STATEMENT

of

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Submitted on behalf of the

AMERICAN BAR ASSOCIATION

before the

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE

UNITED STATES HOUSE OF REPRESENTATIVES

for the hearing on

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE
UNITED STATES RELATING TO PARENTAL RIGHTS

September 9, 2014
I am Thomas M. Susman, Director of Governmental Relations for the American Bar Association. Thank you for the opportunity to share the ABA’s views on proposals for action by Congress to address parental rights. The ABA is the world’s largest voluntary professional organization, with a membership of nearly 400,000 lawyers worldwide. The ABA continuously works to improve the American system of justice and to advance the rule of law in the world.

The ABA has long worked to strengthen families and improve parental protections and resources, and it has many formal policies approved by the Association’s House of Delegates intended to sustain and fortify parent-child relationships. While we have not yet taken a position on the efficacy of a constitutional amendment to protect or define parental rights, we believe there is no shortage of sound policy reforms that Congress can currently act upon through the ordinary legislative process to enhance the rights and responsibilities of parents and to support parent-child relationships.

We have articulated a number of policy recommendations that focus on what Congress can do to provide enhanced parental support when children are placed in foster care. When state or county child welfare agencies become involved with families, the ABA has called upon Congress to encourage keeping or reuniting children safely with their birth parents by increasing the amount and flexibility of funding available for family preservation, and the Association has urged enhanced federal support for family reunification services. The ABA believes such services to parents should include direct access or connection to programs for affordable housing, anti-poverty supports, peer parent support programs, and quality parent legal representation programs. The ABA has also urged Congress to reform the system of financing state child welfare systems, through incentivizing safe and stable parent-child reunifications and rewarding states for increasing their rates of safe and stable reunifications of children in foster care with their parents.

The ABA has long called for improvements in the provision of legal counsel for parents when the parent-child relationship is potentially affected by court action. Therefore, the Association supports the Congressional enactment of H.R. 1096, the Enhancing the Quality of Parental Legal Representation Act of 2013, sponsored by Rep. Gwen Moore (D. WI-4). This bill would help provide quality representation for parents who are involved in the child welfare system, through funding to each state’s federally-supported Court Improvement Program.

In 1987 the ABA first called for laws that ensure competent attorneys are appointed for every indigent parent at all stages of state-initiated child protection proceedings, and that all attorneys receiving such appointments have sufficient training or experience to provide effective representation to parents. The ABA adopted Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases in 2006 to help assure that parents involved with the juvenile courts in cases involving allegations of abuse and neglect receive that competent representation. The Association has also called for provision of legal counsel to low income
parents as a matter of right and at public expense in any adversarial proceedings involving child custody disputes.

The ABA has addressed the legal rights of parents involved with government child protection agencies through numerous mechanisms. There have been several ABA projects, and related policies focused on enhancing support for these parents. For example, the ABA sponsors the *National Project to Improve Representation for Parents Involved in the Child Welfare System*. Through this work, the Association strives to improve outcomes for children and their parents and gives parents a stronger voice in the court system. The ABA has defined high quality representation by developing Association-approved *Standards of Practice*, and it works with states and local jurisdictions to ensure that all attorneys who represent indigent parents meet this definition.

The ABA also designated each June as *National Reunification Month*, which celebrates the important accomplishments of parents, and the many professionals that support them, in getting their children home safely from foster care. The Association hopes Congress will act to bring broader attention to parental reunification work by officially designating each June as a Congressionally-recognized National Reunification Month.

Other ABA policies have supported parents involved with the law in a variety of different contexts.

For example in 2012 the ABA supported the *Uniform Deployed Parents Custody and Visitation Act*, promulgated by the National Conference of Commissioners on Uniform State Laws, which protects the parental rights of military member parents under deployment. Hundreds of thousands of children of military families, under the age of five, are separated from their mother or father due to military assignments. This continues to be a topic worthy of greater Congressional attention.

Several million children have a parent in jail or prison at any given time, with severe adverse consequences to their health and well-being. In 2010 the Association called upon Congress to help protect parental rights when parents are incarcerated, through support of initiatives that facilitate contact and communication between parents in correctional custody and their children, and the Association has urged elimination of restrictions that prohibit recipients of Legal Services Corporation funds from providing legal assistance to incarcerated parents on family law issues. The Association also strongly supports federal support for prisoner reentry programs that begin with assessment of prisoners when they enter jail or prison, include support for maintaining visitation with minor children and adequate and affordable phone access while in confinement as well as family reunification services upon release.

The ABA recognizes that international law regarding parental rights and responsibilities is important, and thus the Association has called upon the Senate to give its advice and consent to ratification of the *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement*
and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. The ABA has also called upon Congress to enact legislation to permit the United States to fully and uniformly implement that Convention, which concerns custody matters and other measures taken for the protection of children and their property, and for the protection of parental rights.

Government child support programs serve half of all our poor children and their families. The ABA has a long history of supporting improvement of laws that help parents receive the child support to which they are entitled. The ABA has urged Congress to pass legislation to ensure uniform laws and procedures in child support cases (such as the Hague Convention on the International Recovery of Child Support), to require new employees to report child support obligations and payment through withholding, to require employers to honor income withholding orders, to establish a national network for the exchange of locate information for the establishment, enforcement and modification of support orders, for the enforcement of visitation orders, for establishment of minimum staffing standards for child support agencies, for improved training for those involved in child support enforcement, for required laws and procedures for civil voluntary parentage acknowledgment, and for strengthening enforcement remedies against the self-employed.

Each year, it has been estimated that over a hundred thousand parents are victims of custodial interference by another parent or family member. On the topic known as parental kidnapping, a practice that results in parents being unlawfully deprived of their child’s custody and visitation rights, the ABA has done considerable work, addressing both domestic and international custodial interference and child abduction, and the Association has called upon Congress to enact legislation establishing a national computerized child custody registry that would aid in protecting parental custody rights. The ABA also supports a variety of Congressional actions to protect parents from domestic violence.

It is well-recognized that America stands behind most of the rest of the industrial world in providing assured job leave for working families. The ABA supports establishment of a reasonable Federal minimum requirement for job-protected parental leave to allow parents to take unpaid leave on full or part-time basis to provide child care for newborn infants, newly-adopted children, and seriously ill children, and the Association has said this should include the continuation of existing health benefits during such periods of leave.

It is essential for America’s future economic prosperity that our young children receive quality, developmentally appropriate care while their parents are working. To aid working parents in securing necessary child care, the ABA has called for Federal legislation designed to provide creative mechanisms for extending the availability and affordability of quality child care, such as the expanded use of tax incentives to parents who purchase child care services or to employers who provide child care services or related benefits to employees, tax credits to child care center
operators, and the targeting of increased public social services funds for the support of a variety of child care programs.

The ABA looks forward to continuing to work with Congress on using Federal law to enhance the safety, permanency, and well-being of families through supporting both parents and their children. Thank you for your consideration of our views.