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Statement for the Record**

**U.S. House of Representatives
The Subcommittee on the Constitution and Limited Government,
The House Judiciary Committee**

**Hearing: “Free Speech: The Biden Administration’s Chilling
of Parents’ Fundamental Rights”
March 23, 2023**

Chairman Johnson, Ranking Member Scanlon, and Members of the Subcommittee on the Constitution and Limited Government, we are writing to submit the following statement for the record.

First Focus on Children is a bipartisan children’s advocacy organization dedicated to making children and families a priority in federal policy and budget decisions. When it comes to making policy that impacts the lives of children, such as education, their best interests and well-being must be the first priority. Far too often, children and youth are invisible or treated as an afterthought, even when the topic is specific to them and their needs.

Fortunately, that is not always the case. In *Brown v. Board of Education* (1954), Chief Justice Earl Warren wrote:

...education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.¹

The Supreme Court recognized the fundamental right to education for all children in the United States that was reaffirmed in *Plyer v. Doe* (1982)² and a number of other decisions. For example, in

¹ *Brown v. Board of Education*, 347 U.S. 483 (1954).

² *Plyer v. Doe* 457 U.S. 202 (1982).

his majority opinion in *Tinker v. Des Moines Independent School District* (1969), Justice Abe Fortas wrote:

*Students in school as well as out of school are “persons” under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. . . In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.*³

Justice Fortas adds:

*It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.*⁴

In the Supreme Court case *Island Trees School District v. Pico* (1982), the Court ruled that children have a fundamental right to an education and access to learning that is not limited by the censorship of books based on “narrowly partisan or political” grounds. As Justice William Brennan writes:

*Our Constitution does not permit the official suppression of ideas. Thus, whether petitioners' removal of books from their school libraries denied respondents their First Amendment rights depends upon the motivation behind petitioners' actions. If petitioners intended by their removal decision to deny respondents access to ideas with which petitioners disagreed, and if this intent was the decisive factor in petitioners' decisions, then petitioners have exercised their discretion in violation of the Constitution.*⁵

Unfortunately, since that time, there has been a retreat from recognizing the important rights that children have with respect to education. As an example, we would urge the Subcommittee to address the real challenge to fundamental rights of children to an education free of historic and extreme levels of book bans and censorship that we are currently witnessing in states and school districts across this country.⁶ Children in this country should be offered and challenged with both

³ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

⁴ *Ibid.*

⁵ *Island Trees School District v. Pico by Pico*, 457 U.S. 853 (1982). See also *West Virginia Board of Education v. Barnette* 319 U.S. 624, 319 U.S. 642 and *Epperson v. Arkansas* 393 U.S. 97 (1968).

⁶ McMahon, Regan, “Why Your Kids Should Read Banned Books,” Common Sense Media, Jan. 30, 2022, <https://www.common sense media.org/articles/why-your-kid-should-read-banned-books>; Chavez, Nicole, “At least 50 groups in the US advocated to ban books in the past year,” CNN, Sep. 19, 2022, <https://www.cnn.com/2022/09/19/us/book-ban-movement-pen-america-report-reaj/index.html>; Natanson, Hannah, “School book bans and challenges, at record highs, are rising again,” Washington Post, Sep. 19, 2022, <https://www.washingtonpost.com/education/2022/09/19/school-book-bans-challenges-record-highs-are-rising-again/>; O’Kane, Caitlin, “Over 1,600 books were banning in U.S. school districts in one year – and the number is increasing,” CBS News, Sep. 20, 2022, <https://www.cbsnews.com/news/banned-books-list-increased-schools-ban-critical-race-theory-sexuality-pen-america-report/>; Pierce, Charles P., “Banning Books in Schools Is Bad for Democracy, and Your Kids Know It,” Esquire, Sep. 21, 2022, <https://www.esquire.com/news-politics/politics/a41311932/banned-books-schools-libraries/>; Pitcher, Michelle, “Students Taking Back ‘Ownership’ of Education,” Texas Observer, Jan. 5, 2023, <https://www.texasobserver.org/texas-book-bans-cameron-samuels/>; Sheridan, Kerry, “Students push back against book bans as the scope of a new Florida law expands,” WUSF, Mar. 6, 2023, <https://wusfnews.wusf.usf.edu/education/2023-03-06/students-push-back-book-bans-scope-new-florida-law-expands>.

the good and bad of our nation’s history and offered different points of view and perspectives to encourage student learning, growth, development, and understanding.

