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BIG BROTHER IS WATCHING: WHEN SHOULD GEORGIA GET INVOLVED IN ISSUES OF FAMILY PRIVACY TO PROTECT CHILDREN’S LIBERTIES?

Michelle Wilco*

INTRODUCTION

Alecia Faith Pennington (Faith) did not officially exist until she was nineteen. Faith’s conservative, religious parents, Lisa and James, raised their nine children on the family farm just outside Kerrville, Texas, and kept their family as self-sufficient and separate from the rest of the world as possible.¹ The family was very insular; the parents homeschooled all of the children, and the family rarely left their home, with the rare exception of going to church.² Lisa and James also prohibited their children from using the Internet until they were eighteen, at which point they were only allowed limited access to websites their parents deemed safe and appropriate.³ According to Faith, her parents created this closed-off world for their children because they wanted to keep “sinful” things away from their kids.⁴ The children were not allowed to argue with their parents, and they grew up dutifully obeying this rule.⁵ Faith, the fourth-born child,⁶

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1. *The Girl Who Doesn’t Exist*, RADIOLAB, at 1 min., 49 sec. (Aug. 19, 2016), <http://www.radiolab.org/story/invisible-girl> [<https://perma.cc/7NQP-XG5D>]. The farm was intended to provide a self-sufficient lifestyle for the family. *Id.* at 3 min., 2 sec. They raised goats, chickens, rabbits, and cows to butcher for food. *Id.* at 2 min., 37 sec. The children were all given biblical names—Grace, Jacob, Hope, Faith, Patience, Noah, Adam, Elijah, and Levi—and they were all required to do chores to keep the farm running. *See id.* at 3 min., 11 sec. Lisa and James enforced strict rules. *Id.* at 3 min., 43 sec. For example, the girls had to wear sleeved dresses with high collars and were not allowed to cut their hair. *Id.* at 3 min., 50 sec.

2. *Id.* at 4 min., 36 sec.

3. *Id.* at 3 min., 50 sec. The children also were not allowed to watch television. *Id.* at 4 min., 16 sec. Additionally, although Faith and some of her siblings had iPods, *id.* at 6 min., 26 sec., they were only allowed to listen to Christian music, *id.* at 4 min. 29 sec.

4. *Id.* at 5 min, 5 sec.

5. *Id.* at 5 min., 20 sec.

6. *Id.* at 3 min., 30 sec.

describes herself as more “stubborn” and “free-spirited” than her siblings.⁷ When she was eighteen, she decided she and her siblings had “no future” and that she needed to get away.⁸ She used her WiFi-compatible iPod to text her grandparents and ask them to take her home with them the next time they came to visit the farm.⁹ A week later, Faith became the first Pennington child to disobey her parents and leave home.¹⁰ Faith said she found the strength to leave because she “knew it was the right thing to do” and because she needed to take control of her own life.¹¹

Once she gained exposure to life outside the Pennington farm, Faith wanted to assimilate.¹² However, her upbringing had affected not only her social ability to blend in with her peers but also her legal ability to do so.¹³ Lisa Pennington gave birth to all of her children at home, and she and James intentionally chose midwives who agreed not to file records of the children’s births.¹⁴ As a result, Faith and her siblings did not have birth certificates or Social Security numbers.¹⁵ The Pennington children had never been to a hospital, seen a doctor, or been enrolled in formal school, so there was no public record of

7. *The Girl Who Doesn’t Exist*, *supra* note 1, at 5 min., 27 sec.

8. *Id.* at 5 min., 56 sec. Faith explains that her breaking point happened during a family meeting in which her oldest sister—who was twenty-three at the time—asked their parents for permission to get a job, her brother asked them for increased Internet access to do work for their family’s church, and her twenty-one-year-old sister asked for a phone. *Id.* at 5 min., 34 sec. Her parents denied all three requests. *Id.* at 5 min., 39 sec. Faith’s oldest sister was told that a job would “bring[] in too much outside influence,” and her twenty-one-year-old sister was told she was not old enough for a phone. *Id.* At this point, Faith concluded, “[T]hey have nothing ahead of them. We’re not allowed to get jobs, not allowed to go to school. We have no life except living here on this little farm.” *Id.* at 5 min., 56 sec.

9. *Id.* at 6 min., 26 sec.

10. *Id.* at 7 min., 12 sec. Her grandparents disagreed with the way Lisa and James were choosing to raise their children, but they continued to visit their grandchildren on the farm. *Id.* at 7 min. Faith initially asked her parents’ permission to leave with her grandparents, which her parents denied. *Id.* at 7 min., 26 sec.

11. *Id.* at 9 min., 16 sec. “[Faith] believed she was walking into this world that was bad. That was potentially going to harm her.” *Id.* at 10 min., 6 sec.

12. *Id.* at 11 min., 45 sec. At almost nineteen, Faith had never been exposed to television, sex education, or basic social norms. *Id.* at 11 min., 3 sec. She did not understand her peers’ pop culture and social references to shows, boys, music, or school, which made her feel like an outsider. *Id.* at 11 min., 33 sec.

13. *See The Girl Who Doesn’t Exist*, *supra* note 1, at 11 min., 45 sec.

14. *Id.* at 12 min., 8 sec.

15. *Id.* at 11 min., 45 sec.

their existence.¹⁶ Faith's parents' decision not to report their children's births left Faith and her eight siblings without any legal identity and invisible to local, state, and federal governments.¹⁷ This lack of legal identity left them unable to get a driver's license, get a job, attend college, or vote.¹⁸

Although Faith's case is unique, it raises broader state and federal law questions because procedures do not exist to resolve similar issues in which parents' right to make choices for their children directly conflicts with those children's current and future interests. This Note seeks to explore and analyze the balance between children's rights and parental autonomy and to propose a plan for Georgia courts to provide clarity on this issue of parental decisions infringing upon children's liberties.

Part I of this Note provides an overview of the legal issues in Faith's case, current law relating to children's rights, the broader philosophical concept of parents' obligation to preserve an "open future" for their children, and issues of family privacy.¹⁹ Part II examines cases and examples of clashes between family autonomy and children's rights, as well as state legislation passed in an attempt to provide guidance in solving this problem.²⁰ Finally, Part III contains a proposal for Georgia courts to address the imbalance between parental and child autonomy.²¹

16. *Id.* at 14 min., 20 sec.; Martin Gould, *Exclusive: Grandfather of 'The Girl Who Doesn't Exist' Reveals How He Dramatically Rescued Teen from 'Off the Grid' Christian Parents Who Never Registered Her Birth*, DAILY MAIL (Feb. 13, 2015, 4:47 PM), <http://www.dailymail.co.uk/news/article-2952933/Grandfather-girl-doesn-t-exist-reveals-rescued-turned-18-grid-Christian-parents-nenver-registered-birth.html> [https://perma.cc/YA6P-V4X3].

17. *The Girl Who Doesn't Exist*, *supra* note 1, at 15 min., 45 sec.

18. *See id.* at 13 min., 35 sec., and 31 min., 13 sec.; *see also* U.S. DEP'T OF HEALTH AND HUMAN SERVS., HOSPITALS' AND PHYSICIANS' HANDBOOK ON BIRTH REGISTRATION AND FETAL DEATH REPORTING 1 (1987), https://www.cdc.gov/nchs/data/misc/hb_birth.pdf [https://perma.cc/UQ4A-9S24] ("Birth certificates are needed for entrance to school; voter registration; obtaining a driver's license, marriage license, passport, veterans' benefits, welfare aid, or social security benefits; and many other purposes.").

19. *See infra* Part I.

20. *See infra* Part II.

21. *See infra* Part III.

I. Background

Many of the issues raised in Faith's story—including her parents' decisions not to take their children to doctors, not to enroll their children in formal schools, and not to report their children's births—are not clearly addressed under current law.²² Medical neglect laws require parents to provide their children with necessary medical and dental treatment, but states and courts vary as to when a lack of traditional medical treatment constitutes neglect.²³ State legislation regulates homeschooling curricula in most states, but eleven states do not require homeschooling families to register with school districts or state agencies.²⁴ State legislation also regulates reporting live births and issuing birth certificates, and most states require live births to be reported and documented.²⁵

Other decisions, such as parents' ability to withhold television and Internet access from their children and limit interactions with people

22. See generally CTRS. FOR DISEASE CONTROL & PREVENTION, STATE DEFINITIONS AND REPORTING REQUIREMENTS FOR LIVE BIRTHS, FETAL DEATHS, AND INDUCED TERMINATIONS OF PREGNANCY 2 (1997), <http://www.cdc.gov/nchs/data/misc/itop97.pdf> [<https://perma.cc/C74P-2RLV>]; U.S. DEP'T OF HEALTH AND HUMAN SERVS., *supra* note 18, at 3; CHILD WELFARE INFO. GATEWAY, DEFINITIONS OF CHILD ABUSE AND NEGLECT 2 (2016); TEX. DEP'T. OF STATE HEALTH SERVS., BIRTH REGISTRATION HANDBOOK 1–2, <http://www.dshs.state.tx.us/vs/field/docs/Birth-Registration-Handbook.pdf> [<https://perma.cc/SMG4-FACP>]; see also *Homeschool Laws in Your State*, HOME SCHOOL LEGAL DEF. ASS'N., <https://www.hslda.org/laws/> [<https://perma.cc/W4Y2-6FZN>] (last visited Feb. 8, 2018); Kate Dailey, *Draper Case: What Makes a Parent Negligent?*, NEWSWEEK (May 22, 2009, 8:00 PM), <http://www.newsweek.com/draper-case-what-makes-parent-negligent-80057> [<https://perma.cc/Y6UZ-98SZ>]. But see Motoko Rich, *Home Schooling: More Pupils, Less Regulation*, N.Y. TIMES (Jan. 4, 2015), <http://www.nytimes.com/2015/01/05/education/home-schooling-more-pupils-less-regulation.html> [<https://perma.cc/RP66-9A86>].

