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HUMAN PAPILLOMAVIRUS VACCINE LEGISLATION: ARE WE OVERSEXUALIZING OUR YOUTH?

DARRYN CATHRYN BECKSTROM*

INTRODUCTION

In June 2006, the Food and Drug Administration (FDA) announced that it had approved Gardasil, a vaccine developed by pharmaceutical manufacturer Merck & Co., Inc.¹ The vaccine is intended to prevent against certain strains of the human papillomavirus (HPV) which can cause genital warts and cervical cancer.² Since the approval of Gardasil, nearly half of state legislatures and the District of Columbia have introduced legislation that would require the vaccine for all school-aged girls.³ In April 2007, Virginia became the first state in the nation to require pre-adolescent girls to receive the HPV vaccine.⁴ Effective October 1, 2008, school-aged girls in Virginia are required to receive the first dose of Gardasil, currently the only FDA approved HPV vaccine on the market,

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1. U.S. Food and Drug Administration, *FDA Licenses New Vaccine for Prevention of Cervical Cancer and Other Diseases in Females Caused by Human Papillomavirus*, <http://www.fda.gov/bbs/topics/NEWS/2006/NEW01385.html> (last visited April 25, 2008).

2. *Id.* The FDA release noted that the vaccine prevents against HPV types 6, 11, 16, and 18. *Id.* These strands are known to cause about 70 percent of all cervical cancer and 90 percent of all genital warts. *Id.* The FDA also stated:

[F]emales are not protected if they have been infected with that HPV type(s) prior to vaccination, indicating the importance of immunization before potential exposure to the virus. Also, Gardasil does not protect against less common HPV types not included in the vaccine, thus routine and regular pap screening remain critically important to detect precancerous changes in the cervix to allow treatment before cervical cancer develops.

Id.

3. National Council of State Legislatures, *HPV Vaccine*, <http://www.ncsl.org/programs/health/HPVvaccine.htm> (last visited April 25, 2008).

4. *Id.* This bill was controversial. Lynne Marie Kohm, *Family and Juvenile Law*, 42 U. RICH. L. REV. 417, 435 (2007) ("Much controversy was waged over this bill, particularly by parents and others who understand the behavioral nature of the sexually transmitted disease HPV. The concerns centered around a lack of track record for the vaccine and the generally growing public perception that mandatory vaccines for minors override parental authority.") (citation omitted). Additionally, in February 2007, Gov. Rick Perry (TX) signed an executive order that would require the HPV vaccine for all girls as a requirement for entrance to the sixth grade. National Council of State Legislatures, *supra* note 3. However, in May 2007, the Texas State Legislature overrode the executive order. *Id.*

before admission to the sixth grade.⁵ Legislation mandating the HPV vaccine as a requirement for school entrance remains pending in other states.⁶

When states require vaccines as a condition for school entrance, they inherently create a tension between the rights of parents and the police power of the state.⁷ Since the U.S. Supreme Court's decision in *Jacobson v. Massachusetts*,⁸ states have increasingly used their police power to require vaccinations for such diseases as diphtheria, measles, mumps, polio, and rubella for schoolchildren.⁹ Unlike these traditionally required vaccinations, the HPV vaccine does not prevent against an illness spread casually between children on the playground or two classmates sitting near each other in the classroom.¹⁰ Rather, the HPV vaccine prevents against a disease that is sexually transmitted.¹¹

This note argues that given the nature of the HPV disease, mandating HPV vaccinations of school-aged girls violates the social teachings of the Catholic Church and neglects to consider the psychological consequences of adolescent sex. Part I applies Catholic social thought and existing law in evaluating the proper role of parents and the state in the sexual development and education of children. Relying on Catholic teachings, Part II demonstrates that mandatory HPV vaccinations have the effect of increasing children's exposure to sex during their vulnerable, pre-

5. VA. CODE ANN. § 32.1-46 (2007) ("Three doses of properly spaced human papillomavirus (HPV) vaccine [are required] for females. The first dose shall be administered before the child enters the sixth grade."). Further, the legislation allows parents to opt-out of the requirement:

Because the human papillomavirus is not communicable in a school setting, a parent or guardian, at the parent's or guardian's sole discretion, may elect for the parent's or guardian's child not to receive the human papillomavirus vaccine, after having reviewed materials describing the link between the human papillomavirus and cervical cancer approved for such use by the Board.

Id. Nonetheless, "Despite this provision, those that are concerned with the bill and those that support the bill alike are concerned with the vaccine's lack of a successful track record and its unknown long-term side effects." Kohm, *supra* note 4, at 435 (citation omitted).

6. National Council of State Legislatures, *supra* note 3.

7. For a historical and legal overview of school vaccination requirements in the U.S., see James G. Hodge, Jr. and Lawrence O. Gostin, *School Vaccination Requirements: Historical, Social, and Legal Perspectives*, 90 KY. L.J. 831 (2002).

8. 197 U.S. 11 (1905) (holding that a mandatory vaccination policy for smallpox did not violate an individual's right to liberty under the Fourteenth Amendment because the policy was a legitimate exercise of state power under the police power of the state).

9. Carrie A. Roll, *The Human Papillomavirus Vaccine: Should it be Mandatory or Voluntary?* 10 J. HEALTH CARE L. & POL'Y 421,431-32 (2007). For an overview of states' general vaccination requirements, see Alan R. Hinman, Walter A. Orenstein, Don E. Williamson, and Denton Darrington, *Childhood Immunization: Laws that Work*, 30 J.L. MED. & ETHICS 122, 124 (2002) ("As of the 2001-2002 school year, all 50 states, the District of Columbia, and Puerto Rico have school entry requirements. In all states, the requirements cover all grades from kindergarten through 12th grade. . . . In all 50 states, the requirements cover diphtheria, tetanus, polio, measles, and rubella vaccines; 47 states require vaccination for mumps, 44 for pertussis, and 41 for hepatitis B. Forty-nine states require a second dose of measles vaccine, 21 require varicella vaccine, and 6 require hepatitis A vaccine.").

