THE RIGHT TO WALK TO SCHOOL

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In 1969, half of all students walked or biked to school. By 2023, only one in ten students did so. Instead, the majority of children today get to school in a car driven by a parent. Although multiple forces drive this trend away from walking, school transportation policies play an outsized role in determining children's mobility options. Across the United States, school districts are quietly adopting policies that prohibit or restrict children from walking to school. These policies are typically justified in the name of safety and administrative convenience, but they operate as significant restraints on parental rights and children's everyday movement.

This Article examines whether public school students have a right to walk to school. In doing so, this Article focuses on the intersection of parental authority, children's individual liberties, and the state's responsibility for child welfare and safe streets. First, this Article explores the right to walk to school from the state's perspective. This side of the conflict has two components: the state's powers to design unsafe streets and the state's interest in student safety in light of those safety concerns. School districts often defend walking restrictions by framing them as measures to prevent traffic accidents. Yet this Article questions whether broad prohibitions are narrowly tailored to serve that interest and whether alternatives (such as improved pedestrian infrastructure or more tailored walk-to-school policies) could achieve safety goals while preserving parental and student rights.

Second, this Article considers the extent to which parental rights insulate decisions about school transportation from excessive state interference. Building on the Supreme Court's parental rights jurisprudence, which affirms the fundamental right of parents to direct the care, custody, and control of their children, this Article argues that restrictions on walking may impermissibly intrude on parental autonomy absent a compelling safety risk.

Finally, this Article explores whether children themselves possess a constitutionally protected right to walk to school. Although the Constitution does not expressly provide such a right, some courts have recognized certain free-movement rights

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(such as the right to intrastate travel or the right to locomotion) in other contexts. This Article analyzes whether prohibitions on walking impose undue burdens on children's freedom of movement, comparing them to curfew laws that have been invalidated for restricting individuals' mobility without sufficient justification.

Taken together, these analyses provide a framework for evaluating the constitutionality of school transportation policies. This Article concludes that restrictions on walking implicate foundational questions about parental authority, children's liberties, and the scope of state power. Courts, school districts, and urban planners should therefore adopt approaches that balance child safety with respect for family autonomy and student freedom of movement.

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INTRODUCTION

Every morning, parents across the United States participate in a familiar transportation ritual: the school carpool line. The scene and experience has become a hallmark of modern parenting, despite the fact that a generation ago, this ritual barely existed. In 1969, roughly half of all American students walked or biked to school.[1] By 2023, that figure had fallen to just 10%.[2] The change reflects more than convenience, parental choice, or a cultural shift; instead, it may represent a

1. Angie Schmitt, *The Agony of the School Car Line*, ATLANTIC (Sep. 18, 2023, at 07:00 ET), https://www.theatlantic.com/ideas/archive/2023/09/school-car-lines-buses-biking/675345/ [https://perma.cc/6J7Z-2RDH].

2. *Id.*

fundamental transformation in how society understands children's mobility, community safety, and the relationship between parents and the state.

To many parents and school administrators, the carpool line seems inevitable. Streets feel too dangerous, drivers too distracted, and distances too great for children to navigate alone. As a result, some school districts have taken this position to its logical extreme: prohibiting students from walking or biking to school, even when parents accompany their child or consent to their child walking. These prohibitions are rarely viewed as constitutional questions. Rather, they are treated as matters of administrative discretion, justified by appeals to safety and liability, and rarely questioned as an ingredient of American car culture. Yet the assumption that school districts may dictate how children arrive at school, regardless of parental preference or a child's capacity for independence, raises constitutional questions about the scope of state power, parental rights, and student liberties.

This Article explores these constitutional concerns through the lens of one overarching question: do public school students have a right to walk to school? Beneath this one question lies a series of legal and constitutional tensions that addresses American family law, urban planning, and freedom of movement. Who decides how a child gets to school: the parent, the child, or the state? When a school district prohibits walking or biking, is it exercising legitimate authority to protect student safety, or is it overreaching into family life? Does the state's failure to design safe streets justify further restrictions on children's movement? These questions implicate not only well-established parental rights and state duties but also a largely unexplored dimension of individual liberty: the child's own right to move freely through public space. In addition, this Article's rights-based approach may imply heightened obligations for municipalities when designing streets in school zones.

The question of whether students have a right to walk to school is analyzed in this Article from a legal and constitutional perspective, but the question matters for practical and normative reasons as well. The dramatic decline in walking and biking to school has far-reaching consequences for public health, environmental policy, and urban design. Studies link active commuting with higher physical activity levels, improved academic performance, and reduced traffic congestion.[3] At the same time, car-oriented school transportation patterns unsafe street design by

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3. Ian Janssen & Allana G. LeBlanc, *Systematic Review of the Health Benefits of Physical Activity and Fitness in School-Aged Children and Youth*, 7 INT'L J. BEHAV. NUTR. & PHYS. ACT. 1, 13 (2010), https://link.springer.com/content/pdf/10.1186/1479-5868-7-40.pdf [https://perma.cc/2VUQ-UAQG]; Irene Esteban-Cornejo et al., *Physical Activity and Cognition in Adolescents: A Systematic Review*, 18 J. SCI. MED. SPORT 534, 538 (2015); José Manuel Sánchez et al., *Evaluation of Emissions in Traffic Reduction and Pedestrianization Scenarios in Madrid*, 100 TRANSP. RSCH. CTR. 1, 12–14 (2021), https://www.sciencedirect.com/science/article/pii/S1361920921003618 [https://perma.cc/QX9J-PUL2]. *But see* Abel Ruiz-Hermosa et al., *Active Commuting to and from School, Cognitive Performance, and Academic Achievement in Children and Adolescents: A Systematic Review and Meta-Analysis of Observational Studies*, 16 INT'L J. ENV'T RSCH. & PUB. HEALTH 1, 18–19 (2019), https://www.mdpi.com/1660-4601/16/10/1839 [https://perma.cc/9LE8-KFME] (finding the full benefits of active commuting to and from school are unknown in light of current study models).

reinforcing "motonormative" approaches to urban mobility.[4] When schools prohibit walking, they reinforce the very dangers that made walking appear unsafe in the first place. Understanding the constitutional vulnerabilities of these policies is therefore critical to reforming them.

In addition, the question raises normative concerns about children's autonomy and civic participation. If children cannot walk to school—even with parental consent—they are effectively excluded from the public spaces that are most meaningful to them. These restrictions then communicate a broader social message: that children's mobility is suspect, that public streets belong to drivers, and that independence is a liability rather than a skill to be cultivated. By exploring whether the Constitution protects a child's right to walk to school, this Article invites a reexamination of how American law conceptualizes children's freedom of movement and participation in civic life.

As this Article demonstrates, the right to walk to school sits at the crossroads of three legal spheres: the state's responsibility for public safety, the parent's right to direct the upbringing of the child, and the child's own liberty interests. Each sphere provides a plausible justification for, or against, restrictions on walking. From the state's perspective, prohibitions on walking may seem prudent or necessary. School districts worry about traffic injuries, limited supervision, and potential liability. Yet the state's interest in safety cannot be understood in isolation from its role in producing unsafe conditions. Governments design and maintain the very streets that deter walking. To prohibit walking because streets are unsafe is, in a sense, to use the state's own policy failures to justify further intrusions on liberty. Nonetheless, to answer any questions about the state's ability to prohibit walking to school (either explicitly or de facto, by not providing pedestrian infrastructure), the state's interest in such a policy must be analyzed.

From the parents' perspective, walking or biking to school may represent a legitimate and even desirable choice. Many parents view walking as a way to foster independence, resilience, and community connection.[5] Parents' decisions about how their children travel to school arguably fall within the protected sphere of family autonomy. The Supreme Court has long recognized that parents possess a fundamental right to make decisions concerning the care, custody, and control of their children. In *Troxel v. Granville*, the Court reaffirmed that this right is deeply rooted in the nation's history and traditions.[6] Yet the contours of that right remain

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4. *See also* Ben Abramson, *Inside the On Ramp: This School May Have America's Worst Location*, STRONG TOWNS (Aug. 17, 2023), https://archive.strongtowns.org/journal/2023/8/17/inside-the-on-ramp-this-school-may-have-americas-worst-location [https://perma.cc/QTQ6-YVCX] (describing an elementary school that is enclosed by a highway on-ramp). *See generally* Rezwana Rafiq & Suman Kumar Mitra, *Shared School Transportation: Determinants of Carpooling as Children's School Travel Mode in California*, 47 TRANSP. 1339 (2020), (identifying the factors that correlate with school carpooling choices).

5. *See* David Pimentel, *Criminal Child Neglect and the "Free Range Kid": Is Overprotective Parenting the New Standard of Care?*, 2012 UTAH L. REV. 947, 956–57.

6. 530 U.S. 57, 65–66 (2000) (plurality opinion) (first citing Meyer v. Nebraska, 262 U.S. 390, 399 (1923); and then citing Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–35 (1925); and then citing Prince v. Massachusetts, 321 U.S. 158, 166 (1944); and then citing

underdeveloped, particularly in contexts that implicate urban planning, student mobility, and state safety regulations. School transportation sits at this intersection. When the state mandates how children must travel to school, does it exercise power over a sphere traditionally reserved to the family such that the fundamental right to make decisions concerning the care of one's child is infringed? If so, would a walk-to-school prohibition be justified by a sufficiently compelling interest, and are the means chosen narrowly tailored to that end?

Finally, from the child's perspective, walking to school may implicate an emerging but underrecognized constitutional interest: the individual's free-movement rights, including the right to intrastate travel and the right to locomotion. Courts have acknowledged a right to move freely within one's state or locality as an aspect of the liberty protected by the Fourteenth Amendment. If courts recognize this right, the question becomes whether it extends to children, and if so, whether blanket prohibitions on walking (or less severe restrictions) unduly burden that right. The analogy to juvenile curfews, many of which have been struck down as overbroad restrictions on movement, provides a useful constitutional starting point in this regard.

This Article unfolds in five parts. Part I traces the rise of the carpool line and the decline of walking to school. It situates the issue historically, examining how urban design, school district liability concerns, and child-neglect laws combined to produce both explicit and de facto walking prohibitions. Part I also examines the state's interest in walk-to-school restrictions, a critical component of any constitutional balancing test. Part II turns to the parental rights dimension. Building on *Troxel v. Granville* and the Supreme Court's parental rights jurisprudence, it considers whether the right to direct the care, custody, and control of one's child encompasses decisions about school transportation. Part II then evaluates whether any compelling state interest justifies overriding those decisions. Part III examines the right to walk to school from the child's perspective, exploring whether individual free-movement rights extend to minors and whether those rights could include a right to walk to school. It assesses doctrinal analogies to curfew cases, the right to intrastate travel, and the right to locomotion. The Conclusion synthesizes these strands, evaluating the constitutionality of walk-to-school prohibitions and proposing a framework for resolving conflicts between safety regulations and liberty interests. It concludes by highlighting and suggesting pedestrian-forward reforms that seek to reconcile safety with autonomy.

This Article concludes that categorical walk-to-school prohibitions are constitutionally vulnerable under both parental rights doctrine and the emerging body of free-movement rights jurisprudence. Decisions concerning how a child travels to and from school likely fall within the traditional sphere of parental authority. While states and school districts unquestionably possess legitimate interests in student safety, traffic management, and administrative efficiency, those interests rarely justify eliminating parental discretion entirely. A blanket prohibition

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Stanley v. Illinois, 405 U.S. 645, 651 (1972); and then citing Wisconsin v. Yoder, 406 U.S. 205, 232 (1972); and then citing Quilloin v. Walcott, 434 U.S. 246, 255 (1978); and then citing Parham v. J.R., 442 U.S. 584, 602 (1979); and then citing Santosky v. Kramer, 455 U.S. 745, 753 (1982)).

on walking to school, particularly one that applies regardless of age, route conditions, or parental accompaniment, is unlikely to survive heightened constitutional scrutiny because less restrictive alternatives are almost always available. More tailored policies, such as route-specific restrictions or limited supervision requirements for younger students, present closer constitutional questions, but even those policies must be supported by concrete safety evidence rather than generalized fears or institutional convenience.

This Article further concludes that children themselves may possess constitutionally cognizable interests in walking to school. Although courts have not definitively articulated the scope of minors' free-movement rights, curfew and intrastate-travel cases strongly suggest that children are not constitutionally invisible when it comes to movement through public space.[7] A walk-to-school prohibition burdens those interests by removing one of the most important and routine destinations in a child's daily life from the set of places the child may access on foot. This Article argues that the constitutional tensions surrounding school transportation are best resolved not through increasingly restrictive mobility policies but through changes to the built environment itself. Rather than treating children's independent movement as a danger to suppress, school districts and municipalities should adopt pedestrian-oriented policies and related infrastructure reforms that make walking safe enough to preserve both family autonomy and children's developing independence.

Ultimately, the right to walk to school is about more than transportation. It implicates a broader societal choice about who public space is for, how much independence children are permitted to exercise, and how government balances safety with freedom. Reexamining that balance through the lenses of constitutional law and family autonomy reveals that the carpool line is not just a daily inconvenience; it is a symbol of how far we have traveled from the walkable communities that once defined American childhood.

I. THE STATE'S INTEREST IN A WALK-TO-SCHOOL PROHIBITION

This Part examines the interests a state would likely invoke to justify a walk-to-school prohibition and evaluates the strength of those interests from a constitutional balancing perspective. It identifies child safety as the most compelling justification while also addressing less compelling justifications such as traffic management, administrative convenience, and institutional liability. In doing so, this Part sets up forthcoming analyses by clarifying what the state is trying to accomplish through a walk-to-school prohibition (and similar restrictions) and proposes some limits on how far those asserted interests can go in the face of burdened constitutional rights.

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7. *See, e.g.*, Schall v. Martin, 467 U.S. 253, 265, 268 (1984); Qutb v. Strauss, 11 F.3d 488, 492 (5th Cir. 1993); Ramos v. Town of Vernon, 353 F.3d 171, 176, 181 (2d Cir. 2003); Nunez v. City of San Diego, 114 F.3d 935, 945 (9th Cir. 1997); United States v. Baroni, 909 F.3d 550, 588 (3d Cir. 2018).

A. The Rise of the Carpool Line and the Demise of the Walk to School

For much of the twentieth century, the daily walk to school was a defining ritual of American childhood. Neighborhoods were designed around local schools; students walked or biked along familiar routes with siblings or friends, and the view that a child might need an adult escort or a car to get to school was not widely held.[8] By the late 1960s, roughly half of all students nationwide walked or biked to school, and distances were short: most lived within a mile of their campuses.[9] In that era, a school commute was measured in minutes and footsteps, not traffic patterns and carpool schedules.[10]

Today, this picture has been almost completely reversed. According to the Federal Highway Administration, fewer than one in ten American students now walk or bike to school.[11] Instead, the vast majority arrive by private automobile, with a smaller portion taking the school bus.[12] The shift has been so pronounced that the carpool line has become a daily logistical operation, dictating the shape of school campuses, the timing of school days, and even local traffic engineering.

In the mid-twentieth century, children's independent mobility was both an expectation and a social norm. The Safe Routes to School program notes that as late as 1969, 48% of students walked or biked to school, while only about 12% were driven by parents.[13] Neighborhood schools were built to be accessible on foot, and their catchment zones rarely exceeded a mile or two.[14] Urban planners in this period often sited schools at the center of residential subdivisions or rural communities,

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8. *See generally* ROGER HART, CHILDREN'S EXPERIENCE OF PLACE (1979) (arguing that children's development relies on independent mobility and that children obtain a sense of place by moving about their environment).

9. Schmitt, *supra* note 1; *see also* Krista Cowman, *Play Streets: Women, Children and the Problem of Urban Traffic, 1930–1970*, 42 SOC. HIST. 233, 236–46 (2017) (tracing the evolution away from children using streets as public spaces for play); Jonathan Simon, *Driving Governmentality: Automobile Accidents, Insurance, and the Challenge to Social Order in the Inter-War Years, 1919 to 1941*, 4 CONN. INS. L.J. 521, 530–47 (1997) (exploring the societal shifts caused by the rise of automobile use in the twentieth century).

10. *See The Decline of Walking and Bicycling*, SAFE ROUTES TO SCH. GUIDE, http://guide.saferoutesinfo.org/introduction/the_decline_of_walking_and_bicycling.cfm [https://perma.cc/3NZ6-WX92] (last visited Aug. 5, 2026) [hereinafter *Decline of Walking and Bicycling*].

11. *Children's Travel to School*, FED. HIGHWAY ADMIN. 1 (Mar. 2019), https://nhts.ornl.gov/assets/FHWA_NHTS_%20Brief_Traveltoschool_032519.pdf [https://perma.cc/V8HZ-HLR5].

12. By 2017, 54.2% of children traveled to school via private vehicle, 33.2% traveled by school bus, 10.4% traveled by biking or walking, and 2.2% took some other form of transit. *Id.*

13. *Decline of Walking and Bicycling*, *supra* note 10. These patterns prioritized walking despite the fact that by 1970, 82.5% of U.S. households owned a motor vehicle. *Figure 2-8 Household Vehicle Ownership: 1960–2010*, BUREAU OF TRANSP. STAT. (Sep. 17, 2015) [hereinafter *Vehicle Ownership*], https://www.bts.gov/archive/publications/passenger_travel_2015/chapter2/fig2_8 [https://perma.cc/XN7E-Z3KC].

14. *Vehicle Ownership*, *supra* note 13.

assuming a child could traverse the distance unaided.[15] As a result, the United States' education landscape was characterized by numerous small schools located in each residential community.[16]

Beginning in the postwar decades, suburbanization began to erode this geographic dynamic.[17] Federal housing subsidies, mortgage guarantees, and the construction of the interstate highway system allowed families to move farther from city centers, while land-use regulations encouraged low-density, single-use residential development.[18] School districts, following the population outward, consolidated small neighborhood schools into larger regional campuses that could accommodate thousands of students.[19] As catchment areas expanded, walking distances grew impractical, and motorized transport filled the gap.

By the late twentieth century, the school bus was joined (and eventually overshadowed) by the private automobile, which created the infamous carpool line. The typical morning scene is now all too familiar: one or several long lines of cars, idling engines, and a steady stream of children deposited within steps of the school entrance. Parents sometimes report that driving feels safer and more efficient than allowing their children to walk, particularly amid concerns about traffic, crime, and kidnapping.[20] Oftentimes, many parents who live within half a mile of school still choose to drive, a paradox perhaps explained less by distance than by social norms, fear, and surrounding street design.[21]

Surveys confirm that the perception of danger, rather than actual incident rates, drives much of this behavior.[22] The Safe Routes to School program cites a 2009 survey in which 61% of parents identified traffic danger as a barrier to walking,

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15. *Id.*

16. Research now shows that smaller schools, following in the tradition of a small community's one-room schoolhouse, provide numerous benefits in addition to easy access for students. BARBARA KENT LAWRENCE ET AL., DOLLARS & SENSE: THE COST EFFECTIVENESS OF SMALL SCHOOLS 8–10 (2002), https://files.eric.ed.gov/fulltext/ED473168.pdf [https://perma.cc/2R49-FF6H].

17. *See* Chad D. Emerson, *Smart Growth and Schools: Legal Hurdles and Legal Solutions for Community-Scale Schools*, 37 MCGEORGE L. REV. 363, 366–67 (2006) ("The social forces driving communities away from small, community schools were numerous and varied, including . . . the rapid 1950s growth of the nation's interstate system (which expanded the geographic areas of schools by making longer travel distances possible).").

18. *Id.*

19. *Id.*

20. Jane E. Brody, *Turning the Ride to School into a Walk*, N.Y. TIMES (Sep. 11, 2007), https://www.nytimes.com/2007/09/11/health/11brod.html [https://perma.cc/D4J6-6NM2].

