UNJUSTLY USURPING THE PARENTAL RIGHT: *Fields v. Palmdale School District*, 427 F.3d 1197 (9th Cir. 2005)

The right of a parent to control his child's upbringing is one of the few fundamental rights recognized by courts as protected under the doctrine of substantive due process.[1] Rooted in vague pronouncements made in two cases decided in the 1920s, *Meyer v. Nebraska*[2] and *Pierce v. Society of Sisters*,[3] this amorphous parental right has never been clearly defined by the Supreme Court.[4] This lack of guidance has proven especially troublesome in the context of public schools where parents have attempted to shield their children from school mandates ranging from dress codes[5] to sex education.[6] Were parental rights to dominate school interests, public education would become untenable, as each parent would effectively hold veto power over the school's curriculum. Thus, many courts have

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1. *See* Troxel v. Granville, 530 U.S. 57, 65–66 (2000) (noting that parental control of children "is perhaps the oldest of the fundamental liberty interests recognized by this Court"); Seal v. Morgan, 229 F.3d 567, 574–75 (6th Cir. 2000) (noting that parental control of children is in the short list of fundamental rights protected under the Due Process Clause).

2. 262 U.S. 390 (1923). *Meyer* involved a state statute that forbade teachers in public, private, and parochial schools from teaching any subject in any language other than English to students who have not completed the eighth grade. *See id.* at 397. Striking down the statute, the Court noted that the legislature "attempted materially to interfere . . . with the power of parents to control the education of their own." *Id.* at 401.

3. 268 U.S. 510 (1925). *Pierce* involved a state statute that required all children between the ages of eight and sixteen to attend public school. *Id.* at 530. Relying on *Meyer*, the Court found it "entirely plain that [the statute] unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control." *Id.* at 534–35. The Court emphasized that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.* at 535.

4. *See* Prince v. Massachusetts, 321 U.S. 158, 167 (1944) ("[T]he state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare.").

5. *See, e.g.*, Blau v. Ft. Thomas Pub. Sch. Dist., 401 F.3d 381 (6th Cir. 2005); Littlefield v. Forney Indep. Sch. Dist., 268 F.3d 275 (5th Cir. 2001).

6. *See, e.g.*, Brown v. Hot, Sexy & Safer Prods., 68 F.3d 525 (1st Cir. 1995).

envisioned the *Meyer-Pierce* right as a balance between the competing interests of the parents and the schools.[7] Yet not until *Fields v. Palmdale School District*[8] did a federal appellate court establish a bright-line rule for parental rights claims relating to a public school's actions.

In *Fields*, Judge Reinhardt of the Court of Appeals for the Ninth Circuit held—rousing much controversy[9]—that "the *Meyer-Pierce* right does not extend beyond the threshold of the school door."[10] Though described by some as a restrained opinion,[11] *Fields* construes precedent broadly, ignores parental interests, and emasculates the *Meyer-Pierce* right in the public school setting. Instead of cutting off parental rights inside public schools, the court should have recognized the delicate interplay between the difficult job of educating students from differing backgrounds and the parental right to inculcate moral standards in their own children.[12] When the parental interest asserted is fundamentally central to the parent-child relationship, the public school must not be given a free pass.

This case began when Kristi Seymour, a volunteer mental health counselor at the Mesquite Elementary School and a master's student in psychology, developed and administered a psychological survey for first, third, and fifth grade students with the goal of "establish[ing] a community baseline measure of children's exposure to early trauma."[13] Ten of the survey questions involved sexual topics.[14] Prior to the administration

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7. *See, e.g.*, Arnold v. Bd. of Educ., 880 F.2d 305, 314 (11th Cir. 1989) ("[A] reasonable accommodation must be found by balancing the traditional rights of parents in the rearing of their children and the interest of the state in controlling public schools."); Littlefield v. Forney Indep. Sch. Dist., 108 F. Supp. 2d 681, 703 (N.D. Tex. 2000) ("Parental rights do not exist in a vacuum; rather, their exercise depends on the circumstances out of which they arise. Hence, the competing interests are balanced."), *aff'd*, 268 F.3d 275.

