

Parents' Bill of Rights



By Paul Engel

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- When does legislation become a Bill of Rights?
- A bill in the North Carolina legislature claims to create a Parents' Bill of Rights. But does it?
- Are there dangers in calling legislation a Bill of Rights?

I'm loath to use the term "Bill of Rights" lightly, for two very good reasons. First, the overuse of any term tends to diminish its value. Second, just because something claims to be a "Bill of Rights" doesn't mean it actually is one. The bill may be very good, but that doesn't mean it's truly a Bill of Rights.

I believe a recent bill filed in the North Carolina legislature gives us an excellent opportunity to test this hypothesis. Would Senate Bill 49 actually create a Parent's Bill of Rights or is this just another example of over-promising and under-delivering?

Why do I have an issue with the use of the term Bill of Rights for this legislation? Let's start by defining the term:

a document containing a formal statement of rights

specifically : a summary of fundamental rights and privileges guaranteed to a people against violation by the state –used especially of the first 10 amendments to the U.S. Constitution

[Bill of Rights – Merriam-Webster Dictionary Online](#)

My issues start with how frequently what is called a Bill of Rights is not a document with a formal statement of rights. When someone takes a simple piece of legislation and places a Bill of Rights label on it, the meaning gets diminished. Like the boy who cried wolf, people no longer place the weight they once did on an actual Bills of Rights because of the overuse of that term.

There is legislation making its way through the North Carolina legislature claiming to be a [Parents' Bill of Rights](#). Let's take a look at this legislation and see how good it is, and if it's worthy of the title Bill of Rights.

North Carolina's Parents' Bill of Rights.

Senate Bill 49 (SB49) is titled [AN ACT TO ENUMERATE THE RIGHTS OF PARENTS TO DIRECT THE UPBRINGING, EDUCATION, HEALTH CARE, AND MENTAL HEALTH OF THEIR MINOR CHILDREN](#). That sounds good, sounds like it could be a Bill of Rights. This legislation would create an article in the General Statutes of North Carolina with a section titled "Parents' Bill of Rights.

▪ **115C-407.73.** *Parents' bill of rights.*

A parent has the right to the following:

[North Carolina SB49 – Parents' Bill of Rights](#)

This bill does contain a parents' bill of rights. Let's see what rights it's designed to protect and whether or not it meets the definition of a Bill of Rights from Merriam-Webster.:

- (1) *To direct the education and care of his or her child.*
- (2) *To direct the upbringing and moral or religious training of his or her child.*
- (3) *To enroll his or her child in a public or nonpublic school and in any school choice options available to the parent for which the child is otherwise eligible by law in order to comply with compulsory attendance laws, as provided in Part 1*

of Article 26 of this Chapter.

(4) To access and review all education records, as authorized by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, relating to his or her child.

North Carolina SB49 – Parents’ Bill of Rights

The first four rights revolve around education. Parents have the right to direct their child’s education and moral or religious training. They have the right to determine what school their child goes to and access to all education records. Of course, that’s not to say there aren’t problems here.

I agree with Article IX, Section 1 of the North Carolina Constitution, which states:

Section 1. Education encouraged.

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

North Carolina Constitution, Article IX, Section 1

Yes, education should be encouraged. In fact, the right to education is guaranteed by Article I, Section 15 of North Carolina’s Constitution:

Sec. 15. Education.

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

North Carolina Constitution, Article I, Section 15

If you read the rest of Article IX though, or even the whole constitution, what you won’t find is the power to to make education compulsory. When the state enacts compulsory education laws, they also regulate what would satisfy that

requirement. So when this new Parents' Bill of Rights claims that parents have the right to direct the education of the child, it really means within the boundaries established by the state. The other problem is this state law submits both the state and the parents to the federal Family Educational Rights and Privacy Act. That federal law was not made pursuant to the Constitution of the United States, since the power to regulate education was never delegated to the United States by its Constitution. So the federal Family Education Rights and Privacy Act is not the supreme law of the land, and the states are not required to abide by it. In fact, according to the case *Marbury v. Madison*, that act is void:

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument.

[Marbury v. Madison Opinion](#)

So if this bill becomes law, it make the rights of parents in North Carolina subject to an illegal federal law. Which means the "rights" North Carolina is claiming to protect does not consider them unalienable, since they are subject to other laws.

(5) To make health care decisions for his or her child, unless otherwise provided by law, including Article 1A of Chapter 90 of the General Statutes.

(6) To access and review all medical records of his or her child, as authorized by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191, as amended, except as follows:

(a.) If the parent is the subject of an investigation of (i) a crime committed against the child under Chapter 14 of the General Statutes or (ii) an abuse and neglect complaint under

Chapter 7B of the General Statutes and an individual authorized to conduct that investigation requests that the information not be released to the parent.

(b.) When otherwise prohibited by law.

