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An Analytical Model to Assure Consideration of Parental and Familial Interests when Defining the Constitutional Rights of Minors—An Examination of In Re Scott K.

I. INTRODUCTION

On May 25, 1979, the California Supreme Court determined that parental permission given to police officers to make a warrantless search of a resident minor son's tool box impermissibly infringed the minor's right of privacy.¹ The United States Supreme Court's denial of the State's petition for certiorari in Fare v. Scott K.² finalized the California Supreme Court's judgment. Two United States Supreme Court opinions handed down since Scott K. implicitly support the prosecution's position advocating the primacy of parental rights in the home.³ This Comment will examine the conflicting parent-child rights in Scott K. in light of these two recent Supreme Court opinions. An alternative theory for the reconciliation of conflicting individual constitutional rights within the family will be examined with Scott K. serving as a model in which to consider the proposed method of judicial analysis.

II. THE Scott Decision

A. The Facts

The facts in Scott K., although unique, are fairly simple. The minor son lived at home with his natural parents but did

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³. Parham v. J.R., 442 U.S. 584 (1979); Bellotti v. Baird, 443 U.S. 622 (1979). Parham upheld the right of parents to voluntarily commit their children to state-operated mental institutions. In Bellotti, Justice Powell's plurality opinion outlined parental rights in a nonabortion context to "provide some guidance as to how a State constitutionally may provide for adult involvement—either by parents or a state official such as a judge—in the abortion decisions of minors." 443 U.S. at 652 n.32. However, Justice Stevens, joined by Justices Brennan, Marshall, and Blackmun, characterized Powell's opinion as "advisory" because it attempted to resolve "hypothetical" questions. Id. at 651 n.32, 656 n.4 (concurring opinion). Although Powell's opinion was criticized for addressing hypothetical questions, it was not criticized as an inaccurate analysis of constitutional law regarding parent-child relationships.
not contribute in any definite way to the maintenance of the family home. The mother discovered marijuana in the minor's bedroom desk drawer. She gave the contraband to a neighbor, an off-duty policeman, and indicated her belief that the boy was trafficking in the drug.4 One week later, another officer came to the home to arrest the boy for possession of marijuana with intent to sell.5 The father invited the officer to come inside the home after the son, who had been working in the garage, was arrested.6 The father later gave permission to the officer to search the home for additional contraband, and the officer discovered a locked toolbox in the boy's room.7 Despite the son's sole ownership of the toolbox and his obvious displeasure, the officer, still acting with the father's permission, opened the toolbox.8 The marijuana hidden within the box was instrumental in convicting the minor. The conviction, affirmed by the appellate court,9 was overturned by the California Supreme Court because the officer had violated the minor's right under the California Constitution to be free from unreasonable, warrantless searches and seizures.10


5. Id. The minor was charged with violation of the California Health and Safety Code: "Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment in the state prison . . . ." CAL. HEALTH & SAFETY CODE § 11359 (West 1976). The statutory provisions of CAL. WELF. & INST. CODE § 602 (West 1971) were applied to determine whether the minor was a juvenile. See Transcript, supra note 4, at 33; 24 Cal. 3d at 398, 595 P.2d at 106, 155 Cal. Rptr. at 672.


7. The officer testified concerning the father's grant of permission:

[T]he father at this time stated for the benefit of the minor and us, telling us that he was giving us permission to search his [the minor's] room now and anytime in the future we felt like it, and I think he did not make it even a restriction on the boy's room only. He told the boy that—or us that we could search his whole residence anytime we felt like it.

Transcript, supra note 4, at 14.

8. Transcript, supra note 4, at 8-9; 24 Cal. 3d at 399, 595 P.2d at 107, 155 Cal. Rptr. at 673.


10. The court felt the minor was "old enough to assert his rights" under article I, section 13 of the California Constitution which provides:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, par-
B. Development of the Issues

The trial court made a finding of fact that justified the father's actions based on a theory of parent, citizen, and homeowner responsibilities.

I find the officer to have been lawfully within the home. I find that in this specific case there is a joint effort on the part of two citizens using the aid and assistance of law enforcement. I find that the father of the minor, because of the evidence elicited as relates the relationship vis-a-vis the father, the minor and the home, had the right to conduct a search through whatever means were efficacious of the entirety of his own home and anything therein contained, whether placed there by his son or any other person; that it is not an overextension of the father's rights to use the instrumentality of the Narcotics Division of the Los Angeles Police Department to assist him in doing so.11

The trial court further found that parents not only have the right, but the duty, to "control the activities of their minor children."12 Since the duty of control still existed in the instant case, the court concluded that the father had a right to consent to the search for contraband.