21. *See* Noreen C. McDonald & Annette E. Aalborg, *Why Parents Drive Children to School*, 75 J. AM. PLAN. ASS'N 331, 335 (2009) (finding that at least one-fourth of parents drive their kids to school). *See generally* Michael Southworth & Eran Ben-Joseph, *Street Standards and the Shaping of Suburbia*, 61 J. AM. PLAN. ASS'N 65 (1995) (arguing that street design accounts for parental preferences to drive).

22. *Decline of Walking and Bicycling*, *supra* note 10; *see also* John D. Omura et al., *Prevalence of Children Walking to School and Related Barriers—United States, 2017*, 118 PREV. MED. 191, 192–93 (2019), (finding that in 2017, 46.2% of parents cited traffic danger as a barrier to their children walking to school, while only 11.3% cited crime).

while only 12% pointed to crime.[23] Between 1969 and 2009, the share of children walking or biking to school fell from nearly half to just 13%, even as pedestrian injury rates declined overall.[24]

Urban design trends reinforced this feedback loop.[25] Development after 1970 favored cul-de-sacs, wide arterials, and separated land uses, all of which increased travel distances and reduced pedestrian connectivity.[26] Sidewalks and crosswalks were often omitted in suburban subdivisions, and state transportation departments prioritized vehicle throughput over pedestrian safety.[27] Schools, needing larger parcels to accommodate fields and parking, were sited on the urban fringe where land was cheap but far from where most students lived. This pattern produced what some planners call "the school-siting paradox": as schools require more space to serve more students, they become less accessible to those students without motorized transport.[28] And even for those who have access to cars, schools still create and reinforce car dependency.[29]

Recent scholarship suggests that children themselves experience these restrictions as a form of dispossession. A 2022 study of children's voices on independent mobility suggests that young people can articulate a nuanced understanding of autonomy and safety.[30] Children valued the ability to get to school on their own not solely for the sake of convenience but also because that ability is an indicator of trust and maturity.[31] When mobility is curtailed (whether by parental fear or institutional design), some children perceive that as evidence that they are not yet trusted members of their communities.[32]

Additionally, the decline in walking and biking by children has broad implications. Public-health researchers link it to rising childhood obesity rates and

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23. *Decline of Walking and Bicycling*, *supra* note 10.

24. NAT'L CTR. FOR SAFE ROUTES TO SCH., *How Children Get to School: School Travel Patterns from 1969 to 2009* 4 fig. 1 (Nov. 2011), https://www.pedbikeinfo.org/pdf/NHTS_school_travel_report_2011_0.pdf [https://perma.cc/TLV2-DENR].

25. *See* Sara C. Bronin, *Rules of the Road: The Struggle for Safety & the Unmet Promise of Federalism*, 106 IOWA L. REV. 2153, 2155–56 (2021).

26. *See* Thomas H. Douthat, *Puerto Rico, You Lovely Island . . . Puerto Rico, You Ugly Island: Combating Criollo Sprawl—the Puerto Rico Land Use Plan and Transect-Based Zoning as a Solution to the Island's Land Use Problems*, 76 REV. JUR. U.P.R. 441, 445–47 (2007).

27. Ryan Stoa, *Vehicles as Weapons: Can the Law Prevent Vehicle Ramming Attacks?*, 13 BELMONT L. REV. 338, 345–47 (2026).

28. EPA, TRAVEL AND ENVIRONMENTAL IMPLICATIONS OF SCHOOL SITING 12 (Oct. 2003), https://www.epa.gov/sites/default/files/2014-04/documents/school_travel.pdf [https://perma.cc/M2RS-CUGN].

29. *See id.* at 3.

30. *See* Idoia Legorburu et al., *Why Are You Allowed to Go to School on Your Own? Exploring Children's Voices on Independent Mobility*, 36 CHILD. & SOC'Y 1111, 1118–21 (2022).

31. *Id.* at 1120–21.

32. *See id.* at 1121.

reduced physical fitness.[33] School drop-off contributes significantly to morning traffic congestion and local air pollution.[34] Car-centric school design consumes valuable land for parking and creates dangerous conditions for the few students who do walk.[35] Sociologists, meanwhile, emphasize the loss of community cohesion: fewer "eyes on the street," weaker social ties, and diminished civic visibility of children.[36]

Recognizing this evolution away from the walk to school reframes the contemporary carpool line not as a cultural preference but as a structural outcome.[37] If students and families today prefer to walk or bike, they face a number of barriers—legal, infrastructural, and social—that state and local governments helped create.[38] An assertion of a right to walk to school may therefore implicate and require legal and institutional reforms.

B. The State's Powers to Design Unsafe Streets

To fully appreciate the context in which schools limit transportation choices for pedestrian students, the state's powers to design unsafe streets must be understood. Urban planning law is primarily understood from the perspective and application of government power.[39] Certainly, governmental powers have been articulated relative to some individual rights that must yield to those powers, but usually when rights are at issue, unlawful applications of the police power invoke takings claims that merely challenge a landowner's right to compensation.[40]

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33. Marilyn A. Roth et al., *The Contribution of Active Travel (Walking and Cycling) in Children to Overall Physical Activity Levels: A National Cross Sectional Study*, 54 PREV. MED. 134, 134 (2012).

34. Trinica Stevens Shumate et al., *Improving School Traffic Flow: A Human Performance Improvement Case Study*, 63 PERFORMANCE IMPROVEMENT J. 36, 36–37 (2024).

35. *See, e.g.*, Keshia M. Pollack et al., *Investigating and Improving Pedestrian Safety in an Urban Environment*, INJ. EPIDEMIOL., May 7, 2014, at 1, 1–2, https://link.springer.com/content/pdf/10.1186/2197-1714-1-11.pdf [https://doi.org/10.1186/2197-1714-1-11].

36. *See, e.g.*, Huê-Tâm Webb Jamme, Deepak Bahl & Tridib Banerjee, *Between "Broken Windows" and the "Eyes on the Street:" Walking to School in Inner City San Diego*, 55 J. ENV'T PSYCH. 121, 122 (2018); Zachary Golden, *EQ Vol.14: Eyes on the Street: Testing Jane Jacobs*, EQUILIBRIUM (July 17, 2024), https://equilibriumecon.wisc.edu/2024/07/17/eq-vol-14-eyes-on-the-street-testing-jane-jacobs/ [https://perma.cc/75AH-G3LZ]; David Pimentel, *Protecting The Free-Range Kid: Recalibrating Parents' Rights and the Best Interest of the Child*, 38 CARDOZO L. REV. 1, 8–9 (2016) (elaborating on Robert Putnam's *Bowling Alone*, which describes the decrease in social capital and links it to pushback against free-range parenting).

37. *See* Melissa A. Napier et al., *Walking to School: Community Design and Child and Parent Barriers*, 31 J. ENV'T PSYCH. 45, 50 (2011) (discussing environmental barriers that are becoming embedded in society such that motorized transportation will become the norm rather than the exception).

38. *See* Michael Lewyn, *The Criminalization of Walking*, 2017 U. ILL. L. REV. 1167, 1186–87, 1193–94.

39. This Section adopts and adapts material from the Author's previous scholarship on free-movement rights in urban environments. *See* Ryan Stoa, *Free Movement Rights and the American City*, 20 FIU L. REV. 1, 7 (2025).

40. *Id.*

Accordingly, the government's power to regulate land use has been understood primarily in the context of private property rights, not parental rights or individual movement rights.[41]

The state's urban planning powers have been held for the past 100 years to be a broad exercise of the police power and, as such, generally receive only rational basis scrutiny from courts reviewing state and municipal policies.[42] To the extent that a city's police powers in the urban planning context have been considered in relation to individual rights, that consideration has historically focused on the interests of private property owners in the face of zoning and land-use decisions that affect property use or property values.[43]

Urban planning law in the United States, particularly its development and solidification in the twentieth century, was significantly shaped by the Supreme Court's landmark decision in *Village of Euclid v. Ambler Realty Co.*[44] *Euclid* affirmed the legality of zoning as a valid exercise of police power, establishing a precedent that allowed cities to regulate land use in ways that would benefit the broader community.[45] Following *Euclid*, urban planning law underwent considerable growth as zoning became a primary mechanism for managing urban expansion, addressing public health, and supporting economic development.[46]

The *Euclid* decision was a transformative moment in American urban planning law. By establishing that zoning ordinances were constitutionally permissible, *Euclid* validated the use of zoning as a comprehensive tool for urban planning.[47] Following *Euclid*, zoning rapidly became the dominant method for controlling urban growth and managing land use in American cities.[48] Municipalities across the country adopted zoning ordinances, creating detailed codes that divided urban areas into districts with specific regulations governing land use, building height, density, and lot coverage.[49] Zoning provided cities with a proactive means of directing development, rather than relying on reactive nuisance claims or ad hoc regulations, and allowed cities to enact sweeping urban planning reforms that prioritized motor vehicle use over other modes of transportation.[50]

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41. *Id.*
42. *Id.* at 11.
43. *Id.* at 14–15.
44. 272 U.S. 365 (1926) (upholding zoning regulations as a valid exercise of the police power).
45. *See id.* at 393–94 (discussing the broad legitimate interests in zoning regulations).
46. *See* Gregory H. Shill, *Should Law Subsidize Driving?*, 95 N.Y.U. L. REV. 498, 541–48 (2020) (discussing the implications of the *Euclid* opinion on modern zoning).
47. *See Euclid*, 272 U.S. at 393–94.
48. *See generally* MICHAEL ALLAN WOLF, THE ZONING OF AMERICA: EUCLID V. AMBLER (Peter Charles Hoffer & N.E.H. Hull eds., 2008) (explaining that in the aftermath of the decision, municipalities across the United States used their zoning powers to accelerate suburban sprawl and dictate acceptable land-use patterns and development).
49. *See generally id.* (broadly describing the mechanics of zoning and the ways in which it can be used to shape land-use development and demographic migration).
50. *See* Shill, *supra* note 46 (explaining that zoning enabled proactive citywide land-use planning and facilitated auto-oriented development patterns).

The adoption of zoning laws allowed cities to segregate land uses that were deemed incompatible. For example, zoning ordinances frequently separated residential areas from industrial and commercial uses to protect residents from pollution, noise, and other externalities associated with industry.[51] Zoning also became a tool for shaping urban form, as cities used height restrictions, lot coverage rules, and setback requirements to control the scale and density of development.[52] Zoning powers were then combined with urban planning powers more generally to allow municipalities to design streets that prioritized vehicular movement.[53]

While zoning was promoted as a means of enhancing public welfare, it also had problematic social and economic consequences. Zoning ordinances were sometimes used to reinforce racial and economic segregation.[54] In some cases, zoning laws were designed to exclude certain socioeconomic groups from affluent residential areas by setting minimum lot sizes, restricting multifamily housing, and imposing other requirements that effectively raised housing costs.[55] Although explicit racial zoning was deemed unconstitutional, socioeconomic restrictions remained and had lasting impacts on the demographic composition of neighborhoods, contributing to patterns of racial and economic segregation that persist in many cities.[56]

The legal landscape of urban planning law continued to evolve throughout the twentieth century as courts further clarified the permissible scope of zoning regulations and related land-use controls.[57] By the 1960s and 1970s, a shift toward more flexible zoning practices began to emerge, driven by criticisms that traditional zoning was too rigid and often led to inefficient and segregated urban forms.[58] Innovations such as planned unit developments, which allowed for greater flexibility in land-use regulations within designated areas, provided a means of accommodating mixed-use developments and more creative site designs.[59]

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51. *See How Zoning Laws Can Help Reduce Pollution*, MILLMAN NAT'L LAND SERVS. (Jan. 25, 2021), https://millmanland.com/industry-news/how-zoning-laws-can-reduce-pollution/ [https://perma.cc/E8N2-L3GK].

52. *See* Shill, *supra* note 46, at 543.

53. DAVID PRYTHERCH, LAW, ENGINEERING, AND THE AMERICAN RIGHT-OF-WAY: IMAGINING A MORE JUST STREET 41 (2018).

54. *See* Michael C. Lens, *Zoning, Land Use, and the Reproduction of Urban Inequality*, 48 ANN. REV. SOCIOLOGY 421, 423–25 (2022).

55. *See* Nicholas Julian, *How Zoning Regulations Affect Affordable Housing*, NAT'L ASS'N HOME BUILDERS (Nov. 11, 2024), https://www.nahb.org/blog/2024/11/zoning-regulation-and-affordable-housing [https://perma.cc/32PH-J49Z].

56. Buchanan v. Warley, 245 U.S. 60, 81–82 (1917).

57. *See, e.g.*, Nectow v. City of Cambridge, 277 U.S. 183, 187–89 (1928) (invalidating a zoning ordinance that restricted a parcel of land to residential use despite evidence that it had little value as residential property).

58. *See generally* Christopher Silver, *Zoning in 20th-Century American Cities,* OXFORD RSCH. ENCYCLOPEDIA AM. HIST. (2016) (chronicling twentieth-century zoning practices, criticisms, and responses). Eventually, even the flexible zoning regulations were challenged. *Id.*

59. *See Small Planned Unit Development (SPUD)*, METRO. PLAN. COMM'N, https://www.shreveportcaddompc.com/about-us/services/applications/small-planned-unit-development-spud [https://perma.cc/ZVE4-PG8C] (last visited Aug. 8, 2026).

Additionally, new planning tools like inclusionary zoning and transferable development rights were developed to promote affordable housing and environmental preservation.[60]

To facilitate motorized vehicle use, legal tools were developed to turn streets from public spaces with shared uses into thoroughfares that prioritize driving. Jaywalking laws were developed to push pedestrians out of the public rights-of-way onto smaller designated corridors and eventually, narrow sidewalks.[61] In combination, child-neglect laws were selectively used to prosecute parents who allowed their children to walk outside independently.[62] Together, these anti-pedestrian laws combined with broader urban planning trends to make cities and public spaces much less hospitable for pedestrians.[63]

The development of urban planning law in the United States therefore reflects a dynamic interplay between private property rights, public welfare, and evolving societal values. While zoning provided a mechanism for separating incompatible land uses and promoting orderly development, it also had complex social consequences, including the reinforcement of economic and racial segregation. Over the twentieth century, urban planning law evolved to incorporate greater flexibility, regional coordination, and environmental considerations, addressing the challenges of urbanization, social equity, and sustainability.

What this history of urban planning law post-*Euclid* demonstrates, however, is that the government's power to regulate land use has always been understood in the context of, and in relation to, private property rights. *Euclid* and subsequent cases balanced the state's police powers against the individual's right to use property.[64] The Supreme Court has rarely considered the state's police powers

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60. *See Transfers of Development Rights*, HOUS. SOLS. LAB (May 17, 2021), https://localhousingsolutions.org/housing-policy-library/transfers-of-development-rights/ [https://perma.cc/G7LN-39E5]. In addition, states such as Oregon and California enacted growth management laws to limit urban sprawl and encourage more sustainable development patterns. Oregon's Land Use Act of 1973, for example, required cities and counties to adopt comprehensive land-use plans that conform to state-wide goals, including the protection of farmland and natural resources. *See Oregon's Statewide Land Use Planning Goals*, OR. PLAN., https://www.oregon.gov/lcd/op/pages/goals.aspx [https://perma.cc/7CCH-BUAP] (last visited Aug. 8, 2026). Growth management laws like these aimed to mitigate the environmental and social costs of unregulated suburban expansion, marking a significant shift in urban planning law toward sustainability. *See* OR. DEP'T LAND CONSERVATION & DEV., OREGON STATEWIDE PLANNING GOALS AND GUIDELINES 56 (July 2019), https://www.oregon.gov/lcd/Publications/compilation_of_statewide_planning_goals_July2019.pdf [https://perma.cc/4GLV-Y2FU].

61. *See* Peter D. Norton, *Street Rivals: Jaywalking and the Invention of the Motor Age Street*, 48 TECH. & CULTURE 331, 332–33, 340–46 (2007); Wyatt Parker Hough, *Street Rivalry Reignited? Repealing the Jaywalking Paradigm*, 91 UMKC L. REV. 455, 460–61 (2022); Josh Widera, *Pedestrian Mobilities at the Crossroads: The Contestation and Regulation of Jaywalking*, 18 INT'L J. COMMUNICATION 815, 816–17 (2024).

62. Lewyn, *supra* note 38, at 1182–84.

63. *But see* Peter Norton, *Persistent Pedestrianism: Urban Walking in Motor Age America, 1920s–1960s*, 48 URB. HIST. 266, 266–67 (2021).

64. Although urban planning is often viewed as a local function, federal law quietly shapes how American cities look and operate as well. National standards for traffic

with respect to city planning as a potential violation of other individual rights not connected to the ownership or use of property.[65]

C. The State's Powers to Make School Transportation Policies

Running in parallel to the state's power to design unsafe streets is the state's power to make school transportation policies that determine how students must or can arrive or depart from school and therefore how students and their families are allowed to navigate the public streets that lie between home and school.

States possess broad authority to shape school transportation policy, which is rooted in their responsibility for public education and the welfare of children. The constitutional basis for this authority is grounded in the state's general police power and its duty under state constitutions to provide for the education of children. For example, in *Everson v. Board of Education*, the Supreme Court upheld a New Jersey statute that authorized school-district boards to make rules and contracts for transporting children to and from school.[66] Though *Everson* addressed an Establishment Clause challenge, it also reflected a recognition that such transportation falls within the province of the state's education and welfare powers.[67]

More broadly, states may mandate that districts provide transportation, determine eligibility for public transportation, regulate vehicles, and establish who counts as a walker rather than a bus rider.[68] In short, school districts' decisions

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control, vehicle safety, and real estate financing create a shared framework that produces remarkably uniform streetscapes and transportation patterns across state lines. *See, e.g.*, South Dakota v. Dole, 483 U.S. 203, 206–09 (1987) (allowing Congress to use transportation funding to dictate transportation outcomes); U.S. DEP'T OF TRANSP., FED. HIGHWAY ADMIN., *Manual on Uniform Traffic Control Devices for Streets and Highways*, https://mutcd.fhwa.dot.gov [https://perma.cc/APV6-FD4C] (last visited Aug. 8, 2026) (creating national standards for signage); U.S. DEP'T OF TRANSP., NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., QUICK REFERENCE GUIDE (2010 VERSION) TO FEDERAL MOTOR VEHICLE SAFETY STANDARDS AND REGULATIONS 4 (2011), https://www.nhtsa.gov/sites/nhtsa.gov/files/fmvss-quickrefguide-hs811439.pdf [https://perma.cc/3MJ4-AESJ] (regulating vehicle safety standards); *see also* Sara C. Bronin & Gregory H. Shill, *Rewriting Our Nation's Deadly Traffic Manual*, 135 HARV. L. REV. F. 1, 2–4 (2021) (discussing the influence of the Federal Highway Administration on federal highways and "every neighborhood block in America").

65. In the more specific context of land-use regulation, however, the Court has considered the limits of the police power relative to some individual rights in cases involving homelessness, skid rows, and public spaces. In *City of Grants Pass v. Johnson*, for example, the Supreme Court determined that criminalizing homelessness in public spaces was not a violation of the Eighth Amendment's protection against cruel and unusual punishment even if the city's homeless shelter was at capacity and could not accommodate more people. 603 U.S. 520, 560–61 (2024). But the plaintiffs in the case were attempting to protect their right to be free from persecution for staying in one place and were not asserting a right to free movement within the city. *See id.* at 547–48.

66. 330 U.S. 1, 3, 18 (1947).

67. *See id.* at 6–7 (treating transportation of schoolchildren as a governmental service advancing education and child welfare).

68. Samuel Speroni & Sarah Winchell Lenhoff, *School Transportation and Educational Equity*, REGUL. REV. (Mar. 30, 2023),

regarding walking or busing are typically anchored in state statutory and regulatory frameworks rather than in a federal constitutional right of free transit or access to school.