23. CHILD WELFARE INFO. GATEWAY, *supra* note 22, at 2; see Dailey, *supra* note 22 (explaining that many parental medical neglect cases show that parents who fail to seek medical attention for their sick or injured children may still believe they are acting in their children's best interests).

24. *Homeschool Laws in Your State*, *supra* note 22. But see Rich, *supra* note 22 (concluding that homeschooling is "broadly unregulated"). For a discussion about education policy and regulation concerns, see Joel Feinberg, *The Child's Right to an Open Future*, in WHOSE CHILD? CHILDREN'S RIGHTS, PARENTAL AUTONOMY, AND STATE POWER 124, 132–33 (William Aiken & Hugh LaFollette eds., 1980) ("An education that renders a child fit for only one way of life forecloses irrevocably his other options. . . . To be prepared for anything, including the worst, in this complex and uncertain world would seem to require as much knowledge as a child can absorb throughout his minority.")

25. CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 22, at 2; U.S. DEP'T OF HEALTH AND HUMAN SERVS., *supra* note 18, at 3. Texas requires attendants at birth—including certified or documented midwives—to file a birth certificate within five days of the date of every live birth, and failing to file a birth certificate within that time is a Class C misdemeanor. TEX. DEP'T. OF STATE HEALTH SERVS, *supra* note 22, at 1–3. There is nothing in Georgia's code (O.C.G.A.) explicitly making it illegal to fail to report live births.

outside their family,²⁶ are even less clear-cut. Although some may argue that these decisions constitute child abuse and deprivation, it is difficult to determine whether parental choices like these have a negative impact on children significant enough for legal intervention, and heavy debate surrounds these questions.²⁷

Congress has limited authority to legislate domestic relations issues, leaving the individual states the power to enact legislation on issues of family law and child welfare.²⁸ Courts have interpreted the Constitution as providing parents the right to “rear their children” and also protecting “the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”²⁹ Courts will usually uphold challenged governmental actions if the statutes in question are “rationally related to a legitimate state interest.”³⁰ For example, states can pass legislation to protect minors.³¹

In Faith’s case, even though her parents broke the law by failing to report their children’s births, in Texas their actions merely constituted a misdemeanor.³² Although the repercussions of this illegal activity were minor for the parents,³³ their decision to deny

26. *The Girl Who Doesn’t Exist*, *supra* note 1, at 3 min., 43 sec.

27. *Emotional Abuse*, NAT’L SOC’Y FOR THE PREVENTION OF CRUELTY TO CHILDREN, <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/emotional-abuse/what-is-emotional-abuse> [<https://perma.cc/YN3E-87UJ>] (last visited Feb. 8, 2018). This United Kingdom website lists “not recognising [sic] a child’s own individuality, trying to control their lives,” “failing to promote a child’s social development,” and “not allowing them to have friends” on its nonexhaustive list of actions constituting emotional child abuse. *Id.*

28. *In re Burrus*, 136 U.S. 586, 593–94 (1890) (“The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.”); *Preface to FAMILIES: RIGHTS, LAWS, AND STABILITY*, at vii, vii (Janice R. Redmund & Kathleen B. Killigan eds., 2008); Alison M. Smith, *Family Law: Congress’s Authority to Legislate on Domestic Relations Questions*, in *FAMILIES: RIGHTS, LAWS, AND STABILITY*, *supra*, at 2, 2.

29. *Troxel v. Granville*, 530 U.S. 57, 60, 66 (2000); *see also Parham v. J.R.*, 442 U.S. 584, 602 (1979) (“Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children.”); Smith, *supra* note 28, at 3 (“The Fourteenth Amendment’s Due Process Clause has a substantive component which ‘provides heightened protection against government interference with certain fundamental rights and liberty interests,’ including parents’ fundamental rights to make decisions concerning the care, custody, and control of their children.”) (footnotes omitted).

30. Smith, *supra* note 28, at 4.

31. *Id.*

32. TEX. DEP’T. OF STATE HEALTH SERVS., *supra* note 22, at 2–3 (“It is also a Class C misdemeanor if a person fails, neglects, or refuses to fill out and file a birth certificate with TER, the local registrar or deliver the certificate upon request to the person with the duty to file it.”).

33. TEX. PENAL CODE ANN. § 12.03(c) (West 2017) (“Conviction of a Class C misdemeanor does

their children legal records of their births had lasting, detrimental effects on the children's liberties. Even though the Pennington children were all born in the United States, and therefore automatically U.S. citizens,³⁴ they needed to prove the circumstances of their births to establish their citizenship and exercise their fundamental constitutional rights.³⁵

For Faith, proving the legitimacy of her U.S. birth required intervention by Texas State Representative Marsha Farney, who drafted a bill and presented it to the House of Representatives in Austin, Texas.³⁶ House Bill 2794, also known as the "Identification Abuse Bill," allowed Texans to more easily apply for delayed birth certificates and included increased punishment for parents who refused to provide their children with documentation of their births when asked.³⁷ In supporting this bill, Farney argued, "[J]ust as we would not allow a parent to physically handicap a child, we should not allow a parent to handicap a child where they can't operate or function in society."³⁸ This balance between preserving children's liberties and respecting parents' authority to make decisions for their children raises questions about when states should interfere with family privacy and parental autonomy in the absence of traditionally recognized child abuse and neglect.

not impose any legal disability or disadvantage.").

34. U.S. CONST. amend. XIV, § 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."); 8 U.S.C. § 1401(a) (2012); *see also* Eyder Peralta, *Three Things You Should Know About Birthright Citizenship*, NAT'L PUB. RADIO (Aug. 18, 2015, 1:24 PM), <http://www.npr.org/sections/thetwo-way/2015/08/18/432707866/3-things-you-should-know-about-birthright-citizenship> [<https://perma.cc/DS2G-3GDQ>].

35. *The Girl Who Doesn't Exist*, *supra* note 1, at 11 min., 45 sec., and 14 min., 2 sec.

36. *Id.* at 26 min., 5 sec.; Abby Ohlheiser, *How a Teenager's Viral Campaign to Prove Her Citizenship is Inspiring a New Texas Bill*, WASH. POST (Mar. 12, 2015), https://www.washingtonpost.com/news/post-nation/wp/2015/03/12/how-a-teenagers-viral-campaign-to-prove-her-citizenship-is-inspiring-a-new-texas-bill/?utm_term=.c2a03edeee4d [<https://perma.cc/2GQ2-7UHF>].

37. H.B. 2794, 84th Leg., Reg. Sess. (Tex. 2015); *The Girl Who Doesn't Exist*, *supra* note 1, at 28 min., 59 sec. ("[T]he bill gives the judge some leeway based on what the circumstances are for the parents.").

38. *The Girl Who Doesn't Exist*, *supra* note 1, at 28 min., 11 sec.

A. Children's Rights and the Concept of Preserving a Child's Future Choices

Some issues relating to children's rights and parental decision-making autonomy are well established.³⁹ The United Nations declared 1979 the International Year of the Child, and numerous mental health professionals began investigating the rights of children in the late 1970s.⁴⁰ The conversation surrounding children's rights expanded to a multidisciplinary approach in the 1980s,⁴¹ and in 1980, philosopher Joel Feinberg delineated three broad categories of moral rights,⁴² which this Note uses in analyzing children's identity rights.

The first category, which Feinberg labeled "A-C-rights," contains rights that adults and children share.⁴³ The second, called "A-rights," consists of free choice rights that are generally exclusive to adults.⁴⁴ Finally, the third, "C-rights," encompasses rights generally exclusive to, and characteristic of, children.⁴⁵ Within C-rights, Feinberg identified a subclass comprised of autonomy rights similar to those in the A-rights class, but which children cannot act upon until they are older.⁴⁶ Although these rights are meant to be "saved for the child until he is an adult," they can be violated and truncated before the child is able to act on them, thus closing the door to certain

39. See MICHAEL FREEMAN, *THE MORAL STATUS OF CHILDREN: ESSAYS ON THE RIGHTS OF THE CHILD* 1–2 (1997); Feinberg, *supra* note 24, at 124–25; James Scott Henning, *Foreword to THE RIGHTS OF CHILDREN: LEGAL AND PSYCHOLOGICAL PERSPECTIVES*, at xiii, xiv (James S. Henning ed., 1982).

