



ADF INTERNATIONAL

ECOSOC Special Consultative Status (2010)

UNIVERSAL PERIODIC REVIEW – FOURTH CYCLE

**Submission to the 50th Session of the Human Rights Council's
Universal Periodic Review Working Group**

April 2025, Geneva, Switzerland

UNITED STATES OF AMERICA

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report highlights the urgent need for the United States of America to take decisive action to protect children by respecting the fundamental human right and responsibility of parents to make decisions concerning the care, custody, and control of their children, particularly their right to protect their children from efforts to impose gender ideology in education and healthcare.

(a) Practices of So-called ‘Gender Transition’

Background

3. Children who experience discomfort with their biological sex may be subjected to interventions ranging from psycho-social treatment, known as ‘social transitioning’ (e.g., changing of names, using different pronouns) to experimental procedures, including the use of puberty blockers, cross-sex hormones, and surgeries. Medicalized ‘gender-transition’ procedures may prevent healthy puberty, radically alter the child’s hormonal balance, interrupt natural puberty, or even remove healthy external or internal organs or body parts.

Federal Legal Framework

4. Children are considered ‘persons’ under the U.S. Constitution and have protected constitutional or statutory rights.¹ The U.S. Supreme Court has long recognized parental rights and the need to protect children under the First and Fourteenth Amendments, which protect, inter alia, the free exercise of religion, the privileges and immunities of citizens, and due process.²
5. The U.S. Supreme Court has affirmed that the responsibility of raising children rests primarily with their parents. As *Wisconsin v. Yoder* and other precedents recognized: ‘The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.’³
6. Under U.S. law, ‘parents are generally presumed to act in the best interests of their children, and they have a ‘substantial, if not the dominant, role’ in making decisions

¹ U.S. Const. amend. XIV; See also 1 U.S. Code § 8 (a) on the definition of ‘Person’, ‘human being’, ‘child’, and ‘individual’ as including born-alive infant.

² See e.g., *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (stressing that liberty under the Fourteenth Amendment protects the right of individuals to, inter alia, ‘bring up children and to worship God according to the dictates of his own conscience’); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (‘[T]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.’); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617-618 and 620 (1984) (recognizing constitutional protections for certain intimate associations, including family relationships).

³ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (holding a state law requiring that children attend school past eighth grade violates Amish parents’ constitutional right to direct the religious upbringing of their children); *Troxel v. Granville*, 530 U.S. 57 (2000) (affirming that parents have the fundamental right to ‘make decisions concerning the care, custody, and control of their children.’).

about their children's mental health care.⁴ Even when they do not, however, '[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents ...'⁵

7. Accordingly, parents have the full right to protect their children from the harms of gender ideology, including from all practices of so-called 'gender transitioning'.
8. The U.S. federal government operates under limited and enumerated powers, with federated states retaining all remaining authority under the Constitution.⁶ While various congressional bills have been introduced, there is currently no federal law that protects children from practices of so-called 'gender transitioning'.⁷
9. Despite the U.S. Supreme Court's consistent recognition of parents' primary role in raising and caring for their children, some federal courts have failed to protect parental rights to the same degree as other fundamental rights,⁸ allowing government officials to infringe on the rights of parents.⁹
10. Therefore, the passage of legislation such as the Families' Rights and Responsibilities Act will ensure that parental rights receive the same level of federal protection as other fundamental rights, protecting every parent's right to direct the upbringing, education, and health care of their children.¹⁰

Subnational or State Legal Framework

11. In this regard, 27 states have enacted legislation using their constitutional 'police powers' to regulate health and safety¹¹ to protect minors from 'gender transitioning'.¹² Laws range from prohibiting state facilities from being used to promote or advocate

⁴ Ryan Bangert, Parental Rights in the Age of Gender Ideology, 27 TEX. REV. L. & POL. 715, 727 (30 Jun. 2023) (quoting *Parham v. J.R.*, 442 U.S. 584, 604 (1979)).

⁵ *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (holding that process is constitutionally due a natural parent at a state-initiated parental rights termination proceeding).

