

THE SENATE OF THE STATE OF TEXAS



SENATOR JANE NELSON

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OPINION COMMITTEE

P.O. BOX 12088
CAPITOL BUILDING
AUSTIN, TEXAS 78711
612/463-0109
FAX: 612/463-0923
TDD: 1-800-735-2989

DISTRICT OFFICE
900 PARKER SQUARE, SUITE 200
FLOWER MOUND, TEXAS 75028
972/724-0088
FAX 972/724-0750

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Attorney General John Cornyn
209 West 14th Street
Austin, TX 78701

RQ-0205-9c

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Committee:
HEALTH SERVICES, CHAIR
CRIMINAL JUSTICE
EDUCATION
SUBCOMMITTEE ON HIGHER EDUCATION
SPECIAL COMMITTEE ON
ELECTRIC UTILITY RESTRUCTURING

Dear Attorney General Cornyn:

As the Chairman of the committee which oversees numerous state agencies dealing with children and their parents, I would like to have your clarification, guidance, and explanation of whether the rights to direct the upbringing and education of one's children are fundamental rights in Texas, and how those rights should be interpreted by state agencies and other Texas officials.

The Texas Legislature has passed two statutes recently which expressly and affirmatively declare that the rights of parents to direct the upbringing and education of their children are fundamental rights in Texas. (Texas Family Code Act of May 26, 1997, HB 425, §3, 75th Legislature; TEX. HUM. RES. CODE ANN. §40.001 (Vernon 1997)). Both are enclosed for your convenience, as Exhibit A and Exhibit B, respectively. I believe that this "fundamental right" is a term of art, and state agencies are required to follow the compelling governmental interest analysis in determining whether their actions violate the fundamental right of parents.

As you know, the Supreme Court of the United States has determined that parents have a fundamental right to direct the upbringing of their children. (*Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)). Since these are the cases that have created the term "fundamental right," I believe that state agencies are also required to adopt the compelling governmental interest analysis in determining whether their actions violate parents' rights. This is the same analysis that the legislature adopted in this past session in enacting the Texas Religious Freedom Restoration Act.

Under the compelling governmental interest analysis, a governmental entity or agency may only restrict parental rights when it serves a compelling governmental interest and is the least restrictive means available. I believe this is the standard that should be followed by all Texas officials based on these two declarations by the legislature.

Please issue an advisory opinion notifying this committee whether state agencies must follow the compelling governmental interest analysis when dealing with the fundamental right of parents to direct the upbringing of their children.

If you have any questions or comments, please feel free to contact my office. Thank you for your time, and I look forward to hearing from you.

Very truly yours,


Senator Jane Nelson
enclosures