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Comment: Protecting Childhood Independence and the Families Who Embrace It

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INTRODUCTION

We live in a society that has become obsessed with child safety.[1] Normal childhood activities a generation (or two)

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1. *See* Nancy Gibbs, *The Growing Backlash Against Overparenting*, TIME (Nov. 30, 2009), https://perma.cc/WTH7-P5DP ("In the 1990s . . . crime went down, yet parents stopped letting kids out of their sight; the percentage

ago—newspaper routes, pick-up sandlot baseball, babysitting, riding bikes through the neighborhood—are not only increasingly rare, but increasingly taboo. At the same time, we have become more willing to judge, second-guess, and meddle in other people's families.[2] When it comes to serious child abuse, this is a very good thing.[3] When it leads to a very expansive view of what might constitute child neglect, it is no longer good.[4]

Indeed, our standards for what constitutes acceptable risk, or what dangers we can live with, have shrunk to almost zero in our current culture, at least when it comes to child safety. Learned Hand's famous formula from *United States v. Carroll Towing*[5]—which suggests that it is rational to take precaution only if and when the precaution costs less than the expected harm it would eliminate (i.e., the product of the harm it would avoid times the likelihood of that harm happening)[6]—has gone by the boards, perhaps because we are so bad at assessing risk. Now we seem to think that if you can imagine something bad

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of kids walking or biking to school dropped from 41% in 1969 to 13% in 2001."); David Pimentel, *Legislating Childhood Independence*, 50 PEPP. L. REV. 285, 291 (2023) [hereinafter Pimentel, *Legislating Childhood Independence*] ("Ironically, now that the stay-at-home, full-time parent is the exception rather than the rule, there is a growing expectation that kids should get dramatically more, and closer, supervision than ever before.").

2. *See* David Pimentel, *Criminal Child Neglect and the "Free Range Kid": Is Overprotective Parenting the New Standard of Care?*, 2012 UTAH L. REV. 947, 948 n.7 (2012) [hereinafter Pimentel, *Criminal Child Neglect*] (citing the public outcry over Lenore Skenazy's decision to allow her nine-year-old son to ride the New York City subway alone); LENORE SKENAZY, FREE-RANGE KIDS: GIVING OUR CHILDREN THE FREEDOM WE HAD WITHOUT GOING NUTS WITH WORRY 50–57 (2009) (discussing the fear and concern of many parents that they will be ridiculed for their parenting choices or blamed if their children are harmed in any way).

3. *See* Pimentel, *Criminal Child Neglect*, *supra* note 2, at 947–48 (explaining that as attitudes and legal standards about parenting have evolved and become more demanding, "child abuse has decreased along with virtually every other threat to children's health and safety").

4. *See id.* at 949 ("[T]he trend toward overprotective parenting—defined as those aspects of over-parenting that address issues of safety—may be reinforced and exacerbated by the fear of criminal liability.").

5. 159 F.2d 169 (2d Cir. 1947).

6. *See id.* at 173 ("[I]f the probability be called P; the injury, L; and the burden, B; liability depends upon whether B is less than L multiplied by P: i.e., whether B less than PL.").

happening to a child, it is not merely negligence, but criminal child endangerment to fail to take precautions against it.[7]

Parenting is hard. But parenting according to the hyper-protective norms that have emerged in some sectors of our society is nigh on impossible, as it usually means nonstop adult supervision, or "hovering," 24/7. This is particularly problematic for American families who cannot afford full-time nannies, or who cannot afford to live in "safe neighborhoods"—a concept that seems to correlate very strongly with the concept of "affluent neighborhoods."[8] And, even if everyone could afford to helicopter their kids, there is considerable doubt that this is healthy for the kids themselves.[9]

There is compelling evidence that giving children more freedom helps them learn self-sufficiency.[10] That, unless they are given more independence in their developmental years, they will not acquire the skills to cope, problem-solve, or take care of themselves.[11] And deans at undergraduate colleges are seeing the results as young people, newly on their own when they enroll in college, are more fragile and vulnerable than ever.[12]

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7. *See, e.g.*, Pimentel, *Criminal Child Neglect*, *supra* note 2, at 962–63 (explaining that a "problem arises . . . where statutes define criminal child neglect or child endangerment in terms of putting a child 'at risk'" because regular parenting decisions, such as whether to let your child play high school football, "involve issues of risk management").