10. Centers for Disease Control and Prevention, *Genital HPV Infection—CDC Fact Sheet*, <http://www.cdc.gov/std/HPV/STDFact-HPV.htm> (last visited April 25, 2008).

11. *Id.*

adolescent years (the “years of innocence”)¹² and sends a message that pre-adolescent and adolescent sex is acceptable as long as children are protected from the physiological harms of such activity. Part III, relying on empirical research, suggests that exposing children to sexual material increases the risk that such children will engage in sexual activity and suffer the accompanying negative psychological consequences. This note concludes by offering parents a way forward in protecting their children’s sexual development and education from mandatory HPV vaccination legislation.

I. CATHOLIC SOCIAL THOUGHT, THE STATE, AND PARENTAL CONTROL

Legislation requiring young, school-aged girls to receive the HPV vaccine before entering school raises the difficult question of how to define the proper role of the state in matters pertaining to the sexual development and education of students. This section discusses the relationship between the Catholic Church, the state, and parents’ role in the sexual development of their children.

A. THE CATHOLIC CHURCH AND THE RIGHTS OF PARENTS

Mandating the HPV vaccine for young girls naturally creates a tension between the Catholic Church’s view of parental autonomy and the role of the state in the sphere of sexual development of children. As previously mentioned, the HPV vaccine protects women against certain strains of HPV that can lead to cervical cancer and genital warts.¹³ However, unlike other childhood vaccinations which protect against viruses such as chicken pox, mumps, and rubella, this vaccine protects against a virus primarily spread through sexual activity.¹⁴ As such, while the vaccine itself is not immoral,¹⁵

12. The Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality: Guidelines for Education within the Family*, ¶ 77 (Dec. 8, 1995), available at http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_08121995_human-sexuality_en.html (last visited April 25, 2008).

13. Bobbie Gostout, *Cervical Cancer Vaccine: Who Needs It, How it Works*, <http://www.mayoclinic.com/health/cervical-cancer-vaccine/WO00120> (last visited Nov. 10, 2007).

14. Centers for Disease Control and Prevention, *supra* note 13; see also, Furton, *supra* note 16 (“To mandate immunization against rubella makes perfect sense. We have a duty to ensure that we are not the cause of harm to others. Typhoid Mary, who spread disease wherever she worked and, when fired, simply took up employment elsewhere, was properly quarantined by public health authorities. She did not intend to do anything wrong, but that made no difference. The state, in the interests of public health, was justified in taking measures that would prevent the spread of a disease caused by casual contact. Coughing or sneezing may happen on a public bus, in a school cafeteria, or at a movie theater. The same is not true of sexual activity—at least we hope not. An element of consent plays an important role in the spread of STDs; hence, a logical response to the problem is to focus on the possibility of changing behavior.”).

15. National Catholic Bioethics Center, *NCBC Statement on Vaccination against Human Papilloma Virus (HPV)* (July 11, 2006), http://www.ncbcenter.org/06-07-11-hpv_vaccine.asp (last

the act of engaging in adolescent premarital sex is “gravely contrary to the dignity of persons and human sexuality which is naturally ordered to the good of spouses and the generation and education of children.”¹⁶

Legislation requiring HPV vaccinations raises several ethical questions about the relationship between the state and parents concerning the sexual development and education of children.¹⁷ Specifically, when is it appropriate to discuss the topic of sex with young children? Further, who has the right to discuss sex with them? Should parents hold this right exclusively, or should public schools be allowed to intervene? While these questions may seem difficult to answer, the Church provides some direction on the rights and duties of parents in these situations.

1. *The Catholic Church, Sexual Development, and Subsidiarity*

The Church emphasizes *subsidiarity* in the realm of sex education.¹⁸ The principle of subsidiarity emphasizes that higher institutions should not undertake what lower institutions can effectively accomplish.¹⁹ Rather, higher institutions, such as the state, should focus its resources on problems and matters that cannot effectively be solved by lower institutions, such as the family.²⁰ This principle extends to sex education.²¹ The Vatican’s Pontifical Council for the Family, in *The Truth and Meaning of Human Sexuality: Guidelines for Education within the Family*, stated:

Sex education, which is a basic right and duty of parents, must always be carried out under their attentive guidance, whether at home or in educational centers chosen and controlled by them. In this regard, the Church reaffirms the law of subsidiarity, which the school is bound to observe when it cooperates in sex education, by

visited Dec. 22, 2007).

16. Catechism of the Catholic Church § 2353, <http://www.vatican.va/archive/catechism/p3s2c2a6.htm#III> (last visited April 28, 2008).

17. Christopher Tollefsen asks the broader question, “[W]hat is the role of the state in the provision of children’s education and the determination of the content of that education.” Christopher Tollefsen, *John Paul II and Children’s Education*, 21 NOTRE DAME J.L. ETHICS & PUB. POL’Y 159, 181 (2007).

18. The Pontifical Council for the Family, *supra* note 12, at ¶ 43.

19. Catechism of the Catholic Church § 1883, <http://www.vatican.va/archive/catechism/p3s1c2a1.htm#II> (last visited April 28, 2008) (“The teaching of the Church has elaborated the principle of *subsidiarity*, according to which ‘a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to co-ordinate its activity with the activities of the rest of society, always with a view to the common good.’”).

