

[Log In](#)[Sign Up](#)

Fourteenth Amendment--Rights Guaranteed: Privileges and Immunities of Citizenship, Due Process, and Equal Protection

> Family Relationships

Family Relationships

Family Relationships.—Unlike the shifting definitions of the "privacy" line of case, the Court's treatment of the "liberty" of familial relationships has a relatively principled doctrinal basis. Starting with *Meyer* and *Pierce*,⁶⁴⁴ the Court has held that "the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition."⁶⁴⁵ For instance, the right to marry is a fundamental right protected by the due process clause,⁶⁴⁶ and only "reasonable regulations" of such relationship may be imposed.⁶⁴⁷ Thus, the Court has held that a state may not deny the right to marry to someone who has failed to meet a child support obligation, as the State already has numerous other means for exacting compliance with support obligations.⁶⁴⁸ In fact, any regulation which affects the ability to form, maintain, dissolve, or resolve conflicts within a family is subject to rigorous judicial scrutiny.

⁶⁴⁴ *Meyer v. Nebraska*, [262 U.S. 390](#) (1923); *Pierce v. Society of Sisters*, [268 U.S. 510](#) (1928).

⁶⁴⁵ *Moore v. City of East Cleveland*, [431 U.S. 494, 503](#) (1977) (plurality). Unlike the liberty interest in property, which derives from early statutory law, these liberties spring instead from natural law traditions, as they are "intrinsic human rights". *Smith v. Organization of Foster Families*, [431 U.S. 816, 845](#) (1977). These rights, however, do not extend to all close relationships. *Bowers v. Hardwick*, [478 U.S. 186](#) (1986) (same sex relationships).

⁶⁴⁶ *Loving v. Virginia*, [388 U.S. 1, 12](#) (1967); *Griswold v. Connecticut*, [381 U.S. 479, 486](#) (1965); *Cleveland Bd. of Educ. v. LaFleur*, [414 U.S. 632, 639-40](#) (1974); *Zablocki v. Redhail*, [434 U.S. 374, 383-87](#) (1978).

⁶⁴⁷ *Zablocki v. Redhail*, [434 U.S. 374, 386](#) (1978).

⁶⁴⁸ *Zablocki v. Redhail*, [434 U.S. 374](#) (1978). The majority of the Court deemed the statute to fail under equal protection, whereas Justices Stewart and Powell found the due process clause to be violated. *Id.* at 391, 396. *Compare* *Califano v. Jobst*, [434 U.S. 47](#) (1977).

There is also a constitutional right to live together as a family,⁶⁴⁹ and this right is not limited to the nuclear family. Thus, a neighborhood which is zoned for single family occupancy, and which defines "family" so

as to prevent a grandmother from caring for two grandchildren of different children, was found to violate the due process clause.⁶⁵⁰ And the concept of "family" may extend beyond the biological relationship to the situation of foster families, although the Court has acknowledged that such a claim raises complex and novel questions, and that the liberty interests may be limited.⁶⁵¹ On the other hand, the Court has held, the presumption of legitimacy accorded to a child born to a married woman living with her husband is valid even to defeat the right of the child's biological father to establish paternity and visitation rights.⁶⁵²

The Court has merely touched upon but not dealt definitively with the complex and novel questions raised by possible conflicts between parental rights and children's rights.⁶⁵³ The Court has, however, imposed limits on the ability of a court to require that children be made available for visitation with grandparents and other third parties. In *Troxel v. Granville*,⁶⁵⁴ the Court evaluated a Washington State law which allowed "any person" to petition a court "at any time" to obtain visitation rights whenever visitation "may serve the best interests" of a child. Under this law, a child's grandparents were awarded more visitation with a child than was desired by the sole surviving parent. A plurality of the Court, noting the "fundamental rights of parents to make decisions concerning the care, custody and control of their children,"⁶⁵⁵ reversed this decision, noting the lack of deference to the parent's wishes and the contravention of the traditional presumption that a fit parent will act in the best interests of a child.