Within that framework, some schools have enacted total prohibitions on walking to school. An intermediate school in Indiana, for example, enforces an outright walk-to-school prohibition: "Due to the location of our school and for safety reasons, students are not allowed to walk to school or to ride bicycles."[69] Meanwhile, an elementary school in Magnolia, Texas, prohibited students from walking home from school even if they were accompanied by a parent.[70] The student handbook for an elementary school in Fresno, California, identifies itself as a "no walk school."[71] An alternative school in Tennessee includes a liability disclaimer with its walking prohibition: "The school and school system are not responsible for any accidents or injuries that may occur en route to or from school, and students are not allowed to walk to and from school."[72] In Maryland, an elementary school puts its walk-to-school prohibition in more personal terms: "We do not have any walkers."[73] And many more schools have imposed prohibitions on biking to school as well, including schools in Vermont, New Jersey, and Illinois.[74]

Even when the student has parental consent or a parent accompanies the student on the way to school, school districts have maintained a car-focused approach to school transportation. In some cases, schools have refused parental requests to allow children to walk home without a parent. An elementary school in Summerville, South Carolina, for example, would not allow some children to walk home without a parent despite the parents' preference for their children to walk

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https://www.theregreview.org/2023/03/30/speroni-school-transportation-and-educational-equity/ [https://perma.cc/2L9N-G6K3].

69. KANKAKEE VALLEY INTERMEDIATE SCH., STUDENT-PARENT HANDBOOK 2025-2026 11 (2025), https://resources.finalsite.net/images/v1749572026/kvk12inus/hn7uopps63zdh8oyh4vh/KVISStudentHandbook25-26.pdf [https://perma.cc/M23X-6XTL].

70. Andrea Watkins, *School's New Policy Bans Parents from Walking Children to School*, FOX 26 HOU. (Apr. 6, 2016, at 11:43 CT), https://www.fox26houston.com/news/schools-new-policy-bans-parents-from-walking-children-to-school [https://perma.cc/L7J2-J6BB].

71. WEST PARK ELEMENTARY SCH., STUDENT-PARENT HANDBOOK, 2024–2025 29 (2024), https://www.westpark.k12.ca.us/documents/W-P-E-/Handbook/2024-25-StudentHandbook.pdf [https://perma.cc/XRS2-4EFP] (emphasis omitted).

72. MILLER BOYD ALT. SCH., STUDENT HANDBOOK 2025–2026 6 (2025), https://resources.finalsite.net/images/v1761745040/hcboenet/ot117f0txqsdmlciujkx/StudentHandbook2025-2026.pdf [https://perma.cc/4DCG-KHH8].

73. HAMPSTEAD ELEMENTARY SCH., STUDENT HANDBOOK 2025–2026 14 (2025), https://ham.carrollk12.org/uploaded/HES_Website/Student_Handbook_2025-2026.pdf [https://perma.cc/X72X-JQVP].

74. *See* NAT'L CTR. FOR SAFE ROUTES TO SCH. & SAFE ROUTES TO SCH. NAT'L P'SHIP, SCHOOL BICYCLING AND WALKING POLICIES: ADDRESSING POLICIES THAT HINDER AND IMPLEMENTING POLICIES THAT HELP, https://www.pedbikeinfo.org/pdf/SRTSlocal_PoliciesThatHelporHinder.pdf [https://perma.cc/PR3P-QG4P] (last visited Sep. 11, 2026).

independently and the children's demonstrated ability to do so for extracurricular activities.[75]

That said, as this Article will explore further below, age-specific restrictions may be more constitutionally justified, as minors can and should be afforded more independence as they mature. One report on childhood independence suggests children are capable of walking independently around the age of 10, so policies that allow more freedom for older students may be on more solid constitutional grounds.[76] But schools do not always adopt pedestrian policies that reflect those developmental patterns. New Market, Alabama, for example, required parental accompaniment for middle school and high school students.[77] It is not difficult to imagine how a typical high school student might feel about their parent accompanying them on their walk to school and how that would shape their transportation choices. The Tennessee alternative school cited above, meanwhile, applies its walk-to-school prohibition to all students regardless of age, including high school students.[78]

Most school districts, however, have not enacted an explicit or complete walking prohibition. In practice, school transportation policies are more likely to create a de facto prohibition (and in many cases, a resulting requirement for parents to drive their children to school), either because surrounding streets are not safe, there is no right of access to a school bus, child-neglect laws create a legal and social environment in which parents are discouraged from allowing their children to walk independently, or some combination of these factors.[79] One school in Ohio, for example, is almost completely surrounded by a highway on-ramp.[80] While walking to school may be possible, it is probably not a realistic option.

Many districts effectively mandate driving to school by making walking on unsafe streets the only available alternative when students live beneath the eligibility threshold for bus service. For example, school districts that impose a "2-mile rule" only provide bus transportation to students who live more than 2 miles from school.

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75. *See* Lenore Skenazy, *Public School Forces Kids to Take the Bus Home. Walking Is Faster.*, REASON (Nov. 10, 2020, at 16:20 MT), https://reason.com/2020/11/10/spann-elementary-walking-home-school-kids/ [https://perma.cc/CQ7E-5DJ3].

76. *See* Phyllis Agran, *Walking and Biking to School: How to Keep Kids Safe*, AM. ACAD. PEDIATRICS (June 20, 2023), https://www.healthychildren.org/English/safety-prevention/on-the-go/Pages/safety-on-the-way-to-school.aspx [https://perma.cc/T62Q-KHZU].

77. *See, e.g.*, Nick Balenger, *Buckhorn Parents Walk Their Children to and from School After New School Rule*, WAFF 48 (Aug. 21, 2025, at 20:50 MT), https://www.waff.com/2025/08/22/buckhorn-parents-walk-their-children-school-after-new-school-rule/ [https://perma.cc/DX2U-XCQE].

78. MILLER BOYD ALT. SCH., *supra* note 72, at 3, 6.

79. The extent to which schools promote walking to school likely affects pedestrian rates as well. *See* Sherry Everett Jones & Sarah Sliwa, *School Factors Associated with the Percentage of Students Who Walk or Bike to School, School Health Policies and Practices Study, 2014*, PREVENTING CHRONIC DISEASE, May 12, 2016, at 1, 3–4, https://www.cdc.gov/pcd/issues/2016/15_0573.htm [http://doi.org/10.5888/pcd13.150573].

80. Abramson, *supra* note 4.

Students who live within 2 miles are expected to be able to walk. Of course, as most American parents know, many streets are not fit for children to walk unaccompanied. As a result, many parents will opt to drive their children to school instead.[81]

Moreover, these policies are sometimes introduced haphazardly, giving parents insufficient time to establish a safe route for their children to bike or walk. Cy-Fairbanks Independent School District in Houston, Texas, for example, notified parents one week before the 2024–2025 academic year began that the school would no longer provide busing for elementary school students who lived less than 1 mile from campus or middle and high school students who lived less than 2 miles from campus.[82] As a result, some parents required accommodations at work so that they could drive their children instead.[83] Other parents were forced to let their children walk or bike despite the city's lack of pedestrian-appropriate infrastructure (some students were expected to walk on the shoulder of busy roads, through ditches, and sometimes into the street to circumvent overgrown bushes).[84] Over the span of one week, at least three students were hit by cars while walking or biking to school.[85]

Although these unsafe walking and biking conditions exist in cities around the United States, school districts continue to limit the availability of buses for students within 1 or 2 miles of their assigned school.[86] Schools in Tampa, Florida,

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81. *See* Byoung-Suk Kweon, Woo-Hwa Shin & Christopher D. Ellis, *School Walk Zone: Identifying Environments That Foster Walking and Biking to School*, SUSTAINABILITY, Feb. 6, 2023, at 1, 2 tbl. 2, https://www.mdpi.com/2071-1050/15/4/2912 [https://doi.org/10.3390/su15042912].

82. Bryce Newberry, *'I Was Frantic': With One Week Left Until School, Cy-Fair ISD Parents Trying to Find Out How to Deal with Bus Route Cuts*, KPRC 2 (Aug. 13, 2024, at 11:59 MT), https://www.click2houston.com/news/local/2024/08/13/i-was-frantic-with-one-week-left-until-school-cy-fair-isd-parents-trying-to-find-out-how-to-deal-with-bus-route-cuts/ [https://perma.cc/3U6T-3MG7].

83. Corley Peel, *Cy-Fair ISD Reduces Some Bus Routes Following Budget Cuts*, KPRC 2 (Aug. 13, 2024, at 11:11 MT), https://www.click2houston.com/news/local/2024/07/24/cy-fair-isd-reduces-some-bus-routes-following-budget-cuts/ [https://perma.cc/Y389-7YQ5].

84. Newberry, *supra* note 82. Parents also pointed to concerns about the 22 sex offenders in the area and fears of human trafficking in Houston to explain why they opted to drive rather than have their children walk. *Id.*

85. Ahmed Humble & Rilwan Balogun, *At Least 3 Cy-Fair ISD Students Hit by Cars Within the Same Week*, KPRC 2 (Oct. 10, 2024, at 18:41 MT), https://www.click2houston.com/news/local/2024/10/09/at-least-2-cy-fair-isd-students-hit-by-cars-within-the-same-week/ [https://perma.cc/6FXQ-WNAX]; *see also* Ahmed Humble, *Cy-Fair ISD Reinstates Bus Transportation for Students in Newly Approved 2025–2026 Budget*, KPRC 2 (June 24, 2025, at 10:17 MT), https://www.click2houston.com/news/local/2025/06/24/cy-fair-isd-reinstates-bus-transportation-for-students-in-newly-approved-2025-2026-budget/ [https://perma.cc/465N-9V9Y] (discussing the swift and unanimous budget increase for bus transportation after three students were hit by vehicles on their way to school).

86. *See, e.g.*, Jada Williams, *'It's Aggravating': Neighborhood Calls Bus Policy Unfair, Unsafe*, TAMPA BAY 28 (Aug. 22, 2025, at 08:00 MT), https://www.tampabay28.com/news/region-hillsborough/its-aggravating-neighborhood-calls-bus-policy-unfair-unsafe/ [https://perma.cc/X24D-T53B].

for example, exclude students living within a 2-mile range of school from bus routes.[87] Unfortunately, some students would have been required to cross six lanes of heavy traffic in order to get to school, which predictably created a de facto walking prohibition, necessitating parents driving their children to school instead.[88] In theory, these policies reflect cost savings and efficient resource allocation; in practice, they can force parents to drive when pedestrian hazards make walking unsafe. When sidewalks are missing, crossings are dangerous, or traffic is heavy, walking becomes an unsafe option by default; yet the transportation policy offers no bus alternative. While these policies do not bar walking outright, they place the burden of walking on families who may lack safe pedestrian routes and thereby reduce walking in practice. This dynamic underscores how transportation eligibility and built-environment realities interact to shape families' practical ability to walk to school.

In other cases, students may be allowed to walk to school, but only if they are accompanied by a parent or guardian. While the policy may seem reasonable on the surface, these parental supervision requirements take familial decision-making out of the hands of parents and into the hands of school administrators. Furthermore, if parents are required to walk to school with their child, they might determine that their time is better spent driving the child on the parent's commute to work.[89] This practice has become increasingly prevalent, with parents frequently referencing the time saved as a reason to prefer driving to school instead of accompanying their child by walking.[90]

Even when schools allow children to walk to school on their own, enforcement of child-neglect laws and shifting social norms have influenced parents' willingness to allow children to walk independently.[91] While no federal law sets a minimum age for unaccompanied walking, states have begun to clarify neglect statutes to distinguish between genuinely hazardous unsupervised wandering and

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87. *Id.*

88. Aaron Mesmer, *Transportation Policy Change Forces Some Pasco Students to Find Their Own Way to School*, FOX 13 TAMPA BAY (Aug. 9, 2022, at 22:44 MT), https://www.fox13news.com/news/transportation-policy-change-forces-some-pasco-students-to-find-their-own-way-to-school [https://perma.cc/DY63-TXC6].

89. As of April 2026, 73% of American commuters travel to work by car. Valentine Fourreau, *Cars Still Dominate the American Commute*, STATISTA (Apr. 2, 2026), https://www.statista.com/chart/18208/means-of-transportation-used-by-us-commuters/ [https://perma.cc/8C9S-3MA5]. Prior to the COVID-19 pandemic, however, 91% of American commuters were traveling to work by car. U.S. DEP'T OF TRANSP., BUREAU OF TRANSP. STAT., *National Household Travel Survey Daily Travel Quick Facts* (May 31, 2017), https://www.bts.gov/statistical-products/surveys/national-household-travel-survey-daily-travel-quick-facts [https://perma.cc/HVN2-DH8T].

90. *See, e.g.*, Jessica Westman, Margareta Friman & Lars E. Olsson, *What Drives Them to Drive? — Parents' Reasons for Choosing the Car to Take Their Children to School*, FRONTIERS PSYCHOLOGY, Nov. 7, 2017, at 1, 3–4, https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2017.01970/full [https://doi.org/10.3389/fpsyg.2017.01970]; McDonald & Aalborg, *supra* note 21, at 336.

91. *See* Pimentel, *supra* note 5, at 959, 986–87 (describing a potential jury's inclination in a child-neglect case to overcalculate the risk of children walking to school, making a conviction more likely).

age-appropriate independent mobility and play. Outside of the school context, in recent years, some parents have been criminally charged or investigated for allowing their children to walk alone. In 2021, for example, a Texas mother of an 8-year-old boy was charged with a felony for allowing her son to walk half a mile home through a suburban neighborhood.[92] In 2018, an Illinois mother of an 8-year-old girl was investigated by the state's Department of Children and Family Services for allowing her daughter to walk the family dog around the block.[93] Part II explores this interplay between child-neglect laws and children's independent mobility in further depth.

The frustration parents feel in response to these prohibitions has spurred a countermovement in support of "free-range parenting."[94] Free-range parenting laws clarify that parents have the authority to allow their children to engage in age-appropriate independent play and travel (such as walking to school).[95] In 2015, the U.S. Congress passed legislation that shielded parents from civil and criminal liability for allowing their children to walk to school (when age-appropriate to do so and when permitted by state or local laws).[96] Utah became the first state to pass a free-range parenting law in 2018.[97] Since then, at least seven other states have followed suit.[98]

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92. Lenore Skenazy, *Suburban Mom Handcuffed, Jailed for Making 8-Year-Old Son Walk Half a Mile Home*, REASON (Nov. 16, 2022, at 10:01 ET), https://reason.com/2022/11/16/suburban-mom-jailed-handcuffed-cps-son-walk-home/ [https://perma.cc/Z2LH-3XTP].

93. Kate Thayer, *Mom Investigated for Allowing 8-Year-Old to Walk Dog*, YORK DAILY RECORD (Aug. 22, 2018, at 16:18 ET), https://www.yorkdispatch.com/story/news/2018/08/22/mom-investigated-allowing-year-old-walk-dog/37570839/ [https://perma.cc/R256-B4NC]; *see also* Nicole Gelinas, *They Let Their Children Cross the Street, and Now They're Felons*, N.Y. TIMES (Aug. 6, 2025), https://www.nytimes.com/2025/08/06/opinion/children-traffic-death-parents.html [https://perma.cc/8EHZ-9AVN] (charging the parents of a deceased child with involuntary manslaughter after their child was killed when walking to the neighborhood supermarket).

94. Andrew Dorn, *More States Are Embracing 'Free Range' Laws That Let Kids Be Kids*, NEWS NATION (Aug. 19, 2023, at 07:00 CT), https://www.newsnationnow.com/us-news/education/states-embracing-laws-that-let-kids-be-kids/ [https://perma.cc/XK4J-XW7J].

95. Brian Geraghty, *Building Sidewalks Back to the Playground: The Case for Free-Range Parenting Laws*, VT. L. REV.: BLOG (May 4, 2026), https://lawreview.vermontlaw.edu/building-sidewalks-back-to-the-playground-the-case-for-free-range-parenting-laws/ [https://perma.cc/9C8P-JCC8].

96. The Every Student Succeeds Act, Pub. L. No. 114-95, § 8542, 129 Stat. 1802, 2119 (2015), reads in part, "[N]othing in this Act shall authorize the Secretary to, or shall be construed to—(1) prohibit a child from traveling to and from school on foot or by car, bus, or bike when the parents of the child have given permission; or (2) expose parents to civil or criminal charges for allowing their child to responsibly and safely travel to and from school by a means the parents believe is age appropriate."

97. Donna De La Cruz, *Utah Passes 'Free-Range' Parenting Law*, N.Y. TIMES (Mar. 29, 2018), https://www.nytimes.com/2018/03/29/well/family/utah-passes-free-range-parenting-law.html [https://perma.cc/4YVF-QCTK].

98. Dorn, *supra* note 94.

Nonetheless, these laws leave significant discretion to the state in determining what constitutes permissible behavior.[99] Furthermore, the fact that free-range parenting laws might insulate parents from child-neglect charges if their children walk to school does not also mean that schools have an obligation to allow students to walk. This is particularly true for private schools, which maintain significant authority over their premises and can maintain carpooling requirements. As a result, many parents now err on the side of chauffeuring children to school rather than permitting independent walking, particularly in environments they judge unsafe or unsupervised. This change has fed into a broader decline in walking to school and a reliance on motonormative approaches to school transportation.

D. The State's Interest in a Walk-to-School Prohibition

Whether schools impose an explicit prohibition on walking to school or a prohibition comes into effect on more de facto terms, if students or parents are to assert a constitutional right to walk to school, the state's interest in these restrictive policies must be identified and evaluated. Any constitutional challenge must weigh the individual interest in mobility, family autonomy, or equal access to education against the governmental interest in the restriction. In other words, the state's ability to justify the policy will help determine its constitutionality. Courts generally defer to school administrators on questions of safety and logistics, but when the restriction burdens an asserted right to free movement or parental choice, the subsequent balancing test requires close attention to the scope and strength of the state's asserted interests.

Perhaps the strongest justification for limiting or prohibiting walking to school is student safety. Districts may argue that their duty of care extends, at least implicitly, to students' travel to and from school, and that allowing children to walk unsupervised increases their exposure to injury, traffic accidents, or crime. Parental fear of traffic danger is one of the principal barriers to children walking to school, cited by almost half of all respondents in one national study.[100] School administrators may view prohibiting walking as a precaution that aligns with their obligation to maintain a safe educational environment.

A second state interest in walk-to-school restrictions is to mitigate liability for student injuries. The student safety concern extends beyond physical injury to questions of supervision: a district might claim that once a child leaves campus on foot, the school cannot ensure the child's safety or verify timely arrival at home. Because states impose varying degrees of responsibility on districts for student safety, officials may conclude that a walking prohibition reduces potential liability exposure. Some administrators discourage walking precisely for this reason, indicating that liability concerns are deeply embedded in district decision-making.[101]

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99. *See* Fenja R. 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, 407 (2024).

100. Omura et al., *supra* note 22, at 192.

101. *See, e.g.*, *Safe Routes to School: Minimizing Your Liability Risk*, CHANGELAB SOLUTIONS 2 (July 2010),

Liability considerations, while possibly overstated, are not imaginary.[102] The concern is that schools may be found liable when a student injury was reasonably foreseeable and adequate preventative steps were not taken.[103] A district may therefore reason that permitting walking in an area known to lack sidewalks, marked crossings, or adequate traffic controls could create foreseeable risk. School transportation guides suggest that pedestrian danger near schools is highest in drop-off and pick-up zones where vehicles and pedestrians mix in confined spaces.[104] A district that has not invested in safe crossings or sidewalks may view a walking prohibition as a rational, if temporary, mitigation measure until infrastructure can be improved.