20. Pope John Paul II discussed the principle of subsidiarity in relation to families:

Whenever the family is self-sufficient, it should be left to act on its own; an excessive intrusiveness on the part of the State would prove detrimental, to say nothing of lacking due respect, and would constitute an open violation of the rights of the family. Only in those situations where the family is not really self-sufficient does the State have the authority and duty to intervene.

Pope John Paul II, Letter to Families, *Gratissimam Sane* (Feb. 2, 1994), http://www.vatican.va/holy_father/john_paul_ii/letters/documents/hf_jpii_let_02021994_families_en.html (last visited June 7, 2008).

21. The Pontifical Council for the Family, *supra* note 12, at ¶ 43.

entering into the same spirit that animates the parents.²²

The Church also emphasizes the important role parents play in the moral and spiritual development of their children.²³ The Catechism of the Catholic Church states, “The fecundity of conjugal love cannot be reduced solely to the procreation of children, but must extend to their moral education and their spiritual formation.”²⁴ Further, “[t]he right and duty of parents to educate their children are primordial and inalienable.”²⁵

The right of parents to educate their children about sexual morality also implies a duty—the duty of parents to properly educate their son or daughter about sex.²⁶ As the Pontifical Council for the Family says, “[i]f in fact parents do not give adequate formation in chastity, they are failing in their precise duty.”²⁷ However, parents would fail in this duty “were they to tolerate immoral or inadequate formation being given to their children outside the home.”²⁸ Legislation mandating the HPV vaccination for schoolchildren violates the principle of subsidiarity. When states pass such legislation, the state is effectively usurping the judgment of parents on the issue of appropriate sexual practices for *their* children.

2. The Catholic Church, Sexual Development, and Morality

In addition to the principle of subsidiarity, this type of legislation violates the teachings of the Church by failing to discuss *morality* with young children.²⁹ Rather than being taught abstinence, today’s society exposes children to “comprehensive” sex education for the purpose of reducing the risk of STDs and pregnancy that results from unprotected sexual activity.³⁰ Morality is almost always missing from this comprehensive discussion of sex. This presents a serious problem:

The moral dimension must always be part of explanations [regarding sex]. Parents should stress that Christians are called to live the gift of sexuality according to the plan of God who is Love, i.e., in the context of marriage or of consecrated virginity and also celibacy. They must insist on the positive value of chastity and its

22. *Id.* (citation omitted).

23. Catechism of the Catholic Church § 2221, <http://www.vatican.va/archive/catechism/p3s2c2a4.htm#IV> (last visited April 28, 2008).

24. *Id.*

25. *Id.*

26. The Pontifical Council for the Family, *supra* note 12, at ¶ 44.

27. *Id.*

28. *Id.*

29. The Pontifical Council for the Family, *supra* note 12, at ¶ 68.

30. Shannon Martin, Robert Rector, and Melissa G. Pardue, The Heritage Foundation, *Comprehensive Sex Education vs. Authentic Abstinence: A Study of Competing Curricula* viii, http://www.heritage.org/Research/Welfare/upload/67539_1.pdf (last visited March 20, 2008).

Further, unlike abstinence education, in comprehensive sex education programs:

[a]bstinence—or not having sex—is mentioned as one option that teens may consider to avoid risks, but the overwhelming emphasis is on reducing risk by encouraging contraceptive use. Since comprehensive sex education programs place by far the greatest focus on using contraception, the implicit message is that abstinence is of secondary importance.

Id.

capacity to generate true love for other persons. This is the most radical and important moral aspect of chastity. Only a person who knows how to be chaste will know how to love in marriage or in virginity.³¹

The Church emphasizes its teachings on parental responsibility regarding the sexual and moral development of children through Catholic conferences around the nation regarding its position on the HPV vaccine. Specifically, the Catholic Conference of Illinois issued a statement that addressed the relationship between the HPV vaccine and parental responsibility:

[T]he state must be cognizant of the potentially difficult situation parents are placed in when considering an immunization for a sexually transmitted disease for their young daughters. Many popular forces in today's society encourage irresponsible and immoral behavior. Parents must ensure that no measure they take can be interpreted by their children in a way that might undermine moral truth. Each child is unique and parents and guardians know what it is best for their child and when it would be appropriate to have these types of discussions and procedures.³²

Similarly, the California Catholic Conference's position on mandatory HPV vaccination of school-aged girls noted that "as with all sexually transmitted disease, the best defense is chastity and, once in marriage, monogamy. Parents must continue, by word and deed, to teach their children the importance of sexual morality."³³

Given the Church's perspective on this issue, legislation requiring pre-adolescent females to receive the HPV vaccination not only violates the principle of subsidiarity, but also sends a message to both children and society that sexual intercourse is acceptable behavior for pre-adolescents and adolescents as long as children are protected from the physical consequences of such conduct. This message, however, contradicts parents who teach their children about sexual abstinence and the value of delaying sexual activity until they are in a marital relationship.

B. THE STATE AND THE RIGHTS OF PARENTS

When examining the rights of parents within a state over the sexual development and education of their children, the state's role must also be considered. This tension has been termed the "competition between the

31. Pontifical Council for the Family, *supra* note 12, at ¶ 68. Under the virtue of chastity, individuals have a right to receive the moral truth: "Chastity presupposes respect for the rights of the person, in particular the right to receive information and an education that respect the moral and spiritual dimensions of human life." Catechism of the Catholic Church § 2344, <http://www.vatican.va/archive/catechism/p3s2c2a6.htm> (last visited April 28, 2008).

32. Catholic Conference of Illinois, *CCI Statement Regarding HPV Vaccine* (March 16, 2007), <http://www.catholicconferenceofillinois.org/bins/site/ftp/Statement%20on%20HPV%203-16-07%20on%20letterhead.doc> (last visited Dec. 16, 2007).

