

MEGAN PATENO

## Custody, Finality, and the Constitution: Re-examining *Bergeron v. Bergeron* Through the Lens of Parental Liberty

**ABSTRACT.** Family law procedures in the United States are constitutionally mandated to balance state interests with the private interests of families. The Louisiana family court system serves as an example of this balancing effort, where *Bergeron v. Bergeron* (1986) creates the standards controlling the state's rules for child custody modification. *Bergeron* sets a high evidentiary threshold that must be met before a family court will reconsider an existing custody decree, reflecting the state's interest in stability. Questions about the decision's constitutionality have arisen, but the framework in *Bergeron* has been continually reaffirmed since its establishment by the Louisiana Supreme Court in 1986. This article analyzes the major doctrinal inconsistencies and Fourteenth Amendment due process concerns arising from the *Bergeron* standard, arguing that the Louisiana custody modification framework risks creating procedural due process barriers and conflicts with prior Supreme Court decisions regarding parental rights. It will also propose a recalibrated approach to custody modification proceedings that preserves state interests while upholding fundamental parental rights and liberty interests.

**AUTHOR.** Megan Pateno is a third-year Political Science major and Sociology minor at the University of California, San Diego. She plans to attend law school and is interested in family law. She would like to recognize Professor Amna Salam and attorney Lindsay Slocum for their thoughtful feedback. She would also like to thank her editors, Andrea Dao and Kajal Puri, whose feedback and steady encouragement significantly strengthened this paper, as well as her managing editor, Vismaya Sista, for her support and guidance throughout the editorial process.

## INTRODUCTION

Family law proceedings in the United States are complex, involving lengthy procedures and circumstances unique to each case, which makes access to judicial review especially important when parental rights are at stake. Family law is primarily governed at the state level, meaning that each state has primary jurisdiction over divorce and child custody cases. Across state jurisdictions, the “best interests of the child” framework governs child custody proceedings.<sup>1</sup> States often interpret this legal framework as promoting stability in children’s lives by limiting repeated litigation and frequent changes to custody arrangements.<sup>2</sup> While these interests are important, the procedural mechanisms used to promote stability also restrict parents’ access to judicial reconsideration of existing custody arrangements. When custody modification standards make it more difficult to obtain a court hearing on the merits of the case, they risk denying parents a meaningful opportunity to be heard regarding their parental rights. This risk causes constitutional concern under the Fourteenth Amendment’s procedural protections,<sup>3</sup> particularly when the courts deny a fit parent an opportunity to present their claims regarding their legal relationship with their children.<sup>4</sup> These concerns raise questions that extend beyond state family law doctrine and implicate broader constitutional limits on custody modification frameworks.

This article will examine how child custody modification standards deprive parents of their Fourteenth Amendment parental rights through a case study of Louisiana’s custody modification framework. Child custody modification standards govern when courts may revisit existing custody orders after a final judgment has been entered. In Louisiana, these standards are structured around a change-of-circumstances requirement and a heightened burden of proof for modification following considered decrees. While these standards are designed to promote stability and finality in custody arrangements, they may also limit a parent’s ability to obtain individualized judicial review of their custodial rights, raising potential due process concerns. Louisiana serves as a strong example because its laws explicitly outline the requirements a parent must

---

<sup>1</sup> The “best interests of the child” standard is a flexible legal standard used by judges in state family courts to evaluate various factors to determine the most ideal living arrangement for a child.

<sup>2</sup> *See* *Burchard v. Garay*, 42 Cal. 3d 531 (1986); *see also* *Gibbs v. Gibbs*, 210 F. 3d 491 (5th Cir. 2000); *see also* *Mastny v. Mastny*, 2017 N.C. App. Lexis 101 (2018).

<sup>3</sup> Procedural Due Process under the Fourteenth Amendment ensures that state governments cannot deprive people of life, liberty, or property without established procedures.

<sup>4</sup> A legal relationship is a recognized connection between two individuals that is governed by law, such as the relationship between a parent and child, or spouses.

meet before a court considers a custody modification request, illustrating how these standards potentially interfere with parental rights. The Louisiana Supreme Court case *Bergeron v. Bergeron* (1986) will serve as a focal point in this analysis, as it outlines and reaffirms this framework by imposing a heavy burden on parents seeking to alter an existing custody arrangement.<sup>5</sup> *Bergeron* highlights the state's interest in promoting family stability, as well as the judicial tension between parental rights and the state's interests. *Bergeron*'s custody modification standards raise constitutional due process concerns and risk infringing on a constitutionally protected parental liberty interest.

Existing scholarship addressing *Bergeron* focuses on the decision's statutory interpretation and its reaffirmation of Louisiana's child custody modification standards.<sup>6</sup> However, far less attention has been paid to custody modification standards that restrict access to an individualized hearing. This raises the question of whether such standards are consistent with procedural due process protections governing parental liberty interests. This analysis will depart from existing scholarship by examining *Bergeron* through a constitutional lens grounded in the Fourteenth Amendment's procedural due process protections for parental liberty interests.

This article will argue that Louisiana's custody modification framework, reaffirmed in *Bergeron*, risks creating a procedural barrier that prevents otherwise fit, non-custodial parents from accessing adequate judicial review. This legal framework risks the wrongful deprivation of parental rights by restricting access to individualized custody modification hearings. A procedural due process barrier affecting fit, noncustodial parents creates a constitutional issue. It risks violating the Fourteenth Amendment due process clause by conflicting with *Stanley v. Illinois* and other Supreme Court decisions regarding parental rights.<sup>7</sup> By focusing primarily on procedural due process, this article will argue that the *Bergeron* custody modification standard does not provide constitutionally adequate access to judicial review. When access to reconsideration of custody orders depends on clearing a heavy threshold, the risk of erroneous deprivation increases, creating a structural disadvantage for the noncustodial parent. This article argues for recalibrating approaches to custody modification, preserving stability while ensuring parents are given proper judicial

---

<sup>5</sup> *Bergeron v. Bergeron*, 492 So. 2d 1199 (1986).

<sup>6</sup> Jonathan Scofield Marshall, *Bergeron v. Bergeron—Reaffirming the Need to Show Circumstances Materially Affecting the Welfare of the Child*, 61 Tulane L. Rev. 1225, 1229 (1987).

<sup>7</sup> See *Stanley v. Illinois*, 405 U.S. 645 (1972); see generally *Santosky v. Kramer*, 455 U.S. 745 (1982); *Troxel v. Granville*, 530 U.S. 57 (2000); see also *Meyer v. Nebraska*, 262 U.S. 390 (1923); see also *Prince v. Massachusetts* 321 U.S. 158 (1944).

hearings. Louisiana child custody modification standards should be amended to be consistent with Supreme Court rulings upholding parental rights.

## I. EXAMINING *BERGERON V. BERGERON*

The judicial standard outlined in *Bergeron* establishes a controlling burden,<sup>8</sup> as threshold requirements govern Louisiana child custody modification rules.<sup>9</sup> This section will outline Louisiana’s custody modification framework, articulated in *Bergeron*, which is unjust and inconsistent with prior Supreme Court decisions. The state’s interests in stability and finality play a significant role in the development of the *Bergeron* standard.

### A. *Considered Decrees, Custody Classifications, and the Change-of-Circumstances Rule*

Considered decrees are final court orders issued by Louisiana judges following a contested hearing or trial.<sup>10</sup> Unlike a consent decree, which is a judgment from an agreement between parties, a considered decree requires a higher burden of proof to modify.<sup>11</sup> In the context of Louisiana family law, considered decrees<sup>12</sup> include court orders regarding divorce and child custody.<sup>13</sup> In the case of *Bergeron*, the initial decree dissolved the marriage and awarded McLee sole custody of the child.<sup>14</sup>

The two types of child custody in Louisiana are legal custody and physical custody. Legal custody allows a parent to make legal decisions for their child, including

---

<sup>8</sup> A controlling burden is the burden of proof that rests on the party asserting a claim to prove the claim to the required standard.

<sup>9</sup> La Code Civ. Proc. Ann. art. 74.2 (2025).

