Statement and Recommendation to National Advisory Committee on Constitutional Reform

10th April 2024

This submission is respectfully submitted by the Trinidad & Tobago Evangelical Council (TTCEC). This Council has been in existence since 1979 and functions under the umbrella of the Evangelical Association of the Caribbean (EAC). The EAC is part of the World Evangelical Alliance (WEA), which is a global ecclesiastical fellowship, instituted in 1846, with alliances on every continent around the world. In fact, there are 130 Alliances around the world, which represent over 400 million evangelicals. The TTCEC is a registered organisation with the Government of Trinidad and Tobago by an Act of Parliament and is listed in position number twelve in the Table of Precedence which comprises the order of protocol of Trinidad and Tobago's highest office holders.

The Council acknowledges the contributions of the following in preparation of this submission (which updates our prior submission entitled *Statement to National Consultation* dated 18 February 2014):

1. Professor William Wagner, J.D, WFFC Distinguished Chair for Faith & Freedom, Spring Arbor University; Distinguished Professor Emeritus (Constitutional Law); President Emeritus, Salt and Light Global (Institute for Constitutional Study) and former Federal Judge.
2. Dr. Augusto Zimmermann, PhD, Law Reform Commissioner (Australia)
3. Dr. Darrell Furgason, Ph.D. (Canada)
4. Rebekah Ali-Gouveia (Attorney at Law)

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1. The Evangelical Alliance of the Caribbean, Tunapuna, Trinidad
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Righteousness exalts a nation…. Proverbs 14:34

INTRODUCTION

The most comprehensive of the National Advisory Committee on Constitutional Reform's supporting documents is the 2013 Report of the Constitutional Commission (hereinafter "the Report"). This report recommends Constitutional changes. Legitimate constitutional reform necessitates preserving good governance under the rule of law and protecting unalienable liberty. We focus our analysis here. We concentrate on the following unalienable fundamental rights: the right to freedom of religious conscience and expression, the right to life, and the right of a man and woman to marry, procreate, and control and direct the upbringing of their children. Preliminarily though, we must address from whence these rights derive.

THE PREAMBLE – GOD AS THE SOURCE OF GOOD GOVERNANCE AND FUNDAMENTAL LIBERTY

The Report in its recommendation on the Preamble raises an issue as to whether the Republic should continue recognizing God as the true source of good governance and fundamental liberty. The Report recommends a capitulatory illogical accommodation for atheists in the Preamble. Specifically, the Report recommends modifying the Preamble to "demonstrate tolerance of diversity that does not eliminate God, but includes others who do not believe in the existence of God." Such a proposition violates a fundamental principle of logic, the Rule of Non-contradiction. The Rule of Non-contradiction provides that contradictory statements cannot both be true in the same sense at the same time. God either exists or He does

not. If the omnipotent Creator of the world exists, His principles ought to inform how we view liberty and rights. If He does not exist, then those holding government power deem rights into existence apart from truth, unencumbered by any objective notion of a higher rule of law. To be sure, such morally relative humanistic determinations facilitate efficient social engineering. Thus, the recognition of the 'Supremacy of God' is a strong protection against tyranny. It reveals that our basic rights are not creations of government, shifting with the whims of those in power, but gifts of God, inherent in our creation. And as our lives are a gift of God, the government has no right to dispose of our rights as it appraises. Rather, the government is accountable to a higher law and thus truly subject to the rule of law. For example, the fundamental rights embodied in the liberty provisions of the Constitution expressly limit the exercise of government power.

Affirming God's supremacy provides a constitutional lens though which one accurately sees truth concerning fundamental rights (i.e., First Principles that correspond to reality). The First Principles are moral absolutes God reveals in His Word and places on the human heart. Present at the creation of the world, these self-evident truths correspond to reality and remain constant through time. They do not evolve over time or circumstance as some in this constitutional reform process have suggested. Rooted in divine, natural, and common law traditions, First Principles form the fundamental foundation for preserving liberty, as well as for constitutional good governance under the rule of law in Trinidad and Tobago. Written on each citizen's heart, these self-evident Truths provide a moral compass with which to guide personal and institutional decision-making; Endowed by our Creator, they provide moral points of reference against which a culture measures right from wrong. Indeed, First Principles

historically informed many government actions improving society, including laws ending slavery and the abominable slave trade, as well as laws providing for the equal treatment under the law.

