



The Parental Rights Amendment: Frequently Asked Questions

1. Why do we need the Parental Rights Amendment?

Parental rights in America are at increased risk from both the federal courts and international law. Domestically, the Supreme Court's decision in *Troxel v. Granville* (2000) removed from parental rights the high legal protection accorded to all other fundamental rights, leaving judges to weigh parental rights against the interests of the child, the State, and even third parties on a case-by-case basis. Meanwhile, ratification of the UN's Convention on the Rights of the Child (CRC), which would overrule State-level family law and constitutionally implied parental rights, is a stated goal of the current administration. One federal court in New York has already twice held that the treaty is even binding without ratification, under the theory of "Customary International Law." The Amendment will correct both of these threats.

2. What is so bad about the UN's Convention on the Rights of the Child?

Despite the innocuous title, the CRC, if ratified, would become binding on judges in all 50 Statesⁱ, while an unelected 18-member panel of internationalists has authority to interpret what it means in practical applicationⁱⁱ. In essence, the U.S. would be obligated to perform whatever this panel tells us we have agreed to perform under the treaty. In addition, all family law (95% of which is currently State law) would become a U.S. treaty obligation, and thus a matter of federal jurisdiction and legislationⁱⁱⁱ, the largest power shift from the State to the federal level in U.S. history. Additionally, the convention makes the government, and not the parents, the first and final caretakers for America's children^{iv}. Parents are relegated to the role of government agents in fulfilling our obligations under the CRC^v.

3. Won't a Parental Rights Amendment protect child abusers?

The proposed Parental Rights Amendment clearly states that parental rights are fundamental rights, but "fundamental" rights are not "absolute" rights. The government can restrict a fundamental right, but only if it proves that it has a compelling reason to do so. Freedom of the press, for instance, does not permit slander or libel. Section Two of the Amendment expressly preserves the current interest (obligation) of the government to protect children from child abuse and neglect, which they do by prosecuting those crimes and by interceding in cases of imminent harm. The Amendment is designed to protect fit parents from unwarranted government intrusion without allowing unfit parents to do whatever they want to their children.

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4. Won't a federal constitutional amendment give the federal government control over parental rights?

Unlike 8 of the last 15 amendments, the proposed Parental Rights Amendment does not contain a clause empowering Congress to pass legislation in order to enforce its protections. As a result, Congress is not granted any additional authority by this Amendment, nor is the executive branch. The courts receive no additional authority either – they already have the power and responsibility to protect personal rights from intrusions of federal, state, or local law. As it is written, this amendment merely requires the judiciary to include parental rights among those liberties which they protect.

5. Isn't State law, including family law, already protected under the 10th Amendment?

The Tenth Amendment does not permit the States to violate individual rights. The Supreme Court in *Meyer v. Nebraska* (1923) found that the personal liberty protections of the Bill of Rights limit both state and federal governments. Neither does the Tenth Amendment protect parental rights. There is not a single case in which the Tenth Amendment serves as a basis for protecting parental rights.

The Tenth Amendment also offers no protection against an international treaty adopted by the United States. "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." *Reid v. Covert*, 354 U.S. 1, 18 (1957). If the federal government ratified the CRC, the Tenth Amendment would not prevent family law from becoming a federal treaty obligation and therefore no longer a matter of state law.

NOTES:

- i. United States Constitution, Article VI
- ii. United Nations, *Convention on the Rights of the Child*, Article 45(d); Committee on the Rights of the Child, *General Comments* numbers 1-12 (2000-2010).
- iii. United States Supreme Court, *Reid v. Covert*, 354 U.S. 1 (1957)
- iv. *Convention on the Rights of the Child*, Article 3(2)
- v. *Ibid*, Article 5.



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