

SENATE JUDICIARY
COMMITTEE NO. 3
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BY STG

Testimony of Steve White In Support of SJ9

Mr. Chairperson, and members of the Senate Judiciary Committee, my name is Steve White. I reside in Bozeman and represent the Montana Coalition of Home Educators (MCHE); a statewide organization composed of homeschooling families dedicated to the education of their children.

I am writing to express support of SJ 9, by MCHE.

Background

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. These numbers *include* the ten amendments in the 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 number 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 38 states, it joins the elite group of 27 constitutional amendments which have been added to the Constitution.

The purpose of SJ9 (page 2 of bill), is to Resolve that the Montana Legislature urges the members of the United States Congress to submit the Parental Rights Amendment to the states for ratification.

Amendment is Needed

Parental Rights face an ever-increasing number of threats in the United States today. Whether through unfriendly court decisions, often-abused federal laws, or over-federalization, the fundamental liberty of parents to make decisions for their child's best interest is in danger.

The Federal courts are full of confusion when it comes to parental rights, especially after the Supreme Court's *Troxel v. Granville* decision in 2000, which left **no clear standard** for future cases. With six different written opinions, *Troxel* indicates an uncertain status of parental rights with an all-too-certain conclusion: parental rights are vulnerable and inadequately protected from government intrusion.

Federal laws like the Family Educational Right to Privacy Act (FERPA) or the Health Insurance Portability and Accountability Act (HIPAA) were intended for good, to enact privacy regulations preventing third parties from accessing educational or medical records. But they include ambiguities with a lot of room for interpretation. As a result, both of these pieces of legislation have been interpreted in ways that shut parents out of their children's lives by denying them access to important information about their children.

The threat to parental rights does not end with vague federal law or confusing court precedents; there are other problems that lessen the power given to parents in protecting and raising their

children. For example, there has been the disturbing trend of federalization in almost every area of government.

With the focus on privacy at the federal level, many states are applying a so-called "child's right to privacy" when it comes to library records. With regulations that prevent parents from viewing the books that their child has checked out, some libraries have even asked a parent to pay a child's late fee -- but refused to specify the book title for the sake of privacy.

As the government gets bigger and handles more concerns of our everyday lives, parents may find themselves and their opinions being squeezed out of their children's lives. Here in America, the role previously left to parents is being usurped by faceless bureaucrats.

How do we protect a right fundamental to American society? By placing it into the Constitution, the law of the land, we can help prevent the spread of federal power in the area of the family and ensure that parental rights are protected with the strength and certainty they deserve. The Parental Rights Amendment is written in a way that will address these domestic threats by making this message clear: parents' fundamental rights will be protected, and no level of government can block parents out of their children's lives.

International Treaty & Parent Rights

Today the **U.N. Convention on the Rights of the Child (UNCRC)** is approaching a possible ratification by the United States Senate. This treaty, as harmless as it may appear, is capable of attacking the very core of the child-parent relationship, removing parents from their central role in the growth and development of a child, and replacing them with the long arm of government supervision within the home.

The UNCRC is an international treaty focused on promoting the rights of children and seeking to give children priority in the implementation of governmental measures. The Convention claims to offer a road map that will guide government officials in the improvement of laws and policies, by defining which rights the government should give to children.

Since its introduction in 1989, the Convention has been ratified by every nation in the world except for the United States and Somalia. The CRC was signed by President Clinton in 1995, but early opposition in the Senate persuaded Clinton not to submit the treaty to the Senate for ratification.

The Senators who opposed the CRC in 1995 believed that the Convention marked a significant departure from the American concept of the relationship between state and child, and was incompatible with the right of parents to raise their children.

The Amendment

The proposed amendment contains three sections:

- (1) The liberty of parents to direct the upbringing and education of their children is a fundamental right.**
- (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.**
- (3) No treaty may be adopted nor shall any source of international law be employed to supersede, modify, interpret, or apply to the rights guaranteed by this article.**

In the 1925 decision of *Pierce v. Society of Sisters*, the U.S. Supreme Court struck down a compulsory attendance act that required all parents to send their students to public schools,

instead of private or religious schools. The court concluded that the act was unconstitutional because it "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."

Thus, Parental Rights (Section 1), currently recognized as implied rights, will become specifically enumerated in the text of the Constitution.

Because fundamental rights are so important to our freedom as Americans, the government must meet a heightened burden of proof in order to restrict those rights. In legal terms, the government's case begins with a positive demonstration – they must prove that there is a government interest in restricting the right, and that the government has a specific interest in restricting the right of the particular parents whose actions are being challenged. In early 2006, the U.S. Supreme Court used this very language when talking about violations of religious liberty. According to the Court, the government must "demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'--the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzales v. O Centro Espirito Beneficente Uniao do Vegetal*, 548 U.S. 418, 430-431 (2006).

Thus, the text of this proposed parental rights amendment (Section 2) merely takes this well-established principle of law, and applies it explicitly to the fundamental right of parents.

According to Article 38 of the *Statute of the International Court of Justice*, international law is comprised of international treaties, international customs which have been accepted as law by general practice, the general principles of law recognized in civilized nations, and the judicial decisions and teachings of legal authors and scholars. All four channels of international law currently pose a significant threat to parental rights.

The Parental Rights Amendment would prohibit the use of all four sources of international law in determining what rights of parents should be protected. Treaties that were ratified by the United States would need to be interpreted in light of what the Amendment guarantees to citizens, instead of using the treaty to interpret the meaning and extent of constitutional liberties. Furthermore, federal courts would not be able to impose harmful principles of customary international law on parents, because the rights granted in the text of the Constitution override and overwhelm conflicting principles of customary international law.

Thus, Section 3 of the Amendment would prevent neither the Senate's treaty power nor the courts subjecting parental rights to international law.

Summary

The only way to ensure the preservation of the child-parent relationship is through an amendment to the U.S. Constitution protecting parental rights. The time to secure the protection and preservation of the American family is now. **Please support the passage of SJ9.**