There are other fundamental rights of importance to children that Congress should address, such as:

- Protecting fundamental civil rights;
- Reversing rising rates of school segregation;
- Addressing inequalities in school funding;
- Enforcing Individuals with Disabilities Education Act (IDEA) and Title IX protections;
- Ending the seclusion and restraint of students;
- Abolishing corporal punishment (i.e., institutional child abuse);
- Ending the criminalization of adolescent behavior;
- Putting a stop to the physical search of students and their property without probable cause;
- Prohibiting mandatory drug testing;
- Addressing ongoing free speech issues; and,
- Protecting the privacy and confidentiality rights of children.⁷

The fact is that students and their needs and concerns are the most important issues in education policy.

Parental Engagement and Parental Civility

As we recently explained in our letter commenting on H.R. 5, we wholeheartedly agree that parents are fundamental to the upbringing of children and absolutely should be engaged and involved in the education of their children. In fact, children have better outcomes when their parents are involved.

As Rebecca Winthrop, Director of the Center for Universal Education at the Brookings Institution, writes:

In school communities where there are trusting relationship among adults – parents or caregivers, teachers, and school leaders – students do better, a lot better. In one rigorous 10-year study across hundreds of school in the U.S., parent-school relationships that were

⁷ Bishop, Joseph P. (ed.), *Our Children Can’t Wait: The Urgency of Reinventing Education Policy in America*, Teachers College Press, 2023; Black, Derek W., “Freedom, Democracy, and the Right to Education,” *Northwestern University Law Review*, 116(4), 2022, 1031-1098; Weishart, Joshua E., “Separate But Free,” *Florida Law Review*, 73(5), 2021, 1139-1198; Black, Derek W., *Schoolhouse Burning: Public Education and the Assault on American Democracy*, Hachette Book Group, 2020; Todres, Jonathan and Shani M. King (eds.), *The Oxford Handbook of Children’s Rights Law*, Oxford University Press, 2020; Huntington, Clare & Elizabeth S. Scott, “Conceptualizing Legal Childhood in the Twenty-First Century,” *Michigan Law Review*, 118(7), 2020, 1371-1457; Weishart, Joshua E., “Democratizing Education Rights,” *William & Mary Bill of Rights Journal*, 29(1), 2020; Black, Derek W., “The Fundamental Right to Education,” *Notre Dame Law Review*, 93(3), 2019, 1059-1114; Robinson, Kimberly Jenkins (ed.), *A Federal Right to Education: Fundamental Questions for Our Democracy*, New York University Press, 2019; Black, Derek W., “The Constitutional Compromise to Guarantee Education,” *Stanford Law Review*, 70, Mar. 2018, 735-103; Rebell, Michael A., *Courts & Kids: Pursuing Educational Equity Through the State Courts*, University of Chicago Press, 2009; Chemerinsky, Erwin, “The Deconstitutionalization of Education,” *Loyola University Chicago Law Journal*, 36(1), Fall 2004, 111-135.

*characterized by respect, personal regard, integrity, and competence were one of the key drivers of improving academic outcomes and student well-being.*⁸

She adds:

*There is a need for deep dialogue between schools and families, a key component of building relational trust. But one of today's biggest threats to improved family-school collaboration is the growing antagonism parents are using to engage with educators and schools. Vitriol, name calling, and personal attacks of teachers, librarians, school principals, and board members are on the rise and is a relational trust crusher. It also undermines the very goal activist parents want – more collaboration.*⁹

As a parent of four children myself, I have actively engaged with my children's schools by voting in school board elections, attending all parent-teacher conferences, volunteering in my children's classrooms, scheduling time to meet with teachers and administrators when important issues arise, serving on the PTAs at my children's schools, serving on athletic booster clubs, and volunteering as an assistant boys and girls basketball coach for two county schools. These were all readily available options and promoted by our community schools with no need for animosity and confrontation.

