**Exam 2 Terms**

1. **Parens Patriae** – a very limited paternalistic power to protect or promote the wellbeing of certain citizens who lack the capacity to act on their own behalf or in their own best interests; namely, children and people who are mentally “incompetent.”

2. **In loco parentis** – to stand in place of parents as a decision making agent for the child; usually a role taken on by the courts or in some cases, delegated by the parents to another entity.

3. **Guardian ad litem** – court appointed advocate for the child, to protect and insure the child’s wellbeing

4. **PINS/FINS** – person in need of support/family in need of support – a person or a family in need of state supervision because of their status as a minor (PINS) or because of deficiencies/concerns about their behavior (FINS)

5. **“mature minor”** – usually a status declared by the court to support the court’s decision to side with a minor against the wishes of the parent or guardian

**Exam 2 Discussion Questions**

**1. Write a brief summary of the highlighted cases, describing why they are important generally to our understanding of marriage, family, or family life; describe why or how the equal protection clause and/or the due process principles were invoked in deciding the case.**

The following Supreme Court rulings are important in helping us understand marriage, family, and family life. These important case rulings include: Moore vs. City of East Cleveland in 1977, Griswold vs. Connecticut in 1965, Loving vs. Virginia in 1965, and Zablocki vs. Redhail in 1978. Moore vs. City of East Cleveland in 1977 shows what the Court protects as a family relationship. The Court favored the woman who was sued for breaking the law, because she was living with her two younger first cousins and this was not defined as a family by the state of Ohio. The Supreme Court declared this law arbitrary violating the substantive due process clause, because it did not violate the public’s health or safety. The Supreme Court ruling of Griswold vs. Connecticut in 1965 showed the Court’s view on privacy within a family. When a doctor was arrested for providing a woman with contraception, the Court reversed the jurisdiction, declaring it a privacy right. The Supreme Court case ruling of Loving vs. Virginia in 1965 demonstrates the Supreme Court’s view on people of different races and ethnicities marrying. The Court did not agree with the state of Virginia, because they were violating the Equal Protection and Due Process clauses by prohibiting the Lovings from their fundamental right of marriage just because they were of different races. In the Supreme Court case ruling of Zablocki vs. Redhail in 1978, the court declared needing orders to marry is unconstitutional, because prohibits a person to exercise their fundamental right of marriage. The man could not obtain an order from the court to marry, because he was not paying child support for his illegitimate child, but this was deemed unconstitutional.

The Supreme Court ensures people are able to exercise their fundamental right to marry without any barriers or obstacles in the way, including orders from the court, policies against race and ethnicities. The Supreme Court also ensures a sense of privacy for women and families, allowing them to use contraception as a legal means. Lastly, the Supreme Court acknowledges their definition of family does not have to mean just biological ties to one another, but also people can be seen as a protected family relationship if they are a potential child relationship, cohabitate together, are permanently and formally committed to one another, and psychologically support one another.

**2. Describe and discuss briefly the early legal assumptions about the family in American Society. How did our changing views of family life, captured in the Burgess definition of the family, represent a shift from those early assumptions toward a "parting of the veil" on family life?**

The legal early assumptions about the family in American society include intrafamily tort immunity, husband and wife are one, mother and child are one, a private, confidential nature of home and family, marriage and family are “confidential conversations,” childhood is a special state of existence, adolescence is a time of “storm and stress,” and due to “original sin” of children, parents owe them discipline. The first legal early assumption about the family in American society is the idea of intrafamily tort immunity. This means that members of a family could not hold their own family members liable of dangers. Any damage done within the family by its members would not be held liable. However, this has changed and family is not viewed as a veiled separate entity. Today, children and parents can sue each other for damage or harm done to one another.

The second legal early assumption about the family in American society is the idea husband and wife is one. They were seen as one, but under the husband. The husband made all of the decisions. Women did not need the right to vote, because they would have been forced to vote the same as their husbands. This began to change when the Married Women‘s Property Act was passed giving women control over any property they brought into the marriage.

The third early legal assumption is the idea that woman and child is one. The mother and child were seen as bonded in a way that the child could never be separated from the mother. It was also assumed the mother would never harm the child, because it would be the same as if she was harming herself since they were seen as one. During this time, the mother was always seen as the custodial parent, the “tender years” doctrine, but now we use the “best interest of the child” principle to determine the custodial parent.

The fourth early legal assumption is the idea that there is a private, confidential nature of home and family and marriage and family are viewed as “confidential conversations.” The idea that marriage is a “confidential conversation” means if the husband was to commit a crime, the wife cannot be forced to testify against him. The husband can confess anything he wants to his wife, and the wife cannot be forces to testify against him. This is where the concept of “pillow talk” derived.