8. 427 F.3d 1197 (9th Cir. 2005).

9. *See* H.R. Res. 547, 109th Cong. (2005) (320-91 house vote calling upon the Ninth Circuit to rehear en banc and reverse).

10. *Fields*, 427 F.3d at 1207.

11. *See, e.g.*, Posting of Eugene Volokh to The Volokh Conspiracy, http://www.volokh.com/archives/archive_2005_11_13-2005_11_19.shtml#1132189719 (Nov. 16, 2005, 20:08 EST); Ruth Marcus, Op-Ed., *Parents, Children, Sex and Judges*, WASH. POST, Nov. 27, 2005, at B07.

12. *See* Wisconsin v. Yoder, 406 U.S. 205, 233 (1972).

13. *Fields*, 427 F.3d at 1200.

14. The survey was composed of four questionnaires, the first of which contained all of the sexual references. That questionnaire asked students to rate

of the survey, Seymour sent letters informing the parents of the survey, explaining its goals, and asking for parental consent.[15] Though Seymour's letter noted that the survey was intended to establish a baseline measure of student exposure to "early trauma (for example, violence)" and that the questions might make a student "feel uncomfortable,"[16] there was no mention of the survey's sexual content.[17] After the school district approved the survey, Seymour administered it to the students, aged seven to ten, in the elementary school during school hours.[18]

Parents of the children who participated in the survey learned of the survey's sexual content and alleged that had they known of the true nature of the survey, they would not have permitted their children to participate.[19] After pursuing an unsuccessful tort claim against the Palmdale School Board, they filed suit in the District Court for the Central District of California, alleging violations of their federal constitutional right to privacy.[20] The court, acknowledging the *Meyer-Pierce*

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how often they experienced fifty-four activities on a scale from "never" to "almost all the time." Most of the listed activities were not sexual in nature, such as "Feeling dizzy" and "Wanting to kill myself." Ten were sexually explicit and were objected to by the parents in the lawsuit: "Touching my private parts too much," "Thinking about having sex," "Thinking about touching other people's private parts," "Thinking about sex when I don't want to," "Washing myself because I feel dirty on the inside," "Not trusting people because they might want sex," "Getting scared or upset when I think about sex," "Having sex feelings in my body," "Can't stop thinking about sex," and "Getting upset when people talk about sex." *Id.* at 1201 & n.3.

15. *See id.* at 1200–01 & n.1.

16. *Id.* at 1200 n.1.

17. *See id.* at 1201.

18. *Id.*

19. *See id.* at 1202. The plaintiffs did not assert that the *Meyer-Pierce* right gave them exclusive authority to teach their children about sex. Instead, they argued that they have the right to control *when* their children would be exposed to such instruction. *See* Fields v. Palmdale Sch. Dist., 271 F. Supp. 2d 1217, 1222 n.8 (C.D. Cal. 2003), *aff'd*, 427 F.3d 1197.

20. *See Fields*, 271 F. Supp. 2d at 1220. *See also id.* at 1221 n.7 ("Many . . . fundamental rights, especially those relating to marital activities and family relationships, have been classified by the Supreme Court under a broader 'right to privacy.'"). The plaintiffs also advanced three other claims: violation of California's state constitutional right to privacy; deprivation of their civil rights pursuant to 42 U.S.C. § 1983; and negligence. *See id.* at 1220. After dismissing the plaintiffs' privacy claim, which the district court characterized as a Fourteenth Amendment substantive due process claim, *see id.* at 1220 n.4, the court dismissed the Section 1983 claim because the plaintiffs did not show a constitutional violation, *see id.* at 1223–24, and declined to exercise supplemental jurisdiction over plaintiffs' state law claims, dismissing them without prejudice, *see id.* at 1224.