40. FREEMAN, *supra* note 39, at 2; Henning, *supra* note 39, at xiv.

41. Henning, *supra* note 39, at xiv.

42. Feinberg, *supra* note 24, at 125.

43. *Id.* at 125 (noting that adults and children share rights such as "the right not to be punched in the nose or to be stolen from. . . . When a stranger slaps a child and forcibly takes his candy in order to eat it himself, he has interfered wrongfully with the child's bodily and property interests and violated his or her rights just as surely as if the aggressor had punched an adult and forcibly helped himself to her purse").

44. *Id.* This category includes rights such as "the legal rights to vote, to imbibe, to stay out all night, and so on." *Id.*

45. *Id.*

46. *Id.* Feinberg calls these "anticipatory autonomy rights" and explains that "[t]hey are, in effect, autonomy rights in the shape they must assume when held 'prematurely' by children." *Id.* at 126. Feinberg also denotes the subclass "dependency-rights" within C-rights, which he describes as rights stemming from basic needs for protection and sustenance and which are common to children but also shared by "handicapped adults who are incapable of supporting themselves and must therefore be 'treated as children' for the whole of their lives." *Id.* at 125.

opportunities in the child's future.⁴⁷ Feinberg called these "rights-in-trust," arguing that parents should keep these rights intact for their children and protect their freedom to choose whether to exercise them.⁴⁸ He further summarized this subclass as children's "right to an open future."⁴⁹ Feinberg clarified the distinction between these categories using the example of the right to exercise religious beliefs, which he explained is an A-right for adults and a right-in-trust for children, who have not yet developed fully enough to decide their religious beliefs for themselves.⁵⁰

Feinberg argued that these categories are necessary to understand why children and adults are different and why their rights need to be treated differently.⁵¹ Because our society accepts that adults possess the maturity to choose freely and independently, we prioritize adults' autonomy in making choices that affect their present lives.⁵² Children, on the other hand, are constantly evolving and are not yet developed or self-sufficient enough to exercise full autonomy.⁵³ Issues about family privacy and children's autonomy typically stem from clashes between parents' A-rights to make choices for their families and children's C-rights-in-trust and rights to an open future.⁵⁴ Feinberg noted that this conflict is usually "between the

47. *Id.* at 125–26. For example, Feinberg writes that an infant has the right to walk on public streets but cannot act on this right until the child learns to walk. *Id.* at 126 ("One would violate that right in trust *now*, before it can even be exercised, by cutting off the child's legs.")

48. Feinberg, *supra* note 24, at 126 ("His right while he is still a child is to have these future options kept open until he is a fully formed self-determining adult capable of deciding among them.")

49. *Id.*

50. *Id.* at 125–26 ("One can avoid confusing the two by referring to the latter simply as part of the child's right to an open future (in respect to religious affiliation).") Feinberg adds, "The free exercise of one's religion . . . presupposes that one has religious convictions or preferences in the first place. When parents choose to take their child to religious observances and to enroll him in a Sunday School, they are exercising *their* religious rights, not (or not yet) those of the child." *Id.* at 125.

51. *Id.* at 127 ("When a mature adult has a conflict between getting what he wants now and having his options left open in the future, we are bound by our respect for his autonomy not to force his present choice in order to protect his future 'liberty.' . . . Children are different.")

52. *Id.* ("[A mature adult's] present autonomy takes precedence even over his probable future good, and he may use it as he will, even at the expense of the future self he will one day become.")

53. Henning, *supra* note 39, at xv ("They need the opportunity to act and the freedom to grow. They need limits and support. It is a challenge to the adult world to provide them their inalienable rights to life, liberty, and the pursuit of happiness. Is there not also a mandate for adults to protect and ensure an enriching world in which children will find themselves ten to twenty years from now?")

54. Feinberg, *supra* note 24, at 128.

child's protected personal interests in growth and development (rather than his immediate health or welfare) and the parents' right to control their child's upbringing, or to determine their own general style of life"⁵⁵

Because minor children cannot legally represent themselves in defending their interests in an open future and challenging their parents in court, courts have granted states the "sovereign power of guardianship"—known as *parens patriae*⁵⁶—for these proceedings.⁵⁷ Although this guardianship power is not typically asserted as a means of defending a child's future adult self, in theory it can be used as a method of preventing parents from making certain permanent, life-altering decisions for children before the children can legally make these decisions themselves.⁵⁸ However, even with the *parens patriae* system giving children a legal voice, in the absence of direct abuse, harm, or neglect, courts tend to defer to parental autonomy and give little weight to children's opposing wishes for their futures.⁵⁹

55. *Id.*; see also *The Girl Who Doesn't Exist*, *supra* note 1, at 23 min., 2 sec. After Faith shared her story on YouTube, one person responded to Faith's dilemma by saying, "Her parents didn't 'neglect anything.' They stood on and exercised their rights, and wisely so. What they did was in her best interest. She just doesn't understand it because she is young and because she has led a protected life." *The Girl Who Doesn't Exist*, *supra* note 1, at 23 min., 9 sec.

56. Feinberg, *supra* note 24, at 128. Feinberg defines *parens patriae* as the state's "capacity as protector of those who cannot help themselves." *Id.* at 130.

57. *Id.* at 128–29; FREEMAN, *supra* note 39, at 3. For a discussion on the right of the child to be heard in judicial and administrative proceedings, see United Nations Convention on the Rights of the Child art. 12, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) ("1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.") and United Nations Comm. on the Rights of the Child, *General Comment No. 12: The Right of the Child to Be Heard*, U.N. Doc. CRC/GC/12 (July 1, 2009).

58. Feinberg, *supra* note 24, at 129 ("[T]here are sometimes ways of interfering [sic] with parents so as to postpone the making of serious and final commitments until the child grows to maturity and is legally capable of making them himself.").

59. Dailey, *supra* note 22.

B. Family Privacy

The concern about preserving family privacy and parents' right to choose what they feel is best for their children is a significant issue conflicting with children's rights and the concept of protecting an open future.⁶⁰ Lisa and James Pennington believed they were acting in their children's best interests by living "outside of the system" and refusing to document their children's births, and Faith's story unearthed many supporters of her parents' choice to create a sovereign family unit separate from the control and recognition of the U.S. government.⁶¹

Regardless of the reasoning behind the Penningtons' decision not to report their children's births, the choices they made for their family clearly had a direct impact on their children's lives and futures.⁶² So, at what point can—or should—the government interfere and insert itself into the family dynamic?

Technological advances in the twentieth century brought such issues of family privacy to the forefront.⁶³ Parents began struggling

60. Feinberg, *supra* note 24, at 128.

61. *The Girl Who Doesn't Exist*, *supra* note 1, at 12 min., 57 sec. Some of the people Radiolab reporter and producer Alexandra Leigh Young interviewed for this story said that they view birth certificates "like [] paper[s] of ownership" and do not want births documented by the government for political, religious, or privacy reasons. *Id.* at 12 min., 32 sec. The Sovereign Citizens Movement has been growing in the U.S. since the late 2000s, and adherents believe they can decide which laws to obey and which to ignore based on the idea that the U.S. government now operates under a system of admiralty law, which seeks to use American citizens as collateral for its currency—thus effectively enslaving all U.S. citizens. *Sovereign Citizens Movement*, SOUTHERN POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/ideology/sovereign-citizens-movement> [perma.cc/R4W-G7QJ] (last visited Feb. 8, 2018). One key aspect of this theory is that the government uses a baby's birth certificate to create a secret corporate trust in the baby's name, thus clandestinely assigning some of the child's rights to a corporation. *Id.* The FBI identifies the Sovereign Citizens Movement as a form of domestic terrorism and refers to sovereign citizens as "anti-government extremists." *Domestic Terrorism: The Sovereign Citizen Movement*, FED. BUREAU OF INVESTIGATION (Apr. 13, 2010), https://archives.fbi.gov/archives/news/stories/2010/april/sovereigncitizens_041310/domestic-terrorism-the-sovereign-citizen-movement [perma.cc/PVU9-76N9].

62. See LAWRENCE M. FRIEDMAN, *PRIVATE LIVES: FAMILIES, INDIVIDUALS, AND THE LAW* 10 (2004) ("What I choose for myself has an impact on other people. A married woman, for example, in most states today has the right to end the marriage. This is her free choice. But what if her husband would choose not to? Her choice trumps his choice.").

