also contain certain protections for parents. Specifically, Colorado's laws require prior to termination of parent-child legal relations the formulation of a reasonable treatment plan to give parents an opportunity to retain custody of their children.<sup>103</sup> Termination can then only occur if the parents fail to complete their treatment plans, the state proves parental unfitness, and the state proves that the parents' conduct or condition is unlikely to change within a reasonable time.<sup>104</sup> Case law in Colorado also has adopted the federal constitutional requirement set out in *Santosky*,<sup>105</sup> that clear and convincing evidence of child abuse or neglect is the appropriate standard of proof in cases involving terminations of parent-child relationships.<sup>106</sup>

In addition, Colorado has stringent statutory standards that must be met before termination of parental rights can occur. In the Colorado's Children's Code, it is clarified that nothing in the subsection concerning child abuse or neglect "shall refer to acts that could be construed to be a reasonable exercise of parental discipline."<sup>107</sup> In Colorado, a parent may use physical force to discipline his or her child if such force is reasonable and appropriate to maintain discipline or promote the welfare of the child.<sup>108</sup> This discipline can even be used as a defense to criminal charges of child abuse.<sup>109</sup>

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103. See COLO. REV. STAT. § 19-3-604 (1997) (stating that a reasonable treatment plan must be devised prior to termination, unless there has been parental abandonment or no appropriate treatment plan is available).

104. See COLO. REV. STAT. § 19-3-604(1)(C) (1997).

105. 455 U.S. 745 (1982).

106. See *People ex rel A.M.D.*, 648 P.2d 625 (Colo. 1982); see also COLO. REV. STAT. § 19-3-604(1) (1997).

107. Colo. Rev. Stat. § 19-1-103(1)(b) (1997).

108. See COLO. REV. STAT. § 19-1-103 (1997); see also BALLOT ANALYSIS, *supra* note 1, at 40.

109. See § 19-1-103.

Opponents of Amendment 17 argued that because laws in Colorado already worked to protect the rights of parents to a great extent, an amendment making these rights even stronger and "inalienable" would be at best excessive, and at worst detrimental to children in abusive homes and families.<sup>110</sup>

Colorado's laws are more stringent and detailed regarding the termination of parental rights than most states,<sup>111</sup> but all states now require clear and convincing evidence for termination of parental rights,<sup>112</sup> and all states have recognized that there is a fundamental liberty interest in parents protecting their legal parent/child relationships.<sup>113</sup>

Most states also have statutory provisions allowing for reasonable discipline of children by parents.<sup>114</sup> Colorado law, for example, requires those investigating reports of child abuse to take into account accepted child-rearing practices of the parents' culture, and reasonable parental discipline or child-rearing practices.<sup>115</sup> "Legal Custody" is even partly defined in Colorado as a relationship in which the custodian has the right to discipline a child.<sup>116</sup>

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110. See Nichol, *supra* note 24.

111. Colorado is more detailed in its requirements for termination of the parent/child legal relationship; other states require much less for termination. See CLARK & GLOWINSKY, *supra* note 96, at 405 n.5.

112. See *Santosky v. Kramer*, 455 U.S. 745, 748 (1982) (holding that, to comport with due process, *every state is required*, prior to termination of the rights of parents, to support their allegations of abuse or neglect "by *at least* clear and convincing evidence") (emphasis added). Colorado followed this decision in *People ex rel A.M.D.*, 648 P.2d 625 (Colo. 1982).

113. See, e.g., *Santosky v. Kramer*, 455 U.S. 745 (1982) (holding that there is a fundamental liberty interest of parents to care for their children, and that all states must protect this interest with fair procedures); *Stanley v. Illinois*, 405 U.S. 645 (1972); *People ex rel M.H.*, 855 P.2d 15, 17 (Colo. App. 1993); *B.B. v. People*, 785 P.2d 132 (Colo. 1990).

114. See, e.g., CAL. PENAL CODE § 11165 (West 1992) (historical notes indicating that the reporting of child abuse should not include "conduct which constitutes reasonable parental discipline"); GA. CODE ANN. § 19-13-1(2) (1997) (excluding reasonable discipline by a parent from its definition of "family violence"); MICH. COMP. LAWS § 750.136b(6) (1991) (clarifying that its provisions on child abuse should not be construed to prohibit a parent from reasonably disciplining a child); N.Y. FAM. CT. ACT § 1012 (McKinney 1983) (commentaries to Act stating that, "New York, like all other states, recognizes the right of parents to discipline their children—so long as the punishment is 'reasonable.'").