Courts have historically been cautious about extending tort liability to schools for injuries students sustain walking to or from campus, yet the patchwork of caselaw reveals the uncertainty that districts face.[105] Many cases turn on whether the school or district has assumed a duty to protect students off school grounds. In *Wright v. Arcade School District*, the California Court of Appeal held that a school district had no duty to provide crossing guards for children walking to school, emphasizing that such traffic protection was a municipal, not educational, function and that it "was not a tort for government to govern" where discretion was lawfully exercised.[106] Similar reasoning appears in *Searcy v. Hemet Unified School District*, where the court declined to impose liability on a district that had never undertaken to provide crossing guards, holding that the enabling statutes were permissive and not mandatory.[107] These decisions signal that districts face unpredictable exposure: if they undertake safety measures, they may assume legal duties they otherwise would not have; if they abstain, they may be accused of negligence once a foreseeable risk materializes.

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https://saferoutespartnership.org/sites/default/files/pdf/Lib_of_Res/JU_SRTS_Liabiliy_Fact_Sheet.pdf [https://perma.cc/NKY2-5H6X].

102. Perceived liability, rather than actual legal precedents suggestive of potential liability, may be a greater driver of schools restricting active mobility. *See* Sara Zimmerman, Karen Kramer & Matthew J. Trowbridge, *Overcoming Legal Liability Concerns for School-Based Physical Activity Promotion*, 103 AM. J. PUB. HEALTH 1962, 1965 (2013).

103. *See, e.g.*, Jessica Campisi, *To What Extent Are Districts, Schools Liable for Students' Safety?*, K–12 DIVE (Feb. 20, 2019), https://www.k12dive.com/news/to-what-extent-are-districts-schools-liable-for-students-safety/547823/ [https://perma.cc/CR5W-L77B] (outlining school district liability cases in contexts other than walking to school).

104. Matt Jacobs, *How to Mitigate Risks in Student Drop-Off and Pick-Up Zones*, PUBLICSCHOOLWORKS, https://corp.publicschoolworks.com/resource/how-to-mitigate-risks-in-student-drop-off-and-pick-up-zones/ [https://perma.cc/3WN3-AZL6] (last visited July 30, 2026).

105. *See, e.g.*, Ramirez v. Long Beach Unified Sch. Dist., 129 Cal. Rptr. 2d 128, 133–35 (Ct. App. 2002) (holding that although schools generally enjoy governmental immunity from tort liability, immunity does not apply when the injured student is, or should be, under school supervision).

106. Robin Cheryl Miller, *Tort Liability of Public Schools and Institutions of Higher Learning for Injury to Student Walking to or from School*, 72 A.L.R.5th 469, § 3 (1999) (citing Wright v. Arcade Sch. Dist., 40 Cal. Rptr. 812, 814, 816 (Ct. App. 1964)).

107. *Id.* § 10[b] (citing Searcy v. Hemet Unified Sch. Dist., 223 Cal. Rptr. 206, 213 (Ct. App. 1986)).

That tension is illustrated in cases where liability was recognized because a school district had voluntarily assumed responsibility for a particular crossing or safety measure. In *Barnes v. Bott*, a Louisiana appellate court found a duty where the school board participated in a city crossing-guard program and failed to verify the guard's presence on the day a student was killed by a car.[108] The court reasoned that by accepting the benefits of the program and monitoring the guards' attendance, the board had "voluntarily assumed the duty" to ensure supervision during normal guard duty hours.[109] Likewise, in *Boham v. City of Sioux City*, the Iowa Supreme Court upheld liability against a school district for inadequate training and outfitting of a crossing guard whose negligence contributed to a child's death.[110] Together, these cases suggest that once a school undertakes even limited safety measures (e.g., by providing guards or designating safe routes) its potential tort exposure expands.[111] From an administrative perspective, the uncertainty surrounding where that duty begins and ends may encourage districts to adopt conservative policies, including prohibitions on walking, as a prophylactic measure against litigation.

The liability risk is compounded by limited protections of governmental immunity when risks are foreseeable and ignored. Courts may anchor liability in a finding that harm was reasonably foreseeable if the school knew of dangerous crossings, prior accidents, or absent guards.[112] Even where immunity statutes apply, plaintiffs often frame their claims as negligent supervision or negligent undertaking, which may fall within exceptions to sovereign immunity.[113] The result is a patchwork of inconsistent outcomes: in some jurisdictions, a district has no duty to protect students off campus; in others, the same district might be liable if it negligently designates a route or fails to notify authorities of a defective traffic signal. In other words, a district's interest in minimizing liability is not entirely speculative or overly conservative; it is grounded in decades of divergent and inconsistent precedent. Prohibiting walking, or routing all students through supervised or bused systems, may be presented as a rational means of avoiding the assumption of legal duties that can arise unpredictably once the district acknowledges even partial responsibility for student safety off campus.[114]

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108. *Id.* § 6 (citing Barnes v. Bott, 571 So. 2d 183, 185–86 (La. Ct. App. 1990)).

109. *Barnes*, 571 So. 2d at 186.

110. Miller, *supra* note 106, § 8 (citing Boham v. City of Sioux City, 567 N.W.2d 431, 435–37 (Iowa 1997)).

111. *See, e.g.*, *Boham*, 567 N.W.2d at 435–37; *Barnes*, 571 So. 2d at 185–86.

112. *See* Ramirez v. Long Beach Unified Sch. Dist., 129 Cal. Rptr. 2d 128, 133–35 (Ct. App. 2002) (holding that state immunity does not preclude liability where a child is, or should be, under school supervision).

113. *See, e.g.*, Jerkins v. Anderson, 922 A.2d 1279, 1285, 1288–90 (N.J. 2007) (holding that a school in a "walking district" with no bus service should foresee the harm to "a young child, exiting school grounds without parental or other supervision"; that schools have a duty to supervise dismissal; and that schools must (1) adopt a policy concerning dismissal specific to a student's age, (2) provide notice to all parents, and (3) adhere to the policy). For a discussion of the ways in which sovereign immunity doctrines incentivize government inaction, see Mark Nevitt, *Sovereign Immunity in a Warming World*, 126 COLUM. L. REV. (forthcoming 2027).

114. Relatedly, insurance and risk-management considerations might be motivating pedestrian restrictions. School district insurance pools and risk-management authorities might

Administrative and logistical considerations often reinforce these safety arguments. Requiring all students to use school-provided transportation can simplify supervision, traffic management, and arrival procedures. Schools must coordinate hundreds or even thousands of daily trips, and consistent transportation modes reduce uncertainty and staffing burdens. Allowing some students to walk independently complicates these procedures, as crossing guards may be required and attendance monitoring becomes less straightforward. Studies of school traffic operations show that the greatest safety risks arise in the moments when large numbers of vehicles and pedestrians converge, suggesting that control and predictability are administratively appealing.[115] Pursuant to these administrative concerns, a district might reasonably claim that a uniform transportation policy, even if restrictive, helps maintain order and reduces risk to all students.

Fiscal and infrastructural factors may also motivate school districts to reduce walking options. Providing transportation is expensive but so is maintaining partial walking eligibility. Hazard-busing, a system in which districts provide buses to children who live within walking distance but must cross dangerous routes, significantly increases transportation costs.[116] Some districts may conclude that a blanket prohibition on walking allows for more efficient routing and avoids case-by-case determinations of hazard eligibility. From an infrastructural perspective, many American suburbs lack continuous sidewalks or safe crossings within half a mile of schools. In these areas, a district might argue that the built environment itself renders walking unsafe and that prohibiting it reflects, rather than creates, the underlying barrier to pedestrianization. Research confirms that walking rates are strongly correlated with the presence of sidewalks, low intersection density, and slow traffic speeds; where these factors are absent, children are far less likely to walk.[117]

In response to potential equal protection challenges, school districts may frame their policies in terms of fairness and uniformity. Allowing some students to walk while others must ride a bus can produce perceptions of unequal treatment, particularly if eligibility turns on geography or parental risk tolerance. A uniform rule that applies equally to all students can be defended as an equity measure, avoiding claims that the district discriminates among families or neighborhoods. The same rationale applies to parental accountability. Districts may argue that uniform rules help ensure that all parents understand who is responsible for a child's safety at dismissal. Especially where younger students are concerned, districts may

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condition coverage or premiums on the adoption of certain safety practices. A prohibition on walking can thus be defended as a fiscally prudent measure that preserves limited educational resources.

115. *See generally* SCOTT A. COONER ET AL., TRAFFIC OPERATIONS AND SAFETY AT SCHOOLS: RECOMMENDED GUIDELINES 2-10 to 2-13 (Jan. 2004), https://static.tti.tamu.edu/tti.tamu.edu/documents/4286-2.pdf [https://perma.cc/92K2-84EY] (recommending physical separation of vehicular, pedestrian, and bicycle traffic patterns and avoidance of site designs that place parent and bus loading zones adjacent to one another).

116. Noreen C. McDonald et al., *Costs of School Transportation: Quantifying the Fiscal Impacts of Encouraging Walking and Bicycling for School Travel*, 43 TRANSP. 159, 162 (2016).

117. *Id.* at 172–73.

believe that requiring an adult to accompany student pedestrians or requiring bus transportation reinforces parental control and reduces disputes about whether children may leave campus alone.

Environmental conditions might offer another justification for some school districts. In states with extreme heat, cold, or precipitation, officials may argue that walking exposes children to unsafe weather conditions. In Louisiana, for example, high humidity and heat indices during the school year may make walking physically hazardous for students and supervising school officials.[118]

Finally, it is worth noting that school districts are likely to ask courts for administrative deference on matters of school transportation. Transportation safety depends heavily on local traffic patterns, crossing designs, and land-use contexts. A district can argue that local officials, not courts, are best positioned to evaluate these conditions and craft appropriate policies. This argument mirrors the broader constitutional deference that courts traditionally extend to local school boards on matters of policy and administration.[119] When the asserted right is novel and not heavily litigated (such as a right to walk to school), courts may be particularly hesitant to second-guess local safety judgments absent clear arbitrariness or discriminatory purpose.

To be sure, these interests vary in persuasive strength. Student safety and supervision are likely to be viewed as at least substantial interests, if not compelling interests. Administrative efficiency, fiscal prudence, liability concerns, and uniformity are more attenuated but likely legitimate under a rational basis review. Infrastructural and environmental constraints may be persuasive if the district documents the hazards rather than relying on generalities. Each of these interests is recognized within the broader framework of rational governmental action in education.

Nonetheless, these same interests, if asserted without evidentiary support or used to perpetuate unsafe or inequitable transportation systems, risk being viewed as pretextual or arbitrary. A well-documented policy grounded in demonstrable safety risks and subjected to periodic review is more defensible than a categorical prohibition adopted for convenience or fear of litigation. Ultimately, this balancing of legitimate state interests against emerging claims to a right of independent movement or parental rights will depend on the right asserted and the level of review a constitutional claim will trigger. In the next Part, the right to walk to school is analyzed in the context of parents' fundamental right to direct the care, custody, and control of their children.

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118. In August 2023, when Louisiana students started their school year, mean high temperatures for the month were a record 101.5°. *2023 Summer Heat & Climatology: New Orleans/Baton Rouge*, NAT'L WEATHER SERV., https://www.weather.gov/lix/2023summerheat [https://perma.cc/U2SK-PV27] (last visited July 30, 2026).

119. *See, e.g.*, Bethel Sch. Dist. v. Fraser, 478 U.S. 675, 686 (1986) (emphasizing a need for broad discretion because "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship" (quoting New Jersey v. T.L.O., 469 U.S. 325, 340 (1985))).

II. DO PARENTAL RIGHTS INCLUDE THE RIGHT TO CONTROL SCHOOL TRANSPORTATION CHOICES?

The state's regulation of how children travel to and from school implicates not only the state's interest in student safety and administrative efficiency, but also the constitutional rights of parents. This Part asks whether a parent's right to direct the care, custody, and control of their children—a fundamental right recognized in *Troxel v. Granville*—extends to decisions about school transportation.[120] Parents traditionally decide when their children may walk alone, how they may commute, and what risks are acceptable in day-to-day life. Yet school districts and other state actors increasingly interfere with those choices through mandatory busing policies, no-walk zones or walking prohibitions, adult supervision requirements, and child-neglect enforcement. This Part examines the constitutional grounding of parental autonomy, the doctrinal limits of *Troxel*, and the nexus between child-neglect laws and youth-transportation independence. Ultimately, it considers whether the parental right to make school transportation choices is fundamental, and if so, whether the state's asserted safety (and other) interests identified in Part I are sufficiently compelling to justify walking restrictions.

A. The Fundamental Right of Parents to Direct the Care, Custody, and Control of Their Children

The Supreme Court's recognition of parental rights as a core component of substantive due process has developed over a century of jurisprudence, grounding the authority of parents to direct the care, custody, and control of their children in the Fourteenth Amendment's protection of "liberty." Although the boundaries of this right have never been absolute, the Court has consistently treated parental decision-making as a fundamental interest, one the state cannot infringe absent a compelling justification and narrow tailoring. This jurisprudential line of cases, beginning with *Meyer v. Nebraska*[121] and *Pierce v. Society of Sisters*[122] and culminating in *Troxel*, provides the doctrinal foundation for evaluating the constitutionality of laws or school district policies that regulate how children may travel to and from school. This Section traces the emergence of the parental rights doctrine and explores the analytical framework that governs restrictions on fundamental rights.

The Supreme Court first articulated constitutional constraints on state regulation of parental decision-making in *Meyer* in 1923, a case involving a Nebraska statute banning instruction in modern foreign languages before the eighth grade.[123] On its face, the law concerned curriculum rather than parental control, but the Court framed the injury more broadly, describing the statute as an intrusion on the liberty of teachers, parents, and students.[124] The Court identified the "liberty" protected by the Due Process Clause as encompassing not only freedom from physical restraint but also a broader set of interests associated with personal

120. 530 U.S. 57, 66 (2000) (plurality opinion).
121. *See* 262 U.S. 390, 399–400 (1923).
122. *See* 268 U.S. 510, 535 (1925).
123. *Meyer*, 262 U.S. at 397–99.
124. *Id.* at 399–401.

autonomy, including "the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children."[125] By including the right to "bring up children" among these protected activities, *Meyer* established that parents possess constitutionally cognizable interests in directing their children's upbringing and education.[126]

Two years later, *Pierce* elaborated this understanding in a more direct challenge to parental educational autonomy.[127] Oregon had enacted a compulsory public education law requiring all children to attend public schools, effectively eliminating private and parochial alternatives.[128] The Court invalidated the statute, emphasizing that "the child is not the mere creature of the State."[129] Parents, the Court held, have the right and the duty to direct their children's education, and the state may not standardize its children by forcing them to accept instruction solely from public teachers.[130] Although the state possesses broad authority to regulate education and ensure civic competency, that authority does not extend to excluding parental choice altogether.[131] *Pierce* is often remembered for its rhetorical flourish, but its doctrinal contribution is important as well: state educational policies, even when adopted for legitimate reasons, must yield when they extinguish or excessively burden parental authority.[132]

Meyer and *Pierce* together form the foundation of modern substantive due process with respect to parental control. Both decisions reflect a suspicion of overly uniform or coercive state approaches to childhood development and a belief that parental autonomy is essential to individual liberty. Importantly, neither case reduced the analysis to simple balancing. Rather, the Court treated parental control as a protected interest that creates a presumption against state interference.[133] Later cases suggest that this presumption is more than an interpretive posture or a rhetorical nod. Instead, the presumption signifies a recognition of "fundamental rights," triggering heightened scrutiny when the government regulates in a way that restricts parental choice. Throughout the twentieth century, the Court cited *Meyer* and *Pierce* to reaffirm that parental authority is constitutionally significant. Cases involving child-rearing, education, family privacy, and related aspects of personal liberty repeatedly turned to these early precedents.[134]

Against this background, the Court's decision in *Troxel* clarified the modern contours of the doctrine and directly addressed the question of how courts

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125. *Id.* at 399.
126. *Id.*
127. *See Pierce*, 268 U.S. at 534–35.
128. *Id.* at 530–31.
129. *Id.* at 534–35.
130. *Id.* at 535–36.
131. *Id.* at 534–35.
132. *See id.* (holding Oregon's state educational policy unconstitutional in light of parental authority).
133. *See id.* at 534–35; Meyer v. Nebraska, 262 U.S. 390, 399 (1923).
134. In *Stanley v. Illinois*, for example, the Court emphasized that a parent's interest "in the companionship, care, custody, and management of his or her children" is "far more precious . . . than property rights." 405 U.S. 645, 651 (1972) (omission in original) (quoting May v. Anderson, 345 U.S. 528, 533 (1953)).

should review state actions that intrude on parental decisions.[135] In *Troxel*, a Washington statute permitted "[a]ny person" to petition for visitation rights with a child at "any time" and authorized courts to grant visitation whenever it served the "best interest of the child."[136] When grandparents sought visitation over the objection of the child's mother, the Supreme Court affirmed the Washington Supreme Court's conclusion that the statute violated the mother's parental rights.[137]

Although *Troxel* did not produce a majority opinion, the holding is relatively clear: the Due Process Clause protects "the fundamental right of parents to make decisions concerning the care, custody, and control of their children."[138] The Court emphasized two elements of the doctrine. First, parental decisions are entitled to special deference in that courts must presume that fit parents act in their children's best interests.[139] Second, the state may not displace a parent's choice (whether the choice concerns educational settings, medical care, religious exposure, or by logical extension, day-to-day aspects of a child's life) merely because a judge finds an alternative arrangement preferable.[140]

Troxel thus reaffirmed the doctrinal status of the parental rights cases within the broader substantive due process framework. The Court linked *Meyer* and *Pierce* to later decisions recognizing fundamental rights related to marriage, procreation, intimate association, and bodily autonomy. Although the Court did not explicitly use the phrase "strict scrutiny,"[141] the logic of its analysis is consistent with strict scrutiny's structure: when the state burdens a fundamental right, it must justify the infringement with a compelling interest and ensure that its regulation is narrowly tailored. Lower courts and scholarship have subsequently interpreted *Troxel*'s parental rights claims as triggering heightened constitutional protection akin to strict scrutiny.[142]

The significance of *Troxel* for present purposes is twofold. First, it confirms that parental decision-making is a fundamental right under the Fourteenth Amendment. Second, it establishes that infringements on parental autonomy are constitutionally suspect even when the intrusion is enacted in the name of children's welfare. The state's claim that it is acting in the name of children's safety does not dispense with constitutional scrutiny; rather, the state must provide evidence that its

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135. *See* Troxel v. Granville, 530 U.S. 57, 68–69 (2000) (plurality opinion) (holding that "so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children").

136. *Id.* at 60 (alteration in original).

137. *Id.* at 60, 75.

138. *Id.* at 66.

139. *Id.* at 68.

140. *Id.* at 68–69.

141. In his concurring opinion, Justice Thomas pointed out that the plurality never articulated a standard of review, emphasizing that strict scrutiny ought to be applied. *Id.* at 80 (Thomas, J., concurring).

142. *See, e.g.*, Langman v. Langman, 757 N.E.2d 505, 508 (Ill. App. Ct. 2001); Harrold v. Collier, 836 N.E.2d 1165, 1171 (Ohio 2005); Hamit v. Hamit, 715 N.W.2d 512, 527 (Neb. 2006).

policy addresses a compelling risk and selects the least restrictive means available. This analytical constraint is particularly relevant in the context of school transportation policies, which often purport to protect children from traffic hazards or other dangers but also directly limit a parent's choice regarding how their child travels to school.

The historical development of parental rights makes clear that the state may regulate children's activities but may not displace parental judgment without constitutional justification. The early twentieth-century decisions emphasized that parents, not the state, bear primary responsibility for directing their children's upbringing. Later cases reaffirmed this principle across different contexts. And *Troxel* rearticulated the doctrine with clarity, ensuring that courts recognize infringements on parental authority as presumptively invalid absent compelling justification.

