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Committee on the Judiciary

SUBCOMMITTEE ON THE CONSTITUTION

Hearing on a “Parental Rights Amendment”

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Thank you for this invitation to address the Subcommittee on the Constitution on the important topic of “Restoring Parental Rights in the Constitution.” Respect for parental rights is integral to the well-being of the family, which in the words of the Universal Declaration of Human Rights is “the fundamental group unit of society.”¹ In particular, respect for parental rights is integral to the well-being of children, who thrive best in an intact nuclear family comprised of a biological father and biological mother.

Specifically, I have been asked to speak as to the United Nations Convention on the Rights of the Child (CRC), and how it affects the rights of parents and impacts the welfare of children.²

The CRC is the most widely ratified treaty bar none. Only the United States and Somalia have not ratified it.³ It is my position that the CRC is a fundamentally flawed treaty, and one which, despite good intentions of many of its supporters and some beneficial provisions, ultimately fails those in whose interests it purports to protect: children.

Thus, United States’ refusal to ratify the CRC and to conform to pressure that it do so is to be applauded, and not derided.⁴

The fundamental problem of the CRC is that, in pertinent part, it envisions the child as an autonomous bearer of “rights” divorced from his or her familial context, with an interventionist State seen as the “guarantor” of the child’s rights. Such a perspective implicitly pits children against their parents and views them abstractly as disembodied beings remote from the context of the family, which is the social unit most protective of the child’s interests and uniquely designed to promote the full and harmonious development of his or her personality.

This is not a hypothetical concern. As set forth in examples below, the United Nations Committee on the Rights of the Child (Committee) has repeatedly inveighed against parents, ostensibly on behalf of the “rights” of children, but in reality, by acting against parents and the family, advocating policies which if

¹ UDHR art. 16(3).

² Convention on the Rights of the Child, G.A. Res. 44/25 U.N. GAOR, 44th Sess. Supp., No. 49, U.N. Doc. A/44/25 (Nov. 29, 1989).

³ See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

⁴ Efforts to encourage ratification the CRC include those of The Campaign for U.S. Ratification of the Convention on the Rights of the Child. See <http://www.childrightscampaign.org>.

implemented would undermine the interests of children. In this they are joined by “child rights” activists and academics whose utopian policy prescriptions often likewise pay scant regard to the family, despite the family’s recognized role as the “fundamental group unit of society” across cultures and across time.

While it should be pointed out that country recommendations and General Comments issued by the Committee have no binding “hard law” effect, they can be used by activists and attorneys to push policy prescriptions detrimental to parents and children – in other words, to the family.

The Text of the CRC

The notion of the child as an autonomous bearer of rights can be seen the following provisions:

- Article 13.1.: “The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.”⁵
- Article 15.1.: “States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.”⁶
- Article 16.1.: “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his honor or reputation.”

Perhaps my response is conditioned by the fact that I am the father of a teenager, but it seems self-evident how unworkable such absolute declarations of rights are in practice, and divorced from the ordinary functioning of family life and the normal interactions among parents and children.⁷

⁵ Cf. CRC art. 17 (“States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources...”).

⁶ While article 13 and 15 recognizes that the broad grant of rights may be subject to “certain restrictions,” based upon the effect upon national security, public order, public health or public morals, these exceptions speak to general justifications for state restrictions on civil and political rights, as opposed to a parental carve out.

⁷ The Convention defines a child as “a human being below the age of eighteen years.” CRC art. 1.

While Article 13, with its broad grant of a right to “seek, receive and impart information and ideas of all kinds” via media of the child’s choice was drafted before the advent of the internet, social media and phenomena such as “sexting,” it should be obvious that responsible parenting requires vigilance in the matter of children’s communications with the outside world and the use of media, including setting of conditions on the exercise of “rights” under this article.

Likewise, what does “freedom of association,” framed as a civil and political right akin to that possessed as a general matter by all,⁸ mean with respect to teenagers? The friends one’s children associate with and who one’s teenage children date, should be matters of concern to responsible parents and subject to parental restriction where appropriate.

Finally, the right of privacy, in particular with regard to correspondence, cannot be viewed in absolute terms, especially given the threat and temptation posed to young people by illicit drugs. While wise parents know to give a certain amount of increasing autonomy to their children as they advance in years, it is important that they also draw boundaries, and a concerned parent may at times discern a need to intervene with regards to a child’s privacy.