The fifth early legal assumption of families is the idea that childhood is a special state of existence. This idea means that the Court recognized someone as an adult or a child. There was no in between age. A child was seen as unable to make decisions, so they cannot marry or make contracts. Children were viewed as not knowing what was happening in the world, so parents had to make all of their decisions for them. Parents were believed to be nurturing and sacrificial and do what is best for the child at all times.

The sixth early legal assumption is the idea that adolescence is a time of “storm and stress.” This idea came in the 1920s when we realized there was a transformation period of development in between childhood and adulthood. This period of time is a tumultuous and detrimental one. Adolescents were described as the state our nation was in after World War I, which affected the way people view adolescents now.

The seventh early legal assumption is the idea that parents owe children discipline because of children’s “original sin.” It was believed children came out of the womb not knowing what was right and wrong, so had to beat them and discipline them however they wanted to teach them. Today, we view infants and children as innocent, but they were not viewed this way before.

By the 1930s, the veil was slowly parted on family life and realized these assumptions were not true. This is the time when women’s rights were affirmed. The courts recognized family members could hurt one another and it is not a sacred private entity all the time, ridding of the intratort immunity. Developmental scientists distinguished more between childhood and adolescence, noting them as two different distinct periods of life. Discovered it is a process to become an adult and it does not happen overnight. We slowly become more sophisticated in our decision making skills. The court also realized within families there are individuals and they have their own rights too. As in Burgess’ definition of family as, “a group made up of individual, interacting personalities.” This began the shift to the modern day view of the family.

**3. The Courts have declined to define family but have given us several indicia of the boundaries or characteristics of relationships likely to receive protected status. What are the characteristics of protected relationships? Describe and discuss.**

Even though the Courts do not explicitly define what a family is, they define what relationships they will protect. The criteria for relationships the Courts will protect indicate how they view traditional families. Each separate criteria is not sufficient enough to define a protected relationship as a family. It is the combination of these characteristics that helps the Court define what a family is. The criteria for protected relationship according to the Courts includes: biological relationship, potential parent-child relationship, cohabitation, and psychological support and involvement. The Court will protect a relationship that does not have a biological relationship present, meaning the people are not already related by blood to each other. Also, the Court will protect relationships in which there is a biological tie between the parent guardian and child, but this criteria is not sufficient enough for either instance. Two people can be not biologically related and live together, but not be a family. They could be just roommates. Also, a parent could have a biological tie to a child, but not actually support, nurture, or care for the child. Parents of an adopted child could also be seen as a family, but they are not biologically tied to them, so this criterion alone is not sufficient.

The next criteria of protected relationships of the Court, the potential parent-child relationship, means families in which the grandparents were acting as the parents were protected. This characteristic was used to eliminate homosexuals as a protected relationship, because they could not bear children. However, now this is not sufficient enough, because the Court protects relationships in which families do not or cannot have children.

The Court will also protect people are who cohabitating as protected relationships. However, this piece of criteria is not sufficient enough on its own, because friends could cohabitate together, so the evidence a shared home is not enough. The criterion of cohabitation includes all of the following ideas: a shared living arrangement, economic cooperation between the spouses, and sexual relations between the spouses.

The Court protects relationships of permanence and formal commitment. A formal commitment indicates permanence, which in turn, implies stability, psychological support, and security. The Court does not protect relationships in which people marry just to prevent someone from being deported. They want the people in the relationship to have the intent to stay together and make a family. In order to show permanence and commitment, the couple must show a merge of bank accounts, a newly established residence, or changing of last names.

The last criterion the Court looks for to protect a relationship is psychological support and involvement. This criterion means the spouses are intimate, stable, and care for one another. This criterion is the most open one of the five because it is not sufficient enough to protect foster family relationships. Each one of these characteristics alone do not define what a family is or what if the Court would protect the relationship. It is the combination of all of these criteria that helps the Court to see the protected relationship as a family.

