



The Coalition of Fathers and Families NY, Inc.
The NY affiliate of the American Coalition of Fathers and Children

“Working to Keep Fathers and Families Together”

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Announcing Proposed Federal Legislation to Protect Families:

The Parents’ Rights and Responsibilities Act of 2007

FaFNY is a New York State organization which is the NY affiliate of ACFC. It is appropriate that we promote national debates and offer national solutions to what has been described as the number one social issue facing America today and which is an individual citizen, societal, state, national (and even international) issue, the family/fatherhood crisis.

ACFC is a national organization, promotes national debate and offers national solutions to what is the most pressing social issue of our time, the national (and even international) family/fatherhood crisis.

In the United States, laws on marriage, divorce, and child custody are made by states. No constitutional provision exists to federalize them, and no responsible group really wishes to federalize them.

To be sure, we all realize that many domestic relations issues are effectively federalized already: child support enforcement [a Child Excise Tax] and domestic violence against women being the two foremost examples. No constitutional justification exists for federal involvement in these matters. Moreover, few corresponding federal protections exist for the rights of those accused. Still, on the principle that "two wrongs don't make a right," our aim is not to further this trend but to reverse it.

What *is* indisputably a proper role for the federal government is the protection of Americans' constitutional rights, and as we all know, constitutional rights are routinely violated by family courts. Among the most basic constitutional rights is the right to the care and custody of one's children and to speak on their behalf. Parenthood has been recognized as a fundamental right by an extensive body of federal and state case law going back to the founding of the Republic and by centuries of English Common Law before that. Yet, as we also know, this law is routinely ignored by divorce courts.

In a divided ruling the US Supreme Court in Elk Grove Unified School District, et al v. Newdow, et al, June 2004, Justice Stevens decision stated that a “Non Custodial Parent – (NCP)”, as defined by the state, had no standing to sue on behalf of their child for a federal question of law. In other words, once labeled a “NCP” by the state courts your rights as a parent to speak on behalf

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of your child, have been terminated. You have, in effect, become a “Non Parent” with no standing as a parent under the United States Constitution. Thus, the denial of your parental rights at the state level effectively removes your constitutional rights at the federal by making you a “non custodial parent”, a decision eerily reminiscent of the Dred Scott “non citizen” decision used to deny civil rights on the basis of race.

It is no secret that the vast majority of “Non Custodial Parents” are fathers and that the bulk of them have that label placed upon them by overly intrusive “family” courts, over their objections, and in the face of individually insurmountable practices of government which are acting as barriers to their fatherhood and their individual parental civil rights.

This intrusion into the family by the Courts has been expanded to include intrusions into parental authority on the parts of government at many and various levels including interfering with individual parental religious education and also parental medical decisions on behalf of the child at the behest of public educational systems even in intact married two parent families. The erosion of individual parental rights continues at the hands of an overly intrusive and abusive judicial system.

When the Judiciary, at the state and federal level, fails to perform their duty to protect individual citizens and their rights to life, liberty and the pursuit of happiness and the fundamental rights guaranteed to us as US Citizens, the weight falls on the shoulders of the balancing branches of government to correct these injustices.

To ensure the protection of these ancient rights, we are proposing that they be codified in the **Parental Rights and Responsibilities Act (PRRA) of 2007**.

PRRA Q&A.

What is the PRRA?

The Parental Rights and Responsibilities Act declares that parents’ rights to direct the upbringing of their children are fundamental rights which the government can curtail only under conditions of “compelling interest.” It stipulates that “No federal, state, or local government, or any official of such a government acting under color of law, shall interfere with or usurp the right of a parent to direct the upbringing of the child of the parent.” (We may seek to strengthen this language to explicitly prohibit child removal and perhaps to eliminate even the "compelling interest" criterion.)

What would be the effect of this bill?

This law has more potential to halt the destruction of the family than any measure that government is now undertaking or can possibly undertake and to do so safely, with minimum government interference, because it guarantees the most essential foundation of the family: the parent-child bond. It is fully compatible with other measures now being proposed to strengthen the family, but it will have far greater efficacy. It will do more to protect marriage as an institution than a ban on homosexual marriage. It will do more to hold marriages together than expensive and questionable marriage psychotherapy programs now being proposed by the Bush administration. It will do more to promote and restore fatherhood than the similarly questionable fatherhood programs of the Clinton administration. It will do more to strengthen family integrity than futile attempts to censor the media. It will have more efficacy than programs that nag at people to get married or stay married. It will do more to reduce divorce than rolling back no-fault laws, and it may even do more to ensure that children have two parents than shared parenting laws (both of which can be circumvented by judges). Yet it is consistent with all these measures, which can still be pursued at the state or federal levels.

Would this act federalize family law?

No. States could still enact any laws they wish on marriage, divorce, and custody, and state courts would remain the venues for handling these matters. But they would have to respect the parent-child bond and could not disrupt it without compelling cause, and the federal judiciary would be explicitly required to guarantee that bond.

Would this bill create new rights or a new protected class of "victims"?

No. It would simply codify rights that have been recognized in Anglophone countries for centuries.

What is the origin of the PRRA?

