PARENTAL RIGHTS
The Fight of Our Lifetime

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At every stage of life, there is no greater resource and refuge for a child than the love of a parent. Time and time again, studies have found and affirmed that the nurture and love of parents plays a crucial role in positively shaping the future of their children.

But a storm is on the horizon. It is a storm that threatens the vital child-parent relationship. It is a struggle over who makes the crucial decisions for our children.

The Supreme Court, once a bastion of freedom and protection for parents, may have already shifted to the point where it no longer recognizes the fundamental right of parents to direct the upbringing and education of their children. This pro-government/anti-parent bias is becoming more and more prevalent every day in the law and in the news.

Beyond our shores, an attitude of preferring the state over the parent is becoming gradually more pervasive and alarming, as governments and activists in the international community seek to transform parental rights into parental *responsibilities* -- responsibilities that the state is willing to enforce. Across the globe, the choices that parents make are being challenged, and sometimes even overturned, only to be replaced by the decisions of state officials who barely know the child.

Throughout our history, the United States of America has recognized and defended the rights of parents to raise and protect their children. It is time for all Americans who affirm the vital child-parent relationship to rise up and defend parental rights within the text of the Constitution itself. This is the only way to secure parental rights forever for our children, their children, and future generations of Americans.

This paper is meant to be a resource for those who seek to secure these rights. It begins by discussing the domestic threat that American judges – from both the conservative and liberal ends of the spectrum – are posing to parental rights by challenging their existence. It then considers the international threat of treaty agreements that would bind parents (such as the United Nations Convention on the Rights of the Child) and a dangerous new legal doctrine called customary international law, which threatens to supersede American law with or without our consent. It concludes with the solution: a constitutional amendment to protect parental rights and preserve them from the reaches of these dangerous domestic and international forces.

No government, regardless of how well-intentioned it might be, can replace the love and nurture of a parent in the life of a child. A parent is willing to brave danger and sacrifice, hardship and heartache. A parent cares, not because her children are "wards" for whom she is responsible. A parent cares because he wants his son to have opportunities he never had; because she hopes that her little child will grow up to be healthy, strong, and secure; because they want their children to one day have families of their own.

This is why parental rights must be secured. This is why this fight is the fight of our lifetime.

THE DOMESTIC THREAT

The Battle for Parental Rights in the American Courts

America's rich heritage as a defender of parental rights is in grave danger. Our courts have become sharply divided on whether parental rights deserve constitutional protection, and some have taken a strong stance against parents and the family. A handful of judges are rewriting America's heritage of freedom.

The Assault on Parental Rights

- A minority of Justices on the Supreme Court believe parental rights deserve "fundamental" constitutional protection.
- Some judges believe parental rights exist, but will not recognize them unless they are explicitly written in the Constitution; others do not believe that these parental rights exist at all.
- Many lower court judges, who handle the majority of real-life cases, have taken a strong stance with the state against recognition of parental rights.

FUNDAMENTAL RIGHTS UNDER FIRE

The Supreme Court has recognized two categories of rights: "fundamental" and "non-fundamental." If a right is "fundamental," the state must prove that it has an interest "of the highest order" *before* it violates your rights, *and* that the state is using the "least restrictive means" to do so.[1] If, however, a right is "non-fundamental," the government only needs to show that it has a rational reason to restrict your rights. The burden of proof is on *you* to show that the state's actions are irrational and illegitimate.

In the 2000 case of *Troxel v. Granville*, only four of the nine Supreme Court justices expressly agreed that the Constitution "protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."[2] Two of them — then-Chief Justice William Rhenquist and Justice Sandra Day O'Connor — have since left the Court. Surprisingly, Rhenquist and O'Connor were joined in this viewpoint by Stephen Breyer and Ruth Bader Ginsberg, two of the most liberal justices on the Court today.[3] While both agreed in *Troxel* that parental rights are fundamental, it is uncertain whether they can be trusted to consistently uphold parental rights in the years to come.

These four justices concluded that the state cannot override the decisions of parents "simply because a state judge believes a 'better' decision could be made" — the state must have a compelling reason before it infringes on parental rights.[4] Ultimately, six justices sided with the parents in Troxel — a narrow victory on an uncertain foundation.

In the battle for the "fundamental" status of parental rights, opponents come from both ends of the judicial spectrum. On one side are judges who agree that parental rights exist, but are leery of supporting them because they are not explicitly protected in the Constitution. On the other side are judges who refuse to recognize that parental rights exist at all. Parents are

left in the middle.