⁶ U.S. Const. amend. X.

⁷ See e.g., S.977, 119th Cong. by Sen. Roger Marshall (R-KS) (A bill to prohibit taxpayer-funded gender transition procedures, and for other purposes) (Introduced 12 Mar. 2025), available at <https://www.congress.gov/bill/119th-congress/senate-bill/977/all-info> and H.R.2202, 119th Cong. by Rep. Doug LaMalfa (R-CA) (A bill to prohibit taxpayer-funded gender transition procedures, and for other purposes) (Introduced 18 Mar. 2025), available at <https://www.congress.gov/bill/119th-congress/house-bill/2202>.

⁸ See e.g., *Foote v. Ludlow School Committee*, No. 23-1069 (1st Cir. 2025) and *January Littlejohn, et al v. School Board of Leon County Florida, et al.*, (Appeals Case # 23-10385) (11th Cir. 2025).

⁹ See also Matt Sharp, 'Congress Must Ensure Parental Rights Receive the Highest Level of Protection,' *ADF Legal* (14 Feb. 2024), available at <https://adflegal.org/article/congress-must-ensure-parental-rights-receive-highest-level-protection/> and Kate Anderson and Emilie Kao, 'The Biden Administration's Proposed Changes to Title IX Threaten Parental Rights,' *The Federalist Society*, (5 Jan. 2023), available at <https://fedsoc.org/commentary/fedsoc-blog/the-biden-administration-s-proposed-changes-to-title-ix-threaten-parental-rights>.

¹⁰ H.R. 650, 119th Cong. By Rep. Virginia Foxx (R-NC) (Families' Rights and Responsibilities Act) (Introduced 23 Jan. 2025), available at <https://www.congress.gov/bill/119th-congress/house-bill/650/text> and S.204 By Sen. Tim Scott (R-SC) (introduced 23 Jan. 2025), available at <https://www.congress.gov/bill/119th-congress/senate-bill/204/text>.

¹¹ See e.g., *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) ('The police power of a State embraces such reasonable regulations relating to matters completely within its territory, and not affecting the people of other States, established directly by legislative enactment, as will protect the public health and safety.');

Prince v. Massachusetts, 321 U.S. 158, 172 (1944) (reaffirming States' authority to adopt 'reasonable regulations' concerning child protection in the interests of 'public health, morals, and welfare').

¹² 'Policy Tracker: Youth Access to Gender Affirming Care and State Policy Restrictions,' *Kaiser Family Foundation* (last visited 17 Mar. 2025), available at <https://www.kff.org/other/dashboard/gender-affirming-care-policy-tracker/>.

for 'social transitioning' to prohibiting healthcare practitioners from providing or prescribing hormones, puberty blockers, and surgeries. They also allow for the revocation of licenses or create a medical malpractice cause of action.

12. Additionally, at least 17 states have passed legislation that protects parental rights as fundamental rights.¹³
13. In contrast, 14 states and the District of Columbia have enacted laws enabling access to so-called 'gender transition' procedures.¹⁴ These laws also vary, but their general aim is to protect 'social' or medicalized 'gender transitioning' by, inter alia, protecting the recipient or provider from civil or criminal charges.

Challenges to Parental Rights

14. Given the varying legal contexts, there are widespread divergences regarding how parents' fundamental rights are being respected across the United States.
15. As exemplified in various cases in Wisconsin, Virginia, and New York,¹⁵ certain states within the U.S. are denying parents their legal rights to protect their children by treating children as the opposite sex at school to 'transition' them, sometimes without the consent or knowledge of their parents.¹⁶
16. A Maryland public school district is refusing to allow parents to opt their children out of classroom activities that try to change the children's religious beliefs about sexuality and gender. The U.S. Supreme Court will soon hear a challenge from a diverse group of parents who argue that this violates their freedom of religious exercise.¹⁷
17. In September 2022, California approved a 'sanctuary state' law that would, inter alia, allow the state to take 'temporary jurisdiction' of a child because the child has been unable to obtain 'gender-affirming' healthcare and empower California courts with jurisdiction to take away a parent's custody.¹⁸ A similar law was approved in Minnesota in April 2023.¹⁹