The state appellate court framed the issue in a similar manner. "The question before us is whether the constitutional right of a minor to privacy (Cal. Const., art. I, § 1), operates to give him a similar right to privacy as against his parents."13 The court agreed with the trial judge that the parental interests compelled a conclusion that the search was constitutional.

The California Supreme Court, however, refused to follow the lower courts' formulation of the issues which focused on the parent-child relationship. In reversing the two lower courts, the state supreme court stated: "A minor's interest in both [relations with parents and government] is identifiable even when, as here, his or her assertion of privacy rights against the government appears to conflict with parental authority. The primary issue in this case involves the minor's rights regarding his gov-

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24 Cal. 3d at 403, 596 P.2d at 109, 155 Cal. Rptr. at 675.
11. Transcript, supra note 4, at 32-33.
12. Id.
13. 142 Cal. Rptr. at 63.
In its petition for certiorari to the Supreme Court of the United States, the prosecution attempted to rephrase the issue to refocus the Court's attention on the parent-child interests.

Does a parent have legal authority to consent to a police search of his minor child's personal property where said personal property is located in the parent's home, the minor child resides in the parent's home and is supported by the parent, and the parent has reasonable grounds to believe the minor child is engaged in criminal activity in the family home?

The Supreme Court did not grant certiorari so it remains unclear whether the Court would have sided with the California Supreme Court or the two lower courts.

An examination of the three California opinions ruling on Scott K. indicates that the major difference in legal reasoning stems from the state supreme court's reliance on Planned Parenthood of Missouri v. Danforth. The state supreme court in Scott K. reasoned that since a parental veto of a minor's decision to secure an abortion had been held unconstitutional in Danforth, the parental interests in Scott K. were not compelling. However, two United States Supreme Court decisions since Scott K. indicate that the fundamental constitutional rights of parents may not be so easily dismissed.

14. 24 Cal. 3d at 399-400, 595 P.2d at 107-08, 155 Cal. Rptr. at 673-74.
17. A denial of certiorari does not resolve the arguments on either side.
19. 428 U.S. at 74-75. However, the analysis of the parental interests in Scott K. and Danforth was fundamentally different. In Scott K., the father's interest in the toolbox was not examined closely by the majority. 24 Cal. 3d at 405, 595 P.2d at 111, 155 Cal. Rptr. at 677. In Danforth, on the other hand, the Court analyzed the parent's and family unit's rights:
   It is difficult, however, to conclude that providing a parent with absolute power to overrule a determination, made by the physician with his minor patient, to terminate the patient's pregnancy will serve to strengthen the family unit. Neither is it likely that such veto power will enhance parental authority or control where the minor and the nonconsenting parent are so fundamentally in conflict and the very existence of the pregnancy already has fractured the family structure.
   428 U.S. at 75. Although the Court in Danforth found more compelling interests in the physician-child relationship than in the parent-child relationship, the Court at least analyzed the effect its decision would have on parents and families in the abortion context. In drawing upon Danforth as precedent, the California Supreme Court should also have discussed how its holding would affect familial relations.
III. RECENT SUPREME COURT DECISIONS ON PARENTAL RIGHTS

After the California courts decided *Scott K.*, the United States Supreme Court addressed the question of the competing constitutional rights of parents and their minor children in the cases of *Parham v. J.R.* and *Bellotti v. Baird.* Parham challenged a parent's right to voluntarily commit a minor child to a state mental institution without a separate hearing to determine the child's interests. The majority held that parents have such a right and discussed at length the traditional and accepted role of parents in our society.

Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is "the mere creature of the State" and, on the contrary, asserted that parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). . . . The law's concept of the family rests on a presumption that the parents possess what a child lacks in maturity, experience and capacity for judgment required in making life's difficult decisions.

In addition, the Court in *Parham* upheld the primary importance of parental direction in family relationships.