<sup>10</sup> Legal Information Institute, *Decree*, <https://www.law.cornell.edu/wex/decree> (last visited Jan. 6, 2026).

<sup>11</sup> Legal Information Institute, *Consent Decree*, [https://www.law.cornell.edu/wex/consent\\_decree](https://www.law.cornell.edu/wex/consent_decree) (last visited Feb. 10, 2026).

<sup>12</sup> The term “considered decree” is specific to Louisiana family law, particularly Louisiana child custody cases. While other states use the term “decree” to refer to final judgements, Louisiana makes a legal distinction between consent decrees and considered decrees

<sup>13</sup> Louisiana Legal Services and Pro Bono Desk Manual, *4.44 Modification of Considered Decree*, <https://probonodeskmanual.loyno.edu/family-law/444-modification-considered-decree> (last visited Feb. 11, 2026).

<sup>14</sup> *Bergeron*, 492 So. 2d at 1194.

education and healthcare decisions.<sup>15</sup> Physical custody determines where the child lives and how much time each parent spends with the child.<sup>16</sup> A joint custody arrangement awards both parents custody of the child, while sole custody awards all legal and/or physical custody rights to one parent.<sup>17</sup>

Louisiana's change-of-circumstances<sup>18</sup> rule and heavy burden of proof rule come from the courts' interpretation of Article 157.<sup>19</sup> The change-in-circumstances judicial precept states that a non-custodial parent seeking custody order modifications must show that a change in circumstances affecting the well-being of the child has occurred since the prior custody order.<sup>20</sup> Modifying custody orders requires the non-custodial parent to meet a heavy burden of proof by demonstrating that the existing custody arrangement is harmful to the child. In *Bergeron*, the lower court ruled that the change-of-circumstances rule and the heavy burden of proof for modification of custody rule had been disregarded by the Louisiana legislature in the 1977 amendment to Article 157.<sup>21</sup> This interpretation by the lower court effectively gave parents a larger say in the upbringing of their children by lowering the evidentiary requirement for a court to consider custody modification. The legislature did not explicitly eliminate these requirements, but the lower court interpreted the amendment as removing them. This change, giving parents easier access to custody modification hearings, reinforced parental rights over state interests.

### *B. Legislative Context*

Historically, Louisiana Civil Code Article 157 has governed the award of permanent child custody orders. Article 157 outlines that judges award custody to the parent filing for divorce unless it is in the best interest of the child to be in the custody

---

<sup>15</sup> Olivia Wathne, *Louisiana Child Custody Laws*, FindLaw (Apr. 30, 2025), <https://www.findlaw.com/state/louisiana-law/louisiana-child-custody-laws.html>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> The change-of-circumstances rule requires a parent seeking modification of a custody order to demonstrate a material change in circumstances since the prior decree before a court will reconsider custody. The heavy-burden rule requires the party seeking modification to show that continuation of the current custody arrangement is so deleterious to the child as to justify modification or that the benefits of the proposed change substantially outweigh the harm caused by disrupting the child's environment.

<sup>19</sup> See *Estes v. Estes*, 258 So. 2d 857 (La. 1972); see also *Fulco v. Fulco*, 183 So. 3d 573 (La. Ct. App. 2015).

<sup>20</sup> *Bergeron*, 492 So. 2d at 1195.

<sup>21</sup> *Id.*

of the other parent.<sup>22</sup> Subsequent child custody cases have developed case law interpreting Article 157. This application has resulted in the development of a precedent that includes five jurisprudential precepts: (1) the best interest of the children principle,<sup>23</sup> (2) the maternal preference rule,<sup>24</sup> (3) the change of circumstances rule, (4) the heavy burden of proof for modification of custody rule<sup>25</sup> (5) the appellate review standard.<sup>26</sup> The “heavy burden of proof” requires a party seeking modification of a considered custody decree to show that the circumstances have changed and that the continuation of the existing arrangement is so harmful to the child’s well-being that modification is warranted, often requiring strong evidence of harm.

After Louisiana courts established these judicial precepts, the legislature amended and reenacted Civil Code Article 157 in 1977 to codify the best-interest principle and statutorily reject the maternal-preference rule.<sup>27</sup> This amendment prioritizes the child’s safety, stability, and overall well-being, making these the primary factors in determining child custody arrangements.<sup>28</sup> Following the amendment, a Louisiana court interpreted the statute to reject both the maternal preference presumption and the heavy burden of proof standard.<sup>29</sup> In *Bordelon v. Bordelon* (1980), the court reasoned that the act not only rejected the maternal preference rule but also implicitly rejected the heavy burden of proof standard for custody modification.<sup>30</sup> Since the heavy burden requirement constrained courts from fully applying the best-interest standard when considering custody modifications, the court concluded that lawmakers intended to remove all other jurisprudential precepts that courts previously developed.<sup>31</sup> This

---

<sup>22</sup> *Bergeron*, 492 So. 2d at 1195.

<sup>23</sup> “The paramount consideration in determining to whom custody should be granted is always the welfare of the children;” *Estes*, 258 So. 2d 859 (1972).

<sup>24</sup> The maternal preference rule presumes that it is in the best interests of the children to grant custody to the mother, unless she is morally unfit or otherwise unsuitable; *Estes*, 258 So. 2d 859 (1972).

<sup>25</sup> The heavy burden of proof for the modification of custody rule says that “when the trial court has made a considered decree of permanent custody, the party seeking the change bears a heavy burden of proving that the continuation of the present custody is so deleterious to the children as to justify removing them from the environment to which they are accustomed;” *Estes*, 258 So. 2d 859 (1972).

<sup>26</sup> The appellate review standard says, “upon appellate review, the determination of the trial judge in child custody matters is entitled to great weight, and his discretion will not be disturbed on review in the absence of a clear showing of abuse;” *Estes*, 258 So. 2d 859 (1972); see *Fulco v. Fulco*, 259 La. 1122, 254 So. 3d 603 (1971).

<sup>27</sup> La. Civ. Code Ann. art 131. (2025) (courts to determine custody).

<sup>28</sup> La. Civ. Code Ann. art. 134. (2025) (factors in determining child’s best interest).

<sup>29</sup> *Bordelon v. Bordelon*, 390 So. 2d 1325 (La. 1980).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

opinion did not address whether the change-of-circumstances rule was also abrogated.<sup>32</sup>

By eliminating the maternal-preference rule, the Louisiana legislature signaled that custody decisions should not be based on categorical assumptions about parents, such as the presumed role of the mother.<sup>33</sup> The best-interest framework provided Louisiana courts with broad discretion in evaluating custody arrangements, prioritizing stability once a child custody decision had been finalized.

### C. *Procedural History*

In 1978, Petitioner Burke Anthony Bergeron Jr. filed for divorce from Respondent Marie Bergeron McLee.<sup>34</sup> McLee was awarded sole custody of their child in the divorce judgment. Following the initial judgment, Bergeron unsuccessfully attempted to modify the child custody order on three separate occasions.<sup>35</sup> On August 8, 1984, Bergeron filed a request for sole custody of the child a fourth time after McLee allowed the child to stay with Bergeron and to attend school nearby.<sup>36</sup> Bergeron argued that the Louisiana courts had disregarded both the change-of-circumstances and the heavy burden of proof rules.<sup>37</sup> The trial court determined that Bergeron should be granted primary physical custody of the child, awarding Bergeron physical custody nine months out of the year.<sup>38</sup> McLee appealed, but the appellate court affirmed the trial court decision.<sup>39</sup> When McLee appealed again, the Louisiana Supreme Court granted certiorari.<sup>40</sup>

---

<sup>32</sup> In *Bordelon v. Bordelon*, the Louisiana Supreme Court emphasized that the 1977 amendment to Civil Code article 157 made the “best interest of the child the paramount consideration in custody determinations.” Although the decision suggested that certain jurisprudential presumptions had been rejected, the opinion did not explicitly address the change-of-circumstances rule governing custody modification.