While the Convention does direct States Parties to respect “the responsibilities, rights and duties of parents... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention,”⁹ as discussed further below, those charged with interpreting the CRC often take a more expansive view of the rights contained therein and seek to expand them even to the point where a conflict with parental authority is the result.

Philosophical Underpinnings of the CRC and the role of the State

While the CRC in a number of places, in particular the preamble, recognizes the fundamental importance of the family¹⁰ and references the “best interests of the

⁸ See Article 22. 1. of the International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) U.N. GAOR, 21st Ses., 1496th plen. Mtg., U.N. Doc. A/6316 (Dec. 16, 1966) (“Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”)

⁹ CRC art. 5.

¹⁰ The preamble, echoing the Universal Declaration of Human Rights of 1948 and the Declaration of the Rights of the Child of 1959, recognizes the family “as the fundamental group

child standard,”¹¹ such concerns are in tension with the view of the child as autonomous rights bearer.¹²

The older view, present in the non-binding Declaration on the Rights of the Child of 1959, sees the child as ideally existing in a familial context and, as a general matter, as dependent on others for securing his or her interests. Beginning in the 1960s and especially in the 1970s, activists began advocating a rights-based approach to secure the interests of the child. As Henry H. Foster, Jr., put it, “The same arguments that were advanced for and against the abolition of slavery and the emancipation of women recur when issues arise regarding the moral and legal rights of children.”¹³ Arising in academic writing, such arguments were also made in courtrooms as well,¹⁴ and, as illustrated above, is a dominant theme in the Convention *on the Rights of the Child*.

Though today there are a number of academic critics of the rights-based approach as found in the CRC,¹⁵ it is still the predominant view among many scholars and members of the Committee.¹⁶

unit of society and the natural environment for the growth and well-being of all its members and particularly children,” and that the child “for the full and harmonious development of his or her personality, should grow up in a family environment.” CRC preamble. Declarations are statements of moral principle which are not legally binding in international law, whereas conventions (or treaties) are binding upon those states that have ratified them. Preambles of treaties are not binding per se, but do provide an interpretive context. *See Vienna Convention on the Law of Treaties* art.31(c) (“The context...shall comprise...the text, including its preamble and annexes.”).

¹¹ *See* CRC art. 9(1) (“States parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents...”).

¹² *See* Bruce C. Hafen & Jonathan P. Hafen, *Abandoning Children to their Autonomy: The United Nations Convention on the Rights of the Child*, 27 *Harv. Int’l L. J.* 449, 451 (1993).

¹³ Henry H. Foster, Jr., *A ‘Bill of Rights’ For Children* 6 (1977).

¹⁴ Children “are autonomous individuals, entitled to the same rights and privileges before the law as adults.” Hafen & Hafen, *supra*, *citing* Brief for State Respondent at 23, *In re Snyder*, 532 P. 2d 278 (Wash 1975).

¹⁵ *See* Lynn M. Kohm, *Suffer the Little Children: How the United Nations Convention on the Rights of the Child Has Not Supported Children*, 22 *N.Y. Int’l L. Rev.* 57 (2009). Professor Kohm’s article has been of particular benefit in the formulation of my thinking with respect to the tensions inherent in the CRC brought about by the child’s rights approach.

¹⁶ *See* James Dwyer, *The Relationship Rights of Children* 11 (2006) (focusing on individual autonomy and declaring that the same moral rights applicable to adults are also applicable to children).

This rights-based approach, however, lends itself to thinking in dialectical terms, whereby the rights possessed by children exist in tension with those who would deny them their rights, *i.e.*, their parents, who are perceived as a class against which children as a class must be able to assert rights instead of as the natural protectors of children. This is in part because the child-rights movement of the 1960s and 1970s arises from a liberationist narrative which adopted a dialectical perspective not only with regard to economic relations, which it viewed as inherently exploitative, but also with regard to social relationships as well.¹⁷

The continuing relevance of such a perspective can be seen in the writing of Samantha Godwin, for example, whose viewpoint is squarely summed up in the title of a forthcoming article to be published by the Northwestern Interdisciplinary Law Review, "Children's Oppression, Rights and Liberation." Godwin links the child rights movements with prior liberation movements, and finds that "despite all good intentions, society is institutionally oppressive to children while privileging adult wishes, desires and interests."¹⁸ Per Godwin, "This oppression occurs without any maliciousness, quite the opposite, it is perpetrated out of concern for the best of children. Paternalistic appeals to the 'best interests' of the legal subordinates as a justification for that subordination is not unique to children. Similar arguments were advanced to justify the power of slave owners over slaves, and of husbands over wives."¹⁹

Under such a framework, the State then is seen as the guarantor of the rights of the child, to be appealed to secure the rights of children as against those who would deny them such rights, namely, parents.²⁰

¹⁷ See generally Herbert Marcuse, *An Essay on Liberation* (1969).