right, stated that the liberty interest asserted by plaintiffs—of "controlling the upbringing of their children by introducing them to matters of and relating to sex in accordance with their personal and religious values and beliefs"[21]—did not exist.[22] Pointing to the First Circuit's decision in *Brown v. Hot, Sexy & Safer Productions*,[23] the district court distinguished the asserted liberty interest from those in *Meyer* and *Pierce*, finding, as did the *Brown* court, that *Meyer* and *Pierce* only "'evince the principle that the state cannot prevent parents from choosing a specific educational program' . . . . They do not, however, give parents a fundamental right to control a public school district's curriculum."[24] The district court, finding no infringed fundamental right, dismissed the plaintiffs' cause of action for failure to state a claim.[25]

Writing for a unanimous Ninth Circuit panel, Judge Reinhardt affirmed. The court, noting that many courts have upheld state actions that intrude upon parental interests,[26] emphasized that a parent does not have an exclusive right to control the upbringing of his child.[27] Like the district court, the Ninth Circuit panel relied heavily on *Brown*, adopting from it the principle that parents "have no constitutional right . . . to prevent a public school from providing its students with whatever information it wishes to provide, sexual or otherwise, when and as the school determines that it is appropriate to do so."[28] The court construed *Meyer* and *Pierce* as permitting parents to determine a child's forum of education—but not the education within that forum—and held that the *Meyer-Pierce* right "does not extend beyond the threshold of the school door."[29] Accordingly, the Ninth Circuit reasoned, the school's

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Plaintiffs did not appeal the district court's dismissal of the state law claims. *See Fields*, 427 F.3d at 1203 n.6.

21. *Fields*, 271 F. Supp. 2d at 1220.

22. *See id.* at 1222.

23. 68 F.3d 525 (1st Cir. 1995).

24. *Fields*, 271 F. Supp. 2d at 1223 (quoting *Brown*, 68 F.3d at 533).

25. *See id.*

26. *See Fields*, 427 F.3d at 1204–05 (collecting cases).

27. *Id.* at 1204.

28. *Id.* at 1205–06.

29. *Id.* at 1207.

actions did not impinge on any liberty interest protected by substantive due process.[30]

The court next considered the privacy rights claim. As the plaintiffs did not allege that their children were forced to disclose private information, the only privacy claim alleged by plaintiffs was that the survey violated their right to make decisions about how and when their children would be exposed to sexual matters.[31] Finding that there is a difference between making intimate decisions and "controlling the state's determination of information regarding intimate manners," the court held that the plaintiffs' purported liberty interest was not protected by the right to privacy.[32]

The court concluded by applying rational basis review to the plaintiffs' federal claims because absent a fundamental rights violation, strict scrutiny does not apply.[33] The court first rejected the plaintiffs' argument that the survey lacked a "legitimate governmental purpose" and was administered solely to benefit Seymour's career, noting that the original complaint included information explaining how the survey would ultimately benefit the school district and its students.[34] Next, the court stated that education is not limited to a school's curriculum and determined that protection of students' mental health "falls well within the state's broad interest in education."[35] In addition, the court found, the survey's objective was to improve the students' ability to learn:

> Although the students who were questioned may or may not have "learned" anything from the survey itself and may or may not have been "taught" anything by the questions they were asked, the facilitation of their ability to absorb the education the school provides is without question a legitimate educational objective.[36]

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30. *See id.*

31. *See id.* Because plaintiffs failed to advance a claim regarding the disclosure of private information, the court did not address any issues relating to compulsory disclosure of such information. *See id.* at 1207 n.8.

32. *Id.* at 1208.

33. *See id.*

34. *Id.* at 1208–09.

35. *Id.* at 1209.