First Principles serve, therefore, as reliable objective standards by which to measure whether a government action is good or bad, just or unjust. The Preamble of the Constitution clearly reflects such a view, and ought to continue to do so. The Constitution should at every opportunity strengthen rather than weaken these protections in the interest of the good of the people and for the protection of the family as the basic unit of society.

Alternatively, a secular humanist perspective allows for constitutionally authorized new globalist entitlements, disguised as rights, conflicting and colliding with the founding principles of Trinidad and Tobago. Since well before the founding of our nation, liberty served as a limit on the exercise of government power, that is "freedom from government action, not entitlement to government benefits." *See Obergefell v Hodges*, Justice Thomas making the same point as to the USA founding). We ought to uphold and preserve that true understanding of liberty. Some though, seek to destroy the liberty of conscience that those who came before us sought to protect. This secular humanist perspective and its globalist entitlement proposals reject "the idea … that human dignity is innate and suggest instead that it comes from the Government. This distortion … inverts the relationship between the individual and the state in our Republic." *Ibid.*

Having addressed the importance of providing the correct perspective, we turn now to the fundamental rights protecting religious freedom, freedom of conscience, the right to life, and the right of parents to control and direct the upbringing of their children.

THE FREEDOMS OF EXPRESSION AND RELIGIOUS CONSCIENCE

For ideas and viewpoints informed by the sacred to enter the marketplace of ideas, citizens must be free to not just to believe and hold them as a matter of conscience, but also to manifest such conscience, including through speech and other expression. Preserving the unalienable liberty of religious conscience and freedom of expression is, therefore, essential to ensure that citizens can introduce such ideas and viewpoints into the marketplace of ideas. It also ensures that these ideas, informed by the sacred, can continue to contribute to the improvement of society. Finally this unalienable fundamental liberty protects against government action excluding citizens from participating in civil society based on the viewpoint or religious conscience held by the citizen.

In our view, the proposed language in the 2006 Draft and 2009 working draft pose serious threats to fundamental liberty and good governance under the rule of law. The 2009 working draft seemingly appears to protect the freedom of expression and the free exercise of religious conscience. Thus, Sections **13 and 14** respectively provide that "Everyone has the right to freedom of conscience and religion, as well as the right to freedom of thought, belief, opinion and expression. Similarly, section 13 (1) and (2) of the 2006 draft ostensibly protects "the right to freedom of conscience and religion," as well as the right "to adopt, change, or manifest one's religion." Likewise, Section 14 (1) and (2) ostensibly protects "the right to freedom of thought, belief, opinion and expression" including "the freedom to exercise it in any form and be any means." Similarly, Section 15 (1) ostensible protects freedom to peacefully assemble and freely associate with others.

Notwithstanding the professed protection for freedom of expression, religious conscience, assembly, and association, the proposed language in 2006 Draft ambiguously

provides that such freedom does not extend to "advocacy of hatred, ridicule or contempt based on race, gender or religion." (See Section 13 (3) pertaining to freedom of religious conscience; Section 14 (5) pertaining to freedom of expression; and Section 15 (5) pertaining to freedom of assembly and association). Likewise, Section 13 and 14 of the 2009 working draft ambiguously mandates that the freedom of religious conscience and freedom of expression does not extend to situations where one advocates "hatred, ridicule or contempt" in pursuance of these rights.

These ambiguous generalities inappropriately allow for arbitrary government action, both in enacting and enforcing criminal laws regulating expression. Indeed, such provisions empower the government to criminalize truth-telling and restrict individual freedom by allowing the state to control a citizen's religious conscience, speech, association, and assembly.