<sup>33</sup> Samuel N. Poole Jr., *Maternal Preference and the Double Burden: Best Interest of Whom?*, 38 Louisiana L. Rev. 1097, 1098 (1977).

<sup>34</sup> *Bergeron*, 492 So. 2d at 1194.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

In reviewing the lower court opinion in *Bergeron*, the Louisiana Supreme Court examined the 1977 amendment to Article 157.<sup>41</sup> The court considered whether a parent seeking to modify a child custody order must meet the change-of-circumstances rule and the heavy burden of proof rule. The Louisiana Supreme Court's ruling carried significant implications for state custody law. If the amendment had displaced these two jurisprudential rules, then courts could reconsider custody based primarily on the child's best interests without requiring a heightened threshold showing. If the rules remained intact, parents seeking modification would continue to face a substantial procedural burden before a court would reconsider an existing custody decree. The Louisiana Supreme Court granted certiorari to resolve this legal question and to clarify the governing standard for custody modification.<sup>42</sup>

#### *D. Holding*

In *Bergeron*, the Louisiana Supreme Court examined whether the trial and appellate courts correctly determined the burden of proof required for modifying an existing child custody order. The Louisiana Trial Court ruled that a parent seeking to modify a child custody order does not need to satisfy either the change-of-circumstances rule or the heavy burden of proof rule, and the Appellate Court affirmed.<sup>43</sup> The Louisiana Supreme Court reversed the judgments of the Appellate Court and the Trial Court.<sup>44</sup> The Louisiana Supreme Court held that, before a court may modify a custody order, the party seeking modification must show a change in circumstances affecting the child's welfare.<sup>45</sup>

#### *E. Legislative Amendments and Legislative Silence*

The Louisiana Supreme Court reasoned in *Bergeron* that the change-of-circumstances and heavy burden of proof requirements apply because the legislature did not intend to disregard these requirements in the 1977 amendment to Article 157.<sup>46</sup> Louisiana courts interpreted Article 157 to develop custody proceeding rules, including the best interest of the children principle, the maternal preference rule,

---

<sup>41</sup> *Bergeron*, 492 So. 2d at 1196.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

the change-of-circumstances rule, the heavy burden of proof for modification of custody rule, and the appellate review standard. The 1977 amendment did not mention the change-of-circumstances rule, the heavy burden of proof rule, or the appellate review standard.<sup>47</sup> In its decision, the Louisiana Supreme Court reasoned that the legislature's silence regarding these established court rules indicated no intent to abrogate them.<sup>48</sup> The *Bergeron* court relied on legislative silence to uphold prior jurisprudence, rejecting *Bordelon* and concluding that this silence reflects acceptance of existing jurisprudence, thereby reaffirming the heavy burden rule.<sup>49</sup>

*F. Stability and Continuity as Judicial Values in Louisiana Custody Jurisprudence*

Louisiana's custody statutes emphasize the best interests of the child, and Louisiana courts have consistently interpreted these provisions to reflect a strong preference for stability and continuity in custody arrangements. The Louisiana Supreme Court interpreted the best interests of the child principle to place particular weight on stability, continuity, and finality, particularly following considered custody decrees. The *Bergeron* opinion found:

When a trial court has made a considered decree of permanent custody, the party seeking a change bears a heavy burden of proving that the continuation of the present custody is so deleterious to the children as to justify removing them from the environment to which they are accustomed.<sup>50</sup>

The court reasons that unnecessary changes in child custody arrangements may be more harmful than beneficial. The heavy burden of proof rule makes it difficult for parents to modify child custody orders, only allowing for modifications in extreme situations where the existing custody arrangement is harmful to the child's well-being.

---

<sup>47</sup> 1978 La. Acts 1076.

<sup>48</sup> “[The legislature’s] failure to articulate and focus specifically on the different and more pernicious threats to children’s welfare associated with permanent custody change litigation does not indicate an intention that the courts should disregard those dangers.” *Bergeron*, 492 So. 2d at 1202.

<sup>49</sup> Legislative silence refers to the absence of certain language or discussion of certain topics in a statute. When a legislature fails to address a specific topic, this often leads to different interpretations by courts. For example, courts may interpret this silence as a deliberate exclusion or intent to preserve prior legislation.

<sup>50</sup> *Fulco v. Fulco*, 259 La. 1122, 254 So.2d 603 (1971).

This standard prevents modifications where they are deemed unnecessary, as courts recognize that children may be harmed by changes in the environment.<sup>51</sup>

The Louisiana Supreme Court asserts that the heavy burden of proof rule is essential because unnecessary changes in the environment harm children, which outweighs the potential benefits of a modified arrangement.<sup>52</sup> This heavy burden of proof rule promotes stability by upholding the final custody decree, excluding situations where existing custody arrangements are proven as harmful to the child.<sup>53</sup>

### G. *Post-Bergeron Jurisprudence and Entrenchment of the Standard*

The *Bergeron* standard has become the controlling doctrinal framework in Louisiana for custody modification after a considered decree. Louisiana courts continue to treat custody modification as an exception that is only considered if a parent can meet the change-of-circumstances rule and the heavy burden of proof rule. Louisiana family courts uphold existing child custody decrees unless a party presents evidence demonstrating that a change in circumstances has made the custody arrangement harmful, and that the benefits of changing the custody decree outweigh the harm caused by the discontinuation of the existing arrangement.<sup>54</sup>

For instance, in *Evans v. Lungrin* (1998), the Louisiana Supreme Court reaffirmed *Bergeron* as the controlling standard for modifying considered custody decrees, requiring the parent to prove that the current situation is harmful to the child.<sup>55</sup> The court decided to name the mother as the domiciliary parent, reasoning that the previous custody arrangement was harmful to the child and that this arrangement would add stability to the child's life.<sup>56</sup> The Louisiana Supreme Court reaffirmed *Bergeron* by requiring the mother to satisfy the heavy burden rule to prove that the modification would protect the stability of the child's environment and therefore outweigh the harm caused by the change. The court's reaffirmation of *Bergeron's* evidentiary threshold requirement shows that family courts have continued to treat *Bergeron* as the standard.

---

<sup>51</sup> See *Bankston v. Bankston*, 355 So. 2d 58 (La. App. 2d Cir. 1978); see also *Languirand v. Languirand*, 350 So. 2d 973 (La. App. 2d Cir. 1977); see also Unif. Marriage and Divorce Act § 409 (1979).

<sup>52</sup> *Bergeron*, 492 So. 2d at 1200.

<sup>53</sup> *Id.*

<sup>54</sup> *Bergeron*, 492 So. 2d at 1200; *Evans v. Lungrin*, 708 So. 2d 731; *Hensgens v. Hensgens* 660 So. 2d 478.

<sup>55</sup> *Evans*, 708 So. 2d 731.

<sup>56</sup> A domiciliary parent is the parent with whom the child primarily resides. Family courts often create this designation in joint custody arrangements.

The Louisiana Supreme Court also reaffirmed the Bergeron standard in *Hensgens v. Hensgens* (1995).<sup>57</sup> In this case, the court discussed the Bergeron standard to clarify that it defines the burden of proof for modifying a considered decree, but not a consent decree.<sup>58</sup> This case involved the modification of a consent decree, and the court held that to change custody in such cases, the heavy burden of proof rule, requiring proving that the current environment is harmful, did not apply. By distinguishing itself from the Bergeron standard, the *Hensgens* decision articulated the applicability of the Bergeron standard in the modification of a considered decree, but not a consent decree.

Additionally, a Louisiana Appellate Court applied the Bergeron principles in *Major v. Major* (2003) while evaluating a custody modification.<sup>59</sup> In this case, the court reviewed a Trial Court decision that restricted the primary domiciliary parent's ability to relocate with the child.<sup>60</sup> The Appellate Court held that the trial court erred in its ruling, and that a parent seeking to move with a child does not have to meet the heavy burden of proof rule to move within a certain distance.<sup>61</sup> The underlying custody order was a stipulated judgment rather than a considered decree, so the Bergeron heavy burden of proof did not apply.<sup>62</sup> Instead, the parent seeking modification was required to show a material change in circumstances and that a modified arrangement would be in the child's best interest. This ruling indirectly reaffirms *Bergeron's* heavy burden rule by showing that it applies when modifying a considered decree, but not when there is consent or a stipulated decree regarding child custody arrangements. The *Major* ruling clarifies that the heavy burden rule continues to govern the modification of considered child custody decrees.

