



SENATE JUDICIARY

Exhibit No. 2

Date 4-4-07

Bill No. HB 312

American Civil Liberties Union
of Montana

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TETSIMONY HB 312

Chairman Laslovich and Members of the Senate Judiciary Committee,

My name is Cathy Day, Public Policy Director, of the American Civil Liberties Union of Montana. I am here today to express ACLU's opposition to HB 312, a proposed Constitutional amendment to provide for the constitutional rights of parents.

The ACLU has consistently defended family autonomy against unwarranted governmental intrusion and has supported Supreme Court decisions upholding rights to family privacy and family integrity. Although the ACLU takes the position that the vital role that parents play in the raising of their children is of critical importance and must be respected, we oppose parental rights bills because they are unnecessary, redundant, and dangerous. These bills would give parents such absolute control over their children's lives that, in some instances, the minors' own constitutional rights would be threatened and their health and well-being endangered.

The language of the bill is too broad and overreaching - several other states have parental rights laws, but they are merely statutory, rather than the more extreme measure of amending the Constitution. These parental rights laws have more narrowly tailored statements of the rights of parents and explicitly clarify how the rights of the state are balanced with the rights of parents.

What happens when the rights of the child, as defined in the Montana Constitution, conflict or compete with this newly defined right of the parent? HB 312 does not clarify how it would interact with other existing constitutional rights; for example, Art. II § 15 of the Montana Constitution guarantees that children have "all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons" - it is unclear if this amendment is intended to preclude some of the rights of children and, if so, which rights?

This is especially disconcerting when one considers the rights of children in neglect and abandonment cases, not to mention divorce and custody proceedings. It has taken years for the "best interests" of the child" to be the controlling standard in divorce proceedings. How would this constitutional right of parents affect that?

This amendment takes the focus away from the well-being of the child -- which has been established constitutionally and in the abuse/neglect statutes, as well as the child custody statutes. Whose rights will be paramount - the mother, the father or the child?

This amendment is unnecessary because well-established case law from the United States Supreme Court already confirms the constitutional right of parents to have control over the upbringing of their children. Most recently, the United States Supreme Court reaffirmed the rights of parents, stating "In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. *Troxel v. Granville*, 530 U.S. 57, 66-67 (2000).

For these reasons, we would encourage you to vote to table HB 312.