33. California Catholic Conference, *Regarding AB 16—A Bill to Mandate the HPV Vaccine for Young Girls* (March 21, 2007), <http://www.cacatholic.org/hpvpvaccinemandate.html> (last visited Nov. 6, 2007).

parent and state.”³⁴ This section reviews the rights of parents under the constitution, the state’s interest in the development of its citizens, and the line drawn in public education concerning parental vs. state control of the curriculum.

1. *The Rights of Parents under the Constitution*

Previous case law provides a basis for parental autonomy over the education of their children. Under the Due Process Clause of the Fourteenth Amendment, parents have a liberty interest in the education and upbringing of their sons and daughters.³⁵ The Supreme Court held in *Meyer v. Nebraska*, that “it is the natural duty of the parent to give his children education suitable to their station in life.”³⁶ In *Pierce v. Society of Sisters*, the Supreme Court held, “[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”³⁷ Most recently, after a lengthy discussion of previous cases validating the right of parents to control their children, the Supreme Court held in *Troxel v. Granville*, “[i]n light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care,

34. See Laura A. Rosenbury, *Between Home and School*, 155 U. PA. L. REV. 833 n. 3 (2007), citing Emily Buss, *Allocating Developmental Control among Parent, Child and the State*, 2004 U. CHI. LEGAL F. 27, 29 (2004). Rosenbury, along with other scholars, have begun to focus not only on the tension between the rights of parents and the state, but also the rights of children in this power relationship, see Hazel Gleen Beh and Milton Diamond, *The Failure of Abstinence-Only Education: Minors Have a Right to Honest Talk About Sex*, 15 COLUM. J. GENDER & L. 12, 50-51 (2006)(“Sex education thus represents a ‘perfect storm’ of competing forces of parental rights, state interests, and children’s rights. In conflicts regarding the education of children, court battles have traditionally focused on the clash between the parental right to raise children and the state’s interest in preparing children for their role in a democratic society, with children’s rights often taking a backseat in such disputes.”). In this note, it is not my intention to focus on the rights of children in the area of sex education, because, as previously discussed, it is the right of parents to direct the sexual education of their children. The Pontifical Council for the Family, *supra* note 159; see generally, Erik M. Zimmerman, *Defending the Parental Right to Direct Education: Meyer and Pierce as Bulwarks Against State Indoctrination*, 17 REGENT U. L. REV. 311, 353 (2005)(“While the public school is a noble institution, the family is one of the few institutions more valuable to individuals and society. By decreasing parental control over education, acceptance of the Children’s Rights doctrine would exacerbate, not lessen, the troubles of the family. The law has traditionally and rightfully recognized that, in all but the most extraordinary circumstances, children’s interests are best served by *encouraging* parents to be thoroughly involved in their lives.”).

35. See e.g., *Meyer v. Neb.*, 262 U.S. 390 (1923)(holding that a state statute which prohibited individuals and teachers from teaching any language other than English in any educational setting violated the Due Process Clause of the Fourteenth Amendment); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)(invalidating a state statute under the Due Process Clause of the Fourteenth Amendment that prohibited parents from placing their children between the ages of eight and sixteen in schools other than those controlled by the state); *Troxel v. Granville*, 530 U.S. 57 (2000)(holding that a state statute allowing non-parents to petition for visitation rights of children violated parents’ rights to control their children under the Due Process Clause of the Fourteenth Amendment).

36. *Meyer*, 262 U.S. at 400.

37. *Pierce*, 268 U.S. at 535.

custody, and control of their children.”³⁸

The Supreme Court decisions discussed above suggest that parents have a right to control the education of their children; however, lower courts have suggested that parental autonomy in the realm of education is not unlimited.³⁹ The Ninth Circuit recently held that parental rights in the realm of their children’s education, including “school programs that educate children in sexuality and health,” end at the selection of the school.⁴⁰ Beyond this right, control of the curriculum has been placed in the hands of the local school board and the state.⁴¹ Other courts have been hesitant to adopt “bright-line” rules concerning the rights of parents in regards to their children’s education, and instead take the position that the right of a parent to control the education of their child is “neither absolute nor unqualified.”⁴²

Many courts have cited *Brown v. Hot, Sexy and Safer Productions* to justify state control over sex education curriculum and distribution of sexual material.⁴³ The U.S. Court of Appeals for the First Circuit noted in *Brown*, “the *Meyer* and *Pierce* cases were decided well before the current

38. *Troxel*, 530 U.S. at 66.

39. *Fields v. Palmdale School District*, 427 F.3d 1197 (9th Cir. 2005)(holding that a survey administered to elementary school students containing questions regarding “sexual matter” did not violate parents’ rights under the Due Process Clause of the Fourteenth Amendment).

40. *Id.* at 1205, 1207 (“In sum, we affirm that the *Meyer-Pierce* right does not extend beyond the threshold of the school door. The parents’ asserted right ‘to control the upbringing of their children by introducing them to matters of and relating to sex in accordance with their personal and religious values and beliefs,’ by which they mean the right to limit what public schools or other state actors may tell their children regarding sexual matters, is not encompassed within the *Meyer-Pierce* right to control their children’s upbringing and education. Accordingly, *Meyer-Pierce* provides no basis for finding a substantive due process right that could have been violated by the defendants’ authorization and administration of the survey.”). See also *Blau v. Fort Thomas Public School District*, 401 F.3d 381, 395-96 (6th Cir. 2005)(“The critical point is this: While parents may have a fundamental right to decide *whether* to send their child to a public school, they do not have a fundamental right generally to direct *how* a public school teaches their child. Whether it is the school curriculum, the hours of the school day, school discipline, the timing and content of examinations, the individuals hired to teach at the school, the extracurricular activities offered at the school or, as here, a dress code, these issues of public education are generally ‘committed to the control of state and local authorities.’”(citations omitted).