63. See *id.* at 9 ("In the twentieth century . . . [t]he family lost its monopoly on the power to train, mold, and socialize children. . . . The outside world came bursting into the home. A man's home was no longer his castle; it was open, porous—it was, above all, an entertainment center. . . . The family was transformed; so too was the very concept and meaning of privacy.").

to control the information their children received, and new technology made it increasingly difficult to limit children's exposure to viewpoints and beliefs that differed from those taught in the home.⁶⁴ Although some families embraced this change, others became increasingly concerned about their ability to shield their children from outside influence and shape their children's worldviews.⁶⁵ Because of this, some families—like the Penningtons—turned inward and revolved exclusively around the immediate family unit, choosing to separate themselves from the outside world as much as possible.⁶⁶

A family's right to choose such a lifestyle stems from rights granted by the U.S. Constitution.⁶⁷ Although the Constitution does not specifically mention a right to privacy, courts have recognized in the text a right encompassing family issues, including marriage, procreation, and education.⁶⁸ “These aspects, broadly termed ‘private family life,’ are constitutionally protected against government interference. As such, a governmental entity must demonstrate a compelling interest to regulate or infringe on an individual's fundamental right.”⁶⁹

But determining what constitutes a compelling interest is not clear. Is there a certain point at which the choices parents make for their children so negatively impact or limit their children's futures that the

64. *See id.*

65. *See id.*

66. *See id.* (“Perhaps what joins all these disparate ideas together is the concept of free choice, including the choice to ‘go public’ or not.”); *The Girl Who Doesn't Exist*, *supra* note 1, at 2 min., 11 sec., and 4 min., 36 sec.

67. *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639–40 (1974); *see Smith*, *supra* note 28, at 3.

68. *Smith*, *supra* note 28, at 3 (“Although the Constitution fails to mention specifically a fundamental right to privacy, courts recognize this right to encompass contraception, abortion, marriage, procreation, education (elementary level) and interpersonal relations.”) (footnote omitted).

69. *Id.*; *see also Cleveland Bd. of Educ.*, 414 U.S. at 639–40 (“This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.”); *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (“It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.”) (citation omitted).

government should intervene to preserve children's rights and future autonomy?

II. Analysis

Some opponents of children's rights argue that deferring to minors' opinions on social issues will detrimentally allow "immature adolescents" to determine our societal views on important issues such as health care and education.⁷⁰ One such opponent wrote that "[i]n the eyes of youth advocates, parents—and parental rights—are little more than stumbling blocks in the way of adolescent . . . rights."⁷¹ Additionally, some opponents worry that prioritizing children's rights above parental autonomy simply increases the likelihood that minors' decisions will be influenced by nonparental trusted adults who may be pushing their own agendas rather than looking out for the children's best interests.⁷²

Conversely, proponents of children's rights contend that strict deference to parental authority over a child's wishes may harm

70. Mary Rice Hasson, *Liberals Won't and Don't Need to "Collectivize" Your Kids: "Youth Rights" and the Shrinking Power of Parents*, 27 NAT. FAM., Fall 2013, <http://familyinamerica.org/journals/fall-2013/liberals-wont-and-dont-need-collectivize-your-kids-youth-rights-and-shrinking-power-parents/#.WAeseZMrKL-> [<https://perma.cc/GC7S-C2CU>] ("The reality is this: to secure 'youth rights' is to secure the vision of the 'sex-positive,' reproductive rights crowd, which believes that children must be taught to internalize a 'shame-free,' non-judgmental, pleasure-driven approach to sexuality and that they are entitled to claim their 'sexual and reproductive rights.' . . . [T]he youth rights perspective welcomes 'sexual diversity,' rejects traditional morality, and touts unfettered youth access to contraception and abortion. . . . In addition, states are being pressured to adopt comprehensive sexual education standards that incorporate the youth rights perspective into discussions of gender, sexuality, and family planning.") (footnotes omitted).

71. *Id.* ("Youth advocates sprint past the law's tradition—including language in several Supreme Court decisions—of recognizing 'that natural bonds of affection lead parents to act in the best interests of their children,' and project the idea that children, instead of benefitting from parental involvement, are likely to be vulnerable, almost universally, to threats or harm from their parents. In the same vein, these youth advocates toss aside the legal 'presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions.' . . . [As a result, p]arents will end up paying for their 15-year-old daughter's treatment for chlamydia, for example, but will never know about it—losing the opportunity to counsel her or ensure adequate treatment and follow-up.") (footnotes omitted).

72. *Id.* ("In real life these 'trusted adults' are likely to be sexual health counselors, educators, physicians, mental health counselors, or even non-professional staff members or amorphous youth 'advocates.' They are likely to encounter children in schools, school-based health centers, youth clubs, health care facilities, and other 'youth-friendly' locations (i.e., where parents are not welcome). They may be providers of the very services (such as abortion or emergency contraception) that a parent would counsel a child to avoid.")

children, giving parents too much control in determining such personal issues as a child's medical procedures, religious beliefs, and education, while restricting children's privacy.⁷³ Issues of clear-cut child abuse notwithstanding, this balance between parent and child autonomy is difficult to achieve, especially when the vague label "child" covers the wide range of all persons under the legal age of majority: eighteen in most states.⁷⁴

A. The Right of the Parent to Govern the Child: Parental Autonomy and Parens Patriae

The right to rear one's children is . . . a fundamental liberty interest

. . . .

Deference to parental autonomy means that the state does not second-guess parental decision making or interfere with the shared opinion of parents regarding how a child should be raised. Nor does it impose its own notion of a child's best interests on a family. . . . [P]arental autonomy includes "the freedom to decide wrongly."⁷⁵

73. See Alireza Parasapoor et al., *Autonomy of Children and Adolescents in Consent to Treatment: Ethical, Jurisprudential, and Legal Considerations*, 24 IRANIAN J. OF PEDIATRICS 241, 245 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4276576/> [<https://perma.cc/Y6LU-TAUT>] ("In guidelines offered in medical ethics literature there are restrictions on the scope of autonomy of adult patients in medical decision-making, for instance a patient's wish to commit suicide is invalid; likewise, multiple restrictions apply to the autonomy of parents regarding their children. For example, in most countries people have the right to refuse life-saving treatments, while no one is granted this same right regarding their children. Similarly, parents cannot refuse their children life-sustaining treatments on account of their own religious beliefs. Parents are morally obliged to make medical decisions based on their children's best interests, not their own wishes and well-being."); see also *Minors' Access to STI Services*, GUTTMACHER INST. (Jan. 1, 2018), <https://www.guttmacher.org/state-policy/explore/minors-access-sti-services> [<https://perma.cc/5GTG-8UA5>].

74. Jennifer Lai, *Old Enough to Vote, Old Enough to Smoke?: Why Are Young People Considered Adults at 18?*, SLATE (Apr. 23, 2013, 7:37 PM), http://www.slate.com/articles/news_and_politics/explainer/2013/04/new_york_minimum_smoking_age_why_are_young_people_considered_adults_at_18.html [<https://perma.cc/7MAB-HD6M>] ("In 47 states, the age of majority—the age at which a person has the legal rights and responsibilities of an adult—is 18.").

75. *Fawzy v. Fawzy*, 973 A.2d 347, 473–74 (N.J. 2009) ("[T]he State permits to stand unchallenged parental judgments that it might not have made or that could be characterized as unwise.").

Courts prefer to defer to parental authority in making decisions for minor children.⁷⁶ Legal scholars who advocate for this deference argue that the state is usually a poor substitute for parental judgment and that state law cannot adequately account for the intricacies of the parent–child relationship.⁷⁷

However, the Supreme Court of the United States has also held that “[t]he right of parents to the care and custody of their children is not absolute.”⁷⁸ In *Prince v. Massachusetts*—a case in which the Court affirmed a guardian’s conviction of violating Massachusetts child labor laws by sending a nine-year-old child to preach on the street and sell religious pamphlets—the Court held that “[p]arents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.”⁷⁹

Although the *Prince* decision relates specifically to the issue of parents making decisions about their children’s religious beliefs, the Court’s reasoning supports giving children the right to make certain decisions for themselves when they reach the age of majority, strengthening Joel Feinberg’s argument that children have the right to an open future.⁸⁰ To protect this right, states must sometimes rely on the *parens patriae* doctrine—which obligates the state to intervene where necessary to protect children from harm—to defend children against their parents’ wishes.⁸¹ Under this doctrine, the state may

76. Stuart J. Baskin, *State Intrusions into Family Affairs: Justifications and Limitations*, 26 STAN. L. REV. 1383, 1385 (1974).

77. *Newmark v. Williams/DCPS*, 588 A.2d 1108, 1116 (Del. 1991); Joseph Goldstein, *Medical Care for the Child at Risk: On State Supervention of Parental Autonomy*, 86 YALE L.J. 645, 650 (1977); Baskin, *supra* note 76, at 1385.