That being said, although *Troxel* is often read as establishing wide-ranging protections for the parental right to direct children's upbringing, the doctrine's boundaries merit careful attention and have been tested in more recent cases. In particular, jurisdictions increasingly confront conflicts between parental choice and state regulation of medical treatment for children. Two interrelated questions emerge from these conflicts: first, how far does the parental right extend when the state claims a compelling interest in children's welfare? Second, what regime governs (and what level of scrutiny applies) when the state categorically prohibits certain conduct entirely, even where parents and children desire to engage in that conduct?[143]

In the recent context of bans on gender-affirming medical treatment for minors, the Sixth Circuit's decision in *L.W. v. Skrmetti* provides insight into the current Court's thinking on the tension between parental rights and prohibited conduct.[144] In that case, Tennessee enacted a statute prohibiting certain transition-related treatment for minors. The district court held that the statute infringed on the parents' "fundamental right to direct the medical care of their children."[145] The Sixth Circuit stayed a nationwide injunction and in its opinion agreed that the parental right to decide treatment is "fundamental."[146] However, the Sixth Circuit also held that because the right to provide any medical treatment (including those wholly disallowed by the state) is not "deeply rooted" in our nation's history and tradition, the statute could withstand less demanding review.[147]

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143. Central to these inquiries is the framework laid out in *Washington v. Glucksberg*. *See* 521 U.S. 702, 720–21 (1997). In *Glucksberg*, the Court held that only rights that are "objectively[] deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty" qualify as fundamental and thus trigger strict scrutiny. *Id.* That analysis continues to inform whether a claimed parental right qualifies as "fundamental" or is subject instead to rational basis review.

144. 83 F.4th 460, 475 (6th Cir. 2023), *aff'd sub nom.* United States v. Skrmetti, 605 U.S. 495 (2025).

145. *Id.* at 469.

146. *Id.* at 475–76 (citing Kanuszewski v. Mich. Dep't of Health & Hum. Servs., 927 F.3d 396, 418 (6th Cir. 2019) (holding that parents possess a fundamental right to make decisions concerning the medical care of their children)).

147. *Id.* at 473.

The court explained that "[t]he government has the power to reasonably limit the use of drugs . . . . If that's true for adults, it's assuredly true for their children."[148] The court reasoned that the decision to provide a treatment that the state has reasonably deemed harmful cannot automatically be subsumed into the parental right; the state may impose a categorical prohibition so long as it rationally relates to a legitimate interest.[149]

The Supreme Court's decision in *United States v. Skrmetti* probably confirms this limitation.[150] The Court affirmed the Sixth Circuit's ruling, holding that the Tennessee statute did not violate the Equal Protection Clause, but left open the question of the Due Process Clause parental rights claim. Although the parental rights claim was not resolved directly, the Court's approach likely signals that parental rights are subject to meaningful limits when the state bans certain treatments and rests that ban on a permissible regulatory regime.[151]

In other words, the *Skrmetti* line draws a distinction between a parent's right to direct medical care in general (which remains fundamental) and the narrower claim of a parent's right to obtain a particular treatment that the state has prohibited. Where the state reasonably deems the treatment harmful or experimental and bans it altogether, parental rights may be constrained under rational basis review rather than strict scrutiny. Thus, the parental right is not absolute; it does not guarantee a right to any medical intervention the parent desires, and it may bow to state regulation so long as the state's classification and prohibition are rationally related to legitimate goals.

This limitation has direct relevance to the school transportation context. A parent's choice to permit a child to walk or bike to school lies within the core parental decision-making domain, but the state may intervene if it can show a compelling interest and narrow tailoring. If, in contrast, the state enacts a blanket prohibition on walking to school (rather than regulating conditions and mitigating hazards), that policy might override parental choices in a way that would likely trigger strict scrutiny under *Troxel* and the earlier parental rights cases. By analogy, the *Skrmetti* line suggests that parental rights are strongest when directing choice among allowed options but weaker when the state bans an entire category of conduct.

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148. *Id.* at 475.

149. As the dissent argued, however, the majority may not have been framing the question correctly. Since the medical treatments in question are not banned for adult use or for minor use in non-gender-affirming contexts, the question is about *who* gets to decide if children should be able to receive the treatments, parents or the state? "Do parents have the right to make that call, or does the government get to decide for itself, notwithstanding the parents' determinations of what is in their children's best interests?" *Id.* at 510 (White, J., dissenting).

150. *See* 605 U.S. 495, 523–24 (2025); *id.* at 541 n.6 (Thomas, J., concurring).

151. For a critique of the Supreme Court's treatment of the scientific literature regarding gender-affirming care, see John Parsi, *The Future Is Dim for Scientific and Medical Evidence and Expertise Post* U.S. v. Skrmetti, 18 ST. LOUIS U. J. HEALTH L. & POL'Y (forthcoming 2026) (on file with *Arizona Law Review*).

Complicating this picture is the suggestion by some scholars that the Supreme Court has not been consistent with respect to how it scrutinizes limitations on parental rights. This lack of doctrinal structure has left unclear which parental decisions warrant heightened protection and which fall within the state's broader regulatory authority, arguably creating ambiguity for questions involving school policies, transportation logistics, and other routine administrative matters.[152] The Seventh Circuit's approach in *Ezell v. City of Chicago*, for example, applied a sliding-scale model in which the severity of the burden determines the rigor of judicial review.[153]

In summary, the parental rights doctrine begins with the recognition of a fundamental right of parents to direct the upbringing of their children under *Meyer*, *Pierce*, and *Troxel*. That right triggers strict scrutiny: the state must articulate a compelling interest and employ narrowly tailored means. At the same time, modern developments like *Skrmetti* show that the right is not unlimited: when the government imposes a categorical ban on certain parental choices like medical treatments, especially ones not deeply rooted in tradition, courts may shift to rational basis review.

For what it is worth, state courts have also played an important role in elaborating the scope and limits of parental rights in the domains of education, schooling logistics, and children's daily activities. Many of these cases echo *Troxel*'s broad recognition that parents possess a fundamental right to direct the upbringing of their children, but they also reveal a consistent willingness to allow states some room to regulate safety, schooling conditions, and child welfare. For example, in *State v. Yoder*, the Wisconsin Supreme Court emphasized that parents retain a constitutionally protected interest in overseeing their children's education, and that that interest encompasses not only curricular decisions but also the means by which schooling occurs.[154] Even so, the state successfully defended certain neutral, safety-oriented requirements, suggesting that parental rights do not displace the state's authority to impose baseline educational mandates.[155]

Courts also routinely address disputes in which parents claim a right to opt their children out of specific school requirements, including those concerning attendance, curricular exposure, and health or safety protocols. For example, in *Care & Protection of Charles*, Massachusetts recognized robust parental rights but upheld the state's authority to intervene where the parents' decisions jeopardized a child's basic welfare, including educational neglect.[156] Likewise, in *In re J.P.*, the Utah Supreme Court stressed that while parental rights are fundamental, they are not absolute and may yield when a neutral, generally applicable regulation is reasonably related to protecting children's physical safety.[157]

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152. *See* Margaret Ryznar, *A Curious Parental Right*, 71 SMU L. REV. 127, 133 (2018).

153. 846 F.3d 888, 892 (7th Cir. 2017).

154. *See* State v. Yoder, 182 N.W.2d 539, 543 (Wis. 1971), *aff'd on free exercise grounds sub nom.* Wisconsin v. Yoder, 406 U.S. 205 (1972).

155. *See Yoder*, 406 U.S. at 233–34.

156. *See* 504 N.E.2d 592, 599–600 (Mass. 1987).

157. *See* 648 P.2d 1364, 1377–78 (Utah 1982).

Together, these and other state-level decisions provide an important complement to *Troxel*. They illustrate that although parental rights are recognized as fundamental across jurisdictions, courts consistently permit substantial regulation of the mechanics of school access (including transportation policies) when the regulations are neutral, safety-oriented, and uniformly applied. Accordingly, both federal and state-level cases suggest that while a parental right to direct children's movement choices may exist, states retain wide latitude to structure the conditions under which children travel to and from school.

And finally, what *Troxel* and its related caselaw reinforce is that authority over children's mobility is largely a binary tension between parents and the state. Children, on the other hand, have not historically been able to assert their own interests. Within this binary, parental rights appear relatively strong, but children's independent interests, such as their own free-movement rights, remain largely underdeveloped by courts and the legal literature.[158] The possibility that children themselves may have rights to assert against the state is explored in further depth in Part III.

B. Children's Mobility and Child-Neglect Enforcement

Further complicating this picture is the occasional enforcement of child-neglect laws when parents allow their children to walk unaccompanied. As discussed in Part I, the notion that parents who allow their children to walk to school unaccompanied might be guilty of child neglect may be contributing to a de facto walk-to-school prohibition, even if school districts have not implemented a prohibition directly. In this Section, a selection of child-neglect cases is presented to illustrate the ways in which parental rights confront child-neglect standards in the context of children's mobility.

The takeaway for purposes of this Article, and broader conversations surrounding children's mobility, is that child-neglect cases may be contributing to a narrative that allowing children to walk unaccompanied constitutes a criminal or negligent act. But upon further investigation, almost all these cases involved extreme scenarios or other forms of abuse or neglect, while almost no cases involved intervention or prosecution when a parent allowed a child to walk unaccompanied in reasonably appropriate circumstances.[159]

California's dependency cases demonstrate that walking unaccompanied often appears as one factor among many when courts evaluate a family's overall circumstances. In *J.M. v. Superior Court*, a mother was criticized for allowing her child to walk to school and to friends' homes unsupervised, but the case also

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158. For a detailed exploration of this problem, see Clare Ryan, *Are Children's Rights Enough?*, 72 AM. U. L. REV. 2075, 2115–23 (2023).

159. The American Academy of Pediatrics suggests that most children are old enough to walk to school on their own around age 10. Agran, *supra* note 76. For a discussion of child-neglect laws and developmental science, see generally Rachel M. Flynn, Nicholas J. Shaman & Diane L. Redleaf, *The Unintended Consequences of "Lack of Supervision" Child Neglect Laws: How Developmental Science Can Inform Policies About Childhood Independence and Child Protection*, 36 SOC. POL'Y REP. 1 (2023) (highlighting misalignment of child-neglect laws and developmental science).

involved significant allegations of physical abuse and neglect.[160] Similarly, in *In re M.C.*, the Department of Public Social Services initially received a report that 5-year-old and 6-year-old children walked to school on their own.[161] The walking functioned as an aggravating detail rather than the core harm.[162] And in *Riverside County Department of Public Social Services v. R.B.*, a child was forced to walk 1.5 miles to school in the context of broader isolation, inadequate hygiene, and physical mistreatment.[163] Investigators ultimately found no threat to the children's safety from walking 1.5 miles to school, but later incidents involving physical abuse, malnourishment, and unsafe living conditions became the primary basis for court intervention.[164]

Cases in other states show similar patterns of enforcement that suggest additional facts beyond unaccompanied walking are often what drive state action.[165] In *Moyes v. State*, for example, a guardian was charged with neglect after allowing her 7-year-old child to walk approximately six minutes to a bus stop in 7° weather without adequate cold-weather clothing. Although the child's lack of proper attire was the most concrete basis for the charge, the court's discussion also suggested that the mere act of walking unsupervised could expose the child to risks such as abduction.[166] In other cases, such as disciplinary actions in New Jersey for parents who made a child walk to school along a busy road as punishment,[167] or a case involving very young children found walking to school after being physically abused,[168] the facts suggest that the legal consequences stem from the totality of the circumstances rather than walking alone. In each of these examples, unaccompanied walking either occurred alongside other forms of neglect or involved children much younger than the middle schoolers and older elementary school students who commonly walk to school in other contexts.

Some cases that only involve walking have received national attention and may contribute to fears that parents should not allow their children to walk unaccompanied.[169] In Gaston County, North Carolina, two parents were charged with involuntary manslaughter and neglect in 2025 after their 7-year-old and 10-year-old sons walked two blocks home from a grocery store, and the younger

160. No. A144929, 2015 WL 4199202, at *1–2 (Cal. Ct. App. July 13, 2015).
161. No. E078112, 2022 WL 4005602, at *1–2 (Cal. Ct. App. Sep. 2, 2022).
162. *Id.*
163. No. E079089, 2023 WL 2582367, at *5–6 (Cal. Ct. App. Mar. 21, 2023).
164. *Id.*
165. Moyes v. State, No. 23A-CR-704, 2023 WL 8869061, at *1–2, *17 (Ind. Ct. App. Dec. 22, 2023).
166. *Id.* at *17–18.
167. N.J. Div. of Youth & Fam. Servs. v. P.W., Nos. A-6117-11T3, A-6083-11T3, 2014 WL 2780979, at *6, *11–12 (N.J. Super. Ct. App. Div. June 20, 2014).
168. N.J. Div. of Child Prot. & Permanency v. J.J., No. A-4402-15T4, 2017 WL 4183283, at *1–2 (N.J. Super. Ct. App. Div. Sep. 22, 2017).
169. *See* David Pimentel, *Fearing the Bogeyman: How the Legal System's Overreaction to Perceived Danger Threatens Families and Children*, 42 PEPP. L. REV. 235, 255–66 (2015) (describing instances involving child neglect and Child Protective Services intervention that risk impacting parents' level of risk tolerance).

child was struck and killed by a car.[170] Because the children were walking a very short distance and were in communication with a parent by phone, the prosecution likely turned on the tragic outcome rather than a categorical rule that unaccompanied walking constitutes neglect.[171] Nevertheless, the case reinforces parental fears because it suggests that even compliance with local norms and expectations regarding how far children can walk on their own will not insulate parents from criminal consequences if an accident occurs.

A Georgia case in 2024 gained national attention as well when a mother was arrested after her 10-year-old son walked 1 mile to a Dollar General.[172] Prosecutors eventually dropped the charges, and Georgia has since adopted legislation granting parents more explicit protections for reasonable childhood independence.[173] Although the walking was the factor that sparked the initial arrest, the ultimate legal resolution suggests that such conduct does not meet the threshold for neglect. Still, the parent's experience of arrest, combined with intense public debate, reinforces the idea that allowing children to walk independently might trigger state intervention.

Collectively, these cases might help explain the tension that shapes parental decision-making when it comes to letting children walk to school. On the one hand, parents hear about arrests, prosecutions, and lengthy child protective proceedings linked to unaccompanied walking and reasonably infer that even short routine walks could be construed as neglect. On the other hand, the actual caselaw shows that walking is rarely the decisive factor. Most prosecutions involve children who are too young or exposed to additional dangers unrelated to the walk itself. The legal system has not treated ordinary age-appropriate walking as a standalone basis for a neglect finding. Yet the public perception generated by these cases may chill parental willingness to permit independent mobility, even within school zones where busing is unavailable.[174]

C. Applying Troxel*: Do Parental Rights Encompass the Right to Allow a Child to Walk to School?*

This Section proposes that a categorical walk-to-school prohibition would likely violate the fundamental right of parents to make decisions concerning the care,

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170. Curtis Bunn, *A 7-Year-Old's Parents Were Arrested After He Was Killed by a Car. Now They're Speaking Out from Jail.*, NBC NEWS (June 19, 2025, at 04:00 MT), https://www.nbcnews.com/news/nbcblk/north-carolina-child-killed-car-parents-arrested-manslaughter-charges-rcna211900 [https://perma.cc/SWP6-2V2B].

171. *See id.*

172. Sally Hawkins et al., *Georgia Mom's Arrest Puts Free-Range Parenting Back into Spotlight*, ABC NEWS (Nov. 21, 2024, at 04:04 MT), https://abcnews.go.com/US/georgia-moms-arrest-puts-free-range-parenting-back/story?id=116004039 [https://perma.cc/7ALW-LM4G].

173. *See* S.B. 110, § 1, 158th Gen. Assemb., Reg. Sess. (Ga. 2025); Jordan Anderson, *Is It a Crime to Let Your Kid Walk Alone? In Georgia, Parents See New Legal Protections.*, IMPRINT (June 6, 2025, at 02:00 MT), https://imprintnews.org/top-stories/is-it-a-crime-to-let-your-kid-walk-alone-in-georgia-parents-see-new-legal-protections/262026 [https://perma.cc/D4D6-Y49D].

174. *See generally* David Pimentel, *Legislating Childhood Independence*, 50 PEPP. L. REV. 285 (2023) (discussing pending limitations on a child's ability to walk to school).

custody, and control of their children. Such a prohibition would likely trigger strict scrutiny, and in most cases, a school would not be able to show a compelling interest and narrowly tailored means sufficient to justify the curtailment of the fundamental right.

The Section considers the extreme end of the school transportation policy spectrum: a hypothetical walk-to-school prohibition that is applied to minor students of any age, regardless of adult supervision. In other words, the school or school district decrees that students may not access the school by pedestrian means. The hypothetical also assumes that parents are either accompanying younger children or permitting age-appropriate children to walk to school in ways that do not run afoul of child-neglect laws. And finally, the hypothetical presumes that busing is not available, as it often is not, for families who live within 1 or 2 miles of school. While this exact hypothetical may be rare today, the trend toward more restrictive pedestrian policies suggests that it is critical to consider the constitutional implications of a total prohibition, should current trends continue to their logical extreme. Thus, the question is simplified: do parental rights encompass the right to allow a child to walk to school? And if so, do schools have a compelling interest and narrowly tailored means to justify a walk-to-school prohibition?

The analysis in Section II.A suggested that parental authority over children's daily activities is deeply embedded in substantive due process doctrine. The question here, then, is whether decisions about how a child travels to school fall within the scope of the fundamental right recognized in *Troxel*. This Section argues that they likely do. A categorical walk-to-school prohibition intrudes on parental decision-making in a manner that fits comfortably within the core of the parental-rights doctrine. Although recent cases such as *Skrmetti* illustrate that parental rights are not unlimited, those decisions are distinguishable. When analyzed under strict scrutiny, a walk-to-school prohibition is unlikely to be justified by a compelling state interest, and even where such an interest exists, a blanket prohibition is unlikely to be narrowly tailored. Less restrictive transportation restrictions (such as supervision requirements) present closer questions, but they too likely implicate heightened constitutional scrutiny.

The threshold inquiry under *Troxel* is whether the challenged policy burdens a decision that parents have traditionally been entitled to make. *Troxel* itself did not define the outer bounds of parental authority, but it reaffirmed a longstanding principle that fit parents are presumed to act in the best interests of their children and that the state may not displace parental judgment simply because it prefers a different outcome.[175] Decisions about when a child may walk independently, how much autonomy a child may exercise in public space, and how risks are assessed in everyday life have historically belonged to parents rather than the state. For much of American history, parents routinely decided whether children could walk to school, run errands, or travel through their neighborhoods without supervision.[176] That practice long predated the rise of modern school transportation systems and

175. Troxel v. Granville, 530 U.S. 57, 68–69 (2000) (plurality opinion).

176. *See* Nicole Vota, Note, *Keeping the Free-Range Parent Immune from Child Neglect: You Cannot Tell Me How to Raise My Children*, 55 FAM. CT. REV. 152, 154 (2017).

was widely understood as an ordinary incident of child-rearing rather than a regulated activity requiring state approval.

School transportation choices fit comfortably within this tradition. Parents have long determined not only where their children attend school but also how they get there. In the nineteenth and early twentieth centuries, walking to school was the default mode of transportation, and parental supervision was the exception rather than the rule.[177] Even after the expansion of school buses, eligibility rules were framed as logistical accommodations rather than displacements of parental authority.[178] The decision to allow a child to walk to school has historically reflected parental judgments about maturity, distance, neighborhood conditions, and the child's individual capabilities. These are precisely the kinds of individualized determinations that *Troxel* treats as constitutionally significant.