¹³ Ala. Code 26-1-6 (Alabama); A.R.S. 1-601 (Arizona); Fla. Statutes 1014.02 (Florida); Ga. Code 20-2-786 (Georgia); I.C. 32-1011 (Idaho); Iowa Code 601.1; Kan. Stat. Ann. 38-141 (Kansas); M.C.L. 380.10 (Michigan); M.C.A. 40-6-701 (Montana); N.R.S. 126.036 (Nevada); Okla. Stat. 25-2001 (Oklahoma); Ohio Rev. Code 3313.473; T.C.A. 36-8-103 (Tennessee); Texas Fam. Code 151.003; Utah Code 62A-4a-201; Va. Code 1-240.1 (Virginia); and Wyo. Stat. 14-2-206 (Wyoming).

¹⁴ Movement Advancement Project, 'Equality Maps: Transgender Healthcare 'Shield' Laws,' (last visited 25 Mar. 2025), available at www.mapresearch.org/equality-maps/healthcare/trans_shield_laws.

¹⁵ See e.g., *Doe v. Madison Metropolitan School District* (Wis. Ct. App. 2023); *Figliola v. Harrisonburg City Public School Board* (Case No. CL22-1304) (Va. Cir. Ct. 2024); *Vitsaxaki v. Skaneateles Central School District et al.* (Case 5:24-cv-00155-DNH-ML) (N.D.N.Y. 2025).

¹⁶ Ari Blaff, 'Who's Carl? When Parents Are the Last to Know About Their Trans Kids,' *Nat'l. Post* (Apr. 30, 2024), available at <https://nationalpost.com/feature/parents-transgender-kids-at-school>.

¹⁷ *Mahmoud v. Taylor* (Docket No. 24-297) (Argument set for 22 Apr. 2025). See also John Bursch, 'Mahmoud v. Taylor (Summary and Related Articles),' *ADF Legal* (last visited 3 Apr. 2025), available at <https://adflegal.org/case/mahmoud-v-taylor/>.

¹⁸ California Senate Bill No. 107 (Approved by Governor and Filed with Secretary of State 29 Sep. 2022), available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB107. See also Matt Sharp, 'California Thinks It Can Raise Your Kids Better Than You Can,' *Alliance Defending Freedom* (7 Jun. 2024), available at <https://adflegal.org/article/california-thinks-it-can-raise-your-kids-better-you-can/>.

¹⁹ Minnesota HF 146 (93rd Legislature) (Effective date 228 Apr. 2023), available at <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF146&y=2023&ssn=0/>.

18. In April 2023, Washington State enacted a bill that allows youth shelters to contact the Department of Children, Youth, and Families instead of parents for minors seeking so-called 'gender-affirming treatment'.²⁰
19. In August 2024, parents sued Colorado education authorities over their child's 'social transition'.²¹ The lawsuit followed the passage of a law that required school personnel to address students by their 'chosen' name, deemed it 'discriminatory' to use the child's legal name as given by his or her parents, and did not provide any parental consent process.²²
20. Overall, one parental rights organization found 1214 school districts that have Transgender/Gender Nonconforming Policies that openly state that district personnel can or should keep a student's transgender status hidden from parents.²³
21. The alienation of parents from their children regarding consent concerning medical issues related to sexuality, sex, or gender is not supported by U.S. law or any binding international human rights treaty.
22. Yet, these laws and policies threaten serious psychological and physical harm to children who are pushed to deny their sex and change their identity without the knowledge or consent of their parents.

