

KEEPING VERMONT'S PUBLIC LIBRARIES SAFE: WHEN PARENTS' RIGHTS MAY PREEMPT THEIR CHILDREN'S RIGHTS

"The central struggle of parenthood is to let our hopes for our children outweigh our fears."¹

"My mother had a great deal of trouble with me, but I think she enjoyed it."²

INTRODUCTION

Good parents work hard to raise their children with integrity and common sense. They give their children room to grow and develop their self-identity, knowledge, and desires. Over time, this parent-child relationship changes as the children reach adolescence.³ Children seek privacy and opportunities for self-expression, experiencing the risks that accompany these opportunities—and generally disregarding all of their common sense.⁴ As a result, the parent-child relationship treads uncharted waters and experiences both gentle and stormy seas. Yet for the rest of their life, parents care deeply about maintaining the capability to ensure their children's basic welfare.

As mentioned above, adolescent children sometimes make choices that put their welfare at great risk. To illustrate, consider this hypothetical. A 16-year-old girl, Caroline, maintains a fair relationship with her parents. She begins to act abnormally and responds negatively when her parents offer their help. Caroline's parents understandably give her space to solve the problem, but they contact her school to ensure nothing serious occurred. However, Caroline's condition worsens, and her parents become concerned. They contact her friends' parents without luck. They offer their help to her again but receive no response. They contact the public library that she visits and request her library records to ensure that she explored the Internet without

1. Jone Johnson Lewis, Ellen Goodman Quotes, http://womenshistory.about.com/od/quotes/a/ellen_goodman.htm (last visited Feb. 6, 2010).

2. Thinkexist.com, Mark Twain Quotes, http://thinkexist.com/quotation/my_mother_had_a_great_deal_of_trouble_with_me-but/14166.html (last visited Feb. 6, 2010).

3. See Shelley Burt, *The Proper Scope of Parental Authority: Why We Don't Owe Children an "Open Future,"* in CHILD, FAMILY, AND STATE 243, 260–61 (Stephen Macedo & Iris Marion Young eds., 2003) (discussing the complex needs that maturing children should receive from their parents as they pass through adolescence).

4. Martin R. Gardner, *Student Privacy in the Wake of T.L.O.: An Appeal for an Individualized Suspicion Requirement for Valid Searches and Seizures in the Schools*, 22 GA. L. REV. 897, 901–02 (1988) (describing an adolescent child's desire to seek privacy). See generally FERRIS BUELLER'S DAY OFF (Paramount Pictures 1986) (illustrating the lack of common sense adolescents sometimes exude).

harmful effect.⁵ They courteously ask Caroline's friends if there is a problem. Eventually, the parents discover Caroline likes a schoolmate and cannot develop the relationship. Thankfully, the parents' concern was unfounded; and importantly, the state provided the parents with supportive, neutral laws that allowed them to obtain her public library records to ensure her welfare.

In Vermont, the parents in the above hypothetical have no legal right to request their child's public library Internet records because the child is 16-years-old.⁶ This Note addresses this important state issue and argues that Vermont's Confidentiality of Library Patron Records Act (CLPRA)⁷ should be amended to better enable parents to ensure their children's welfare. First, this Note explores the rights of parents to control the upbringing of their children and the independent rights of their children.⁸ Second, this Note offers a legal model for determining when, through state action, parents' rights may preempt their children's independent rights.⁹ Finally, this Note applies its offered legal model to the present issue and argues that the Vermont State Legislature should amend the CLPRA age limit for minors from 16- to 18-years-old so parents have legal authority to obtain their children's public library records exclusively dealing with the Internet.

Part I explores the rights of parents to control the upbringing of their children and the independent rights of those children.¹⁰ This Part analyzes the societal values and benefits derived from parents and children exercising their independent rights. This Part also studies how the CLPRA affects these rights.

Part II offers a model of analysis for resolving legal conflicts arising between the rights of parents to control the upbringing of their children and the

5. Vermont state law does not require public libraries to install Internet blocking software. WESTLAW.COM, 50 STATE STATUTORY SURVEYS: INTERNET FILTERING, BLOCKING, AND USAGE IN SCHOOLS AND LIBRARIES (2009), <http://www.lawschool.westlaw.com> [hereinafter INTERNET FILTERING SURVEY].

6. See VT. STAT. ANN. tit. 22, § 172(b)(3)-(4) (2009) (mandating that parents may not obtain their children's public library records, unless the children are under 16 years of age or the court orders disclosure).

7. *Id.* §§ 171-173 (2009). The CLPRA broadly defines the term "[p]atron transaction records" to include "information that discloses an individual's activities within a library[.]" *Id.* § 171(3). Where parents do obtain access to their child's records, this provision allows the disclosure of both printed and electronic materials, including Internet records. *Id.*

8. See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (protecting parents' freedom to raise their children); *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976) (protecting children's right to an abortion without parental consent).

9. See Ferdinand Schoeman, *Adolescent Confidentiality and Family Privacy*, in PERSON TO PERSON 213, 219 (George Graham & Hugh Lafollette eds., 1989) (arguing that state actions may preempt children's independent rights in support of the parents' rights where children's basic welfare is at issue).

10. This Note focuses primarily on the rights of adolescent children between ages 12 and 17.

independent rights of their children. The offered model addresses state actions that are based on the state's police power to enforce the parents' authority over the conflicting independent rights of children. Under this model, such actions are valid only if "deemed requisite to protect the child's welfare[.]"¹¹ and the state action does not impose a duty on the government to act.

Part III applies the offered model to the current CLPRA and argues for amending the statute's age requirement for disclosure of children's public library Internet records from 16 to 18 years of age. This Part argues that the amended CLPRA would be a valid exercise of the state's police powers to enforce the parents' authority over their children's conflicting rights. In short, this amendment would give parents a powerful tool for ensuring the welfare of their children. However, this amendment must be balanced with the unfortunate reality that abusive parents can exploit such an amendment to the CLPRA, and even good parents can undermine their children's trust by spying on their public library Internet records. This Part offers a proposed amendment to the current CLPRA that attempts to address this reality.

I. PARENTS' RIGHTS VERSUS CHILDREN'S INDEPENDENT RIGHTS

The Due Process Clause of the U.S. Constitution protects parents' right to control the upbringing of their children.¹² Aside from this core parental right, children have many of the same rights as adults under the U.S. Constitution, federal statutory law, and state law.¹³ Many of the rights parents and children have stem from society's values and the benefits derived from those values.¹⁴ This Part explores the importance of these rights, which allow children to develop their self-identity and become productive citizens. Furthermore, this Part explores parents' rights to raise their children and provide for their basic welfare. In analyzing these rights, one can begin to see how the current CLPRA and an amended CLPRA may affect them.

A. *The Independent Rights of Children*

Children have independent rights under the U.S. Constitution, federal statutory law, and state law. These rights are similar in scope to those of

11. Schoeman, *supra* note 9, at 219.

12. *Meyer*, 262 U.S. at 399.

13. See *infra* Part I.A (discussing the independent rights of children).

14. See *Moore v. City of E. Cleveland*, 431 U.S. 494, 503-04 (1977) (plurality opinion). "[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." *Id.* (citations omitted).

adults; however, children's rights are tapered to account for their lack of maturity and experience in exercising these rights.¹⁵

1. Children's Constitutional Rights

The U.S. Constitution provides children with many of the same basic fundamental rights as adults. Protecting children's freedom of speech ensures that they will develop self-identity.¹⁶ In other words, children must develop their ideas and opinions through free speech so they can contribute to "robust, and wide-open" debate in society upon entering adulthood.¹⁷

The Court applies the same standard for adults and children in cases where school officials limit free speech to protect school activities. In *Tinker v. Des Moines Independent Community School District*, the Court held that students could not be suspended for wearing black armbands to school in protest of the Vietnam War.¹⁸ The Court held that a student "may express his opinions, even on controversial subjects"¹⁹ unless evidence "might reasonably" indicate "substantial disruption of or material interference with school activities[.]"²⁰ Similarly, the Court applied the same standard to adults protesting near a schoolhouse.²¹

Under the Equal Protection Doctrine, the U.S. Constitution also affords children the same basic protection from invidious discrimination. In *Brown v. Board of Education*, the Court held that school segregation of black and white students was unconstitutional.²² In many other situations, the Court has employed the Equal Protection Clause to protect certain groups of children from discrimination against other groups of children.²³ However,

15. See *Bellotti v. Baird*, 443 U.S. 622, 634 (1979) ("We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.").

16. See C. Thomas Dienes & Annemargaret Connolly, *When Students Speak: Judicial Review in the Academic Marketplace*, 7 YALE L. & POL'Y REV. 343, 352-53 (1989) (discussing the importance of children's right to free speech and its impact on their development into autonomous adults).