In addition to my personal experiences, I have learned a great deal over the years from both of my parents, my step-mother, step-brother, my uncle, and several cousins, who are all educators about the immense understanding of pedagogy and concern that educators have for our nation's students. As a result, I have immense respect for the work, talent, dedication, and concern that the vast majority of teachers and educators bring to their profession on a daily basis – all with the goal of educating our nation's children to best achieve their hopes and dreams while also trying to provide a place of health, safety, and compassion for each and every one of their students. We must never forget that teachers stand at the forefront of defense to protect our children when threats arise in our schools.

Again, we strongly support parental engagement in education, and parents absolutely should have a say in their children's education. As Winthrop explains:

*To foster better family-school relationships, actors at all levels have a role to play. Parents and families can put down their weapons and show up to the discussion with schools ready to engage constructively. But in turn, educators need to step up and do their part in fostering relational trust.*¹⁰

Thus, although we oppose H.R. 5,¹¹ we do agree with the sentiment of the Sense of the House language in the bill that reads “[e]ducators, policymakers, and other stakeholders should never seek

⁸ Winthrop, Rebecca, “The dueling parents’ rights proposals in Congress: What the evidence says about family-school collaboration,” Brookings Institution, Mar. 14, 2023, <https://www.brookings.edu/blog/education-plus-development/2023/03/14/the-dueling-parents-rights-proposals-in-congress-what-the-evidence-says-about-family-school-collaboration/>.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Lesley, Bruce, “Letter to Rep. Julie Letlow, et al., in opposition to H.R. 5,” First Focus Campaign for Children, Mar. 20, 2023, <https://campaignforchildren.org/wp-content/uploads/sites/2/2023/03/Letter-on-Parents-Bill-of-Rights.pdf>.

to criminalize the lawfully expressed concerns of parents about their children’s education.”¹² However, it should also be said that parents and outside agitators should never bully, threaten, dox, or seek to intimidate educators, teachers, and even students themselves. The numerous stories of death threats, violence, harassment, and efforts to intimidate school board members, administrators, teachers, and even students are disturbing and unacceptable.¹³

Moreover, the extensive stories listed in footnote 13 are just a small fraction of those reported. They undermine and harm our nation’s public schools, students, and our democracy. We have seen far too much violence in our schools. If the Department of Justice is looking into ways to protect

¹² H.R. 5 - 118th Congress, Parents Bill of Rights, Mar. 1, 2023, <https://www.congress.gov/bill/118th-congress/house-bill/5>.