States Protecting Children from 'Gender Transitioning'

23. On the other hand, states exercising their legitimate right to block child 'gender transitioning' have met resistance, including legal challenges.
24. Notably, in December 2024, the U.S. Supreme Court heard arguments in *United States of America v. Skrmetti*²⁴ regarding the constitutionality of a Tennessee law that, inter alia, prohibits a healthcare provider from knowingly performing or offering to perform on a minor a procedure for the purpose of enabling him or her to identify with, or live as, a purported identity inconsistent with his or her biology.²⁵ If the law's constitutionality is upheld, the Supreme Court would recognize the legitimate interest of states across the country in protecting children from 'gender transitioning'. The court will issue its decision in the summer of 2025.

Executive Orders

25. In addition to the subnational legal framework, executive orders (EOs) are written policy directives issued by the U.S. President stemming from inherent powers found

²⁰ Washington State (2023 Reg. Session)(SB 5599) (Adopted and Engrossed 12 Apr. 2023), available at <https://app.leg.wa.gov/billssummary?BillNumber=5599&Initiative=false&Year=2023>.

²¹ Ben Markus, 'Parents sue over teen's social gender transition they say was kept from them,' *CPR News* (9 Aug. 2024), available at <https://www.cpr.org/2024/08/09/adams-county-parents-sue-over-teens-hidden-gender-transition/>.

²² Colorado General Assembly (75th General Assembly) HB24-1039 ('Non-Legal Name Changes') (Approved by Governor 29 Apr. 2024) (Effective date 29 Apr. 2024), available at <https://leg.colorado.gov/bills/hb24-1039>.

²³ Parents Defending Education, 'List of School District Transgender – Gender Nonconforming Student Policies,' (7 Mar. 2023), available at <https://defendinged.org/investigations/list-of-school-district-transgender-gender-nonconforming-student-policies/>.

²⁴ *United States v. Skrmetti* (Docket No. 23-477) (Argued 4 Dec. 2024).

²⁵ Codified as Tenn. Code Ann. § 68-33-103.

in the Constitution or granted by Congress.²⁶ President Donald J. Trump has issued EOs relevant to 'gender transitioning'.

26. The EO titled 'Ending Radical Indoctrination in K-12 Schooling' directs a plan to eliminate federal funding or support for 'illegal and discriminatory treatment and indoctrination in K-12 schools, including based on gender ideology and discriminatory equity ideology'.²⁷
27. The EO calls on recipients of federal funds providing K-12 education to comply with all applicable federal laws that protect parental rights, including the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA).²⁸
28. The EO calls for each agency to prevent or rescind federal funds, to the maximum extent consistent with applicable law, from being used to 'directly or indirectly support or subsidize the social transition of a minor student, including through school staff or teachers or through deliberately concealing the minor's social transition from the minor's parents'.²⁹
29. The EO titled 'Protecting Children from Chemical and Surgical Mutilation' establishes the policy of the U.S. to not fund, sponsor, promote, assist, or support the so-called 'transition' of a child to identify as the opposite sex, and to 'rigorously enforce' all laws that prohibit or limit these 'destructive and life-altering procedures'.³⁰
30. The EO defines 'child' as an individual under nineteen years of age and 'chemical and surgical mutilation' as:

'[T]he use of puberty blockers, including GnRH agonists and other interventions, to delay the onset or progression of normally timed puberty in an individual who does not identify as his or her sex; the use of sex hormones, such as androgen blockers, estrogen, progesterone, or testosterone, to align an individual's physical appearance with an identity that differs from his or her sex; and surgical procedures that attempt to transform an individual's physical appearance to align with an identity that differs from his or her sex or that attempt to alter or remove an individual's sexual organs to minimize or destroy their natural biological functions.'
31. The EO expresses intent to end reliance on discredited scientific guidelines, such as those provided by the World Professional Association for Transgender Health. It also seeks to defund institutions, research, or grants that support these interventions for children. The EO gives additional directives to the Secretary of Health and Human Services to take appropriate actions to effectuate the order.

²⁶ *Youngtown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) ('The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.').

²⁷ United States. *Executive Order 14190: Ending Radical Indoctrination in K-12 Schooling*. (29 Jan. 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-indoctrination-in-k-12-schooling/>.

²⁸ *Id.* at Sec. 1 Purpose and Policy.