**4. Name and discuss at least 5 conditions or requirements for marriage currently in place in most states.**

Marriage is a contract that has necessary conditions and requirements in most states in order to fully agree to this status. The marriage requirements include: consent, solemnization, consanguinity, age, monogamy, and mental capacity. The first requirement in order to be able to enter into the contract of marriage is to have consent from both spouses. The spouses have to want to marry and cannot be forced into marrying the other person. The participating parties have to be competent to give their consent. The second requirement of marriage is the solemnization of the marriage. This means a state marriage license must be issues, any waiting time before getting period must be required, and usually a formal ceremony of some kind, but does not have to be religious. Some states even allow proxy marriages, which are marriages when the groom cannot be physically present due service or incarceration, so someone else stands in for him. The third requirement for marriage is consanguinity, meaning the spouses are eligible to marry due to enough degrees of separation between kin. This requirement does not allow people to marry that are blood related, because of the threat of powerlessness, incest, and the greater chance of producing mentally defected offspring. The fourth requirement for marriage is the age of each spouse. Each spouse must be of legal age to marry, or have the consent of parents and guardians if they are of younger ages. Some states do not allow children of a certain age to marry at all, even with parental consent. The spouses have to be old enough to competently enter into a contract. In Louisiana, at age 18 you can marry without parental consent, at age 16 you can marry with parental consent, and below 16 you cannot get married at all. If you are pregnant and too young to marry without parental consent, but you parents will not give it to you, then the court can emancipate you from you parents, and let you marry without consent. Another condition for marriage is the requirement of monogamy. A spouse cannot be married to someone else if they want to be married again. They must be properly divorced if they were married in the past. The last requirement to participate in the contract of marriage is having the mental capacity to give consent and enter into a contract. The court allows some people with limited mental capacity to enter into the contract of marriage, even though they lack full mental capacity. It is crucial to have all of these requirements before marrying, because marriage is a state contract.

**5. What is "full faith and credit" and what is its significance for marriage and divorce? What is the potential significance of the full faith and credit argument as applied to same-sex marriage?**

The “Full Faith and Credit” clause is a provision of the Constitution that requires state governments and the federal governments to accept documents of other state governments. This concept means if a couple marries in another state other than Louisiana and then move to Louisiana, then Louisiana must recognize this couple as married. This same concept applied to divorce too. Louisiana must recognize the couple as divorced if they were divorced in another state. The reason and importance for this is because married families receive benefits, tax breaks, and resources that unmarried people do not. If the family is not viewed as married in the state they move to, then they would not receive the same benefits, tax breaks, and resources they received in their previous home state.

This same “full faith and credit” clause deals with homosexual couples too. This topic was of concern for homosexual couples, because if a homosexual couples marry in Massachusetts, a state that recognizes same-sex marriage, but then moves to Louisiana, a state that does not recognize same-sex marriage, were not sure if their marriage would still be recognized. Congress passed a law, Defense of Marriage Act (DOMA) in 1996, stating that marriage is only between a man and a woman, and no state is forced to recognize same-sex marriage form another state. The same-sex married couples were also not eligible to receive the same federal benefits as heterosexual couples. This law, DOMA, created controversy, but was seen as a compromise, because some people want solely heterosexual marriages, and others said Congress could not pass such a law.

**6. What is DOMA? What does it mean to describe some states, as Dr. Garand did in his presentation, as Super-DOMA states or Mini-DOMA states?**

Defense of Marriage Act (DOMA) in 1996, is a law Congress passed stating that marriage is only between a man and a woman, and no state is forced to recognize same-sex marriage form another state. This law was in response to the confusion of the “full faith and credit” clause of homosexual couples marrying and moving to other states. The same-sex married couples were also not eligible to receive the same federal benefits as heterosexual couples. This law, DOMA, created controversy, but was seen as a compromise, because some people want solely heterosexual marriages, and others said Congress could not pass such a law.

The fifty states vary on their belief of same-sex marriages and DOMA. Those states that strongly dislike same-sex marriages are called the Super-DOMA states. These states have amendments in the constitution that state all forms of recognition of a same-sex relationship is unconstitutional and banned. A few super-DOMA states include: Alabama, Florida, Louisiana, and Texas. The states that just have amendments limiting marriage to one man and woman and nothing more are called mini-Doma states. A few mini-DOMA states include: Alaska, California, Mississippi, and Tennessee. The states that just have laws limiting marriage to a man and a woman, but no constitutional provisions are called statutory states. A few statutory states include: Maine, Minnesota, and North Carolina. The states that allow civil unions between same-sex couples and provides them with state-level spousal rights are called civil union states. A few civil union states include: Hawaii, New Jersey, and Rhode Island. The states that issue marriage licenses to same-sex couples are called same-sex marriage states. A few same-sex marriage states include: Massachusetts, Connecticut, and Vermont.

**7. Describe and discuss in a fully developed essay the trends in changing attitudes towards same-sex marriage in US society over the past 20 years or so.**

The trends in attitudes towards same-sex marriage in U.S. society are changing. The American society are becoming more favorable and accepting toward same-sex marriage over time. The attitudes have increased dramatically. There are two explanations for this trend in changing attitudes. The first explanation deals with a generational change. People from younger generations are more accepting for same-sex marriages. The younger people are more supportive of same-sex relationships, and as the older people die off and are not part of the political system anymore, the ratings for accepting of same-sex marriages are increasing. However, in addition, the second explanation shows an overall increase in acceptance of same-sex marriage and approval in each separate generation. This means the older generations are become more accepting and supporting too as time goes on. The idea of same-sex marriage was alien to people thirty years ago, but this topic has gained major popularity and is strongly advocating for now, making it more public. A theory as to why older people are becoming more accepting of same-sex couples now includes that someone they care about (grandson or granddaughter) is homosexual and this opens their eyes and mind and make them more accepting and supportive of homosexuals.