In defining the respective rights and prerogatives of the child and parent in the voluntary commitment setting, we conclude that our precedents permit the parents to retain a sub-

22. 442 U.S. at 600-06. The challenge was unsuccessful. The Court explained that [p]arents in Georgia in no sense have an absolute right to commit their children to state mental hospitals; the statute requires the superintendent of each regional hospital to exercise independent judgment as to the child's need for confinement. . . .

[However,] [t]he *pars patriae* interest in helping parents care for the mental health of their children cannot be fulfilled if the parents are unwilling to take advantage of the opportunities because the admission process is too onerous, too embarrassing, or too contentious. It is surely not idle to speculate as to how many parents who believe they are acting in good faith would forgo state-provided hospital care if such care is contingent on participation in an adversary proceeding designed to probe their motives and other private family matters in seeking the voluntary admission.

*Id.* at 604-05.
23. *Id.* at 602 (citations omitted) (brackets original).
substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse, and that the traditional presumption that the parents act in the best interests of their child should apply.  

Clearly, then, the Court recognized and upheld the right of parents to control and direct the lives of their children so long as there is not evidence of abuse or neglect.  

In the later case of *Bellotti v. Baird*, the Court struck down a Massachusetts attempt to include parents in their child's abortion decision. In so holding, however, the Court affirmed basic parental rights and duties in nonabortion areas. The Court found significant precedent in history and tradition justifying the primacy of parental authority and enumerated what it as-

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24. *Id.* at 604. Even though the Court found that some kind of inquiry should be made by a "neutral factfinder" to determine whether the statutory requirements for admission were satisfied, the procedure outlined did not "unduly [tread] on traditional parental authority [nor] . . . [inhibit] parental decisions to seek state help." *Id.* at 606-07.  
25. While there was evidence of possible neglect or abuse in *Parham*, *id.* at 589-90, the Court made no such finding. Had it done so, *Wisconsin v. Yoder*, 406 U.S. 205 (1972), indicates that parental rights could have been limited because the "parental decisions [would] jeopardize the health or safety of the child, or have a potential for significant social burdens." *Id.* at 234.  
26. The significant portion of the statute struck down required the following:  
If the mother is less than eighteen years of age and has not married, the consent of both the mother and her parents is required. If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown, after such hearings as he deems necessary. Such a hearing will not require the appointment of a guardian for the mother.  

27. It is important to always keep foremost in the analysis of children's rights vis-a-vis their parents that the abortion decision is unique. *Bellotti v. Baird*, 443 U.S. at 642. Therefore, the precedents established in the abortion context are not always applicable to other decisions minors may wish to make. *See* *Parham v. J.R.*, 442 U.S. at 602-04.  
28. The precedent of history and tradition can be of major importance in the posturing of a case before the Court. "If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it . . . ." *Walz v. Tax Commission*, 397 U.S. 664, 678 (1970) (citing *Jackman v. Rosenbaum Co.*, 260 U.S. 22, 31 (1922)). Justice Stewart observed in *Parham* that "[f]or centuries it has been a canon of the common law that parents speak for their minor children." 442 U.S. at 621. In *Bellotti*, Justice Powell found that beliefs regarding parental primacy in the familial relationship are "deeply rooted in our nation's history and tradition." 443 U.S. at 638. It would appear that since the parent-child relationship had existed long before our nation was formed, the role of parents in the home deserves a strong presumption in its favor.  

However, it is somewhat ironic that other interpretations of "history" by the Court fail to take these self-evident facts into account. The historical basis of *Roe v. Wade*, 410 U.S. 113 (1973), which became persuasive precedent in Planned Parenthood of Missouri v. *Danforth*, 428 U.S. at 75, failed to take into account the parent-child history that was
sumed parents teach their children. The Court thought it necessary to prohibit state interference with parental attempts to fulfill that teaching role. After observing the conflicts among child-rearing theories, Justice Powell placed the exercise of parental rights in a historical and sociological perspective.

While we do not pretend any special wisdom on this subject, we cannot ignore that central to many of these theories, and deeply rooted in our nation's history and tradition, is the belief that the parental role implies a substantial measure of authority over one's children. Indeed, "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society."\

While reaffirming the parental duty to raise children, the Court reemphasized earlier declarations defining the duties of parents.