36. *Id.* at 1209–10. The court also noted that this "educational objective" is more closely related to the school's educational mission than other school actions such

Finally, the court found that the survey's administration can also be justified based on the state's interest as *parens patriae* in the mental health of its students.[37] Because of the "broad aims of education" and the state's interest in its students' mental health, the court held that the school's administration of the survey was rationally related to the legitimate state interest in "effective education and the mental welfare of its students."[38]

Fields relies heavily on *Brown* to reach the conclusion that the *Meyer-Pierce* right cannot be wielded to contest public school policies.[39] *Brown*, however, does not compel such a finding. *Brown* concerned, in part, a *Meyer-Pierce* claim against a public school for holding a mandatory school assembly consisting of a sexually explicit AIDS awareness program.[40] In its opinion, the *Brown* court narrowly construed the *Meyer* and *Pierce* holdings.[41] Addressing the scope of the parental right, the court rejected the notion that parents have a right to exercise control over the public school curriculum, holding instead that *Meyer* and *Pierce* merely permit parents to choose an alternative to public schools for their children.[42] Specifically, *Brown* found that *Meyer* and *Pierce* do not "encompass[] a fundamental constitutional right [for parents] to *dictate the curriculum* at the public school to which they have chosen to send their children."[43] Nor do they "encompass a broad-based right to *restrict the flow of information* in the public schools"[44] or allow parents to dictate "what the state shall *teach* their children."[45] The holding in *Brown* comports with the theory that the primary aim of the

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as dress codes and community service requirements, which have been held constitutional. *See id.* at 1210.

37. *See id*. at 1210.

38. *Id.* at 1210–11.

39. *See id.* at 1207.

40. *See* Brown v. Hot, Sexy & Safer Prods., 68 F.3d 525, 529 (1st Cir. 1995). The plaintiffs alleged that the program coordinator, for example, approved of oral sex and homosexual activity; simulated masturbation; had a student lick an oversized condom; encouraged a student to demonstrate his "orgasm face"; informed a student that he was not having enough orgasms; and told a student that he had a "nice butt." *Id.*

41. Even though *Meyer* and *Pierce* employed broad language referring to the right to raise children, *Brown* limited those cases to their facts. *See* Recent Case, 110 HARV. L. REV. 1179, 1181–82 (1997).

42. *See Brown*, 68 F.3d at 533–34.

43. *Id.* at 533 (emphasis added).

44. *Id.* at 534 (emphasis added).

45. *See id.* (emphasis added).

public school is to *instruct* its students, a view that has been endorsed by the Supreme Court.[46]

Moreover, even ancillary, noncurricular school policies that have been found to trump parental rights contribute to the educational environment and help students absorb the educational curriculum offered. In *Blau v. Fort Thomas Public School District*,[47] for example, the Sixth Circuit upheld a public school's dress code policy against a *Meyer-Pierce* claim. The *Blau* court noted that the dress code was intended, in part, to "focus attention upon learning and away from distractions," "improve the learning environment," and "promote good behavior."[48]

If the *Meyer-Pierce* framework allowed parents to exercise control over the curriculum, the system of public education would be wholly impractical and unworkable.[49] Indeed, one section of the *Fields* decision reflects this view.[50] It takes a significant leap, however, to infer from *Brown* that all school policies—even those manifestly unrelated to the school's educational mission—should be shielded from the parental right.

The psychological survey at issue in *Fields* might not be shielded from the parental right because it reverses the traditional flow of information. By completing the survey, the stu-

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46. *See* Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988) (holding that schools do not offend the First Amendment when retaining editorial control in school-sponsored expressive activities "so long as their actions are reasonably related to *legitimate pedagogical concerns*") (emphasis added).

47. 401 F.3d 381 (6th Cir. 2005), *cited in* Fields v. Palmdale Sch. Dist., 427 F.3d 1197, 1206 (9th Cir. 2005).

48. *Id.* at 391 (alterations omitted). *See also* Immediato v. Rye Neck Sch. Dist., 73 F.3d 454, 462 (2d Cir. 1996) (upholding a public high school's mandatory community service program against a *Meyer-Pierce* claim, and noting that "the program helps students recognize their place in their communities, and, ideally, inspires them to introspection regarding their larger role in our political system").

