

**Prepared Testimony of**

**~~Kent Vincent, Attorney at Law~~ Jennifer Laporte**

**Before the**

**Kansas House of Representatives  
Children and Families Committee**

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Mr. Chairman and Distinguished Members of the Committee: Thank you for the opportunity to provide testimony in support of House Resolution 6009, concerning a proposed amendment to the United States Constitution protecting families and their children.

**INTRODUCTION**

My name is Jennifer Laporte and I am a concerned Kansas parent and a volunteer with ParentalRights.org. The mission of ParentalRights.org is to protect children by empowering parents through adoption of the Parental Rights Amendment to the U.S. Constitution and by preventing U.S. ratification of the UN's Convention on the Rights of the Child (CRC). I am testifying today regarding the necessity of an Amendment to the United States Constitution to protect the fundamental liberty of parents to direct and control the upbringing of their children. First, I will give an overview of the Amendment and its relationship to the laws and courts of Kansas. Then, I will give a brief statement of the concerns of myself and other Kansas parents about the ever-increasing threats to parental rights.

The proposed  
PARENTAL RIGHTS AMENDMENT

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 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.

The Parental Rights Amendment (PRA) codifies and preserves the *longstanding traditional standard* for parental rights and child protection in America. Both Kansas law and the Supreme Court of the United States hold that parental rights are “fundamental” rights as called for in PRA Section One.

| [K.S.A. Section 38-141](#) provides:

(b) It shall be the public policy of this state that parents shall retain the fundamental right to exercise primary control over the care and upbringing of their children in their charge.

U.S. Supreme Court ruling:

“The liberty interest...of parents in the care, custody, and control of their children...is perhaps the oldest of the fundamental liberty interests recognized by this Court.” – *Troxel v. Granville*, 530 U.S. 57 (2000)

Under United States Supreme Court precedent, a Court applies *strict scrutiny* when reviewing government actions that substantially interfere with a citizen’s fundamental rights. The language of PRA Section Two comes directly from U.S. Supreme Court case law articulating this “strict scrutiny” standard.

“The essence of all that has been said or written on the subject is that only those interests of the highest order and those not otherwise served can overbalance

legitimate claims to the free exercise of [a fundamental right].” – *Wisconsin v. Yoder*, 406 U.S. 205 (1972); See also *Adarand v. Peña*, (1995), *Widmar v. Vincent*, (1982), and *Church of the Lukumi Babalu Aye, Inc., v. Hialeah*, (1993).

Courts at various levels of the federal judiciary used this same terminology in 125 cases since its introduction in 1972. Its meaning, therefore, is well established and clear. The Kansas Court of Appeals has recognized that government action must meet the same high test of strict scrutiny if a fundamental liberty is in question:

~~"To determine whether government action violates an individual's right to the free exercise of religious beliefs under the Kansas Constitution, a court must determine: 1) whether the individual's religious beliefs are sincerely held; 2) whether the state action burdens the individual's free exercise of religious beliefs; 3) whether the state interest is overriding or compelling; and 4) whether the State used the least restrictive means of achieving its interest[O]nly those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion:"~~ (that is, a fundamental right). (No. 105,366 *Stinemetz v. KHPA*) *Wright v. Raines*, 1 Kan. App.2d 494, 571 P.2d 26 (1977) at 501.

State laws that provide for child safety and protection are upheld under a strict scrutiny standard because the government has a compelling interest in protecting children where unfit parents threaten their welfare. Kansas' compelling government interest to pass laws for the sake of children will not be changed by codifying Kansas' existing standard in the federal Parental Rights Amendment.

The fundamental rights standard in the PRA also preserves a fit parent's fundamental liberty to control and direct the upbringing of their children. In *Troxel v. Granville*, a majority of the United States Supreme Court failed, for the first time in contemporary history though, to apply the strict scrutiny standard. The *Troxel* decision therefore created ambiguity and confusion in lower courts. Indeed, an increasing number of federal courts interpret *Troxel* as granting them greater latitude on whether to even apply strict scrutiny to government actions that substantially interfere

with parental decisions concerning their children. Justice Thomas' concurring opinion accurately notes:

“... The opinions of [a majority of the Court] recognize [a parental right] right, but curiously none of them articulates the appropriate standard of review....” – *Troxel v. Granville*, 530 U.S. 57 (2000), Thomas concurring at 530 U.S. 80.

Section Three of the proposed Amendment is designed to protect the authority of the State of Kansas over matters reserved to them under the Tenth Amendment, which might otherwise be ceded to the federal government through a properly executed treaty.