**8. Describe generally what we mean by "marriage promotion policies" and discuss how encouraging marriage may be used as a policy tool in US society.**

Due to increasing divorce trends, marriage promotion policies came about. The government likes when people are married, because it is a contract of who owns what property, who will support the children, and the resources the family has. It is easy for a family to be self-sufficient and the government does not have to interfere as much, when the family is married with this contract. The state cares about divorce, because then the government is not sure who is taking care of the property and children. The state is afraid they will become responsible for taking care of these divorced families. This is why the government made divorce so hard to obtain. The traditional type of divrce was called fault-based divorce. The obstacles to marry were few, but the obstacles to divorce were extremely difficult. Divorce was viewed as disruptive and did not who was going to take care of the wife and children. In order to divorce, the husband was typically charged with a fault, adultery, abuse, abandonment, drunkenness, and insanity. However, most times there was not a fault as to why the couple wanted to get divorced. They just fell out of love. They would lie to the court and make up a lie about a fault. We understood this was terrible, so the no-fault divorce contract was signed and adopted. No-fault divorce is very easy to obtain, so fault-divorce is practically obsolete now. The grounds for no-fault divorce are irreconcilable differences and the marriage is broken beyond repair. Divorce has not been declared as a fundamental right, but marriage is. If you cannot get married, because the government won’t let you get divorced, then this is a barrier to your fundamental right of marriage.

Marriage is encouraged as a policy issue, because when families are married they are less dependent on the government. Families are the best places where family functions are carried out at the greatest level of stability and permanence. Marriage promotion was also encouraged because the typical stereotype of a person on welfare was a single woman on welfare. Welfare was being cut back at this point in time, so it was thought if women would marry then they wouldn’t be on welfare and our society would benefit. Regardless of the backlash from this welfare cut policy, we know children in a stable, two-parent environment do well, because of the steady stream of resources and attention from two caring adults.

**9. Why do the courts defer to parents in decisions regarding the rearing of their children? In deferring to parents in childrearing, what assumptions are made about the parents – their actions and motivations – by the courts and the state? How does parental autonomy in childrearing contribute to a richly diverse democracy – what purposes are served?**

It was believed by protecting the rights of the parents, this would protect the rights of their children. This is the only case the court would protect one individual’s rights in order to control another person. This thought process was rooted in views of the child and parent relationship. One of the views of this relationship that supported protecting parents’ rights to protect children’s included the idea that parents will provide a secure and nurturing environment and sacrifice for their children. Parents were also thought to be mature, competent, and possess good judgment on behalf of their children. It was also believed parents will act in the best interest of their children. The government has not defined what it means to act in the best interest of children, because as a democracy we value diversity of views. The government will allow autonomy and parents’ own decision making in how to raise their children, because children are not creatures of the state. Society ensures parents have autonomy in decision making, and to reward parents for acting in these benevolent behaviors, the government will not interfere in childrearing. The government does not want to take on the burden of parenting, because the government is not equipped to handle it. Families still disagree thinking immunizations of children or being forced to wear a seat belt is interference with family life, but just as much as the government cares of the well-being of one child, it also cares for the health and safety of all the other children that child sick or flying out of the window can hurt. The government tries to protect the public’s health and safety too, but not interfere with family life to a certain extent.

These above views of protecting the rights of children by protecting the rights of their parents are reaffirmed in Supreme Court case rulings regarding children’s education, language used in the family home, and religious instruction. In the ruling of Pierce vs. Society of Sisters in 1925, did not force children to attend public schools, but allowed them to attend private or religious schools if the parents preferred this type of schooling for their child. The ruling favored the Society of Sisters stating public schools could not force children to not go elsewhere for education, because this is a violation of freedom of relation and life. The case of Meyer vs. Nebraska in 1923 declared the teaching of foreign languages in the schools violating the Due Process of the Fourteenth Amendment, after a teacher was arrested for teaching a student how to read the Bible in German. Parents wanted to teach their children their native language and not the “mother tongue” of another country. The ruling of Wisconsin vs. Yoder in 1972 also showed support for parents’ decision making on behalf of their children’s rights. The Supreme Court declared parents could take their children out of school after the eighth grade to direct the children’s upbringing and religion, further supporting parents’ decision making on behalf of their children. The court ruled in favor of the three Amish families after being arrested, explaining this was a violation of the Free Exercise Clause of the First Amendment. The above cases show support the idea that by protecting parents’ rights we protect children’s rights, but there are instance, and we begin to see this, as we progress and modernize as a society that parents may not always act in the best interest of their children. Sometimes, we must protect children’s rights over their parents’ rights. This boundary was seen evident in the case ruling of Prince vs. Massachusetts in 1944, when a Jehovah Witness lady was charged with child labor laws after forcing her niece to work on the streets selling religious material. The courts ruled against her favor, explaining this did not infringe upon her Equal Protection of the Fourteenth Amendment and parents do not have absolute control over children. This is the first time we see the government start to draw boundaries around children’s rights. The traditional view of protecting parents’ rights for the sake of children’s rights began to become historical with the realization of parents can do harm to their children and children’s decision making skills are developed and competent before they are of legal age. Even though, there started a shift toward protecting children’s rights, the government still favors parental control and care over children, because they do not want to or are equipped to take on the burden of childrearing. The government or experts cannot expect to side with children’s rights, but still expect their parents to care for them, because children are not creatures of the state or experts.