17. Developments in the Law—The Constitution and the Family, *The Parent-Child Relationship*, 93 HARV. L. REV. 1350, 1359 (1980) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

18. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513-14 (1969).

19. *Id.* at 513.

20. *Id.* at 514.

21. See *Grayned v. City of Rockford*, 408 U.S. 104, 117 (1972) (applying the *Tinker* standard to uphold the city's ordinance regulating activity near the school).

22. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

23. See, e.g., *Trimble v. Gordon*, 430 U.S. 762, 773-76 (1977) (upholding children's right to intestate succession under the equal protection clause); *Jimenez v. Weinberger*, 417 U.S. 628, 637 (1974) (challenging a statute regarding eligibility of illegitimate children for social security benefits under the equal protection clause); *N.J. Welfare Rights Org. v. Cahill*, 411 U.S. 619, 621 (1973) (per

the Court has not included children among the classifications considered “suspect.”²⁴ Furthermore, the Court has not used the Equal Protection Clause to invalidate laws that distinguish between classes of children and classes of adults.²⁵ In short, the trait of youth is fundamentally different than race because children may not be able to perform in society due to their youth, while race has no bearing on a person’s ability to perform.²⁶ Thus, the Equal Protection Clause protects both children and adults from laws that discriminate based on classifications considered “suspect”; however, laws that discriminate against children based on their age are not considered “suspect” classifications.²⁷

The U.S. Constitution also provides children with procedural due process rights to ensure that they have protection before being deprived of their liberties. *In re Gault* held that juveniles have the procedural due process right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to the privilege against self-incrimination.²⁸ However, in *Parham v. J.R.*, the Court held that a child is not entitled to a hearing prior to being admitted to a mental hospital by his parents.²⁹ The Court ruled that “a state may elect to provide such adversary hearings in situations where it perceives that parents and a child may be at odds, but nothing in the Constitution compels such procedures.”³⁰ The Court acknowledged that the state had a strong interest in avoiding complex procedures that may discourage parents from obtaining treatment for their children.³¹ The Court pointed out that a hearing might “exacerbate whatever tensions already exist between the child and the parents” and prevent the parents from helping the child’s treatment both before and after hospitalization.³² Importantly, *Parham* only restricted the child’s procedural rights for admission, not for prolonged hospitalization.³³ Thus, the Court

curiam) (upholding an equal protection challenge regarding discrimination in welfare assistance to a family with illegitimate children); *Gomez v. Perez*, 409 U.S. 535, 538 (1973) (per curiam) (upholding a challenge to a Texas law requiring a father to provide support to legitimate children only); *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 165 (1972) (finding that posthumous workmen’s compensation that denied benefits to illegitimate children, while providing for legitimate ones, violated the Equal Protection Clause).

24. Developments in the Law—The Constitution and the Family, *supra* note 17, at 1366.

25. *See id.* (explaining that children are not a suspect class because youth is “relevant to a person’s ability to perform or contribute to society in a great many respects”).

26. *Id.*

27. *Id.*

28. *In re Gault*, 387 U.S. 1, 30 (1967).

29. *Parham v. J.R.*, 442 U.S. 584, 607 (1979).

30. *Id.* at 611 n.18.

31. *Id.* at 605.

32. *Id.* at 610.

33. *Id.* at 616.

enforced the parent's authority over the child's conflicting due process rights to ensure the child's welfare.

The U.S. Constitution also provides children with independent rights concerning the subject of family, but, depending on a child's level of maturity, a state may limit those rights for the purpose of ensuring the child's welfare. In *Carey v. Population Services International*, the Court invalidated a state law that prohibited the distribution of non-medical contraceptives to persons under 16-years-old.³⁴ The Court stated the law burdened the right of individuals to use contraceptives if they so desired and served no compelling state interest.³⁵ *Carey* did not issue a majority opinion; however, six justices indicated the unreasonableness of punishing fornication with the risk of pregnancy.³⁶ The Court recognized that the risks, such as STDs or unwanted pregnancy, associated with a child's decision to engage in sexual activity would only further injure the child's welfare if the state law were upheld.

In the abortion context, the Court again balances children's rights with the rights of parents for the basic purpose of ensuring the child's welfare. In *Danforth v. Planned Parenthood of Central Missouri*, the Court held that a blanket parental consent requirement was unconstitutional.³⁷ Again in *Bellotti v. Baird*, the Court struck down a similar state law requiring pregnant minors seeking an abortion to obtain parental consent or judicial approval following parental notification because it unconstitutionally burdened the right of the pregnant minor to get an abortion.³⁸ However, the

34. *Carey v. Population Servs. Int'l*, 431 U.S. 678, 678 (1977).

35. *Id.* at 689–90.

36. *Id.* at 695.

37. *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976). The Court reasoned that there were no significant state interests in a blanket parental consent requirement for minors' abortions. *Id.* The Court held that a third-party cannot have veto power over the physician and his or her patient, regardless of the reason for withholding consent. *Id.* Furthermore, the Court reasoned that requiring parental consent would not strengthen the family unit and parental authority because the parent-child relationship is already in conflict due to the "very existence of the pregnancy." *Id.* at 75. Thus, the independent interests of the parent are "no more weighty than the right of privacy of the competent minor mature enough to have become pregnant." *Id.*

38. *Bellotti v. Baird*, 443 U.S. 622, 651 (1979). The Court reasoned that abortion creates a grave and serious decision for pregnant minors, who are thrust into the decision-making role of an adult. *Id.* at 642. The Court acknowledged the detriment pregnancy can pose to a woman's future education, employment skills, and financial resources, regardless of her age. *Id.* The Court also noted that "abortion may not be the best choice for the minor" based on her family circumstances or her maturity. *Id.* Because of the highly personal and case specific nature of the minor's choice, the Court reasoned that parents cannot have absolute veto power over a competent minor's wishes to have an abortion, and "if the State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained." *Id.* at 643 (citation omitted). The child must demonstrate through this alternative procedure that she is either (1) mature enough and informed enough through discussion with her physician to make the decision

Court in *H.L. v. Matheson* upheld a state law that required a doctor to notify parents that their minor child decided to have an abortion.³⁹ The Court again upheld a state law that one parent must be notified before a minor could have an abortion in *Ohio v. Akron Center for Reproductive Health*.⁴⁰ In these abortion cases, the Court balanced the right of children to make decisions affecting their basic liberties with the rights of parents to control their upbringing by allowing the parents to be involved, or at least aware, of the children's decisions. This balance allows the parent to ensure the child's welfare through support, advice, and understanding, while ultimately allowing the child to exercise her independent right to abortion.

In conclusion, children's rights are determined by balancing the children's ability to become productive and engaging members of society with the parents' and state's interest in ensuring the children's welfare until they become adults. As a result, children receive many of the same rights as adults, including the right to abortion.

2. Children's Federal Statutory Rights

Children also receive rights under federal statutory law designed to ensure their welfare. This subsection illustrates that federal law supports parental authority over children's independent rights by qualifying such rights with parental disclosure and oversight.

Children have strong privacy rights under the Federal Privacy Act of 1974.⁴¹ Parents must have their children's welfare in mind when abridging their children's privacy rights under the Act.⁴² A Michigan federal district court case highlights the tension between a child's right to privacy under the Privacy Act and parents' need to access that information for a child's welfare. *DePlanche v. Califano* held that an unmarried father could not obtain his children's records without their consent or a relevant exception

independently, or (2) the abortion is in her best interest. *Id.* at 643–44.

39. *H.L. v. Matheson*, 450 U.S. 398, 413 (1981).

40. *Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502, 520 (1990).