41. See Roxana M. Smith, *Parental Due Process: Fields v. Palmdale School District*, 37 GOLDEN GATE U. L. REV. 673, 677-678 (2007)(“Parents of public school children have many rights, including the right to vote for elected school officials, to seek changes in the conduct of school boards, and the activities, curricula, and administration of public schools. The courts, however, are justifiably wary of judicial intervention in the operation of public schools. The attempt of parents to assert control over school curriculum and activities may be distinguished from the interest of parents regarding the fundamental right to direct the education and upbringing of their children.”).

42. *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 182 (3rd Cir. 2005)(holding that a survey distributed to students containing questions regarding sexual activity, among other topics, did not violate parents’ due process right to control the information received by their children under the Fourteenth Amendment).

43. *Brown v. Hot, Sexy and Safer Productions, Inc.*, 68 F. 3d 525 (1st Cir. 1995)(holding that a school-sponsored sex education program did not violate a parent’s right to rear their child under the Due Process Clause of the Fourteenth Amendment); see generally *Fields*, 427 F.3d at 1205; *Parker v. Hurley*, 474 F. Supp. 2d 261, 263 (D. Mass. 2007)(citing *Brown* in holding that the presentation of books in a public school setting containing homosexual subjects did not violate parents’ right to direct the educational upbringing of their child).

‘right to privacy’ jurisprudence was developed, and the Supreme Court has yet to decide whether the right to direct the upbringing and education of one’s children is among those fundamental rights whose infringement merits heightened scrutiny.”⁴⁴ Nonetheless, in *Brown*, the court held that the right established in *Meyer-Pierce* regarding parents’ control over their children’s education does not “encompass a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children.”⁴⁵

In sum, while the Supreme Court has emphasized that parents have a constitutional right to choose where to educate their children, the Court has remained silent on the issue of parental control over the curriculum in public schools. Instead, recent lower federal court decisions have held that though parents have the right to choose where to educate their children, the right of parents to dictate the curriculum ceases at the doors of the public school.

2. *The State and Sexual Development*

While parents have an interest in the education of their children, the Supreme Court has held that the state also has an interest in the development of its youngest citizens.⁴⁶ In furtherance of this interest, lower courts have held that parents do not possess a fundamental right “to control the upbringing of their children by introducing them to matters of and relating to sex in accordance with their personal and religious values and beliefs and [this] asserted right is not encompassed by any other fundamental right.”⁴⁷ As such, when determining whether a school has violated parents’ due process rights under the Fourteenth Amendment to direct the education of their children, courts consider whether the “government action . . . [is] rationally related to a legitimate state interest.”⁴⁸ Under this standard of review, courts often defer to the state because it is supposed that the state assumes the role of *parens patriae*, therefore allowing the state to interfere with the parent’s rearing of their children.⁴⁹

Although there are instances when the government may rightfully interfere with the rights of parents, such as removing a child from a home after suffering physical or sexual abuse, the recent decisions of lower federal courts increasingly suggest the government may interfere with the rights of parents when the parents are educating their children in a manner that is contrary to prevailing sexual norms of society—especially in the area

44. *Brown*, 68 F.3d. at 533.

45. *Id.*

46. *Prince v. Mass.*, 321 U.S. 158 (1944)(holding that a state may regulate the activities of a child even though such regulation may conflict with the religious beliefs and practices of the individual).

47. *Fields*, 427 F.3d at 1211 (internal quotations omitted); see e.g., *Brown*, 68 F.3d at 533; *Blau*, 401 F.3d at 395-96; *Parker*, 474 F. Supp. 2d at 274.

48. *Fields*, 427 F.3d at 1211.

49. *Prince*, 321 U.S. at 166.

of adolescent sex.

3. *Sexual Material in the Public Schools: Recent Illustrations*

Recent cases demonstrate the deference given by courts to public schools regarding sex education and distribution of sexual material to children. In *Fields v. Palmdale School District*, a group of parents sued the Palmdale School District after their children received a survey containing questions with “sexual subjects.”⁵⁰ The U.S. Court of Appeals for the Ninth Circuit held that “there is no fundamental right of parents to be the *exclusive* provider of information regarding sexual matters to their children, either independent of their right to direct the upbringing and education of their children or encompassed by it.”⁵¹

The Palmdale School District and various outside organizations developed and administered the survey to first, third, and fifth grade students.⁵² Although parents were informed of the survey through a letter, “[t]he letter did not explicitly state that some questions involved sexual topics.”⁵³ The questionnaire contained several questions that addressed sexual behavior.⁵⁴ These questions included: “touching my private parts too much,” “thinking about having sex,” “thinking about sex when I don’t want to,” “can’t stop thinking about sex,” and “not trusting people because they might want sex.”⁵⁵ The court stated that this survey was a “reasonable state action pursuant to legitimate educational as well as health and welfare interests of the state.”⁵⁶

In addition to controlling sexual messages in school, some state legislatures are creating curricula that “borders on proselytizing in support of the acceptability of same-sex marriage, to unsuspecting, impressionable children as part of a larger gay-friendly agenda.”⁵⁷ Recently, the U.S. Federal District Court for the District of Massachusetts held that parents do not have a fundamental right to control the subject matter taught in public schools.⁵⁸ In *Parker v. Hurley*, parents sued the school district after their children were presented with materials that depicted homosexual couples as a typical family structure.⁵⁹ A kindergarten student was “given a book that depicts various forms of families, including one that includes parents of the same gender.”⁶⁰ Further, a first grade student “was read a book about a

50. *Fields*, 427 F.3d at 1202.

