SUPREME COURT OF SIERRA

IN RE WB-02-14

JUSTICE CHEATEM delivered the opinion of the Court.

Section 3 of the Safer Western Act, WB-02-14, ("SWA") contains two provisions relevant here. First, it requires all public schools in Sierra to "conduct sexual education classes in Grade 9 and 10, where safe sex, puberty and healthy & unhealthy relations are discussed" ("Section 3(a)"). Second, it requires "Private Education Providers" to fund "70% of the provisions in the Safer Intercourse Act if opting into its provisions and the state of Western shall fund the remaining 30%" ("Section 3(c)").

Petitioner Cycllia P. Sales ("Sales") challenges both provisions as unconstitutional under both the constitution of Sierra and the Constitution of the United States. In particular, Sales challenges Section 3(a) as a violation of her fundamental right to control the upbringing of her children pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution, as set forth in *Troxel v. Granville*, 530 U.S. 57 (2000). Furthermore, although Sales' children attend public school, Sales also challenges Section 3(c) on the basis that it contravenes Article IX, Section 8, of the Sierra constitution, which prohibits public funding for private educational institutions.

For the reasons set forth below, this Court finds Section 3(a) constitutional and upholds its application in this instance, but finds unconstitutional Section 3(c). The fine against Sales for the truancy of her two children is therefore **AFFIRMED**.

A.

The facts of this case are as follows: Sales has two children, both of whom are enrolled in a public school in the state of Sierra. Sales claims she is a "practicing christian [sic]" and on that basis opposes her children's participation in the sexual education classes mandated by the SWA. She further claims that she was unable to have her children "opt out" of the

mandated sexual education classes. Sales therefore refused to allow her children to attend school at all. As a result of Sales' refusal to allow her children to attend school, she was fined for the truancy of her two children.

B.

This case is properly before this Court. While, perhaps, a federal court might find it lacks jurisdiction to hear this case on the grounds of failure to establish standing, Sierra law differs substantially from federal law in this arena.[1]

Unlike the United States Constitution, the Sierra constitution has no "case-or-controversy" clause limiting the jurisdiction of this Court. That clause is the basis for the federal standing doctrine; the limitations of "standing" are therefore inapplicable here. *See, e.g.*, *Grosset v. Wenaas*, 42 Cal.4th 1100, 1117 n.13 (2008). Even a party without any direct, "beneficial interest" is able to seek a writ of mandate

[1] For the purposes of the edification of the parties, and *without holding*, the Court sets forth what it believes would be the likely outcome of a *federal*, not Sierra, standing analysis below:

The basic question of standing is "whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Among the requirements of standing is that the litigant must "show that [she] has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *See, e.g.*, *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-102 (1983). The harm must be "personal," not a general policy preference or dislike of a given statute. *See, e.g.*, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

As to Section 3(a), Sales has articulated an appropriate, personal harm: she has been fined as the result of her failure to allow her children to attend the mandated sexual education program. That the bill provides it should not go "into effect" until the 2019 school year is immaterial for two reasons. First, it may very well be that the school in question implemented the program in anticipation of the 2019 mandatory roll-out. Second, and more important, regardless of whether the events alleged have *in fact* happened, Sales has articulated a particularized and immediate threat of sustaining a future harm. At a minimum, Sales has established her intent not to allow her children to enroll her children in a public educational facility until such a time as she is unable to "opt out" of the classes established under the SWA. Because Sales would be fined for such a course of action, she faces a real and particularized, and not a hypothetical, future harm.

However, Sales has failed to establish standing as to her challenge to Section 3(c). Nowhere in Sales' petition does she show any harm flowing from the provisions of Section 3(c) except in the hypothetical or broadest and most abstract sense. Sales at no point alleges that her children have been subjected to the SWA curriculum as the result of Section 3(c). Her children do not attend any private educational institution, let alone one alleged to be implementing the SWA curriculum; she certainly does not allege that the school her children attend was induced to instruct her children on the SWA curriculum as the result of Section 3(c).

through our courts pursuant to Sierra Code of Civil Procedure section 1086. *Weatherford v. City of San Rafael*, 2 Cal.5th 1241, 1248 (2017). While there are "prudential" considerations that our courts sometimes apply, *id*., this Court rejects such limitations in instances where parties challenge a statute or state action on the basis of a constitutional violation.

Therefore, because there is no standing prerequisite to this Court exercising jurisdiction, Sierra's argument that the events described in the complaint did not happen, or that (construing Sierra's argument as broadly as possible) Sales' harm is only hypothetical in nature, fails. *See, e.g.*, *id*. at 1247-48.

C.