**10. Define and differentiate these terms: the police power of the state vs. the parens patriae power of the state.**

The police power of the state allows the government to intervene when someone is at risk if immediate harm, preventing citizens from hurting one another, including citizens in families. The State tries to promote public welfare for everyone’s well-being. Examples of police power exercised by the state include the security maintaining safety in Tiger Stadium, so no one else gets hurt or injured when others act irresponsible. The State exercising their police power also comes into play when someone breaks into a family’s home. They protect the family from harm. If a child is at harm in a particular family, the state will practice their power of parens patriae under their police power to remove that child from the destructive home.

The parens patriae power of the state is a limited paternalistic power to promote the wellbeing of certain citizens who lack the capacity to act in their own best interest. These groups of people include children and those mentally “incompetent.” This power is not only used under the state’s police power when a child is in harm, but also outside of their police power, when dealing with the child’s best interest. Children are not capable of the same mental capacity as adults, because they have “peculiar vulnerabilities.” Children lack critical thinking skills, self-identity, firm view of reality, and are programmed to listen and believe to parents. Parents have maturity of judgment over children, because they do not lack the cognitive skills for decision making like children do. Children are also not creatures of the state, meaning that the state can enforce their parents patriae power, but cannot abuse it, because the government neither wants to or is equipped to parents and raise children. When the state feels as if they do need to intervene, it will only be after the parents have shown an inability to put the child’s best interest first. The government does not define what the best interest of the child is, because our nation values diversity and autonomy of parental values, creating a democracy. However, the state gives the parents time and opportunities to show they are equipped to put the child’s interest first, but if not, then the state will intervene. The state assess each family situation separately, deciding whether the breaking of the family attachment and bonds is of less harm than the harm done to the child by staying in the family. This is a crucial decision, because breaking bonds between parents and children are detrimental for children’s psychological functioning and growth. If the child is in greater harm though by staying in this family situation, then the state will exercise their parens patriae power and remove the child from the home. Because the parens patria power forces the state to take care of the children, there must be a clear and logical reason as to when this power is exercised. This power cannot be used to improve character development or because there is suspicion of a promiscuous lifestyle of the parents. The reason cannot be vague or ambiguous. States will exercise this parens patriae power when a youth is incorrigible, meaning they are being reared in a nurturing and competent home, but the youth is still acting out, misbehaving, and cannot be disciplined or controlled. The youth can be put into foster care, because they are detrimental to their self and their siblings. The governments can never exercise their right of parens patriae power just because someone is a minor. The state wants to eventually have the adolescents turn into mature, competent decision making citizens. As the adolescent ages, the state will allow more power to the adolescent to make their own decisions over their parents.

**11. Describe how child custody decisions have evolved from the “tender years” doctrine to the “best interests of the child” principle; be sure to define the terms.**

Child custody decisions must be finalized pertaining to the child’s welfare, education, religion, and development when parents divorce or are absent in times of service, death, or abandonment. A guardian is designated as the supervisor for the child, until he or she turns 18 and can legally make decisions and live on their own. Child custody decisions have evolved from the “tender years” doctrine to the “best interests of the child” principle over time. The “tender years” doctrine believes the child could not be separated from his or her mother. Now, this doctrine is seen as a violation of the Equal Protection of the 14th Amendment, by not giving the father figure the same opportunities for child custody. If the mother is seen as the parent who better puts the child’s interest first, then the mother will be chosen as the custodial guardian, but we have evolved and use a new principle to decide child custodial decisions.