¹³ Borter, Gabriella, Joseph Ax, and Joseph Tanfani, “School boards get death threats amid rage over race, gender, mask policies,” Reuters, Feb. 15, 2022, <https://www.reuters.com/investigates/special-report/usa-education-threats/>; Talbot, Margaret, “The Increasingly Wild World of School Board Meetings,” The New Yorker, Oct. 8, 2021, <https://www.newyorker.com/news/daily-comment/the-increasingly-wild-world-of-school-board-meetings>; Stieglitz, Brian and Sandra Salathe, “We know who you are...we will find you’: Furious anti-maskers threaten Tennessee school board official over decision to reinstate face masks as COVID cases surge,” Daily Mail, Aug. 11, 2021, <https://www.dailymail.co.uk/news/article-9885093/Clay-Travis-slams-cosmetic-theater-masks-tense-Tennessee-school-board-meeting.html>; Natanson, Hannah, “Death threats, online abuse, police protection: School board members face dark new reality,” Washington Post, Nov. 9, 2021, https://www.washingtonpost.com/local/education/death-threats-online-abuse-police-protection-school-board-members-face-dark-new-reality/2021/11/09/db007706-37fe-11ec-9bc4-86107e7b0ab1_story.html; Feuer, Alan, “I Don’t Want to Die for It’: School Board Members Face Rising Threats,” New York Times, Nov. 5, 2021, <https://www.nytimes.com/2021/11/05/us/politics/school-board-threats.html>; Lopez, Brian, “Death threats and doxing: The outcomes of mask mandate and critical race theory fights at a Texas school board,” Dec. 15, 2021, <https://www.texastribune.org/2021/12/15/texas-school-boards-political-fights/>; Girard, Scott, “An impossible situation: Members leaving school board amid politicization, divisiveness,” The Cap Times, Aug. 10, 2022, https://captimes.com/news/education/an-impossible-situation-members-leaving-school-boards-amid-politicization-divisiveness/article_bd9d3fb-c040-5828-81cf-083017b08972.html; Powell, Tori B., “Virginia parent charged after she threatens ‘bring every single gun loaded’ over school’s mask dispute,” Jan. 21, 2022, <https://www.cbsnews.com/news/virginia-school-board-gun-threat-face-mask-dispute/>; Brown, Danielle J., “FL school board members recount threatening texts, vandalism and other harassment,” Florida Phoenix, Oct. 25, 2021, <https://floridaphoenix.com/2021/10/25/fl-school-board-members-recount-threatening-texts-vandalism-and-other-harassment/>; Jenkins, Jennifer D., “I’m a Florida school board member. This is how protesters come after me,” Washington Post, Oct. 20, 2021, <https://www.washingtonpost.com/outlook/2021/10/20/jennifer-jenkins-brevard-school-board-masks-threats/>; Garger, Kenneth, “Man socks Connecticut school board member in face at meeting about mascot change,” New York Post, Dec. 16, 2021, <https://nypost.com/2021/12/16/connecticut-school-meeting-turns-violent-board-member-ray-mcfall-punched-in-face/>; Levinson, Jonathan and Troy Brynelson, “3 Vancouver schools placed on lockdown after Proud Boys try to enter during masks protect,” OPB, Sep. 3, 2021, <https://www.opb.org/article/2021/09/03/vancouver-schools-lockdown-anti-mask-protesters-entry/>; Hanna, Maddie, “Pennsbury’s board president received threats of death and rape. She’s not alone,” Philadelphia Inquirer, Oct. 31, 2021, <https://www.inquirer.com/news/school-board-threats-pennsylvania-20211031.html>; Kaska, Jimmie, “Eau Claire Police investigating threat toward ECASD school board president,” Mar. 21, 2022, <https://www.weau.com/2022/03/21/eau-claire-police-investigating-threat-towards-ecasd-school-board-meeting/>; Hawkins, Beth, “‘The Hate Is Just Too Much’: Threatened by Neighbors and Trolled on Social Media, Minnesota School Board Members Are Quitting in Record Numbers,” The 74, <https://www.the74million.org/article/minnesota-school-board-members-quit-threats-trolls-hate/>; Capitol Broadcasting Company, “Some adult behavior at Board of Ed meetings wouldn’t be tolerated in schools,” WRAL News, Jan. 27, 2022, <https://www.wral.com/coronavirus/editorial-some-adult-behavior-at-board-of-ed-meetings-wouldnt-be-tolerated-in-schools/20101146/>; Fowler, Hayley, “Student whose grandmother died of COVID is mocked at TN school board meeting, video shows,” Charlotte Observer, Sep. 9, 2021, <https://www.charlotteobserver.com/news/coronavirus/article254101448.html>; and, Epstein, Jake, “An immunocompromised high schooler spoke in favor of mask mandates at a school board meeting. Parents in the audience booed and mocked them,” Insider, Oct. 25, 2021, <https://www.insider.com/immunocompromised-student-endorsed-mask-mandates-parents-booed-board-meeting-2021-10>.

students, teachers, other educators, parents, school board members, and their families from death threats, harassment, and violence, this is something we would support.

Moreover, it must be noted that the many examples of threats, intimidation, and violent behavior cited in footnote 13, including that by the Proud Boys, would never be tolerated if any of those behaviors were conducted by children. Kids would undoubtedly be punished and likely arrested for far less. Furthermore, Congress would never tolerate such behavior directed at Members of Congress or in the halls of Congress. Thus, it should never promote such behavior in our nation's schools.

In addition, we should all be deeply concerned about what message adults engaging in such behaviors are sending to our children. Our children are watching and listening, and it is sad that so many adults are trying to politicize education and make it about themselves rather than focusing on the education, needs, and well-being of children. We urge members of the Subcommittee to reject such behavior or the promotion of it as unacceptable and unproductive.