8. *See* David Pimentel, *Punishing Families for Being Poor: How Child Protection Interventions Threaten the Right to Parent while Impoverished*, 71 OKLA. L. REV. 885, 898–99 (2019) [hereinafter Pimentel, *Punishing Families*]; *see also* ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 297–98 (2000).

9. *See* Gaia Bernstein & Zvi Triger, *Over-Parenting*, 44 U.C. DAVIS L. REV. 1221, 1274 (2011) (examining negative psychological harms of "Intensive Parenting"); Laurence van Hanswijck de Jonge, *Helicopter Parenting: The Consequences*, INT'L SCH. PARENT, https://perma.cc/4CBC-Q77A (last visited Dec. 18, 2022) (providing consequences of excessive parenting such as underdevelopment of the brain, emotional backlash, low self-esteem and confidence, sense of entitlement complex, and more).

10. *See* Bernstein & Triger, *supra* note 9, at 1275 (stating that the heavy monitoring involved in "Intensive Parenting" has been shown to prevent children from developing independence, self-sufficiency, and the coping skills needed to handle the hardships of life); *see also* SKENAZY, *supra* note 2, at xx.

11. *See* Bernstein & Triger, *supra* note 9, at 1275–76.

12. *See, e.g.*, JULIE LYTHCOTT-HAIMS, HOW TO RAISE AN ADULT: BREAK FREE OF THE OVERPARENTING TRAP AND PREPARE YOUR KID FOR SUCCESS 6–7 (2015). Lythcott-Haims served as Dean of Freshmen and Undergraduate Advising at Stanford University before writing her book. *See* Kate Chesley,

A few scholars have called attention to these problems with our legal standards and the collateral damage they may be doing to American children and society. Ms. Schick-Malone's note in this volume of the *W&L Law Review*, *Letting the Kids Run Wild: Free-Range Parenting and the (De)Regulation of Child Protective Services*,[13] is the latest contribution to this literature.

I. THE LAW IS GETTING IN THE WAY

Pushing back against hyper-protective parenting, or "Intensive Parenting,"[14] is especially hard, however, when the law is invoked to enforce those norms.[15] Vaguely written statutes designed to protect children from neglect and endangerment have been used to prosecute parents who are trying to teach their children independence.[16] The vague statutes combine with the "if you see something, say something" ethic behind mandatory reporting laws to create a perfect storm. Cell phones are so handy and easy to use, and we have made people feel compelled to report *anything* they see and to feel like heroes when they do. The result can be a serious disruption of families, including intrusive investigations accompanied by

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Lythcott-Haims Stepping Down as Dean of Freshmen and Undergraduate Advising, STANFORD NEWS (Mar. 28, 2012), https://perma.cc/NP8P-ANQJ. My sister-in-law has served as one of these undergraduate deans for nearly thirty years, and she notes the common complaint that a dean's life is increasingly consumed with responding not to students, but to parents. Indeed, these days more than ever, undergraduates respond to adversity by calling their parents. And then, all too often, the parents call the dean demanding that the problem be addressed. And in these days of constant cell phone use, it is so easy to call.

13. *See generally* Fenja Schick-Malone, Note, *Letting the Kids Run Wild: Free-Range Parenting and the (De)Regulation of Child Protective Services*, 81 WASH. & LEE L. REV. 387 (2024).

14. *See* Bernstein & Triger, *supra* note 9, at 1226–27 (explaining the practice of "Intensive Parenting").

15. *See* Pimentel, *Criminal Child Neglect*, *supra* note 2, at 991 ("Fear of prosecution may well reinforce the overprotective parenting norms, coercing parents to conform their parenting to the overprotective parenting that has, for a variety of dubious reasons, emerged as the new minimum standard of care in mainstream American culture.").

16. *See, e.g.*, *Single Mother Handcuffed, Jailed for Letting 14-Year-Old Babysit During COVID*, PARENTSUSA, https://perma.cc/NC4H-939Q (last visited Nov. 21, 2022).

threats to remove children from their parents' custody.[17] It is worth noting as well that, even when the report is not ultimately substantiated, the investigation alone can be traumatizing.[18] A routine investigation, for example, subjects family members, including very young children, to questioning by police, searches of homes, and examinations of children's bodies for signs of abuse.[19] This can be traumatizing for everyone in the family.[20] It is a heavy price to pay for families who cannot provide the constant oversight the new norms seem to demand due to limited temporal or financial resources or because of their values and parenting style.