The duty to prepare the child for "additional obligations"... must be read to include the inculcation of moral standards, religious beliefs and elements of good citizenship." Wisconsin v. Yoder, 406 U.S. 205, 233 (1972). This affirmative process of teaching, guiding and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens.\

The state's role in assisting parents to fulfill these duties was also clearly articulated. "[I]t 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 which the state can neither supply nor hinder."\

A recognition of these parental rights had formed the basis of the trial and appellate courts' rationale in Scott K., which upheld parental power to consent to a search of a minor son's property. Appellate Judge Kingsly found that:

A parent who, as in this case, has reasonable grounds to believe that a minor child is engaged in serious criminal activity, must

articulated in Parham and Bellotti. Compare 428 U.S. at 75 with 442 U.S. at 602 and 443 U.S. at 637-39. Obviously, this inconsistency is not explainable by events which transpired between 1975 and 1979. Perhaps, then, the use of "history" to determine unwritten constitutional rights depends more on the judicial-historian than on what actually occurred.

29. 443 U.S. at 637-38 (quoting Ginsberg v. New York, 390 U.S. 629, 639 (1968)).
30. 443 U.S. at 637-38.
31. Id. at 638 (quoting Prince v. Massachusetts, 321 U.S. 158, 166 (1944)) (emphasis in original).
be allowed to investigate that belief, in order to determine the proper discipline and corrective action to be taken. If that investigation involves the search, with or without the minor's consent, of locked items, the search is justified as a conduct in aid of the parental power of care and discipline.32

The police action of opening the box and acting as agents for the father does not change the nature of the parental right:

It follows that, if the father in this case had himself opened the toolbox, or if the father, exerting his parental authority, had secured the key from the minor and then opened the box, the search would have been lawful. . . . What the father could do himself, he could do by an agent, whether that agent be a locksmith or a policeman.33

Nonetheless, the California Supreme Court rejected the "notion that the father here could effectively waive his son's right to be secure in the son's effects" insofar as that right related to the state.34 The state's highest court determined the legality of the father's third-party consent by examining his interest in his son's toolbox rather than by analyzing the parent-child relationship. The court stated:

Parents may have a protective interest in property belonging to children, but that fact may not be assumed. When a warrantless search is challenged the People must show it was reasonable. Here the People did not establish that the consenting parent had a sufficient interest under search and seizure law. The father claimed no interest in the box or its contents. He acknowledged that the son was owner, and the son did not consent to the search.35

By focusing solely upon the possessory interest in a toolbox and the son's relationship to the state, the court misinterpreted the significant roles that familial autonomy and parental primacy play in our federal constitutional framework.36 Such a narrow

32. 142 Cal. Rptr. at 63.
33. Id.
34. 24 Cal. 3d at 403, 595 P.2d at 110, 155 Cal. Rptr. at 676.
35. Id. at 405, 595 P.2d at 111, 155 Cal. Rptr. at 677.
36. By avoiding in its judicial analysis the legal presumptions favoring the family the California Supreme Court committed a significant analytical error. Perhaps it did so because the record "disclose[d] some discord in the parent-child relation." 24 Cal. 3d at 403, 595 P.2d at 109, 155 Cal. Rptr. at 675. This conclusion, however, was not documented by specific reference to the trial transcript. By failing to cite what in fact constituted the familial discord, the court did not articulate what facts or premises would rebut the legal presumption that natural bonds of affection lead parents to act in the best
analysis illustrates an all too frequent oversight in judicial analysis—failure to consider and articulate what effect a determination favoring an individual’s constitutional rights may have on the family.\textsuperscript{37}

The difficulty caused by the type of narrow analysis employed by the California Supreme Court is not that it destroys the existence of federal parental rights outside the abortion context; rather, it prevents jurists from recognizing the existence of constitutionally protected parental rights when a conflict arises between those rights and the rights of their children in relation to the state.\textsuperscript{38}