The inherent vagueness of the proposed constitutional provision is so ambiguous as to place good governance under the rule of law in peril. Vague constitutional provisions beget vague statutory language preventing notice of what constitutes a criminal offense. Only unambiguous language affords prior notice to the citizenry of conduct proscribed. In this way the rule of law provides predictability for individuals in their personal and professional behaviour. A fundamental principle of due process, embodied in the right to prior notice, is that a criminal statute is void for vagueness where its prohibitions are *not* clearly defined. Although citizens may choose to roam between legal and illegal actions, governments of free nations insist that their Constitution and laws give an ordinary citizen notice of what is prohibited, so that the citizen may act accordingly.

This lack of notice to the citizen allows government authorities to arbitrarily define a criminal offence *after* the commission of the act. For example, government authorities might arbitrarily decide (after the fact) if religious expression, (e.g., discussing issues of public

morality), falls within Section 13 (3)'s prohibition against expressing contempt for a protected group of persons. In using the inherent vagueness of a law to make such morally-relative determinations, government authorities arbitrarily transform protected expression of sincerely held faith-based beliefs, into a prosecutable expression of "contempt." And so, for example, when a pastor preached the Word of God from the pulpit in Sweden, Swedish authorities prosecuted him using a provision eerily similar to the proposed language here. Ultimately the Supreme Court of Sweden freed the pastor, relying on many of the same concerns we raise in this submission.

The International Covenant on Civil and Political Rights (ICCPR)[1] and its Optional Protocol,[2] guarantees the right to free expression. ICCPR, art. 19. In this regard, Article 19 expressly states that "[e]veryone shall have the right to hold opinions without interference," and that "[e]veryone shall have the right to freedom of expression." *Id.* This right includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, . . . or through any other media . . . ." *Id.* The right to free expression should, at a bare minimum, mean that governments of free nations have no power to restrict a citizen's expression due to its message, its ideas, its subject, or its content. The very fact that speech may succeed in effecting social change will inevitably result in attempts by persons with vested interests to censor it. But this is the very reason for according it special protection.

The ICCPR also guarantees the free exercise of religion for individuals in signatory states. Article 18 explicitly provides that "[e]veryone shall have the right to freedom of thought,

[1] ICCPR, G.A. Res. 2200A, U.N. GAOR, 31st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976.
[2] Optional Protocol to the ICCPR, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, *entered into force* 23 March 1976.

conscience and religion." ICCPR, art. 18. This right includes "freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in *worship*, observance, practice and *teaching*." *Id.* (Emphasis added). These and other treaties recognize the universal and inalienable nature of the two fundamental freedoms. A free and democratic society cannot remain so for long without protecting freedom of expression and the free exercise of religion.

Under the ICCPR, therefore, a country can only limit these rights by provisions "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." *Id*. art. 18, §3. Moreover, United Nation's precedents do not limit an individual's inalienable right to free expression based upon an alleged emotional perception of the hearer. *See e.g., Riley et al. v. Canada,* Communication No. 1048/2002 (refusing to recognize an alleged injury founded upon an emotional response of the viewer, the Human Rights Committee denied standing to Canadian law enforcement organization opposing Khalsa Sikh officers wearing turbans).

A principal precept of the rule of law is that it provides predictability for individuals in the conduct of their affairs. As discussed, a vague penal provision provides no such predictability and opens the door for government authorities to decide what the law means *after* the conduct occurs. That which is prohibited becomes clear only *after* a government authority selectively enforces the vague law against a citizen—based upon the authority's own morally relative construal of the ambiguous language. To be sure, the exercise of such discretion provides the means for an authority to efficiently advance a political agenda. The insidious consequences of doing so, however, include the deterioration of fundamental democratic principles and good governance under the rule of law.

In the case of a vaguely worded criminal statute, prosecution can, without prior notice of the conduct prohibited, lead to a citizen's loss of liberty. Additionally, ambiguous provisions often lead to governments arbitrarily preventing citizens from discussing fundamental questions of public morality. Moreover, the ambiguous generalities here also dangerously encourage private citizens of one religion to bring causes of action against other citizens of other religions who truthfully discuss differences in doctrine between the two. Such provisions therefore unnecessarily may lead to inter-religious strife and community tension.