41. The Federal Privacy Act, 5 U.S.C. § 552a (2006).

42. *Id.* § 552a(h) (stating that “the parent of any minor . . . may act on behalf of the individual”). The Office of Management and Budget (OMB) “prescribe[s] guidelines and regulations for the use of agencies in implementing” the Privacy Act. *Id.* § 552a(v)(1). In describing parental authority pursuant to § 552a(h), OMB Guidelines state that “[t]here is no absolute right of a parent to have access to a record about a child absent a court order or consent.” OMB Guidelines, 40 Fed. Reg. 56,741, 56,742 (Nov. 21, 1975). Further, OMB Guidelines state that section 552a(h) is “discretionary and that individuals who are minors are authorized to exercise the rights given to them by the Privacy Act or, in the alternative, their parents or those acting in loco parentis may exercise them in their behalf.” OMB Guidelines, 40 Fed. Reg. 28,948, 28,970 (July 9, 1975).

under the Privacy Act.⁴³ The father was not married to the mother and was denied visitation rights by decree.⁴⁴ The district court found that the father was requesting personal information on his social security benefits that also contained information about his children's residence.⁴⁵ The father was requesting information about his children and not just about his benefits, so the information requested could not be considered part of his record.⁴⁶ In short, the father was not acting on behalf of his children.⁴⁷

The Privacy Act provides exceptions for parents to obtain their children's information where they act on behalf of the children. Under 5 U.S.C. § 552a(b)(8), parents can obtain their children's records by showing "compelling circumstances affecting the health or safety" of the children.⁴⁸ The Act provides a safeguard for the individual whose records have been disclosed by requiring that notification will be transmitted to the "last known address of such individual."⁴⁹ The Department of Health and Human Services allows parents to act on behalf of a minor "who has been declared incompetent due to physical or mental incapacity or age"⁵⁰ These exceptions within the Act illustrate that parents must act on behalf of their children for the purpose of ensuring their children's welfare to obtain private records.

In addition to the Privacy Act, the Freedom of Information Act (FOIA) also protects children's privacy rights.⁵¹ FOIA requires that "[a]ll agencies of the U.S. Government are required to disclose records upon receiving a written request, except those records that are protected from disclosure pursuant to nine exemptions and three exclusions."⁵² Specifically, "22 [C.F.R. §] 171 codifies the access procedures and guidelines for the availability of Department of State records and information to the public."⁵³ The Department has discretion to disclose children's records to parents on a case-by-case basis determined by the circumstances.⁵⁴ FOIA lays out

43. *DePlanche v. Califano*, 549 F. Supp. 685, 699 (W.D. Mich. 1982).

44. *Id.* at 688.

45. *Id.* at 695.

46. *See* 5 U.S.C. § 552a(a)(4) (defining the term "record" as used in the Federal Privacy Act).

47. *See id.* § 552a(h) (allowing parents or legal guardians to act on behalf of their child only where the child's welfare is at issue).

48. *Id.* § 552a(b)(8).

49. *Id.*

50. 45 C.F.R. § 5b.10 (2009).

51. The Freedom of Information Act, 5 U.S.C. § 552 (2006).

52. U.S. Department of State Freedom of Information Act, <http://www.state.gov/m/a/ips> (last visited Feb. 6, 2010).

53. *Id.*; *see* 22 C.F.R. § 171 (2004) (outlining the law and procedure to obtain records from the Department of State).

54. 22 C.F.R. § 171.32(c)(1) (2004) (showing that the State Department may, in its discretion, disclose such records to the parent to the extent determined by the Department to be appropriate in the

exemptions from disclosure that “could reasonably be expected to constitute an unwarranted invasion of personal privacy”⁵⁵ Congressional intent clearly hinges on allowing access to information but not at the expense of the individual’s welfare. The State Department’s procedural regulations for disclosure of requested information are consistent with this intent because they require analysis of the circumstances of each case. In combination, FOIA and the Privacy Act protect children’s privacy unless parents act on behalf of their children for the purpose of ensuring the children’s welfare.

The Children’s Online Privacy Protection Act (COPPA) also protects children’s privacy rights.⁵⁶ Under the Act, it is illegal “for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates” statutorily specified regulations.⁵⁷ Under 15 U.S.C. § 6502(b)(1)(B)(iii), a parent may obtain the child’s personal information collected from the website through any reasonable means.⁵⁸ COPPA provides that

neither an operator of such a website or online service nor the operator’s agent shall be held to be liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under subsection (b)(1)(B)(iii) of this section to the parent of a child.⁵⁹

In short, the Act allows for the protection of children’s privacy but ensures that parents can access such information to ensure their children’s safety and welfare.

In the school context, the Family Educational Rights and Privacy Act of 1974 (FERPA) also protects children’s privacy rights.⁶⁰ Under FERPA, schools cannot receive federal funds under any applicable program to any educational agency that has a policy of denying or effectively preventing parents of students “the right to inspect and review the education records of their children.”⁶¹ FERPA expresses with plain language clear congressional

circumstances of the case).

55. 5 U.S.C. § 552(b)(7)(C) (2006).

56. The Children’s Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–6506 (2006).

57. *Id.* § 6502(a)(1).

58. *Id.* § 6502(b)(1)(B)(iii).

59. *Id.* § 6502(a)(2).

60. The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (2006).

61. *Id.* § 1232g(a)(1)(A).

intent for parents to have access to their children's educational records.⁶² FERPA illustrates the balance between children's privacy rights and the parents' rights to control the upbringing of their children.

As this Note addresses below, the ramifications of such access to information become apparent. Good parents will utilize supportive laws of their parental authority as tools to promote their children's exposure to information through positive and open discussion. Even where the parents may disagree with the curriculum, they will be empowered to address the materials with knowledge, foresight, and compassion. Unfortunately, abusive parents will not, and good laws must acknowledge and confront this conundrum. In sum, federal laws balance children's privacy rights with the parents' rights to view such information for the purpose of ensuring the child's welfare. Where parents cannot show the necessity of disclosure, the federal laws protect children's privacy.

3. Children's State Rights

This subsection addresses where state actions side with the rights of children over the rights of parents. In general, states grant children rights based on their interest in "fostering the growth of mature children by giving them greater freedom of action and preparing them to discharge the responsibilities of citizenship in a democracy"⁶³ Of course, "[t]he state's choice will . . . be limited by generally applicable constitutional principles."⁶⁴

In general, most states provide statutes allowing minors to marry. These statutes may require court approval in addition to parental consent.⁶⁵ In the case of *In re Lori M.*, the New York court held that a mother could not invoke the power of the state to intervene and adjudicate her 15-year-old daughter as a "person in need of supervision" because of her daughter's association with a 21-year-old lesbian.⁶⁶ The daughter invoked her right of privacy by deciding to pursue her own sexual orientation, and that right fell within the constitutionally protected zone of privacy.⁶⁷

In restricting children's rights in the context of computers, 30 states have statutes requiring public institutions, such as schools and libraries, to

62. *Id.*

63. Developments in the Law—The Constitution and the Family, *supra* note 17, at 1383.

64. *Id.*

65. See *Jones v. State*, 619 So.2d 418, 422 (Fla. Dist. Ct. App. 1993) (recognizing that minors' "right to consensual sex is not substantially burdened by requiring a delayed exercise" of such a right until age of majority).

66. *In re Lori M.*, 496 N.Y.S.2d 940, 942 (N.Y. Fam. Ct. 1985).

67. *Id.* at 941–42.

provide Internet filters for blocking obscene materials.⁶⁸ States create these statutes “to protect minors from harmful or inappropriate data.”⁶⁹ Vermont state law does not require such technology in public institutions.⁷⁰ This lack of regulation gives children more freedom to learn and develop; however, such freedom comes with risk to the child’s welfare and should be addressed in the current CLPRA.

In addition to Internet software, most states provide statutes protecting children’s private information from disclosure. These state laws were modeled after and adopted from the Freedom of Information Act.⁷¹ Under Ohio state law, public libraries must disclose minors’ records to the requesting parents.⁷² In Vermont, parents have the right to obtain their children’s library records without the children’s consent, so long as the children are under 16-years-old.⁷³

Looking specifically at Vermont state laws, children’s rights cover a broad range of subjects. In the context of marriage, state courts require parental consent for minors if they are under age 18.⁷⁴ In the context of child custody in divorce cases, *Valeo v. Valeo* held that courts must determine the parental custody of the child based on which parent has the best ability to ensure the child’s welfare, regardless of objections from the child in such cases.⁷⁵ Concerning statutory rape, Vermont law prohibits persons from engaging in sexual acts with minors under the age of 16.⁷⁶ Vermont law creates a mandatory duty for certain persons to report child neglect and abuse.⁷⁷ Vermont law also forbids showing obscene materials to minors.⁷⁸ In each context, Vermont enforces the parents’ authority to control the upbringing of their children for the purpose of ensuring the children’s welfare.

In sum, states have an interest in providing children with rights that allow them to develop and become productive members of society. With

68. See INTERNET FILTERING SURVEY, *supra* note 5 (detailing state and federal laws, or lack thereof, regarding Internet filtering, blocking, and usage in schools and libraries).

69. *Id.*; see, e.g., DEL. CODE ANN. tit. 29, § 6602C (2005) (providing protection to minors); GA. CODE ANN. § 20-5-5 (2008 & Supp. I 2009) (protecting minors); MINN. STAT. § 134.50 (2009) (protecting minors).