Scalia and "Implied Rights"

The most prominent example of the first type of judge is Supreme Court justice Antonin Scalia, a conservative jurist who considers himself to be a "strict constructionist," meaning that he believes the Constitution has a fixed meaning that is apparent from the text, instead of having subtle, hidden meanings that judges can read into the text.

When the Supreme Court decided in *Troxel* that parental rights were fundamental, Scalia disagreed. Even though he felt that parental rights were among the "unalienable rights" of Americans,[5] Scalia noted that there was no explicit recognition of parental rights in the Constitution. Thus, Scalia voted against the judicial recognition of parental rights, fearing that if the Court recognized an *implied right*, the courts could reinterpret that right at will, and freely interfere with family law whenever they wished.[6]

The Supreme Court and Parental Rights

Fundamental Right	**Non-fundamental Right**
Ruth Bader Ginsberg Stephen Breyer Clarence Thomas (?) *William Rhenquist ** *Sandra Day O'Connor**	David Souter Antonin Scalia **No Constitutional Right** Anthony Kennedy John Paul Stevens
Unknown Chief Justice John Roberts Samuel Alito	

** No longer on the Court*

(?) Justice Thomas' position on parental rights is uncertain at best. While he voted for the parent in Troxel, Thomas declined to join the majority's opinion, and hinted in his concurring opinion that had the case considered whether the Court could enforce unenumerated rights, he might have ruled against parental rights.

Thomas and "Original Intent"

Another conservative jurist, Justice Clarence Thomas, voted for the parent in *Troxel*, but questioned whether parental rights were "fundamental." Thomas's reasoning (similar to Scalia's) was that the "original intent" of the Due Process Clause prohibited judicial enforcement of "unenumerated" rights.[7] However, since neither party raised that legal issue in *Troxel*, Thomas voted on the side of the parents to be consistent with precedent.

Hostility to Parental Rights

At the other end of the spectrum of opponents, Justice David Souter held that parental rights were "generally protected" by the Constitution, but were not fundamental.[8] Of the three remaining justices, Justice Scalia agreed with Justice Souter that parental rights were not fundamental rights, while Justices Anthony Kennedy and John Paul Stevens did not even recognize the rights of parents in the Constitution.[9]

The Unknown

The two newest justices on the Court, John Roberts and Samuel Alito, do not have a proven voting record when it comes to parental rights. While both are conservative judges, they could come down either way on parental rights — but even if both side with parental rights as "fundamental," that still only leaves a minority of four Justices who believe that parents currently have a fundamental right protected by the Constitution the way it has historically been interpreted.

TROUBLE IN THE LOWER COURTS

There is one more threat to parental rights that bears mentioning. In order for the Supreme Court's decision in a case to govern other courts, a *majority* of judges must agree on the same opinion — but only 4 of the 9 judges on the Court voted for the same opinion in *Troxel*.

Citing this fact, many lower courts (which handle everyday cases that affect parents) have used *Troxel* to undermine parental rights, claiming that since the Supreme Court cannot agree, the lower courts are free to decide a case however they wish. As recently as September 2007, federal judges in the First Circuit ruled that social workers did not violate the constitution as long as they made a "plausible decision" before removing a child from the home.[10]

CONCLUSION

The United States has a rich history of protecting the fundamental rights of parents, but across our nation, that perception is changing. What is more, opponents of parental rights are not only gaining support from these domestic threats, but are also receiving support from a new ally — the rising force of international law.

For further reading:

[1] *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972).

[2] *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

3 *Troxel* (Syllabus), 530 U.S. at 57-58.

[4] *Troxel*, 530 U.S. at 72-73 (2000).

[5] *Troxel* (Scalia, dissent), 530 U.S. at 91-92.

[6] *Troxel* (Scalia, dissent), 530 U.S. at 93.

[7] *Troxel* (Thomas, concurring), 530 U.S. at 80.

[8] *Troxel* (Souter, concurring), 530 U.S. at 77.

[9] *Troxel* (dissents), 530 U.S. at 80, 91, 93.

[10] *Carter v. Lindgren*, No. 06-2539 (1st Cir. Sept. 7, 2007).

THE INTERNATIONAL THREAT

The Menace of International Law

Fortunately, the United States is among the handful of nations whose history and heritage has (until recently) valued parental rights. Across the globe, a vast coalition wields two weapons against the family. One weapon seeks to implement international agreements that elevate the power of the state over the rights of parents. Another weapon, a dangerous new legal doctrine, threatens to impose these international trends upon us — with or without our consent.

THE WORLD'S FAMILY

In 1995, President Clinton signed the UN Convention on the Rights of the Child (CRC), an international treaty which requires the state to protect "the best interests of the child."[1] Despite Clinton's signature, the Senate has not ratified the CRC, and even under Clinton, no President has formally sent the CRC to the Senate for possible ratification.