The Court now reaches the merits of this case, to the extent there are any. First, the Court addresses the first question Sales put forth in her petition: does Section 3(a) "go[ ] against the precedent set in *Troxel v. Granville*, where Parental Interest is given priority over a perceived best interest of the child. Furthermore, does *Meyer v. Nebraska* also defend [Sales'] right to liberty under the Due Process Clause of the 14th amendment?" As an initial matter, this Court assumes, without holding, that no parent can "opt out" their child from the program mandated by Section 3(a), notwithstanding any other provision of the Code, as the statute makes no references to any such exception.

i.

Our Constitution guarantees to all persons a right to privacy against unwarranted government intrusion into their lives. *Roe v. Wade*, 410 U.S. 113, 152 (1973). This right includes the right to determine, within reason, the upbringing of one's own children. *E.g.*, *Troxel v. Granville*, 530 U.S. 57 (2000); *see also Meyer v. Nebraska*, 262 U.S. 390 (1923).

But there is no such thing as an absolute right; our society, our legislatures, and our courts have long recognized that even those rights we hold most dear are subject to some limitation. Notwithstanding the First Amendment, for example, a man cannot shout "fire!" in a crowded theatre;

inducing others to commit murder remains a crime; the creation and transmission of child pornography is "speech" but nonetheless, and rightly, results in a prison term. So, too, here; the right of a parent to rear her children and to control their education remains cabined within certain reasonable limitations.

Thus, *Meyer* itself, upon which Sales so heavily relies, recognized that a parent's right to rear her child as she sees fit must give way to the state's ability to "make reasonable regulations for all schools" and "prescribe a curriculum for institutions which it supports." *Meyer*, 262 U.S. at 402. Similarly, in *Pierce v. Massachusetts*, 321 U.S. 158 (1944), the Supreme Court noted that "the family itself is not beyond regulation in the public interest . . . [N]either the rights of religion nor rights of parenthood are beyond limitation." *Id.* at 166.

Indeed, time and again courts have rejected efforts by parents to impose their own values on the public school education of their children. *See, e.g.*, *Leebaert v. Harrington*, 332 F.3d 134 (2d Cir. 2003) (holding that there is no fundamental right to "dictate the curriculum at the public school to which [parents] have chosen to send their children"); *Mozert v. Hawkins*, 827 F.2d 1058 (6th Cir. 1987) (rejecting First Amendment challenge to required reading for students); *Vandiver v. Hardin County Board of Education*, 925 F.2d 927 (6th Cir. 1991) (upholding ability of state to require home-schooled student to pass equivalency exams despite religious objection). The list goes on and on. *C.N. v. Ridgewood Board of Education*, 430 F.3d 159, 182 (3rd Cir.2005) (explaining that Brown, among other decisions, "held that in certain circumstances the parental right to control the upbringing of a child must give way to a school's ability to control curriculum"); *Littlefield v. Forney*, 268 F.3d 275, 291 (5th Cir.2001) (holding that "[w]hile Parents may have a fundamental right in the upbringing and education of their children, this right does not cover the Parents' objection to the school uniform policy"); *Blau v. Fort Thomas Public School District*, 401 F.3d 381, 395-96 (6th Cir.2005) (holding that a parent does not have a right to exempt his child from a school dress code); *Swanson v. Guthrie Independent School District*, 135 F.3d 694, 700 (10th Cir.1998) (rejecting constitutional

challenge to school's refusal to allow a student to attend classes part-time); *Herndon v. Chapel Hill-Carrboro City Board of Education*, 89 F.3d 174, 176 (4th Cir.1996) (holding that requiring high school students to perform public service does not violate parents' right to control the education of their children).

Of particular relevance here is *Brown v. Hot, Sexy and Safer Productions, Inc.*, 68 F.3d 525 (1st Cir. 1995), in which a federal appeals court rejected a claim by parents of constitutional violation arising from their children's mandatory attendance of a "ninety-minute presentation" about HIV/AIDS. *Brown* explained that *Meyer* and *Pierce* "evince the principle that the state cannot prevent parents from choosing a specific educational program." But in holding against the parents, *Brown* explained that *Meyer* and *Pierce* were inapposite because the parents before them sought a "fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children." There is a difference, the court continued, between the State telling a parent, "You can't teach your child German or send him to a parochial school" and a parent telling the State, "You can't teach my child subjects that are morally offensive to me."

Though not binding, this Court finds *Brown*'s analysis persuasive. Like the parents in *Brown*, Sales objects to sexual health-related school curriculum taught to her children as contrary to her beliefs. Though the curriculum mandated under Section 3(a) is broader and persists across two school years, the analysis remains the same: Sales, like the parents in *Brown*, is telling the state, "You can't teach my child subjects that are morally offensive to me." That claim did not survive in *Brown* and it cannot survive here. Granting the right Sales claims would eviscerate the ability of the state to promulgate *any* uniform curriculum. Instead, each school would have to piece together custom-made curricula to fit the peculiar beliefs of parents. Nor would we be able to constitutionally limit the scope of such custom-made curricula to religious parents--both the Sierra constitution and the United States Constitution preclude such religious discrimination, including between "believers" and "non-believers."