In a free society, freedom of expression and religious conscience is not needed to protect the ideas of those with whom those in power agree. It is needed to protect those who express ideas with which those in power do not agree. Thus the test of a functioning moral government is not whether the government protects speech with which it agrees – it is whether it will protect expression that it finds contemptuous or hateful. Instead of censuring speech, the answer, at least in a nation valuing freedom, must always be more speech. Good ideas win over bad and hateful ideas, not on the power of a government official's determination, but on the force of truth argued persuasively in the public square.

Finally, when a nation's constitution vaguely regulates free expression, an ominous chill on the exercise of fundamental freedoms accompanies its promulgation. Compelled by the piercing chill of an unpredictable potential prosecution, citizens, and especially religious citizens, cease exercising their basic liberties. They fear to assemble, pray, worship, or even speak.

Recent statements made in the public domain regarding, the absence of conflict between religious freedom and rights based on same sex relations, suggest an inadequate assessment of the facts and matters which have emerged and continue to emerge globally. Indeed, "[r]ecognizing a constitutional right to same-sex marriage without simultaneously protecting

conscience rights will trigger threats to the religious liberty of people and organizations who cannot, as a matter of conscience, treat same-sex unions as the moral equivalent of opposite sex marriage. Several factors indicate that without conscience protections, widespread and intractable church-state conflicts will result." [3]

It is further submitted that the word 'Gender' in the 2006 Draft Constitution, if used should be defined as 'men and women' or 'male and female' since to date there has been no consensus by State Parties at the level of The United Nations[4] that this word should be redefined to mean anything other than this. In particular there should be no redefinition of Gender to be based on a social construct or based on fluidity.[5]

In a pluralistic society, numerous conflicting points of view exist. Historically, therefore, the perpetuation of functional democracy requires free and open debate. Fearing prosecution, religious leaders in Trinidad and Tobago will inevitably self-censor sincerely held faith-based beliefs—and may even cease expressing anything at all. The potential for a national chill on religious expression, therefore, quite possibly rests on the final language of constitutional reform.

WORLDVIEWS COLLIDE

As noted in our introduction a secular humanist perspective allows for new constitutional entitlements, disguised as rights, conflicting and colliding with the founding principles of Trinidad and Tobago. Again, liberty in our nation has always served as a limit on the exercise of government power, that is "freedom from government action, not entitlement to government benefits." *See Obergefell v Hodges*, Opinion of Justice Thomas. Colliding with this truth are the pre-suppositions in the Questionnaire by the National Advisory Committee on Constitutional:

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[3] The Becket Fund for Religious Liberty Amicus Curiae in the United States Court of Appeal Tenth Circuit

[4] Treatment of terms such as "gender" and "sex" and more recent formulations such as "sexual orientation" and "gender identity" in ordinary discourse and in the context of UN documents. Marguerite Peeters

[5] "Gender Wars at the UN" Jane Adolphe

- Should economic, social, and cultural rights be established in the Constitution?
- Should environmental protection rights be established in the Constitution?
- Should sexual orientation and gender be protected rights in the Constitution?

Regarding the latter question, the ambiguity of the phrase "sexual orientation and gender" is woefully inadequate. In addition to persons identifying as homosexual, does the phrase cover other groups of people with other sexual orientations? Does it provide constitutional protection for a group of people whose sexual orientation is for young children (pedophiles)? Does it cover a group of people whose orientation is toward violence (e.g., serial killer rapists)? What about people whose sexual orientation is for dead humans (necrophiles)? What about people whose sexual orientation is for barnyard animals (bestiality)? Or those whose sexual orientation is toward one's own close relatives (incest)?

Does it enable, for example, government prosecution of a pastor's sermon about the conduct of a group of people whose sexual orientation is for extramarital sex (swingers/adulterers)? Does it enable government prosecution for discussion about the conduct of a group of people whose sexual orientation is for multiple partners within a marital relationship (polygamists)? Does the phrase provide constitutional protection for gender identity such that a biological man identifying as a woman now is entitled to use the woman's shower and bathroom at an elementary school?