70. INTERNET FILTERING SURVEY, *supra* note 5.

71. See WESTLAW.COM, 50 STATE STATUTORY SURVEYS: FREEDOM OF INFORMATION ACTS (2009), <http://www.lawschool.westlaw.com> (providing comparison of each state’s privacy laws).

72. OHIO REV. CODE ANN. § 149.432(B)(1) (2009).

73. VT. STAT. ANN. tit. 22, § 172(b)(4) (2009).

74. VT. STAT. ANN. tit. 18, § 5142 (2009).

75. *Valeo v. Valeo*, 132 Vt. 526, 532, 322 A.2d 306, 311 (Vt. 1974).

76. VT. STAT. ANN. tit. 13, § 3252(c) (2009).

77. VT. STAT. ANN. tit. 33, § 4913 (2009).

78. VT. STAT. ANN. tit. 13, § 2804b (2009).

that interest in mind, states still allow parents to control the upbringing of their children to ensure children's safety. This balance appears at the constitutional, federal, and state level when parent-child conflicts arise. Courts and legislatures consistently choose—whether in favor of the parent or child—the solution that best ensures the child's basic welfare. The case law and statutes develop the scope of this basic welfare around the child's physical⁷⁹ and mental⁸⁰ well-being. As a result, the law grants greater liberties to maturing children to develop into productive citizens⁸¹ but retains parents' ability to ensure their children's basic welfare.⁸²

B. Parents' Rights

Parents maintain the right to control the upbringing of their children as a fundamental right protected by the Due Process Clause of the U.S. Constitution.⁸³ In addition to this constitutional right, states also provide laws that enforce parents' authority over their children's rights to ensure their welfare.⁸⁴

This section focuses specifically on parents' fundamental right to control the upbringing of their children. To be clear, this right does not apply to legal actions between parents and children. In that context, parents cannot win a legal dispute by claiming that their children simply must always listen to them. In contrast, this Note focuses on parent-child conflicts that arise from state actions siding with either the parents or the children. Naturally, where the state sides with a party, the other side will dispute the validity of the judgment. To the point, where the state sides with the children, the parents may claim the state action violates their fundamental right to control the upbringing of their children. With the

79. *See id.* § 3252(c) (prohibiting sexual conduct with minors); *see also* VT. STAT. ANN. tit. 33, § 4912 (2009) (protecting minors from child abuse).

80. *See* *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954) (concluding that segregation of children in schools is detrimental to their mental development); *see also* VT. STAT. ANN. tit. 13, § 2804b (2009) (prohibiting the display of obscene materials as it is harmful to minors).

81. *Developments in the Law—The Constitution and the Family*, *supra* note 17, at 1383.

82. *See* *Parham v. J.R.*, 442 U.S. 584, 610 (1979) (allowing parents to admit their child to a mental hospital without preliminary hearing and explaining that skipping a hearing may reduce family tension and increase the chance for successful treatment); *see also* 15 U.S.C. § 6502(b)(1)(B) (2006) (allowing parents full access to discover what personal information website operators obtain when their children visit their website).

83. *See* *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (protecting parents' freedom to bring up their children).

84. *See* *Developments in the Law—The Constitution and the Family*, *supra* note 17, at 1383 (noting that the outcome of parent-child conflicts “will often turn on whether the state chooses to favor one side or the other”).

important relevance of that fundamental right in mind, this section looks at parents' constitutional rights.

Under the U.S. Constitution, parents have three fundamental rights: the right to custody of their children,⁸⁵ the right to keep the family together,⁸⁶ and the right to control the upbringing of their children.⁸⁷ *Santosky v. Kramer* held that parents cannot have their custody rights terminated unless the state proves its allegations by "clear and convincing evidence."⁸⁸ Additionally, the Court held that parents have the right to keep the family together.⁸⁹ In *Moore*, the Court used the Due Process Clause to strike down an ordinance under which it was a crime for a homeowner's son and grandsons to live with her.⁹⁰

Most importantly, the Court has taken a strong stance in favor of parents' right to control the upbringing of their children.⁹¹ Two years later, *Pierce* held unconstitutional a state law that required children to attend public schools.⁹² The Court stated "[t]he 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."⁹³ Thus, the Court reaffirmed the parents' right to control their child's upbringing.

The Court has limited this right, holding that the state can interfere to ensure children's welfare. In *Prince v. Massachusetts*, for example, the Court upheld a state child labor law that prevented a nine-year-old Jehovah's Witness from selling religious magazines.⁹⁴ The Court reaffirmed the parents' fundamental right⁹⁵ but held that "the family itself is not beyond regulation in the public interest"⁹⁶ In light of *Prince*, the Court has continually given great deference to parents' fundamental right when balanced against state actions on behalf of the child.⁹⁷ *Wisconsin v.*

85. *Santosky v. Kramer*, 455 U.S. 745, 7447–48 (1982) (holding that before a state may sever completely and irrevocably the rights of parents in their natural child, due process requires that the state support its allegations by at least clear and convincing evidence).

86. See *Moore v. City of E. Cleveland*, 431 U.S. 494, 506 (1977) (finding unconstitutional a housing ordinance defining "family" in such a manner that certain households did not qualify).

87. *Meyer*, 262 U.S. at 399.

88. *Santosky*, 455 U.S. at 769.

89. *Moore*, 431 U.S. at 503–04.

90. *Id.* at 506.

91. *Meyer*, 262 U.S. at 390.

92. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925).

93. *Id.* at 535.

94. *Prince v. Massachusetts*, 321 U.S. 158, 163 (1944).

95. *Id.* at 166.

96. *Id.*

97. See James G. Dwyer, *Parents' Religion and Children's Welfare: Debunking the Doctrine of Parents' Rights*, 82 CAL. L. REV. 1371, 1393–94 (1994) (noting cases where the courts have given

Yoder held that Amish parents had a right to exempt their children from a mandatory school attendance law based on their right to control the upbringing of their children and their right to free exercise of religion.⁹⁸ The Court stressed the importance of balancing the state's interest in "universal education" with the parents' fundamental rights to raise their children as they see fit.⁹⁹ The Court afforded great weight to the parents' rights, stating that "[t]he conclusion is inescapable that secondary schooling, by exposing Amish children to worldly influences in terms of attitudes, goals, and values[,] would be contrary to the Amish way of life."¹⁰⁰ Ruling in favor of the parents, the Court stressed that there was no evidence showing "any harm to the physical or mental health of the child . . ."¹⁰¹

Additionally, the Court has restricted children's free speech rights to allow parents to ensure their children's welfare. In *Ginsberg v. New York*, the Court held that a statute prohibiting the sale of obscene materials to minors under age 17 did not invade freedom of expression or other freedoms constitutionally guaranteed to minors.¹⁰² The Court held that the statute had a rational relation to the objective of safeguarding such minors, and that statute was not void for vagueness in definition of obscenity "harmful to minors" or of "knowingly" selling such materials.¹⁰³ The Court held that the state properly concluded that parents "who have . . . primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility."¹⁰⁴

At its root, the *Ginsberg* ruling draws an important distinction between state interference with the free speech of adults and state reinforcement of parental authority to restrict children's free speech.¹⁰⁵ When parents censor the child, the child is not restricted to "expression of those sentiments that are officially approved" or serve "to 'foster a homogenous people.'"¹⁰⁶ This censorship will also not "instill in the child a spirit of submission to state authority."¹⁰⁷ The child knows that the parents' intentions are to serve his or her best interests.

deference to parents' free exercise rights in private religious schools).

98. *Wisconsin v. Yoder*, 406 U.S. 205, 207 (1972).

99. *Id.* at 214.

100. *Id.* at 218.

101. *Id.* at 230.

102. *Ginsberg v. New York*, 390 U.S. 629, 633 (1968).

103. *Id.* at 643.

104. *Id.* at 639.

105. *Developments in the Law—The Constitution and the Family*, *supra* note 17, at 1381.

106. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969) (quoting *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923)).

107. *Developments in the Law—The Constitution and the Family*, *supra* note 17, at 1381.