North Carolina SB49 – Parents’ Bill of Rights

Next, this “Bill of Rights” protects the rights of parents to make healthcare decision for their children, but again there are problems. These rights are “limited” by both state law and illegal federal law. I looked up Article 1A of Chapter 90 of the North Carolina General Statues, where §90.21.1 establishes the legal situations when a physician can treat a minor without parental consent. These situations generally revolve around a need for treatment when a parent or guardian cannot be contacted to give consent, but there is one situation that should give every parent pause:

Where the parents refuse to consent to a procedure, and the necessity for immediate treatment is so apparent that the delay required to obtain a court order would endanger the life or seriously worsen the physical condition of the child. No treatment shall be administered to a child over the parent’s objection as herein authorized unless the physician shall first obtain the opinion of another physician licensed to practice medicine in the State of North Carolina that such procedure is necessary to prevent immediate harm to the child.

North Carolina General Statues, Article 1A § 90-.21.1

So even if this legislation passes, a parent will not have the right to make healthcare decisions for their child if state licensed doctors disagree with it. Furthermore, when it comes to accessing a child’s medical records, all it would take is a law to override the “rights” of the parents to review them.

(7) To prohibit the creation, sharing, or storage of a biometric scan of his or her child without the parent’s prior

written consent, except as authorized pursuant to a court order or otherwise required by law, including G.S. 7B-2102 and G.S. 7B-2201.

(8) To prohibit the creation, sharing, or storage of his or her child's blood or deoxyribonucleic acid (DNA) without the parent's prior written consent, except as authorized pursuant to a court order or otherwise required by law, including G.S. 7B-2201.

North Carolina SB49 – Parents' Bill of Rights

Here the state wants to protect the parents' right to control the collection or storage of biometric or similar data regarding their children. Once again we see that these "rights" are limited by the laws of the state.

(9) To prohibit the creation by the State of a video or voice recording of his or her child without the parent's prior written consent, except a recording made in the following circumstances:

When otherwise prohibited by law.

1. During or as part of a court proceeding.
2. As part of an investigation under Chapter 7B or Chapter 14 of the General Statutes.
3. When the recording will be used solely for any of the following purposes:
 4. A safety demonstration, including one related to security and discipline on educational property.
 5. An academic or extracurricular activity.
 6. Classroom instruction.
 7. Photo identification cards.
 8. Security or surveillance of buildings or grounds.

North Carolina SB49 – Parents' Bill of Rights

Why shouldn't the state get parental permission to record the

voice or video of a child as part of an investigation? How about if the investigation is into the actions of the parents? Once again we see the state claiming to protect rights, but making sure it protects its ability to violate those rights when it sees fit.

(10) To be promptly notified if an employee of the State suspects that a criminal offense has been committed against his or her child, unless the incident has first been reported to law enforcement or the county child welfare agency, and notification of the parent would impede the investigation.

North Carolina SB49 – Parents’ Bill of Rights

Lastly, the state wants to make sure that a parent is notified when a state employee suspects a crime has been committed against their child. There is an exception for when law enforcement or child welfare has been notified and including the parents would impede the investigation, but this legislation places absolutely no burden of proof on the state employee to show that notification of the parents would impede the investigation. There are plenty of reports of child services abusing their powers to intimidate parents and abduct children, so how does this legislation guarantee rights against violation by the state?

There are other limitations placed on parents’ rights:

▪ 115C-407.76. Limitations on the right to parent.

(a) The requirements of this Article do not authorize a parent to do any of the following:

(1) Engage in unlawful conduct.

(a) Abuse or neglect the child, as defined in Chapter 7B of the General Statutes.

(b) The requirements of this Article do not prohibit the following:

(1) A State official or employee from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.

(2) A court of competent jurisdiction from acting in its official capacity within the reasonable and prudent scope of its authority or issuing an order otherwise permitted by law.

North Carolina SB49 – Parents’ Bill of Rights

And thus we see that the legislature of North Carolina is not so much making a Bill of Rights, but a bill of privileges under state control, that they are extending to parents. As we noted in the Merriam-Webster Dictionary:

a summary of fundamental rights and privileges guaranteed to a people against violation by the state

Bill of Rights – Merriam-Webster Dictionary Online

What’s created in this legislation is not the state recognizing the fundamental rights of parents that are protected from the states, but only “rights” the state will regulate.

Conclusion

I’m not saying that this legislation is bad. The State of North Carolina sees the importance of parents controlling their children’s education, healthcare, and information, but this is not a true Bill of Rights. Compare the language from North Carolina’s Parents’ Bill of Rights with that in the Bill of Rights in the Constitution of the United States:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amendment IV

The protection of rights under the Constitution of the United States uses firm language, “shall not be violated,” and “no warrants shall issue, but...” Compare that to the language in NC SB49. “unless otherwise protected by law”, and “When the recording will be used solely for...” Does that sound like “a summary of fundamental rights and privileges guaranteed to a people against violation by the state”?

I understand the need to not only protect the rights of parents, but protect children from the abusive parents. This legislation, however, goes too far. It not only protects students from abusive parents, but allows the state to supersede those parents’ rights by simple legislation. How is allowing the state to legislate the infringement of your rights a protection of your rights?

Again, I believe this legislation is pretty good and does a lot to protect the rights of parents. It’s just not really a “Bill of Rights”, which further diminishes the term. I hope the North Carolina legislature enacts this law. I only wish they modify the title of Article 29F to something that more accurately depicts what this law would do. May I suggest the “Protection of Parental Rights Act”.

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E-Mail Paul Engel: paul@constitutionstudy.com