

Family Preservation and Reconciliation Act of 2007

110th CONGRESS
2nd 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.

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 `Family Preservation and Reconciliation Act of 2007'.

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 Fourteenth 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); the right of parents to the care and custody of their children has been recognized as “a fundamental right protected by the 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.”
- (2) this right has been acknowledged for centuries by the common law, and by the tradition of western civilization, which recognizes that parents have the responsibility to love, nurture, train, and protect their children;

- (3) 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;
- (4) some decisions of Federal and State courts have treated the right of parents not as a fundamental right but as a non-fundamental 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; and
- (8) the in-tact family is a cornerstone for our society and children are best raised in an in-tact family; and
- (9) Congress recognizes the benefits of marriage for men, women, children and society as a whole and has expressed its intent for marriage through legislative incentives and programs involving the use of federal funds promoting marriage and the family; and
- (10) state government intrusion into the family, absent compelling justification thus establishing an empowered custodial parent and disenfranchised non-custodial parent is an incentive for divorce and inconsistent with Congress' intent.

(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.

(7) To preserve the institution of marriage and maintain familial ties.

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 or restrict 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);
- (iv) directing or providing for the religious teaching of the child; and
- (v) inculcating moral and ethical principles.

(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.

(1) 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, and that in accordance with long established legal doctrines presuming (a) that each parent is fit and (b) that fit parents are presumed to act in their child[ren]'s best interest; no removal of a child from the care of any fit parent absent a finding of parental unfitness by clear and convincing evidence may be effected; unless

- (2) that parent has been criminally charged and convicted for the abuse or neglect of that child as defined and applied in State criminal law; or
- (3) removal of the child is necessary due to danger of imminent or substantial harm to the child.
- (4) It is the specific finding and intent of this bill that public policy is furthered, and a that child[ren]'s best interest is served, by maximizing the amount of time a child[ren] spend with each parent in the event the parents divorce, separate or are never married.

SEC. 5. STRICT SCRUTINY.

No exception to section 4 shall be permitted, unless the government or official is able to demonstrate, by clear and convincing 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.

SEC. 8. SEVERABILITY

If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