49. *See, e.g.*, *Brown*, 68 F.3d at 533 ("If all parents had a fundamental constitutional right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school's choice of subject matter.").

50. *See* 427 F.3d at 1206 ("Neither *Meyer* nor *Pierce* provides support for the view that parents have a right to prevent a school from *providing any kind of information*—sexual or otherwise—*to its students*.") (emphases added).

dents in *Fields* were, in fact, teaching the survey administrator.[51] Although one cannot seriously assert that the students learned anything useful by taking the survey,[52] the mere lack of direct educational connection does not necessarily extinguish the school's interest.[53] But it should be incumbent upon the school to demonstrate an interest that is not so indirect as to be meaningless for the students involved.[54]

This point was not lost on the Ninth Circuit. Noting that the survey's goal was "to gauge exposure to early trauma and to assist in designing an intervention program" to help the students in learning,[55] the court held that such surveying is "more directly within the school's basic educational mission, than, for example, requiring students to wear uniforms or to participate in community service."[56] Although the court's concern for the school's interest is evident, it gives short shrift to the associated interests of the parents. Implicitly, the court equates an alleged right to exempt a child from a dress code with an alleged right to prevent seven-year-olds from taking a sexually laden survey. Though blue jeans might be stylish and comfortable, the parental interest in a child's ability to wear them does not offer a "flattering analogy" to the much more compelling parental interest in shielding a child from sexual content.[57]

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51. For a history of the administration of surveys in public schools, see Beth Garrison, Note, *"Children are Not Second Class Citizens": Can Parents Stop Public Schools from Treating Their Children Like Guinea Pigs?*, 39 VAL. U. L. REV. 147 (2004).

52. Though one might assert that the young students have implicitly learned that they or their peers might be having sex feelings in their bodies, *see supra* note 14, such "learning" was minimal, at best, and in any event was not the survey's intent. *See supra* text accompanying note 13.

53. Examinations, for example, involve a similar reversal of the standard information flow. But examinations help to gauge student performance and inform the school in adjusting the educational experience accordingly.

54. Because the litigation in *Fields* was dismissed at an early stage, relevant questions, such as whether the survey would actually result in beneficial educational changes, and if so, whether such data would benefit the students actually taking the surveys, have not been answered. *See infra* text accompanying notes 70–71.

55. *Fields*, 427 F.3d at 1210.

56. *Id.*

57. *Cf.* Blau v. Ft. Thomas Pub. Sch. Dist., 401 F.3d 381, 394 (6th Cir. 2005) (noting that recognized fundamental rights do not offer a "flattering analogy" to the right to wear blue jeans).

Rather than ignoring parental rights, the Ninth Circuit should have followed the lead of the Third Circuit in *Gruenke v. Seip*.[58] That court noted,

> It is not unforeseeable . . . that a school's policies might come into conflict with the fundamental right of parents to raise and nurture their child. But when such collisions occur, the primacy of the parents' authority must be recognized and should yield only where the school's action is tied to a compelling interest.[59]

In *C.N. v. Ridgewood Board of Education*,[60] a case involving a survey that queried middle and high school students on alcohol and drug use, sexual activity, and violence,[61] the Third Circuit interpreted *Gruenke* to "recognize a distinction between actions that strike at the heart of parental decision-making authority on matters of the greatest importance and other actions that, although perhaps unwise and offensive, are not of constitutional dimension."[62] Unlike the bright-line rule embraced by the court in *Fields*, the *C.N.* court adopted a less predictable approach that strikes the necessary, nuanced balance between the dueling tensions of the *Meyer-Pierce* parental right and the practicability of the public school system.[63]

When a parent alleges infringement of his *Meyer-Pierce* right, a court should first determine whether the infringed right is of the "greatest importance" by considering the importance of the asserted right to a reasonable parent.[64] The reasonable parent likely has a stronger interest in how and when the school in-

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58. 225 F.3d 290 (3d Cir. 2000).

59. *Id.* at 305.

60. 430 F.3d 159 (3d Cir. 2005).