The United Nations' Convention on the Rights of the Child is an example of a treaty that, if ratified, overrides laws enacted by the Kansas legislature relating to families and children. In this regard, Article VI of the United States Constitution expressly provides that:

“... *all Treaties made, or which shall be made* under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, *any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*”(emphasis added)

Moreover, in *Reid v. Covert*, 354 U.S. 1 (1957), the U.S. Supreme Court confirmed that:

“To the extent that the United States can validly make treaties, the people and the States have delegated their power to the National Government and the Tenth Amendment is no barrier.”

**The proposed amendment preserves the longstanding traditional standard of parental rights protection already recognized in the State of Kansas, and preserves for the State the same legal authority that it already has to govern in areas of child safety and abuse prevention.**

Parental rights are under attack in our nation, with the first threat originating from within the

federal court system. Across the country, many judges are beginning to deny the vital role of parents in the lives of their children, instead inserting the government into a "parental" role in a child's life. This dangerous assertion is leading to the severance of the child-parent relationship in numerous instances across the nation—removals that cause unnecessary pain to both children and their parents.

*A thirteen-year-old boy in Washington State was removed from his parents after he complained to school counselors that his parents took him to church too often. His school counselors had encouraged him to call Child Protective Services with his complaint, which led to his subsequent removal and placement in foster care. It was only after the parents agreed to a judge's requirement of less-frequent church attendance that they were able to recover their son.<sup>1</sup>*

The dwindling support for parental rights found on the federal level has opened the door to a growing, blatant disregard of parental rights within the lower courts of our nation. Parental rights violations are on the increase across the country, as courts exchange parental involvement for government control in the lives of America's children.

*A West Virginia mother was shocked when a local circuit judge and a family court judge ordered her to share custody of her four-year-old daughter with two of the girl's babysitters. Referring to the sitters as "psychological co-parents," the justices first awarded full custody to them, only permitting the mother to visit her daughter four times a week at McDonalds. Eventually she was granted primary custody, but forced to continue to share her daughter with the sitters.*

*When her case finally reached the West Virginia Supreme Court of Appeals in October 2007, the beleaguered mother was relieved to finally be granted full custody of her daughter.*

*In their October 25 opinion Supreme Court justices wrote that they were "deeply troubled by the utter disregard" for the mother's rights. One justice referred to the mother's right as the "paramount right in the world." Chief Justice Robin Davis summed up the case in one simple question. "Why does a natural parent have to prove fitness when she has never been found unfit?" he asked.<sup>2</sup>*

International law that seeks to empower the government to intrude upon the child-parent relationship is becoming an increasing threat. [The UN Convention on the Rights of the Child](#)

[UNCRC](#)), a seemingly harmless treaty with dangerous implications for American families, is approaching possible ratification by the United States. Under the UNCRC, instead of following due process, government agencies would [have the power to override your parental choices](#) at their whim because they determine what is in "the best interest of the child." In essence, the UNCRC applies the legal status of abusive parents to *all* parents. This means that the burden of proof falls on the *parent* to prove to the State that they are good parents—when it should fall upon the State to prove that their investigation is not without cause. Professor Geraldine van Bueren, one of the participants in drafting the UNCRC, states that: “Best interests provides decision and policy makers with the authority to substitute their own decisions for either the child’s or the parent’s, providing it is based on considerations of the best interests of the child. Thus, the Convention challenges that family life is always in the best interests of children and that parents are always capable of deciding what is best for children.”

Anyone who has ever been a parent or a child is hopefully keenly aware of the reality that there are no perfect parents or even any perfect children. However, the vast majority of Kansas parents are good and fit parents who love their children and work extremely hard every day (and night) to make the best decisions possible for their children. As a parent, I feel that I know my children the best and love my children the most. Wise and caring parents like myself should be trusted to make decisions for their children that are in their best interests. I have spent countless hours working to get this Amendment passed not only so that I can raise my own children with loving discernment, but also so that in the future my children will be able to exercise their right to raise their children in an atmosphere of freedom and respect rather than in one of oppression and fear.

**For all the above reasons, I urge you to pass House Resolution 6009 in support of the proposed Parental Rights Amendment to the U.S. Constitution.**

NOTES:

1. This was not a reported decision and personal names are withheld in such cases as a matter of course. Our source for this information was Michael Farris, J.D., who advised the parents relative to this case.

2. *In Re: Visitation and Custody of Senturi N.S.V.*, 221 W.Va. 159, 652 S.E. 2d 490 (2007)