115. See COLO. REV. STAT. § 19-1-103(1)(b) (1997).

116. See COLO. REV. STAT. § 19-1-103(73)(A) (1997).

### III. ARGUMENTS FOR AND AGAINST PARENTAL RIGHTS LEGISLATION

Arguments abound on both sides of the parental rights legislation battlefield. Proponents of the legislation argue that such legislation is necessary to protect parenting and the family unit, while opponents claim that legislation codifying parental rights could pose serious dangers to children.

#### A. *Proponents of Parental Rights Legislation*

Parental rights legislation supporters offer two main arguments in support of the enactments. The first of these arguments involves the need for protection of parents, children, and families in general, from intrusion by the state. The second justification is that parental rights legislation is just an embodiment of existing federal protection of the rights of parents. These arguments are illustrated by the debate surrounding Colorado's proposed Amendment 17.

The Colorado Parental Rights Amendment was backed mainly by conservative Christian groups; an estimated ninety-seven percent of the funding for the Amendment 17 campaign came from Of the People, a Christian group from Arlington, Virginia.<sup>117</sup> Noting that many of the parental rights proposals are supported by such Christian groups, one commentator has made the following observation: "Interestingly, none of these proposed changes is explicitly related to parents' religious rights or beliefs, though they are being championed by religious organizations and

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117. See Johnston, *supra* note 56. Because the group did not disclose any of the names of its contributors, and because it characterized itself as a single donor, a judge gave the "go-ahead for a hearing to take place to determine whether Of the People broke state election law by funding Amendment 17 without ever registering as a formal political committee. If it loses the case, it would mean the group would have to report the names of its donors, which to date have remained secret." *Id.* Of the People said it was "backing parents who want schools to return to basics and who want less government intrusion." Huang, *supra* note 4.

According to a spokesperson from the Of the People Foundation, the Foundation has many supporters, including doctors, lawyers, priests, and rabbis. See Telephone Interview with Courtney Atherton, *supra* note 9. This spokesperson also stated that some individuals from every institution publicly opposing the amendment actually supported Of the People and Amendment 17. See *id.*; see also *infra* note 137 (listing those who supported the opposition of Amendment 17).

it is clear that many of the issues involved in parental control implicate religious beliefs."<sup>118</sup>

Supporters of Colorado's Amendment 17 may have hoped that once this amendment passed in Colorado, other states would follow suit and enact similar legislation.<sup>119</sup> Colorado's constitution is uniquely susceptible to this type of amendment testing because, unlike most states, it only takes a simple majority of votes to amend its constitution, such a majority constituting only fifty percent plus one vote.<sup>120</sup> Therefore, supporters of parental rights legislation thought the amendment could be passed more easily in Colorado.<sup>121</sup>

Proponents of Amendment 17 maintained that it was intended to affirm the natural rights of parents to raise their children, and that state constitutional recognition of these rights would help ensure that they would not be undermined by governmental systems.<sup>122</sup> The arguments for the amendment included the following sentiment: "By restoring traditional parental authority, the integrity and solidarity of the family unit is protected against intrusive outside forces. Parents know what is in the best interest of their children and families. Therefore, they should have constitutional protection to direct and control their children's lives until the children become adults."<sup>123</sup>

Supporters of the amendment expressed frustration and feelings of powerlessness with what they considered arbitrary actions of governmental agencies and the untimely resolution of governmental disputes involving the family.<sup>124</sup> As one newspaper summarized, "many parents are legitimately worried about government interference in their families. Across the country, they read news stories about education bureaucracies unfairly

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118. David Fisher, Note, *Parental Rights and the Right to Intimate Association*, 48 HASTINGS L.J. 399, 400 (1997).

119. An Of the People spokesperson stated that his organization saw Colorado as a "testing ground" and their "target state." Jonathon Kerr, *Colorado's Parental Rights Amendment Called Deceptive*, WEST'S LEGAL NEWS, Oct. 14, 1996, at 10,838, available in 1996 WL 584475.

120. See BALLOT ANALYSIS, *supra* note 1, at 1, 47. This system also resulted in Colorado's controversial Amendment 2, the anti-gay rights amendment that was passed in 1992. This amendment was ultimately overturned by the U.S. Supreme Court in 1996. See *People v. Romer*, 116 S. Ct. 1620 (1996).

121. See Telephone Interview with Courtney Atherton, *supra* note 9.

122. See *id.*

123. BALLOT ANALYSIS, *supra* note 1, at 41.

124. See *id.*

blocking avenues to home-schooling, about underage daughters getting abortions without parental notice, [and] about parents losing custody of their children based on charges that are later recanted."<sup>125</sup>

Supporters of Amendment 17 recounted cases like these to help promote the initiative. It is easy to dismiss this as a mere scare tactic; however, a closer look at these cases reveals legitimate concerns about government intrusion. For example, in testimony before the Senate Judiciary Committee regarding the Federal PRRA, a case was cited in which a mother found a bag filled with multi-colored condoms in the bedroom of her young daughters, ages thirteen and fourteen.<sup>126</sup> Upon confronting her children, the mother discovered that they were both given AIDS tests, pap smears, birth control pills, and condoms, pursuant to the advice of a middle school counselor.<sup>127</sup> When she called the school, they told her the tests were confidential. It is interesting to note that in this case, as well as in other cases involving the distribution of condoms in schools, the parents were not challenging the distribution of condoms per se, but only the distribution to their children without any parental involvement.