²⁹ *Id.* at Sec. 3 (b)(iii).

³⁰ United States. *Executive Order 14187: Protecting Children from Chemical and Surgical Mutilation*. (28 Jan. 2025), available at <https://www.federalregister.gov/documents/2025/02/03/2025-02194/protecting-children-from-chemical-and-surgical-mutilation>.

Contested Evidence-Base Regarding 'Gender-Transitioning'

32. The causes of gender dysphoria among children remain poorly understood, and long-term outcomes associated with social and medical 'transition' are highly problematic.
33. According to a government-commissioned study conducted in the United Kingdom, titled 'Independent Review of Gender Identity Services for Children and Young People' (hereinafter 'Cass Review'), social transition in childhood may change the development trajectory of children with early gender incongruence.³¹
34. As the world's largest review of the evidence for treatments for young persons experiencing gender dysphoria, the Cass Review found that children who had socially 'transitioned' at an earlier age and/or prior to being seen in a clinic were more likely to proceed to a medical pathway with the long-term implications of which being unknown.³²
35. In other words, 'social transitioning' contributes to the likelihood of medical or 'surgical transitioning'. This puts children on a path toward lifelong medicalization, including puberty-blocking drugs, cross-sex hormones, and body-altering surgeries, all of which can result in irreversible effects, including permanent sterilization.³³
36. Certain medical associations, such as the American College of Pediatricians, also caution against so-called 'gender-affirming' therapy for children.³⁴ They note the 'vigorous, albeit suppressed debate among physicians, therapists, and academics' on the appropriate standard of care, despite gender dysphoria typically resolving in the 'vast majority of patients by late adolescence'.³⁵
37. Assessing the evidence base, there is a rising global consensus³⁶ to adopt a cautious approach to 'gender transitioning', particularly in European countries such as Finland,

³¹ Dr. Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People*, (April 2024) at pg. 32, available at <https://cass.independent-review.uk/home/publications/final-report/>.

³² *Id.* at pg. 31.

³³ T.D. Steensma, et al., *Desisting and Persisting Gender Dysphoria After Childhood: A Qualitative Follow-Up Study*, *Clinical Child Psychology and Psychiatry* 16(4):499-516 (2011), available at <https://pubmed.ncbi.nlm.nih.gov/21216800/>.

³⁴ American College of Pediatricians Position Statement: *Mental Health in Adolescents with Incongruence of Gender Identity and Biological Sex* (Feb. 2024), available at <https://acpeds.org/assets/positionpapers/depression-in-transgender-adolescents-february-2024-updated-3-25-24.pdf>.

³⁵ American College of Pediatricians, Position Statement: *Gender Dysphoria in Children* (Nov. 2018), available at <https://acpeds.org/position-statements/gender-dysphoria-in-children>.

³⁶ See Brief of International Non-Profit Organizations Advocating for Families Impacted by Gender Dysphoria as *Amici Curiae* in Support of Respondents in *United States v. Skrametti* (Submitted 15 Oct. 2024) at pgs. 2-3 and 28, available at <https://independencelaw.org/wp-content/uploads/2024/10/2024-10-14-International-Groups-Skrametti-Amicus.pdf>.

Sweden, France, Norway, and the UK.³⁷ States of the United States that continue to permit or even encourage such procedures on children have become outliers.³⁸

38. Every person experiencing gender dysphoria should receive the highest evidence-based standards of care to prevent overdiagnosis, misdiagnosis, and unnecessary, irreversible medicalization. However, so-called child 'gender-affirmative' care does not meet such goals, and states banning it should be lauded.