Lastly, the Court has addressed the parents' fundamental right in the context of abortion. In *Bellotti v. Baird*, the Court held that a requirement of parental consent for abortion unduly burdens a child's Constitutional right to an abortion.¹⁰⁸ However, the Court in *H.L. v. Matheson* upheld a state law that required doctors to notify parents when their minor child was going to have an abortion.¹⁰⁹ In analysis, a child's right to an abortion draws little comparison with the child's right to privacy concerning the disclosure of her library records. Both issues are relevant to the child's welfare; but with abortion, the child's welfare is in the hands of medical experts. The parents' special relationship with the child can act as a strong support—or source of conflict—for the child during such a difficult decision, but exercising their fundamental right as parents may be of little use in such a situation.¹¹⁰

In contrast, parents' fundamental right to control the upbringing of their children is of great use in the context of disclosure of the children's library records. Here, the parents can utilize their special relationship with their children to ensure physical and emotional welfare.¹¹¹ As an example, accessing a child's library records can inform parents if the child has encountered a harmful situation on the Internet. Parents can quickly discover if their child is in danger and address the problem head on.

In conclusion, parents have a fundamental right to control the upbringing of their children. This right is protected by the Constitution, and courts generally defer to parents' determination regarding the upbringing of their children. As noted in *Pierce*, the state does not want to "standardize its children."¹¹² Rather, the state wants parents to exercise their right to raise their children because this will ensure strong familial relationships and add to society's diversity and pluralism, which promotes the basic welfare of both the state and the children.¹¹³ However, in certain contexts like abortion, the parents' right becomes mostly irrelevant to their children's basic welfare. Unlike abortion, the parents' fundamental right should be supported by state action to allow disclosure of their children's public

108. *Bellotti v. Baird*, 443 U.S. 622, 651 (1979).

109. *H.L. v. Matheson*, 450 U.S. 398, 413 (1981).

110. *Cf. Note, The Mental Hospitalization of Children and the Limits of Parental Authority*, 88 *YALE L.J.* 186, 194–96 (1978) (noting that the social pluralism rationale—constitutional policy that "disfavors state practices that threaten to impose on all a single conception of a worthwhile way of life"—offers little help in conflicts between parents and children arising over medical issues, where that rationale "might just as well be advanced by allowing children to decide for themselves whether they ought to seek treatment in a mental hospital").

111. *See* *Developments in the Law—The Constitution and the Family*, *supra* note 17, at 1355–56 (discussing the importance of the parent–child relationship to the child's emotional development).

112. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925).

113. *Developments in the Law—The Constitution and the Family*, *supra* note 17, at 1353–54.

library Internet records, as this will allow the parents to ensure their children's welfare.

II. A LEGAL MODEL FOR RESOLVING CONFLICTS BETWEEN PARENTS' RIGHTS AND THEIR CHILDREN'S INDEPENDENT RIGHTS

Courts must determine when a state action can validly enforce parents' rights over their children's conflicting independent rights. Part II offers a legal model for resolving such parent-child conflicts, and argues that states may validly enforce parents' rights over their children's conflicting rights where it is necessary to ensure the children's welfare.¹¹⁴ Furthermore, state actions should enforce parental authority only through neutral laws that require parents to actively seek to ensure their children's welfare.

This legal model stems from *Adolescent Confidentiality and Family Privacy*.¹¹⁵ The model distinguishes parent-state conflicts from parent-child conflicts.¹¹⁶ In family privacy claims, courts give parents "strong discretion" over state interference with their Constitutional right to structure family life.¹¹⁷ In contrast, "family integrity claims" involve "the claim a family member initiates to bring in the state . . . to manage an issue that the party believes threatens the family order from within."¹¹⁸ A subgroup of these family integrity claims are parental role claims. "Parental role claims" are "specifically directed at maintaining parental authority over children"¹¹⁹ Courts give these claims "weak discretion," ruling in favor of parents' claims "only when the rationale for according the parents discretion is the child's welfare."¹²⁰ When the state creates a law that provides parents with the discretion to interfere with their children's conflicting rights, "court[s] rarely uphold[] state intervention to enforce parental control . . . except when such intervention is deemed requisite to protect the child's welfare."¹²¹

Importantly, the parents' fundamental right to control the upbringing of the family has "never provided a decisive reason for state support of parental

114. Schoeman, *supra* note 9, at 219.

115. *See generally id.* (developing a legal model to support state intervention only when necessary to protect a child's well-being).

116. *Id.* at 216.

117. *Id.* at 220 (explaining that the state gives deference to parents "to construct a family observant of the parents' values").

118. *Id.* at 216.

119. *Id.*

120. *Id.* at 219.

121. *Id.*

authority over objecting children.”¹²² This is because the children, not the state, are challenging the parental authority.¹²³ Because the conflict is between parents and children, the parents’ fundamental right to family rearing does not provide a legal basis for preserving their parental role claim. Simply put, the state action enforces the parents’ discretion, so parents have no legal reason to oppose such an action in a parent–child conflict. Instead, parent–child conflict cases focus on the children’s welfare.¹²⁴ Thus, the key point of this legal model is the definition of a child’s “welfare.”

In reviewing the validity of such state actions, the U.S. Constitution,¹²⁵ federal statutory law,¹²⁶ and state law¹²⁷ provide strong guidance for defining the scope of a child’s “welfare.” Supreme Court precedent consistently analyzes the physical and mental well-being of the child when considering a child’s welfare. In the mental health context, the Court has upheld state interference with children’s rights to enforce parental authority.¹²⁸ In the abortion context, the Court compromises parents’ and children’s rights by allowing parents to *participate* in a child’s abortion through mandatory notice.¹²⁹ However, the child ultimately retains the right to decide whether to have the abortion.¹³⁰ Similarly, the Court has also addressed this issue in the First Amendment context. The Court has upheld state laws protecting parents’ authority to forbid their children from purchasing obscene materials for the child’s basic welfare.¹³¹ These cases illustrate that the Court consistently holds

122. *Id.*

123. *Id.*

124. *Id.*

125. *See supra* Part I.A.1; *H.L. v. Matheson*, 450 U.S. 398, 413 (1981) (holding that a state requirement for parental notification in minor’s abortion context does not violate the Constitution); *Parham v. J.R.*, 442 U.S. 584, 611 (1979) (admitting children to mental hospital with parental consent but without preliminary hearing).

126. *See supra* Part I.A.2; 20 U.S.C. § 1232g (2006) (providing parents with full access to children’s public school records).

127. *See supra* Part I.A.3; VT. STAT. ANN. tit. 18, § 5142 (2008 & Supp. I 2009) (requiring parental consent for minors who wish to marry).

128. *See, e.g., Parham*, 442 U.S. at 584 (upholding laws against minor children, who brought action alleging that they and other class members had been deprived of their liberty without procedural due process by virtue of Georgia mental health laws, which permit voluntary admission of minor children to mental hospitals by parents or guardians).

129. *H.L.*, 450 U.S. at 413 (upholding state law that required doctor to notify parents that minor child is going to have an abortion); *see Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502, 520 (1990) (upholding state law that one parent must be notified before minor could have an abortion); *Hodgson v. Minnesota*, 497 U.S. 417, 422–23 (1990) (upholding parent participation in abortion, but rejecting parental veto power).

130. *Bellotti v. Baird*, 443 U.S. 622, 643–44 (1979).

131. *Ginsberg v. New York*, 390 U.S. 629, 639 (1968) (permitting the state to conclude that parents “who have . . . primary responsibility for children’s well-being are entitled to the support of laws

that state laws validly enforce parental authority when the child's basic physical or mental health is at stake.

In addition to Supreme Court precedent, both federal statutory law and state law also provide guidance in defining the scope of children's welfare. Concerning child custody in divorce cases, state courts generally defer to the state's choice of appropriate custodial parent, regardless of a child's objections to the state's choice.¹³² As presented in Part I.A, Vermont courts allow broad state action to enforce parents' rights over objecting children.¹³³ Further, federal statutes such as FERPA and COPPA grant parents access to their children's Internet and school records to ensure the child's physical and mental well-being.¹³⁴ Even the Federal Privacy Act allows parents to act on behalf of their children when the child's physical or mental well-being is at risk, such as in compelling medical situations.¹³⁵

Importantly, children's rights outweigh parents' rights in particular cases, and these cases define the outer limits of children's "welfare." State and federal courts strike down state laws that infringe on the children's rights where their best interest is served by allowing them to exercise their rights. For example, the state cannot create a law to enforce a parent's religious views over the children's opposing views.¹³⁶ The state also cannot enforce a parental veto over a minor's choice to have an abortion.¹³⁷ Further, the state cannot make laws that unreasonably infringe on a minor's right to free speech.¹³⁸ Based on Supreme Court precedent, federal law, and state law, a child's "welfare" is defined as the physical and mental well-being of the

designed to aid discharge of that responsibility."); *FCC v. Pacifica Found.*, 438 U.S. 726, 749–50 (1978) (upholding censorship by FCC of obscene language on broadcast uniquely accessible to children).