78. *V.C. v. M.J.B.*, 748 A.2d 539, 548–49 (N.J. 2000) (“For example, a legal parent’s fundamental right to custody and control of a child may be infringed upon by the state if the parent endangers the health or safety of the child. Likewise, if there is a showing of unfitness, abandonment or gross misconduct, a parent’s right to custody of her child may be usurped.”) (citations omitted).

79. *Prince v. Massachusetts*, 321 U.S. 158, 164, 170 (1944) (“[T]wo claimed liberties are at stake. One is the parent’s, to bring up the child in the way he should go, which for appellant means to teach him the tenets and the practices of their faith. The other freedom is the child’s, to observe these.”).

80. *Id.* at 170; Feinberg, *supra* note 24, at 126.

81. See United Nations Comm. on the Rights of the Child, *General Comment No. 12: The Right of the Child to Be Heard*, *supra* note 57, ¶ 37 (“The representative must be aware that she or he represents exclusively the interests of the child and not the interest of other persons (parent(s)).”); *Fawzy v. Fawzy*,

usurp parental control and require children to attend school or prevent minor children from working, among other things.⁸² *Parens patriae* grants the state a “wide range of power for limiting parental freedom and authority in things affecting the child’s welfare,” but this power is typically limited to protecting a child from harm or death.⁸³ Unfortunately, harm in this sense is not defined.⁸⁴ Although harm clearly applies to overt physical, mental, and emotional abuse, whether the *parens patriae* power extends to protect future harm a child’s parents cause is unclear.⁸⁵

1. Parental Naming Rights

One example of this deference to parental autonomy is the parental right to choose any name for a child, regardless of whether that name may potentially limit a child’s future or cause mental anguish.⁸⁶ Celebrities are often mocked for the names they choose for their children.⁸⁷ For example, Gwyneth Paltrow and Chris Martin famously named their children Apple and Moses, Nicolas Cage named his son Kal-El, and Kim Kardashian and Kanye West named their daughter North West.⁸⁸

973 A.2d 347, 347, 358–60 (N.J. 2009) (“[T]he state has an obligation, under the *parens patriae* doctrine, to intervene where it is necessary to prevent harm to a child. . . . [P]otential harm to the child is the constitutional imperative that allows the state to intervene into the otherwise private and protected realm of parent–child relations.”) (citations and footnotes omitted).

82. *Prince*, 321 U.S. at 165 (“It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens.”); see also *Fawzy*, 973 A.2d at 358 (“[S]tate, as *parens patriae*, can intrude on parental autonomy to protect child from ill health or death.” (citing *Prince*, 321 U.S. at 166–67)).

83. *Prince*, 321 U.S. at 167; see also *Fawzy*, 973 A.2d at 358.

84. See *Prince*, 321 U.S. at 170; Feinberg, *supra* note 24, at 129.

85. Feinberg, *supra* note 24, at 129.

86. Carlton F.W. Larson, *Naming Baby: The Constitutional Dimensions of Parental Naming Rights*, 80 GEO. WASH. L. REV. 159, 161–62 (2011).

87. See, e.g., Catherine Connors, *The Worst Celebrity Baby Names*, BABBLE, <https://www.babble.com/celebrity/33-worst-celebrity-baby-names/> [<https://perma.cc/FJJ7-5A3V>] (last visited Feb. 11, 2018).

88. Gilbert Cruz, *Top Ten Wacky Celebrity Baby Names*, TIME (May 9, 2011), http://content.time.com/time/specials/packages/article/0,28804,2070329_2070340_2070330,00.html [<https://perma.cc/2UBV-RZ3S>]; Rande Dawn, *All in the Family! See Chris Martin’s Kids Apple, Moses Sing at Coldplay Concert*, TODAY (June 27, 2016, 7:58 AM), <https://www.today.com/parents/all-family-see-chris-martin-s-kids-apple-moses-sing-t100291> [<https://perma.cc/5WGH-Q99T>]; Stephanie Webber, *Kim Kardashian Chose to Name Daughter North West Because of Anna Wintour, Pharrell*

Naming laws vary by state.⁸⁹ Connecticut, for example, does not have any laws regulating naming,⁹⁰ while California prohibits the use of diacritical marks indicating pronunciation, such as é and ñ.⁹¹ On the other end of the spectrum, however, in 2013, a Tennessee judge was charged with violating the state’s Code of Judicial Conduct after she ordered parents to change their baby’s name from Messiah to Martin and argued that naming the baby after Jesus Christ was not in the child’s best interest.⁹² In another instance, New Jersey parents were legally allowed to name their children Adolf Hitler, JoyceLynn Aryan Nation, and Honszlynn Hinler because New Jersey statutory law states a child “may be given any chosen name(s) or surname” and only allows the state registrar to reject names containing “an obscenity, numerals, symbols, or a combination of letters, numerals or symbols, or a name that is illegible.”⁹³

Although many other countries have established lists of names parents may not give their children, free speech under the First Amendment makes this solution to the problem of parents giving children harmful names—such as Adolf Hitler—a nonstarter in the

Williams, US WEEKLY (Sept. 6, 2014), <http://www.usmagazine.com/celebrity-news/news/kim-kardashian-chose-name-north-west-because-of-anna-wintour-pharrell-201469> [<http://perma.cc/RN3T-Q63M>].

89. Larson, *supra* note 86, at 162.

90. *Id.* at 163–64. In fact, in 2011 a Connecticut judge “discovered, to his astonishment, that Connecticut did not require a name to be placed on a child’s birth certificate, nor was there any authority whatsoever governing the acquisition of a legal name at birth.” *Id.*

91. *Id.* at 161, 169 (“San Francisco Chronicle writer Louis Freedberg tried to register his newborn daughter’s name with the state of California. The girl’s name was Lucia. But the state of California refused to enter this name on her birth certificate. California’s Office of Vital Records insists that birth names can be recorded using only ‘the 26 alphabetical characters of the English language with appropriate punctuation if necessary.’”) (footnotes omitted).

92. Katy Steinmetz, *From Messiah to Hitler, What You Can and Cannot Name Your Child*, TIME (Aug. 12, 2013), <http://nation.time.com/2013/08/12/from-messiah-to-hitler-what-you-can-and-cannot-name-your-child/> [<https://perma.cc/B9EZ-TCWZ>]; *Tenn. Judge Faces Judicial Review for Ordering Baby Messiah’s Name Change*, CBS (Oct. 25, 2013, 3:56 PM), <http://www.cbsnews.com/news/tenn-judge-faces-judicial-review-for-ordering-baby-messiahs-name-change/> [<https://perma.cc/72RL-VVX8>] (“[Judge Bellew’s] written order said, ‘‘Messiah’’ is a title that is held only by Jesus Christ. Labeling this child ‘‘Messiah’’ places an undue burden on him that as a human being, he cannot fulfill.’”).

93. Larson, *supra* note 86, at 161 (footnotes and internal quotation marks omitted). “A statute prohibiting the name ‘Adolf Hitler’ is viewpoint discriminatory. If parents can name their children after Franklin Roosevelt or Winston Churchill, the state is choosing to permit a favored ideological message and to suppress a disfavored one.” *Id.* at 196.

United States.⁹⁴ Additionally, state laws would have a difficult time maintaining such a list or updating the restrictions on children's names, as naming trends often correlate with popular culture, and "[p]arental imagination and bad judgment will run far ahead of anything foreseen by legislators."⁹⁵ Still, naming laws often play an important role in weighing parental autonomy and children's rights to an open future because parent-given names are defining and can sometimes cause unnecessary anguish.⁹⁶ In one case, a New Zealand judge ruled that naming a child Talula Does the Hula From Hawaii constituted a form of child abuse because the name "makes a fool of the child and sets her up with a social disability and a handicap"⁹⁷ In that case, the judge acknowledged that, despite her age, the nine-year-old girl in question exhibited maturity because her fear of being teased for her name showed "she ha[d] a greater level of insight than either of her parents."⁹⁸

In the United States, minors are often prohibited from changing their given names without parental permission.⁹⁹ Georgia requires both parents' consent to change a child's name unless the parents are

94. *Id.* at 171, 195–96.

95. *Id.* at 197.

96. *Id.* ("No other form of human expression has such permanent, life-altering consequences for another human being who lacks any ability to counter it.")

97. Kathy Marks, *Parents Must Rename Girl Called Talula Does The Hula From Hawaii*, INDEPENDENT (July 24, 2008, 11:00 PM), <http://www.independent.co.uk/news/world/australasia/parents-must-rename-girl-called-talula-does-the-hula-from-hawaii-876813.html> [<https://perma.cc/494M-GRDM>] ("[The judge] ordered that her name be changed, saying it was highly embarrassing and made her a target for ridicule. Her lawyer, Colleen MacLeod, told the court that the girl was so mortified she instructed her friends just to call her simply 'K.'"); Eugene Volokh, *Talula Does the Hula From Hawaii*, SLATE (July 30, 2008, 7:13 AM), http://www.slate.com/articles/news_and_politics/jurisprudence/2008/07/talula_does_the_hula_from_hawaii.html [<https://perma.cc/H6TV-79FM>] ("A New Zealand Family Court judge apparently viewed this name as a form of child abuse—the girl had complained that '[s]he fears being mocked and teased' about it—and asserted legal custody over the child so as 'to ensure that a proper name was found for her.'").