The supporters' second main contention is that parental rights legislation is simply a reiteration of already recognized parental rights, and is based on long-standing Supreme Court rulings, such as *Meyer*<sup>128</sup> and *Pierce*,<sup>129</sup> which have "recognized the liberty of parents and guardians to direct the upbringing and education of children under their control."<sup>130</sup> Supporters claim that these cases justify the need for increased parental and

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125. *A Vague Proposal/Amendment 17 Isn't the Way to Address Concerns of Parents*, COLO. SPRINGS GAZETTE TELEGRAPH, Oct. 31, 1996, at B6.

126. See *Protecting Parental Rights: Hearings on S. 984 Before the Senate Judiciary Comm. on Admin. Oversight and Courts*, 104th Cong. (1995) (statement of E.W. Chip Angell). A similar case with a court challenge to the disbursement of condoms is *Alfonso v. Fernandez*, 635 N.Y.S.2d 932 (N.Y. Sup. Ct. 1995), ruling that distribution of condoms without parental consent violated parents' rights to direct their children. In contrast, *Curtis v. Falmouth*, 652 N.E.2d 580 (Mass. 1995), overruled objections of parents to the distribution of condoms without parental consent.

127. See *id.*

128. 262 U.S. 390 (1923) (discussed *supra* in Part II.A.).

129. 268 U.S. 510 (1925) (discussed *supra* in Part II.A.).

130. See Norton, *supra* note 3 (quoting from *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925)). Norton also cites *Meyers v. Nebraska*, 262 U.S. 390 (1923) and *Prince v. Massachusetts*, 321 U.S. 158 (1944). These cases are discussed *supra* in Part II.A.

familial protection and believe that courts can distinguish between "discipline" and "abuse" should such legislation be adopted.<sup>131</sup>

Although the Parental Rights Amendment was defeated in Colorado, supporters of Amendment 17 did not view this as a complete loss. In a newsletter distributed by Of the People, the Chairman of the group made the following observations:

While parental rights advocates did not achieve the victory in Colorado they had hoped for, many important lessons were learned. Opponents seized on the word "discipline" in the initiative language to reinforce their deceptive claim that parental rights would somehow make it more difficult to protect children from abuse and neglect. . . . And although the initiative did not pass, it sparked a statewide debate, and the Speaker of the Colorado House has expressed interest in pursuing the issue legislatively in 1997. . . . As long as government bureaucracies continue to usurp the parental role, the parental rights movement will continue to grow and gather momentum.<sup>132</sup>

Therefore, despite the defeat in Colorado, the views of the supporters of the amendment are important to keep in mind. It is easy to forget that the amendment was supported by an impressive forty-three percent of Colorado voters on November 5, 1996, and an even more impressive percentage months before the election.<sup>133</sup>

### *B. Opponents of Parental Rights Legislation*

Reviewing the viewpoints of the opponents and proponents of parental rights legislation, it is hard to believe that the same legislation is being discussed. While the proponents stated that Colorado's Amendment 17 was a necessary reiteration of existing parental rights and Supreme Court holdings,<sup>134</sup> the opponents

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131. See Norton, *supra* note 3.

132. Jeffrey Bell, *From the Chairman—Parental Rights: Here to Stay*, VOICE (Of the People Foundation, Arlington, VA), Winter 1997, at 2.

133. See *supra* note 3 and accompanying text. Senator Bob Dole, a former presidential candidate, also publicly supported the amendment. See *Parental-Rights Issue Splits Colorado: State Is Key Test for National Movement*, ARIZ. REPUB., Nov. 5, 1996, at A6.