(b) International Human Rights Law

39. Under international human rights law, the United States is empowered to adopt measures to protect children from so-called 'gender transition' procedures and ensure parents' rights to make decisions concerning the care, custody, and control of their children.
40. In general, various human rights instruments, inter alia, recognize the family as the fundamental unit of society, stress that childhood is entitled to special care and assistance, emphasize parents as primary caretakers and the subsidiary role of the state in that regard, and that parents are the primary educators of their children.³⁹

International Covenant on Civil and Political Rights (ICCPR)

41. Among other provisions, Article 24 of the International Covenant on Civil and Political Rights (ICCPR) guarantees every child to have, 'such measures of protection as are required by his status as a minor, on the part of his family, society and the State' without distinction as to race, color, sex, language, religion, national or social origin, property or birth.⁴⁰
42. Measures by the United States to restrict or cease funding, sponsoring, promoting, assisting, or supporting the so-called 'gender-transitioning' of a child are necessary to protect children from harm, affirm parental rights, and are compatible with Article 24. Moreover, states have a legitimate interest in exercising their right to enforce all laws that prohibit or limit the 'gender transitioning' of children.

³⁷ See e.g., Frieda Klotz, 'A Teen Gender-Care Debate Is Spreading Across Europe,' *The Atlantic* (28 Apr. 2023) <https://www.theatlantic.com/health/archive/2023/04/gender-affirming-care-debate-europe-dutch-protocol/673890/>; Académie nationale de médecine, 'La médecine face à la transidentité de genre chez les enfants et les adolescents,' *Académie nationale de médecine* (25 Feb. 2022) <https://www.academie-medecine.fr/la-medecine-face-a-la-transidentite-de-genre-chez-les-enfants-et-les-adolescents/>; and John Stewart and James Palmer, 'NHS England's Response to the Final Report of the Independent Review of Gender Identity Services for Children and Young People,' NHS England (10 Apr. 2024), available at <https://www.england.nhs.uk/long-read/nhs-englands-response-to-the-final-report-of-the-independent-review-of-gender-identity-services-for-children-and-young-people/>.

³⁸ Jathon Sapsford and Stephanie Armour, 'U.S. Becomes Transgender-Care Outlier as More in Europe Urge Caution,' *W.S.J.* (29 Jun. 2023), available at <https://www.wsj.com/articles/u-s-becomes-transgender-care-outlier-as-more-in-europe-urge-caution-6c70b5e0>.

³⁹ See e.g., Universal Declaration of Human Rights (UDHR) (proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A)) at Arts. 12, 16.3, and 26.3, available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>; International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 Dec. 1966 by General Assembly resolution 2200A (XXI)) at Arts. 10.1 and 13.3, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; Convention on the Rights of the Child (CRC) (adopted 20 Nov. 1989 by General Assembly resolution 44/25) at Preamble, Arts. 5, 8, and 9, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

⁴⁰ International Covenant on Civil and Political Rights (ICCPR) (Adopted 16 Dec. 1966 by General Assembly resolution 2200A (XXI)), available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>. See also Art. 18.4.

43. In contrast, the failure in certain cases to ensure the rights of parents to make decisions concerning the care, custody, and control of their children is inconsistent with these obligations because (1) they deny protections for children's health as required given their status as minors and (2) contravene the rights of parents to protect their children from the harms of so-called 'gender transitioning'.
44. In this regard, relevant reservations, understandings, and declarations (RUDs) made by the U.S. upon ratification of the ICCPR include the understanding that the U.S. Constitution and the laws of the United States 'guarantee all persons equal protection of the law and provide extensive protections against discrimination'.⁴¹ The U.S. also emphasized that, *inter alia*, Article 24 is 'not self-executing' and:
- 'The United States understands *distinctions* based upon race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status [...] to be *permitted when such distinctions are, at minimum, rationally related to a legitimate governmental objective* [emphasis added].'
45. These RUDs are crucial in understanding the United States' international human rights obligations because the U.S. Supreme Court has recognized the Senate's authority to condition its consent to treaties, and lower courts generally give effect to RUDs.⁴²
46. While ratification of the ICCPR did not change constitutional rights in the U.S., as non-self-executing treaties are not directly enforceable in U.S. courts, that does not impact the treaty's status under international law.⁴³ By explicitly incorporating the domestic legal test for determining the constitutionality of a law, we can ascertain the United States' international legal obligations under the ICCPR.
47. Unlike the heightened 'strict scrutiny' standard which requires the government to proffer that any action infringing upon a fundamental right is 'narrowly tailored' to serve a 'compelling' government interest, the explicit recognition of the 'rational basis' test as the appropriate standard is important because a law prohibiting, for example, child 'gender-transitioning' should be sustained as long as it serves a 'legitimate' government interest.⁴⁴
48. This is because state laws prohibiting child 'gender transitioning' that classify based on 'age' or 'medical purpose', as the state law at issue in *Skrmetti* does, should not trigger heightened review under binding precedents.⁴⁵ Therefore, given the highly problematic nature of child 'gender transitioning', measures of protection under Article