98. Marks, *supra* note 97 ("While the goal of selecting a unique name could not be criticised [sic], [the judge] said, 'these parents have failed in exercising the first and important task of parenthood.' Naming a child was not 'a time to be frivolous or to create a hurdle for their child's future life.' Apart from the social aspect, it could present problems when they registered for an exam, or applied for a passport or driving licence [sic].")

99. See Alissa Merksamer, *How to Change Your Child's Name*, BABYCENTER (May 2016), http://www.babycenter.com/0_how-to-change-your-childs-name_3641846.bc?showAll=true [<https://perma.cc/NJN6-QVJU>].

deceased, have legally abandoned the child, or have not supported the child for at least five years prior to the filing of the name change petition.¹⁰⁰ Within the name change petition, applicants must also explain their reasons for requesting the change.¹⁰¹ Courts are instructed to use this reasoning to determine whether granting the change would be in the child's best interests.¹⁰² Although Georgia name change guidelines and Section 19-12-1 of the Georgia Code apply equally to petitions to change first, middle, and last names, Georgia law governing this issue appears mainly concerned with protecting parental rights and legitimation¹⁰³ in changing a child's last name, rather than protecting children's interests in changing their first names or distancing themselves from their parents by changing their last names.¹⁰⁴ In contrast, although Pennsylvania also considers the child's best interest when ruling on name change petitions, Pennsylvania courts additionally acknowledge a petitioning child's age and ability to understand the significance of changing her first or last name when deciding how much weight to give to the child's desire for a name change.¹⁰⁵ These strict restrictions are in place even though cases show that parents may exhibit immaturity or callous disregard for their children's mental well-being in choosing their

100. O.C.G.A. § 19-12-1(e) (2017); ATLANTA LEGAL AID SOC'Y, INSTRUCTIONS FOR NAME CHANGE OF MINOR CHILDREN 1 (Mar. 2014), <http://www.georgialegalaid.org/files/6FCBD72D-B465-109D-9EC1-5A4F52A74EE9/attachments/57B2AFA4-612A-4373-9DA1-03EABCE6713D/instructions-name-change-child.pdf> [<http://perma.cc/29HJ-6DER>].

101. ATLANTA LEGAL AID SOC'Y, *supra* note 100, at 4.

102. *Id.*

103. "Legitimation is a legal action which is the only way, other than by marrying the mother of a child, that the father of a child born out of wedlock in the State of Georgia may establish legal rights to his child." *Frequently Asked Questions About Legitimation*, SUPERIOR CT. OF FULTON COUNTY, <https://www.fultoncourt.org/family/family-legitimation.php> [<https://perma.cc/YRH8-8YDL>] (last visited Feb. 10, 2018).

104. See O.C.G.A. § 19-12-1(b), (e) (2017); ATLANTA LEGAL AID SOC'Y, *supra* note 100, at 4.

105. *Name Change in Pennsylvania for Minor Children*, NORTHWESTERN LEGAL SERVS. (May 2010), https://www.nwls.org/Name_ChangeMinors.htm [<https://perma.cc/T7VW-3LW3>] ("The link between the parent and child may cause embarrassment or problems for the child in school and the community. For example, a name change may be granted where a parent has committed a notorious crime in the community and the child suffers harassment because of bearing his or her parents' surname. . . . The Court may look to the child to figure out whether the child understands the impact of changing his or her name. A young child will most likely not be able to understand what it will mean to change his or her name. Of course, a teenager can probably express his or her desire and understanding of the impact of the name change to a greater degree. The Court will decide how much weight to give to the desires of the child.").

names,¹⁰⁶ and studies show that, commonly, even well-intentioned parents later regret the names they gave their children.¹⁰⁷

B. State Legislation Concerning Parental Control

Although parental naming choices often raise concerns about blindly deferring to full parental autonomy, the majority of state laws governing the conflict between parental authority and state control revolve around issues of education and health care.¹⁰⁸

1. Education

Parents have the constitutional right under the due process clause “to direct the upbringing and education of children under their control.”¹⁰⁹ The Amish, for example, only believe in educating children through eighth grade, and the seminal case *Wisconsin v. Yoder* held that the Amish interest in educating children based on the community’s values outweighed Wisconsin’s statutory requirement of further education.¹¹⁰ An earlier case, *Meyer v. Nebraska*, finding

106. See Marks, *supra* note 97; Steinmetz, *supra* note 92.

107. Adam Boulton, *A Fifth of Parents Regret Their Child’s Name—Study*, TELEGRAPH (Aug. 31, 2016, 3:14 PM), <http://www.telegraph.co.uk/news/2016/08/31/a-fifth-of-parents-regret-their-childrens-name-study> [https://perma.cc/UKP3-R5DU] (reporting that one-in-five English parents admit they regret the names they chose for their children); see also Catherine Pearson, *When You Regret the Name You Chose for Your Baby*, HUFFINGTON POST (Jan. 18, 2016, 4:23 PM), http://www.huffingtonpost.com/entry/when-you-regret-the-name-you-chose-for-your-baby_us_56980638e4b0778f46f8afb6.

108. See Stephen T. Knudsen, *The Education of the Amish Child*, 62 CALIF. L. REV. 1506, 1507–10 (1974); S. Woolley, *Children of Jehovah’s Witnesses and Adolescent Jehovah’s Witnesses: What Are Their Rights?*, 90 ARCHIVES OF DISEASE IN CHILDHOOD 715, 718 (2005). States have also explored issues of religious freedom and parental autonomy, but this is typically discussed as part of a larger issue concerning religion as it relates to a child’s well-being or education. See *Prince v. Massachusetts*, 321 U.S. 158, 167–68 (1944) (holding that “when state action impinges upon a claimed religious freedom, it must fall unless shown to be necessary for or conducive to the child’s protection against some clear and present danger But the mere fact a state could not wholly prohibit this form of adult activity, whether characterized locally as a ‘sale’ or otherwise, does not mean it cannot do so for children. . . . The state’s authority over children’s activities is broader than over like actions of adults.”).

109. *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925) (“The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”).

110. See *Wisconsin v. Yoder*, 406 U.S. 205, 235–36 (1972); see also Knudsen, *supra* note 108, at 1506 (“The child at 12 or 13 years of age begins a new period of self-awareness, and it is crucial to Amish parents that their children not be taught to identify with non-Amish values. The Amish feel that a child who achieves a level of scholarship beyond the fundamentals of the primary grades is likely to

that parents have the duty and the right to provide their children with an education “suitable to their station in life,” supports the Court’s holding in *Yoder*.¹¹¹ What happens, then, if parents decide—as Faith’s did—to educate their children without any exposure to views other than their parents’ views? Parents could potentially use *Meyer* and *Yoder* to legally restrict their children’s education by simply arguing that they did not intend for their children to rise to a higher station in life, leaving children voiceless if they disagree with the level or quality of education their parents provide. Judge William Blackstone noted that “the municipal laws of most countries . . . seem to be defective . . . by not constraining the parent to bestow a proper education upon his child.”¹¹² While courts weigh parents’ rights in dictating their children’s education against states’ interests in compulsory education, minor children are left without an inherent voice in the decision-making.¹¹³

2. *Health Care: Consent for Medical Treatment*

Another area in which children are often voiceless is health care.¹¹⁴ Although medical treatment and procedures require patient autonomy—barring life-threatening procedures for incapacitated patients—minors are legally unable to consent to their own medical care, and this decision instead falls to their parent or guardian.¹¹⁵ One

leave the community and be lost to the church. More importantly, if a child spends the great part of his day at the high school, there is less chance he will learn to appreciate the Amish way of life.”). The *Yoder* court “found that the free exercise right of the Amish and the traditional interest of the parents in the religious upbringing of their children outweighed the state interests in education beyond the eighth grade.” Knudsen, *supra* note 108, at 1507.

111. *Meyer v. Nebraska*, 262 U.S. 390, 400–01 (1923) (“[I]t is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the States, including Nebraska, enforce this obligation by compulsory laws. . . . That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected.”); *see also Pierce*, 268 U.S. at 535 (“The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”).

112. Knudsen, *supra* note 108, at 1507–08 (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 451 (T. Cooley ed., 1899)).

113. *See id.* at 1511.

114. *See* Goldstein, *supra* note 77, at 650–52.