Given the absence here of any definition, the ambiguous language arguably could include any and all such groups. Will an otherwise law-abiding citizen, therefore, face prosecution for calling pedophilia or necrophilia bad? For objecting to a biological man invading a school girl's locker room? Because no articulated rule of law gives notice to the public of what the phrase proscribes, unpredictable possibilities of prosecution pervade all parts of the social order.

Moreover, an individual's inalienable right to free religious conscience and expression forbids such government-imposed guessing games, especially when the public has no way of predicting what morally relative choice the prosecutor will choose when making a decision to prosecute.

THE FUNDAMENTAL RIGHT TO LIFE

One of the principle functions of a civilized nation's government is to protect human life. Although it must also protect liberty, the interest in life is plainly superior. Life without liberty at least holds the potential for renewed liberty, but liberty without life is a nullity. Thus, in civilised nations, no one has the "liberty right" to torture or terminate innocent human life because it is wrong to do so. What is wrong cannot be a right. Because God created human life in His image, all human life holds inherent dignity that everyone, including government authorities, must respect. Again, as noted earlier, this First Principle historically informed many government actions improving society. Beyond informing laws ending slavery and laws providing for the equal treatment under the law, this First Principle also serves as the basis for laws prohibiting murder, abortion, partial birth abortion, infanticide, euthanasia, etc.

Because God creates human life, only He can authorize the taking of it – and nowhere in His Word does He authorize killing of unborn or partially born human life. God's inviolable standard is expressed in His command, "Thou Shalt Not kill." *Exodu*s 20:13; *Deuteronomy* 5:17 (King James). Thus, viewed through the lens of an unalienable worldview, one discovers divinely revealed objective standards on the value of human life. In the revealed is the inviolable objective standard that killing unborn and partially born human life for personal convenience purposes is always wrong. Underlying this inviolable standard is a presumption that human life has inherent value and purpose at all stages and is thus deserving of protection. Importantly, there is no internationally recognized right to abortion.[6]

Because human life holds inherent value, future constitutional language must protect it from government actions inconsistent with this unalienable standard. In the chapter of the 2006 draft recognising and protecting fundamental rights, Section 5 provides:

[6] See also, the San Jose Articles http://www.sanjosearticles.com/

> "Everyone has the right to life, security of the person and the right not to be deprived thereof except by due process. Everyone has the right to have his life respected and this right shall be protected by law, in general, from the moment of conception."

Although seeming to protect the inherent value of human life at all stages, the words *"in general"* raise concerns. First, the vagueness of this language presents the same vagueness problems analyzed in the previous section of this submission. Second, it places an ominous opportunity for the government to evolve its own morally relative notion of when human life should be protected. Indeed, this language authorizes those holding power in government to engage in social engineering by reserving for itself the power to make final determinations of when life begins and what circumstances they will recognize any right to protect it.

Properly understood, the inherent value of human life serves as an unalienable limit on the exercise of government power. The 2006 language, however, creates an enormous potential for government officials and judges to 'legalise' abortion, partial-birth abortion, infanticide and euthanasia by reading their own biases into such a highly abstract provision. We recommend declaring the inalienability of the right to life from the conception in the strongest possible terms. We recommend, as the 2009 working draft does, deleting the language "in general". Unlike the 2009 working draft though, we recommend including a clear statement indicating the right begins at the moment of conception.

In their online submission, the Catholic Commission for Societal Justice (CCSJ) articulated similar concerns. We concur with the change they recommend:

> [T]he right of the individual to life **<u>from conception</u>**, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law…"

This proposal reflects a correct understanding of the right to life as a fundamental right that begins at the moment of conception. Science overwhelmingly supports the position that human life begins from the moment of fertilization[7] and as such we humbly request that the final constitutional draft reflect this proposed language.

