SUPREME COURT OF THE UNITED STATES

No. 99–138

JENIFER TROXEL, ET VIR, PETITIONERS *v.* TOMMIE GRANVILLE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

[June 5, 2000]

JUSTICE THOMAS, concurring in the judgment.

I write separately to note that neither party has argued that our substantive due process cases were wrongly decided and that the original understanding of the Due Process Clause precludes judicial enforcement of unenumerated rights under that constitutional provision. As a result, I express no view on the merits of this matter, and I understand the plurality as well to leave the resolution of that issue for another day.*

Consequently, I agree with the plurality that this Court's recognition of a fundamental right of parents to direct the upbringing of their children resolves this case. Our decision in *Pierce* v. *Society of Sisters,* 268 U. S. 510 (1925), holds that parents have a fundamental constitutional right to rear their children, including the right to determine who shall educate and socialize them. The opinions of the plurality, JUSTICE KENNEDY, and JUSTICE SOUTER recognize such a right, but curiously none of them articulates the appropriate standard of review. I would apply strict scrutiny to infringements of fundamental

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*This case also does not involve a challenge based upon the Privileges and Immunities Clause and thus does not present an opportunity to reevaluate the meaning of that Clause. See *Saenz* v. *Roe,* 526 U. S. 489, 527–528 (1999) (THOMAS, J., dissenting).

rights. Here, the State of Washington lacks even a legitimate governmental interest– to say nothing of a compelling one– in second-guessing a fit parent's decision regarding visitation with third parties. On this basis, I would affirm the judgment below.