



March 2, 2024

Farida Shaheed
Special Rapporteur on the right to education
Office of the High Commissioner for Human Rights
United Nations
hrc-sr-education@un.org

Re: Input for the country visit to USA

Dear Special Rapporteur Shaheed:

Thank you for the opportunity to submit these comments ahead of your visit to the United States. As attorneys general of our respective states, we have the duty and responsibility to protect the constitutional rights of our citizens. The United States Supreme Court has stated unequivocally that parents have a fundamental liberty interest in the education of their children and that the state's role in education is not primordial, preeminent, or preferred. *Pierce v. Society of the Sisters*, 268 U.S. 510 (1925). And every state in the United States has officially recognized this fundamental liberty interest either in court or by statute.¹ Put simply, parents—not the government—are the primary and preeminent decision makers for their children's education.

We oppose any attempt to use the Abidjan Principles to limit educational choice or innovation in the United States. Private schools, charter schools, home schools, and other learning environments, have delivered real, impactful results for American students. School choice has expanded educational opportunity for all students, but particularly for low-income families and students with special needs.² Research even demonstrates that school choice raises the achievement of students who remain in public schools.³ School choice programs have flourished—increasing

¹ See PROTECTING PARENTAL RIGHTS AT THE STATE LEVEL, <https://parentalrights.org/states/>.

² See, e.g., <https://www.edchoice.org/engage/25-years-25-most-significant-school-choice-research-findings/>

³ <https://www.tandfonline.com/doi/full/10.1080/0161956X.2016.1207436>

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access to education—because decisions are made by parents, not government bureaucrats.

The Abidjan Principles are incompatible with American law. The United States Supreme Court has appropriately recognized that children are “not the mere creature of the State; those who nurture [the]m and direct [their] destiny have the right, coupled with the high duty, to recognize and prepare [the]m for additional obligations.” *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972). The right of parents to direct the care and custody of their children is perhaps the oldest of the fundamental liberty interests safeguarded by the United States Constitution. That parental authority is based on the commonsense recognition that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions.⁴ Perhaps more importantly, it’s also based on the idea that parents are best suited to “prepar[e their children] for obligations the state can neither supply nor hinder.” *Prince*, 321 U.S. at 166.

Although parental rights are firmly engrained in American law, they are universal and intrinsic, and predate our Bill of Rights.⁵ See *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 845 (1977). During the late-eighteenth and early-nineteenth century, Sir William Blackstone’s writings greatly influenced the American common-law understanding of the reciprocal rights and duties that the natural law imposes on parents and children.⁶ Blackstone defined the parent-child relationship as “the most universal relation in nature” and explained that parents have a duty to provide for their children’s maintenance, protection, and education. 1 William Blackstone, *Commentaries on the Laws of England* *446 (1753). While recognizing that municipal laws reinforce these duties, he argued that “Providence has done it more effectually ... by implanting in the breast of every parent that natural ... affection, which not even the deformity of person or mind, ... wickedness, ingratitude, ... [or] rebellion of children[] can totally suppress or extinguish.” *Id.* *447. Parental authority stems from parents’ duties to provide for their children’s maintenance, protection, and education and includes, as a necessary

⁴ To be sure, this broad parental authority is not absolute—parents have no license to abuse or neglect their children. Nor does the parental relationship give parents the right to disregard lawful limitations on the use of medical procedures or drugs.

⁵ The United States of America was founded on the self-evident truths that human beings are created equal and endowed by their Creator with certain unalienable rights. In other words, our rights do not come from government. Government is merely the means by which individuals secure those rights.

⁶ See John Witte, Jr., *The Nature of Family, The Family of Nature: The Supremising Liberal Defense of the Traditional Family in the Enlightenment*, 64 *Emory L.J.* 591, 598, 658-62 (2015).

incident, the authority to perform those duties without unreasonable state interference. *See id.* *452–53.

Blackstone was not writing on a blank slate. Instead, he drew from influential natural law thinkers like Samuel Pufendorf and Baron Montesquieu. *See id.* *447 (arguing, by reference to Pufendorf, that parents’ duty to “provide for the *maintenance* of their children is a principle of natural law ... laid on them not only by nature herself, but by their own proper act[] in bringing them into the world”); *see id.* (“[T]he establishment of marriage in all civilized states is built on this natural obligation for the father to provide for his children.” (citing 2 Baron De Montesquieu, *The Spirit of the Laws* 69 (1749))). Similar views on the parent-child relationship can be found in the earlier writings of Hugo Grotius, John Locke, Jean-Jacques Burlamaqui, and others. *See, e.g.,* 2 Hugo Grotius, *The Rights of War and Peace* 208–12 (Richard Tuck ed., 2005) (1625) (“Children need to be educated and conducted by the Reason of another. And none but Parents are naturally [e]ntrusted with this Charge.”); John Locke, *The Two Treatises of Civil Government* 243 (Thomas Hollis ed., A. Millar et al.) (1689) (“The power ... that parents have over their children arises from that duty which is incumbent on them to take care of their offspring during the imperfect state of childhood.” (cleaned up)); Jean-Jacques Burlamaqui, *The Principles of Natural and Politic Law* 61 (1747) (arguing that “Providence ... has inspired parents with that instinct or natural tenderness ... for the preservation and good of those whom they have brought into the world”).