¹⁸ Samantha Godwin, *Children's Oppression, Rights and Liberation*, 4 Nw. Interdisc. L. Rev. 247, 252 (2011). Other academics have likewise argued that children are "indoctrinated" by their parents when they are brought up in a particular religious tradition, and because they are not presented with a smorgasbord of different religions, their rights have been violated. See Joel Feinberg, "The Child's Right to an Open Future," in Aiken and LaFollette, (eds.), *Whose Child? Children's Rights, Parental Authority and State Power* (1980); John White, *The Aims of Education Restated* (1982); and Hugh LaFollette, "Freedom of Religion and Children," *Public Affairs Quarterly* 1989 (3), 75-87. These views are criticized in Sylvie Langlaude, *Children and Religion under Article 14 UNCRC: A Critical Analysis*, 16 Int'l J. Child. Rts. 475, 479 (2008).

¹⁹ Godwin, *supra* at 253.

²⁰ An example of this view can be seen in a Resolution adopted by the General Assembly in 2010 (A/RES/64/142) which calls, inter alia, for governments to create "Youth policies aiming at empowering youth to face positively the challenges of everyday life, including when they decide

While the State certainly has a role as guarantor of the welfare of children, including intervening in cases of abuse or neglect within the family context,²¹ and the CRC rightfully acknowledges the police powers of States Parties to protect children from narcotics,²² sexual exploitation²³ and trafficking,²⁴ there is also the danger of the State crowding out mediating institutions such as the family, churches and (non-public) schools.

For example, with respect to education, the CRC states that States Parties shall “Make primary education compulsory and available free to all.”²⁵ While this in part echoes the Universal Declaration of Human Rights, what is noticeably missing is another (important) article from the Universal Declaration which declares that “Parents have a prior right to choose the kind of education to be given to their children.”²⁶ (A “prior” right is *ipse facto* pre-political and grounded in nature, which the State does not grant but only can recognize.)²⁷

Such an assertion of the positive power of the State with respect to education can interfere with the rights of parents, such as those who homeschool their children, and such an assertion of a State control over education is inconsistent with U.S. Supreme Court precedent which is solicitous of the parents right to control the upbringing of their children consistent with their moral values.²⁸

The CRC does ameliorate this somewhat by noting that with respect to education, nothing “shall be construed so as to interfere with the liberty of

to leave the parental home ...” Article 34 (c) of the Guidelines for the Alternative Care of Children, Annex to the Resolution.

²¹ See CRC art. 9(1), cited above.

²² “States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances.” CRC art. 33.

²³ “States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.” CRC art. 34.

²⁴ “States parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form.” CRC art. 35.

²⁵ CRC art. 28(1)(a).

²⁶ UDHR art. 26(3).

²⁷ Cf. Aristotle, Nicomachean Ethics (“The love between husband and wife is evidently a natural feeling, for Nature has made man even more of a pairing than a political animal in so far as the family is an older and more fundamental thing than the state.”)

²⁸ See *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

individuals and bodies to establish and direct educational institutions,” but this is to be “subject always...to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”²⁹ This again not only ignores the rights of parents who homeschool their children, but also makes non-State education (such as provided by parochial schools) conditional on standards set by the State; as discussed below, when State-mandated standards include content that is morally objectionable to parents and non-State educational institutions, there is a potential for conflict between the State and mediating institutions, with the CRC weighing against such mediating institutions.

In sum, by CRC viewing children as solitary rights bearers with rights guaranteed by the State, and by favoring the State over mediating actors – in particular the family – the CRC unduly interferes with the rights of parents.

