H. R. 1946

To protect the fundamental right of a parent to direct the upbringing of a child, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 1995

Mr. Largent (for himself, Mr. Parker, Mr. Allard, Mr. Baker of Louisiana, Mr. Bartlett of Maryland, Mr. Barr, Mr. Barton of Texas, Mr. Bryant of Tennessee, Mr. Calvert, Mr. Chambliss, Mrs. Chenoweth, Mr. Christensen, Mr. Chrysler, Mr. Clement, Mr. Coburn, Mr. Combest, Mr. Cooley, Mr. Crane, Mr. Crapo, Mr. Delay, Mr. Dickey, Mr. Doolittle, Mr. Dornan, Mr. Duncan, Mr. Emerson, Mr. Forbes, Mr. Fox of Pennsylvania, Mr. Goodlatte, Mr. Graham, Mr. Hastert, Mr. Hastings of Washington, Mr. Hayworth, Mr. Hefley, Mr. Hilleary, Mr. Hostettler, Mr. Hutchinson, Mr. Inglis of South Carolina, Mr. Knollenberg, Mr. Lewis of Kentucky, Mr. Metcalf, Mr. Montgomery, Mrs. Myrick, Mr. Neumann, Mr. Petri, Mr. Porter, Mr. Quillen, Mr. Rahall, Mr. Roberts, Mr. Salmon, Mrs. Seastrand, Mr. Sensenbrenner, Mr. Shadegg, Mrs. Smith of Washington, Mr. Solomon, Mr. Stearns, Mr. Stockman, Mr. Stump, Mr. Tate, Mr. Tauzin, Mr. Taylor of North Carolina, Mr. Tiahrt, Mr. Thornberry, Mrs. Vucanovich, Mr. Wamp, Mr. Watts of Oklahoma, Mr. Weller, Mr. Wicker, and Mr. Young of Alaska) introduced the following bill; which was referred to the Committee on the Judiciary.

A BILL

To protect the fundamental right of a parent to direct the upbringing of a child, and for other purposes.

1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.
This Act may be cited as the “Parental Rights and Responsibilities Act of 1995”.

SEC. 2. FINDINGS AND PURPOSES.
(a) FINDINGS.—Congress finds that—

(1) the Supreme Court has regarded the right of parents to direct the upbringing of their children as a fundamental right implicit in the concept of ordered liberty within the 14th amendment to the Constitution of the United States, as specified in Meyer v. Nebraska, 262 U.S. 390 (1923) and Pierce v. Society of Sisters, 268 U.S. 510 (1925);

(2) the role of parents in the raising and rearing of their children is of inestimable value and deserving of both praise and protection by all levels of government;

(3) the tradition of western civilization recognizes that parents have the responsibility to love, nurture, train, and protect their children;

(4) some decisions of Federal and State courts have treated the right of parents not as a fundamental right but as a nonfundamental right, resulting in an improper standard of judicial review being applied to government conduct that adversely affects parental rights and prerogatives;
(5) parents face increasing intrusions into their legitimate decisions and prerogatives by government agencies in situations that do not involve traditional understandings of abuse or neglect but simply are a conflict of parenting philosophies;

(6) governments should not interfere in the decisions and actions of parents without compelling justification; and

(7) the traditional 4-step process used by courts to evaluate cases concerning the right of parents described in paragraph (1) appropriately balances the interests of parents, children, and government.

(b) PURPOSES.—The purposes of this Act are—

(1) to protect the right of parents to direct the upbringing of their children as a fundamental right;

(2) to protect children from abuse and neglect as the terms have been traditionally defined and applied in statutory law, such protection being a compelling government interest;

(3) while protecting the rights of parents, to acknowledge that the rights involve responsibilities and specifically that parents have the responsibility to see that their children are educated, for the purposes of literacy and self-sufficiency, as specified by the
Supreme Court in Wisconsin v. Yoder, 406 U.S. 205 (1972);

(4) to preserve the common law tradition that allows parental choices to prevail in a health care decision for a child unless, by neglect or refusal, the parental decision will result in danger to the child’s life or result in serious physical injury of the child;

(5) to fix a standard of judicial review for parental rights, leaving to the courts the application of the rights in particular cases based on the facts of the cases and law as applied to the facts; and

(6) to reestablish a 4-step process to evaluate cases concerning the right of parents described in paragraph (1) that—

(A) requires a parent to initially demonstrate that—

(i) the action in question arises from the right of the parent to direct the upbringing of a child; and

(ii) a government has interfered with or usurped the right; and

(B) shifts the burdens of production and persuasion to the government to demonstrate that—
(i) the interference or usurpation is essential to accomplish a compelling governmental interest; and
(ii) the method of intervention or usurpation used by the government is the least restrictive means of accomplishing the compelling interest.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) APPROPRIATE EVIDENCE.—The term “appropriate evidence” means—

(A) for a case in which a government seeks a temporary or preliminary action or order, except cases which terminate parental custody or visitation, evidence that demonstrates probable cause; and

(B) for a case in which the government seeks a final action or order, or in which it seeks to terminate parental custody or visitation, clear and convincing evidence.

(2) CHILD.—The term “child” has the meaning provided by State law.

(3) PARENT.—The term “parent” has the meaning provided by State law.
(4) RIGHT OF A PARENT TO DIRECT THE UPBRINGING OF A CHILD.—

(A) IN GENERAL.—The term “right of a parent to direct the upbringing of a child” includes, but is not limited to a right of a parent regarding—

(i) directing or providing for the education of the child;

(ii) making a health care decision for the child, except as provided in subparagraph (B);

(iii) disciplining the child, including reasonable corporal discipline, except as provided in subparagraph (C); and

(iv) directing or providing for the religious teaching of the child.

(B) NO APPLICATION TO PARENTAL DECISIONS ON HEALTH CARE.—The term “right of a parent to direct the upbringing of a child” shall not include a right of a parent to make a decision on health care for the child that, by neglect or refusal, will result in danger to the life of the child or in serious physical injury to the child.
(C) **NO APPLICATION TO ABUSE AND NEGLECT.**—The term "right of a parent to direct the upbringing of a child" shall not include a right of a parent to act or refrain from acting in a manner that constitutes abuse or neglect of a child, as the terms have traditionally been defined.

(5) **STATE.**—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States.

**SEC. 4. PROHIBITION ON INTERFERING WITH OR USURPING RIGHTS OF PARENTS.**

No Federal, State, or local government, or any official of such a government acting under color of law, shall interfere with or usurp the right of a parent to direct the upbringing of the child of the parent.

**SEC. 5. STRICT SCRUTINY.**

No exception to section 4 shall be permitted, unless the government or official is able to demonstrate, by appropriate evidence, that the interference or usurpation is essential to accomplish a compelling governmental interest and is narrowly drawn or applied in a manner that is the least restrictive means of accomplishing the compelling interest.
SEC. 6. CLAIM OR DEFENSE.

Any parent may raise a violation of this Act in an action in a Federal or State court, or before an administrative tribunal, of appropriate jurisdiction as a claim or a defense.

SEC. 7. DOMESTIC RELATIONS CASES AND DISPUTES BETWEEN PARENTS.

This Act shall not apply to—

(1) domestic relations cases concerning the appointment of parental rights between parents in custody disputes; or

(2) any other dispute between parents.

SEC. 8. ATTORNEY'S FEES.

Subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988 (b) and (c)) (concerning the award of attorney's and expert fees) shall apply to cases brought or defended under this Act. A person who uses this Act to defend against a suit by a government described in section 4 shall be construed to be the plaintiff for the purposes of the application of such subsections.