The Hippocratic Oath written during the fifth to fourth centuries B.C. declares, "… I will not give to a woman an abortive remedy. In purity and holiness I will guard my life and my art." Hippocratic Oath, available at https://biotech.law.lsu.edu/cases/research/hippocratic-oath.htm (last visited February 26, 2024). For most of world history this standard was a cornerstone of medical ethics.

Human life holds inherent value and merits protection when it is human, and every human life begins at conception.[8] As Professor Francis Beckwith cogently explains:

> Only artifacts, such as clocks and spaceships, come into existence part by part. Living beings come into existence all at once and then gradually unfold to themselves and to the world what they already *are*, but only incipiently are. Because one can only develop certain functions by nature (i.e., a result of basic, intrinsic capacities) a human being at every stage of development is *never* a potential person, she is *always* a person with potential even if that potential is never actualized due to premature death or the result of the absence or deformity of a physical state necessary to actualize that potential.[9]

Again, what this means as practical matter is that all human life has dignity and is worthy of protection. Significantly, scientists no longer disagree on when human life begins. The consensus among scientists is that it begins at conception.[10]

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[7] Westchester Institute for Ethics and the Human Person on 'When Life Begins'.

[8] *See, e.g.*, Scott Klusendorf, *The Case for Life* (2009) at 36, 44 (citing numerous embryological experts and texts and noting that even rabid abortion advocates such as Peter Singer admit an embryo is a human being at conception); Dianne N. Irving, *When do human beings begin? Scientific myths and scientific facts*, International Journal of Sociology and Social Policy, Vol. 19 No. 3/4 (1999) at 22-46, *available at* https://doi.org/10.1108/01443339910788730 (last visited 7/24/21); Charles I. Lugosi, *Conforming to the Rule of Law: When Person and Human Being Finally Mean the Same Thing in Fourteenth Amendment Jurisprudence*, 4 GEOJLPP 361, 362, n.2 (2006) (citing a variety of authoritative sources).

[9] Francis J. Beckwith, Defending Life: A Moral and Legal Case Against Abortion Choice (2007) at 34 (emphasis in original; internal citation omitted).

[10] *See* fn. 8, *supra*.

If a government decides a baby at a certain stage of development can, in ordinary circumstances, be killed, it has decided that that baby is not a person. If it decides that baby cannot be killed, it has decided that that baby is a person. What a government purports to be doing when it makes those decisions is immaterial; it is unquestionably defining our humanity. The only question is how it will do so. Conceived by a human father and a human mother, are we to be recognized as human beings, whole and equal by nature?

Why, exactly, does the state have an interest in the lives of pre-born human beings? It is because they are human beings – not only as a matter of morality, but of biological science as well. If the state has an interest in preserving human life (which it does), then it has an interest in human life; and that interest begins when human life begins.

Our humanity is a constant. It does not vary over time under different circumstances. It is our nature, not a feature of our environment or our accomplishment. It does not vacillate based on the state of our technology, including even the technology that lets a baby live outside the mother's womb. Just a few centuries ago, a child typically couldn't live outside the womb before it reached near full gestation, which is thirty-seven to forty weeks. You and your baby at 37 weeks pregnant, *available at* https://www.nhs.uk/pregnancy/week-by-week/28-to-40-plus/37-weeks/ (last visited February 26, 2024). Just fifty years ago, viability—and hence personhood for some—was gained at about twenty-eight weeks.[11] Now, it is about twenty-three weeks.[12] One can imagine a time when our technology advances to the point that an embryo at conception could be placed into a technological or bionic "mother" of some sort and be viable. Any conception of our humanity as a technologically determined variables is utterly dehumanizing.

Advances in science now reveal the remarkable development of a pre-born child from the moment of fertilization. Gone are the days when society can question whether such a pre-born child is merely a "clump of cells."[13] Actual video of children in the womb reveals the completeness of development of a fetus. *See* https://www.ehd.org/your-life-before-birth-video/ (last visited February 26, 2024) (displaying pieces of actual video footage of a child's development in utero).

