

**Prepared Testimony of
Distinguished Professor Emeritus William Wagner**

**Before the House of Representatives
Committee on Civil Law and Procedure
May 8, 2023**

Distinguished Chair and Distinguished Members of the Committee: Thank you for providing me the opportunity to provide testimony on House Bill 152.

INTRODUCTION

My name is William Wagner and I hold the academic rank of Distinguished Professor Emeritus (Law). I served on the faculty at the University of Florida and Western Michigan University Cooley Law School, where I taught Constitutional Law and Ethics. I currently hold the Faith and Freedom Center Distinguished Chair at Spring Arbor University. Before joining academia, I served as a federal judge in the United States Courts, as Senior Assistant United States Attorney in the Department of Justice, and as a Legal Counsel in the United States Senate. Most relevant though, I also serve as a Member of the Board of Directors of the Parental Rights Foundation (PRF). PRF is a non-profit research and educational institution dedicated to the promotion and preservation of parental rights and the protection of children.

I testify today in support of House Bill No. 152.

HB 152 PROTECTS CHILDREN BY PRESERVING PARENTAL RIGHTS

HB 152 submits to the voters a proposed constitutional amendment that preserves the deeply rooted historical tradition and legal standard for parental rights and child protection in America. Louisiana case precedent suggests¹ and the Supreme Court of the United States holds, that parental rights are “fundamental” rights as called for in HB 152.

Under United States Supreme Court precedent, a Court applies *strict scrutiny* when reviewing government actions that substantially interfere with a citizen’s fundamental rights. U.S. Supreme Court case law articulates a “strict scrutiny” standard that limits the exercise of government power.

“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 at least 125 cases since its introduction in 1972. Its meaning, therefore, is well established and clear.

Using the fundamental right strict scrutiny standard, HB 152 preserves Louisiana’s compelling government interest in passing laws protecting children from abuse by unfit parents. Indeed, state laws that provide for child safety and

¹ Cf. *State ex rel. Paul v. Peniston*, 105 So. 2d 228, 232 (La. 1958) (Tate, J., concurring); See also, *Ex parte E.R.G.*, 73 So.3d 634 (Ala. 2011) (holding “[t]he right of parents to direct the upbringing of their children has long been recognized as fundamental by the United States Supreme Court and, therefore, as a right protected by the Fourteenth Amendment ... This Court has also recognized the fundamental nature of parental rights.”)

protection are upheld under a strict scrutiny standard because the government has a compelling interest in protecting children where unfit parents threaten their welfare. For example, Louisiana has a compelling interest in protecting children against the physical abuse of a child committed by an unfit parent.²

The fundamental rights standard in HB 152 also preserves a fit parent's fundamental liberty to control and direct the upbringing of their children, especially in the education sphere. After all, who is in the best position to know what is in the best interest of a child? The fit parents who raised the child or a government authority (well-intentioned or not) who did not? The deeply rooted historical and legal traditions of this nation recognize what every parent knows the moment they hold their child for the first time. It has been given to them the duty, responsibility, and right to control and direct the upbringing of their child. The right properly serves as a limit on the exercise of government power. HB 152 recognizes this right in the State of Louisiana and enacts this limit on the exercise of the State's power.

Passage of HB 152 would make Louisiana the 16th state in the nation to include parental rights as a fundamental right in state law. The other 15 states are: West Virginia prior to 1931, Kansas and Michigan in 1996, Texas in 1999, Utah in 2000, Colorado in 2003, Arizona in 2010, Nevada and Virginia in 2013, Oklahoma

² See, e.g., §14:403 Criminal; Art. 609 & 603 Children's Code (Acts seriously endangering the physical health of child, including infliction of physical injury; exploitation by overwork; or sexual abuse). Thus, it is worth noting, that every State protecting parental rights in its state code, also continues to fully prosecute child abuse and neglect cases, and still properly holds the power to terminate parental rights (i.e., when the government shows a compelling state interest to do so and no less restrictive means to protect the child exist). Likewise, a compelling state interest would prevent parents from disrupting teachers teaching class during the school day.

in 2014, Idaho in 2015, Wyoming in 2017, Florida and Montana in 2021, and Georgia last year.³

BEYOND HB 152, THE NECESSITY OF THE PARENTAL RIGHTS AMENDMENT
TO THE UNITED STATES CONSTITUTION

Pending before the U.S. Congress is a proposed amendment to the U.S. Constitution that inoculates against international interference with state constitutional provisions like that proposed pursuant to HB 152.

The proposed Amendment to the U.S. Constitution is designed to protect the authority of the State of Louisiana 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, would override a constitutional provision enacted by the people of Louisiana relating to families and children (including the proposed constitutional amendment pursuant to HB 152 if enacted). In this regard, Article VI of the United States Constitution expressly provides that:

³ West Virginia (W. Va. Code § 44-10-7, as extended by *In re Willis*, 157 W.Va. 225, 207 S.E.2d 129 (WV 1973); *see also* W. Va. Code § 49-1-1(a) and W. Va. Code § 49-6D-2(a)); Kansas (Kan. Stat. Ann. § 38-141(2)(b); *see also* Kan. Stat. Ann. § 60-5305(a)(1)); Michigan (Mich. Comp. Laws § 380.10); Texas (Texas Family Code § 151.003); Utah (Utah Code Ann. § 62A-4a-201; *see also* Utah Code Ann. § 30-5a-103); Colorado (Colo. Rev. Stat. § 13-22-107(1)(a)(III)); Arizona (Ariz. Rev. Stat. § 1-601); Nevada (Nevada Rev. Stat. Ann. § 126.036); Virginia (Va. Code Ann. § 1-240.1); Oklahoma (Okla. Stat. tit. 25, § 2001—2005); Idaho (Idaho Code § 32-1012 – 1013); Wyoming (Wyo. Stat. Ann. § 14-2-206); Florida (Fla. Stat. § 1014.03); Montana (Mont. Code Ann. § 40-6-701); Georgia (Ga. Code Ann. § 20-2-786).

“... 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.”

For all the above reasons, I urge passage of House Bill 152 but also urge you to additionally consider passing a resolution supporting the proposed Parental Rights Amendment to the U.S. Constitution currently before the U.S. Congress. The proposed amendment to the U.S. Constitution will preserve the longstanding traditional standard of parental rights protection recognized in the proposed amendment to the Louisiana Constitution pursuant to HB 152.