This historical understanding distinguishes school transportation decisions from the category of parental choices at issue in *Skrmetti*. In that case, the Sixth Circuit considered whether the fundamental right of parents to direct the medical care of their children encompassed the right to obtain treatments that the state had categorically banned.[179] The court concluded that while parental authority over medical decision-making is fundamental in general, it does not necessarily include the right to access a specific treatment that the state has prohibited based on safety and efficacy concerns.[180] The court emphasized the absence of a deeply rooted tradition supporting a parental right to provide newly developed medical interventions that the legislature had determined to be harmful.[181]

A walk-to-school prohibition presents a different problem. Allowing a child to walk to school is not a novel or contested practice. It is an ordinary aspect of childhood that predates modern regulatory frameworks. Unlike the medical treatments at issue in *Skrmetti*, walking to school is not an activity that has been newly authorized or newly restricted in response to emerging scientific uncertainty. On the contrary, it is an activity that was once ubiquitous and has only recently become restricted due to changes in infrastructure, risk perception, and administrative policy. The relevant tradition here is not one of state regulation, but of parental discretion and youth autonomy.

The analogy to *Skrmetti* also breaks down for structural reasons. The statute at issue in *Skrmetti* imposed a categorical ban on certain conduct across the entire jurisdiction. Parents were not permitted to obtain the prohibited treatment for

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177. *See* JILL SAUCEMAN & KATHY MAYS, OAK HILL SCHOOL HERITAGE EDUCATION CENTER: AN 1886 ONE-ROOM SCHOOLHOUSE 7 (1999).

178. *See* Lyz Lenz, *A Brief History of the School Bus*, SMITHSONIAN MAG. (Sep. 2022), https://www.smithsonianmag.com/innovation/history-school-bus-180980554/ [https://perma.cc/2VLN-45VS]. For example, during the Great Depression, schools across the nation had to consolidate. As a result, students who were no longer within walking distance were offered school buses. *See id.* For years to follow, schools across the nation offered transportation as a means of convenience while still providing parents with discretion over how their children got to school. *See* Speroni & Winchell Lenhoff, *supra* note 68.

179. L.W. v. Skrmetti, 83 F.4th 460, 475 (6th Cir. 2023).

180. *Id.* at 473.

181. *Id.*

purposes of gender transitions in virtually any context, regardless of provider, supervision, or individual circumstances.[182] A walk-to-school prohibition, by contrast, does not amount to a general ban on children walking in public. Children remain free to walk in their neighborhoods, to parks, to friends' homes, and to extracurricular activities. The prohibition applies only to one specific trip and only when the child's destination is a school campus. The state is not declaring walking itself impermissible or inherently dangerous, but rather asserting control over a particular segment of a child's daily movement.

That distinction matters for purposes of substantive due process. The parental right at issue is not a claimed entitlement to engage in prohibited conduct but the right to make a routine, everyday decision about a child's mobility within the bounds of otherwise lawful behavior. *Troxel*'s core concern was the displacement of parental judgment by administrative or judicial preferences.[183] A school transportation policy that forbids walking substitutes institutional risk aversion for parental assessment without eliminating the underlying activity from the child's life. That partial displacement of parental authority is precisely the type of intrusion that triggers heightened scrutiny rather than deferential review.

If a walk-to-school prohibition burdens a fundamental parental right, the next question is whether the state can justify that burden by pointing to a compelling interest. As discussed in Part I, school districts typically invoke student safety, liability avoidance, administrative efficiency, and infrastructural limitations to justify restrictions on walking. Some of these interests are substantial and legitimate. Not all of them rise to the level of compelling interests capable of overriding a fundamental right.

Generalized concerns about convenience, uniformity, or liability avoidance are unlikely to satisfy strict scrutiny. Courts have repeatedly held that administrative ease, standing alone, does not justify the infringement of fundamental rights.[184] Likewise, fear of litigation or uncertainty about tort exposure is unlikely to qualify as compelling where the underlying legal duties are speculative or contingent. A school district's desire to simplify dismissal procedures or avoid case-by-case assessments may be rational, but it is unlikely to justify a categorical intrusion into parental autonomy.

Student safety presents a stronger case. Protecting children from serious physical harm is among the state's most important functions, and in some circumstances it may qualify as a compelling interest. Where a school can demonstrate that a particular route, or perhaps the entire perimeter of the school, exposes children to acute traffic hazards that the district cannot reasonably mitigate,

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182. The prohibited hormone therapies that were used to facilitate gender transitions in Tennessee are, however, permitted and used in other medical contexts. The law still allows minors to receive hormone treatments in those other medical contexts. TENN. CODE. ANN. § 68-33-103(b) (2023).

183. *See* Troxel v Granville, 530 U.S. 57, 67 (2000) (plurality opinion).

184. *See, e.g.*, Frontiero v. Richardson, 411 U.S. 677, 690 (1973) (rejecting administrative convenience as a sufficient justification where heightened scrutiny applies); Stanley v. Illinois, 405 U.S. 645, 656 (1972) ("[T]he Constitution recognizes higher values than speed and efficiency.").

such as high-speed arterials without crossings or sidewalks, a court may be receptive to the claim that unrestricted walking poses a genuine danger. Even in those cases, however, the state bears the burden of showing that the risk is concrete and specific rather than abstract or speculative. General assertions that streets are unsafe or that walking is risky are unlikely to suffice.

Even assuming that the state can identify a compelling interest in preventing pedestrian injuries under certain conditions, a categorical walk-to-school prohibition is unlikely to be narrowly tailored. Strict scrutiny requires that the state adopt the least restrictive means available to achieve its objective. A blanket ban on walking forecloses a range of less restrictive alternatives that would preserve parental choice while addressing safety concerns. Schools could permit walking with parental accompaniment, limit walking to designated routes, provide crossing guards, adjust dismissal times, or coordinate with local governments to improve pedestrian infrastructure.[185] Each of these measures targets the asserted risk more directly than a prohibition that applies regardless of age, supervision, or route conditions.

The over-inclusiveness of a categorical prohibition is particularly apparent when applied to older students. A rule that prevents a 16-year-old from walking a short distance to school, even with parental consent, is difficult to justify as narrowly tailored to safety concerns that might plausibly apply to much younger children. *Troxel*'s presumption that fit parents act in their children's best interests suggests that individualized parental judgments should not be displaced absent clear evidence of necessity. A policy that treats all students as equally incapable of walking safely is likely to be viewed as insufficiently tailored.

Admittedly, less severe transportation restrictions present closer questions. A policy that permits walking only if a parent accompanies the child, for example, is not as clear a violation of a parent's fundamental right to make decisions concerning school transportation.[186] Such a rule still burdens parental autonomy by dictating how a parent must allocate time and supervision, but it does so in a less absolute way. Because the burden is less severe than a categorical ban, a court might be more inclined to view the policy as a safety regulation rather than a prohibition. Even so, the requirement may trigger heightened scrutiny if it effectively forecloses walking for families unable to provide accompaniment due to work or other caregiving obligations.

Whether such a policy survives strict scrutiny would depend on the strength of the state's evidence and the availability of alternatives. If the school can

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185. Furthermore, while school districts may not have control over urban planning and street design decisions that create unsafe streets in the first place, a court may want to see school district officials at least attempting to persuade city planners to make the school's pedestrian infrastructure safer before determining that a walking ban is narrowly tailored.

186. The Baton Rouge Center for Visual and Performing Arts, for example, enforces a walk-to-school policy that requires students to be accompanied by an adult and registered in advance as a walker. *BRCVPA Walker / Bike Rider Procedures*, BATON ROUGE CTR. FOR VISUAL & PERFORMING ARTS, https://ebrschools.org/wp-content/uploads/2025/08/2025-BRCVPA-Walker-_-Bike-Rider-Procedure.pdf [https://perma.cc/W5AF-VJF9] (last visited July 14, 2026).

demonstrate that unsupervised walking presents a specific and unmitigable danger, a supervision requirement may be more defensible than an outright ban. And a mandatory adult supervision policy would be, for fairly obvious reasons, increasingly less compelling as the age of the child increases. At the same time, the existence of less restrictive options, such as group walking programs or designated safe routes, would weaken the state's claim that mandatory parental accompaniment is necessary. The analysis in these cases is likely to be fact-specific and context-dependent rather than categorical.

Ultimately, the application of *Troxel* to school transportation policies suggests that categorical walk-to-school prohibitions are constitutionally suspect. Decisions about whether and how a child walks to school fall within a domain of parental authority that is deeply rooted in history and tradition. While the state may regulate to protect children from serious harm, it must do so with precision and restraint. Policies that substitute broad prohibitions for individualized judgment are unlikely to satisfy strict scrutiny, particularly where the asserted risks can be addressed through less restrictive means. The closer the policy comes to eliminating parental choice altogether, the more likely it is to infringe on the fundamental right to direct the care, custody, and control of one's children.

III. INDIVIDUAL FREE-MOVEMENT RIGHTS AND THE CHILD

This Article has thus far treated the right to walk to school primarily as a question of parental authority. This Part considers whether minor children themselves may invoke independent free-movement rights under the Fourteenth Amendment, separate and apart from the rights of their parents. Courts have recognized certain freedom of movement interests, including the right to intrastate travel and the right to locomotion, but they have rarely examined how those rights apply to children in ordinary settings such as a walk to school.

This Part asks two related questions. First, do these free-movement rights extend to minors as rights they may assert in their own capacity, rather than solely through their parents? Second, if they do, does a walk-to-school prohibition impose a constitutionally significant burden on those rights? By examining free-movement rights and cases addressing children's liberty interests, this Part explores whether school transportation restrictions implicate not only family autonomy, but also the child's own freedom to walk to school.

A. Free-Movement Rights and the Individual

To begin, it is necessary to establish and explore the contours of any free-movement rights that are provided and protected by the U.S. Constitution that might be relevant in the walk-to-school context. In a previous article, the Author identified four free-movement rights that individuals might invoke when faced with restrictions on their urban mobility: the right to interstate travel, the right to intrastate travel, the right to locomotion, and the right to public assembly and expression.[187]

The right to interstate travel protects the individual's right to travel freely between states. The Supreme Court has recognized the right to interstate travel, and although the source of the right may be up for debate, its existence and validity are

187. Stoa, *supra* note 39, at 38–64.

not.[188] The right to interstate travel may provide some protections when a pedestrian is attempting to walk across state lines but is burdened by insufficient infrastructure or a walking prohibition.[189]

There is little data regarding interstate K–12 school attendance, as school enrollment data focuses on school location, not student residence location. It is unlikely that many minor children are attending public schools out of state, as school district boundaries and enrollment processes generally assume and follow intrastate patterns. However, the right to interstate travel may be relevant in a limited number of educational contexts, as several major metropolitan areas straddle state lines (e.g., Kansas City, St. Louis, Cincinnati, Memphis, and Washington, D.C.).[190] Nonetheless, the right to interstate travel is probably of limited relevance to the right to walk to school and is not discussed further here.

With respect to the right to public assembly and expression, by protecting "the right of the people peaceably to assemble," the First Amendment carves out broad protections for individuals (including pedestrians) to use and travel on public streets, on sidewalks, and in other public forums.[191] In *Cox v. Louisiana*, the Supreme Court distinguished between pedestrians using sidewalks for expressive activity and motor vehicles obstructing traffic, suggesting that individuals on foot enjoy broader protections than those in cars.[192] The reasoning reflects the idea that streets and sidewalks are natural venues for public discourse, even if states retain broad powers to restrict public access and assembly in the name of public safety.[193]

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188. *See, e.g.*, Crandall v. Nevada, 73 U.S. 35, 49 (1867); United States v. Guest, 383 U.S. 745, 759 (1966); Shapiro v. Thompson, 394 U.S. 618, 638 (1969); Saenz v. Roe, 526 U.S. 489, 500 (1999).

189. The Nice Bridge between Virginia and Maryland is only accessible to motor vehicles, for example. *See Resources for Bicycling and Walking in Virginia*, VA. DEP'T OF TRANSP., https://www.vdot.virginia.gov/travel-traffic/bike-ped/ [https://perma.cc/2ZZ2-NHJR] (last visited Aug. 13, 2026); *see also* Bryan P. Sears, *Cycling Advocates Pan Maryland-Virginia Bridge Crossing Plan as Potentially Deadly*, MARYLAND MATTERS (May 8, 2023, at 07:30 ET), https://marylandmatters.org/2023/05/08/cycling-advocates-pan-maryland-virginia-bridge-crossing-plan-as-potentially-deadly/ [https://perma.cc/2CVE-QJXG] (discussing the inaccessibility of the Governor Harry Nice Bridge for bicyclists).

190. *See, e.g.*, MARK C. HOGREBE, LYDIA KYEI-BLANKSON & WILLIAM F. TATE, INTERSTATE SCHOOL CHOICE? EVALUATING EDUCATIONAL QUALITY IN REGIONS THAT ARE DIVIDED BY STATE LINES, IN THE RESEGREGATION OF SCHOOLS: EDUCATION AND RACE IN THE TWENTY-FIRST CENTURY 164 (Jamel K. Donnor & Adrienne Dixson eds., 2013) (investigating differences in educational performance levels in East St. Louis, Illinois, and St. Louis, Missouri).

191. U.S. CONST. amend. I.

192. *See* 379 U.S. 536, 555 n.13 (1965) (clarifying that, although not squarely presented before the Court, a State or municipality cannot reserve streets and nearby areas purely for traffic—but instead must have "some open area . . . preserved for outdoor assemblies").

193. *See* Cox v. New Hampshire, 312 U.S. 569, 574 (1941) ("The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition

Nonetheless, the right to public assembly and expression is probably of limited value in evaluating a minor child's right to walk to school. There is certainly a robust history regarding the First Amendment rights of public school students on or near school grounds.[194] And the right to expression and public assembly may provide students with certain rights to walk on surrounding streets in order to protest or otherwise invoke these First Amendment rights.[195] However, this Article is focused on the routine walk to school, and it is unlikely that the First Amendment will provide significant protections against a walk-to-school prohibition.

The right to intrastate travel and the right to locomotion, by contrast, may provide a sound basis to challenge walk-to-school prohibitions. The Supreme Court has not formally recognized a right to intrastate travel. And until 1990, the federal courts, in general, had not considered if the right to travel—well established in the context of interstate travel—extended to intrastate local travel. This omission garnered attention from scholars throughout the 1980s.[196] And while the Supreme Court has not yet addressed the issue, the First, Second, Third, and Sixth Circuit Courts of Appeal have recognized a fundamental right to intrastate travel to some extent.[197]

Although it did not explicitly consider the right to intrastate travel, the First Circuit struck down a durational residency requirement imposed on newly arrived city residents seeking housing assistance in *Cole v. Housing Authority of City of*

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of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions.").

194. *See, e.g.*, Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 514 (1969); Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 861–72 (1982); Chandler v. McMinnville Sch. Dist., 978 F.2d 524, 531 (9th Cir. 1992) (holding that a button worn by students with the word "scab" is not inherently disruptive and that it is protected by the First Amendment and cannot be suppressed until proven disruptive); Mahanoy Area Sch. Dist. v. B.L., 594 U.S. 180, 193 (2021) (holding that even student speech appearing "unworthy" of protection is afforded the rights of the First Amendment).

195. *See* Grayned v. City of Rockford, 408 U.S. 104, 118 (1972) (finding "it clear that the public sidewalk adjacent to school grounds may not be declared off limits for expressive activity by members of the public" unless it "materially disrupts classwork or involves substantial disorder or invasion of the rights of others" (quoting *Tinker*, 389 U.S. at 513)).

196. *See* Keith E. Smith, *Constitutional Law—Cruising for a Bruising—An Attack on the Right to Interstate Travel*, 36 VILL. L. REV. 997, 997 n.2 (1991) (first citing Charles Gray, *Keeping the Home Team at Home*, 74 CALIF. L. REV. 1329, 1352 (1986); and then citing Richard H. McAdams, *Tying Privacy in* Knotts*: Beeper Monitoring and Collective Fourth Amendment Rights*, 71 VA. L. REV. 297, 324 (1985); and then citing Developments, *The Constitutional Rights of Public Employees*, 97 HARV. L. REV. 1738, 1751 n.70 (1984)) (listing sources showing the Supreme Court has not decided the issue of a right to intrastate travel).

197. *See generally* Kathryn E. Wilhelm, *Freedom of Movement at a Standstill? Toward the Establishment of a Fundamental Right to Intrastate Travel*, 90 B.U. L. REV. 2461 (2010) (discussing Second, Third, and Sixth Circuit jurisprudence on intrastate travel).

Newport.[198] While one plaintiff had moved to the city from out of state, the other plaintiff had not.[199] The court did not distinguish between them in finding that their fundamental right to travel had been impermissibly burdened.[200]

In 1990, the Third Circuit more explicitly identified the right in *Lutz v. City of York*. The court scrutinized the Constitution and the many sources of the right to travel that the Supreme Court has articulated and determined that the right to travel does extend to protect the individual's right to intrastate local travel.[201] The Third Circuit recognized the right to intrastate travel as implicit within the broader constitutional protections of personal liberty and freedom of movement.[202] The court emphasized that freedom of movement is fundamental, deeply rooted in the nation's "history and tradition[s]" and is essential for personal autonomy.[203]

More recently, the Sixth Circuit struck down a city ordinance as an unconstitutional interference with the individual's right to intrastate travel. In *Johnson v. City of Cincinnati*, the court struck down a Cincinnati ordinance that banned individuals with prior drug-related arrests from entering certain neighborhoods, including their neighborhoods of residence.[204] The court ruled that the ordinance violated the fundamental right to travel under the Due Process Clause of the Fourteenth Amendment. It held that the law improperly restricted freedom of movement without sufficient justification, as it broadly prohibited affected individuals from accessing public spaces and their own residences. The court applied strict scrutiny, finding that the ordinance was not narrowly tailored to serve a compelling government interest. The decision reinforced that governmental restrictions on movement must be justified by significant public interests and cannot arbitrarily infringe upon constitutional rights.

Shortly afterward, in the Second Circuit's decision in *Ramos v. Town of Vernon*, the court noted that the Second Circuit has a clearly recognized right to intrastate travel, at least for adults.[205] The case addressed a curfew ordinance that applied only to juveniles, but the court suggested that if the curfew were to apply to adults, it would burden the right to intrastate travel and be subjected to strict scrutiny.[206]

The Sixth and Second Circuit decisions in *Johnson* and *Ramos*, therefore, reinforced the *Lutz* principle that states and municipalities cannot impose sweeping restrictions on the right to move freely within one's own state. All three cases set

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198. Cole v. Hous. Auth., 435 F.2d 807, 813 (1st Cir. 1970).

199. *Id.* at 809.

200. *See id.* at 813.

201. *See* Lutz v. City of York, 899 F.2d 255, 258–68 (3d Cir. 1990).

202. *See id.* at 266–68.

203. *Id.* at 267 (quoting Moore v. City of E. Cleveland, 431 U.S. 494, 503 (1977) (plurality opinion)).

204. Johnson v. City of Cincinnati, 310 F.3d 484, 487 (6th Cir. 2002).

205. *See* Ramos v. Town of Vernon, 353 F.3d 171, 176 (2d Cir. 2003) (citing King v. New Rochelle Mun. Hous. Auth., 442 F.2d 646, 648 (2d Cir. 1971)); Spencer v. Casavilla, 903 F.2d 171, 174 (2d Cir. 1990) (observing that the circuit "has held that the Constitution . . . protects the right to travel freely within a single state"); Kolender v. Lawson, 461 U.S. 352, 358 (1983) (recognizing "the constitutional right to freedom of movement").

206. *Ramos*, 353 F.3d at 176.

crucial precedent affirming that the right to intrastate travel is protected under the Constitution and that any government-imposed restrictions must withstand judicial scrutiny.