Two possible reasons may explain why a majority of the California Supreme Court did not focus on the fundamental nature of parental rights. First, some members of the court may be opposed to “a strong public policy protecting the interest of a parent in the care, discipline and control of a minor child.”\textsuperscript{39} Such an attitude necessarily detracts from the primacy of federally recognized parental rights when parental rights are balanced

interests of their children. Moreover, the court’s election not to specify when and how presumptions are rebutted that favor “protecting the interests of a parent in the care, discipline and control of a minor child,” 75 Cal. App. 3d at 164, 142 Cal. Rptr. at 63, deprived lower or sister state courts, desiring to resolve parent-child constitutional conflicts, of needed guidance. Indeed, the conclusion in \textit{Scott K.} that the minor “was age 17, old enough to assert his rights,” 24 Cal. 3d at 402-03, 595 P.2d at 109, 155 Cal. Rptr. at 675, seems to overlook Justice Powell’s conclusion that “the fact that a minor may be very much an adult in some respects does not mean that his or her need and opportunity for growth under parental guidance and discipline have ended.” 443 U.S. at 644 n.23. The well-recognized fact that “parents naturally take an interest in the welfare of their children—an interest that is particularly strong where a normal family relationship exists and where the child is living with one or both parents,” id. at 646, was not addressed by the California court as an important factor to be considered when determining a minor’s constitutional rights vis-a-vis his parents and the state.


with those of the minor child.40 Secondly, the Supreme Court precedent in *Roe v. Wade*41 and *Planned Parenthood of Missouri v. Danforth*,42 which favors consideration of the constitutional rights of individual family members without a complete analysis of familial rights, provides no model for courts to follow in considering competing constitutional rights.

With this background information in mind, this Comment will introduce and illustrate a model for judicial analysis of these conflicting rights. While the model does not intrinsically favor the rights of either parent or child, it ensures that the rights of all family members will be considered in the judicial decision-making process. The use of this model as a framework for opinion writing or fact resolution will ensure that the federally recognized role of parental primacy in the home is not overlooked or intentionally sidestepped in court decisions allegedly focusing on children's constitutional rights.43

IV. JUDICIAL REVIEW OF CONFLICTING CONSTITUTIONAL RIGHTS OF PARENT AND CHILD BY ANALOGY

A. Creation of “Judicial Legislation”

The *Scott K.* case was appealed, inter alia, under the fourteenth amendment.44 Traditionally, the Supreme Court has tested legislation under a two-tiered equal protection analysis.45

40. Justice Richardson’s dissent advocated the balancing approach. See 24 Cal. 3d at 408-09, 595 P.2d at 113, 155 Cal. Rptr. at 678-79.
41. 410 U.S. 113 (1973). The Court specifically reserved judgment in *Roe* on family issues in the abortion area, id. at 165 n.7, however, the *Roe* holding served in part as authority for the *Danforth* holding, especially as it related to the privacy rights of the pregnant woman, see 428 U.S. at 69-72.
42. 428 U.S. 52 (1976).
43. The California Supreme Court is not alone among state courts that have sidestepped analysis of difficult parental rights issues under the pretext of solely examining a minor’s rights vis-a-vis the state. See *Rouw v. Arkansas*, 265 Ark. 797, 581 S.W.2d 313 (1979); *Briere v. Briere*, 107 N.H. 432, 224 A.2d 588 (1966); *Commonwealth v. Smith*, 472 Pa. 492, 372 A.2d 797 (1977); *State v. Koome*, 84 Wash. 2d 901, 530 P.2d 260 (1975).
Provided the legislation is rationally related to the achievement of goals within the scope of a legislative body's constitutional power, it will be upheld unless it (1) improperly affects a "suspect" classification\(^{46}\) or (2) infringes the exercise of a fundamental right.\(^{47}\) This two-tiered test can also be applied by analogy to situations involving individual and family rights. Before making its final decision, a court could examine the possible ramifications of its holding by treating its tentative opinion as a statute and then applying equal protection analysis. Obviously, judicial opinions are not legislation, but the public policy set by judicial precedent often has the same political and practical impact upon society. For this reason, the self-imposed application of equal protection analysis to prospective judicial opinions is appropriate.

For example, if the *Scott K.* case had been enacted by a legislature, instead of announced by a court, the law might have read like this:

Because of a desire to ensure that a minor's constitutional right to privacy is recognized in this state, a minor has an abso-

\(^{46}\) The concept of "suspect" classifications was first articulated by Justice Jackson in *Korematsu v. United States*, 323 U.S. 214 (1944) as follows:

All legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.


lute right to be free from a warrantless search that is consented to by his parents, even though both the parents and police are aware of reasonable evidence indicating the juvenile is engaging in criminal activity in the home. This law is to be applied by the judiciary in such a manner that the parental interest in raising and training children is not the primary issue when a court is determining the constitutionality of parent-approved warrantless police searches of children's property.

