Prepared Testimony of
Distinguished Professor Emeritus William Wagner

Before the Colorado House of Representatives
Committee on State, Civic, Military, and Veterans Affairs
April 21, 2025

Distinguished Chair and Distinguished Members of the Committee: Thank you for providing me the opportunity to provide testimony on House Concurrent Resolution 25-1003

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 Vice-President and 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 HCR25-1003 and comment here on the correct constitutional standard for fundamental inalienable rights.

HCR25-1003 PRESERVES INALIENABLE PARENTAL RIGHTS TO PROTECT CHILDREN

HCR25-1003 empowers the voters of Colorado to preserve in Colorado's Constitution the deeply rooted historical and legal tradition recognizing parental rights as inalienable. The U.S. Supreme Court recognizes that inalienable parental rights are fundamental. Accordingly, HCR25-1003 provides that

> All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; OF DIRECTING THE UPBRINGING, EDUCATION, AND CARE OF THEIR CHILDREN; and of seeking and obtaining their safety and happiness.

Under United States Supreme Court precedent, a court applies *strict scrutiny* when reviewing government actions that interfere with parents' inalienable right to control and direct the upbringing of their children.

> "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 inalienable right]." – *Wisconsin v. Yoder*, 406 U.S. 205 (1972); See also *Adarand v. Pena*, (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. Colorado statutorily likewise recognizes the fundamental nature of this inalienable right CO Rev. Stat § 13-22-107 (2024):

> Parents have a fundamental right and responsibility to make decisions concerning the care, custody, and control of their children. The law has long presumed that parents act in the best interest of their children.

The proposed Constitutional Amendment will ensure Colorado recognizes the correct constitutional standard to preserve the deeply rooted historical tradition and legal standard for parental rights and child protection in America. Moreover, the amendment in this way would also preserve Colorado's compelling government interest in passing laws protecting children from abuse by unfit parents while utilizing the correct fundamental right standard. Indeed, state laws that provide for child safety and 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, Colorado has a compelling interest in protecting children against the physical abuse of a child committed by an unfit parent.[1]

The proposed amendment 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

[1] Thus, it is worth noting, that every State protecting parental rights in its state law, 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.

on the exercise of government power. The proposed amendment properly recognizes this right in the State of Colorado and properly provides this limit on the exercise of the State's power.

Passage of HCR25-1003 empowers the people of Colorado to vote to make Colorado the 21st state in the nation to recognize parental rights as a fundamental inalienable right in state law. The other 20 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 in 2014, Idaho in 2015, Wyoming in 2017, Florida and Montana in 2021, and Georgia, North Dakota, Iowa, Alabama, and North Carolina in 2023, Tennessee last year, and Indiana in 2025.[2]

For all the above reasons, I urge passage of HCR25-1003. The proposed amendment will preserve the longstanding traditional inalienable parental rights protection recognized in U.S. Supreme Court precedent.

---

[2] Indiana SB 143 (pending governor signature); 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); North Dakota HB 1362; Iowa SF 496; Alabama HB6; North Carolina SB49; and Tennessee SB 2749