The Interpreters of the CRC

This implicit tension in the CRC between a rights-based approach and one which asserts that the best interests of the child should be the relevant standard wherein the family is the best guarantor of the well-being of children in most cases is exacerbated by the outsized role the CRC grants to the Committee.³⁰ The Committee is to be comprised of “experts of high moral standing and recognized competence in the field covered by this Convention.”³¹ This favors “experts” in the field of children’s rights, who by self-selection, tend to be those who would interpret the “rights” of the child to be in tension with those of parents and the

²⁹ CRC art. 29(2).

³⁰ It should be noted that the CRC empowers the Committee to receive reports of States Parties and to request further information from States Parties. CRC art. 44. It does not give power to the Committee to issue legally binding opinions. The Committee has, however, taken it upon itself to issue reports on States Parties’ compliance and interpretations of provisions of the CRC. Problems associated with such actions by treaty monitoring bodies, including the Rights of the Child Committee, are set forth in a submission made by the Alliance Defending Freedom, the Catholic Family and Human Rights Institute and Focus on the Family submitted to the Office of the High Commissioner for Human Rights in June 2012.

³¹ CRC art. 43.2.

family, issuing directives that extend beyond its powers and to opine as to matters not covered by the text of the CRC.³²

This can be seen in certain *ultra vires* statements by the Committee, such as its criticism in 1995 of a policy by the United Kingdom that empowered parents to remove their children from sex education courses on the ground that allowing parents to exclude their children from such classes amounted to denial of the child's right to express views freely.³³ Likewise, in 1998 the Committee improperly instructed the government of Japan to take steps to "guarantee the child's right to privacy, *especially in the family...*"³⁴ Such views undermine the parent-child and family bond, and ultimately harm children, as they drive a wedge between parent and child and disrupt family harmony. In the worse case, they lead to calls for the intervention by the State against parents in a ham-handed attempt to enforce "rights" of the child.

In addition to seeking to set standards on child sexuality education without the possibility for parents to opt out their children, the Committee has called for access to counseling and reproductive health services by children without the need for parental consent with references to confidentiality,³⁵ including abortion.³⁶

The latter is extremely problematic, given that abortion is nowhere referenced in the CRC, and indeed, its text is consistent with protecting the unborn

³² For a compilation of acts that exceed the competency of the Committee, some of which are referenced in this Statement, *see* FamilyPolicy.ru, *Ultra Vires Acts by the Committee on the Rights of the Child and the New Optional Protocol to the UNCRC*, available at <http://www.familypolicy.ru/rep/int-12-034en.pdf>.

³³ Concluding observations on report by United Kingdom of Great Britain and Northern Ireland (1995, CRC/C/15/Add.34, para. 14), (citing article 12).

³⁴ Concluding observations on report by Japan, (1998, CRC/C/15/Add.90, para. 36) (emphasis added).

³⁵ See e.g. concluding observations on reports by Bulgaria (2008, CRC/C/BGR/CO/2, para. 48 (d)), and Georgia (2008, CRC/C/GEO/CO/3, para. 47-48)).

³⁶ Pressure for reviewing national legislation concerning abortion were contained in concluding observations on reports by Uruguay (2007, CRC/C/URY/CO/2, para. 51-52), Mozambique (2009, CRC/C/MOZ/CO/2, para. 64), Nigeria (2010, CRC/C/NGA/CO/3-4, para. 62 (e)), Burkina Faso (2010, CRC/C/BFA/CO/3-4, para. 57), Sri Lanka (2010, CRC/C/LKA/CO/3-4, para. 55), El Salvador (2010, CRC/C/SLV/CO/3-4, para. 61 (d)). Other UN treaty monitoring bodies have likewise suggested that prolife laws constitute a breach of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. *See* Concluding observations of the Committee against Torture for Ireland (CAT/C/IRL/CO/1) (June 17, 2011).

children.³⁷ States Parties to the CRC did not authorize the Committee to interpret the text of the Convention. Therefore the Committee has no authority to interpret the CRC in ways that create new state obligations or that alter the substance of the rights contained in the treaty.

A further example of the Committee acting beyond its competence is its pressuring countries to consider new 'rights' and corresponding 'obligations' incorporated in a non-binding expert document *International Guidelines on HIV/AIDS and Human Rights*.³⁸ The purported obligations contained therein are not found in the CRC nor in any other treaty, and there is no established consensus behind them. Yet the "obligations" set forth in the *Guidelines* advocated by the Committee including amending abortion laws,³⁹ laws regulating same-sex relationships,⁴⁰ and laws regulating prostitution.⁴¹ Yet the Committee, in its concluding observations, has repeatedly made this controversial document the basis for its recommendations to States Parties.⁴²

³⁷ See CRC preamble ("the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth") (citing Declaration of the Rights of the Child). On this point, see Piero A. Tozzi, *International Law and the Right to Abortion*, International Organizations Law Group, Legal Studies Series No. 1 (2010) at 7.