In such post-*Bergeron* cases, the change-of-circumstances rule and heavy burden of proof requirement function as threshold barriers to custody modification, often preventing courts from reaching the merits of a parent's request to modify a considered custody decree. These cases reiterate that the moving parent must satisfy the heightened evidentiary requirements before a court will consider modifying the custody arrangement.<sup>63</sup> In cases where the parent cannot meet these requirements, courts may deny modification without doing a full individualized review of the

---

<sup>57</sup> *Hensgens*, 660 So. 2d 478 (La. 1995).

<sup>58</sup> *Id.*

<sup>59</sup> *Major v. Major*, 849 So. 2d 547, 547 (La. App. 1 Cir. 2003).

<sup>60</sup> *Id.*

<sup>61</sup> La. Rev. § 9:355.2 (a parent with physical custody cannot move a child's principal residence more than 75 miles from the other parent's home without written consent or a court order).

<sup>62</sup> *Major* at 547.

<sup>63</sup> See *Evans*, 708 So. 2d 731; see also *Hensgens* 660 So. 2d 478; see also *Major* 849 So. 2d 547.

parent-child relationship. As a result, the *Bergeron* framework can limit a parent's access to judicial reconsideration of custody, implicating the parent's constitutionally protected liberty interest in maintaining their relationship with their child.

## II. PROCEDURAL DUE PROCESS AND THE CONSTITUTIONAL LIMITS OF THE *BERGERON* CUSTODY MODIFICATION FRAMEWORK

Procedural due process is a constitutional rule under the Fifth and Fourteenth Amendments that dictates legal proceedings.<sup>64</sup> Procedural due process protects certain interests from arbitrary governmental intrusion by ensuring fair legal procedures.<sup>65</sup> This constitutional rule requires notice and a hearing before the government deprives an individual of life, liberty, or property.<sup>66</sup> The following sections outline the procedural due process protections for parental custody rights, arguing that the *Bergeron* standard conflicts with Fourteenth Amendment procedural due process cases that mandate individualized custody hearings before the state can terminate parental rights.

This argument does not assert that *Bergeron* is facially unconstitutional, that stability is an illegitimate state interest, or that custody arrangements should be frequently relitigated. The concern is that the *Bergeron* framework risks operating as a procedural due process barrier, particularly as applied to fit, noncustodial parents, by conditioning access to individualized review on a demanding threshold that may prevent courts from reaching the merits. Recognizing the legitimacy of stability-based justifications does not resolve constitutional concerns raised by custody modification frameworks that restrict access to individualized hearings. Rather, it clarifies the constraints within which the custody modification doctrine must operate. The question is not whether stability should matter, but how custody standards can preserve stability while remaining consistent with procedural due process protections.

### A. *The Fundamental Liberty Interest in Parenting*

The United States Supreme Court has long recognized parental rights under the Fourteenth Amendment as seen in *Meyer v. Nebraska* (1923), *Pierce v. Society of Sisters*

---

<sup>64</sup> U.S. Const. amend. V; U.S. Const. amend. XIV

<sup>65</sup> See *Mathews v. Eldridge*, 424 U.S. 319 (1976); see also *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972); see also *Goldberg v. Kelly*, 397 U.S. 254 (1970); see also *Collins v. Harker Heights*, 503 U.S. 115 (1992).

<sup>66</sup> *Mathews*, 424 U.S. at 319.

(1925), and *Prince v. Massachusetts* (1944). These cases demonstrate that parenting and childbearing have long been recognized as fundamental constitutional liberty interests. States cannot interfere with these fundamental parental rights without meeting procedural due process requirements.

1. *Meyer v. Nebraska* (1923)

In *Meyer*, the Supreme Court was faced with the question of whether the Due Process Clause of the Fourteenth Amendment protects the fundamental liberty of parents to control their children's education and upbringing against a Nebraska law.<sup>67</sup> The Supreme Court found that the Nebraska law prohibiting foreign language instruction was unconstitutional and violated Meyer's liberty from state interference protected by the Due Process Clause.<sup>68</sup> The majority opinion stated, "It is the natural duty of the parent to give his children education suitable to their station in life."<sup>69</sup> The Supreme Court recognized the right of parents to control the upbringing and education of their children as a fundamental liberty interest, establishing that the state cannot arbitrarily interfere with parental rights. This case established that the Fourteenth Amendment protects the fundamental liberty of parents to control their children's education. *Meyer* reinforced that parenting is a protected liberty and that the state must follow specific procedures and provide adequate procedural protections before it can legally infringe on that interest.<sup>70</sup> This principle is relevant to custody modification proceedings because procedural rules that restrict a parent's ability to seek judicial reconsideration of custody may burden the same protected liberty interest recognized in *Meyer*.<sup>71</sup>

2. *Pierce v. Society of Sisters* (1925)

In *Pierce*, the Supreme Court addressed whether a state law requiring children to attend public schools violated the fundamental liberty of parents under the Due Process Clause.<sup>72</sup> The Compulsory Education Act of 1922 required children aged eight

---

<sup>67</sup> *Meyer*, 262 U.S. at 390.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

to sixteen to attend public schools.<sup>73</sup> Under the Due Process Clause, the fundamental liberty interests of parents include the power to “direct the upbringing and education of children under their control.”<sup>74</sup> In this case, the Supreme Court held that the state law violated the fundamental liberty of parents to direct the education of their children by arbitrarily setting private schools as off-limits.<sup>75</sup> *Pierce* affirmed that parents possess a fundamental liberty interest under the Fourteenth Amendment in directing the upbringing and education of their children, and that state authority over child welfare is not absolute. The parents’ right to choose their child’s school is a fundamental right that the state cannot interfere with unless they meet procedural due process requirements.<sup>76</sup> Accordingly, custody modification frameworks that limit a parent’s access to judicial review raise due process concerns when they interfere with a parent’s ability to direct the upbringing of their child.

### 3. *Prince v. Massachusetts* (1944)

In *Prince*, the Supreme Court ruled on whether the parental right to direct a child’s upbringing took precedence over a state’s authority to enforce child labor laws.<sup>77</sup> Parents have a fundamental liberty interest in directing their children’s upbringing, but this right is not absolute. Under the *parens patriae* doctrine, the state can restrict parental rights if necessary to protect the welfare of the child.<sup>78</sup> The Supreme Court held that the fundamental right to parenting can be restricted by the state to protect a child’s welfare.<sup>79</sup> *Prince* illustrates the balancing act between parental rights and state protection. It recognizes that parents have a constitutionally protected liberty interest in directing their children’s upbringing, while also showing that state interference with that interest must occur through constitutionally adequate procedures designed to protect the child’s welfare. This decision affirmed the fundamental liberty interests of parents while clarifying that the state may restrict parental rights only through just procedures to protect a child’s well-being. While states can act to protect children’s

---

<sup>73</sup> Compulsory Education Act, 1923 Or. Laws 9 (codified as amended at Or. Laws § 5259).

<sup>74</sup> *Id.* at 390.

<sup>75</sup> *Pierce*, 268 U.S. at 510.

<sup>76</sup> *Id.*

<sup>77</sup> *Prince*, 321 U.S. at 158.

<sup>78</sup> The *parens patriae* doctrine allows the state to act as a guardian for those unable to care for themselves, authorizing the state to protect the welfare, rights, and interests of such persons.

<sup>79</sup> *Prince*, 321 U.S. at 158.

welfare, procedural mechanisms used in custody proceedings must still provide constitutionally adequate protections before limiting parental rights.

