

November 9, 2022

The Honorable Jerrold Nadler
Chair, House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jim Jordan
Ranking Member, House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Madeleine Dean
Vice Chair, House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Debbie Lesko
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Nadler, Ranking Member Jordan, Vice Chair Dean, and Rep. Lesko:

On behalf of First Focus Campaign for Children (FFCC), a bipartisan children's advocacy organization dedicated to making children and families a priority in federal budget and policy decisions, I am writing to express strong opposition to H.J.Res. 99 and urge you to soundly reject this proposal by Rep. Debbie Lesko to radically alter the U.S. Constitution with a "parental rights" amendment.

By definition, parents and families are fundamental to the upbringing, education, and well-being of children. The U.S. Supreme Court has repeatedly upheld parents' rights as fundamental. For instance, in *Troxel vs. Granville*, the Supreme Court concluded "the interest of parents in the care, custody, and control of their children" to be "perhaps the oldest of the fundamental liberty interests recognized by this Court."

The role of parents in the protection and well-being of children is vital and an important part of FFCC's advocacy. In fact, it is why FFCC has supported numerous policies and pieces of legislation that respect and support the critically important role of parents, including the Child Tax Credit, Family First Prevention Services Act, the Homeless Children and Youth Act, Healthy Families Act, Trauma-Informed Care for Children and Families Act, Family-Based Care Services Act, Preventing Maternal Deaths Act, and other legislation that encourages parental involvement in schools and prevents the separation of migrant children from their parents and families, which violates the rights and best interests of both parents and their children.

Tragically, H.J.Res. 99 fails to recognize that both parental and child rights must be supported. By undermining even the most limited current protections for children, H.J.Res. 99 would create greater threats to the safety, education, health, and well-being of children. Therefore, FFCC strongly opposes Rep. Lesko's proposed "parental rights" constitutional amendment.

H.J.Res.99 Would Limit the Protection of Children from Abuse and Neglect

First, while most parents deserve deference in the upbringing of their children and support to help any parents struggling to fulfill parenting duties, some parents are unable to live up to the responsibilities and duties of parenting. Sadly, some parents are violent, criminal, unfit, and a danger to children.

In cases where parents commit neglect or physical, emotional, or sexual abuse upon their children or put children in harm's way, there is a critical role for society to respect the fundamental human rights of children and to step in and protect them from danger and harm.

The language in H.J.Res. 99, grants parents the constitutional protection to “direct the upbringing, care, and education of their children as a fundamental right” with the only possible exceptions of when there is a government interest of “the highest order” or with “a parental action or decision that would end life.” This would impede actions to protect children from abuse and violence – short of death.

Child abuse and domestic violence can take many forms and the clear evidence shows that the trauma from physical, emotional, or sexual abuse and abject neglect can be life-long and passed from one generation to the next. Granting constitutional protections to parents to take any actions against children short of “a parental action or decision that would end life” will have tragic consequences, as some children will be left in horribly abusive and unsafe situations.

In fact, with respect to cases of emotional or sexual abuse, neglect, and physical abuse, there may be no threat of death, but H.J.Res. 99 could lead to judicial action and standards that put parental rights ahead of protecting children from abuse, violence, and harm and roll back a century of protections that have been put into place for children.

In our past, kids were seen as the property of their parents. As Woodhouse writes:

As late as 1920, a parent who killed a child in the course of punishment could claim a legal excuse for homicide in no fewer than nine states. Well into the nineteenth century, a father could enroll his male children in the army and collect the enrollment bounty, betroth his minor female children to persons of his choice, and put his children to work as day laborers on farms or factories and collect their wage packets.

We should not return to those days.

Samantha Godwin, resident fellow at Yale Law School, writes:

When evaluating the extent of parents’ legal rights, we should not merely consider how ideal parents exercise their power to provide the effective care and guidance children need. The extent of what the law enables imperfect parents to do to their children must also be taken into account. The issue is not only what role we hope that parents play in their children’s lives, but how the powers actually granted might be used and abused for better or worse. Thinking only in terms of how the best parents conduct themselves is a mistake; it is also necessary to account for what the worst parents can get away with.

H.J.Res. 99 Would Create Chaos and Lawsuits in Public Schools and Harm Students

Second, while we strongly support parental and community engagement in education through PTAs, advisory committees, and communities in schools, a detrimental consequence of H.J.Res. 99 is that it could potentially result in a flood of litigation initiated by individual parents, at taxpayers’ expense, against anyone working with children, including early childhood educators, teachers, librarians, counselors, social workers, and nurses, or between parents with opposing values.

The language grants a “right to direct education,” but similar language has been used in some states with similar language to promote book bans, speech codes, the whitewashing of history and science, and other types of censorship that a single parent might desire upon all parents in a school.

