

A BRIEF HISTORY OF LEGAL PRECEDENTS FOR REFUSING HIGH STAKES STANDARDIZED TESTING

Source FairTest.org,

http://fairtest.org/sites/default/files/GeneralOptOutGuidewFormLetter_0.pdf

“**Meyer v. Nebraska** upheld parents' rights by affirming “the natural duty of the parent to give his children education suitable to their station in life...” Clearly the preferences of the parents in educational matters outweighed those of the government. The court further emphasized, “The Fourteenth Amendment guarantees the right of the individual ... to establish a home and bring up children, to worship God according to his own conscience.”

Pierce v. Society of Sisters confirmed **Meyer v. Nebraska** and parents' right to direct the upbringing of their children with regard to religions matters and to direct their children's education. The decision in *Pierce*, struck down an Oregon education law which, required all children ages eight and sixteen to be educated in public schools. The Court stated: "Under the doctrine of *Meyer v. Nebraska*, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children. The *Pierce* decision also upheld parents' rights to protect their children from government standardization, making it clear that children "are not the mere creature of the state..."

The Supreme Court's decision in **Prince v. Massachusetts** clearly admitted that parents held the highest responsibility and right to control the upbringing of their children, not the State. "It is cardinal with us 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."

Griswold v. Connecticut, emphasized that the state cannot interfere with the right of a parent to control his child's education, and that the right to educate one's child as one chooses is guaranteed in the Bill of Rights. The Court further stated that this right was applicable by the First and Fourteenth Amendments.

In 1972, Wisconsin v. Yoder upheld the *Pierce* decision by declaring: "This case involves the fundamental interest of parents, as contrasted with that of the state, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring tradition."

The 1996 decision in *M.L.B. v. S.L.J.* firmly voiced that the choices about marriage, family life, and the upbringing of children were ranked as "of basic importance in our society," again emphasizing that the rights sheltered by the 14th Amendment against the government's "unwarranted usurpation, disregard, or disrespect." This particular case involved the State's authority to permanently sever a parent-child bond. The Court's decision unequivocally upheld parents' rights in general.

The Supreme Court in **Reno v. Flores in 2000 states:** "There is a presumption that fit parents act in their children's best interests, there is normally no reason or compelling interest for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children," and **Troxel v. Granville,** "The state may not interfere in child rearing decisions when a fit parent is available."

In 1978, Congress enacted the **Protection of Pupil Rights Act,** which gives parents the right to inspect educational material--ALL educational material, which would include anything used in the course of providing instruction to our children.....A parent has the right to remove a child from objectionable classroom instruction and/or activity. **Three clauses in two different amendments** lay the solid foundation for these constitutional provisions: **the Fourteenth Amendment's Due Process Clause, and the First Amendment's Free Speech and Free Exercise Clauses.**

The First Amendment Free Speech and Free Exercise Clauses, combined with the Fourteenth Amendment's fundamental liberty interest of parents to direct the education and upbringing of their children, form a strong foundation upon which parents can assert their right to opt their children out of objectionable school material or activities. The higher the degree of coercion on students to participate in, or otherwise endorse the classroom activity, the stronger the constitutional argument in favor of a parental opt-out right.