Once the prospective holding has been recast in legislative form, the judge writing the opinion should then subject the holding of an early draft to an analogous "strict judicial scrutiny." Failure to meet any of the criteria traditionally recognized in equal protection analysis would require either a revision of the opinion or at least a clearly articulated explanation as to why the fundamental rights of other family members are not considered compelling.48

B. Application of Equal Protection Analysis to the Scott K. "Judicial Legislation"

1. Are the chosen "means" rationally related to the desired "ends" of the judicial "legislation"?

The means chosen to achieve the objective of the Scott K. holding are not rationally related because they are overinclusive: they encompass a larger area than necessary. In its effort to protect the child from parent-approved governmental searches, the court failed to distinguish between two basic types of individual freedoms that exist in a democratic society: the freedom to be free from something, generally, unwarranted governmental intrusion into one's personal life; and the freedom to be free for something, such as the freedom to chose to prepare oneself to contribute to society.

48. The strict judicial scrutiny standard was first articulated in Korematsu v. United States, 323 U.S. 214 (1944). The problem caused by strict scrutiny is that it is applied with varying degrees of strictness. For example, the Court decided that "discrimination between individuals on the basis of their legitimacy does not 'command extraordinary protection from the majoritarian political process,' San Antonio School District v. Rodriguez, 411 U.S. 1, 28 (1973), which our most exacting scrutiny would entail." Mathews v. Lucas, 427 U.S. 495, 506 (1976). The application of "strict" and "not so strict" judicial scrutiny in the illegitimacy field illustrates that this type of analysis can be applied somewhat unevenly by the same judges.

49. In addition to fundamental rights of parents, fundamental rights of federalism, which reserve to the states "[t]he powers not delegated to the United States by the Constitution," are also offended. See U.S. Const. amend. X.
By emphasizing the child's right to be free from something—warrantless police searches—the California Supreme Court has impermissibly infringed the parents' duty and right to be free to prepare the child for societal responsibilities.50 In contrast, the Supreme Court has recognized a parental duty requiring an "affirmative process of teaching, guiding, and inspiring, by precept and example [which] is essential to the growth of young people into mature, socially responsible citizens."51 Indeed, the Court has noted that "[l]egal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding."52 By denying parents the right to act in a way beneficial to their children and family, the California Supreme Court appears to have impermissibly infringed the parent's ability to fulfill these obligations.

2. Is the classification of children as a separate group constitutional?

Children have long been recognized as being proper recipients of special treatment in state legislation.53 For example, the well known case of Ginsberg v. New York,54 which held that the state has the right to prohibit the sale of pornography to minors under age seventeen, reinforces this policy.55 In Ginsberg the Court observed that "the legislature could properly conclude

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50. If a child is not taught industry and self-reliance, and is not encouraged to develop these traits during his early life, the child may lack the ability to make a significant, constructive contribution to society. Since an emancipated minor usually lacks such skills, without parental training and encouragement it may be difficult for him to contribute in a meaningful way to society. Although the minor may be "free" to contribute, his lack of adequate preparation may prevent him from doing so.


52. Id. at 638-39.

53. "Children have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State's duty towards children." Id. at 633-34 (quoting May v. Anderson, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring)). Justice Powell also noted three reasons why the constitutional rights of children are not congruent with those of adults: "the peculiar vulnerability of children; their inability to make critical decisions in an informed mature manner; and the importance of the parental role in child-rearing." Id. at 634.

54. 390 U.S. 629 (1968).

55. Public airways have also been restricted for the benefit of unsuspecting children. F.C.C. v. Pacifica Foundation, 438 U.S. 726, 749-750 (1978).
that parents . . . who have this primary responsibility for children’s well-being are entitled to the support of laws designed to aid the discharge of that responsibility.” The Court cited a commentator approving the legislation of “morality” when it enhanced the ability of the parents to inculcate morals in the child as the parent saw fit.

In the nonabortion area, the United States Supreme Court has consistently reaffirmed laws supporting parental attempts to exercise control over their children without giving the children any rights or prerogatives held by their parents. Such precedent indicates that the focus in Scott K. on the child-state relationship rather than on the parent-child relationship could have been held unconstitutional had the same delineation been made by a state legislature.