⁶⁴⁹ "If a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest, I should have little doubt that the State would have intruded impermissibly on 'the private realm of family life which the state cannot enter.'" *Smith v. Organization of Foster Families*, 431 U.S. 816, 862-63 (1977) (Justice Stewart concurring), *cited with approval in* *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

⁶⁵⁰ *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) (plurality opinion). The fifth vote, decisive to the invalidity of the ordinance, was on other grounds. *Id.* at 513.

⁶⁵¹ *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977). As the Court noted, the rights of a natural family arise independently of statutory law, whereas the ties that develop between a foster parent and a foster child arise as a result of State-ordered arrangement. As these latter liberty interests arise from positive law, they are subject to the limited expectations and entitlements provided under those laws. Further, in some cases, such liberty interests may not be recognized without derogation of the substantive liberty interests of the natural parents. Although *Smith* does not define the nature of the interest of foster parents, it would appear to be quite limited and attenuated. *Id.* at 842-47. In a conflict between natural and foster families, a court is likely to defer to a typical state process which makes such decisions based on the best interests of the child. See *Quilloin v. Walcott*, 434 U.S. 246 (1978).

⁶⁵² *Michael H. v. Gerald D.*, 491 U.S. 110 (1989). There was no opinion of the Court. A majority of Justices (Brennan, Marshall, Blackmun, Stevens, White) was willing to recognize that the biological father has a liberty interest in a relationship with his child, but Justice Stevens voted with the plurality (Scalia, Rehnquist, O'Connor, Kennedy) because he believed that the statute at issue adequately

protected that interest.

⁶⁵³ The clearest conflict to date was presented by state law giving a veto to parents over their minor children's right to have an abortion. *Planned Parenthood v. Danforth*, [428 U.S. 52](#) (1976); *Planned Parenthood v. Casey*, [503 U.S. 833](#) (1992). See also *Parham v. J. R.*, [442 U.S. 584](#) (1979) (parental role in commitment of child for treatment of mental illness).

⁶⁵⁴ [530 U.S. 57](#) (2000).

⁶⁵⁵ [530 U.S.](#) at 66.

Pages: [23](#) [24](#) [25](#) [26](#) [27](#) [28](#) [29](#) [30](#) [31](#) [32](#) [33](#) [34](#) [35](#) [36](#) [37](#) [38](#) [39](#) [40](#) [41](#) [42](#) [43](#)



Find a Lawyer



Elliot Conn

Consumer Law
San Francisco, CA



Michael J. Mandelbrot

Military Law, Personal Injury, Products Liability, Asbestos & Mesothelioma
Novato, CA



Sarah Van Voorhis

Divorce, Family Law
San Francisco, CA



Mark F. Anderson

Consumer Law
San Francisco, CA



Louis Randolph Harris

Business Law, Tax Law, Real Estate Law
San Francisco, CA

Lawyers - Get Listed Now!

Get a free directory profile listing

Ask a Lawyer

Question:

Add details

120

Ask Question

Subscribe to Justia's **Free Newsletters** featuring summaries of federal and state court opinions.

**SUBSCRIBE
NOW**

Justia Legal Resources

FIND A LAWYER

Bankruptcy Lawyers
Business Lawyers
Criminal Lawyers
Employment Lawyers
Estate Planning Lawyers
Family Lawyers

INDIVIDUALS

Bankruptcy
Criminal
Divorce
DUI
Estate Planning
Family Law

Personal Injury Lawyers
More...

BUSINESS

Business Formation
Business Operations
Employment
Intellectual Property
International Trade
Real Estate
Tax Law
More...

US FEDERAL LAW

US Constitution
US Code
Regulations
Supreme Court
Circuit Courts
District Courts
Dockets & Filings
More...

OTHER DATABASES

Legal Blogs
Legal Forms
GAO Reports
Product Recalls
Patents
Trademarks
Countries
More...

Personal Injury
More...

LAW STUDENTS

Law Schools
Admissions
Financial Aid
Course Outlines
Law Journals
Blogs
Employment
More...

US STATE LAW

State Constitutions
State Codes
State Case Law
California
Florida
New York
Texas
More...

LEGAL MARKETING

Websites
Blogs
Content
Social Media
Local Marketing
Paid Ads (CPC/PPC)
Lawyer Directory
More...

© 2015 Justia

[Company](#) [Terms of Service](#) [Privacy Policy](#) [Contact Us](#)