*B. The Presumption of Fitness and the Right to Maintain the Parent-Child Relationship*

In *Troxel v. Granville* (2000), the Supreme Court reaffirmed that the Due Process Clause protects a fit parent’s fundamental right to make decisions about the care, custody, and control of their children.<sup>80</sup> The Supreme Court evaluated a Washington statute that allowed anyone to petition for a court-ordered right to see a child over a custodial parent’s objection if it is in the child’s best interest.<sup>81</sup> The Supreme Court determined whether this law interfered with parents’ rights to raise their children, which is protected by the Due Process Clause of the Fourteenth Amendment. Custody and visitation arrangements are a part of a child’s upbringing, and the Washington statute limited this right.<sup>82</sup> The statute allowed individuals other than the parent to control the child’s upbringing, interfering with the parent’s control of their child. The Supreme Court found that the law was unconstitutional, as it violated the rights of parents under the Due Process Clause of the Fourteenth Amendment.

The precedent created by *Troxel* is relevant to the *Bergeron* standard because the *Troxel* decision emphasized the constitutional principle that fit parents are presumed to act in the best interests of their children. The majority opinion stated, “There is a presumption that fit parents act in the best interests of their children,”<sup>83</sup> creating the presumption of parental fitness principle.<sup>84</sup> *Bergeron*’s custody modification framework may be in tension with *Troxel*’s presumption that fit parents act in the best interests of their children because it conditions meaningful custody review on a heightened threshold showing. *Troxel* presumes that a fit parent acts in the best interest of their child, but *Bergeron* requires a fit parent to prove the current arrangement is harmful before the court will reconsider custody. *Bergeron* may deny meaningful judicial review of a fit parent’s parental relationship unless they can prove the existing arrangement is harmful, which conflicts with the constitutional principle in *Troxel* that fit parents’ decisions deserve special weight. *Troxel* presumes that fit parents act in the

---

<sup>80</sup> *Troxel v. Granville*, 530 U.S. 57 (2000).

<sup>81</sup> Wash. Rev. Code § 26.10.160(3) (1994).

<sup>82</sup> *Troxel*, 530 U.S. at 68.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

child's best interests, but *Bergeron* prevents a fit parent from seeking custody modification unless they prove serious harm or benefit. In this way, the *Bergeron* standard contradicts the constitutional presumption articulated in *Troxel*, as it limits a fit parent's ability to seek meaningful review.

*C. Procedural Due Process and the Right to an Individualized Hearing*

The parental rights established by *Meyer*, *Pierce*, *Prince*, and *Troxel* are at issue in *Bergeron*. The Fourteenth Amendment ensures that parents receive fair treatment before the state interferes with their fundamental liberty interest in parental decision-making. Therefore, when the state interferes with parental rights, heightened procedural protections are required. Like *Troxel*, *Stanley v. Illinois* (1972) and *Santosky v. Kramer* (1982) established that fit parents have a constitutionally protected right to control the upbringing of their children.<sup>85</sup> *Santosky* further established that heightened procedural protections are required when the state seeks to interfere with parental rights.<sup>86</sup>

In *Stanley*, the Supreme Court evaluated the constitutionality of an Illinois law that presumed unwed fathers were unfit parents, violating the Equal Protection Clause of the Fourteenth Amendment.<sup>87</sup> Under this state law, unwed fathers were presumed to be unfit parents, regardless of circumstance, when the mother died.<sup>88</sup> The law removed an unwed father's parental rights without a hearing to determine his fitness.<sup>89</sup> The majority opinion states, "Procedure by presumption is always cheaper and easier than individualized determination. But when... the procedure forecloses the determinative issues of competence and care, it needlessly risks running roughshod over the important interests of both parent and child."<sup>90</sup> This decision asserted that the law violated the Due Process Clause of the Fourteenth Amendment because it deprived the father of his parental custody rights without an individualized determination.<sup>91</sup> Categorical presumptions were found to be constitutionally suspect when they disregard the interests of parents and children. *Stanley* established that parents must be given a meaningful opportunity to be heard, and that when parental rights are at stake,

---

<sup>85</sup> *Stanley v. Illinois*, 405 U.S. 645, 649 (1972); *Santosky v. Kramer*, 455 U.S. 745 (1982).

<sup>86</sup> *Santosky*, 455 U.S. at 753.

<sup>87</sup> *Stanley*, 405 U.S. at 649.

<sup>88</sup> *Id.*

<sup>89</sup> *See, e.g.*, Ill. Rev. Stat. ch. 37, § 701 et seq. (1971) (Juvenile Court Act).

<sup>90</sup> *Stanley*, 405 U.S. at 649.

<sup>91</sup> *Id.*

the Constitution requires individualized determinations rather than categorical exclusions.<sup>92</sup> The Bergeron standard directly contrasts with the requirement of individualized determinations established in *Stanley*.

The legal doctrines established in *Stanley* were reinforced in *Santosky*, where the Supreme Court ruled that heightened procedural protections are required before terminating parental rights.<sup>93</sup> In *Santosky*, the Supreme Court ruled on the constitutionality of a New York statute that allowed the state to terminate parental rights upon a showing by a preponderance of evidence, which is the ordinary civil standard requiring proof that a claim is more likely than not to be true, that the child was permanently neglected.<sup>94</sup> The Supreme Court held that the New York law was unconstitutional because the standard for terminating parental rights was too low, violating the Due Process Clause.<sup>95</sup> Since parental rights are a fundamental liberty interest, the Court ruled that the Constitution required a higher evidentiary standard before the state could permanently terminate parental rights.<sup>96</sup> While *Santosky* involved termination proceedings rather than custody modification, its emphasis on heightened procedural protections for parental rights highlights the tension created when the Bergeron framework places a substantial evidentiary burden on the parent seeking custody modification. The Bergeron standard prioritizes finality in custody judgments, but in doing so, it may invert the constitutional logic that normally requires the state to justify restrictions on parental rights.

*Stanley* and *Santosky* established that when parental rights are implicated, the Constitution requires strong procedural protections and individualized judicial determinations before the state may interfere with the parent-child relationship. This principle builds on the parental liberty doctrine articulated in *Meyer*, *Pierce*, *Prince*, and *Troxel*, all of which recognize constitutional protection for the parent-child relationship and limit the state's ability to interfere with parental rights without adequate procedural safeguards. By contrast, the Bergeron standard requires parents to meet a high evidentiary threshold before a court will reconsider the custody arrangement. As a result, courts may decline to reevaluate custody even when a fit parent seeks reconsideration of their parental relationship with the child. Thus, the Bergeron standard risks functioning as the procedural shortcut rejected in *Stanley*,

---

<sup>92</sup> *Stanley*, 405 U.S. at 649.

<sup>93</sup> *Id.*; *Santosky*, 455 U.S. at 745.

<sup>94</sup> N.Y. Fam. Ct. Act § 622.

<sup>95</sup> *Santosky*, 455 U.S. at 753.

<sup>96</sup> *Id.* at 745.

where categorical rules are substituted for individualized determinations. When a legal standard prevents courts from making individualized determinations, and when a parent cannot meet a heightened evidentiary standard to receive review, it raises serious concerns about whether these standards adequately protect a parent's constitutional rights.

*D. The Bergeron Framework as a Procedural Due Process Barrier to Custody Modification*

While the preceding subsections established the constitutional requirements, this subsection examines how the framework established in *Bergeron* operates in practice as a system of procedural barriers that restrict access to custody modification review.

*1. Threshold Gatekeeping and Access to Custody Modification Review*

The framework established in *Bergeron* operates as a procedural gatekeeping mechanism that restricts access to custody modification hearings.<sup>97</sup> Specifically, the change-of-circumstances rule and the heavy burden of proof function as threshold requirements that restrict access to custody modification review.<sup>98</sup> The change-of-circumstances rule and the heavy burden of proof rule filter out cases that do not meet the *Bergeron* standard, preventing them from proceeding to a full trial. In practice, this means that *Bergeron* not only influences custody outcomes but also determines whether a parent is permitted to access judicial review at all.