61. *See id.* at 167–69.

62. *Id.* at 184.

63. A balancing test is not perfect, but it is preferable to absolutist alternatives. *See, e.g.*, William G. Ross, *The Contemporary Significance of* Meyer *and* Pierce *for Parental Rights Issues Involving Education*, 34 AKRON L. REV. 177, 207 (2000) ("The decisions therefore must remain controversial in the absence of pure communism or pure libertarianism, for there is no obvious or perfect way to balance the competing interests of the parents and the state in matters of education in a free, but statist, society.").

64. The asserted right should be particularized. In *C.N.*, the court specifically noted that the exposure of *middle and high school students* to sexual content in a survey does not infringe the *Meyer-Pierce* right. *See C.N.*, 430 F.3d at 185. A court, however, could reasonably find that parents have a *Meyer-Pierce* right in preventing a school from exposing younger children to such sexual content.

troduces his child to sexual materials and a weaker interest in what his child is compelled to wear to school. In *C.N.*, the Third Circuit ultimately held that the survey in question did not reach the level of "strik[ing] at the heart of parental decision-making authority."[65] Appellate courts, however, have found interference with the *Meyer-Pierce* right where a school counselor coerced a minor student into obtaining an abortion[66] and where a coach forced a public school student to take a pregnancy test and then discussed the positive results with others.[67] These cases suggest that only the most egregious scenarios will qualify as matters worthy of protection under *Meyer-Pierce*.

When an asserted parental right is found to be of the utmost importance so that it rises to the level of being fundamental, the school must demonstrate a compelling interest to justify its actions, taking into context its traditional role as a teaching institution.[68] This approach properly balances the competing interests of parents and schools while ensuring that the courts do not become inordinately ensnared in what traditionally lies in the legislative realm. There is no way to codify this fact-based approach into a rule. Accordingly, this nascent right will have to develop through the judicial system. Although this approach increases judicial uncertainty for all parties, schools can sidestep the entire constitutional issue by instituting opt-out procedures or systems of informed consent to potentially controversial programs to avoid infringing a possible parental right.

Because *Fields* was dismissed at the complaint stage, it is difficult to establish whether the survey struck at the heart of parental decision-making authority, and if so, whether it would survive strict scrutiny. Even when their children are very young, parents have differing views on how to approach their children's sexual education.[69] The mere administration of the

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65. *Id.* ("A parent whose middle or high school age child is exposed to sensitive topics or information in a survey remains free to discuss these matters and to place them in the family's moral or religious context . . . . School Defendants . . . at most . . . may have introduced a few topics unknown to certain individuals.").

66. *See* Arnold v. Bd. of Educ., 880 F.2d 305, 312–14 (11th Cir. 1989).

67. *See* Gruenke v. Seip, 225 F.3d 290, 306–07 (3d Cir. 2000).

68. *See* Mullins v. Oregon, 57 F.3d 789, 793 (9th Cir. 1995) (compelling interest necessary). *See supra* text accompanying note 46 (traditional role of school as teaching institution).

69. *See, e.g.*, Jodi Kantor, *Sex Ed for the Stroller Set*, N.Y. TIMES, Nov. 17, 2005, at G1.

survey to seven- through ten-year-old children does not necessarily implicate the *Meyer-Pierce* right. A reasonable person could find that that the survey was not so sexually tinged, or that the targeted population was not so young, that it infringed upon the heart of parental decision-making authority. Or perhaps the survey's administration did, in fact, have a working system of informed consent.[70] And even if the survey infringed on the parental right, the state might have a compelling interest in better understanding the sexual histories of their younger students.[71] The Ninth Circuit should have reversed the dismissal and remanded the case back to the district court to answer these important questions.