To date, only the Second, Third, and Sixth Circuits have explicitly recognized the right to intrastate travel (while the First Circuit recognized the right by implication).[207] The other circuit courts have not addressed the issue, nor has the U.S. Supreme Court. While plaintiffs in other circuits can certainly invoke the right to intrastate travel to challenge walk-to-school prohibitions in good faith, it is unclear if those courts would recognize the right. Challengers in the First, Second, Third, and Sixth Circuits, however, are well-positioned to invoke the right to intrastate travel to challenge restrictions on pedestrian access to public schools.

By contrast, the right to locomotion is a well-established right recognized by the Supreme Court, but to what extent might it apply in the urban planning context? Historically grounded in either the Fourth, Fifth, or Fourteenth Amendments, the right to locomotion has not frequently been pitted against the state's urban planning police powers or a school district's transportation policymaking powers. However, U.S. courts have historically given deference to the individual's right to locomotion as applied to use of the public streets and sidewalks. In *Delaware v. Prouse*, the U.S. Supreme Court wrote that "people are not shorn of all Fourth Amendment protection when they step from their homes onto the public sidewalks."[208] In 1983, the D.C. Circuit wrote in *Gomez v. Turner* that the fact "that citizens can walk the streets, without explanations or formal papers, is surely among the cherished liberties that distinguish this nation from so many others."[209]

The right to locomotion—the freedom to move freely in public spaces without arbitrary government interference—was central to the Supreme Court's rulings in *Papachristou v. City of Jacksonville* and *City of Chicago v. Morales*. Both cases struck down vague laws that criminalized movement without requiring clear criminal intent, reinforcing the Fourteenth Amendment's Due Process Clause as a safeguard against arbitrary restrictions on mobility.[210] *Papachristou* emphasized that

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207. Two state-level cases are notable. *Toma v. State* considered a Texas municipal ordinance that banned cyclists from using public roads when an adjacent pathway was available instead. 126 S.W.3d 528, 529–30 (Tex. Ct. App. 2003). A cyclist was ticketed for riding her bike on a public street and challenged the ordinance as an unconstitutional violation of her right to travel (among other arguments). *Id.* The Texas court disagreed, noting that the ordinance applied only to bicycling within the municipality and did not involve interstate travel. *Id.* Though the court could have addressed the right to intrastate travel, it declined to do so. *See id.* In Minnesota, by contrast, a state court relied on *Lutz v. City of York* (though it was not controlling) to recognize the right to intrastate travel and invalidate a municipal ordinance placing limits on "cruising." State v. Stallman, 519 N.W.2d 903, 906–10 (Minn. Ct. App. 1994).

208. 440 U.S. 648, 663 (1979).

209. 672 F.2d 134, 143 n.18 (D.C. Cir. 1982).

210. In *Papachristou*, the Supreme Court struck down a Jacksonville vagrancy law that allowed police to arrest individuals for behaviors such as loitering, wandering at night, or being a "common thief" without actual evidence of a crime. *See* Papachristou v. City of Jacksonville, 405 U.S. 156, 158, 171 (1972). In *Morales*, the Supreme Court struck down Chicago's anti-gang loitering ordinance, which allowed police to disperse and arrest groups

walking, socializing, and being in public spaces are fundamental rights that cannot be restricted by overly broad laws.

Both cases implied a right to locomotion by striking down laws that criminalized innocent movement. The rulings reinforce that vague laws restricting public presence violate due process and cannot be used to arbitrarily control people's mobility in urban spaces. What these cases do not suggest is that the right to locomotion guarantees an individual's right to move freely by whatever method of transportation they prefer. However, this line of cases may prove persuasive in a case challenging the constitutionality of a school transportation policy that permits students to access the school by motor vehicle but not by walking, absent strong justification.

B. Do Minor Children Have Free-Movement Rights of Their Own?

If free-movement rights are protected by the Constitution to some extent, the next question is whether minor children enjoy these constitutional protections in their own right or whether children's freedom of movement is merely a part of their parents' rights to direct the care, custody, and control of their children. While the right to intrastate travel and the right to locomotion are not as developed as the right to interstate travel or the right to public assembly and expression, there is a compelling body of caselaw that invokes the right to intrastate travel and the right to locomotion in the context of minor children. This caselaw either recognizes those rights or at least assumes that if the rights exist, minor children could invoke them.

As a preliminary matter, it is perhaps necessary to clarify the mechanisms by which children may assert their constitutional rights against the state.[211] While the Supreme Court extends to children the protections offered by the Constitution, it has recognized that the state may have greater capacity to regulate children than adults. In *Planned Parenthood of Central Missouri v. Danforth*, the Court made clear that "constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority" while simultaneously acknowledging that the state may exercise "somewhat broader authority to regulate the activities of children than of adults."[212] That dynamic frames nearly all subsequent lower-court treatment of minors' free-movement claims.

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of people if an officer suspected they were gang members and they refused to leave the area. *See* City of Chicago v. Morales, 527 U.S. 41, 45–46, 64 (1999). The law did not require proof of criminal activity—mere presence in a public place was enough to trigger police intervention. *Id.*

211. The Supreme Court recognizes that children enjoy constitutional protections of their own. *See, e.g.*, *In re* Gault, 387 U.S. 1, 13 (1967) (finding that children are persons under the Constitution); Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969) (finding that children are extended the right to free speech under the First Amendment, including within the school setting); Goss v. Lopez, 419 U.S. 565, 574–76 (1975) (finding that children are extended the protection of due process under the Fourteenth Amendment, including within the school setting); New Jersey v. T.L.O., 469 U.S. 325, 333–37 (1985) (finding that children are extended the protection against unreasonable searches and seizures under the Fourth Amendment, including within the school setting).

212. 428 U.S. 52, 74 (1976).

Practically speaking, a child's capacity to assert an independent constitutional claim is often contingent on parental recognition of the underlying right and parental support in facilitating the child's exercise of that right.[213] Minors can also bring a claim in federal court through non-parental legal representatives such as a guardian ad litem; in limited cases, the doctrine of *in loco parentis* may authorize school administrators (as agents of the state) to represent the interests of a minor student.[214] It is certainly possible that parents may not share the same views as their children with respect to school transportation and mobility rights. However, this Article assumes arguendo that for purposes of asserting the rights to intrastate travel or locomotion against the state in the face of a walk-to-school prohibition, the interests of parents and children are aligned.[215]

The question, then, is to what extent minor children's mobility rights have been recognized by the courts. Perhaps surprisingly, there is an emerging body of caselaw applying the right to intrastate travel and the right to locomotion to minor children. While these cases do not always yield favorable outcomes for minors, they do consistently find or imply that minors enjoy these mobility rights, which cannot be unconstitutionally burdened by the state.

Although the Supreme Court has never directly addressed whether minor children independently enjoy a constitutional right to intrastate travel or locomotion, the Court's juvenile due process cases provide additional context, even when they do not directly concern free movement. In *Schall v. Martin*, for example, the Court upheld the preventive detention of juveniles under a New York statute, emphasizing that minors are "always in some form of custody" and that the state's *parens patriae* interest can justify restrictions that would be impermissible if applied to adults.[216] Although *Schall* did not purport to resolve the existence or scope of a right to locomotion, its reasoning has often been invoked by lower courts to assess the weight of minors' liberty interests in free-movement cases. At the same time, Justice Marshall's dissent underscored that detention severely limits a juvenile's freedom of movement, implicitly recognizing that minors do possess a cognizable

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213. *See, e.g.*, Rachel Kennedy, *A Child's Constitutional Right to Family Integrity and Counsel in Dependency Proceedings*, 72 EMORY L.J. 889, 918, 949–50 (2023); Alison M. Brumley, *Parental Control of a Minor's Right to Sue in Federal Court*, 58 U. CHI. L. REV. 333, 344 (1991). This lack of liberty to independently assert a violation of constitutional rights stems from the common law view that children were the property of their parents, not autonomous individuals. Kennedy, *supra*, at 918 (citing Barbara Bennett Woodhouse, *Children's Rights* 4–5 (U. of Penn L. Sch. Pub. L. Working Paper No. 06, 2000); Shanta Trivedi, *My Family Belongs to Me: A Child's Constitutional Right to Family Integrity*, 56 HARV. C.R.-C.L. L. REV. 267, 272 (2021).

214. FED. R. CIV. P. 17(c). Similar rules allow representatives to sue on behalf of minor children in state court. *See, e.g.*, LA. CODE CIV. PROC. ANN. art. 683 (2016) (instructing that persons with parental authority over an unemancipated minor must sue to enforce the right of a minor because unemancipated minors have no procedural capacity to sue). With respect to the *in loco parentis* doctrine, see generally Mahanoy Area Sch. Dist. v. B.L., 594 U.S. 180 (2021) (exploring the modern understanding of *in loco parentis*).

215. *But see* Clare Ryan, *Are Children's Rights Enough?*, 72 AM. U. L. REV. 2075, 2084–87 (2023) (questioning whether children's legal protections are sufficient to protect their interests).

216. 467 U.S. 253, 265, 268 (1984).

mobility interest, even if the majority ultimately found it outweighed.[217] That tension (acknowledgment of an interest followed by its partial subordination) reappears throughout circuit court decisions addressing curfews, detention, and other restrictions.

Among the federal courts of appeal, the most consistent theme (and a cause for hope in the walk-to-school context) is that minors have been permitted to assert free-movement claims without threshold dismissal, even where the claims ultimately failed. In the Fifth Circuit's decision in *Qutb v. Strauss*, for example, minor plaintiffs challenged a municipal curfew ordinance on the ground that it infringed their right to locomotion.[218] The court assumed without deciding that such a right existed and that minors could invoke it. Applying strict scrutiny, the court nonetheless upheld the ordinance, concluding that the city's interests in juvenile safety and crime prevention were compelling and that the ordinance was narrowly tailored.[219] Notably, the court did not suggest that the minors lacked standing to assert the right or that the right was categorically unavailable to them; instead, it resolved the case through means–end balancing.

The Ninth Circuit took a stronger approach in *Nunez v. City of San Diego*, which represents one of the broadest recognitions of minors' free-movement rights in the context of the right to locomotion.[220] There, the court held that a juvenile curfew ordinance burdened minors' fundamental rights to free movement and locomotion and that strict scrutiny therefore applied.[221] While acknowledging the state's interest in protecting minors, the court rejected the argument that those interests justified broad preventive detention of juveniles absent individualized suspicion. In doing so, the Ninth Circuit treated minors' mobility rights as fully constitutional, differing from those of adults only in the weight afforded to the state's justifications, not in the existence of the rights themselves.[222]

In *Ramos v. Town of Vernon*, discussed in Section III.A, the Second Circuit explicitly recognized that minors possess a right to intrastate travel and freedom of movement as well, but declined to treat it as fundamental for purposes of strict scrutiny.[223] Instead, the court adopted an intermediate scrutiny test, reasoning that neither rational basis review nor strict scrutiny adequately accounted for the state's dual role as regulator and protector of children. But after applying that standard, the

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217. *Id.* at 291 (Marshall, J., dissenting) ("In both situations, the detainee suffers stigmatization and severe limitation of his freedom of movement.").

218. 11 F.3d 488, 492 (5th Cir. 1993).

219. *Id.* at 496.

220. 114 F.3d 935, 945 (9th Cir. 1997).

221. *Id.* at 949.

222. State courts do not address these issues uniformly, unsurprisingly. But there is some caselaw showing a similar recognition of a minor child's fundamental right to freedom of movement, with burdens on that right being subjected to strict scrutiny. *E.g.*, Commonwealth v. Weston, 913 N.E.2d 832, 846 (Mass. 2009). In *Commonwealth v. Weston*, for example, the Massachusetts Supreme Judicial Court applied strict scrutiny to a juvenile curfew and concluded that although the curfew itself was constitutional, accompanying criminal penalties unconstitutionally infringed on minors' freedom of movement. *Id.*

223. 353 F.3d 171, 176, 181 (2d Cir. 2003).

court concluded that the challenged curfew ordinance violated minors' rights.[224] *Ramos* is significant in that while it declined to recognize freedom of movement as a fundamental right minor children enjoy, it nonetheless invalidated a restriction on that right even though the ordinance was only subjected to intermediate scrutiny.

The D.C. Circuit has taken a more restrictive approach. In *Hutchins v. District of Columbia*, the court framed the issue as whether minors possess "the right to freely wander the streets—even at night" and answered in the negative.[225] While acknowledging that a right to free movement might exist in the abstract, the court held that juveniles do not have a fundamental right to be in public spaces at night without adult supervision. The court relied on Supreme Court precedent emphasizing the diminished autonomy of minors and the breadth of the state's *parens patriae* authority.[226] Importantly, however, *Hutchins* did not reject the existence of a right to locomotion altogether. Rather, it concluded that if such a right existed, it did not extend to juveniles in the context presented.

Other circuits have addressed the issue more indirectly. In *D.L. v. Unified School District No. 497*, the Tenth Circuit rejected a claim that a school district's residency policies violated a right to intrastate travel, holding that the Constitution protects only interstate travel.[227] The plaintiffs included minor children, and the court did not question their ability to assert the claim. Instead, it resolved the case by denying the existence of the right itself. The structure of the analysis suggests that had the court recognized a right to intrastate travel, minors could have been proper claimants. But certainly, for purposes of asserting a right to intrastate travel or locomotion in the walk-to-school context, the Tenth Circuit may be unlikely to recognize the right for minors or their parents.

Finally, the Third Circuit's decision in *United States v. Baroni* offers yet another alternative approach to resolving the question of minors' free-movement rights.[228] In *Baroni*, the court recognized the existence of a right to intrastate travel based on earlier precedent but held that the right was not sufficiently established (or not clearly enough articulated) to provide fair notice to government officials.[229] Although *Baroni* did not involve minors as plaintiffs, its reasoning has implications for potential walk-to-school claims: even where a court recognizes a right in principle, qualified immunity and fair notice doctrines may prevent the claim from being successful. In that sense, minors' free-movement rights may exist in theory but remain underenforced due to the unsettled state of the law.

Taken together, these cases offer several takeaways. First, courts rarely hold that minors are categorically excluded from enjoying free-movement rights. Even courts that ultimately reject such claims usually assume that minors can assert them, resolving disputes at the level of scrutiny or means–end balancing rather than standing or entitlement. Second, courts diverge on how protective those rights should be, with some applying strict scrutiny, others intermediate scrutiny, and

224. *Id.* at 187.
225. 188 F.3d 531, 538 (D.C. Cir. 1999).
226. *Id.* at 539.
227. 596 F.3d 768, 776 (10th Cir. 2010).
228. *See* 909 F.3d 550, 588 (3d Cir. 2018).
229. *Id.*

others a form of rational basis review under the guise of *parens patriae*. Third, while minors have not enjoyed sweeping success in asserting their free-movement rights, there have been breakthroughs, with some favorable outcomes due to courts recognizing free-movement rights as fundamental (e.g., *Nunez*), and others due to minor claimants succeeding in overcoming a lower level of scrutiny (e.g., *Ramos*).

Arguably then, the caselaw supports the proposition that minors are recognized as constitutional actors capable of asserting rights to intrastate travel and locomotion, even if those rights are more easily burdened than the analogous rights of adults. The emerging caselaw does not treat children's mobility as a mere privilege revocable at will by the state, certainly, but neither does it elevate it to an absolute entitlement. Instead, most of these cases place minors' free-movement rights within a broader constitutional framework that governs childhood rights generally, acknowledging constitutional protection while permitting greater regulation. But importantly, that framework provides an opening to ask whether walk-to-school prohibitions unconstitutionally burden minor children's free-movement rights.

C. Are the Free-Movement Rights of Children Unconstitutionally Burdened by a Walk-to-School Prohibition?

The previous analyses suggest that minor children can enjoy constitutional rights of their own and that those rights include free-movement rights such as the right to intrastate travel and the right to locomotion. The final analytical question, then, is whether a walk-to-school prohibition unconstitutionally burdens these rights. This Section first explores how a court might find that a minor student's free-movement rights are implicated and burdened by a walk-to-school prohibition and then examines if lesser restrictions (such as a parental companion requirement) would burden free-movement rights. Second, assuming that these rights are burdened, the analysis addresses the possible levels of scrutiny a court might apply. Finally, this Section applies those levels of scrutiny to a walk-to-school prohibition to identify possible arguments states might make to support their school transportation policies.

Essentially, this Section asks whether a categorical or near-categorical prohibition on walking to school constitutes a sufficiently serious interference with a child's liberty interest in movement to trigger constitutional scrutiny. And if so, whether the state's justifications are adequate under the applicable standard of review to survive that scrutiny. As with parental rights, the analysis will be context-dependent. The strength of the child's claim depends on the nature of the restriction, the age of the student, and the extent to which the prohibition restricts otherwise lawful and ordinary movement through public space. Naturally, the more extreme the restriction (such as a total prohibition on pedestrian school access), the more likely a court will find a constitutional violation. Given the trend toward more restrictive policies, it is important to appreciate the constitutional concerns with outright prohibitions, even if they currently remain hypothetical in many school districts.

To begin, a walk-to-school prohibition might burden a child's free-movement rights in at least two ways. First, it restricts the child's ability to traverse public streets and sidewalks for a common and socially accepted purpose.

Walking to school is not an incidental or recreational activity but a routine, daily trip that connects the child to a core public institution. School is also compulsory for most students.[230] Second, the walk-to-school prohibition is destination-specific rather than behavior-specific. It does not regulate unsafe conduct necessarily, such as crossing against traffic signals or loitering in dangerous areas, but instead conditions access to school on the use of a particular mode of transportation. In that respect, the restriction resembles the neighborhood exclusion zones invalidated in intrastate travel cases (e.g., *Johnson v. City of Cincinnati*) more than the time-limited curfews upheld in others.[231] In theory the child remains free to walk, but in practice they are barred from doing so when the destination is the school campus.

Courts evaluating curfews and exclusion ordinances have often treated this type of geographic or functional limitation as a meaningful burden on free movement.[232] In cases recognizing a right to intrastate travel, the harm is not merely that movement is regulated, but that the state dictates where an individual may or may not go within the community. A walk-to-school prohibition operates in a similar fashion. It does not criminalize walking generally, but it removes one of the most important destinations in a child's daily life from the set of places the child may reach on foot. For younger students, that destination may be the only regular point of independent movement outside the home.[233] Even for older students, it is often the most frequent and predictable trip. The restriction therefore has a structural effect on the child's liberty that is more than a minor inconvenience.

The burden is amplified where the prohibition is categorical and applies regardless of age, supervision, or route conditions. A policy that bars a 17-year-old from walking a few blocks on residential streets with sidewalks burdens free movement in a more significant and problematic way than a policy that restricts unsupervised walking by kindergarten students across high-speed urban highways. The former approaches a general exclusion from pedestrian access to a public institution, while the latter more closely resembles a safety regulation calibrated to local conditions. Courts considering juvenile curfews have repeatedly emphasized this distinction, noting that age-neutral or broadly sweeping restrictions are more difficult to justify than targeted ones. The *Nunez* and *Ramos* courts, for example, were both critical of travel restrictions on minors that were categorical, overly broad,

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230. *See* Daniel J. Rose, *Compulsory Education and Parent Rights: A Judicial Framework of Analysis*, 30 B.C. L. REV. 861, 866–74 (1989); Philip B. Kurland, *The Supreme Court, Compulsory Education, and the First Amendment's Religion Clauses*, 75 W. VA. L. REV. 213, 224–31 (1973); Vivian E. Hamilton, *Home, Schooling, and State: Education in, and for, a Diverse Democracy*, 98 N.C. L. REV. 1347, 1353–75 (2020).

231. *See, e.g.*, 310 F.3d 484, 487 (6th Cir. 2002).

232. *See, e.g.*, *id.* at 505; Lutz v. City of York, 899 F.2d 255, 268 (3d Cir. 1990); City of Chicago v. Morales, 527 U.S. 41, 53–55 (1999); Papachristou v. City of Jacksonville, 405 U.S. 156, 171 (1972).