132. *See Schleiffer v. Meyers*, 644 F.2d 656, 657 (7th Cir. 1981) (denying injunction against Swedish law that required a ten-year-old child to return to his mother in Sweden because of the importance of parental role and child's lack of maturity to make this decision).

133. *See* VT. STAT. ANN. tit. 18, § 5142 (2009) (restricting marriage for minors); VT. STAT. ANN. tit. 13, § 3252(c) (defining sexual assault of a minor); VT. STAT. ANN. tit. 22, § 172(b) (allowing parents access to child's library records if the child is under 16 years old); VT. STAT. ANN. tit. 33, § 4913 (mandating citizens to report abuse of children); VT. STAT. ANN. tit. 13, § 2804b (prohibiting the display of obscene materials to minors); *State v. Barlow*, 160 Vt. 527, 530, 630 A.2d, 1299, 1301 (1993) (holding that a minor's privacy interest under the state constitution is limited in duration and is outweighed by a compelling state interest); *Valeo v. Valeo*, 132 Vt. 526, 532, 322 A.2d 306, 311 (1974) (determining child custody after divorce).

134. *See* 20 U.S.C. § 1232g(a)(1)(A) (2006) (providing parents access to their children's school records); 15 U.S.C. § 6502(b)(1)(B)(iii) (2006) (providing access to children's Internet information).

135. *See* 5 U.S.C. § 552a(b)(8) (allowing parental access to an individual's records where compelling reasons exist).

136. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 205 (1963) (holding that state action to enforce Bible reading at school was a violation of the Establishment Clause of the First Amendment).

137. *Bellotti v. Baird*, 443 U.S. 622, 643 (1979).

138. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969).

child. Thus, this legal model holds that a state action can validly enforce a parent's authority over a conflicting right of a child only where such action best serves the physical and/or mental well-being of the child.

Courts must determine when a state action enforcing parental authority better serves the child's welfare than a state action protecting the child's independent rights. Two factors help determine when enforcement of parental authority best serves a child's welfare, especially at the adolescent level: maturity and privacy.¹³⁹ Regarding maturity, adolescents' mental capacities exist somewhere between youthful and mature levels. Studies have shown that children with serious illness retain a more mature understanding of their situation than their parents.¹⁴⁰ However, the average teenager does not have a mature capacity and is "at best developing during adolescence."¹⁴¹ Where the child is placed in the decision-making role of an adult, or would benefit from exercising his or her rights by developing adult skills, courts are more willing to protect the child's rights.¹⁴² These case-specific contexts include terminal illness, free speech, and abortion.

In contrast, where a child lacks the required maturity to fully assess the practical consequences of his or her decisions, courts are more willing to enforce the parents' authority to ensure the child's welfare.¹⁴³ These case-specific contexts include parental consent to underage marriages, parents' access to their children's school and Internet records, and parents' right to access their children's private medical records.¹⁴⁴ Importantly, the Court acknowledges that parents have a "primary responsibility for [their] children's well-being[.]" and "laws [should be] designed to aid discharge of that responsibility."¹⁴⁵ Thus, in determining whose rights should prevail in parent-child conflicts, courts are more willing to uphold state actions that enforce parents' authority over their child's conflicting rights when the

139. Schoeman, *supra* note 9, at 222.

140. *Id.* (citing MYRA BLUEBOND-LANGER, *THE PRIVATE WORLDS OF DYING CHILDREN* (1979)).

141. *Id.* (emphasis added).

142. *See, e.g., Bellotti*, 443 U.S. 622 (upholding child's right to abortion); *Tinker*, 393 U.S. at 513 (upholding child's right to free speech).

143. *See, e.g., Parham v. J.R.*, 442 U.S. 584, 610 (1979) (allowing parents to admit their child to mental hospital without preliminary hearing to ensure family tensions are not exacerbated and child's treatment has greater potential for success); *FCC v. Pacifica Found.*, 438 U.S. 726, 749-50 (1978) (upholding censorship by FCC of obscene language on broadcast uniquely accessible to children); *Schleiffer v. Meyers*, 644 F.2d 656 (7th Cir. 1981) (denying injunction against Swedish law that required a ten-year-old child to return to his mother in Sweden because of the importance of parental role and child's lack of maturity to make this decision).

144. *See* 20 U.S.C. § 1232g(a)(1)(A) (2006) (providing parents access to their children's school records); 15 U.S.C. § 6502(b)(1)(B)(iii) (providing access to children's Internet information); 5 U.S.C. § 552a(b)(8) (allowing access to an individual's records where compelling reasons exist).

145. *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

parents are in the best position to ensure the child's welfare based on their experience and maturity.

In addition to maturity, courts should also consider the child's need for privacy when determining if enforcement of parental authority will best serve the child's welfare. Specifically, a child's privacy becomes a tool for managing his or her increased responsibilities as an adolescent.¹⁴⁶ However, parents' right to invade their children's privacy helps ensure the children's welfare. Practically, "we would think that a much stronger reason would be required to invade the privacy of an older than a younger child" because "[p]rivacy matters more to older children and is more central to their development and integrity than it is to younger children"¹⁴⁷ Court precedent and statutory law illustrate this tension by granting children the ability to exercise their rights—such as free speech and the decision to have an abortion. However, the case law consistently holds that a child's privacy rights end when the child cannot competently make decisions that will ensure his or her welfare.¹⁴⁸ Thus, courts consider privacy as a function of maturity when determining if a state law that enforces a parent's authority best serves the child's welfare. In short, mature children should enjoy more privacy because it is "central to their development[.]"¹⁴⁹ and state laws that abrogate that privacy should be viewed with more skepticism. However, immature children should enjoy less privacy because they are not competent to ensure their own welfare,¹⁵⁰ and state laws that enforce parents' authority should be viewed favorably by courts.

In addition to analyzing the child's welfare, this legal model argues that state action enforcing parental authority is only valid if it establishes neutral laws and policies that require parents to proactively account for their child's welfare. First, state laws should not cause the child to develop a distrust of

146. Schoeman, *supra* note 9, at 224 ("[P]rivacy plays a bigger role in [older children's] development than it does in younger children's lives").

147. *Id.*

148. *See id.* (noting that a major difference between younger children and older children is their maturity).

If [the minor] satisfies the court that she is mature and well enough informed to make intelligently the abortion decision on her own, the court must authorize her to act without parental consultation or consent. If she fails to satisfy the court that she is competent to make this decision independently, she must be permitted to show that an abortion nevertheless would be in her best interests.

Bellotti v. Baird, 443 U.S. 622, 647–48 (1979).

149. Schoeman, *supra* note 9, at 224.

150. *Id.*; *see* VT. STAT. ANN. tit. 18, § 5142 (2008 & Supp. I 2009) (restricting marriage for minors); VT. STAT. ANN. tit. 22, § 172(b)(3)–(4) (2009) (allowing parents access to child's library records if the child is under 16-years-old).

the state. Laws that authorize the state to proactively inform parents of their child's activities provide the child with a strong rationale for distrusting the state because the child will view the state as working against his or her privacy interests.¹⁵¹ This form of state action is unacceptable. In large part, children's rights exist to develop children into productive citizens who add to the "marketplace of ideas" in our society.¹⁵² An adolescent child who develops a distrust of the state may be more likely to refrain from active and productive involvement in society once in adulthood, which vitiates a central rationale for the child's independent rights.¹⁵³ Second, state laws should promote active parent involvement for ensuring the child's welfare. Neutral state laws that require parental action promote such involvement because parents understand that the state will not discourage their actions, but instead support their efforts to ensure the child's welfare.¹⁵⁴ For these reasons, state actions enforcing parental authority should only remain valid if they establish neutral laws and policies that require the parents to proactively account for their child's welfare.

In sum, this legal model provides an analysis for resolving parent-child conflicts, not parent-state conflicts. Specifically, this model determines when the state may validly enforce parental rights over their child's conflicting rights. This model holds that such state actions are valid only when enforcing the parent's authority is in the best interest of the child. In their analysis, courts must consider the maturity and privacy interests of both the child and the parent. Additionally, this model states that such state actions may only be valid if they establish neutral laws that require proactive parental

151. See Edna Ullmann-Margalit, *Trust, Distrust, and in Between*, in *DISTRUST* 60, 80 (2004) (Russell Hardin ed., 2004) ("Institutional distrust embodies one's belief that the intentions of the officeholders of the institution are discriminatory and that the institution is consequently unfair in ways that work against one's interests.").

