



Statement in opposition to CACR 29

Note: CACR 29 would amend the NH State Constitution by adding the following: Art.] 2-a. [Parental Rights.] Parents have the natural right to control the health, education, and welfare of their children; therefore, the State shall not abridge the role or responsibility of parents in controlling the health, education, or welfare of their children. [emphasis added]

Madam Chairman, members of the committee. My name is Jack Lightfoot, and I'm from Child and Family Services. I am here to ask you to oppose CACR 29 because we believe it will be detrimental to the children of New Hampshire.

The state constitution already provides ample protection for the critical role that parents play in the care and well-being of their children. As long ago as 1978, our state Supreme Court stated very forcefully, The New Hampshire Constitution, part I, article 2, recognizes that "[a]ll men have certain natural, essential, and inherent rights---among which are, the enjoying and defending life and liberty ... and ... seeking and obtaining happiness." It is axiomatic that the State "does not need to grant parents authority they already have and which is, under our political theory, prior to the state itself. State v. Robert H., 118 N.H. 713, 715; 393 A.2d 1387 (1978) [emphasis added]

Since 1978, there have been a number of cases which also recognize the rights of parents. Each of these cases balanced the rights of parents with the need of children for safety and security. In the Robert H. case, itself, the issue was what standard of proof to apply in termination of parental rights cases. Others have dealt with the broad range of issues that may bring a child's needs into conflict with a parent's wishes: child custody and visitation following a divorce, adoption, child abuse or neglect, and placement of a child into foster care. There has thus developed a well thought-out, solid body of law which can be applied to particular cases coming before the courts.

CACR 29 would jeopardize this long-standing body of law, and call into question the very underpinnings of our most important child welfare legislation. This is because a court is most likely to begin its analysis with a very reasonable supposition: the legislature would not do a meaningless act. By passing CACR 29 the legislature could easily be seen as sending a message that the Constitution as it has been interpreted up to now does not provide adequate respect for the rights of parents over their children. Why else would you pass it? Are parents to be given greater deference in raising their children? Are the existing laws defining abuse and neglect and the court procedures for protecting children still Constitutional? Would a parent in a divorce action be able to argue that his or her rights were violated by a court-imposed parenting plan?

I ask you to vote CACR 29 ITL. Thank you for your attention, and I will be happy to answer any questions.