233. Roger Hart's 1979 study on the relationship between children's mobility and development suggests that children develop and obtain a sense of place by moving about their environments and their neighborhoods independently, and that when they are not allowed to do so, children develop weaker attachments to those places and to their communities. HART, *supra* note 8.

and not context-specific.[234] A walk-to-school prohibition that draws no distinctions among students is therefore more likely to be viewed as a substantial burden on a minor's liberty interest.

The same logic applies, though perhaps with less force, to policies that allow walking only with adult accompaniment. These requirements do not prohibit walking entirely, but they condition it on parental availability. For some families, that condition may be functionally prohibitive, effectively eliminating walking as an option. From the child's perspective, the requirement still restricts independent movement in public space and communicates that walking alone is impermissible. Courts assessing curfews have sometimes treated similar conditions as partial burdens on free movement rather than outright deprivations, which suggests that the constitutional analysis may turn on the degree of the burden. In *Qutb*, for example, the court held that a juvenile curfew was not a total deprivation of freedom of movement because it allowed for, among other exceptions, juvenile movement while accompanied by a parent.[235] Still, it is notable that despite these exceptions, the court acknowledged a burden on freedom of movement.

A more difficult question arises where a child faces a de facto prohibition instead of a de jure prohibition. In this scenario, the school does not prohibit walking to school, but the surrounding street design makes walking effectively impossible or unreasonably dangerous. Sidewalks may be absent, crossings unmarked, traffic speeds high, or routes fragmented in ways that make pedestrian travel impracticable for children. From the student's perspective, the result is indistinguishable from an express prohibition: the child cannot safely traverse public space to reach school on foot.

The problem here is that attributing constitutional responsibility for that burden is more complex. Although both school districts and urban planners are arms of the state, they are distinct governmental actors operating under different statutory mandates and decision-making processes. Courts are generally reluctant to aggregate the actions of separate state entities to find a single constitutional violation, particularly where no one actor has formally restricted movement.[236] At the same time, free-movement cases have not been limited to express bans. Courts assessing exclusion zones and curfews have looked to functional effects as well as

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234. *See* Nunez v. City of San Diego, 114 F.3d 935, 948–49 (9th Cir. 1997); Ramos v. Town of Vernon, 353 F.3d 171, 187 (2d Cir. 2003).

235. Qutb v. Strauss, 11 F.3d 488, 494 (5th Cir. 1993).

236. *See, e.g.*, DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 195–97 (1989) (holding that the Due Process Clause generally does not impose affirmative duties on the state to protect individuals from harm and emphasizing that constitutional liability requires state action that restrains liberty rather than background conditions); Washington v. Davis, 426 U.S. 229, 239–42 (1976) (rejecting constitutional liability based solely on disparate or burdensome effects absent a clearly attributable governmental decision or intent); Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691–95 (1978) (requiring that constitutional violations be traceable to an official policy or decision of the relevant governmental entity and rejecting theories that aggregate independent governmental acts); Rizzo v. Goode, 423 U.S. 362, 371–77 (1976) (declining to impose structural constitutional liability absent a direct causal link between challenged conditions and a specific state actor's conduct).

formal classifications, asking whether state action meaningfully prohibits access to public space for ordinary purposes.[237] A plausible argument could be made then that when the state, through its planning and transportation choices, creates a built environment that predictably prevents children from walking to school, and the school relies on those conditions to justify inaction or denial of alternatives, the combined effect burdens a child's free-movement interest.

Nonetheless, the doctrinal challenge for plaintiffs is not the absence of a burden but the problem of attribution and remedy. Courts may be hesitant to constitutionalize unsafe street design absent discriminatory intent or an explicit restriction, and they may view the claim as sounding more like a tort or policy problem than a due process one. Still, where unsafe design is longstanding and well-documented, and it foreseeably excludes children from pedestrian access to a public school, a functional prohibition argument at least exposes the tension between freedom of movement and de facto immobility created by state action (or inaction).

If a walk-to-school prohibition does burden a child's free-movement rights, the next question is what level of scrutiny a court is likely to apply. The caselaw does not provide a single answer. As discussed in Section III.B, courts have applied strict scrutiny, intermediate scrutiny, and rational basis review to restrictions on minors' movements, depending on how they characterize the right and the state's role as *parens patriae*. The most protective approach treats the right to free movement as fundamental even for minors, triggering strict scrutiny when the state imposes broad restrictions.[238] A more deferential approach might treat free-movement rights as diminished in the juvenile context and apply intermediate scrutiny or a version of the rational basis test.

Under a strict scrutiny framework, a categorical walk-to-school prohibition would face significant difficulty. Protecting children from serious physical harm is likely to qualify as a compelling interest in the abstract, but the state would still need to show that a blanket ban is narrowly tailored to that interest. As with parental rights, the existence of less restrictive alternatives undermines that showing. If the state can address safety concerns through route designation, traffic calming, crossing guards, staggered dismissal times, or supervision requirements, a total prohibition is unlikely to be the least restrictive means available. Courts striking down curfews have emphasized this part of the constitutional rights analysis, reasoning that the state may not broadly restrict liberty when more targeted measures would suffice.[239]

Even under intermediate scrutiny, which several courts have applied to juvenile curfews, the state must demonstrate a substantial relationship between the restriction and an important governmental objective.[240] This standard is less demanding than strict scrutiny but still requires evidence rather than generalizations. A school district asserting that walking is dangerous would likely need to show that pedestrian access to the campus poses a concrete and pervasive risk that cannot be mitigated through ordinary traffic control measures the school could implement.

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237. In *Morales*, for example, the Supreme Court found problematic the fact that the ordinance "does reach a substantial amount of innocent conduct." 527 U.S. at 60.

238. *See, e.g.*, *Nunez*, 114 F.3d at 946.

239. *See, e.g.*, *id.* at 946–51; *Ramos*, 353 F.3d at 187.

240. *See, e.g.*, *Ramos*, 353 F.3d at 183.

General references to traffic volumes or liability concerns are unlikely to satisfy this burden. In curfew cases applying intermediate scrutiny, courts have invalidated ordinances where the fit between the restriction and the asserted interest was weak or overinclusive.[241] A walk-to-school prohibition that applies equally to safe and unsafe routes would present similar problems.

Rational basis review presents the friendliest terrain for the state, but even here minor students could raise legitimate claims. Although courts are deferential under rational basis review, they have sometimes invalidated restrictions on movement where the policy appears arbitrary or unrelated to its stated purpose.[242] A prohibition that allows students to arrive by private car but not on foot may invite skepticism, particularly if the stated concern is traffic safety, as walking typically reduces vehicular congestion rather than exacerbating it. While rational basis review does not require empirical precision, it does require a plausible connection between means and ends. A court might reasonably question whether forcing all students into cars advances pedestrian safety in a coherent way. Naturally, the state is on more solid footing if the school transportation choices include effective busing as an alternative to private cars.

With respect to the state's asserted interests, safety is likely the strongest interest the state can advance, but its persuasive force is context-dependent. Courts evaluating curfews have distinguished between generalized fears and documented problems. Where a city could point to concrete evidence of juvenile victimization during curfew hours, courts have been more inclined to uphold restrictions.[243] Where the record consisted largely of anecdote or speculation, courts have been less deferential.[244] A school district defending a walk-to-school prohibition would likely face a similar evidentiary burden if heightened scrutiny applies.

Liability avoidance and administrative convenience are weaker justifications when weighed against a child's liberty interest. Even courts applying rational basis review have been reluctant to credit administrative ease as a sufficient reason to restrict fundamental or quasi-fundamental rights. In the juvenile curfew context, courts have repeatedly noted that convenience cannot substitute for necessity when liberty is at stake.[245] A walk-to-school prohibition justified primarily by staffing limitations or fear of litigation is therefore unlikely to be favorably received under any form of heightened review. Uniformity and equal treatment arguments likewise have limited force. Treating all students the same does not necessarily render a policy constitutional if the policy burdens a protected interest. Curfew cases suggest that uniform application can exacerbate rather than cure constitutional defects when it results in overly broad restrictions on freedom of

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241. *Id.* at 187.

242. *See Morales*, 527 U.S. at 56–64 (invalidating a public-space exclusion ordinance where the restriction on movement bore no meaningful relationship to the city's asserted crime-prevention objectives and operated in an arbitrary manner); Papachristou v. City of Jacksonville, 405 U.S. 156, 162–71 (1972) (striking down a vagrancy ordinance that criminalized ordinary movement and presence in public places without a rational connection to public safety).

243. *See* Qutb v. Strauss, 11 F.3d 488, 493 (5th Cir. 1993).

244. *See Nunez*, 114 F.3d at 947–48; *Ramos*, 353 F.3d at 185–86.

245. *See Nunez*, 114 F.3d at 951–52.

movement.[246] A uniform prohibition on walking may simplify enforcement, but it does so by disregarding differences among students, routes, and neighborhoods. Courts might be wary of such generalized treatments where liberty interests are concerned.

Environmental and infrastructural constraints likely occupy an intermediate position. In some settings, the absence of sidewalks or the presence of high-speed traffic may make walking genuinely hazardous.[247] A court may be sympathetic to a school district that can demonstrate that it lacks authority or resources to remediate those conditions in the short term. Even then, however, a categorical prohibition is unlikely to be the only option. Temporary measures, targeted restrictions, or coordination with local governments may achieve safety objectives without broadly burdening children's movement. The fact that infrastructure is unsafe because of prior governmental choices may further complicate the state's position, as courts may be reluctant to allow the state to invoke its own policy failures as a justification for restricting liberty.

Finally, age sensitivity is likely to play a large role in any judicial analysis. Courts evaluating minors' rights are likely to recognize developmental differences. A policy that might survive scrutiny as applied to elementary school students may not survive as applied to high school students. A walk-to-school prohibition that treats a 6-year-old and a 16-year-old identically might be vulnerable, therefore, especially if it prohibits independent movement for young adults who would otherwise be permitted to navigate public space freely. This concern has surfaced repeatedly in curfew cases, where exemptions for older minors have often been decisive in upholding or invalidating ordinances.[248]

Taken together, these considerations suggest that a walk-to-school prohibition is at least constitutionally questionable when evaluated through the lens of a child's free-movement rights. The burden on liberty is real, particularly when the restriction is categorical and destination-specific. The applicable level of scrutiny is uncertain and likely to vary by jurisdiction, but under strict or intermediate scrutiny, the policy would face substantial hurdles. Even under rational basis review, the fit between the prohibition and the state's asserted interests may be sufficiently weak to invite judicial skepticism.

None of this implies that children have an unfettered constitutional right to walk to school under all circumstances. The caselaw does not support an absolute claim of that nature. It does, however, suggest that the state may not lightly prohibit a child's ordinary use of public streets to access a public institution. Where the state

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246. *See id.*

247. *See* Vanessa Casado Perez, *Reclaiming the Streets*, 106 IOWA L. REV. 2185, 2191–92 (2021).

248. *See generally* Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1266 (M.D. Pa. 1975) ("Obviously, the older the persons being regulated, the greater the burden on the state to justify the regulation in terms of reasonableness, and there would come an age beyond which a nocturnal curfew could not be constitutionally applied, absent extraordinary or emergency circumstances."); City of Sumner v. Walsh, 61 P.3d 1111, 1118 (Wash. 2003) (Chambers, J., concurring) (explaining that a minor's age and judgment comes into play when determining whether a government action is narrowly tailored).

chooses prohibition over regulation (or generalized uniformity over tailoring), it risks crossing the line from understandable safety regulation into impermissible restraints on student liberty. In that sense, the free-movement analysis converges with the parental rights analysis discussed above. Both point toward a constitutional preference for narrowly tailored, evidence-based approaches that respect family autonomy and children's developing independence while addressing genuine safety concerns.

CONCLUSION

Whether the analysis is framed through the fundamental right of parents to direct the care, custody, and control of their children, or through the emerging recognition of children's own free-movement rights, this Article concludes that a categorical walk-to-school prohibition sits, at best, on constitutionally unstable ground. In both rights-based frameworks, the constitutional problem is not that the state may never regulate how children travel to school, but that broad prohibitions substitute the government's risk aversion for individualized judgment in ways that likely overburden parents' and children's liberty interests without sufficient justification.

From the parental rights perspective, a total walk-to-school prohibition intrudes directly into a domain historically reserved to families. Decisions about whether a child may walk to school, with whom, and under what conditions have traditionally been made by parents, informed by their knowledge of the child's maturity, the neighborhood, and the specific route. *Troxel* and its predecessors do not immunize every parental choice from regulation, but they do establish a presumption that fit parents act in their children's best interests and that the state must offer more than generalized safety concerns to displace parental judgment.[249] When a school district forbids walking altogether, even with parental consent or accompaniment, it does not merely regulate the parental choice; it eliminates parental choice entirely. Given that burden, strict scrutiny is the appropriate level of scrutiny with which to evaluate and test the school transportation policy in question; in most cases a categorical prohibition will fail to overcome the test. Student safety is undoubtedly an important and sometimes compelling interest, but a blanket ban is rarely the least restrictive means of advancing that interest. Less intrusive alternatives exist in nearly every context, including designated walking routes, crossing guards, staggered dismissal times, or age- and route-specific rules. The closer a policy comes to extinguishing parental discretion rather than regulating it, the more constitutionally suspect it becomes.

The free-movement analysis reaches a similar conclusion but through a different lens. Although the contours of minors' free-movement rights might remain unsettled for the foreseeable future, the curfew and intrastate travel cases suggest that children are not constitutionally invisible when it comes to mobility. Courts have repeatedly assumed, and sometimes expressly held, that minors possess liberty interests in movement that cannot be burdened arbitrarily. A walk-to-school

249. *See* Troxel v. Granville, 530 U.S. 57, 68 (2000) (plurality opinion); Pierce v. Soc'y of Sisters, 268 U.S. 510, 535 (1925); Meyer v. Nebraska, 262 U.S. 390, 399–402 (1923).

prohibition burdens those interests in a meaningful way. It is destination-specific rather than conduct-specific, removing one of the most important public destinations in a child's daily life from the set of places the child may reach on foot. For many students, particularly younger ones, the school commute may be their primary opportunity for independent movement in public space. Prohibiting that movement reshapes the child's relationship to the school and, more broadly, to the city.

Under strict or intermediate scrutiny, a categorical prohibition is difficult to defend for the same reasons it fails under a parental rights analysis. Even under rational basis review, the coherence of a policy that channels all students into cars in the name of safety is not particularly convincing. Walking generally reduces traffic congestion around schools, and the risk profile of pedestrian travel varies dramatically by age, route, and street design. A uniform school transportation policy may simplify administration, but curfew cases illustrate that uniformity can exacerbate constitutional shortcomings when that uniformity results in overbreadth. In that sense, the free-movement analysis reinforces the conclusion that prohibition is an especially blunt instrument in a context that probably demands nuance.

Between these poles lies a spectrum of less restrictive policies that warrants more careful, fact-specific analysis. Parental accompaniment requirements, age thresholds, and route-based restrictions impose smaller burdens on parental autonomy and children's movement than outright bans. A requirement that young elementary school students be accompanied on particularly hazardous routes may be defensible where the school can document concrete risks that cannot be easily mitigated. Age limits that relax supervision requirements as children mature better acknowledge developmental realities and are more likely to survive constitutional scrutiny than rules that treat all minors alike. Even these policies, though, are not constitutional no-brainers for the state. A supervision requirement that effectively forces working parents to drive may function as a de facto prohibition for some families, and age thresholds that are not reflective of actual conditions may resemble the arbitrariness of categorical bans. The constitutional lesson, perhaps, is not that any regulation short of prohibition is permissible, but that the strength of the state's justification must rise with the severity of the burden imposed.

The convergence of parental rights and free-movement rights with respect to walking to school also hints at a more constructive path forward. If prohibition is constitutionally problematic, then regulation and, most importantly, redesign, become more promising alternatives. This is where this Article's rights-based analysis intersects with contemporary urban planning best practices. The School Streets model adopted in Paris, New York City, and other cities around the world offers a concrete example of how safety and liberty can be aligned rather than pitted against each other.[250] By restricting through-traffic near schools during arrival and dismissal times, calming traffic through wider sidewalks and slower vehicular speeds, and generally prioritizing pedestrians and cyclists, these programs more proactively address the risks that school districts often cite to justify walking

250. *School Streets*, OPENPLANS, https://www.openplans.org/schoolstreets [https://perma.cc/M686-63YR] (last visited July 29, 2026) (describing New York City's School Streets program).

prohibitions or restrictions.[251] Instead of responding to unsafe streets by restricting children's movement, School Streets responds by reshaping the streets to promote children's movement.[252]

Using schools as hubs for pedestrian-friendly corridors also lessens the constitutional problem. When the built environment supports safe walking, the need for restrictive transportation policies diminishes. Parents can exercise their judgment without exposing children to unreasonable risk, and children can access school in ways that promote independence. From a legal perspective, this approach reduces the tension between state interests and individual rights by attempting to align them. A city that invests in safe routes to school is not only promoting public health and active mobility; it is also reducing the likelihood that its school districts will feel compelled to adopt constitutionally questionable policies.[253]

This rights-based analysis therefore supports a broader recommendation that extends beyond litigation and potential constitutional challenges. School districts and urban planners should treat walking to school not as a liability to be managed, but as a mode of access to be supported. That does not require ignoring safety risks, but it does require shifting the focus of the state's action from regulating or restricting children's behavior to improving the conditions that shape that behavior. When streets are designed primarily for cars, prohibiting children from walking may seem rational. When streets are designed with children in mind, prohibition and restriction policies become unnecessary and difficult to justify.

This Article's preceding parts bring to the surface the constitutional implications of school transportation policies that have largely escaped legal scrutiny. Walk-to-school prohibitions (and lesser restrictions) are often framed as mundane administrative decisions, presumed to be insulated from constitutional analysis by deference to school officials and fears about liability.[254] By placing these policies within the established and evolving doctrines of parental rights and free-movement rights, this Article demonstrates that walk-to-school restrictions raise important questions about liberty, family autonomy, and the use of public space. This Article does not claim that children have an absolute right to walk to school in all circumstances or that the state must accept extreme safety risks. It does claim that walk-to-school prohibitions and other severe restrictions should be the

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251. RICHARD CLARKE, CHILD HEALTH INITIATIVE, SCHOOL STREETS: PUTTING CHILDREN AND THE PLANET FIRST 2 (Apr. 2022), https://www.fiafoundation.org/media/hr3fmhin/school-streets-report-pages.pdf [https://perma.cc/7HTT-42E3].

252. *See* Anna E. Greer et al., *Walking Toward a Brighter Future: A Participatory Research Process to Advocate for Improved Walk-to-School Corridors*, 22 HEALTH PROMOTION PRAC. 248, 254–55 (2021).

253. *See* Chad D. Emerson, *Smart Growth and Schools: Legal Hurdles and Legal Solutions for Community-Scale Schools*, 37 MCGEORGE L. REV. 363, 368–74 (2006) (describing the public-health benefits associated with policies that facilitate walking and bicycling to school).

254. Perhaps, too, there is insufficient attention paid to parental rights and freedom of movement in the urban mobility context.

exception rather than the rule, and that when the state chooses prohibition, it bears a heavy burden to justify that choice.

At a broader level, the right to walk to school demonstrates one way in which constitutional law interacts with everyday urban life. The decline of walking is often attributed to culture shifts or convenience, but it is also the product of legal choices about land use, transportation, and risk allocation. Reexamining those choices through a constitutional lens suggests that the carpool line, too, is a reflection of how law structures children's relationships to their communities. By tying together parental authority, children's liberty interests, school transportation policy, and urban design, this Article invites the legal community, school administrators, and urban planners to reconsider whether the default assumption should be that children are driven to school or whether the law should once again make room for them to walk.