3. Does the statute impermissibly infringe essential rights of the family unit, parents, or children?

a. Rights of the family unit are infringed. The proposed Scott K. “statute” appears to infringe fundamental rights of the family. Regarding due process rights affecting the family, the Supreme Court has noted:

We have little doubt that the Due Process Clause would be offended, “[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children’s best interest.”

Placing aside the requirement that the children actually protest the breaking up of the family, the Scott K. “statute” offends

56. 390 U.S. at 639.
58. See cases cited note 38 supra.
60. Since parents traditionally speak in behalf of their children, Parham v. J.R., 442 U.S. at 584 (Stewart, J., concurring), the protests of the parents regarding the dissolution of the natural family would be considered as the protests of both the parent and child. Therefore, an analysis of the concerns of the protesting parents would in fact meet the
due process because it elevates the legal position of the minor to be at least coequal with that of the parent. Such equality destroys the legal presumptions upon which the family is based and could cause the "breaking up [of] the natural family." While family members may still live in the same residence, the legal and practical expectations in the relationship would be seriously altered when the general populace, especially rebellious minors, understood the implications of a decision like Scott K. Since Supreme Court opinions indicate the family unit has a legitimate expectation of protection in the law, there should be a hearing of some kind regarding the potential dissolution of the family. Due process requires nothing less.

b. Fundamental parental rights are infringed. Enactment of the Scott K. "statute" impermissibly infringes parents’ responsibilities to their other children and their interests as homeowners. Aside from the parental responsibility discussed by the appellate court in Scott K. to prepare an erring son for additional obligations in life, other interests are equally important.

requirements and standards enunciated in Quillon.

61. The majority opinion in Scott K. completely ignored the additional parental interests in (1) a stable home environment, free from criminal activity and (2) protecting the interest of other children in the home—a concern articulated by Justice Richardson’s dissent. See text accompanying note 69 infra. Thus, it can be argued that the child’s individual rights were elevated above those of the parent because parental rights in areas not related to the son’s right to autonomy were infringed by the decision.

62. The attempt to equalize the parent-child relationship destroys the legal presumptions that favor parental primacy in the home. Such equalization also presupposes that a parent cannot correctly guide the child and add to his life for the long-term benefit of both parties.


64. Where there is an expectation of a right or interest, a hearing must be held to determine the reasons justifying the taking away of that right. See Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1972).

65. If the court is determined to focus solely on the individual child’s interests vis-a-vis the state, then its determination should affect only the fundamental relationship of the parent with that one child. It should not interfere with or affect (1) other familial or personal areas of the parent’s life or (2) the relationship of any other sibling with that particular parent. For example, in addition to an interest in disciplining one child, the parent has a fundamental right to maintain a home that is free from criminal activity, as well as to provide a safe environment and proper guidance for other children in the home. The conclusion that these rights should not be examined or recognized because the other family members are not parties in the litigation, see Lowe, In re Scott K.; Equality under the Law? A Minor’s Dilemma, 6 W. St. U.L.R. 157, 163-68 (1978), presupposes that the exercise of constitutional rights of individual family members takes place in a vacuum. This is simply not true.

66. 142 Cal. Rptr. at 63.
Justice Richardson, dissenting from the California Supreme Court's holding in Scott K., found these alternative parental responsibilities compelling:

The parents had a legitimate purpose in seeking to ferret out the existence of any criminal activity conducted in any part of their home. Their responsibility to themselves, and as parents of Scott and of any other children in the family required that they do so. Parents in certain situations have a right to be suspicious, and to act reasonably in accordance with those suspicions. They do not help their children if they do otherwise. A locked container controlled solely by the suspect minor and found in his room would, of course, be one of the most logical places for concealment of contraband or criminal evidence.

Under the foregoing conditions, I would not recognize a child's right of "sanctuary" vis-a-vis the responsible parent.67

The United States Supreme Court's recent reaffirmation of the parental responsibility to train and prepare their children would probably mandate that the Scott K. "statute" be struck down on this point alone, for it impermissibly infringes fundamental rights of parents regarding their other children.

c. Children's rights and expectations under the law are infringed. The judicial-statute in Scott K. impermissibly infringes the child's long-term, fundamental rights68 in two ways. First, a child has the right to be raised by his parents,69 even though he may rebel against parental decisions. To deprive a mi-