Article 18 of the CRC declares that parents have "the primary responsibility" for the upbringing and development of the child. The best interests of the child will be their basic concern."[2] In doing so, the CRC converts parental *rights* into parental *responsibilities* to "act in the best interests of their children"[3] – not only in public spheres, but also "in private spheres, such as the home."[4]

By stripping parents of rights and replacing them with responsibilities, "best interests provides decision and policy makers with the authority to substitute their own decisions for either the child's or the parents."[5] Parents lose their ability to make decisions for their children and their family, and surrender that authority to the state.

REJECTING OUR HERITAGE

The Supreme Court held in 1978 that the Constitution would be offended if a state attempted to break up the family because "it thought that to do so was in the children's best interest,"[6] and *Troxel* reiterated in 2000 that the state could not override the decisions of parents "solely on the judge's determination of the child's best interests."[7] But if the CRC were ratified, these guarantees to parents would be void. Under the Constitution, treaties are part of the "supreme law of the land"[8] — overriding everything but the express language of the U.S. Constitution and its amendments. No one can force a nation to enter into a treaty, but once the treaty is accepted, that nation is legally obligated to do what it says.[9] If America ratifies the CRC, it will be bound to honor its provisions.

NO REFUGE IN "RIGHTS"

Can a treaty override our rights under the Constitution? A treaty cannot override a constitutional right — as long as that right is *explicitly* protected in the Constitution. But as

Scalia and Thomas noted in *Troxel*, parental rights are not enumerated in the Constitution. In the 1920 case of *Missouri v. Holland*, the Supreme Court held that more was required than "some invisible radiation" from a constitutional provision in order to be shielded from a treaty's requirements. An implied right is not protected from the reaches of an international treaty.

This places parental rights directly in the path of destruction: because they are not explicitly protected by the Constitution, any treaty that the U. S. ratifies can override them – including the *Convention on the Rights of the Child*.

But the story gets worse. Even if the U.S. never ratifies the CRC, America could still be forced to yield to its provisions, under the legal doctrine of customary international law.

THE RISING SPECTER OF CUSTOMARY INTERNATIONAL LAW

Customary international law (CIL) is "comprised of the customs and usages among nations of the world."[10] If a custom is widely practiced by other nations, it becomes part of the international law – even if Congress never ratifies it. Because every nation in the world (except the United States and Somalia) has adopted the CRC, a growing coalition of judges believes that the CRC is customary international law and influences U.S. law – *even though the U.S. has not ratified it.*

In *Roper v. Simmons*, the Supreme Court struck down the juvenile death penalty, emphasizing repeatedly that the CRC prohibits the death penalty, and that "the United States now stands alone in a world that has turned its face against the juvenile death penalty."[11] The weight of international opinion, though not *binding*, provided significant confirmation for the Court's conclusions.[12]

WHEN THE STATE BECOMES THE PARENT

Whether the CRC is adopted by the U.S Senate or imposed by the forces of customary international law, the result will be the same: parents will lose their ability to make decisions for their children. At best, the government will have constant grounds to challenge the everyday decisions that parents makes, even in the privacy of their own home; at worst, the state will have the power to override the decisions of parents and become, in effect, the *true* parent of every child.

Here is a brief summary of how the CRC, either ratified or imposed, would significantly alter parental rights:

Prohibition of Corporal Punishment

Article 19 of the CRC commands that the child shall be protected "from all forms of physical or mental violence." Across the board, the UN's Committee on the Rights of the Child has held that this article "requires the protection of children from all forms of violence, which includes corporal punishment in the family."[13] The United Kingdom has been subjected to considerable censure for its continued defense of "reasonable chastisement," which the UN has denounced as "a serious violation of the dignity of the child."[14]

Expansive Government Oversight of Home Schooling

Article 28 of the CRC requires the government to "recognize the right of the child to education." In order to achieve this right, the government must "make primary education compulsory and available free to all," and "take measures to encourage regular attendance at schools." Further, in Article 29, the Convention states that education should develop "respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations." Finally, the Convention allows for education by private individuals, as long as the "education given in such institutions shall conform to such minimum standards as may be laid down by the State."

At the very least, the freedom to home school would be subjected to government oversight and review, to ensure that parents are meeting these educational "standards." Parents who refuse to teach their children to respect the principles "enshrined in the Charter of the United Nations" could face prosecution by the state. At worst, these provisions of the CRC could completely erase home schooling as a legitimate option of education.