If you are a parent, your own parents (or parents-in-law) probably disapprove, in some way, of how you are raising your kids. The marketplace of ideas should be generating better answers on how to parent as time goes by. But we cannot have an open debate about what is best for children if those who favor giving kids a longer leash are going to face criminal liability or risk losing custody of their children.[21] The debate is squelched when legal authorities take sides and intervene. In the end, everyone will be intimidated into adopting the new hyper-protective parenting orthodoxy, regardless of whether there are better alternatives.[22] Parents who love their children enough to defy the prevailing norms and try to teach them independence may be able to do so only at the risk of having

17. *See* David Pimentel, *Fearing the Bogeyman: How the Legal System's Overreaction to Perceived Danger Threatens Families and Children*, 42 PEPP. L. REV. 235, 274–75 (2015) [hereinafter Pimentel, *Fearing the Bogeyman*].

18. *See* Thomas L. Hafemeister, *Castles Made of Sand? Rediscovering Child Abuse and Society's Response*, 36 OHIO N.U. L. REV. 819, 878–80 (2010).

19. *See* RICHARD WEXLER, WOUNDED INNOCENTS 109–15 (1990) (detailing multiple incidents of children being strip-searched by child-protective workers in response to false reports).

20. *See* Doriane Lambelet Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 WM. & MARY L. REV. 413, 441 (2005).

21. *See* David Pimentel, *Protecting the Free-Range Kid: Recalibrating Parents' Rights and the Best Interest of the Child*, 38 CARDOZO L. REV. 1, 56 (2016) [hereinafter Pimentel, *Protecting the Free-Range Kid*].

22. *See id.* ("If any busybody in the neighborhood is likely to disapprove of one's free-range or long-leash parenting practices, the parent can no longer pursue those practices, or otherwise rely on his or her own instincts on how best to parent a child in a potentially dangerous world.").

their families investigated and, in extreme cases, broken up.[23] As such, the chilling effect on parenting choices can be very powerful.

II. HOW TO ADDRESS THE PROBLEM

So, what's to be done? Some engaged scholars and activists, including Lenore Skenazy's *Let Grow* organization, are working to change attitudes and make the case that childhood independence is important and should be cultivated.[24] They have worked to debunk the stranger-danger myth and to counter perceptions that children are in grave danger anytime they are given the liberty to explore the world around them.[25] They have taken up the cause of parents who have been unfairly targeted in these types of interventions.[26] And they have lobbied for legislation—called "Reasonable Childhood Independence" laws—designed to protect parents who wish to give their children some independence.[27] Utah was the first state to adopt such legislation in 2018, and seven other states have followed with some version of the legislation.[28]

Ms. Schick-Malone's note effectively articulates the problem these laws address and attempts to determine the impact of the new law in Utah, which has been in effect for five years now. It is a question worth asking, even if it is not easily answered.

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23. *See id.* at 57 ("[If] only one type of parenting—state-approved overprotective parenting—will be permitted[,] parents can either conform to the state-approved approach or risk the heavy-handed retribution from state authorities.").

24. *See Our Mission*, LETGROW, https://perma.cc/X7Y9-27KN (last visited Oct. 30, 2023).

25. *See* Pimentel, *Protecting the Free-Range Kid, supra* note 21, at 9.

26. *See* Pimentel, *Fearing the Bogeyman*, *supra* note 17, at 257–75.

27. *See* Pimentel, *Legislating Childhood Independence*, *supra* note 1, at 302–06.

28. *See id.* at 306–19.

III. IMPACT OF "REASONABLE CHILD INDEPENDENCE" STATUTES

In her note, Schick-Malone chooses a couple of metrics for study to examine the impact of the Utah statute, including the number of child neglect referrals and reports, and the number of family interventions that resulted in Utah both before and after the legislation.[29]

She observes that interventions are down modestly in Utah and concludes that the law is having some impact.[30] Presumably, before the new legislation, the policy was for Utah authorities to take all such reports seriously and "err on the side of safety." If they shrugged off a report, and a child later came to harm, they could find themselves in serious trouble, as happened in New York City in the 1990s.[31] A child came to harm, and the New York agency was blamed for its inaction.[32] The agency responded by increasing the number of "removals" (when children are removed from the custody of their own parents) by 50 percent (from 8,000 to nearly 12,000) in the next two years.[33] No doubt many of those removals were unwarranted and a matter of simple butt-covering by the agency.[34]

The Utah legislation, however, gives the authorities formal permission to disregard a wide range of reports about, for example, children "engaging in outdoor play," children out on shopping errands, or children "traveling to and from school."[35] Child protection and law enforcement authorities may be very much reassured by the legislation. Relieved of the responsibility

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29. *See* Schick-Malone, *supra* note 13, at 434–35.