115. NAT’L ASS’N FOR THE EDUC. OF HOMELESS CHILDREN & YOUTH, UNACCOMPANIED YOUTH’S RIGHTS TO CONSENT FOR MEDICAL TREATMENT 1 (Nov. 2011),

justification for this practice is that most medical professionals believe children and adolescents “lack the emotional maturity to understand the richer complexity of decisions.”¹¹⁶

Within health care, sex education is one of the more hotly contested issues in the debate between parental authority and children’s rights.¹¹⁷ States have consistently expanded minors’ rights to consent to health care relating to sexual activity, and all fifty states grant children the ability to seek testing and treatment for sexually transmitted infections without their parents’ consent or knowledge.¹¹⁸ In 2012, the Bloomberg administration in New York City founded the Connecting Adolescents to Comprehensive Health (CATCH) program, a government-funded pilot program designed to combat the city’s teen pregnancy problem by providing female students with contraceptives.¹¹⁹ The program provides birth control to students as

www.naehcy.org/dl/tk/hs/17_consent.doc [<https://perma.cc/6UD9-SM7K>]; *see also* Parasapoor et al., *supra* note 73, at 241 (“In modern medical ethics, patient autonomy is considered a major principle in making decisions about an individual’s health, and those who receive healthcare should have the right to practice their autonomy consciously and freely; healthcare providers, on the other hand, are obligated to respect this right and allow patients to practice their autonomy in the course of their treatment. In cases where a patient cannot exercise this right due to his or her limited ability to make medical decisions—a condition referred to as lack of capacity—a qualified person will proceed to make such decisions as the patient’s surrogate based on his or her best interests.”) (footnotes omitted).

116. Hasson, *supra* note 70 (“New data from neuropsychology and insights into adolescent brain development suggest ‘that while adolescents might be able to articulate intellectually the causal relations between their actions and the results of their actions, they tend to lack the emotional maturity to understand the richer complexity of decisions.’”) (footnotes omitted); *see also* Parasapoor et al., *supra* note 73, at 242–43.

117. *See Minors’ Access to STI Services, supra* note 73.

118. *Id.* (“Many states, however, allow physicians to inform parents that the minor is seeking or receiving STI services when they deem it in the best interests of the minor. . . . All 50 states and the District of Columbia explicitly allow minors to consent to STI services, although 11 states require that a minor be of a certain age (generally 12 or 14) before being allowed to consent.”); *see also* Hasson, *supra* note 70 (“In every U.S. state, children have the right to consent on their own to testing and treatment of sexually transmitted infections (STIs).”) (footnote omitted).

119. *Mayor Michael Bloomberg Defends Giving NYC Students Plan B “Morning-After Pill,”* CBS N.Y. (Sept. 24, 2012, 11:10 PM), <http://newyork.cbslocal.com/2012/09/24/bloomberg-defends-giving-nyc-students-plan-b> [<https://perma.cc/VAY3-3FJM>]. Scholars debate whether this is a good or bad practice. *Compare* Hasson, *supra* note 70 (“So under the protective cloak of ‘sexual health’ rights, adults (excluding parents) may empower immature adolescents to make ‘the right choices’ (e.g., to use emergency contraception). The same adolescent, however, is too immature to make ‘the right choices’ when it comes to enlisting in the Armed Forces, or operating a motor vehicle, or even getting a tattoo.”), *with* Beth DeFalco, *Quinn May OK Morning-After Contraceptive Pill for 11-Year-Old Middle-School Girls*, N.Y. POST (Aug. 21, 2013, 4:00 AM), <http://nypost.com/2013/08/21/quinn-may-ok-morning-after-contraceptive-pill-for-11-year-old-middle-school-girls/> [<https://perma.cc/V6FG-CF8G>] (“This is a really important option we need to make accessible. . . . We need to recognize the reality of what’s

young as fourteen without parental consent or notification; however, parents can still outrank their children's autonomy and prevent them from receiving contraceptives or pregnancy tests by signing opt-out forms.¹²⁰

Although some scholars see expanding children's rights to privacy and control over health care and medical treatment as a positive step toward increasing children's rights vis-à-vis parental autonomy, others worry that this expansion takes the parents out of the decision-making process altogether, making it more likely that minors will make rash—and potentially life-altering—decisions about sexual activity and medical treatment.¹²¹

III. Proposal

Some states address the issue of minors' lack of legal capacity to consent to medical procedures by applying an exception to the parental consent requirement: the "mature minor" doctrine.¹²² This doctrine applies when parents or guardians are unable to make medical decisions for their children or when children disagree with their parents about appropriate and preferred medical treatment.¹²³ In such instances, the doctrine helps medical professionals listen to children and make a determination about whether adolescents are legally capable of independently consenting to general medical treatment.¹²⁴ An "increasingly prevalent ethical sense that especially older adolescents deserve to be treated as autonomous medical

happening in children's lives and give them what they need to make the rights choices and protect themselves.") (remarks by New York City Council Speaker Christine Quinn) (internal quotation marks omitted).

120. Mayor Michael Bloomberg Defends Giving NYC Students Plan B "Morning-After Pill," *supra* note 119. The Department of Education noted that only one to two percent of parents exercised the opt-out option at the time of publication. *Id.*

121. Hasson, *supra* note 70 ("Parents will end up paying for their 15-year-old daughter's treatment for chlamydia, for example, but will never know about it—losing the opportunity to counsel her or ensure adequate treatment and follow-up.")

122. Doriane Lambelet Coleman & Philip M. Rosoff, *The Legal Authority of Mature Minors to Consent to General Medical Treatment*, 131 AM. ACAD. OF PEDIATRICS 786, 787 (2013), <http://pediatrics.aappublications.org/content/131/4/786> [https://perma.cc/66D4-JPHD].

123. *Id.*

124. *Id.* "General medical treatment" excludes abortions, which have a separate set of guidelines. *Id.* The abortion guidelines are beyond the scope of this Note.

decision-makers” contributed to the implementation of this doctrine, causing some medical professionals to grant socially mature children as young as twelve the right to consent or refuse certain treatments.¹²⁵

One explanation for this doctrine’s existence in the medical field is the need to prioritize life-saving medical procedures over parental autonomy.¹²⁶ For example, many cases have discussed the issue of Jehovah’s Witnesses refusing blood transfusions for their children; tort law, however, governs this issue if the transfusion involves a medical emergency.¹²⁷ Even so, the driving motivation behind implementing the mature minor doctrine in most states was the desire to limit medical professionals’ liability in treating minors against their parents’ wishes because “lobbying to limit the liability of doctors who properly care for children is much more likely to be popular and successful than lobbying to limit the rights of parents.”¹²⁸

Perhaps the most logical reason why this maturity-based exception to parental autonomy exists only in the medical field is the difference in the way medical professionals and the law view adolescents.¹²⁹ Adults’ ability to consent to medical procedures is primarily based on cognitive capacity, determined on a case-by-case basis,¹³⁰ and many

125. *Id.*

126. Kurt M. Hartman & Bryan A. Liang, *Exceptions to Informed Consent in Emergency Medicine*, HOSP. PHYSICIAN, Mar. 1999, at 53, 57, http://www.turner-white.com/pdf/hp_mar99_emergmed.pdf [<https://perma.cc/X3S4-553E>] (“For minors in an emergency care situation, the commonly accepted rule is similar to that of legal adults: physicians generally are not held liable for treating a minor without parental consent when an emergency exists and immediate injury or death could result from the delay associated with attempting to obtain parental consent. However, courts are split on the issue of informed consent when a minor patient’s condition is life-threatening yet does not require immediate medical attention. Some courts have held that the emergency exception does not apply and therefore parental consent or consent from another legally authorized individual must be obtained. Other courts apply the mature minor exception, which allows the minor to give informed consent if the patient has the ability to understand and comprehend the nature of the proposed treatment as well as the associated risks and potential results in view of the surrounding circumstances.”) (footnotes omitted).

127. *See* Woolley, *supra* note 108, at 715. The state often steps in under the *parens patriae* doctrine for these cases because the child’s life is at stake. *Id.* (“In addition to parental challenges adolescent JWs have been fighting their own battle to be recognised [sic] as mature enough to make their own decisions regarding blood products.”).

128. Coleman & Rosoff, *supra* note 122, at 789.

129. *Id.* at 788 (“The most important of these is probably that the medical community appears largely to assume a neurobiological and developmental approach to adolescent autonomy, whereas the law’s approach is primarily grounded in political theory and attendant constitutional doctrine.”).

