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In Support of S.B. 996, The Parental Rights Protection Act

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Chair Argall, Minority Chair Street, Senators of the State Government Committee, thank you for your time this morning. I speak in support of S.B. 996, the Parental Rights Protection Act.

S.B. 996 is a commonsense bill that is premised on almost 100 years of U.S. Supreme Court precedent. S.B. 996 recognizes that parents are a child's first, best, and strongest protection, and that the best way to protect children is by empowering parents.

S.B. 996 codifies that parental rights are a fundamental right, the highest right recognized in our nation's legal structure.

The U.S. Supreme Court has long recognized that parental rights are a fundamental right. *See, e.g., Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Troxel v. Granville*, 530 U.S. 57 (2000).

Pennsylvania's Supreme Court has also recognized that parental rights are a fundamental right, stating just last year in *In re Adoption of C.M.*, 255 A.3d 343, 358 (Pa. 2021) that "[a] parent's right to make decisions concerning the care, custody, and control of his or her children is among the oldest of fundamental rights." *See also, e.g., In re D.C.D.*, 105 A.3d 662 (Pa. 2014); *Hiller v. Fausey*, 904 A.2d 875 (Pa. 2004).

Passage of S.B. 996 would make Pennsylvania the 16th state in the nation to codify parental rights as a fundamental right in state law. The 15 states that have already done this are WV prior to 1931, Kansas and Michigan in 1996, Texas in 1999, Utah in 2000, Colorado in 2003, Arizona in 2010, Nevada and Virginia in 2013, Oklahoma in 2014, Idaho in 2015, Wyoming in 2017, Florida and Montana in 2021, and Georgia just this year.¹

¹ West Virginia (W. Va. Code § 44-10-7, as extended by *In re Willis*, 157 W.Va. 225, 207 S.E.2d 129 (WV 1973); *see also* W. Va. Code § 49-1-1(a) and W. Va. Code § 49-6D-2(a)); Kansas (Kan. Stat. Ann. § 38-141(2)(b)); *see also* Kan. Stat. Ann. § 60-5305(a)(1)); Michigan (Mich. Comp. Laws § 380.10); Texas (Texas Family Code § 151.003);

In these 15 states that specify in state code that parental rights are fundamental, abuse of children and neglect of children are still prosecuted. Parental rights are still terminated when the government shows that it has a compelling state interest to do so and there is no less restrictive means to protect the best interests of the child. Indeed, the U.S. Supreme Court has long made it clear that state interference with fundamental parental childrearing rights is justified in limited instances to protect the health, safety, and welfare of children. For example, in *Prince v. Massachusetts*, 321 U.S. 158 (1944), the U.S. Supreme Court said "...the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare...". *Id.* at 167.

In these 15 states that specify in state code that parental rights are fundamental, parents are not allowed to disrupt teachers during the school day. The public schools are still strong.

And in these 15 states that specify in state code that parental rights are a fundamental right, laws governing the education of children at home, compulsory attendance laws, and other common sense laws governing the parent-child relationship exist as they did prior to the passage of the fundamental parental rights legislation.

If S.B. 996 is enacted into Pennsylvania law, it will provide parents with the highest level of legal protection. It will codify in Pennsylvania law that parents have the fundamental right to raise their children, educate their children, care for their children, make medical decisions for their children, and raise their children, while still allowing the Pennsylvania government to protect children when necessary, and to still provide public education. The Legislature is charged with protecting the rights of the people, so this belongs in the Pennsylvania Code.

So, what is a fundamental right? Let's start 99 years ago, with the U.S. Supreme Court's 1923 decision in *Meyer v. Nebraska*. The U.S. Supreme Court stated "[T]he individual has certain fundamental rights which must be respected." And then speaking about the U.S. Constitution's 14th Amendment's Due Process Clause, the U.S. Supreme Court continued "Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

Utah (Utah Code Ann. § 62A-4a-201; *see also* Utah Code Ann. § 30-5a-103); Colorado (Colo. Rev. Stat. § 13-22-107(1)(a)(III)); Arizona (Ariz. Rev. Stat. § 1-601); Nevada (Nevada Rev. Stat. Ann. § 126.036); Virginia (Va. Code Ann. § 1-240.1); Oklahoma (Okla. Stat. tit. 25, § 2001—2005); Idaho (Idaho Code § 32-1012 – 1013); Wyoming (Wyo. Stat. Ann. § 14-2-206); Florida (Fla. Stat. § 1014.03); Montana (Mont. Code Ann. § 40-6-701); Georgia (Ga. Code Ann. § 20-2-786).

Two years later, in 1925, the U.S. Supreme Court made this clearer in *Pierce v. Society of Sisters*: “The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The 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.”

In 1972, the U.S. Supreme Court held in *Wisconsin v. Yoder*: “[T]his case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. 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.”

In 2000, the U.S. Supreme Court held in *Troxel v. Granville*: “The liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court.” The U.S. Supreme Court then spent several paragraphs discussing all the cases establishing parental rights as a fundamental right, and concluded, “In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”

S.B. 996 is a commonsense bill that protects the fundamental, Constitutional rights of all parents in Pennsylvania, rich and poor, Black and white, urban and rural, gay and straight, Republican and Democrat. I urge that it be passed into law in the Commonwealth of Pennsylvania.