

Amendment Seeks to Safeguard the Rights of Parents

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Affirming the rights of parents in The First State is the goal of a proposed constitutional amendment that will be introduced in the General Assembly next week.

The House bill seeks to add a new section to the state constitution stipulating that parents have a “fundamental right” to the “care, custody and control of their child.”

“Having spoken about this with constituents, most are surprised to learn that Delaware parents do not already have such authority under the law,” said State Rep. Charles Postles, R-Milford North, one of the bill’s prime sponsors.

Federal law is also lacking such safeguards, as was illustrated in *Troxel v. Granville* – a dispute over a Washington state custody law that came before the U.S. Supreme Court in 2000.

In his opinion in that case, 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 High Court’s previous decisions had failed to define the issue and that the terms of parental rights needed to be legally established. Justice Scalia suggested state legislatures would be best suited to the purpose.

There are reportedly 30 states that either have a statute defining and protecting parental rights, have case law interpreting parental interests as a fundamental right, or a combination of the two. Delaware is one of the remaining states with neither.

“Blue states like Colorado have enacted such a law, as have red states like Texas,” said State Sen. Brian Pettyjohn, R-Georgetown, the Senate prime sponsor of the bill. “This legislation is about recognizing that as a parent you have the primary responsibility for raising your children, making decisions you believe to be in their best interests, and teaching them the values you believe are appropriate.”

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.”*

“If this amendment were enacted, the government would still have the authority to make laws and promulgate regulations that could impact children and their parents,” Rep. Postles said. “However, it would have to meet a high legal standard to justify the action, then limit it to the least intrusive means to accomplish it.”

The bill includes specific provisions to prevent it from being misused to shield abusive parents; or prevent law enforcement, the courts, and state agencies from acting within the scope of their authority to protect the welfare of Delaware children.

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.

“We’ve got more than a year to discuss this before the session is over at the end of June 2020, so it is my hope we have a very thorough, very thoughtful debate on this subject,” Sen. Pettyjohn said. “Clarifying parents’ rights with regard to the decisions they make on behalf of their children is one of the most important things we can do.”

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