30. *See id.* at 421.

31. *See* Symposium, *Rights of Parents with Children in Foster Care: Removals Arising from Economic Hardship and the Predicative Power of Race*, 6 N.Y.C. L. Rev. 61, 61–62 (2003).

32. *See id.*

33. *Id.* at 64.

34. *See* Pimentel, *Fearing the Bogeyman*, *supra* note 17, at 273–74. There are also financial incentives for the agencies. As soon as a child is placed in foster care, federal funds are available to pay for that. *Id.* at 271–73. Accordingly, the sooner the agency gets a child in foster care, the sooner the agency is relieved of the financial burdens associated with the "case." *Id.* at 271.

35. UTAH CODE ANN. § 80-1-102(58)(b) (West 2023).

to follow-up on these less problematic issues—where childhood independence may be mistaken for child neglect—they can concentrate their attention and resources on more serious issues of child endangerment.

But Schick-Malone also notes, from her look at the data, that the number of referrals has not gone down.[36] She suggests that the law has not produced its intended result in this regard.[37] While the numbers are undoubtedly correct, we should not read too much into this result. As long as everyone is a mandatory reporter (as is the case in Utah and a minority of other states), and failure to report suspected child neglect is a crime,[38] there is a strong, continuing incentive for people to call in reports whenever they see something that fails the "Would I do that with my kid?" test.[39] And, as Schick-Malone notes, while everyone in Utah is a mandatory reporter, not everyone is going to be aware of the new law and new standards.[40] Accordingly, it is not entirely surprising that reports have not gone down.

But let's expand our view and take a look at the many other purposes of the legislation. The new law, of course, was never envisaged as the silver bullet that would solve all the problems in this area. It is part of a multi-faceted effort some of us are engaged in, and committed to, to address these problems. Accordingly, one can make the case that the scope of Schick-Malone's examination is far too narrow, at least if it is intended to reach final conclusions about the overall impact of the Reasonable Childhood Independence law in Utah.

Indeed, the Utah legislation has additional purposes. First, it is meant to provide peace of mind to parents who want to empower their children. "Is my child old enough, or mature enough, to walk herself to school?" is a question a parent should be able to answer with one priority in mind, "What is best for

36. Schick-Malone, *supra* note 13, at 421–22.

37. *See id.*

38. *See* Hafemeister, *supra* note 18, at 853–54.

39. And there is little or no disincentive, as the laws in virtually all fifty states provide immunity for reporters, at least those who act in good faith. *See id.* at 860; Pimentel, *Fearing the Bogeyman, supra* note 17, at 267 ("[Federal law] requires, as a condition of federal funding, that the states provide immunity from liability to all reporters of child abuse." (citing 42 U.S.C. § 5106a(b)(2)(B)(vii))).

40. *See* Schick-Malone, *supra* note 13, at 421–22.

my child and for my family?" Absent legislation like Utah's, parents may have to consider, "What will my nosy neighbors think if they see my child walking to school?" or, "How will the authorities respond if my neighbor calls child protection?"

Accordingly, one purpose of Reasonable Childhood Independence laws is to reassure parents.[41] The value of such reassurance is hard to measure, but that does not mean it is not important. Parents of young children are always a bit stressed, often worried about whether they are doing things right.[42] But in Utah, the law is now clearer. Parents there have a list of things they know they can let their kids do without fearing that they will be investigated or punished, or have their family torn apart for doing so.

Second, as already noted, the fact that interventions have gone down, even when the referrals have not, strongly suggests that the legislation is helping agencies focus their energies. That is, it suggests that the new law has emboldened the agency to set aside a significant number of the referrals. Under the new law in Utah, the Child Protection Agency has much better guidance on what is and, more significantly, is not actionable child neglect.