134. See Norton, *supra* note 3.

argue that the broad, vague language of the amendment had the potential to “disrupt schools, clog courts with lawsuits and protect child abusers.”<sup>135</sup> Opponents of Amendment 17 included the National Parents and Teachers Association, the National Education Association, and the American Academy of Pediatrics.<sup>136</sup>

There were also doubts expressed by the opponents of Amendment 17 about how closely the Parental Rights Amendment followed the Supreme Court decisions that the proponents claimed the amendment mirrored. University of Colorado School of Law Professor Gene Nichol, stated that the amendment’s language went beyond the Supreme Court rulings: “Those cases recognized rights of parents to ‘establish a home and bring up children’ and to ‘direct (their) upbringing and education.’ But even those strong interests were said to be subject to ‘regulations which (have) a reasonable relation to some purpose within the competence of the state.’”<sup>137</sup> Amendment 17, on the other hand, was dangerous in its absoluteness; it gave a “natural, essential and inalienable” right to parents “to direct and control the upbringing, education, values and discipline of their children.”<sup>138</sup>

Reviewing the cases that the proponents relied upon to illustrate unwarranted governmental intrusion into the private family home, Professor Nichol stated:

I have no doubt that government agencies make mistakes in their efforts to protect children. And I know that sometimes our schools and other public institutions act arbitrarily and reflect values other than our highest ideals. But these imperfections no more justify the elimination of an authority

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135. Huang, *supra* note 4.

136. See ABORTION REP., *supra* note 7. A flyer opposing Amendment 17, distributed by the Protect Our Children group, adds the following groups to this list of opponents: The Adoption Exchange, the Colorado Association of School Boards, the Colorado Library Association, the Colorado Education Association, Planned Parenthood, Colorado District Attorneys Council, Colorado Council of Churches, Anti-Defamation League, Colorado Medical Society, Colorado Bar Association, Colorado Children’s Campaign, Kempe Children’s Foundation, and the League of Women Voters. See PROTECT OUR CHILDREN COALITION, INC., PROTECT OUR CHILDREN—VOTE NO ON 17 (1996).

137. Nichol, *supra* note 24 (quoting *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925)) (parentheses in the original).

138. *Id.*

to regulate on the basis of the health and well-being of our children than the occasional missteps of police justify the elimination of the criminal law. Amendment 17 would do so little good, and it poses risks that we should be unwilling to embrace.<sup>139</sup>

Concerns about Colorado's proposed Amendment 17 were widespread, and after the vote of November 5, 1996, one newspaper surmised the following:

Citizens from all walks of life stepped up to oppose it: school administrators, who feared that it could mean individual curricula; teachers, who wondered if any cross word could bring a parental lawsuit; doctors and social workers, who worried that child abuse could increase; law enforcement officials, who felt their ability to prosecute abusive parents could be diminished; and any voter who didn't want to be made a guinea pig on an initiative that was funded largely from out-of-state sources.<sup>140</sup>

As pointed out in Part II of this comment, opponents of parental rights legislation claim that there are already legal protections for parents available in current laws, and there is no great need for extra state or federal legislation. Barbara Woodhouse, a public opponent of the Federal PRRA and similar state proposals, argued that: "State laws . . . provide for procedural and substantive protections for parents in areas from abuse and neglect, to education and religious training. In addition, strong constitutional principles reaffirmed repeatedly by the Supreme Court already empowered parents to challenge unlawful acts by government authorities and to receive remedies for constitutional violations."<sup>141</sup>

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139. *Id.*

140. *A Parental-Rights Spanking*, SALT LAKE TRIB., Nov. 9, 1996, at A10.

141. Woodhouse, *supra* note 32, at 405. Woodhouse argues that parental rights legislation is much more than a restatement of existing constitutional precedent regarding state interventions in the family. She argues that such legislation would raise the standard for emergency interventions; shift the balance towards non-intervention in cases of suspected abuse and medical or physical neglect; narrow the definition of abuse and neglect; create confusion; and result in lengthy litigation to clarify vague meanings. *See id.* at 406.

#### IV. CONCLUSION

The parental rights movement and the proposed legislation introduced at both state and federal levels is, at best, unnecessary. The parental rights movement sounds benign and even commonsensical; however, the inclusion of these rights in state or federal legislation may prove to be dangerous excess for the children involved. There are sufficient existing state and federal laws to protect parents and their fundamental liberty interest in parenting. Ultimately, the proposed legislation may not harm children, but it would do very little to protect good parents, and the potential for its harm to children is reason enough to oppose any such ratification.

The best way to handle strained relations between parents and children is on a case-by-case basis, with strong constitutional and statutory protection of privacy. This is the way the system is now set up, and it creates a good balance between the rights of parents and the states' interests in protecting children. Another future possibility is parental rights legislation similar to that enacted in South Carolina. This legislation will allegedly create a delicate balance between the needs of parents for protection from unwarranted state intrusion and the needs of abused and neglected children.

In all of the rhetoric of parental rights, there is little or no mention of the rights of children. Certainly, their rights to a safe, nonabusive, and enjoyable childhood environment should be a factor in the parent/child calculus.

Nevertheless, the parental rights movement, as illustrated in Colorado and in the federal arena, has been gaining both momentum and national recognition. This movement will play a big role in children's laws in the next few decades. Citizens need to decide what their stance is on this issue and become aware of the existing protections that parents do have.