Today, we have progressed to the “best interests of the child” principle, which believes joint custody is the preferred arrangement of child custody for the mother and father. If a parent is deemed as noncustodial, then they may see their visitation rights limited. In deciding custodial parents, the court takes into considerations different criteria of the parents and child. These criteria include: the needs of the child, the parents’ standard of living, the parents’ financial resources, the age of the child, and the responsibility of the parent to care ofr other children. Once custody of the child is determined, it can be modified or reversed if some circumstances occur. These include the stability of the child’s environment, changes in the parents’ circumstances, or kidnapping. Grandparents’ visitation rights are still not clear and defined by the state.

**12. Define and discuss the processes by which or circumstances under which parental rights may be terminated. Make reference to the triology of "putative fathers" cases listed above.**

There are two different processes by which parental rights can be terminated. Parental rights can be terminated voluntarily and involuntarily. A parent voluntarily terminating their parental rights means the parent gives consent for the child to be placed in another home and surrender to the state. When parents voluntarily terminate their parental rights, this occurs during a small window of time, usually three to five days, and then is irrevocable. If a mother voluntarily terminates her rights, she must give notice to the biological father, in order for him to voluntarily terminate his rights too or to be the custodial parent.

In contrast to the above process, when a parent involuntarily terminates their parental rights, this means the state has exercised their parens patriae power removing the child from their home. Parents’ rights would be involuntarily terminated if parents are seen as unfit showing instances of neglect, abuse, or abandonment are seen in the family. If it is in the child’s best interest for the parental rights to be terminated, then the state will exercise their parens patriae power and do so.

Because custody is now governed by the “best interests of the child” principle and not the “tender years” doctrine, fathers are supposed to be given the same opportunities to receive child custody as the mothers. These rights were reaffirmed in Supreme Court case rulings in what is called the trilogy of putative father cases. This trilogy of putative father cases include: Stanley vs. Illinois in 1972, Quilloin vs. Walcott in 1978, and Caban vs. Mohammed in 1979. The ruling of Stanley vs. Illonois in 1972 affirmed due process for fathers who are not married to the mother of their children. This case declared fathers must be given a hearing to see if they are unfit as the custodial father before their parental rights are terminated, after a man was forced to involuntarily terminate his parental rights when the mother of his children died. Even though, he lived with the mother and raised the children with her, once she died, the children became wards of the state. The ruling of Caban vs. Mohammed in 1979 reversed a previous Supreme Court ruling, declaring the hearing of fathers to be seen as unfit before their parental rights are terminated as a violation against the Equal Protection clause, because mothers did not have to do this. The court decision of Quilloin vs. Walcott in 1978 shows the court values a mother and father family formation for children over a single father. The mother’s new husband was granted adoption rights to the child, even though the biological father wanted full custody of the child. This ruling shows parents who are not married to one another but want custody of the child are at risk for losing custody. These three court rulings pertain to putative fathers and define their rights as parents.

**13. Regarding the cases listed above, content is grouped into a couple of major categories: children's (adolescents') rights to speech and expression and minors' rights to access contraceptive services and abortion with limited barriers tolerated as imposed by the state or by parents. Using the cases above, summarize children's (adolescents') rights to speech and free expression, and to contraception and abortion services.**

After realizing parents can do harm to their children and children are capable of decision making before they are of legal age, the government shifted and decided to protect children’s rights in certain circumstances over parental rights. Eventually, the government also hopes adolescents grow into mature, decision making citizens, so they must allow for children to exercise this ability before they are adults. The categories the government decided to allow children to exercise their own decision making include adolescents’ rights to speech free expression, abortion, and contraceptive services. These rights were reaffirmed in Supreme Court case rulings.

The rights for adolescents to free speech and expression stem from several Supreme Court case rulings. The fundamental right to free speech and expression are affirmed in the Supreme Court ruling of Tinker vs. Des Moines Independent Community School District in 1969 when the Supreme Court declared the school’s policy banding arm bands to support the protest to the Vietnam Way unconstitutional. The Court ruled in favor of the three children wearing the arm bands showing support for the children’s fundamental right to free speech and expression. The Court explained, “Children do not leave their constitutional rights at the school door.” However, The Supreme Court ruling of the case Bethel School District No. 403 vs. Fraser in 1986 showed how adolescents have the fundamental right of free speech and expression, but to a certain extent. In this case, the Supreme Court ruled the school’s policy did not infringe on the student’s freedom of speech by suspending Fraser for making sexual innuendos in a campaign speech. The Supreme Court recognizes and allows adolescents to exercise their fundamental rights, but to a certain degree. Another case ruling shows that limitations still exist on adolescents’ fundamental rights. In the Supreme Court case ruling of Hazelwood School District vs. Kuhlmeier in 1988, the Court ruled in favor of the school district, because a principal eliminating questionable school newspaper stories is not infringing upon the students’ freedom of speech. The students outraged that their principle eliminated their stories on divorce and teen pregnancy were not favored in this case ruling, because the Supreme Court recognized the school’s policy over the adolescents’ rights to free speech and expression.