*2. The Denial of an Individualized Hearing*

Louisiana courts do not review merits or allow an individualized hearing unless the party requesting the modification can meet the *Bergeron* standard. The *Bergeron* standard denies fit, noncustodial parents individualized hearings on their parent-child relationship by restricting merits review altogether, which is in tension with the

---

<sup>97</sup> In family law, merits review is a final evidentiary hearing where the judge evaluates substantive issues rather than procedural issues. It is a trial on the merits where the court makes a decision based on facts, evidence, and legal arguments of a case.

<sup>98</sup> Procedural filters are rules and doctrines that cases must pass through in order to have a full hearing on the merits of the case. These filters are often grounded in procedural law and filter out cases that do not meet a certain procedural requirement or standard in order to protect the court's time and ensure due process.

procedural principles established by *Stanley*.<sup>99</sup> *Stanley* requires individualized determinations when parental rights are at stake, and the Bergeron framework restricts access to individualized custody modification hearings.<sup>100</sup> Therefore, the Bergeron standard is inconsistent with the prior Supreme Court decision in *Stanley*.<sup>101</sup> As applied, the Bergeron framework conditions access to an individualized hearing with a heightened preliminary burden, meaning that many parents never receive a case-specific determination of their parental relationship. By potentially denying parents an individualized hearing, *Bergeron* conflicts with *Stanley* and risks violating procedural due process protections of fundamental parental rights.

### 3. *The Heavy Burden of Proof and the Risk of Erroneous Deprivation*

The standard established in *Bergeron* is problematic because it increases the risk that a fit parent will be wrongfully denied a meaningful opportunity to protect their relationship with their child.<sup>102</sup> When fundamental parental liberty interests are at stake, the Supreme Court has made clear that there must be procedures to reduce the risk of erroneous deprivation.<sup>103</sup> In cases like *Santosky*, the Court required heightened procedural safeguards to reduce the risk of erroneous deprivation.<sup>104</sup> The *Santosky* Court applied the “clear and convincing evidence” standard in the context of parental termination proceedings, showing the heightened procedural protections that are required when the state seeks to permanently take away parental rights.<sup>105</sup>

Additionally, the Bergeron framework lacks safeguards to reduce the risk of erroneous deprivation. Instead, *Bergeron* adds barriers that a noncustodial parent must overcome before a court will even consider modifying an existing custody order.<sup>106</sup> Supreme Court procedural doctrine provides a framework for evaluating such risks. Under the procedural due process balancing framework established in *Mathews v.*

---

<sup>99</sup> *Stanley*, 405 U.S. at 649.

<sup>100</sup> *Id.*; *Bergeron*, 492 So. 2d at 1193.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Here, erroneous deprivation refers to the government wrongfully taking a person’s life, liberty, or property without procedural due process.

<sup>104</sup> *Santosky*, 455 U.S. at 753.

<sup>105</sup> *Id.*

<sup>106</sup> *Bergeron* 492 So. 2d at 1202.

*Eldridge* (1976), the weight of the private interest and the risk of error matter.<sup>107</sup> In accordance with the *Mathews* framework, the private interests, which are the parents' relationship with their child, should be heavily considered.<sup>108</sup> By imposing a threshold requirement before deciding on merits, the *Bergeron* standard increases the risk that a parent with a legitimate claim will never receive a meaningful and individualized opportunity to be heard.<sup>109</sup> In practice, this structure prevents courts from reaching the merits of potentially valid claims, thereby heightening the risk of erroneous deprivation. When fundamental rights are involved, due process typically requires procedural safeguards that protect against error, not barriers that make review harder to obtain.

#### 4. *Disparate Procedural Burdens on Fit, Noncustodial Parents*

The *Bergeron* framework also creates a structural imbalance between custodial and noncustodial parents in a given custody arrangement. Because the *Bergeron* framework requires a heavy burden of proof to modify a considered custody decree, that burden in practice falls on the noncustodial parent seeking to reopen custody.<sup>110</sup>

This structure creates procedural asymmetry. The custodial arrangement receives the protection of stability and finality, as family courts are reluctant to modify the arrangement once the initial custody decree has been finalized. The noncustodial parent must satisfy a heightened threshold before the court will reach the best interests analysis on the merits.<sup>111</sup> Even when the noncustodial parent is fit and acting in good faith, the *Bergeron* framework requires that parent to carry the full procedural burden of reopening the custody determination.<sup>112</sup> This structure can burden a noncustodial parent's parental liberty interest by limiting meaningful access to judicial reconsideration of the custody arrangement.

While the *Bergeron* framework is not an explicit presumption of unfitness, it functions similarly because the heightened thresholds are extremely difficult to satisfy. If the heightened threshold cannot be satisfied, the court never reaches an

---

<sup>107</sup> Risk of error refers to the probability of the judge or the legal system reaching an incorrect decision due to mistaken factual findings or incorrect applications of legal rules and doctrines; *Mathews*, 424 U.S. at 335.

<sup>108</sup> *Id.*

<sup>109</sup> *Bergeron*, 492 So. 2d at 1202.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

individualized assessment of the parent-child relationship.<sup>113</sup> In this way, the *Bergeron* standard risks operating as a de facto irrebuttable presumption in favor of the existing custody decree, a concern consistent with *Stanley*, which rejected the use of categorical presumptions that foreclose individualized determinations in cases involving parental fitness.<sup>114</sup> The *Bergeron* standard presumes that stability resulting from the continued enforcement of an existing custody arrangement is in the child's best interest.<sup>115</sup> Although *Bergeron* does not create an explicit irrebuttable presumption, in practice, the heightened burden of proof may operate as a strongly constraining barrier that is difficult for a noncustodial parent to overcome. The Supreme Court's decision in *Stanley* rejected similar categorical rules that denied parents individualized determinations when parental rights were at stake.<sup>116</sup> While custody modification differs from the termination of parental rights, the procedural due process principle remains relevant. Due process requires meaningful, individualized consideration, not categorical exclusion.

From a procedural due process perspective, neutrality is necessary to guarantee fair, unbiased decision-making. A system that consistently places the entire burden of access to review on the parent seeking change, usually the noncustodial parent, raises concerns about whether the process fairly accounts for parental liberty interests. When access to a custody modification hearing depends on meeting a rigid threshold, the risk of erroneous deprivation increases for parents who are fit but unable to meet the demanding preliminary standard.<sup>117</sup> Even when the noncustodial parent is fit and acting in good faith, the *Bergeron* framework still requires that parent to carry the full procedural burden.<sup>118</sup> This creates a structural disadvantage for the noncustodial parent, thereby making it more difficult for them to exercise their parental rights. As a result, the *Bergeron* framework structurally limits a parent's ability to obtain judicial review of their parent-child relationship.

##### 5. *Procedural Due Process and Meaningful Access to the Courts*

---

<sup>113</sup> *Bergeron*, 492 So. 2d at 1202.

<sup>114</sup> An irrebuttable presumption is a legal rule that accepts a specific fact as absolute truth, disallowing any evidence or testimony to the contrary.

<sup>115</sup> *Bergeron*, 492 So. 2d at 1202.

<sup>116</sup> *Stanley*, 405 U.S. at 649.

<sup>117</sup> *Bergeron*, 492 So. 2d at 1202.

<sup>118</sup> *Id.*

The *Bergeron* standard raises concerns about meaningful access to the courts. Procedural due process is not satisfied simply because a formal mechanism for modification exists. If the threshold is so demanding that legitimate claims are deterred or foreclosed, the right to seek judicial reconsideration is effectively unavailable.

High procedural barriers discourage parents from pursuing modification even when circumstances have changed. If review is unattainable, the framework risks functioning as a denial of access to an individualized hearing. As the Supreme Court emphasized in *Stanley*, when parental fitness is at issue, parents are entitled to individualized consideration rather than categorical exclusion.<sup>119</sup> A custody modification rule that prevents courts from reaching the merits of a case may conflict with that principle.

Stability is legitimate, but procedural rules designed to promote stability may deny parents the opportunity to be heard regarding their relationship with their children. Taken together, the *Bergeron* threshold requirements, denial of individualized hearings, and the risk of erroneous deprivation demonstrate that this standard functions in practice as a barrier to meaningful judicial review.

