

# CITIZENS FOR SELF-GOVERNANCE LITIGATION SUMMARY

## **Brief of Amici Curiae Citizens for Self-Governance, Parental Rights Foundation, and Home School Legal Defense Association in *In the matter of D. N. Dailey***

- Court: Michigan Supreme Court
- Party Supported: Neither Party
- Issue: Parental Rights
- Attorney: Michael Farris, admitted *pro hac vice*

### **Summary:**

Michael Farris submitted this brief on behalf of the named organizations not to support either party, but to impact the legal framework upon which parental rights cases are decided. The brief begins by highlighting the fact that the United States Supreme Court has consistently treated parental rights as a single, fundamental liberty interest. It then explains how the Court has traditionally, but inexplicably, followed two separate approaches in analyzing parental rights cases. It has examined cases involving total termination of parental rights using a “procedural due process” analysis, but has applied its more subjective and more constitutionally tenuous “substantive due process” analysis in reviewing cases that involve challenges to a single aspect of parental rights, such as the parent’s right to make an educational or medical decision for her child.

The brief urges the Michigan Supreme Court to adopt a synthesized framework that would afford parental rights the highest possible level of protection.

The suggested approach would align more closely with the more defensible and more objective “procedural due process” doctrine. It would start with the presumption that the parents who hold the responsibility to protect and care for their children also enjoy the right to maintain custody and make decisions for them. Before the government could interfere with that sacred parent-child relationship,

the suggested framework would require the government to prove, by clear and convincing evidence, that:

1. The parent has breached his or her responsibilities by abuse, neglect, or abandonment;
2. The government’s intervention is necessary to advance an interest of the highest order (a compelling interest); and
3. The government’s intervention is no more intrusive than is necessary to accomplish that interest.

This brief is significant for at least two reasons. First, if adopted, this framework for analyzing parental rights cases would mark a significant shift in favor of parents, because it would not allow courts to require parents to compete with the state or others in arguing about what is “in the best interest of the child.” Rather, it would allow the state to intervene in the parent-child relationship only after demonstrating that such intervention is necessary to prevent some form of harm to the child. Second, given a long string of recent court opinions questioning the Court’s subjective, endlessly malleable “substantive due process” doctrine, it is crucial for parental rights advocates to develop a well-reasoned basis for protecting parental rights pursuant to the more stable procedural due process doctrine. This brief provides that framework.