Another fundamental right adolescents have been declared to possess to a certain extent is the right to contraception and abortion. The court ruling of Roe vs. Wade in 1973, did not necessarily pertain to adolescents and their fundamental rights, but declared the fundamental right to privacy or abortion for all women, eventually defining how adolescents are capable of the rights of abortion and contraception too. The Webster vs. Reproductive Health Services ruling in 1989 declared the Missouri preamble as constitutional, even though, it contradicts Roe vs. Wade in 1973, saying life beings at conception and abortion is unconstitutional. The adolescents’ rights of abortion and contraception were reaffirmed in Supreme Court case rulings. In the Planned Parenthood of Central Missouri vs. Danforth 1976 case ruling, the Supreme Court upheld the right for adolescents to have abortions without parental or spousal consents, allowing adolescents more freedom in their fundamental rights. In the ruling of Ballotti vs. Baird in 1976 and 1979, the Court declared teenagers do not need to have parental consent to have an abortion. If they are required to obtain parental consent, then there must be another way for teenagers to prove consent to an abortion besides parental as the deciding factor. The court can grant them permission for abortion if parents do not offer their consent. In the rulings of City of Akron vs. Akron Center for Reproductive Health in 1983 and Planned Parenthood of Southeast Pennsylvania vs. Casey in 1992, the Supreme Court reaffirmed their abortion rights and struck down abortion law provisions including: informed consent, spousal notification, parental consent, 24 hour waiting period, and certain facilities performing abortions, allowing easier exercise of their fundamental rights to contraception and abortion for adolescents. All of the above Supreme Court cases show how adolescents are given the ability to exercise the fundamental rights of freedom of speech and expression, abortion, and contraception, but to a degree.

**14. The notion that children have legal rights is a relatively modern concept. Instead, the state and the courts traditionally believed that we protected children by protecting their parents and parental rights. What traditional views about the parent-child relationship supported the idea that children were best protected by protecting their parents? Cite cases (hint: the first 4 cases listed in the week of Oct. 14) in which parental controls over matters such as their children's education, language used in the family home, and religious instruction were protected.**

Children having their own fundamental rights is a recent transition in the 60s from the traditional way of thought of children’s rights. Before it was believed by protecting the rights of the parents, this would protect the rights of their children. This is the only case the court would protect one individual’s rights in order to control another person**.** This thought process was rooted in views of the child and parent relationship. One of the views of this relationship that supported protecting parents’ rights to protect children’s included the idea that parents will provide a secure and nurturing environment and sacrifice for their children. Parents were also thought to be mature, competent, and possess good judgment on behalf of their children. It was also believed parents will act in the best interest of their children. The government has not defined what it means to act in the best interest of children, because as a democracy we value diversity of views. The government will allow autonomy and parents’ own decision making in how to raise their children, because children are not creatures of the state. Society ensures parents have autonomy in decision making, and to reward parents for acting in these benevolent behaviors, the government will not interfere in childrearing. The government does not want to take on the burden of parenting, because the government is not equipped to handle it. Families still disagree thinking immunizations of children or being forced to wear a seat belt is interference with family life, but just as much as the government cares of the well-being of one child, it also cares for the health and safety of all the other children that child sick or flying out of the window can hurt. The government tries to protect the public’s health and safety too, but not interfere with family life to a certain extent.

These above views of protecting the rights of children by protecting the rights of their parents are reaffirmed in Supreme Court case rulings regarding children’s education, language used in the family home, and religious instruction. In the ruling of Pierce vs. Society of Sisters in 1925, did not force children to attend public schools, but allowed them to attend private or religious schools if the parents preferred this type of schooling for their child. The ruling favored the Society of Sisters stating public schools could not force children to not go elsewhere for education, because this is a violation of freedom of relation and life. The case of Meyer vs. Nebraska in 1923 declared the teaching of foreign languages in the schools violating the Due Process of the Fourteenth Amendment, after a teacher was arrested for teaching a student how to read the Bible in German. Parents wanted to teach their children their native language and not the “mother tongue” of another country. The ruling of Wisconsin vs. Yoder in 1972 also showed support for parents’ decision making on behalf of their children’s rights. The Supreme Court declared parents could take their children out of school after the eighth grade to direct the children’s upbringing and religion, further supporting parents’ decision making on behalf of their children. The court ruled in favor of the three Amish families after being arrested, explaining this was a violation of the Free Exercise Clause of the First Amendment. The above cases show support the idea that by protecting parents’ rights we protect children’s rights, but there are instance, and we begin to see this, as we progress and modernize as a society that parents may not always act in the best interest of their children. Sometimes, we must protect children’s rights over their parents’ rights. This boundary was seen evident in the case ruling of Prince vs. Massachusetts in 1944, when a Jehovah Witness lady was charged with child labor laws after forcing her niece to work on the streets selling religious material. The courts ruled against her favor, explaining this did not infringe upon her Equal Protection of the Fourteenth Amendment and parents do not have absolute control over children. This is the first time we see the government start to draw boundaries around children’s rights. The traditional view of protecting parents’ rights for the sake of children’s rights began to become historical with the realization of parents can do harm to their children and children’s decision making skills are developed and competent before they are of legal age. Even though, there started a shift toward protecting children’s rights, the government still favors parental control and care over children, because they do not want to or are equipped to take on the burden of childrearing. The government or experts cannot expect to side with children’s rights, but still expect their parents to care for them, because children are not creatures of the state or experts.