Instead, we urge the Subcommittee to promote constructive community and parental engagement and civility. As Arnold F. Fege and John H. Jackson explain, "There is a growing realization that not only is the school the center of the community, but the community is the center of the school."¹⁴ They cite a growing community schools movement that includes "high-quality education and cradle-to-career youth programming, physical-and mental-health support, workforce development, affordable housing, and community leadership."¹⁵ Their vision of community engagement would provide a far better future for our children than the culture wars and political divisiveness that others seek to impose upon kids.

A Real Parents' and Children's Agenda

By an overwhelming 77-11% margin, a May 2022 poll by Lake Research Partners¹⁶ found that parents believe "policy involving children should always be governed by a 'best interest of the child' standard." By a 60-19% margin, the American people believe we are spending too little as opposed to too much on public education. And when it comes in investing in children, 9-in-10 voters (90-7%) agreed with the statement that "investing in children helps improve their lives, development, and outcomes."

When it comes to children's policy overall, a nationwide survey by Global Strategy Group in February 2023¹⁷ found that American voters have strong priorities in favor of "creating more effective childcare options for all families" (87-8%), "expanding family and medical leave" (82-12%), bringing back the improved Child Tax Credit (76-13%), and "expanding universal preschool for all 3- and 4-year-olds" (73-16%). The support for this agenda stands in sharp contrast to the

¹⁴ Fege, Arnold F. and John H. Jackson, "Grappling With America's History to Inform Our Future Policies," in Joseph P. Bishop, *Our Children Can't Wait: The Urgency of Reinventing Education Policy in America*, Teachers College Press, 2023, 11-22.

¹⁵ *Ibid.*

¹⁶ First Focus on Children, "Fact Sheet: Parents Support a Positive Child and Family Agenda," Nov. 9, 2022, <https://firstfocus.org/blog/fact-sheet-parents-support-a-positive-child-and-family-agenda>.

¹⁷ Navigator, "Americans are Prioritizing Safety and Quality Education While Rejecting Book Bans and Restricted Curriculums," Mar. 9, 2023, <https://navigatorresearch.org/americans-are-prioritizing-safety-and-quality-education-while-rejecting-book-bans-and-restricted-curriculums/>.

opposition that American voters express to an agenda that would call for “banning books that some parents find to have questionable content” (32-57%) and “banning high school classes like AP African-American history” (21-68%). A CBS News/YouGov poll found even lower levels of support for banning books for “criticizing U.S. history” (17% yes, 83% no), “political ideas you disagree with” (15-85%), “depicting slavery” (13-87%), and “discussing race” (13-87%).¹⁸

We would argue that there is also likely very little support for educational micromanagement, such as that proposed by a chapter of Moms for Liberty in Florida, to ban the spelling of words like “spinal tap”, “quarantine”, or “isolation” by students because they are too “scary of words.”¹⁹

Rather than bans and censorship, parents strongly support a very different affirmative agenda for children, which includes making greater investments in children.

In fact, as the Lake Research Partners poll found, parents overwhelmingly believe the federal government spends too little rather than too much on reducing child hunger (65-5% overall and mothers at a near unanimous 68-1%). Parents also believe we are spending too little rather than too much on public education (60-19%), early childhood education (63-9% overall and 67-8% among mothers), assistance for child care expenses (61-11% overall and 70-8% among mothers), accessing mental health services (64-14%), preventing gun violence (52-10%), child poverty (67-16%), child homelessness (69-13%), and child abuse and neglect 67-10% overall and 76-6% among mothers).²⁰

So yes, let’s listen to the parents and do what is right for children. Congress should put the best interests and well-being of children at the forefront of policy decisions involving children.

¹⁸ Backus, Fred and Anthony Salvanto, “Big majorities reject book bans – CBS News poll,” CBS News, Feb. 22, 2022, <https://www.cbsnews.com/news/book-bans-opinion-poll-2022-02-22/>.

¹⁹ Craig, Tim, “Moms for Liberty has turned ‘parental rights’ into a rallying cry for conservative parents,” Washington Post, Oct. 15, 2021, https://www.washingtonpost.com/national/moms-for-liberty-parents-rights/2021/10/14/bf3d9ccc-286a-11ec-8831-a31e7b3de188_story.html.

²⁰ First Focus on Children, *supra* note 16.