The original PRRA was introduced in 1995 to protect home-schoolers and other intact families from school authorities and other government officials who might usurp their right to raise their children as they see fit. But the original bill had a major weakness: It exempted from its protection parents who lose their children through involuntary divorce (or false allegations of child or domestic abuse). In other words, the proposed law stipulated that the government could not interfere with or separate children from a parent unless the other parent requested it by filing for divorce, in which case the government could seize control of the children with no further explanation. By specifically exempting divorce, the proposed law could even have been interpreted as endorsing government-enforced separation of

children from parents. We propose to close this loophole (Section 7 of the original bill), so that the act does protect parents and children of divorce.

Perhaps most important, it will accomplish all this not by involving government in the family but by keeping government out of the family. It may not solve every family problem -- that is for families to do themselves -- but it will get the government out of the family so they can do so. Government's role will be limited to the negative one of guaranteeing and protecting family integrity against external violation by anyone, including itself.

Why should it be enacted when it failed before?

The original bill had support among professional pro-family groups: home-schoolers, family advocates, social conservatives, the religious right, some libertarians. But a huge constituency of parents themselves, who could have been mobilized to support this bill (*viz.*, non-custodial parents and victims of child abuse laws), was specifically excluded from its protections. The 1995 bill was defeated not only by special interest lobbying (primarily by teachers' unions), but also by a lack of enthusiastic public support.

Closing the loophole and including non-custodial parents would create a broad-based coalition, uniting the original bill's advocates with a much larger constituency of parents themselves, who have watched their authority over their children be not simply eroded by the culture but, more seriously, usurped by the government.

Non-custodial parents, couples who lose their children through spurious child abuse accusations, parents who have their children improperly adopted against their wishes, and others would have a clear stake in this bill. It would also give the pro-family groups a proactive agenda and place them on the moral high ground as the as the defenders of rights, rather than as ogres who oppose homosexual marriage.

It would also put fathers' groups in alliance with mainstream political groups. We would be the vanguard of a parents' revolt: Not because we are another groups speaking *for* parents. Because we *are* parents.

Wouldn't it provoke massive opposition, just like the first time?

Yes, perhaps even more. Not only the teachers' unions but probably social workers' and other white-collar unions would mobilize against it, and of course feminists. (On the other hand, blue-collar unions might well sympathize with us.) But in a sense the whole point is to provoke controversy and create a long overdue national dialogue on the family. After decades of fatherless children, divorce-on-demand, homosexual marriage, and government impotence in the face of myriad social problems stemming from these ills, the country is ripe for it.

Family issues are now on the front pages every day. Even childless people are fed up with the destruction of the family and its huge social and

economic costs to us all. But many are uncertain what can be done about it, and little clear leadership is being provided. People are divided over gay marriage. Government marriage counseling and fatherhood programs promise solutions but are hopelessly vague about what precisely they can do. Attacks on pornography and abortion and public schools do not readily translate into clear prescriptions for saving the family. The country and the world are demanding leadership to rescue the family.

A clear and straightforward statement unequivocally defending the family as the guardian of a private sphere of life and asserting the rights of parents to be left in peace with their children constitutes a principle that would be virtually impossible to oppose. Unlike the campaign against gay marriage, defenders of the family would take the moral high ground and challenge opponents to explain why they oppose such an obviously just, sensible, and universally recognized principle as the rights of parents to raise their children as they see fit and the rights of children not to be torn from the arms of loving parents.

We must not shrink from this challenge. In a sense, the battle could be almost as important as the bill. Congress could pass this bill as a resolution tomorrow, and it would sit ignored alongside the case law. By provoking a national dialogue over the family and mobilizing a grassroots constituency, we would build the structures and watch-dog institutions to monitor the judiciary and bureaucracy and foster a political culture that values parents generally, fathers in particular, families and households as zones free from government intrusion, and children as something other than weapons and tools and justifications for expanding government power.

Q&A Discussion authored by Dr. Stephen Baskerville, ACFC President with additions and editing by Mr. James Hays, FaFNY President

Draft text of PRRA follows:

[Draft]

Parents' Rights and Responsibilities Act of 2007

_____ CONGRESS
_____ Session

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

IN THE SENATE OF THE UNITED STATES

2007

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Parents' Rights and Responsibilities Act of 200__'.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress finds that--

- (1) 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 amendment to the Constitution, as specified in *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925);
- (2) the right of parents to the care and custody of their children has been recognized as "a fundamental right protected by First, Fifth, Ninth and Fourteenth Amendments" in *Doe v. Irwin*, 441 F. Supp. 1247 1251 (D. Mich. 1977), as "far more precious than property rights" and by the Supreme Court as an "essential" right that protects a substantial interest that "undeniably warrants deference, and, absent a powerful countervailing interest, protection," in *May v. Anderson*, 345 U.S. 528, 533 (1953), *Meyer v. Nebraska*, 262

U.S. 390, 399 (1923), and *Stanley v. Illinois*, 405 U.S. 645 (1971), and the Supreme Court has held in *Troxel v. Granville*, 530 US 2000 (99-138), that “The liberty interest at issue . . . the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court. . . . [I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”

(3) this right has been recognized for centuries by the common law, and by the tradition of western civilization.