⁴¹ United Nations Treaty Collection, Depositary Status for ICCPR (last visited 18 Mar. 2025), available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en.

⁴² See generally 'Reservations, Understandings, Declarations, and Other Conditions to Treaties,' *Congressional Research Service* (7 Sep. 2022), available at <https://www.congress.gov/crs-product/IF12208>.

⁴³ *Sosa v. Alvarez-Machain*, 542 U.S. 692, 734 (2004) (While the ICCPR did not create obligations enforceable in federal courts, 'the Covenant does bind the United States as a matter of international law'); See also *Medellin v. Texas*, 552 U.S. 491, 520 (2008) ('Such judgments [of an international tribunal] would still constitute international obligations, the proper subject of political and diplomatic negotiations.').

⁴⁴ *Gonzales v. Carhart*, 550 U.S. 124 (2007) ('Where it has a rational basis to act [...] the State may use its regulatory power to bar certain procedures and substitute others, all in furtherance of its legitimate interests in regulating the medical profession ...').

⁴⁵ See e.g., *Gregory v. Ashcroft*, 501 U.S. 452, 470 (1991) (holding that 'age is not a suspect classification'); *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 236 (2022) ('[t]he regulation of a medical procedure ... does not trigger heightened constitutional scrutiny unless the regulation is a mere pretext designed to effect an invidious discrimination.').

24 for children can legitimately encompass protecting them from 'gender transitioning'.

49. Additionally, as stated by the Human Rights Committee:

'Responsibility for guaranteeing children the necessary protection lies with the family, society and the State. Although the Covenant does not indicate how such responsibility is to be apportioned, *it is primarily incumbent on the family, [...] and particularly on the parents, to create conditions to promote the harmonious development of the child's personality* and his enjoyment of the rights recognized in the Covenant. [emphasis added]'⁴⁶

50. This comment recognizes the parents' prior rights in the natural and fundamental order concerning the care, custody, and control of their children. While parental rights are not absolute, the failure to respect such parental rights to protect their children from 'gender transitioning' would leave vulnerable children without the necessary protection enjoyed under Article 24, increasing the risk of violations of their human rights. It could also put parents and guardians in a precarious position, as they risk state interference if they do not support their child's 'transition'.

(c) Recommendations

51. In light of the aforementioned, ADF International suggests the following recommendations be made to the United States of America:

- a. Promote the adoption of relevant legislation at the federal or state level, including but not limited to the Families Rights and Responsibilities Act in Congress and state parental rights bills;
- b. Promulgate, amend, or rescind, as appropriate, agency policies to prohibit practices of so-called 'gender transitioning' of children, particularly policies that deceive parents and deprive them of their rights to notice and consent;
- c. Cease any funding, sponsoring, promoting, assisting, or supporting all practices of so-called 'gender transition' of children;
- d. Rigorously enforce all applicable laws and policies that prohibit or otherwise restrict the so-called 'gender transitioning' of children;
- e. Take all necessary and appropriate measures to ensure the rights of parents to protect their children from practices of so-called 'gender transition'; and
- f. Use all available methods to increase the quality of data, including through the commissioning of an independent review, to guide clinical practices for improving the health of children who experience gender dysphoria.

⁴⁶ CCPR General Comment No. 17: Rights of the child (Art. 24) (7 Apr. 1989) at para. 6, available at <https://www.refworld.org/legal/general/hrc/1989/en/37603>.



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