51. *Id.* at 1200.

52. *Id.*

53. *Id.* at 1201 (“The letter did not explicitly state that some questions involved sexual topics, although it did specify that the survey questions were about ‘early trauma (for example, violence)’ and there was a warning that ‘answering questions may make [the] child feel uncomfortable.’”).

54. *Id.* at 1202.

55. *Id.*

56. *Id.* at 1211.

57. Charles J. Russo, *Same-Sex Marriage and Public School Curricula: Preserving Parental Rights to Direct the Education of Their Children*, 32 U. DAYTON L. REV. 361, 364 (2007).

58. *Parker*, 474 F. Supp. 2d at 264.

59. *Id.*

60. *Id.* at 263.

prince who married another prince.”⁶¹ The school district defended the books, stating that they “were part of the Lexington school system’s effort to educate its students to understand and respect gays, lesbians, and the families they sometimes form in Massachusetts, which recognizes same-sex marriage.”⁶² The *Parker* court reasoned that the right of parents to control the education of their children does not include the right to control the curriculum of the public school. The court concluded:

The *Meyer* and *Pierce* cases, we think, evince the principle that the state cannot prevent parents from choosing a specific educational program—whether it be religious instruction at a private school or instruction in a foreign language. . . . We do not think, however, that this freedom encompasses a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children.⁶³

The aforementioned cases show how courts are giving public schools greater control over the dissemination and content of sexual material. These holdings demonstrate the tension between parents’ inherent right to direct the sexual development of their child under the social teachings of the Catholic Church and the state’s interest in exposing children to sexual material during their formative pre-adolescent years. The state’s action in pursuit of its interest in the sexual development of children violates the principle of subsidiarity emphasized by the Church in regards to sex education by failing to grant parents the ability to control the content of the sexual material in the public school classroom.⁶⁴ In these cases, the state has failed to present the “moral dimension” of sex when presenting children with this material.⁶⁵

II. THE YEARS OF INNOCENCE AND THE HPV VACCINE

The administration of surveys containing sexual material and the use of books depicting homosexual relationships demonstrate a broader trend in the American public education system: raising children’s exposure to sexual information at an increasingly earlier age.⁶⁶ These examples are in

61. *Id.*

62. *Id.*

63. *Id.* at 268-69.

64. The Pontifical Council for the Family, *supra* note 12, at ¶ 43.

65. *Id.* at ¶ 68.

66. Distribution of a survey questionnaire to children does not convey respect for a child as a human being and their “modesty.” The Pontifical Council for the Family, *supra* note 12, at ¶ 127. Specifically, The Pontifical Council for the Family, in *The Truth and Meaning of Human Sexuality*, noted:

[The] principle of respect for the child excludes all improper forms of involving children and young people. In this regard, among other things, this can include the following methods that abuse sex education: (a) every ‘dramatized’ representation, mime or ‘role playing’ which depict genital or erotic matters, (b) making drawings, charts or models etc. of this nature, (c) seeking personal information about sexual questions or asking that family information be divulged, (d) oral or written exams about genital or erotic questions.” *Id.* Also, in *The Truth and Meaning of*

direct conflict with Pope John Paul II's focus on the years of innocence—the preadolescent years:

It can be said that a child is in the stage described in John Paul II's words as '*the years of innocence*' from about five years of age until puberty — the beginning of which can be set at the first signs of changes in the boy or girl's body (the visible effect of an increased production of sexual hormones). This period of tranquility and serenity must never be disturbed by unnecessary information about sex.⁶⁷

Surveys and books demonstrate only a fraction of the sexual material children experience in today's public schools. For instance, groups such as Sexuality Information and Education Council of the United States (SIECUS), provide sexually explicit information and training opportunities for educators, health professionals, parents, and communities across the country, including materials that teach masturbation to children as young as five-years old.⁶⁸ SIECUS teaches:

Masturbation is a natural, common, and non-harmful means of sexual self-pleasuring that is engaged in by individuals of all ages, sexual orientations, and levels of functioning. It can be a way of becoming comfortable with one's body and enjoying one's sexuality, whether or not in a sexual relationship. No one should be made to feel guilty for choosing or not choosing to masturbate, but it is appropriate for parents and other adults to make it clear that masturbation should be done in private.⁶⁹

Moreover, many public school districts have condom distribution plans.⁷⁰ For example, a middle school in Portland, Maine, offers various forms of contraception, including condoms, birth control pills and patches.

Human Sexuality, it was discussed that homosexuality should be reserved until children reach the stage of adolescence.

Id. at ¶ 125. Further, "*Homosexuality* should not be discussed before adolescence unless a specific serious problem has arisen in a particular situation. This subject must be presented only in terms of chastity, health and 'the truth about human sexuality in its relationship to the family as taught by the Church.'" *Id.* Finally, "[y]oung children who are exposed to state-mandated, gay-friendly teaching that essentially legitimizes same-sex marriage by presenting it as one of an array of familial alternatives may suffer from confusion to the extent that they may be exposed to ideas in school that they cannot fully comprehend." *Russo, supra* note 57, at 371.

67. The Pontifical Council for the Family, *supra* note 12, at ¶ 78.

68. The Sexuality Information and Education Council of the United States, *About Us*, <http://www.siecus.org/about/index.html> (last visited May 1, 2008); see also Robert E. Rector, *The Effectiveness of Abstinence Education Programs in Reducing Sexual Activity Among Youth*, The Heritage Foundation, <http://www.heritage.org/Research/Abstinence/BG1533.cfm> (last visited May 1, 2008).