³⁸ E/CN.4/1997/37

³⁹ *International Guidelines on HIV/AIDS and Human Rights* (E/CN.4/1997/37) at 5 (f) (stating that "Laws should also be enacted to ensure women's reproductive and sexual rights, including the right of independent access to reproductive and STD health information and services ... including safe and legal abortion ...")

⁴⁰ Guideline 4 (b) and Guideline 5 (h) of the *International Guidelines on HIV/AIDS and Human Rights* (E/CN.4/1997/37) stating that 'Criminal law prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed, with the aim of repeal' (Guideline 4 (b)) and 'Anti-discrimination and protective laws should be enacted to reduce human rights violations against men having sex with men ... These measures should include providing penalties for vilification of people who engage in same-sex relationships, giving legal recognition to same-sex marriages and/or relationships and governing such relationships with consistent property, divorce and inheritance provisions. ... Laws and police practices relating to assaults against men who have sex with men should be reviewed to ensure that adequate legal protection is given in these situations' (Guideline 5 (h)).

⁴¹ Guideline 4 (c) of the *International Guidelines on HIV/AIDS and Human Rights* (E/CN.4/1997/37) stating that 'With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing ...'.

⁴² Such references were made in concluding observations on reports by Uganda (2005, CRC/C/UGA/CO/2, para. 52), Mexico (2006, CRC/C/MEX/CO/3, para. 53), Benin (2006, CRC/C/BEN/CO/2, para. 58), Ethiopia (2006, CRC/C/ETH/CO/3, para. 56), Thailand (2006, CRC/C/THA/CO/2, para. 58), Lebanon (2006, CRC/C/LBN/CO/3, para. 60), Tanzania (2006, CRC/C/TZA/CO/2, para. 49).

The Committee does not explain how changing abortion laws to permit minors to obtain abortion without parental consent, undoing laws regulating same-sex relationships and legalizing prostitution can serve the best interests of children. Rather, this reflects a view of the child as the unencumbered rights bearer taken to the extreme of its logic.⁴³

Abuses by State Actors Justified by Reference to the CRC

The above concerns are not merely abstract concerns, for the CRC has been invoked by State Actors – often, unelected bureaucrats or judges – in justifying actions that intrude upon the rights of parents or in justifying policies that undercut the role of parents as the primary educators of their children.⁴⁴

One egregious example of the CRC being invoked to separate children from their parents due to majoritarian contempt for the non-conformist views of parents comes from Sweden, where child protective services removed a homeschooled child, Domenic Johansson, from his evangelical Christian parents.⁴⁵ This occurred despite homeschooling being legal in Sweden throughout the relevant time period

⁴³ Despite the Committee's rights-based activism, the institution has been ineffective in addressing global exploitation of children, such as curbing sex trafficking. *See* Kohm, *supra*; *see also* Marc D. Seitles, Effect of the Convention on the Rights of the Child Upon Street Children in Latin America: A Study of Brazil, Colombia, and Guatemala, 16 INT'L PUB. INT. 159, 159-60 (1997) (critiquing the CRC); *see also* U.N. Special Session on Children Draft Provisional Outcome Document, "A World Fit for Children," HUM. RTS. WATCH, Sept. 3, 2001, <http://www.hrw.org/en/news/2001/09/03/un-special-session-children-draft-provisional-outcome-document-world-fit-children> (stating that governments have to adopt appropriate goals to protect children's rights); *see also* Roy W. Brown, Representative, World Population Foundation, *Address Before the Human Rights Council, The Horror of Child Marriage* (Apr. 16, 2007), available at <http://www.iheu.org/node/2553> (illustrating how the Convention on the Rights of the Child has many weaknesses). Even advocates of U.S. ratification of the convention appear ambivalent as to the Convention's effectiveness in protecting children. *See* Martin Guggenheim, Ratify the U.N. Convention on the Rights of the Child, But Don't Expect Any Miracles, 20 Emory Int'l L. Rev. 43 (2006).