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[11] Hollowell, K. J., *Defining a Person Under the Fourteenth Amendment: A Constitutionallyand Scientifically Based Analysis*, 14 Regent UL Rev. 67, 83-86 (2001); *see also* Bonnie Rochman, *A 21-Week-Old Baby Survives and Doctors Ask, How Young is Too Young to Save?* Time Magazine (May 27, 2011), available at https://healthland.time.com/2011/05/27/baby-born-at-21-weeks-survives-how-young-is-too-young-to-save/ (last visited July 27, 2021).

[12] *Id*. at 84.

[13] *See* Klusendorf, *supra*, at 38-39 (dispelling "clump of cells" argument).

 [14]

At twenty-two days, the child's heart begins to beat. https://www.ehd.org/your-life-before-birth-video/ (last visited July 15, 2020).

At six weeks, the child begins moving. *Id*.

At seven weeks, scientists can detect a child's brainwaves, and the child can move his or her own head and hands. *Id*. The child also displays leg movements and the startle response by that time. *Id*.

At eight weeks, the child's brain exhibits complex development. *Id*. The child also then begins breathing movements and shows preference for either his or her left or right hand. *Id*. At nine weeks, the child sucks his or her thumb, swallows, and responds to light touch. *Id*.

At ten weeks, the child's unique fingerprints are formed on his or her fingers. *Id*.

At twelve weeks, the child opens and closes his or her mouth and moves his or her tongue. *Id*. The child's fingers and hands are also fully formed by twelve weeks' gestation. *Id*.

https://www.ehd.org/movies/231/Responds-to-Touch (last visited February 26, 2024) (displaying video of baby at fifteen weeks responding to touch).

By sixteen weeks, the child's gender is easily detectable, and the child looks undeniably human:

[14] Photograph of a human fetus at eighteen weeks of gestational development. Lennart Nilsson, Foetus 18 weeks, http://100photos.time.com/photos/lennart-nilsson-fetus (last visited July 14, 2020).

https://www.ehd.org/gallery/436/Hiding-the-Face#content (last visited February 26, 2024) (showing photographic still of sixteen-week ultrasound video of a male fetus hiding his head away from the touch of the ultrasound transducer).

By nineteen weeks, the child hears and responds to noises, even making different facial expressions when listening to music. *See, e.g.*, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4616906/ (last visited February 26, 2024) (finding that neural pathways participating in the auditory–motor system may be developed as early as the gestational age of sixteen weeks).

The humanity of the pre-born child is even more apparent today than ever before.

THE FUNDAMENTAL RIGHT OF A MAN AND WOMAN TO MARRY, PROCREATE, AND CONTROL THE UPBRINGING OF THEIR CHILDREN

(e.g., decisions concerning the child's education and medical care)

Long before "Western Culture" existed, the ancient Holy Scriptures instituted marriage between a man and a woman and instructed them to be fruitful and multiply.[15] The divine law likewise articulated the authority and responsibility of parents to direct the upbringing of their children.[16] Thus, naturally, and as a matter of religious conscience, parents marry, procreate and raise their children. In this role father and mother make medical, educational, and other decisions in the best interest of their children. Indeed, many parents view such decisions as a natural and sacred *parental* responsibility of the highest order. And, since ancient times, parents exercised this responsibility as a matter of religious conscience. Much of the natural law writing influencing Western Culture reflected those unalienable marital standards and parental rights revealed first in divine law.[17] Blackstone's writing likewise convincingly shows the common law traditions also reflected the natural and divine law principles.[18] Contemporary positive law reflects these deeply rooted cultural and legal traditions as well.[19]

The 2006 draft provides in Section 11 that:

> (1) A parent or guardian has the right to provide a school of his own choice for the education of his child or ward.

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[15] See *Genesis* 2:24 (NIV) and *Matthew* 19:5 (NIV), 'For this reason a man will leave his father and mother and be united to his wife, and they will become one flesh'. See also *Genesis* 9:7 (NIV), 'As for you, be fruitful and increase in number; multiply on the earth and increase upon it'.