**15. Using the cases noted above, describe generally the areas in which children have been declared to possess fundamental rights to some extent. In your opinion, is it progressive or reckless to extend rights to children (adolescents) in circumstances that may pit the will or preferences of the parents against the will or preference of the child? What are the implications- good or bad - for family life and for civic life (i.e., our democracy) when children's rights are enumerated and protected apart from the rights of the adult parents?**

Supreme Court rulings have declared children certain fundamental rights to a certain extent. These fundamental rights include the rights to free speech and expression, the right to contraception, and the right to abortion or privacy. The fundamental right to free speech and expression are affirmed in the Supreme Court ruling of Tinker vs. Des Moines Independent Community School District in 1969 when the Supreme Court declared the school’s policy banding arm bands to support the protest to the Vietnam Way unconstitutional. The Court ruled in favor of the three children wearing the arm bands showing support for the children’s fundamental right to free speech and expression. The Court explained, “Children do not leave their constitutional rights at the school door.” The Supreme Court ruling of the case Bethel School District No. 403 vs. Fraser in 1986 showed how adolescents have the fundamental right of free speech and expression to a certain extent. In this case, the Supreme Court ruled the school’s policy did not infringe on the student’s freedom of speech by suspending Fraser for making sexual innuendos in a campaign speech. The Supreme Court recognizes and allows adolescents to exercise their fundamental rights, but to a certain degree. Limitations still exist on adolescents’ fundamental rights. In the Supreme Court case ruling of Hazelwood School District vs. Kuhlmeier in 1988, the Court ruled in favor of the school district, because a principal eliminating questionable school newspaper stories is not infringing upon the students’ freedom of speech.

Another fundamental right adolescents have been declared to possess to a certain extent is the right to contraception and abortion. In the Planned Parenthood of Central Missouri vs. Danforth 1976 case ruling, the Supreme Court upheld the right for adolescents to have abortions without parental or spousal consents, allowing adolescents more freedom in their fundamental rights. In the ruling of Ballotti vs. Baird in 1976 and 1979, the Court declared teenagers do not need to have parental consent to have an abortion. If they are required to obtain parental consent, then there must be another way for teenagers to prove consent to an abortion besides parental as the deciding factor. The court can grant them permission for abortion if parents do not offer their consent. In the rulings of City of Akron vs. Akron Center for Reproductive Health in 1983 and Planned Parenthood of Southeast Pennsylvania vs. Casey in 1992, the Supreme Court reaffirmed their abortion rights and struck down abortion law provisions including: informed consent, spousal notification, parental consent, 24 hour waiting period, and certain facilities performing abortions. The Webster vs. Reproductive Health Services ruling in 1989 declared the Missouri preamble as constitutional, even though, it contradicts Roe vs. Wade in 1973, saying life beings at conception and abortion is unconstitutional. All of the above Supreme Court cases show how adolescents are given the ability to exercise the fundamental rights of freedom of speech and expression, abortion, and contraception, but to a degree.

In my opinion, it is progressive to extend fundamental rights to adolescents, even though it may contradict the preferences of the parents. Traditionally, parents’ rights were protected and supported, assuming this would protect and support the children’s rights too. This relationship was thought to be logical, because parents were thought to provide secure and sacrificial environments on behalf of their children, to be mature and competent, and to act in the children’s best interest. As a reward for parental sacrifice, the government would not interfere with family life, relieving the state of the burden of childbearing. However, we became aware that parents can do harm to their children and some adolescents have the decision making skills before they are legal. Someday, we hope for children to grow up into mature, competent decision makers and citizens. Yes, when they are younger, the best way to care for children is to allow the parents to make the best decisions for the children, but as the children age, parents and government must gradually allow adolescents some room for their own ability to make decisions. The implications of the government allowing adolescents to make certain adult decisions will eventually lead to adolescents growing into mature citizens.