

Bill Would Safeguard the Right of Parents to Raise their Children

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For More Information, Contact: Joe Fulgham, 302-744-4184

A new measure pending action in the General Assembly seeks to assert the rights of parents in The First State.

[House Bill 448](#) would add a new provision to the state constitution affirming that parents have a fundamental right to the “care, custody and control of their child.”

The bill’s prime sponsor, [State Rep. Deborah Hudson, R-Fairthorne](#), said state and federal governments have eroded parental authority over time and her legislation would act to counterbalance that encroachment.

Although many people may assume the right of parents to raise their children is fundamental and protected, a U.S. Supreme Court finding disproved that notion. The case of *Troxel v. Granville* (2000) involved a state law and a dispute over child visitation between the children’s mother and their paternal grandparents. A Washington state law allowed any person to petition for visitation rights at any time, with a judge able to grant visitation if he or she determined it would be in the best interest of the child.

The High Court ultimately found the law unconstitutional, but the decision was reached without achieving a majority and with six different opinions being issued.

Justice Antonin Scalia wrote that while he thought the right of parents to direct the upbringing of their children was among those the U.S. Constitution said shall not be denied or disparaged, his belief was not a legal protection. He said the Supreme Court’s previous parental rights decisions had failed to define the issue, noting the diversity of opinion “in the relatively simple case” about which he was writing.

Justice Scalia concluded that the terms of parental rights needed to be legally established, suggesting state legislatures would be best suited to the purpose because they were less likely than federal judges to cause harm; would be able to correct quickly any missteps and were “removable by the people.”

There are presently 31 states that either have a statute defining and protecting parental rights and/or have case law that interprets parental interests as a fundamental right. Delaware is one of the remaining 19 states with neither protection.

The core of Delaware’s proposed constitutional amendment states: *“Neither the state, nor any agency of the state, nor any political subdivision of the state, shall infringe on the parental right as provided under this article without demonstrating that the interest of*

the government as applied to the parent or child is a compelling interest addressed by the least restrictive means.”

The language contains two important protections, first requiring the government to meet a high legal standard to prove the proposed action is needed, then limiting it to the least intrusive means to accomplish it.

Since the start of 2013, eight states have enacted laws defining and protecting parental rights, including Virginia. Delaware’s proposed statute is based on laws in Wyoming, Nevada, and Oklahoma.

The bill includes specific provisions to preclude it from being misused to shield abusive parents; or prevent law enforcement, the courts, and child welfare agencies from acting in their official capacity within the scope of their authority.

State Rep. Charles Postles, R-Milford, another prime sponsor of the measure, said the legislation was partially inspired by Rule 225 – a controversial regulation proposed by the Delaware Department of Education. Among other things, the original draft of the rule, which has since been changed, would have allowed school children of any age to self-select their gender and racial identities without parental notification or consent.

“Rule 225 crystalized the need for parental rights protections in our code” Rep. Postles said. “The state should not be able to usurp parental rights just because a few officials believe they know what’s best for your children. Rule 225 was initiated by just one person when Governor Carney issued a memo directing the secretary of education to create it.”

Rep. Hudson said her constitutional amendment would level the playing field for parents. “If this were enacted, the government would still have the authority to make laws and promulgate regulations that could impact children and their parents. However, it would have to justify the action, meeting a high legal standard.”

Rep. Postles said the ability of government to impose its will on Delaware families is presently unfettered. “This amendment would give parents protections they do not currently enjoy and ensure their voices are not superseded by state officials.”

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