The end result would be an unconscionable waste of resources and lives: the role of the school and of educators is not to guard children against the intrusion of facts into the fantasy of their parent's worldview, or to mould children into believers of their parents' faiths. To the contrary, the purpose of education is to expose us to new ideas, to challenge our assumptions about the world, and to make us into smarter, more knowledgeable, and more capable people in the process. There is no "constitutional right" for a parent to keep her children in ignorance of the world around them.

Notwithstanding the weight of the above precedent, Sales bravely contends otherwise: that *Troxel* stands for the proposition that a parent can exempt herself from a neutral and generally-applicable law merely because she disagrees with what it prescribes. Sales is wrong. *Troxel* pertains generally to the right to rear one's children, but only in the context of child visitation rights over parental objections. Those facts are a far cry from the facts before this Court now.

Of the cases *actually* relevant here, *Meyer* struck down a law prohibiting entirely the instruction of German; *Pierce* prohibited parents from sending their children to parochial school. In both, the Court endorsed the notion that the state cannot artificially prevent parents from giving their children *access* to information; in neither did the Court hold any fundamental right to exclude one's children from learning. *See Runyon v. McCrary*, 427 U.S. 160 (1976) (characterizing the holdings of *Meyer* as protecting "the subject matter . . . taught at private school" and the latter as protecting the right to "send . . . children to a particular private school rather than a public school."). Children, too, have rights. As recognized in *Meyer*, the fundamental rights of the Fourteenth Amendment encompass not only the ability to dictate the rearing of one's children but the right of the individual to "acquire useful knowledge." *Meyer*, 262 U.S. at 399.

In light of the above, this Court rejects Sales' insistence on a departure from the judicial consensus that there is no fundamental right to prevent one's child from being taught the curriculum used at the school to which a parent has decided to send her children.

ii.

The right to liberty under the Due Process Clause of the Fourteenth Amendment protects all persons within the jurisdiction of the United States and provides to all guarantees of the rights encompassed within that Clause. The right to liberty, however, does not encompass the right to do whatever one wants, whenever one wants. The Due Process Clause prohibits the government from depriving persons of their liberty *without due process of law*. Sales' suggestion that she has somehow been deprived of her "liberty" therefore carries no weight.

The amount of "process" to which a person is tied to the significance of the liberty at stake. *See, e.g.*, *Goldberg v. Kelly*, 397 U.S. 254 (1970). In the instant case, Sales has at risk only a "fine" of an unstated amount, but certainly no more than $2,500.00. As compared to, for example, a prison term, the interest here is minimal. Although a parent may be sentenced to up to one year in prison for the truancy of their children, Sales has alleged no such punishment. By all appearances, Sales has been afforded notice and the opportunity to challenge her fine. She has not been deprived of any procedural due process.

D.

Sierra has declined to defend Section 3(c). Accordingly, it has waived any argument in support of that Section. Section 3(c) is therefore declared unconstitutional. However, as Sales' children were not enrolled in any private educational institution and Sales was not subject to the fine in question as a result of Section 3(c), this finding has no impact on the constitutionality of the fine imposed upon her.

E.

In conclusion, this Court notes that submitting to democratically-enacted and non-discriminatory laws is not oppression but rather an essential part of our form of government. Indeed, we could not have liberty without it. Legal scholars Christopher Eisgruber and Lawrence Sager have explained:

> [W]e are regularly called upon to act in ways that we dislike. . . . We accept the imposition of a myriad of rules, even though those rules often deflect us from the course we would otherwise pursue; and even, in some cases, when we regard the collective projects that underwrite the rules as misguided. We accept the imposition of these rules because our society--indeed any modern society--could not function without reciprocal sacrifices of this sort.

Eisgruber et al., *Religious Freedom and the Constitution* 84 (2007). This same "reciprocal sacrifice" is all that is asked from Sales.

That the persons to bear the cost of Sales' "sacrifice" are her children does not change the analysis. Children are not the property of a parent but independent and individual human beings endowed with the same rights and dignity of all others. With this in mind, we cannot, as a society, abide a regime under which persons such as Sales can "opt out" of our system of democratically-promulgated rules at their whim--and particularly so when it threatens to undermine the health, safety, and well-being of the children in question. As philosopher Brian Barry once observed, "[b]y granting immunity to parents who do things to their own children that would be illegal if they did them to any other children, the state is handing over power to parents in a particularly brutal and uncontrolled way. Public tolerance is a formula for creating a lot of private hells." *Culture and Equality: An Egalitarian Critique of Multiculturalism* 143 (2003).

Neither the constitution of Sierra nor the Constitution of the United States grants Sales the ability to exercise untrammeled power over her children. This Court therefore cannot, and will not, extend to her the perverse kind of tolerance she seeks: the freedom to subject her children to a private hell of ignorance and sexually transmitted infections. The fine imposed upon Sales is therefore

Affirmed.