69. Sexuality Information and Education Council of the United States, *Position Statements*, at <http://www.siecus.org/about/abou0001.html> (last visited Dec. 7, 2007). This position is contrary to the teachings of the Catholic Church, see generally, The Pontifical Council for the Family, *supra* note 12, at ¶ 103.

70. See Camille Waters, *A, B, C's and Condoms for Free: A Legislative Solution to Parents' Rights and Condom Distribution in Public Schools*, 31 VAL. U. L. REV. 787 (1997)(overview of condom distribution plans); Joshua A. Douglas, *When is a "Minor" also an "Adult"?: An Adolescent's Liberty Interest in Accessing Contraceptives from Public School Distribution Programs*, 43 WILLAMETTE L. REV. 545 (2007)(discusses the conflicting rights of parents, children, and the state in contraception distribution at schools).

Girls as young as eleven years of age may receive birth control pills from the school's health center.⁷¹ Since medical treatment is confidential under Maine privacy laws, parents who allow their eleven year old daughters to use the school's health care center will not be notified if their daughter is prescribed oral contraception.⁷²

The years of innocence principle discussed by John Paul II has implications for the distribution of the HPV vaccine. It has been suggested that the HPV vaccine should be administered to females before the onset of sexual activity, as the vaccine only prevents against and does not eliminate certain strains of HPV.⁷³ However, legislation requiring the vaccination of young, school-aged girls before entrance to school targets girls around the age of eleven.⁷⁴ Unfortunately, the vaccination of eleven-year-old girls requires parents to prematurely discuss with their children some of the more intricate details of sex, instead of gradually introducing the subject.⁷⁵ The Pontifical Council for the Family, in *The Truth and Meaning of Human Sexuality*, explained:

In some societies today, there are planned and determined attempts to impose *premature sex information* on children. But, at this stage of development, children are still not capable of fully understanding the value of the affective dimension of sexuality. They cannot understand and control sexual imagery within the proper context of moral principles and, for this reason, they cannot integrate premature sexual information with moral responsibility. Parents should politely but firmly exclude any attempts to violate children's innocence because such attempts compromise the spiritual, moral and emotional development of growing persons who have a right to their innocence.⁷⁶

State legislation requiring pre-adolescent girls to receive the HPV vaccine as a requirement for school entrance is another attempt by the government to introduce sex to young children. Instead of allowing parents to gradually introduce the subject of sex to their children, including both its moral and physical implications, the government, in contradiction to the Church's teachings, is forcing parents to expedite the process by which children are introduced to sex. Today, age inappropriate sex "education" and contraception distribution programs, among other sex-related activities, are present in elementary and middle schools. Given these activities, legislation mandating the HPV vaccine for young girls further contributes to the "oversexualization" of youth within our society when vaccination of

71. Associated Press, *Maine middle school to offer birth control*, (Oct. 18, 2007), available at <http://www.cnn.com/2007/HEALTH/10/18/middleschool.contraception.ap/index.html> (last visited May 1, 2008).

72. *Id.*

73. Allan Hildesheim and Rolando Herrero, *Human Papillomavirus Vaccine Should be Given Before Sexual Debut for Maximum Benefit*, 196 J. OF INFECT. DIS. 1431 (2007).

74. National Council of State Legislatures, *supra* note 3.

75. The Pontifical Council for the Family, *supra* note 12, at ¶ 83.

76. *Id.*

these young girls take place while they are still in the early formation of their sexual development.

III. THE PSYCHOLOGICAL CONSEQUENCES OF ADOLESCENT SEX

This note has argued that the HPV vaccine should not be mandated for school-aged girls because the vaccine introduces sex to young girls during their vulnerable, pre-adolescent years. Empirical research suggests that exposure to sexual material at early ages increases the likelihood of sexual initiation and sexual activity among adolescents. A 2004 study published by the American Academy of Pediatrics observed that viewing sexual content on television can “hasten” sexual initiation among children:

[The authors] observed substantial associations between the amount of sexual content viewed by adolescents and advances in their sexual behavior during the subsequent year. Youths who viewed 1 [standard deviation] more sexual content than average behaved sexually like youths who were 9 to 17 months older but watched average amounts of sex on TV.⁷⁷

When pre-adolescents and adolescents engage in sexual activity, various negative psychological consequences can occur. These consequences include depression, substance abuse, and marital instability.⁷⁸ First, research has demonstrated that sexual activity is correlated with depression among adolescents.⁷⁹ Notably, adolescents who engage in

77. Rebecca L. Collins, Marc N. Elliott, Sandra H. Berry, David E. Kanouse, Dale Kunkel, Sarah B. Hunter, and Angela Miu, *Watching Sex on Television Predicts Adolescent Initiation of Sexual Behavior*, 114 PEDIATRICS e280, e287 (2004), available at <http://pediatrics.aappublications.org/cgi/reprint/114/3/e280> (last visited May 12, 2008) (suggesting that parents decrease children’s exposure to such material.); see also Jane D. Brown, Kelly Ladin L’Engle, Carol J. Pardun, Guang Guo, Kristin Kenneavy, Christine Jackson, *Sexy Media Matter: Exposure to Sexual Content in Music, Movies, Television, and Magazines Predicts Black and White Adolescents’ Sexual Behavior*, 117 PEDIATRICS 1018 (2006), available at <http://pediatrics.aappublications.org/cgi/reprint/117/4/1018> (last visited May 12, 2008) (explaining that viewing sexual content in formats other than television, including music, movies and magazines, increased the likelihood of sexual activity and initiation among middle school students).

78. While not discussed in this note, juvenile delinquency has also been tied to sexual activity. See Stacy Armour and Dana L. Haynie, *Adolescent Sexual Debut and Later Delinquency*, 36 J. OF YOUTH AND ADOLESCENCE 141 (2007).