Those working in this area have never been able to show that the number of unwarranted interventions—ones where childhood independence was mistaken for child neglect—has been particularly high.[43] However, there have been some

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41. *See* Pimentel, *Legislating Childhood Independence*, *supra* note 1, at 331.

42. *See* Zoya Gervis, *Parents Spend an Insane Amount of Their Lives Worrying About Their Kids*, NY POST (Sept. 10, 2018), https://perma.cc/FH2Y-EYF8 ("Parents spend an incredible 37 hours a week worrying about their children, according to new research.").

43. *See* Pimentel, *Protecting the Free-Range Kid, supra* note 21, at 55

> [T]he fact that several of these cases have received significant publicity is by no means evidence that such state interventions are common. There are no good statistics on how frequently these arrests and interventions occur for parents who are, for whatever reason—parenting philosophy, resource limitations, culture, etc.—engaged in some type of free-range parenting; the evidence comes anecdotally, mostly from news reports. But the publicity given to recent highly-publicized cases, where parental rights were given so little respect by state authorities, is certain to chill the exercise of parental rights across the nation.

incidents, which have been publicized, and that is enough to cast a very serious chill on everyone.[44] One might say that the greater problem is the looming threat of CPS interventions. When CPS intervenes in and disrupts a family that is pursuing free-range parenting, or a family that is barely holding it together, it victimizes not only that family, but everyone who witnesses it.[45] The threat that such a thing could happen is sufficient to scare other parents into changing their parenting styles. They may no longer feel like they can trust their own judgment, but feel coerced into adopting highly protective parenting practices, even if this does not feel right for their family, and even if those practices are impractical and expensive for families of more limited means.[46]

Third, the Utah law will set an important precedent for other states, as it has for seven states already,[47] to adopt some form of Reasonable Childhood Independence legislation. The Utah legislation's impact, therefore, goes far beyond the borders of the state. Utah has inspired other state legislatures to take up the issue and attempt to address it.[48] And, as all seven of these states have a larger population than Utah (3.4 million),

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see also E-mail from Diane Redleaf, Legal Couns. to Let Grow & Former Dir. Chi. Fam. Def. Ctr., to author (Sept. 5, 2023) (on file with author) (acknowledging that "we have precious little data showing children are being removed for engaging in independent activities").

44. *See, e.g.*, Lenore Skenazy, *Mom Charged with "Child Endangerment" When Tot Wanders Off*, FREE-RANGE KIDS (June 27, 2011), https://perma.cc/EB9M-Q4WF (describing a case where a mother was charged with child endangerment after her child wandered into the street while she was sleeping). The incidents in Montana (discussed in Pimentel, *Criminal Child Neglect*, *supra* note 2, at 968–69), Ohio (discussed in Pimentel, *Fearing the Bogeyman*, *supra* note 17, at 262), Maryland (discussed in Pimentel, *Fearing the Bogeyman*, *supra* note 17, at 263–64 and Pimentel, *Protecting the Free-Range Kid*, *supra* note 21, at 2–3), and Georgia (discussed in Pimentel, *Legislating Childhood Independence*, *supra* note 1, at 288), are also powerful anecdotes.

45. *See* Pimentel, *Protecting the Free-Range Kid*, *supra* note 21, at 20.

46. *See id.*

47. *See* Schick-Malone, *supra* note 13, at 418 (listing Colorado, Connecticut, Montana, Oklahoma, Texas, and Virginia as states that have passed Free-Range Parenting amendments); Lenore Skenazy, *Free-Range Kids in Virginia, Connecticut, and Illinois Celebrate a Very Special Independence Day*, REASON (July 1, 2023) [hereinafter Skenazy, *Free-Range Kids in Virginia*], https://perma.cc/T99F-2GVC.

48. *See* Schick-Malone, *supra* note 13, at 418–19.

including large states like Texas (30 million) and Illinois (12.5 million),[49] the number of families now protected by such legislation has gone up dramatically.

Finally, the Utah legislation, the legislation enacted in other states, and the legislation proposed in other states have attracted media attention as well.[50] In this way, the Utah legislation has been enormously influential in raising awareness about the problems with legal enforcement of hyper-protective parenting norms. Those concerns are important for parents, nosy neighbors, other mandatory reporters, the agencies responding to referrals, and more, to understand.

Considering all of these benefits, the Utah legislation is a huge step forward for a host of reasons beyond any increase or decrease in the number of referrals, reports, or interventions.