152. See *James v. Bd. Of Educ.*, 461 F.2d 566, 574 (2nd Cir. 1972) ("It would be foolhardy to shield our children from political debate and issues until the eve of their first venture into the voting booth."); John H. Garvey, *Children and the First Amendment*, 57 *TEX. L. REV.* 321, 338 (1979).

[T]he state's interest in children as future citizens [is], if anything, more apparent in cases affirming the existence of children's free speech rights than in those denying it. The reason is that free speech plays an important role in the child's development, a role that is socially desirable quite apart from whether children have or should have full free speech rights.

Id.; Maurice E. Stucke & Allen P. Grunes, *Antitrust and the Marketplace of Ideas*, 69 *ANTITRUST L. J.* 249, 251 (2001) (describing the term "marketplace of ideas").

153. SANDY JACKSON & HÉCTOR JULIO RODRÍGUEZ-TOMÉ, *ADOLESCENCE AND ITS SOCIAL WORLDS* 242 (1993) ("Clear links have been reported between attitudes to law and authority on the one hand and degree of involvement in delinquency on the other.") (citation omitted).

154. See *H.L. v. Matheson*, 450 U.S. 398, 413 (1981) (upholding a state law mandating parental notification in minor's abortion context); *Ginsberg v. New York*, 390 U.S. 629, 639 (1968) (permitting the state to enact laws to aid parents in carrying out their responsibilities for their children's well-being).

involvement. Ultimately, this legal model provides courts with a flexible balancing test that ensures the child's welfare through active parental involvement, yet limits the state's ability to infringe on children's rights.

III. AMENDING VERMONT'S CLPRA

Vermont's CLPRA¹⁵⁵ should be amended to provide parents with discretion to access their children's public library Internet records until the child reaches the age of 18. This Part analyzes the validity of the current CLPRA, examines the rationale for amending the Act, explains why this amendment is a valid state action, and suggests the appropriate components of this amendment.

Turning first to the current CLPRA, this state law enforces parents' authority over the child's conflicting independent rights to privacy, creating a parent-child conflict. Specifically, the Act allows parents to obtain their child's public library records if the child is under the age of 16.¹⁵⁶ Parents may obtain any materials the child has "viewed in print or electronic form, research questions posed, materials in any format that the patron has requested through interlibrary loan . . . or any other library service . . . requested."¹⁵⁷ Thus, the current CLPRA gives parents broad access to their child's library records, including the child's Internet activities at the public library.

Under the offered legal model for resolving such conflicts, the current CLPRA is a valid state action because parental access to a child's public library records ensures the child's welfare at the public library.¹⁵⁸ The Act allows parents to remain aware of their child's activities at the public library concerning media such as books, movies, and the Internet. Using such media, children can discover materials that are inappropriate for their age.¹⁵⁹ The current CLPRA allows parents to learn if their child has accessed such materials and respond accordingly to ensure the child's mental well-being.¹⁶⁰ Further, the Act can function much like FERPA and

155. VT. STAT. ANN. tit. 22, §§ 171–173 (2009).

156. *Id.* § 172(b)(4).

157. *Id.* § 171(3).

158. *See supra* Part II.

159. *See* ROBERT E. FREEMAN-LONGO, CYBERSEX: THE DARK SIDE OF THE FORCE 78 (AI Cooper ed., 2000) (noting that "it is 'illegal' for children and teens to go into adult-oriented web sites and problematic to engage in online sexual activities"); DOUGLAS A. GENTILE & DAVID A. WALSH, NATIONAL INSTITUTE ON MEDIA AND THE FAMILY, MEDIA QUOTIENT: NATIONAL SURVEY OF FAMILY MEDIA HABITS, KNOWLEDGE, AND ATTITUDES 6, 89 (1999), available at http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/19/73/d4.pdf (finding that media such as television can have a negative effect on a child's mental development depending on the substance of the materials viewed).

160. VT. STAT. ANN. tit. 22, §§ 171–173 (2009); *see also* GENTILE & WALSH, *supra* note 159, at

COPPA, which both exist to protect the child's privacy and ensure that his or her records remain accurate and private.¹⁶¹ Under the current CLPRA, the parent can access the child's public library records to ensure his or her records do not reflect any false information and that no one has misused these records.¹⁶² Thus, the current CLPRA allows parents to ensure their child's welfare by addressing any mentally disruptive materials the child encountered at the public library and by preventing unwanted third parties from obtaining their child's personal information through disclosure by library staff.

Most importantly, the current CLPRA allows parents to remain aware of their child's activities at the public library concerning interactive aspects of the Internet. The Act allows parents to not only ensure their child's mental well-being, but also their child's physical safety. In today's society, children use the Internet as a primary means of communication with others.¹⁶³ Predators also use the Internet as a means to victimize children.¹⁶⁴

The publicity about online "predators" who prey on naive children using trickery and violence is largely inaccurate. Internet sex crimes involving adults and juveniles more often fit a model of statutory rape—adult offenders who meet, develop relationships with, and openly seduce underage teenagers—than a model of forcible sexual assault or pedophilic child molesting.¹⁶⁵

90 (noting that parents who monitor the substance of the media their child experiences—such as music and movies—will better ensure the mental development of their child).

161. See U.S. Department of Education, Family Educational Rights and Privacy Act (FERPA), <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last visited Feb. 6, 2010) "[P]arents [have] certain rights with respect to their children's education records. These rights transfer to the student . . . [at] the age of 18 Parents . . . have the right to request that a school correct records which they believe [are] inaccurate or misleading." *Id.*; 15 U.S.C. § 6502(b)(1)(B)(iii) (2006) (providing parents with access to the information that Internet websites collect concerning their children).

162. See VT. STAT. ANN. tit. 22, § 172(c) (2009) (ensuring that a patron's library records used for statistical records or circulation activities cannot contain the patron's name "or any other personally identifying information").

163. See DAVINA PTUITT-MENTLE, NATIONAL CYBER SECURITY ALLIANCE, 2008 NATIONAL CYBERETHICS, CYBERSAFETY, CYBERSECURITY BASELINE STUDY, III (2008), available at <http://stay safeonline.mediaroom.com/index.php?s=67&item=44>. "Children are connected to the Internet at home, at school and while they're on the go. They are shunning traditional communication methods and replacing them with instant and text messaging, [and] they keep their friends posted on their activities and whereabouts with social networking . . ." *Id.*

164. Michael G. McGrath & Eoghan Casey, Abstract, *Forensic Psychiatry and the Internet: Practical Perspectives on Sexual Predators and Obsessional Harassers in Cyberspace*, 30 J. AM. ACAD. PSYCHIATRY L. 81, 81 (2002) ("[T]he sexual predator and the obsessional harasser have found cyberspace to be a vehicle capable of meeting their needs: obtaining information, monitoring and contacting victims, developing fantasy, overcoming inhibitions, avoiding apprehension, and communicating with other offenders.").

165. Janis Wolak et al., *Online "Predators" and their Victims: Myths, Realities and*

The study done by Crimes Against Children Research Center and Family Research Laboratory of the University of New Hampshire stresses an important fact about the dangerous online interactions that occur between children and Internet predators. Children who interact online with adults know they are communicating with adults in the great majority of cases.¹⁶⁶ Offenders rarely need to trick children about their sexual interests because “most victims who meet offenders face to face go to such meetings expecting to engage in sexual activity.”¹⁶⁷ If children have access to the Internet at the public library, they can potentially fall victim to these harmful predators through online interactions. Unfortunately, younger children are just as active online as older children.¹⁶⁸ Because of the high risk associated with Internet use, the current CLPRA grants parents the necessary authority to ensure both the mental and physical well-being of their child, while the child engages in activities at a Vermont public library.

In addition to ensuring the child’s welfare, the current CLPRA establishes that parents must proactively ensure their child’s welfare at the public library by requesting any information their child obtains. Specifically, the Act does not allow the state to affirmatively act to disclose a child’s information to his or her parents. Instead, the state must remain neutral.¹⁶⁹ This gives parents an incentive to stay involved in their child’s public library activities and encourages children to trust the state, which will not actively disclose their records to their parents.¹⁷⁰

Because the current CLPRA enforces parental authority over the child’s conflicting independent rights for the purpose of ensuring the child’s welfare and does not allow the state to act on behalf of the parent, the Act is a valid law as analyzed under the offered legal model for parent–child conflicts.

Having analyzed the validity of the current CLPRA, this Note now proposes amendments to the current CLPRA, explains why these amendments should be adopted, and what they should consider. First, the current law should be amended to allow parents to obtain their child’s internet records from the public library until the child reaches the age of 18.