79. See, e.g., Denise D. Hallfors, Martha W. Waller, Daniel Bauer, Carol A. Ford, and Carolyn T. Halpern, *Which Comes First in Adolescence—Sex and Drugs or Depression?* 29 AM. J. OF PREVENTATIVE MED. 163, 168 (2005) (“experimentation with substance use and sexual activity play an important role in depression, regardless of pubertal timing or status. [The results] also offer insight into sex differences in depression. For females, even modest involvement in substance use and sexual experimentation elevates depression risk.”); Denise D. Hallfors, Martha W. Waller, Carol A. Ford, Carolyn T. Halpern, Paul H. Brodish, and Bonita Iritani, *Adolescent Depression and Suicide Risk: Association with Sex and Drug Behavior*. 27 AM. J. OF PREVENTATIVE MED. 224 (2004); Robert E. Rector, Kirk A. Johnson, and Lauren R. Noyes, *Sexually Active Teenagers Are More Likely to Be Depressed and to Attempt Suicide*, The Heritage Foundation (May 30, 2003), <http://www.heritage.org/Research/Abstinence/cda0304.cfm> (last visited Nov. 10, 2007); M.W. Waller, D.D. Hallfors, C.T. Halpern, B.J. Iritani, C.A. Ford, and G. Guo, *Gender Differences in Associations Between Depressive Symptoms and Patterns of Substance Use and Risky Sexual Behavior among a Nationally Representative Sample of U.S. Adolescents*, 9

sexual intercourse are, on average, more likely to experience depression and entertain suicidal thoughts when compared to adolescents who abstain from sex.⁸⁰ While this correlative relationship may appear to suggest that sexual activity flows from depression, research demonstrates the opposite conclusion. Rather, adolescent sexual intercourse increases emotional stress, which leads to an increased risk of depression.⁸¹

Second, adolescent sex is also associated with substance abuse.⁸² A 2005 study, using longitudinal data from the National School-Based Youth Risk Behavior Surveys, found that respondents who engage in sex and in risky sexual practices have higher rates of drinking and drug use. The study found that 69% of high school males who had sex in the past three months reported drinking in the past thirty days compared to 40% of males who did not have sex during this period.⁸³ For females, the numbers were 34% and 17%, respectively.⁸⁴ The results also uncovered a relationship between adolescent sexual activity and drug use.⁸⁵ Thirty-nine percent of males who reported having sex in the past three months also reported using marijuana compared to 14% of males who reported not having sex during this time period.⁸⁶ The results for females were 27% and 9%, respectively.⁸⁷ Further, males who had sex in the past three months also reported using marijuana an average of 6.55 times compared to 1.59 times for those who reported not having sex during this period.⁸⁸ Comparably, women reported using marijuana 2.94 times compared to .71 times, respectively.⁸⁹

Finally, marital instability is a *future* potential consequence of adolescent premarital sex.⁹⁰ Those who engaged in sex before marriage are, on average, three times more likely to divorce than those who did not engage in premarital sex.⁹¹ Further, women who engaged in earlier sexual

ARCH WOMENS MENT HEALTH 139 (2006)).

80. Rector, Johnson, and Noyes, *supra* note 78.

81. *Id.*

82. See, e.g., Michael Grossman and Sara Markowitz, *I Did What Last Night?! Adolescent Risky Sexual Behaviors and Substance Abuse*, 31 E. ECON. J 383 (2005).

83. *Id.* at 391.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. See, e.g., Jay Teachman, *Premarital Sex, Premarital Cohabitation, and the Risk of Subsequent Marital Dissolution Among Women*, 65 J. OF MARRIAGE AND FAM. 444 (2003); Tim B. Heaton, *Factors Contributing to Increasing Marital Stability in the United States*, 23 J. OF FAM. ISSUES 392, 401 (2002)(using multivariate regression and controlling for socioeconomic factors, the study found that “[d]issolution rates are substantially higher among those who initiate sexual activity before marriage, whose’s [sic] first sexual intercourse was involuntary, who had a birth before marriage, and who cohabitated before marriage.”).

91. Using data from the National Survey of Family Growth, the study found that women who had at least one other sexual relationship before marriage to their spouse “increased [their] risk of divorce (from 53% to 166%).” Teachman, *supra* note 90, at 453.

debut were also more likely to divorce when compared to women who delayed their sexual debuts.⁹²

The aforementioned findings further highlight the need for adolescents to postpone sexual activity. Though parents play a significant role in the sexual development of their children, state governments and school boards should assist parents by encouraging abstinence among students and preventing the dissemination of messages which could be conceived as condoning adolescent sexual behavior – such as requiring young, school-aged girls to receive a vaccination for a sexually transmitted disease.

CONCLUSION

Legislation mandating the HPV vaccine for young, school-aged girls violates Catholic social thought and neglects to adequately address the psychological consequences of adolescent sex. Since recent decisions by the lower federal courts have limited parents' right to control the education of their child, parents opposing these limits must use another medium to achieve control over their son or daughter's education. That medium is the democratic process. Because curriculum control has long been left in the hands of local school boards and state legislatures, it may be in the best interest of parents to treat the HPV vaccine as a matter of curriculum. Parents who do not desire to have the state impose its view of sexual morality on children, should band together and voice their concerns with their elected representatives, school board members, and other policymakers to affect desired change.

92. Robert E. Rector, Kirk A. Johnson, Lauren R. Noyes, and Shannan Martin, *The Harmful Effects of Early Sexual Activity and Multiple Sexual Partners Among Women: A Book of Charts*, The Heritage Foundation, (June 23, 2003), http://www.heritage.org/Research/Family/upload/44695_2.pdf (last visited May 17, 2008).