IV. CRITIQUE OF THE LEGISLATION

A. *Problem: The State Is Still Tasked with Deciding What Is Okay and What Is Not*

The Utah legislation is not ideal, of course. And I do not want to suggest that it is beyond criticism. In fact, at the time it was passed, I was invited to write a commentary about the new law for an online publication called *The Conversation*.[51] In the end, my commentary included its own criticism.[52] Although the law listed a number of activities—walking to school, playing outside, etc.—making it clear that these things should not be

49. The populations of the influenced states are as follows: Texas, 30 million; Illinois, 12.5 million; Virginia, 8.7 million; Colorado, 5.8 million; Oklahoma, 4 million; and Connecticut, 3.6 million. U.S. Econ. Dev. Admin., *USA States in Profile*, STATSAMERICA, https://perma.cc/M2HM-6MJT (last visited Feb. 2, 2024).

50. *See, e.g.*, Skenazy, *Free-Range Kids in Virginia*, *supra* note 47; Korva Coleman, *Utah's 'Free-Range' Parenting Law Protects Parents so Kids Can Roam*, NPR (Apr. 1, 2018), https://perma.cc/CVE5-Q88K.

51. *See generally* David Pimentel, *Free-Range Parenting Gets Legal Protection in Utah—But Should the State Dictate How to Parent?*, CONVERSATION (June 5, 2018), https://perma.cc/N22L-PPJY.

52. *See id.*

deemed neglect, it still left the state (and the statute) as the ultimate arbiter of what constitutes acceptable parenting.[53]

In a perfect world, we would return the discretion about what a child is ready for, how much a child can be trusted, and what risks are acceptable risks, to the parents who know that child best and, presumably, who love that child best. If the statute lists what is acceptable, then it leaves the roles reversed, where the state is giving parents permission to parent in limited, enumerated ways.[54] And that is not right. The state is not the ultimate parent, and parents should not have to ask the state's permission to follow their own instincts in parenting their children. Ideally, the tables should be flipped, and the state should have to defer to parents' judgments on these issues. Admittedly, that has proven to be extremely difficult to do without undermining the protection of children from serious child abuse.[55] So, what was done in Utah may be closer to "the best we can do."

Also, despite this criticism, the Utah law's language is certainly better than the language of the New Mexico statute, which criminalizes "causing or permitting a child to be . . . placed in a situation that may endanger the child's life or health."[56] One of the best new childhood independence statutes is in Texas and is far more focused, characterizing neglect as "*blatant* disregard for the consequences of [one's] act or failure to act that results in harm to the child or that creates an *immediate danger* to a child's physical health or safety."[57] Language like this is going to be effective in addressing serious child endangerment scenarios while preserving important latitude to parents engaged in the difficult business of risk management in the rearing of children.

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53. *See id.*

54. *See id.*

55. The fact that some children suffer serious abuse at the hands of their own parents demonstrates that we can never trust parents completely—or, more to the point, cannot trust *all* parents—to act in the best interest of their children.

56. N.M. STAT. ANN. § 30-6-1(D) (2024).

57. 40 TEX. ADMIN. CODE § 707.469(a) (2022) (emphasis added).

B. *Problem: The Statute Protects Only Those Kids "Whose Needs Are Met"*

As Schick-Malone notes, there is another very troubling clause in the Utah law: "whose basic needs are [otherwise] met."[58] Essentially, it says that walking to school and playing outside are not neglect of a child "whose basic needs are [otherwise] met."[59] And that suggests that a child who is missing out on something—whether it is decent housing, medical care, adequate food, sufficient adult attention, care, or love—is not entitled to the same level of independence as the kids who are adequately housed, fed, and cared for. And this makes no sense at all. A kid who does not have adequate parental attention has the same need for independence as the kid who has that attention. Arguably, if a child is in a family that is strapped for money or managing with a single parent who is also the lone breadwinner, they may need a lot *more* independence to look after themselves and to carry out tasks for the family, including shopping, cooking, or trips to the laundromat.

