



POLICY *Brief*

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DEMOCRACY'S SLEDGEHAMMER: USE OF THE NOTWITHSTANDING CLAUSE FOR SASKATCHEWAN'S BILL 137, "THE PARENTS' BILL OF RIGHTS"

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CONTEXT

- Transgender rights has become a growing and divisive issue in recent years
- In 2023 the Saskatchewan government introduced legislation setting out how teachers should address the issue in classrooms
- The Parents' Bill of Rights deals with the use of pronouns for children under 16
- It stipulates schools must get parents consent before using a student's chosen gender pronoun
- Transgender advocacy groups asked the government to suspend the legislation
- When the government refused groups advocating for transgender children filed and received an injunction to delay the bill's implementation
- The government then invoked the notwithstanding clause in the Charter of Rights and Freedoms
- By so doing, the legislation was protected from a challenge on constitutional grounds
- The core issue is whether parental rights should override those of children

CONSIDERATIONS

- Public opinion appears divided on the legislation
- One poll indicated 44 per cent strongly support; 31 per cent strongly opposed
- Use of the notwithstanding clause in the Charter of Rights and Freedoms is at the core of the debate
- It can be used by governments to override Constitutional rights
- Original intent was notwithstanding clause be used sparingly and after a law was deemed unconstitutional by the courts
- In the case of Bill 137 the Saskatchewan government has invoked the clause to avoid being challenged in the courts
- Critics believe the legislation undermines the ability of schools to create safe and inclusive environments for 2SLGBTQ+ students

QUESTIONS

- Should parents' rights supersede the rights of children under 16?
- Do children have fully formed rights with all others in society?
- What are the risks this legislation poses for transgender kids?
- What should be the role of parents in their child's education?
- Is this the proper use by government of the notwithstanding clause?