Consequently, a disgruntled parent could create havoc in schools and communities across the country by demanding changes to curriculum and teaching methods that might then conflict with the desires of other parents with children in the schools and the community or even the other parent of that child. Education

decisions and disputes would have to be litigated by the courts as “parental rights” cases rather than by communities and parents within the schools themselves. This would be an outright disaster for our nation’s education system and children would be the biggest losers.

H.J.Res. 99 also promotes education vouchers and the privatization of public schools all across this country, which is something we strongly oppose.

H.J.Res. 99 Would Threaten the Health of Children

Third, H.J.Res. 99 would open up an array of dangerous possibilities with respect to children’s health. For example, there are already measles and mumps outbreaks across this country due to states granting an array of “parental rights” exemptions to school vaccine requirements. These exemptions give parents the ability to exempt their children from critically important vaccinations that protect the health of their children and the community at-large, including other children who may have an immunosuppressed medical condition. Under a “parental rights” constitutional amendment, even current vaccination laws could likely be gutted and the health of children would be threatened.

Another area of federal and state law that could be gutted are those provisions granting “mature minors” to exercise independent decision-making when it comes to giving informed consent or to refuse medical treatment with respect to their own bodies and health care, such as “conversion therapy,” female genital mutilation, seclusion and restraint, or other harmful or detrimental “care.” In addition, there have been companies selling bleach or other toxic “cures” to parents for a whole array of conditions, including autism. The language in H.J.Res. 99 makes such so-called “care,” even if harmful, unwanted, or toxic, a fundamental constitutional right of the parent. Short of a “parental action or decision that would end life” (Article 4 of H.J.Res. 99), courts could rule that government could not protect children from such harm.

As for undercutting “mature minor” laws, H.J.Res. 99 would seem to undercut the ability of adolescents from seeking out and confiding in their physician or other medical providers when seeking medical information regarding sexual health and education, pregnancy, STD prevention, family planning, substance use disorder treatment, mental health and suicide prevention counseling, or even by younger children in matters related to physical or sexual abuse by adults. Parents would direct the “care.”

Again, it is important to highlight that some of these laws were passed to address circumstances where parents have made decisions that might be counter to the “best interest” of the child, such as instances when parents have chosen to withhold blood transfusions, cancer treatment, or other medical treatment for religious reasons, or have sought to force the sterilization or institutionalization of children.

Finally, federal law and regulations provide for extra precautions and protections related to medical research in children (the “Common Rule”). In such cases, a capable child “must actively show his or her willingness to participate in the research, rather than just complying with directions to participate and not resisting in any way.” H.J.Res 99 would threaten all of these current legal protections that promote the “best interest” and voice of children in their own care and treatment.

H.J.Res. 99 Undermines Child Rights, Protections, and Voice: It Should Be Rejected

Parents are the guardians and not the owners of children. Unfortunately, H.J.Res. 99 treats children as purely passive objects of the authority of parents. Children have fundamental rights that would be eliminated by this proposal and deserve more than just to be protected from parental decisions that “would end life.” Children deserve better.

In fact, the failure to recognize the rights of children, to respect their voice, or even consider what is in their best interest is so pervasive that kids are not even listened to on issues that exclusively impact them, such as

education, child abuse and neglect, child trafficking, and teenage pregnancy. H.J.Res. 99 embodies this tragic problem and fails children.

The fact is that violence, abuse, injustice, and discrimination against children in families, schools, prisons, and institutions can best be significantly reduced if children’s voices are heard and their rights are protected. The consequence of the silencing or dismissal of the voices of children about the harm they experience and their needs has the effect of protecting the abusers, which includes parents, government, and private institutions, rather than the children.

In *Trovel v. Granville*, Justice John Paul Stevens agreed with the “presumption that parental decisions generally serve the best interests of their children,” but he noted that “even a fit parent is capable of treating a child like a mere possession.” Thus, kids need protections too. As Stevens explains:

Cases like this do not present a bipolar struggle between the parents and the State over who has final authority to determine what is in a child’s best interests. There is at minimum a third individual, whose interests are implicated in every case to which the statute applies — the child. . . . [T]o the extent parents and families have fundamental liberty interests in preserving such intimate relationships, so, too, do children have these interests, and so, too, must their interests be balanced in the equation.

If policymakers are to take actions that impact children, it should be to take action in their “best interest,” to protect them from harm, and, at the very least, to do no harm. Unfortunately, H.J.Res. 99 fails to, as Justice Stevens says, properly balance the equation of interests at stake in decisions impacting children, undermines the fundamental rights, protections, and voice of children and would be quite harmful. We urge the House Judiciary Committee to reject it.

Sincerely,



Bruce Lesley
President