



Constitutional Right of Parental Liberty endangered by Florida Supreme Court decision

The Fourteenth Amendment of the United States Constitution guarantees parents the right to “establish a home and bring up children,”¹ and “this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.”²

The Florida Constitution’s explicit guarantee to privacy³ goes even further, ensuring that “parents have a constitutional right of privacy to raise their children as they see fit short of the existence of a compelling state interest to justify the violation of a parent’s fundamental right to raise his or her child.”⁴ The Florida Supreme Court has previously held that this right “encompasses decisions on the activities appropriate for their children, whether they be academically or socially focused pursuits, physically rigorous activities, adventure sports, or an adventure vacation.”⁵

In December, the Florida Supreme Court⁶ stripped parents of the ability to sign waivers for their children to participate in activities such as field trips, youth sports, and amusement park rides in the case of *Kirton v. Fields*. However, the decision was devoid of any compelling interest of the state. Instead, the Court used the doctrine of *parens patriae*⁷ to justify its decision, even though this theory has never been applied outside of juvenile delinquency/dependency proceedings and child custody/support cases.

The Court’s decision represents a divergence from other laws in Florida that allow parents to consent to a panoply of activities and risks for their children, such as:

- A parent’s ability to allow a minor to purchase, receive, possess and use weapons, including firearms—sections 790.17 and 790.22, F.S.
- A parent’s ability to give a talent agency permission to have a minor pose in the nude—section 468.12, F.S.

¹ *Meyer v. Nebraska*, 262 U.S. 390 at 399 (1923).

² *Id.*

³ Florida Constitution Article I Section 23.

⁴ *Forbes v. Chapin*, 917 So.2d 948, 952 (Fla. 4th DCA 2005).

⁵ *Global Travel Marketing, Inc. v. Shea*, 908 So.2d 392, 404 (Fla. 2005).

⁶ *Kirton v. Fields*, 2008 WL 5170603 (Fla. 2008).

⁷ *Id.* at 3 (Meaning the state’s power to restrict the parent’s control in certain circumstances).

- A parent’s right to withhold or grant consent to his/her child undergoing an abortion procedure—section 390.01114, F.S.
- A parent’s ability to allow a minor to receive a tattoo—section 877.04, F.S.
- A parent’s ability to allow a minor to receive body piercing—section 381.0075, F.S.
- A parent’s ability to allow a child to utilize a tanning salon facility—section 381.89, F.S.
- A parent’s ability to bring a child to pari-mutuel facilities—section 550.0425, F.S.
- A parent’s ability to allow the exhibition of motion pictures, exhibits, shows, representations, or other presentations, which depict nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse in front of his/her child—section 847.013, F.S.
- A parent’s ability to allow a 16-year-old to opt out of school attendance—section 1003.21, F.S.
- A parent’s ability to allow a 16-year-old to marry—section 741.0405, F.S.
- A parent’s ability to grant permission for use of a minor’s name, portrait, photo, or likeness for commercial purposes—section 540.08, F.S.
- A parent’s ability to give consent for a minor to apply for a Florida driver’s license—section 322.09, F.S.

Thus, after the recent Supreme Court decision, parents currently have the right to allow their children to undergo abortions or be photographed in the nude, yet are forbidden from releasing a service provider from liability so that a child can ride a roller coaster or participate in club soccer.

Dissenting from the majority’s decision in *Kirton*, Justice Wells pointed out the inherent flaws in the Court’s decision, warning that many groups and service providers will not be able to insure against the risks that will flow from the unenforceability of these waivers, and it will “likely force small-scale activity providers out of business.”⁸

Not only does the Court’s decision realize the fears of Justice Wells, but it also infringes on the constitutional rights of parents under both the United States Constitution and the Florida Constitution. The *Kirton* decision now forces the Legislature to render its own decision and either endorse or reject the reasoning of the Court, to the detriment or benefit of the freedom of children and parents to determine what is best for their families.

⁸ *Id.* at 12.