

# A Parent's Constitutional Right to Custody

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## Best Interest

- ▶ "The paramount consideration and *polar star*, which have long governed and guided the discretion of our trial judges in [custody disputes], are the welfare and needs of the child, not the persons seeking his or her custody, and even parental love must yield to the promotion of this higher interest."
  - *In re: Peal*, 305 NC 640 (1982)

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## Best Interest

- ▶ "The primary concern of the trial court in awarding custody is not the rights of the parent(s) but the best interest of the child."
  - *Best v. Best*, 81 NC App 337 (1986)

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## Best Interest

- ▶ “[A] order for custody ... shall award the custody of such child to such person, agency or organization or institution as will best promote the interest and welfare of the child.”
  - GS 50-13.2(a)

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## *Petersen v. Rogers* (1994)

- ▶ Parents have significant constitutional protections against custody claims brought by third parties
- ▶ “The integrity of the family unit is protected by the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment.”

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## *Petersen*

- ▶ “As long as a parent is fit, the interest of the State in caring for children is *de minimus*.”
  - *Stanley v. Illinois*, 405 US 645 (1972)

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**Petersen**

▶ “The best interest of the child ... is a proper ... criterion for making the decision as to which of two parents will be accorded custody. But it is not ... the sole constitutional criterion for other ... judgments involving children, ... where their interests conflict ... with the interests of others.”

◦ *Reno v. Flores*, 507 US 272 (1993)

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**Petersen**

▶ “The best interest of the child is not the standard that governs parents’ ... exercise of their custody. So long as certain minimum requirements of child care are met, the interests of the child may be subordinated to the interests of other[s] ...”, including to the rights of the parents.

◦ *Reno v. Flores*, 507 US 272 (1993)

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**Petersen v. Rogers (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.”



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### *Petersen v. Rogers* (1994)

- ▶ “Parents with lawful custody of a child have the prerogative of determining with whom their children associate.”



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### Nothing new .....

- ▶ “the rights to conceive and to raise one’s children have been deemed ‘essential,’ ‘basic civil rights of man,’ ‘far more precious than ... property rights.’
  - *Petersen*
- ▶ This paramount interest “is perhaps the oldest fundamental liberty interest” recognized by the US Supreme Court
  - *Troxel v. Granville*, 530 US 57 (2000)

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### *Price v. Howard* (1997)

- ▶ Parents have a ***fundamental liberty interest*** in the care, custody and control of their children
  - Substantive Due Process issue
    - *Accord Troxel v. Granville*, 530 US 57 (2000)



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*Owenby v. Young*

- ▶ “The Due Process Clause of the Fourteenth Amendment ensures that the government does not impermissibly infringe upon a parent’s paramount right to custody *solely to obtain a better result for the child.*”
  - 357 NC 142 (2003)

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*Troxel v. Granville*

- ▶ “So long as a fit parent adequately cares for his or her children, there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.”

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*Troxel v. Granville*

- ▶ The Due Process Clause prohibits the State from overriding a parent’s determination of best interests based solely on the premise that a judge can make a “better decision” than the parent

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*Price v. Howard* (1997)

- ▶ When parents enjoy constitutionally-protected status, “application of the ‘best interest of the child standard’ in a custody dispute with a non-parent would offend the Due Process Clause.”

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*Price v. Howard* (1997)

- ▶ “A parent’s due process interest in the companionship, custody, care and control of a child is not absolute.”

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*Price v. Howard*

- ▶ Parent’s protected interest “is a counterpart of the parental responsibilities the parent has assumed and is based on a presumption that he or she will act in the best interest of the child.”



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### Price v. Howard

- ▶ “Therefore, the parent may no longer enjoy a paramount status if his or her conduct is inconsistent with this presumption or if he or she fails to shoulder the responsibilities that are attendant to raising a child.”



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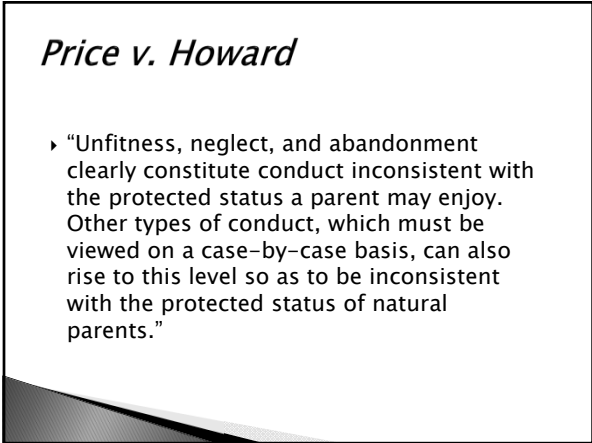
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### Price v. Howard

- ▶ “Unfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status a parent may enjoy. Other types of conduct, which must be viewed on a case-by-case basis, can also rise to this level so as to be inconsistent with the protected status of natural parents.”



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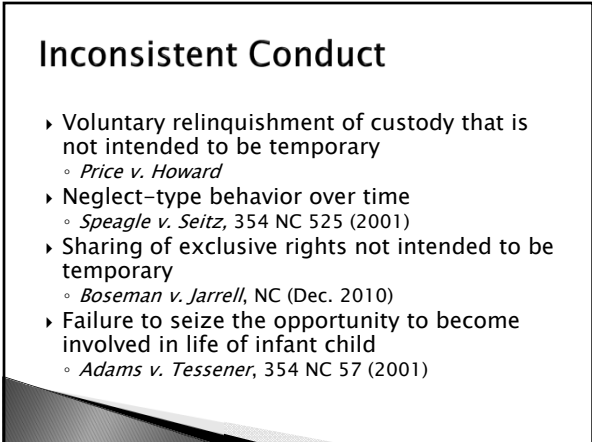
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### Inconsistent Conduct

- ▶ Voluntary relinquishment of custody that is not intended to be temporary
  - Price v. Howard
- ▶ Neglect-type behavior over time
  - Speagle v. Seitz, 354 NC 525 (2001)
- ▶ Sharing of exclusive rights not intended to be temporary
  - Boseman v. Jarrell, NC (Dec. 2010)
- ▶ Failure to seize the opportunity to become involved in life of infant child
  - Adams v. Tessener, 354 NC 57 (2001)



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