

March 26, 2011

Mr. Tim Lambert
Texas Home School Coalition
P.O. Box 6747
Lubbock, Texas 79493

RE: House Bill 2557; comments

Dear Mr. Lambert:

Please accept my regret for not being able to attend the legislative hearing in person. Pressing personal matters in McKinney this week simply prevent it. I trust you will convey this letter to the assembled legislators.

I would like to comment on the proposal being considered by the legislature, HB 2557, and the unconstitutional manner in which non-parent access statutes are being interpreted by several Texas courts. Please indulge me as I explain what I consider to be the bedrock problem we are presently addressing.

As a civil rights attorney for over 25 years, I have extensive experience “in the trenches,” so to speak, with matters involving Constitutional rights. My practice has involved cases concerning freedom of religious expression, freedom of speech, eminent domain, fair trial, government misconduct, and sanctity of life. In the past several years I have also been hired to evaluate and litigate cases involving the fundamental rights of parents to “parent” their children free from illicit interference. My experience spans the waterfront of cases involving Child Protective Services and law enforcement, the ability of parents to determine the medical care their children will or will not receive, and the issue of parental fitness both generally and in specific instances. One thing this experience has taught me is that many intelligent, well-meaning judges are simply ignorant of the law as it relates to Constitutional rights, particularly the rights that parents have regarding how they educate, discipline, and care for their own children. To overcome their ignorance in these areas, courts often look to statutes for guidance. And that is why your job as legislators is so extremely important.

The United States Supreme Court has repeatedly described parental rights as “pre-eminent” and even “pre-constitutional” in their origin and importance. I tend to believe these words mean something, and even more than just “something.” I note that when the Supreme Court uses such stunning language -- which it rarely does -- it does so soberly and with due respect for the Source from which such rights truly arise. I could simply list these rights, but that profits nothing. Instead, a firm grasp of the basic **foundation** of parental rights is much more conducive to understanding which laws are in keeping with Constitutional parental rights and in faithfully executing those laws. Said another way, **with** such a foundation in hand, a listing of such rights is unnecessary, but **without** such a foundation, a mere listing of such rights is meaningless. The **foundation** is the key.

Unfortunately, either from bad lawyering or from being too busy to themselves study the foundation of these rights, judges are constantly, even if accidentally, undermining the very rights they are charged with protecting. I do not blame the judges for this; I know too many of them and they are good people. Instead, I prefer to place the blame where it really belongs: on legislators who do not themselves understand the foundations of the rights they are seeking to uphold, protect, and defend through legislation. It is difficult to hit the target if you do not see the target. I am actually *encouraged*, however, by my belief that these failings -- both by judges and legislators -- are due merely to ignorance and not to hatefulness, stupidity, or lack of concern, and thus are readily corrected with education.

The time I have today is insufficient to explain the entire basis of the rights of parents to freely raise their own children with a minimum of government interference. Suffice to say, the topic is extensively addressed in numerous appellate and Supreme Court decisions, including *Troxel v. Granville* and in the

recent Chassidie Russell case from the Texas Supreme Court. I encourage you to spend some time reading these incredibly illuminating opinions on Constitutional law. When you do, the unmistakable conclusion you will come away with is that parental rights are not like other rights, where “the state giveth, and the state taketh away.” Rather, these rights are considered "pre-eminent" and "fundamental" which translates to mean they are self-evident and endowed on each of us by our Creator. When such rights are involved, the government must tread very lightly. To counter the propensity of governments to run roughshod over such rights, a free people establish a superior compact with their government in the form of a Constitution. That the Constitution is the supreme law of the land is beyond argument, but what that means and how that plays out in the machinery of the legislatures is often lost in the hustle and bustle of legislative, political, and personal agendas and their advancement. Despite the popular metaphor, we are not “making sausage” here. This is a grave situation, especially when it results in separating fit parents from their children.

In the case of the non-parent access statutes in Texas, courts have recently interpreted them to mean that in certain child custody cases one fundamental parental right – enjoyment of the presumption that a child should be raised by its own fit parents – is somehow no longer applicable. This is such a radical departure from both Constitutional law and basic common sense that the only way to explain such a departure by educated jurists is to believe that the judges somehow feel they have no choice but to act as they do. And the only way judges of integrity come to such a conclusion is by believing the legislature not only allows such an insane result, but actually **compels** it.

Echoing the opinion of the United States Supreme Court, parental rights are the most serious and important rights known to mankind. Most parents would freely sacrifice their rights of free speech, freedom of religion, and freedom to vote -- even their own liberty -- if it meant they got to keep their rights as parents. Parental rights are not only Constitutional in scope, supernatural in origin, and supreme in significance, their protection is absolutely essential to the peaceful and sane functioning of any human society. Revolutions have been fought to secure far lesser rights. It is therefore **critical** for our legislators to take more care and more thought in the drafting of laws affecting parental rights than they take in any other area. Your deliberations must be focused not only on making the language of such statutes crystal clear, but in thinking long and hard about exactly what ramifications and consequences might result from each and every word in such laws, taking particular care that these laws not be unclear, ambiguous, or contradictory, all while keeping in mind that the bond between a parent and child is God-ordained and thus precious in His sight.

Others better versed in Family Law than I am will address the statutory changes that must be considered by this body in order to restore the Constitutional parental rights currently being trampled in our courts. Thank you for allowing an old soldier a chance to share with you a view from the trenches.

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