130. *Id.* For a discussion of cognitive capacity concerns and parental ability to sterilize mentally

medical professionals believe that cognitive ability and social maturity should be factors in determining every patient's ability to consent to medical treatment.¹³¹ These professionals also believe that adolescents are capable of displaying high enough levels of both cognitive ability and social maturity to qualify for the same rights of consent afforded to competent adults.¹³² In contrast, U.S. laws are premised on the understanding that individual rights "belong almost exclusively to adults," generally ignoring adolescents' maturity and refusing to legally recognize minors' desire to make their own choices.¹³³

By ignoring adolescents' cognitive capacity and grouping all minors together under the label "children," the law equates a one-year-old and a seventeen-year-old and considers both too immature to have any say in determining their own future liberties.¹³⁴ Although the mature minor doctrine is not a perfect solution in granting minors a voice, it at least offers them the ability to fight for their liberties in determining one aspect of their lives: their medical treatment.¹³⁵

disabled children who are "never likely to develop the capacity for consent," see Marina Kamenev, *Sterilizing a Child, for a Better Life*, ATLANTIC (Sept. 19, 2013), <http://www.theatlantic.com/health/archive/2013/09/sterilizing-a-child-for-a-better-life/279765/> [<https://perma.cc/4CYC-HVUK>].

131. Coleman & Rosoff, *supra* note 122, at 787.

132. *Id.* at 788 ("[G]iven that medicine is fundamentally about the scientific facts, that medical ethics are centrally concerned with the exercise of personal autonomy conditioned only on factual capacity, and that the legal informed consent standard applicable to adults is based primarily on capacity, this assumption makes perfect sense.").

133. *Id.* ("[O]ne of the most important aspects of American political theory [is] the fact that individual rights, including parents' rights, belong almost exclusively to adults. Indeed, children have been described as 'the Achilles Heel of liberalism' precisely because their constitutional status is mostly not as bearers of individual rights."); see also *Parham v. J.R.*, 442 U.S. 584, 602–04 (1979) ("The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. . . . The fact that a child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery does not diminish the parents' authority to decide what is best for the child.").

134. Coleman & Rosoff, *supra* note 122, at 789 ("[T]he law embraces the legal fiction that childhood is, for most purposes, a monolithic category of individuals aged 0 to 18, all of whom lack legal if not cognitive capacity, because its focus tends to be on the protection of parents' rights. Children's best interests are not erased in this equation, of course; but the strong legal presumption is that for the duration of the child's minority, parents are the proper proxy decision-makers with respect to these interests.") (footnote omitted).

135. *Id.* at 786 ("A comprehensive analysis of both statutory and common law demonstrates that . . . parental consent continues to be required by most jurisdictions, even when the minor can be considered cognitively 'mature.'").

Applying this exception beyond the health care context to the general deference afforded to parental autonomy by Georgia courts would allow children and minors a say in protecting their views of their futures and would offer a preferable alternative to lawsuits.¹³⁶

Jurisdictions that apply the mature minor doctrine do so in one of three ways.¹³⁷ They either (1) allow all minors older than a certain age (sometimes as young as twelve) to consent to general medical treatment; (2) allow all minors, all minors older than sixteen, or all minors deemed mature enough to be capable of informed consent to consent, but only if their parents are either unavailable or unwilling to consent on their behalf; or (3) permit all mature minors to consent.¹³⁸ This range of application allows states to implement the mature minor doctrine in accordance with other existing state policies on parental autonomy and children's rights, providing Georgia with three different ways to assess adolescents' maturity and capacity to make lifestyle choices for themselves.

In Faith Pennington's case, a state-implemented children's rights doctrine based on the mature minor doctrine could have allowed her to challenge her parents' decision not to record her birth and to fight to have her citizenship recognized earlier, thus giving her ample time to assimilate with her peers and plan for her open future before deciding whether to go to college or find a job at eighteen. Such a doctrine would give Faith and children in similar situations the ability to determine their own values and shape their futures accordingly, rather than allowing their parents' decisions to handicap their futures.

However, increasing children's rights to challenge their parents' decisions may give rise to lawsuits. For example, a twelve-year-old girl in Canada recently sued her father and won after he grounded her and refused to let her attend her sixth-grade school field trip.¹³⁹

136. *See id.* at 787, 791. Currently, only eight states have a broad statutory mature minor exception, and nine states have narrow or modified common law versions of this exception. *Id.* at 787. Georgia is one of thirty-four states without any applicable mature minor exception. *Id.* at 791.

137. *Id.* at 789.

138. *Id.* Many states that use the mature minor doctrine also relieve the parents of any obligation to pay for the medical treatment they oppose for their children. *Id.* at 790.

139. *Quebec Dad Sued by Daughter After Grounding Loses His Appeal*, CBC NEWS (Apr. 7, 2009, 4:35 PM), <http://www.cbc.ca/news/canada/montreal/quebec-dad-sued-by-daughter-after-grounding->

Although the Quebec Superior Court stated its ruling “should not be seen as an open invitation for children to take legal action every time they’re grounded,” this decision set a precedent for other Canadian children to sue their parents over inane perceived injustices.¹⁴⁰ A less outlandish, but similar, case in the U.S. involved a teenager who sued her estranged parents for refusing to pay for her to enroll in private school and cover the full cost of her college tuition, although that teenager eventually dropped her lawsuit and moved back in with her parents.¹⁴¹ In a subsequent case, a New Jersey judge ordered a twenty-one-year-old’s parents to foot a \$16,000-a-year bill for their daughter’s college education, despite the fact that their daughter was a legal adult who no longer lived with her parents.¹⁴²

To compromise between the United States’ traditional deference to parental autonomy and the difficulties inherent in evaluating all minors’ maturity and ability to make decisions equally, Georgia should establish a children’s rights maturity doctrine. The doctrine could be used in lawsuits involving this balance between interests based on the second implementation of the mature minor exception. Under this doctrine, all minors in Georgia who demonstrate the requisite capability of informed consent for medical procedures would be able to challenge their parents’ choices regarding their personal liberties when their parents either hold opposing views directly affecting the children’s interests or refuse to make a decision about an issue directly affecting their children’s livelihoods.

Parents should still have the right to make certain decisions on their children’s behalf. A doctrine of this nature would simply support what the *parens patriae* intends to accomplish, giving

loses-his-appeal-1.803756 [https://perma.cc/MW3Q-YB75] (“Quebec Superior Court rejected the Gatineau father’s appeal of a lower court ruling that said his punishment was too severe for the wrongs he said his daughter committed.”). In this case, the daughter used the Internet after her father specifically forbade her from doing so. *Id.*

140. *Id.*

141. Enjoli Francis, Ryan Smith & Aaron Katersky, *Rachel Canning Loses Effort to Make Parents Pay High School Tuition*, ABC NEWS (Mar. 4, 2014), <http://abcnews.go.com/US/rachel-canning-loses-suit-make-parents-pay-high/story?id=22768908> [https://perma.cc/TF55-TCDB].

142. Cheryl K. Chumley, *N.J. Parents Ordered to Pay College for Estranged Daughter*, 21, WASH. TIMES (Nov. 14, 2014), <http://www.washingtontimes.com/news/2014/nov/14/nj-parents-ordered-to-pay-college-for-estranged-da/> [https://perma.cc/7XGG-HHGN].

children the ability to challenge and potentially prevent their parents from unilaterally making life-altering decisions on their behalf against their will.

CONCLUSION

In Faith’s case, when Texas law failed to dissuade her parents from ignoring state birth-reporting procedures, Faith and her siblings suffered the consequences of their parents’ power of autonomy. It is easy to see how Lisa and James Pennington’s decision truncated their children’s liberties—and how stricter state laws governing failure to report live births could help protect future children from suffering the repercussions of their sovereign citizen parents’ illegal actions—but the clash between parental autonomy and children’s rights to an open future appears and will continue to appear in broad contexts in our judicial system.

Because of the litigious nature of our society¹⁴³ and the number of cases challenging parental autonomy, Georgia should proactively prepare itself by implementing a system governing parent-child lawsuits and children’s rights to dictate their own futures. Children need a voice, and Georgia should recognize minors’ rights to an open future by providing an applicable doctrine for courts to weigh mature minors’ desire to stop their parents from socially handicapping them to the point at which “they can’t operate or function in society.”¹⁴⁴

Children should not have to suffer the consequences of their parents’ decisions when those choices limit their ability to maturely and thoughtfully dictate their own futures. Although courts tend to defer to parental autonomy, cases about this autonomy struggle have resulted in seemingly arbitrary rulings, leaving children unsure whether courts will consider their appeals for rights to an open future. By using the preexisting models of *parens patriae* and the mature

143. Paul H. Rubin, *More Money into Bad Suits*, N.Y. TIMES (Nov. 16, 2010, 4:44 PM), <http://www.nytimes.com/roomfordebate/2010/11/15/investing-in-someone-elses-lawsuit/more-money-into-bad-suits> [<https://perma.cc/4PAF-SAK6>] (“The United States is already the most litigious society in the world.”).

144. *The Girl Who Doesn’t Exist*, *supra* note 1, at 28 min., 11 sec.; *see also* Marks, *supra* note 97.

minor doctrine to allow children to defend their future liberties in court, Georgia courts can implement a system to address this autonomy imbalance in a fairer and more predictable manner while simultaneously sending the message that children's rights are valid human rights and children's future liberties deserve to be protected.