67. 24 Cal. 3d at 409, 595 P.2d at 113, 155 Cal. Rptr. at 679.
68. While not articulated in current standards, perhaps the fundamental rights of a child could be characterized in a long-term framework rather than a present-enjoyment analysis. Since minors, by definition, do not have equal legal status with adults, perhaps the criteria for determining the fundamentalness of a minor's rights should focus on how the immediate exercise or denial of a right will affect the minor's exercise of that right after attaining majority. For example, in determining that a child has a fundamental right of privacy in the home vis-a-vis his parents, the court should consider not only the immediate strains this will place on the parent-child relationship but also whether it will deprive the minor of an opportunity to learn proper parental roles essential to exercise his future, fundamental right to raise and discipline his own children. By allowing a minor to flout parental authority while breaking the law because of the alleged error of a law enforcement officer (who reasonably relied on the parental consent to search), the court infringed the minor's rights in two additional ways. The minor's right and duty to prepare to make a social contribution as a law abiding citizen is infringed, see Wisconsin v. Yoder, 406 U.S. 205, 233 (1972), as is his right to enjoy a positive and natural relationship with his parents and other family members in the future. Such long-term results question the real fundamentalness of short-term "rights" which the court attempted to "give" to the minor in Scott K.
nor of parental correction and discipline by practically forbidding law enforcement involvement with parents who are aware their child is knowingly breaking the law takes away the child's right to parental direction and guidance. Secondly, both constitutional and family law is premised on the expectation that parents can and will assist their children in making difficult decisions.

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. More important, historically it has been recognized that natural bonds of affection lead parents to act in the best interests of their children. To claim Scott's actions demonstrated that he had proper judgment is to equate either lawbreaking or avoiding criminal punishment with maturity.

The child then, as well as the parents and family unit, had fundamental rights infringed by the "enactment" of the Scott K. decision. Since an equal protection analysis of the Scott K. "bill" indicates that it would have been unconstitutional if enacted by a legislature, the California Supreme Court and the United States Supreme Court should have examined more closely the compelling issues in the case. To avoid infringing the well-recognized rights of parents regarding their minor children, judges should place the early draft of future decisions in a legislative mold to ascertain whether it can withstand a self-imposed strict judicial scrutiny. Such measures would lead to analytical resolutions of conflicts between a child's constitutional rights and the rights of his parents. Such an analysis should occur whether or not the parent is a party in the case.


71. While the Supreme Court did review the state's request for certiorari in Scott K., a more careful examination of the issues it posed or a more structured analysis of parental rights in the abortion context might have eliminated much of the rationale used by the California Supreme Court to justify its decision. Of course a denial of certiorari is neither an affirmance or reversal of the California Supreme Court.

72. Poorly reasoned decisions are those which attempt to brush-off or ignore major, precedentially sound viewpoints that appear in the lower court opinions and the briefs filed on appellate review. To disagree with the lower court holdings is not improper; however, it hinders the principled development of the law for a court to disagree and then fail to articulate the standards used to arrive at that disagreement.

73. Parental rights are obviously at stake in cases similar to Scott K. For example, in Bellotti the parents had enough interest in the case, even though not parties, to motivate Justice Powell to address a significant portion of the Court's opinion to the relation-
V. Conclusion

The difficulty caused when courts abandon recognition of parental rights in cases dealing with conflicting parent-child-state interests could be resolved if the judge drafting the opinion would analyze the conflicts in the analytical framework proposed in this Comment. After recognizing that the fundamental rights of all family members will probably be affected by a ruling on the rights of one member, the opinion writer could place the tentative holding in a legislative mold to more easily subject the opinion to a traditional equal protection analysis. It would be examined for (1) a rational and specific relationship between the ends and the means selected; (2) an impermissible classification of subject matter; and (3) possible infringements of the fundamental rights of the family unit, parents, or children. If the self-imposed “strict judicial scrutiny” uncovers constitutional weaknesses in the initial decision, the judge should rewrite the opinion to eliminate conflicts or to articulate the reasons why the constitutional rights of others were not considered significant. The self-restraint imposed by this type of analysis would improve the underlying rationale of opinions, even if the analysis is not articulated. While application of this model may not always result in judicial opinions favoring parental rights, it will ensure that the preeminence of parents in American society will be fully considered and recognized in judicial opinion writing.

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ship of parent-child rights. See 443 U.S. at 633-39. Other cases which have established parental rights did not have parents as actual litigants. See Pierce v. Society of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923).