The right of a parent to control the upbringing of his child is fundamental.[72] Though public schools can and do usurp many parental choices,[73] this right—which encompasses "the inculcation of moral standards"[74]—vests first in parents.[75] When a child passes through the public school doors, he does not become a "mere creature of the state."[76] Judicial interference in

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70. *But see Fields*, 271 F. Supp. 2d at 1219 (sexual nature of questions not disclosed); *see also id.* at 1219 n.3 (child allegedly given survey even when parents did not return consent form).

71. *See* Marilyn Brown, *Sex Survey "Eye-Opening" for Local Parents*, TAMPA TRIB., Dec. 11, 2005, http://www.tampatrib.com/MGBW1T2U2HE.html ("'There is no way I'd want [my son] to take that survey if he was in middle school,' said Camille Johnston, mother of children ages 7 and 10 who attend Nelson Elementary School in Dover. 'But I'd want those results.'"). It is certainly ironic that in its quest to "[p]rotect[] the mental health of children," *Fields*, 427 F.3d at 1209, the school district can expose those children to a sexually tinged survey that arguably damages their mental well-being. *See* Trachtman v. Anker, 563 F.2d 512, 520 (2d Cir. 1977) (Gurfein, J., concurring) (noting that distributing questionnaires inquiring about sex may not physically harm students, but "a blow to the psyche may do more permanent damage than a blow to the chin").

72. *See* Troxel v. Granville, 530 U.S. 57, 66 (2000).

73. *See* Prince v. Massachusetts, 321 U.S. 158, 167 (1944) (noting that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare").

74. Wisconsin v. Yoder, 406 U.S. 205, 233 (1972).

75. *See Prince*, 321 U.S. at 166; *see also Yoder*, 406 U.S. at 232 ("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 American tradition.").

76. Pierce v. Soc'y of Sisters, 268 U.S. 510, 535 (1925). *See also* M.L.B. v. S.L.J., 519 U.S. 102, 116 (1996) ("Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as 'of basic importance in our society,' rights sheltered by the Fourteenth Amendment against

public schools should be minimal because legislatures are primarily charged with crafting policy;[77] courts, however, should not stand idly by as public schools violate fundamental rights. As the Supreme Court declared in *West Virginia State Board of Education v. Barnette*, "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted."[78] Although the public school exerts a high level of control over its students, its control is not absolute.[79] American constitutional jurisprudence affirms that this society is not one where children are wholly disconnected from their parents and educated entirely by the state. If the *Meyer-Pierce* parental right is to have any real meaning, it is to preclude the public school from egregiously usurping the parental role in matters of the utmost importance.

Elliott M. Davis

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the State's unwarranted usurpation, disregard, or disrespect.") (citation omitted); Gruenke v. Seip, 225 F.3d 290, 307 (3d Cir. 2000) ("Public schools must not forget that 'in loco parentis' does not mean 'displace parents.'").

77. *See* Epperson v. Arkansas, 393 U.S. 97, 104 (1968) (finding that courts generally should not "intervene in the resolution of conflicts which arise in the daily operation of school systems"); *see also Yoder*, 406 U.S. at 235 ("[C]ourts are not school boards or legislatures, and are ill-equipped to determine the 'necessity' of discrete aspects of a State's program of compulsory education. This should suggest that courts must move with great circumspection in performing the sensitive and delicate task of weighing a State's legitimate social concern when faced with religious claims for exemption from generally applicable educational requirements."). In addition, parents can act to change the course of their children's public schools. *See, e.g.*, Ross, *supra* note 63, at 189–90; Laurie Goodstein, *A Decisive Election in a Town Roiled over Intelligent Design*, N.Y. TIMES, Nov. 9, 2005, at A24 (describing how parents voted out school board members who introduced intelligent design into science classes). But through judicial action, courts can serve to "initiat[e] a dialogue between the court and the political branches." Recent Case, 119 HARV. L. REV. 677, 683 (2005).

78. 319 U.S. 624, 637 (1943).

79. *See, e.g.*, Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 652–57 (1995). *Compare* Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.") *with Fields*, 427 F.3d at 1207 ("[T]he *Meyer-Pierce* right does not extend beyond the threshold of the school door.").