### III. STABILITY INTERESTS AND CONSTITUTIONAL LIMITS OF CUSTODY FINALITY

#### *A. Stability and Continuity as Legitimate State Interests*

Stability and continuity are legitimate state interests in custody proceedings. Courts are right to be concerned about the potential harm caused by repeated litigation and frequent changes in custody arrangements. Once the court has issued a custody decree after a contested hearing, that judgment reflects a determination of the child's best interests given the current circumstances. It is reasonable for courts to treat such decrees with caution before modifying them.

The State has a clear interest in minimizing disruption, promoting continuity in a child's living environment, and preventing custody litigation from becoming constant or strategic. Courts implement this interest through procedural barriers that make custody modification more difficult.<sup>120</sup> The *Bergeron* standard serves legitimate child welfare goals by making custody modification the exception rather than the norm, ensuring stability remains central to family law doctrine.<sup>121</sup> While stability remains

---

<sup>119</sup> *Stanley*, 405 U.S. at 649.

<sup>120</sup> *Bergeron*, 492 So. 2d at 1202.

<sup>121</sup> *Id.*

important, state authority is not unlimited. The question remains whether the procedural mechanisms used to protect stability should restrict a parent’s meaningful opportunity to be heard. Legitimate state interests must operate within constitutional boundaries. Stability and finality cannot override the procedural protections required when fundamental parental liberty interests are at stake. With fundamental rights, procedural due process requires that legal rules not function as absolute barriers to review.<sup>122</sup> Although family law traditionally falls within state jurisdiction, the Supreme Court has intervened in domestic relations regimes where constitutional protections are not adequately safeguarded.

*B. Finality, Judicial Economy, and the Risk of Over-Deterrence*

In addition to stability, the courts have an interest in finality<sup>123</sup> and judicial economy.<sup>124</sup> Courts have limited time and resources, so they cannot rehear the same custody dispute every time a parent is dissatisfied with an existing arrangement. Heightened thresholds are designed to deter frivolous or repetitive claims to protect children from unnecessary instability.<sup>125</sup> However, finality alone cannot justify procedural foreclosure. When the threshold becomes so high that parents with legitimate concerns are discouraged from seeking modification, the rule risks over-deterrence. Procedural rules may deter weak or bad-faith claims, but they should not block legitimate claims. Over-deterrence may discourage parents from seeking custody modification even when circumstances would justify it. Procedural due process does not prohibit threshold rules; it requires that thresholds not function as absolute barriers to meaningful review.<sup>126</sup> Courts should care about maintaining stability in children’s lives, but that concern has constitutional limits when it starts to deter individualized consideration of parental relationships.

In practice, courts have the ability to dispose of weak claims at the pleading stage or early in the hearing once the moving party fails to produce minimally credible evidence supporting modification. The initial hearing should therefore function as a screening

---

<sup>122</sup> See *Stanley*, 405 U.S. at 649.

<sup>123</sup> Finality refers to the concept that legal disputes should achieve a resolution that will not be appealed or disturbed.

<sup>124</sup> Judicial economy refers to the principle of conserving limited judicial resources and maximizing efficiency within the court system by managing cases to avoid unnecessary hearings, wasted time, and excessive litigation costs.

<sup>125</sup> See *Bergeron*, 492 So. 2d at 1201; see also *Evans*, 708 So. 2d 731.

<sup>126</sup> See *Mathews*, 424 U.S. 319; see also *Stanley*, 405 U.S. 645.

mechanism, where claims that plausibly implicate a legitimate concern or a change affecting the child's welfare proceed to full evidentiary development. This preserves docket efficiency while shifting the filtering function from a pre-hearing barrier to an in-hearing determination.

The procedural structure of custody modification rules also reflects a direct tradeoff between competing parental interests. While this article emphasizes the noncustodial parent's liberty interest in accessing judicial review to seek modification of custody arrangements, the custodial parent also has an interest in stability once a custody decree has been entered. Repeated litigation over custody can impose high financial costs, time burdens, and emotional strain on the custodial parent, while also disrupting the child's living environment. From this perspective, heightened thresholds for modification serve institutional interests in judicial economy and function as a protective mechanism for custodial parents by limiting continuous relitigation. At the same time, however, these same thresholds restrict the noncustodial parent's ability to obtain an individualized hearing on changed circumstances affecting their relationship with the child. The resulting framework reflects a balance between protecting custodial stability and preserving noncustodial access to judicial review, with the *Bergeron* standard reflecting that balance in favor of finality once a considered decree has been entered.

### *C. Federalism, Family Law, and Constitutional Minimums*

While family law has traditionally been the province of states, states do not have unlimited authority over family law or procedural due process. States possess broad authority to structure custody proceedings and define modification standards.<sup>127</sup> Federal courts typically avoid interfering in state and domestic relations matters.<sup>128</sup> This principle is well established, but state authority over family law is not unlimited. The Supreme Court has repeatedly intervened in state domestic relations regimes where due process concerns were at issue or when constitutional protections were insufficient.<sup>129</sup> Cases such as *Stanley* and *Santosky* arose from state custody or parental rights disputes.<sup>130</sup> Recognizing constitutional limits in the context of child custody

---

<sup>127</sup> See *Santosky*, 455 U.S. 745; see also *Stanley*, 405 U.S. 645.

<sup>128</sup> See *Ankenbrandt v. Richards*, 504 U.S. 689 (1992).

<sup>129</sup> See *Stanley*, 405 U.S. 645; see also *Santosky*, 455 U.S. 745; see also *Troxel*, 530 U.S. 57.

<sup>130</sup> *Stanley*, 405 U.S. at 649; *Santosky*, 455 U.S. at 753.

modification would not represent federal overreach. Instead, it reflects the principle that all state procedures must satisfy minimum constitutional liberty guarantees.

#### IV. SUBSTANTIVE DUE PROCESS IMPLICATIONS OF PROCEDURAL BARRIERS

##### *A. When Custody Finality Burdens Fundamental Rights*

Although this article primarily focuses on the procedural due process issues that arise from *Bergeron*, the *Bergeron* framework also implicates substantive due process concerns.<sup>131</sup> Parental rights have long been recognized as fundamental liberty interests under the Fourteenth Amendment.<sup>132</sup> When custody rules operate categorically rather than individually, they burden fundamental liberty interests in ways that exceed what stability alone can justify.

The emphasis on finality in *Bergeron* reflects the Court's focus on prior custody judgments, but this focus cannot become so rigid that it prevents custody modification.<sup>133</sup> If finality is elevated to the point that meaningful reconsideration is practically unattainable, the doctrine begins to place substantive weight on the initial custody order itself. This shift raises concerns about whether parental liberty is being unduly constrained. The *Bergeron* standard is not facially unconstitutional under substantive due process, but the tension between finality and liberty becomes constitutionally relevant when access to review is restricted.

##### *B. As-Applied Substantive Due Process Concern*

In certain applications, the *Bergeron* framework may burden parental liberty without sufficient justification. This is demonstrated when a fit parent shows that circumstances have evolved in ways affecting the child's welfare, but is unable to satisfy the heavy *Bergeron* threshold. The result may be a substantial interference with the parent-child relationship. In such cases, the procedural barrier produces substantive effects. The parents' liberty interest is substantially constrained. While courts may legitimately prioritize stability, substantive due process requires that restrictions on

---

<sup>131</sup> Substantive due process, derived from the Due Process Clauses of the Fifth and Fourteenth Amendments, protects fundamental liberty interests against governmental interference. It concerns the scope of protected rights themselves, including privacy, marriage, and procreation, rather than the procedures required to restrict those rights.

<sup>132</sup> See *Meyer*, 262 U.S. 390; see also *Pierce*, 268 U.S. 510; see also *Troxel*, 530 U.S. 57.

<sup>133</sup> *Bergeron*, 492 So. 2d at 1202.

fundamental rights be justified by more than administrative convenience or generalized concerns about finality.<sup>134</sup> The Supreme Court has repeatedly treated burdens on parental decision-making as implicating fundamental liberty interests protected by the Fourteenth Amendment, reinforcing that restrictions on custody-related rights must be carefully justified under substantive due process principles.