⁴⁴ As noted above, the State has a legitimate role in intervening in cases of abuse or neglect, and the CRC references procedural safeguards in cases where parental custody is challenged.

⁴⁵ 13 August 2009, Länsrätten (County Administrative Court), Case No. 531-09 (upholding the decision of Swedish social services to continue the separation of the family), *aff'd* 27 January 2010, Regeringsrätten (Supreme Administrative Court), Case No. 45-10 (denying appeal). The facts from a perspective favorable to the parents are set forth at <http://dominicjohansson.blogspot.com>.

and the parents by all accounts being loving and caring.⁴⁶ Alliance Defending Freedom has represented the parents in corollary proceedings before the European Court of Human Rights, which in general has been more solicitous of the rights of parents.⁴⁷

Another adverse decision concerning homeschooling arose in Spain, specifically with respect to standards with respect to sex education mandated by the previous government that parents found to conflict with their moral and religious beliefs. The State alleged a violation to the right to education protected by domestic legislation as well as the Convention on the Rights of the Child.⁴⁸ The Constitutional Court of Spain ruled that as schooling in Spain was mandatory, every child must conform to standards dictated by the Government, notwithstanding the objections of parents. This is comparable to the federal court decision in *Parker v. Hurley*, which held *inter alia* that parental objections to public school curriculum which they contend normalized offensive homosexual behavior were overruled by the state interests.⁴⁹

⁴⁶ Svensk författningssamling (1985:1100); 10 kap. Särskilda utbildningsformer, Home education has also been affirmed by Swedish case-law. *See e.g.* In the case of RÅ 1990 ref 111 (holding that a 7 year old child could be home educated in Sweden under the Swedish School Act). In subsequent proceedings in the Johansson case to terminate parental rights in favor of the current foster parents, the judge wrote a strong opinion denying the motion based on testimony as to the fitness of the parents from fact witnesses and experts. An application for an emergency order to reunite the family based on the findings that the family is fit and that parental rights were not terminated is currently *sub judice*.

⁴⁷ ECHR, *Johansson and Others v. Sweden* (application no. 27370/10). The European Court of Human Rights has elsewhere held: “It is in the discharge of a natural duty towards their children – parents being primarily responsible for the “education and teaching” of their children – that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education.” ECHR, *H v. United Kingdom* (judgment of 8 July 1987), Series A No. 120, pp. 59-63, § 84(e). The Court has also held that it is an interference of a very serious order to separate a family. Such a step must be supported by sufficiently sound and weighty considerations in the interests of the child; as the European Commission rightly observed, it is not enough that the child would be better off if placed in care. *Olsson v. Sweden*, (No 2) (1992) 17 EHRR 134, [1992] ECHR 13441/87, at 72.

⁴⁸ Judgment N, 133-2010, *available at*

<http://www.tribunalconstitucional.es/es/jurisprudencia/Paginas/Sentencia.aspx?cod=10041>. This also illustrates the limited scope of the ostensible protections afforded by CRC article 29(2), discussed above, which as written would require non-state schools to conform to standards such as those imposed by the former government of Jose Luis Rodriguez Zapatero.

⁴⁹ 474 F. Supp.2d 261 (D. Mass. 2007), *aff’d* 514 F.3d 87, 102 (1st Cir. 2008).

Similar concerns have been raised by parents in Peru⁵⁰ and Colombia,⁵¹ where the government has justified sexuality and citizenship programs with content similar to the Spanish curriculum by reference to, among other things, the Convention on the Rights of the Child.

Conclusion

In sum, children are often vulnerable and in need of special protection. Their interests are best served, in the usual course, by being raised in intact families, ideally by their biological mother and father, though special circumstances may make that not possible. The best protectors of children's rights are people who care about them the most – their mothers and fathers. The exclusion or downplaying of the rights of parents and support for the family – such as by elevating a misguided notion of “rights” such as contained in the Convention on the Rights of the Child over the best interest of the child – ultimately harms children rather than helping protect them.

Respectfully submitted,



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⁵⁰ Lineamientos para una educación sexual integral, abril, 2008, DIARIO OFICIAL [D. O.] (Peru).

⁵¹ Programa Nacional de Educación para la Sexualidad y Construcción de la Ciudadanía, mayo 27, 2007, DIARIO OFICIAL [D.O.] (Colom.).