Parental rights are particularly forceful when it comes to directing the education of their children. Indeed, “the values of parental direction of the religious and education of their children in their early and formative years have a high place in our society.” *Wisconsin v. Yoder*, 406 U.S. 205, 213-14 (1972). This means the state cannot prevent parents from choosing a specific educational program—whether it be religious instruction at a private school or instruction in a foreign language. That is, the state does not have the power to “standardize its children” or “foster a homogenous people” by completely foreclosing the opportunity of individuals and groups to choose a different path of education. Meyer, 262 U.S. at 402. Moreover, “[t]he fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only.” *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972). As one education scholar has noted:

Even if parents have a duty to ensure their children are educated, legislatures are not required to establish any particular regulatory framework because parents are endowed with clearly recognized and inalienable rights to make decisions about how their children are educated and raised; legislative bodies do not violate any constitutional norms when

they determine that little or no active oversight or monitoring of home-schooling is necessary. Educational authority does not flow from the state to the parent but, rather, as one would expect in a self-governing republic, from the people to the state.⁷

The Abidjan Principles are also incompatible with the U.N.'s 1948 Universal Declaration of Human Rights, which affirms in article 26.3 that parents have a "prior right" to decide what kind of education their children shall receive. The context of this statement is important. Germany nationalized all education and criminalized parents who refused to send children to public schools in 1938.⁸ The framers witnessed the outcome of a government weaponizing education to support totalitarian "ruling ideologies" as "noble ideals" in opposition to parental choice. So, "[a]fter the fall of the Axis powers in World War II, representatives of the free world gathered as the newly formed United Nations to enshrine human rights that had been threatened by totalitarian regimes and ideology. Education was one of these rights."⁹ Responding specifically to the Nazi regime's use of Germany's education system to indoctrinate children into its inhumane ideology, the Declaration said education "shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms."¹⁰ Similarly, the U.N.'s International Covenant on Economic, Cultural and Social Rights states in articles 13 and 14 that private learning institutions must be respected and that parents have a human right to ensure that their children's education conforms to the family's religious and philosophical convictions.

Those who want increased regulation of private education in the United States, in line with the Abidjan Principles, possess a vested interest in undermining educational freedom and innovation. The irony is that these special interests have done the most to block access to and accountability in education. During the COVID-19 pandemic, teachers' unions in America kept public schools closed even as private schools and workplaces opened.¹¹ The effects were catastrophic for students: Two

⁷ Michael Donnelly, *Homeschooling Response: Questioning Presumptions of the Primordial State*, 66 JOURNAL OF LAW & EDUCATION 77 (Fall 2020).

⁸ <https://www.washingtonexaminer.com/opinion/1981439/un-abandons-founding-ideals-to-pick-fight-with-home-schoolers/>

⁹ <https://www.washingtonexaminer.com/opinion/473470/un-agency-attacks-homeschooling/>

¹⁰ <https://www.washingtonexaminer.com/opinion/1981439/un-abandons-founding-ideals-to-pick-fight-with-home-schoolers/>.

¹¹ <https://www.edweek.org/teaching-learning/how-teachers-unions-are-influencing-decisions-on-school-reopenings/2020/12>; <https://www.republicanleader.senate.gov/newsroom/research/powerful-teachers-unions-cant-distort-the-facts-they-worked-with-democrats-to-keep-schools-closed>

decades of growth for American students in reading and math were wiped away by just two years of pandemic-disrupted learning.¹²

The pandemic revealed to the public what some in America have understood for a while: Teachers' unions are less concerned with educational excellence and more concerned with politics and self-preservation.¹³ For example, the Los Angeles Public School Union (the largest school district in America) leveraged school re-openings for non-pandemic and partisan goals, such as charter school moratoriums, defunding the police, and rent abatement.¹⁴ The American Federation of Teachers (the second largest teachers' union in America) demanded suspension of teacher evaluations, reduction class sizes, funding for new non-teaching staff, and elimination of student evaluations during the pandemic. In other words: less accountability. A report from Government Accountability Institute tracked how teachers' unions have shifted millions of dollars away from workplace-representation efforts to political/campaign activity since 2005.¹⁵ In 2021, the National Education Association (the nation's largest teachers union) spent \$66 million on political activities and lobbying and just \$32 million on representational activities.¹⁶ We encourage your report to examine the effects that powerful public-sector unions have had on access and accountability in public education.

We wholeheartedly support increased access to education. School choice has delivered enormous gains for that cause in the United States. We urge you to reject the Abidjan Principles and stand up for the fundamental rights of parents to choose the educational environment that's best for their children.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin Knudsen", with a long horizontal flourish extending to the right.

AUSTIN KNUDSEN
Attorney General to Montana


¹² <https://www.the74million.org/article/nations-report-card-two-decades-of-growth-wiped-out-by-two-years-of-pandemic/>

¹³ <https://www.tabletmag.com/sections/news/articles/how-teachers-union-broke-public-education>

¹⁴ <https://reason.com/2020/07/28/teachers-unions-want-wealth-taxes-charter-school-bans-and-medicaid-for-all-before-schools-can-reopen/>

¹⁵ <https://g-a-i.org/wp-content/uploads/2022/10/GAI-Teachers-Union-Report.pdf>

¹⁶ Id.



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