## V. RECALIBRATING CUSTODY MODIFICATION STANDARDS TO PROTECT PARENTAL LIBERTY

The following section proposes a solution to the procedural due process barriers created by *Bergeron*. The most efficient solution is a child custody modification framework that revises the change in circumstances rule and the heavy burden of proof rule, while preserving Louisiana's interest in stability and finality. A solution to the due process risks created by *Bergeron* must be attentive to constitutional protections of parental rights.

### A. *Recalibrating the Change in Circumstances and Heavy Burden of Proof Rules*

The major risk of denying parents access to individualized hearings follows from *Bergeron*'s heightened threshold requirements in the change in circumstances rule and the heavy burden of proof rule. These rules warrant modification because they risk the denial of parental rights and contradict the precedent established by *Stanley*.<sup>135</sup> An adequate solution must propose a change to *Bergeron*'s heightened threshold barrier, consistent with *Stanley*, while ensuring that parents maintain their fundamental liberty interests protected by the Due Process Clause.

A recalibration of the *Bergeron* standard must align with the requirements established in *Stanley*. The *Stanley* decision requires that, when parental fitness is at issue, parents receive individualized consideration rather than categorical exclusion.<sup>136</sup> The *Bergeron* standard can prevent courts from ruling on the merits of a case, which conflicts with the *Stanley* principle.<sup>137</sup> To eliminate barriers to individual consideration, a recalibrated standard must modify the change in circumstances rule

---

<sup>134</sup> See *Stanley*, 405 U.S. 645; see also *Santosky*, 455 U.S. 745; see also *Mathews*, 424 U.S. 319.

<sup>135</sup> *Stanley*, 405 U.S. at 649.

<sup>136</sup> See *Id.*; see also *Santosky*, 455 U.S. at 753–54.

<sup>137</sup> *Id.*

and the heavy burden of proof rule. To be consistent with *Stanley*, these rules cannot function as evidentiary threshold barriers to individualized review.<sup>138</sup>

The change in circumstances and the heavy burden of proof rules must be eliminated as preliminary requirements for a custody modification request hearing. Family courts must give parents a meaningful opportunity to be heard if the parent can articulate why the custody arrangement should be modified. This would ensure that parents are guaranteed individualized consideration for their child custody modification orders.

This approach would not undermine judicial economy because courts would retain the authority to dismiss claims that lack an evidentiary basis after an initial individualized hearing. Rather than serving as rigid gatekeeping mechanisms, the change in circumstances and heavy burden of proof rules should operate as evaluative tools within the hearing itself. This allows courts to efficiently resolve weak claims without categorically denying access to review, thereby preserving both fairness and efficiency. This approach does increase the initial demand on judicial resources by requiring courts to hold preliminary evidentiary hearings in a broader set of cases. However, that burden is justified because it ensures that claims involving fundamental parental liberty interests are not foreclosed at the threshold stage without any individualized assessment. Moreover, early evidentiary screening within the hearing itself would limit full adjudication to cases with genuine factual disputes, mitigating overall docket strain. This would mean that courts proceed to full evidentiary hearings only in cases that present factual disputes, while dismissing claims that lack factual support at an early stage.

*B. Preserving Stability and Finality Without Foreclosing Individualized Review*

The recalibration of *Bergeron's* change-of-circumstances and heavy burden of proof rules ensures access to individualized review. However, a solution must acknowledge the legitimate state interests in custody modification proceedings. Louisiana courts must achieve a balance between stability and parental liberty. Such a balance can be achieved through a refined interpretation that treats the change-of-circumstances requirement and the heavy burden of proof as factors assessed during the merits hearing rather than as preliminary barriers to access.

Rather than serving as preliminary evidentiary thresholds, courts can utilize such standards to evaluate the parents' claims during an individualized hearing. To preserve

---

<sup>138</sup> *Stanley*, 405 U.S. 645.

stability, judges should consider these factors when deciding whether or not to grant custody modification. Such an evaluation may depend on whether the parent can articulate the circumstances that warrant modification and whether the parent presents evidence demonstrating their claims. This ensures stability and finality remain protected as substantive considerations rather than procedural barriers.

Courts can deny modification where stability would be disrupted without sufficient justification, but they cannot prevent a parent from being heard in the first instance. This distinction ensures that stability is preserved without infringing on procedural due process rights. This approach preserves the integrity of custody determinations while ensuring that procedural due process is not sacrificed in the name of efficiency or finality.

### *C. Broader Implications for Custody Modification Doctrine*

The procedural due process concerns raised by the *Bergeron* framework are not limited to Louisiana. Many other states have custody modification rules that require changed circumstances or impose heightened burdens of proof before courts will reconsider existing custody arrangements.<sup>139</sup> These doctrines are often justified by the same interests in stability and finality that underlie *Bergeron*.<sup>140</sup> This analysis suggests that such frameworks used by other states may raise constitutional concerns when they function as threshold barriers to judicial review rather than as standards applied during individualized hearings. When child custody modification rules prevent courts from reaching the merits of a parent's claim, they risk denying parents meaningful access to individualized determination of their parental rights, consistent with the principles articulated in *Stanley*.<sup>141</sup>

This issue is important because custody modification proceedings directly affect the parent-child relationship, which is a fundamental liberty interest protected by the Fourteenth Amendment as recognized in *Troxel*. If other jurisdictions apply similar threshold requirements that restrict access to hearings, those frameworks may be

---

<sup>139</sup> Many jurisdictions employ similar threshold requirements before modifying custody orders. *See* *Wade v. Hirschman*, 903 So. 2d 928 (Fla. 2005) (requiring a “substantial, material, and unanticipated change in circumstances”); *see also* *Shipman v. Shipman*, 357 N.C. 471 (2003) (requiring a substantial change affecting the child's welfare); *see also* Tex. Fam. Code § 156.101 (requiring a “material and substantial change”); *see also In re Marriage of Burgess*, 13 Cal. 4th 25 (1996) (applying the “changed circumstance rule” to promote stability in custody arrangements).

<sup>140</sup> *Bergeron*, 492 So. 2d 1193.

<sup>141</sup> *Stanley*, 405 U.S. at 649.

vulnerable to the same procedural due process concerns identified in Louisiana with the *Bergeron* standard.

The need to recalibrate custody modification standards is not unique to Louisiana. Courts across state jurisdictions should ensure that procedural rules designed to promote stability and finality do not foreclose individualized review, but instead function as part of a fair and constitutionally adequate decision-making process.

## CONCLUSION

State custody modification laws that create procedural barriers to individualized hearings risk denying parents procedural due process guarantees. This article analyzed how Louisiana's custody modification framework, established in *Bergeron*, risks creating a procedural barrier that prevents otherwise fit, non-custodial parents from accessing adequate judicial review. *Bergeron* controls custody decree modifications in Louisiana, requiring a parent to prove a change in circumstances that affects the well-being of the child before a court can hear the case.<sup>142</sup> This framework creates a heightened evidentiary threshold that can deny parents meaningful access to custody modification hearings, potentially interfering with the procedural protections guaranteed by the Fourteenth Amendment.<sup>143</sup> As a result, the *Bergeron* standard risks denying parents individualized hearings and undermining the presumption of parental fitness recognized in Supreme Court precedent.<sup>144</sup> To address these procedural due process concerns, this article argues for a recalibrated approach to custody modification that preserves the state's interest in stability while ensuring that parents are afforded meaningful access to judicial review. Rather than operating as rigid threshold barriers, custody modification standards should allow courts to reach the merits of a parent's claim through individualized hearings. Ultimately, Louisiana's custody modification framework must be refined to align with Supreme Court jurisprudence protecting parental liberty interests. Ensuring that parents have a meaningful opportunity to be heard is not incompatible with stability and finality; rather, it is a constitutional requirement. Even incremental doctrinal adjustments can help reconcile these competing interests, allowing child custody law to protect children's welfare and fundamental parental rights.

---

<sup>142</sup> *Bergeron*, 492 So. 2d at 1193.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*