

## The Constitutional Framework of Parents' Rights

Abuse, Neglect, Dependency, &  
Termination of Parental Rights  
November 2014

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... nor shall any state deprive any person of life,  
liberty, or property, without due process of  
law...

NC Const. Art. I, Sec. 19

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### What Does That Mean?

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

"[w]ithout doubt" the fourteenth amendment  
"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."

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### What Does it Mean for Parents

- Care
- Custody
- Control
- Companionship

*Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) "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."

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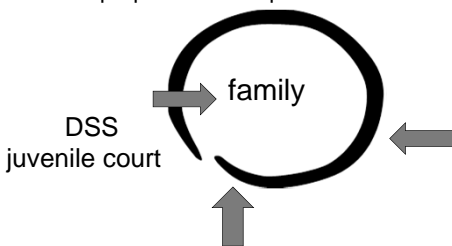
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### State Action Affecting Constitutional Rights

When and how may the state intervene in families for the purpose of child protection?



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### When Can the State Interfere?

- Government's compelling interest (protection of children)
- Whether statute is narrowly tailored to meet government's objectives;
- Whether there are less restrictive means of accomplishing the same goal.

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### The Fourteenth Amendment

The state may interfere with the parent-child relationship only when the parent is unfit OR has acted inconsistently with their constitutionally protected interest.

*Lehr. V. Robertson*, 463 U.S. 248 (1983)

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### North Carolina Cases

- *Petersen v. Rogers*, 337 N.C. 397 (1994)

Absent a finding that parents are **unfit or have neglected the welfare of their children**, the constitutionally-protected paramount right of parents to custody, care and control of their children must prevail.”

- *Price v. Howard* 346 N.C. 68 (1997)

The state may interfere with the parent-child relationship only when the parent is **unfit OR has acted inconsistently with the parent’s constitutionally protected interest**.

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### What is Unfit?

“[A] natural parent has forfeited his or her constitutionally protected status [upon a] finding of any one of the grounds in N.C.G.S. § 7B-1111.”

*Owenby v. Young* , 357 N.C. 142 (2003)

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**Determining:  
Inconsistent with Protected Status**

- Question of Law
- Must be viewed cumulatively
- Case by case basis

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- "Unfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status parents may enjoy." Price v. Rogers
- "Here, the children have been adjudicated dependent and neglected by their parents... and their legal custody now resides with DSS. The children have been removed from their home and placed in foster care because their parents failed to provide adequate shelter, clothing, food, medical care and formal education. By their failure to provide basic necessities for their children, appellants have acted in a manner inconsistent with their constitutionally protected parental relationship." In re Stratton, 153 N.C. App. 428 (2002)

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**Dependency?**

- "A finding that defendant's children had been adjudicated dependent in an earlier proceeding is not alone sufficient to establish that defendant has acted in a manner inconsistent with her parental status."

Rodriguez v. Rodriguez, 211 N.C. App. 267, 278, 710 S.E.2d 235, 243 (2011)

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Do the Parent's Actions have to be

## "BAD"

- No!
- "...the focus is not on whether the conduct consists of "good acts" or "bad acts." Rather, the gravamen of "inconsistent acts" is the volitional acts of the legal parent that relinquish otherwise exclusive parental authority to a third party."

Mason v. Dwinell, 190 N.C. App. 209, 228, 660 S.E.2d 58, 70 (2008)

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## "Good Acts"

- Voluntary Relinquishment of Custody
- Creation of Parent-Like Relationship with a Non-Biological Person

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## What About Putative Fathers

Look to:

7B-1111(a)(5)

48-3-601(2)b.

48-3-603(a)

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Actions of Co-Respondent  
What if he or she is non-removal  
parent?

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Burden of Proof

Clear and convincing

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**What about  
Procedural Due Process?**

- Appropriate Standard of Proof
- Right to Receive Notice of Proceedings
- Right to Participate in Hearings

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### Avoiding Reversals and Remands

- Find both parents early in the case.
- Make findings about the actions of each parent in the adjudication order
- Address each parent's rights and responsibilities at disposition
- Don't use best interest standard without sufficient findings
- Ensure notice to both parents throughout the case

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