Exhaustive Collection of Private Information

Paradoxically, the protection of the child's rights requires that the government amass an exhaustive collection of private information about children. Throughout its country reports, the Committee on the Rights of the Child has consistently urged governments to "establish a central registry for data collection and introduce a comprehensive system of data collection incorporating *all the areas covered by the Convention*."[15] Because the Convention covers everything from the child's economic welfare, to medical decisions, to familial relationships, to physical and mental well-being, the extent of the government's ability to collect information is virtually limitless.

A Child's Right to Make Autonomous Decisions

Throughout the Convention, the government is commanded to respect "the evolving capacities of the child" by promoting and facilitating "respect for the views of children and their participation in all matters affecting them," whether in schools, judicial proceedings, or family life.[16] The government is charged with ensuring that children enjoy their "*fundamental freedoms, including those of opinion, expression and association*," within the family setting.[17]

If the government is charged with ensuring that children participate in "all matters affecting them," nothing prevents the government from substituting its own will for that of a parent.

A number of years ago, a thirteen-year old boy brought his parents to court under a Washington state statute which sought to give children who were in "conflict with their parents" a right to be heard. The conflict? His parents wanted him to attend church on Sunday morning, Sunday evening, and Wednesday evening, while the boy only wanted to attend once a week. The trial judge ruled that if the parents wanted their son back, they needed to limit his church attendance because once a week was enough church for a 13-year old boy. Afraid of losing their son, the parents agreed to obey the judge's order.

Removal of the Child from the Home

As has been previously mentioned, if the parents fail to uphold their responsibilities under the CRC, the state has an obligation to intervene. In nations that have already adopted the CRC, this "intervention" often comes in the form of a parent's worst nightmare: the loss of their child.

In August 2007, British Child Protective Services informed an expectant mother that she would lose her child because she was "diagnosed with depression and a personality disorder, leading to concerns that her baby might be subjected to 'emotional abuse,'" – even though she has never been accused of posing physical danger to a child.[18] British CPS has threatened another expectant mother with the loss of her baby because she too is "capable of 'emotional abuse,'" even though her psychologist has testified that she poses no threat to her child."[20] When asked to justify their actions, British CPS said that decisions like these have to be made by social workers who have to consider the best interests of the child.[21]

Sadly, stories like these are becoming common. In 2006, more than 2000 babies under one year old were taken from their parents — three times the number ten years ago,[22] and many of these parents "were not told why their children were taken away."[23]

What constitutes "emotional abuse"? According to the American Medical Association, "emotional abuse" can be something as simple as "making fun of a child, calling a child names, and always finding fault."[24] Article 19 of the CRC, however, commands parents to "protect children from all forms of physical or *mental violence*" – another term for "emotional abuse." If parents fail to protect their children from these "negative influences," the state is obligated under the CRC to intervene – even if that means removing the child from the home.

CONCLUSION

The "best interests of the child" phrase empowers the *state* to make decisions about the welfare and happiness of a child it has never even met: in short, the state becomes the parent. Thankfully, there is still time to secure this right for ourselves and our children — if we are willing to act now.

For further reading:

[1] *Convention on the Rights of the Child*, art. 3.

[2] *Convention*, art. 18.1.

[3] UNICEF, *Implementation Handbook for the UN Convention on the Rights of the Child*, 46.

[4] Van Bueren, *International Rights of the Child: Section A*, 8.

[5] Van Bueren, 46.

[6] *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

[7] *Troxel v. Granville*, 530 U.S. 57, 67 (2000).

[8] *U.S. Constitution*, art. VI.

[9] Van Bueren, 6.

[10] *Maria v. McElroy*, 68 F.Supp. 2d 206, 233 (E.D.N.Y. 1999).

[11] *Roper v. Simmons*, 543 U.S. 551, 576, 577 (2005).

[12] *Roper*, 543 U.S. at 578.

[13] UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties, Concluding observations: New Zealand* (27 October 2003): CRC/C/15/Add.216.

[14] UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties, Concluding observations: United Kingdom of Great Britain and Northern Ireland* (9 October 2002): CRC/C/15/Add.188.

[15] UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Thirty-sixth session, Concluding observations: France* (4 June 2004): CRC/C/15/Add.240.

[16] UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties, Concluding observations: France* (4 June 2004): CRC/C/15/Add.240.

[17] UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties, Concluding observations:* ***Mexico*** (10 November 1999): CRC/C/15/Add.112.

[18] Sunday Telegraph, "YouTube row over social services baby threat," Aug. 20, 2007.

[19] London Daily Telegraph, "Threat to take new-born over emotional abuse," Aug. 26, 2007.