Schick-Malone caught that problem and highlighted it in her note, explaining that this provision discriminates against poor families by withholding rights of childhood independence from any child, and any family, that is already struggling.[60] Ironically, this provision imposes *heavier* childcare burdens on the poor than on the affluent.[61]

This is not a problem unique to the Utah law. The existing laws nationwide already unduly and unfairly target poor families for child-neglect interventions.[62] I document this in my article, *Punishing Families for Being Poor*, published in the *Oklahoma Law Review*, and Diane Redleaf, legal counsel to Let Grow and former director of the Chicago Family Defense Center, has written and spoken about it widely.[63] The definition of

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58. UTAH CODE ANN. § 80-1-102(58)(b)(iv) (West 2023); *see also* Schick-Malone, *supra* note 13, at 416–18.

59. UTAH CODE ANN. § 80-1-102(58)(b)(iv).

60. *See* Schick-Malone, *supra* note 13, at 401–02.

61. *See id.*

62. *See generally* Pimentel, *Punishing Families*, *supra* note 8.

63. *See generally id.*; CAITLIN FULLER & DIANE L. REDLEAF, FAMILY DEF. CTR., WHEN CAN PARENTS LET CHILDREN BE ALONE?: CHILD NEGLECT POLICY

"neglect" in many states is virtually indistinguishable from the definition of "poverty."[64] We see interventions in families that are poor and parents charged with neglect because the law defines neglect to include the failure to provide decent housing, adequate medical care, or enough good food to eat.[65] It is neglect to let kids play outside because they live in dangerous neighborhoods, while kids growing up in affluent circumstances can play outside in *their* neighborhoods without fear of gang violence, street crime, or any of the other problems that characterize low-income communities and neighborhoods.[66] It imposes a disproportionate burden on poor families to invest *even more* in child supervision than is expected of a middle- or upper-class families.[67]

And the "whose needs are met" language puts a point on it. As Schick-Malone observes, the Utah law enables "third parties [to use] the economic and cultural circumstances of the child to assess whether their physical needs are met, which will be especially hard on low-income parents that are struggling to provide basic necessities."[68] She adds that this will create further disparities, notably "an increased number of Child Protective Services cases involving minority and low-income families."[69]

Those of us lobbying for such legislation in other states, most notably Diane Redleaf and Lenore Skenazy, have worked hard to keep such language—"whose needs are met"—out of the

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AND RECOMMENDATIONS IN THE AGE OF FREE RANGE AND HELICOPTER PARENTING (2015), https://perma.cc/A6JR-YBC5 (PDF).

64. *See* WEXLER, *supra* note 19, at 18 ("The broad definitions of neglect used in most state statutes are virtually definitions of poverty.").

65. *See* CHILDREN'S BUREAU, U.S. DEP'T HEALTH & HUM. SERVS., DEFINITIONS OF CHILD ABUSE AND NEGLECT 3 (2022), https://perma.cc/TDJ7-8E5B (PDF) ("Neglect is frequently defined as the failure of a parent or other person with responsibility for the child to provide needed food, clothing, shelter, medical care, or supervision to the degree that the child's health, safety and well-being are threatened with harm.").

66. *See* Pimentel, *Punishing Families*, *supra* note 8, at 897–98 (citing LINDA C. FENTIMAN, BLAMING MOTHERS: AMERICAN LAW AND THE RISKS TO CHILDREN'S HEALTH 9 (2017)).

67. *See id.* at 900–04.

68. Schick-Malone, *supra* note 13, at 426.

69. *Id.*

bills introduced in other states.[70] Schick-Malone was dead right to call it out as problematic. But none of the newly enacted laws are perfect; every one of them leaves gaps or holes that will have to be addressed in other ways.

CONCLUSION

This problem—a legal problem of how to give parents flexibility and how to give children independence—cuts to the core of some of our most sacred values: (1) how we raise our kids in this society, (2) the degree to which parents are free to raise their children as they see fit, and (3) the extent to which the state gets to substitute its own judgment for that of parents. Incursions into the family, and disruptions of family security and integrity, should be the exception rather than the rule. Schick-Malone joins a small group of legal scholars who are not content to stand by and watch while families are disrupted and parents are forced to infantilize their children for fear of legal consequences. Her contribution to the discussion and debate in this area is most welcome, as it highlights the problem and raises awareness of the need for better solutions and better approaches.

70. Getting bills through the legislative process has, unsurprisingly, required many concessions and compromises. Most the of the legislation passed has fallen short of *Let Grow*'s hopes and ambitions for these laws. But the "whose needs are met" language remains, at least for now, unique to Utah.