(2) the role of parents in the raising and rearing of their children is of inestimable value and deserving of both praise and protection by all levels of government;

(3) the tradition of western civilization recognizes that parents have the responsibility to love, nurture, train, and protect their children;

(4) some decisions of Federal and State courts have treated the right of parents not as a fundamental right but as a nonfundamental right, resulting in an improper standard of judicial review being applied to government conduct that adversely affects parental rights and prerogatives;

(5) parents face increasing intrusions into their legitimate decisions and prerogatives by government agencies in situations that do not involve traditional understandings of abuse or neglect but simply are a conflict of parenting philosophies;

(6) governments should not interfere in the decisions and actions of parents without compelling justification; and

(7) the traditional 4-step process used by courts to evaluate cases concerning the right of parents described in paragraph (1) appropriately balances the interests of parents, children, and government.

(b) PURPOSES- The purposes of this Act are--

(1) to protect the right of parents to the care and custody of their children and to direct the upbringing of their children as a fundamental right;

(2) to protect children from abuse and neglect as the terms have been traditionally defined and applied in State law, such protection being a compelling government interest;

(3) while protecting the rights of parents, to acknowledge that the rights involve responsibilities and specifically that parents have the responsibility to see that their children are educated, for the purposes of literacy and self-sufficiency, as specified by the Supreme Court in *Wisconsin v. Yoder*, 406 U.S. 205 (1972);

(4) to preserve the common law tradition that allows parental choices to prevail in a health care decision for a child unless, by neglect or refusal, the parental decision will result in danger to the life of the child or result in serious physical injury to the child; (5) to fix a standard of judicial review for parental rights, leaving to the courts the application of the rights in particular cases based on the facts of the cases and law as applied to the facts; and (6) to reestablish a 4-step process to evaluate cases concerning the right of parents described in paragraph (1) that--

(A) requires a parent to initially demonstrate that--

(i) the action in question arises from the right of the parent to direct the upbringing of a child; and

(ii) a government has interfered with or usurped the right; and

(B) shifts the burdens of production and persuasion to the government to demonstrate that--

(i) the interference or usurpation is essential to accomplish a compelling governmental interest; and

(ii) the method of intervention or usurpation used by the government is the least restrictive means of accomplishing the compelling interest.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) APPROPRIATE EVIDENCE- The term `appropriate evidence' means--

(A) for a case in which a government seeks a temporary or preliminary action or order, except a case in which the government seeks to terminate parental custody or visitation, evidence that demonstrates probable cause; and

(B) for a case in which a government seeks a final action or order, or in which the government seeks to terminate parental custody or visitation, clear and convincing evidence.

(2) CHILD- The term `child' has the meaning provided by State law.

(3) PARENT- The term `parent' has the meaning provided by State law.

(4) RIGHT OF A PARENT TO DIRECT THE UPBRINGING OF A CHILD-

(A) IN GENERAL- The term `right of a parent to direct the upbringing of a child' includes, but is not limited to a right of a parent regarding--

- (i) directing or providing for the education of the child;
- (ii) making a health care decision for the child, except as provided in subparagraph (B);
- (iii) disciplining the child, including reasonable corporal discipline, except as provided in subparagraph (C); and
- (iv) directing or providing for the religious teaching of the child.

(B) NO APPLICATION TO PARENTAL DECISIONS ON HEALTH CARE- The term 'right of a parent to direct the upbringing of a child' shall not include a right of a parent to make a decision on health care for the child that, by neglect or refusal, will result in danger to the life of the child or in serious physical injury to the child.

(C) NO APPLICATION TO ABUSE AND NEGLECT- The term 'right of a parent to direct the upbringing of a child' shall not include a right of a parent to act or refrain from acting in a manner that constitutes abuse or neglect of a child, as the terms have traditionally been defined and applied in State criminal law.

SEC. 4. PROHIBITION ON INTERFERING WITH OR USURPING RIGHTS OF PARENTS.

No Federal, State, or local government, or any official of such a government acting under color of law, or any other party, shall interfere with or usurp the right of a parent to the care and custody of the child of the parent or to direct the upbringing of the child of the parent, unless

- (1) that parent has been duly convicted of the abuse or neglect of that child as defined and applied in State criminal law; or
- (2) that parent has been duly found to have abrogated or violated the marital contract with the other parent of that child as defined and applied in State law.

SEC. 5. STRICT SCRUTINY.

No exception to section 4 shall be permitted, unless the government or official is able to demonstrate, by appropriate evidence, that the interference or usurpation is essential to accomplish a compelling governmental interest and is narrowly drawn or applied in a manner that is the least restrictive means of accomplishing the compelling interest.

SEC. 6. CLAIM OR DEFENSE.

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

SEC. 7. ATTORNEY'S FEES.

Subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988 (b) and (c)) (concerning the award of attorney's and expert fees) shall apply to cases brought or defended under this Act. A person who uses this Act to defend against a suit by a government described in section 4 shall be construed to be the plaintiff for the purposes of the application of such subsections.