[16] See e.g., *Deuteronomy* 5:16; *Ephesians* 6:1–3; *Proverbs* 22:6; *Proverbs* 13:24; *Ephesians* 6:4.

[17] The writings of Pufendorf, Grotius, and Locke, for example, all expressly recognized the moral role of marriage the right of parents to direct decisions concerning the upbringing of their children. See, e.g., Pufendorf, *The Two Books* on the duty of man and citizen according to the natural law Chapter 3, 1, 2, available at http://www.constitution.org/puf/puf-dut_203.txt; H Grotius, *The Rights of War and Peace*, Book 1, The Preliminary Discourse XV; J Locke, The Second Treaties of Government, 96, Prentice Hall, 1952 (Originally published in 1690).

[18] See e.g., Blackstone, *The RIGHTS of PERSONS*, Book I, Ch 15 and 16, (describing the relationship between child and parent as "consequential to that of marriage, being its principal end and design: and it is by virtue of this relation that infants are protected, maintained, and educated").

[19] For example, the Jamaican charter of rights defines marriage as between one man and one woman.

> (2) Everyone has the right to - (a) a basic education, including adult basic education; and (b) further education, which the State through reasonable measures shall make progressively available and accessible.
>
> (3) Everyone has the right to receive education in a public or private institution where that education is reasonably practicable.
>
> (4) In order to ensure the effective access to, and implementation of, this right, the State shall consider all reasonable educational alternatives, taking into account various types of education to meet different levels of competencies.

The 2006 draft dangerously placed final determination in the hands of the state, and not the fit parents raising their children. The government oversight of the parental prerogative empowers the state, rather than the parent, with the authority to weigh alternative approaches against each other and determine the best fit. For example, if parents choose one form of schooling (e.g., home education) government officials can construe the language here to determine the parental decision reasonably impracticable. The current constitution and the 2009 working draft marginally improve upon the 2006 Draft. The Constitution in Chapter 1, Sec. 4 (f)) states, "[T]he right of a parent or guardian to provide a school of his own choice for the education of his child or ward." Section 11 of the 2009 working draft includes this language and adds an additional provision

A parent or guardian has the right to -

a) obtain access to education facilities for his or ward; and
b) provide a school of his own choice for the education of his child or ward

The major difference between the 2009 working draft and the 2006 draft is the absence of the language empowering the government to determine what is reasonable in connection with the child's education. Although the plain meaning of the language "school of his own choice" in the

2009 working draft appears to include homeschooling, it does not expressly do so. Moreover, by limiting the parental right to the area of education, none of the versions protect the right of fit parents to direct and control the upbringing of their children. Parents know what is in the best interest of their own children far better than government bureaucrats seeking to substitute their judgment for that of the parent. Given that government increasingly seeks to interfere with the decisions of fit parents, especially in the areas of health care and education, the Constitution should expressly protect fit parents rights in a broader way than currently recommended by the Report. We recommend, therefore, adding the following section to the Constitution.

> The liberty of parents to control and direct the upbringing of their children, including decisions concerning the education and health care of their children, is a fundamental right of the highest order. The government shall not infringe upon this right. No treaty or any source of international law may be adopted or employed to supersede, modify, interpret, or apply to the rights guaranteed by this provision.

The very real danger surrounding an erosion of parental rights; especially on single parent and vulnerable families is being witnessed in the Nordic countries at an alarming rate such that it should signal a warning to this nation to protect our children by strengthening not weakening parental rights and responsibility while at the same time rehabilitating and reconciling families.[20]

CONCLUSION

The only way to truly preserve good governance and protect unalienable liberty is first understand from whence they come. Affirming God's supremacy provides a constitutional lens through which one accurately sees truth concerning fundamental rights. Viewed through this lens, our recommendations protect unalienable liberty, thereby strengthening good governance under the rule of law as we continue the task of nation building.

[20] The Nordic Committee on Human Rights Report on child removal cases in Sweden and neighbouring Nordic Countries to the Secretary General to the Council of Europe.