Implications for Prevention and Treatment, 63 AM. PSYCHOLOGIST 111 (2008) (emphasis removed), available at <http://www.unh.edu/ccrc/pdf/Am%20Psy%202-08.pdf>.

166. *Id.* at 112.

167. *Id.* at 113.

168. JON GIBS & JOHN BRAUER, NIELSEN ONLINE, TEEN VIEWING OF DRUG AND ALCOHOL-RELATED VIDEOS ONLINE 5 (Sept. 2008), available at http://www.ncjrs.gov/ondcppubs/publications/pdf/teenviewing_darvideos_online.pdf (finding that more than a third of teens who watched drug related videos online were under the age of 16).

169. VT. STAT. ANN. tit. 22, §§ 171–173 (2009) (lacking any provisions requiring or allowing the state to affirmatively provide parents with their child’s public library records).

170. See Ullmann-Margalit, *supra* note 151, at 80 (noting that institutional distrust derives from believing officeholders will work against one’s interests).

Importantly, only Internet records should be available to parents once a child turns 16, while all other records defined by the statute should no longer be accessible to parents.¹⁷¹ Second, the current law should be amended to include a notice provision that requires state officials to disclose to requesting children—regardless of age—those library records their parents obtained through the CLPRA.

The Vermont Legislature should adopt both the proposed Internet amendment and the proposed notice amendment because these two changes will best ensure the child's basic welfare. The proposed Internet amendment allows parents to ensure their older child's—age 16 and 17—physical welfare while the child engages in online activities at the public library.¹⁷² Further, the notice amendment gives children the ability to fully account for their records and all those who obtain them.

Turning first to the Internet amendment, children's online interactions with adults create a dangerous risk to children's welfare as described above, regardless of the child's age.¹⁷³ Unfortunately, older adolescent minors remain open to the same level of risk as minors under the age of 16 when participating in online interactions with adults. A study done by the Rochester Institute of Technology found that among 10th graders to 12th graders, students admitted to using the Internet to interact with strangers in ways that included "chatting 48%; flirting 25%; providing personal information 22%; talking about private things 17%; and engaging in sexually oriented chat 15%. [Furthermore,] 14% accepted an invitation to meet an online stranger in-person and 14% of students . . . invited an online stranger to meet them in-person."¹⁷⁴ In short, older children's online interactions with adults remain an enormous risk to their welfare, and children can ignore the dangerous nature of these interactions to the detriment of their mental and physical well-being.

Turning next to the notice amendment, the current CLPRA does not permit a child to request information on all third parties who obtain his or her records.¹⁷⁵ The law should give children this explicit authority because

171. See VT. STAT. ANN. tit. 22, § 171(3) (defining the scope of the term "records").

172. Michele L. Ybarra & Kimberly J. Mitchell, *Exposure to Internet Pornography among Children and Adolescents: A National Survey*, 8 CYBERPSYCHOLOGY & BEHAV. 473, 473 (2005), available at <http://www.liebertonline.com/doi/abs/10.1089/cpb.2005.8.473> ("The vast majority (87%) of youth who report looking for sexual images online are 14 years of age or older, when it is developmentally appropriate to be sexually curious.").

173. See Wolak, *supra* note 165, at 113 (finding that offenders rarely need to trick their online child victims, who openly want to meet them with the expectation of sexual activity).

174. SAMUEL C. MCQUADE, ROCHESTER INSTITUTE OF TECHNOLOGY, SURVEY OF INTERNET AND AT-RISK BEHAVIORS 15 (2008), available at <http://www.rrcsei.org/RIT%20Cyber%20Survey%20Final%20Report.pdf>.

175. VT. STAT. ANN. tit. 22, §§ 171–173 (2009).

the child's library records belong to the child.¹⁷⁶ Thus, this amendment would allow the child to retain full knowledge of his or her documents, even though others—such as parents—may need to assist the child with managing his or her records until the child reaches a mature level of responsibility. Further, the transparency achieved by the notice amendment would allow the child to maintain an honest relationship with his or her parents because the parents will know that any disclosure they obtain will be openly available at the child's request.¹⁷⁷ This may be especially important in a family relationship that involves child abuse, where the child may greatly benefit by having knowledge of his or her parents' disclosure as to his or her library activities. In short, the notice amendment provides children with a full account of their records and all those who obtain their records.

Under the offered legal model, both amendments are valid state actions because they enforce the parent's authority over the child's conflicting privacy rights for the purpose of ensuring the basic welfare of the child. Both amendments also avoid placing an affirmative duty on the state to side with either the parent or the child. However, a primary issue arises in granting parental access to a child's Internet records after the child becomes 16-years-old. Specifically, this amendment needs strong policy reasons for invading an older child's privacy rights.¹⁷⁸ The legal model resolves this issue by determining whether enforcing the parents' rights or the child's rights will best ensure the child's welfare. The legal model balances the relevant maturity of older children who interact online.¹⁷⁹

In general, older children do not possess the necessary maturity to avoid harmful online sites and interactions that can pose a risk to their basic welfare.¹⁸⁰ Importantly, Vermont state law does not require public libraries to block potentially harmful sites on their computers with Internet access,¹⁸¹ so children of all ages have free range to explore a variety of interactive online experiences. Further, older adolescents are more likely than younger

176. See VT. STAT. ANN. tit. 22, § 172 (2009) (stating that a patron's records shall remain confidential).

177. Ann C. Crouter & Melissa R. Head, *Parental Monitoring and Knowledge of Children*, in HANDBOOK OF PARENTING: BEING AND BECOMING A PARENT 461, 462 (Marc H. Borstien ed., 2d ed. 2002) (explaining that a healthy parent-child relationship enhances parents' desire "to monitor their child and to use healthy behavior management practices").

178. See Schoeman, *supra* note 9, at 224 (explaining why older children have a stronger interest in privacy).

179. See *id.* (explaining that privacy becomes more relevant to a child's needs as the child develops an increased level of maturity).

180. See MCQUADE, *supra* note 174, at 15-17 (citing statistics to demonstrate that older children lack the maturity to avoid harmful interactions on the Internet).

181. See INTERNET FILTERING SURVEY, *supra* note 5 (noting the absence of Vermont law on Internet filtering, blocking, and usage in schools and libraries).

teenagers to engage in Internet chat rooms and such activities that place them at risk of meeting Internet predators.¹⁸² In contrast, parents generally possess a more developed maturity that will ensure their children avoid harmful online interactions. Thus, the amended CLPRA would validly enforce the parents' authority over the children's conflicting privacy rights because parents' authority best ensures the children's welfare.

An additional point should be made about the Internet amendment and its exclusive focus towards online media. By keeping the parents' access to only Internet records and not the 16- or 17-year-old child's other library records, the parents will only be able to access those records that create a realistic potential of harm to the child's well-being. This will help prevent a "chilling effect" on children's public library activity. In short, this amendment would allow parents to ensure the physical and mental well-being of their children but not overly infringe on the children's privacy.

Turning to the nuts and bolts of the actual amendments, a few considerations should be highlighted. First, parents are the legal guardians of their children until the age of majority, and as such, have a duty to ensure their children's welfare. With that in mind, parents who consent to a child's underage marriage should no longer have the privilege of obtaining their married child's library records, especially as their legal duties have been waived. Second, the law should take utmost care to focus on granting authority to individuals, while rejecting any grants of affirmative authority to the state itself.

Thus, the Internet amendment should simply provide a provisional exception to Chapter 4, Section 172(b)(4) that allows parents to obtain their child's Internet records exclusively as defined by the current CLPRA until the child reaches the age of 18. Further, the amendment should include express language that underage marriage of a minor by parental consent waives the parents' rights under the amended CLPRA to obtain their children's Internet records. Finally, the notice amendment should clearly state that all children, regardless of age, shall have a right to obtain all information regarding their records upon request to a library official, including all disclosures of their records to third parties—such as their parents.

182. See GIBS & BRAUER, *supra* note 168, at 5 (finding that two-thirds of teens who watched drug related videos online were 16-years-old or older).

CONCLUSION

Overall, parent-child conflicts cannot be resolved through litigation concerning parents' fundamental rights. Instead, the offered legal model provides a reasonable method for resolving such conflicts. Where the state creates a law that enforces parents' authority over their children's conflicting rights, the law is valid only if it ensures the children's basic welfare.

Under this legal model, the proposed amendments to the current CLPRA validly enforce the parents' authority over their children's privacy rights because this best ensures the welfare of the children. It is important to keep Vermont's public libraries safe and productive centers of knowledge for both children and adults, and these amendments will assist in providing such an environment.

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