[20] Sunday Telegraph, Aug. 20, 2007.

[21] The Daily Mail, "My baby will be taken from me the moment it's born," Sept. 6, 2007.

[22] The Daily Mail, Sept. 6, 2007.

[23] American Medical Association, *Child Abuse and Neglect.*

[24] UNICEF, *Implementation Handbook*, 258.

THE SOLUTION

For our Children and Grandchildren: The Parental Rights Amendment

If we are to secure America's rich heritage of freedom from the decisions of American judges and from the dangers of international law, we must act now to enshrine these rights in the surest protector of our rights and liberties — the Constitution of the United States. Nothing short of a constitutional amendment can ensure that we and our children will have the freedom to raise the next generation of prosperous and vigilant citizens.

The Solution:
Amending the Constitution

- Only a Constitutional Amendment can ensure that parental rights will be honored in the United States, and protect these rights from the threat of international law.
- Only 33 amendments have ever been passed by Congress, and of these, only 27 have been ratified by the states.
- Passing an amendment takes supporters at every level of government -- in Congress, in committees, and in the states. Every American can make a difference by *becoming involved*.

WHY A CONSTITUTIONAL AMENDMENT?

If creating a constitutional amendment is so difficult, why should we pursue it? Quite simply, amending the Constitution is the only way to secure our parental rights.

Only a constitutional amendment will ensure that the government respects and honors the vital relationship between children and their parents that our nation has long recognized. It is also the only way to secure this right regardless of the *judges* who fill the Supreme Court. The founding fathers created a nation ruled by *laws*, not men — placing parental rights in the text of the Constitution ensures that *law* will defend the American family. Lastly, only an explicit constitutional amendment that recognizes parental rights can combat customary international law and protect the family from international treaties (like the UN Convention on the Rights of the Child) that place the state in the role of parents. If these dangerous international forces remain unchecked, America could one day transform parental rights into responsibilities.

If a strategy to secure parental rights does not neutralize both the domestic and the international threats, then it will ultimately fail. Only a constitutional amendment completely eliminates these threats.

A DIFFICULT ROAD

Every year, some two hundred amendments to the U.S. Constitution are introduced, but only 33 have been passed by both the House and the Senate in Congress, and of these, only 27

have been ratified by three-quarters of the states (including the ten in the original Bill of Rights).

An amendment to the Constitution begins when a bill is *introduced* in Congress. The bill is then assigned to a *committee*, which considers the proposed text, altering it as needed. Because of the vast amount of bills that Congress receives each year, many are not even considered by committees, and many more are voted down before they make it back to the House or Senate. If the committee approves the bill, it is then debated and must be approved by a two-thirds vote of both the House *and* the Senate. Only thirty-three proposed amendments have cleared this threshold.

Once passed by Congress, the amendment must be ratified by three-fourths of the states. If it gains the approval of 37 states, it joins the elite group of 27 constitutional amendments which have been added to the Constitution.

DRAFT PARENTAL RIGHTS AMENDMENT FOR THE UNITED STATES CONSTITUTION

SECTION 1

The liberty of parents to direct the upbringing and education of their children is a fundamental right.

SECTION 2

Neither the United States nor any state shall infringe upon this right without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served.

SECTION 3

No treaty nor any source of international law may be employed to supersede, modify, interpret, or apply to the rights guaranteed by this article.

AN IMPOSSIBLE TASK?

Amending the Constitution is an enormous task — it requires time, resources, vision, dedication, and hard-working people who will make it happen. But it is not an impossible task.

ParentalRights.org is a growing coalition of individuals who are bringing together their time, resources, vision, and dedication — individuals who believe that the vital role of parents in the lives of their children should be protected and cherished. If government officials want to interfere in the family, they must prove that they have a compelling reason to do so, *not* because they think they can do a better job than the child's parents. The vast majority of parents know their children better and love them more than a government official ever could. The government should be *supporting parents* as they raise their children — not the other way around.

You do not need to be a full-time politician or lobbyist to make a difference — the support of *every American* is vital to this process. Here are some practical ways that you as a home school leader can get involved in the fight for parental rights:

- Visit ParentalRights.org and sign the petition for a constitutional amendment to protect parental rights
- Consider partnering with ParentalRights.org to make this amendment a reality.
- Continue to pray for the success of this amendment.
- Share the need for this amendment with families in your church and community. Encourage them to join the fight to secure their parental rights.

THE FIGHT OF OUR LIFETIME

The battle for parental rights is the fight of every American, because it is the battle for future generations of great Americans. Time still remains for us to make a difference, and to take a stand for freedom.

This is the fight of our lifetime — and together, we can win it.