



# HAVING KIDS™

## *Child-first Advocacy*

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Dear Mr. President,

[Having Kids](#), a human rights, child welfare and environmental protection organization, writes on behalf of Deanna Young, a twenty-five year old American citizen and student at San Francisco State University.

This letter will describe why recent policies put the United States in violation of Denna's fundamental human right to found a family under the Article 23(2) International Covenant on Civil and Political Rights. This letter will also provide a solution that will bring the U.S. into compliance with the treaty.

### **The United States' Pronatalist Policies**

Recently, the Administration and Congress have begun to implement a suite of related pronatalist policies that A) limit persons' access to contraception, the ability to terminate one's pregnancy, and other reproductive rights, and B) simultaneously use subtle financial incentives to nudge parents to have more children. Prominent members of Congress and the Administration have admitted the [prontalist intent](#) of these policies, which have included: [defunding teen pregnancy programs](#), [severely limiting family planning abroad](#), [rolling back the ACA birth control](#) mandate, and pushing for the [elimination of the child adoption tax credit](#), while also [increasing the tax credit for bearing children](#). In an extreme example of the same approach, one Republican lawmaker recently discussed limiting access to abortions because doing so [would eventually produce a glut of more laborers](#) to fuel the economy.

Though the Administration and its supporters justify pronatalist policies as protecting [freedom of conscience](#), contrary to [recent authority](#) from the Covenant's Human Rights Committee, as well

as [helping to grow the economy with a glut of cheap laborers](#), the truth is that such policies expand the [income inequality gap](#), [hinder child development](#), and [further degrade the environment](#). As renowned demographer [John May writes](#) “Access to family planning is first and foremost a human right. It is also an issue of public health and, in the long run, sustainable economic growth.”

As such the United States’ pronatalist policies unlawfully interfere with Deanna’s ability to provide her prospective child a fair start in life, as well as other correlative obligations inherent in the right to found a family under Article 23(2) of the International Covenant on Civil and Political Rights ) (“ICCPR”) (ratified by the U.S. in 1992 under President George H.W. Bush) and Article 16 of the Universal Declaration of Human Rights.

### **Pronatalism Recklessly Accelerates and Exacerbates the Cumulative Effects of Climate Change, and All Related Forms of Environmental Degradation**

While these pronatalist policies violate the fundamental human right to found a family for many of the reasons discussed below, this letter will initially focus on pronatalism’s major contribution to climate change, where experts have recognized that “[urgent action is needed to reduce not only our mean \(carbon\) footprints but also the ‘number of feet’](#)—that is, the growing population either already creating large footprints or aspiring to do so.”

Recent United States’ reports show that the [adverse impacts of climate change continue to mount](#) while [the window to curb or offset those impacts shrinks ever smaller](#). Indeed, assessments by the Administration’s [own officials](#), as well as [NATO](#) and [members of Congress](#), demonstrate that climate change is a serious threat to national security.

We can no longer ignore the [clear evidence that larger families drive the worst impacts on our climate](#), create [dysfunctionally crowded cities](#), and invariably result in other forms of environmental degradation and reduced quality of life, especially with the planet on pace for a [world population of 11 billion](#) or significantly more in 2100, and the [global dangers](#) (which include significant threats the U.S. national security) that such a number represents. The urgency of the problem cannot be overstated when “[every week an extra 1.5 million people need food and somewhere to live](#),” which “amounts to a huge new city each week, somewhere, which destroys wildlife habitats and augments world fossil fuel consumption.”

The importance of smaller families as a key component in tackling climate change is even more apparent in developed countries, with [the greenhouse gas impact of a child born in the U.S. over 500% that of a child born in China](#). Accordingly, [a fertility rate decrease in the U.S. “would have](#)

[a massive impact on both near-term and long-term global GHG emissions](#)—much more even than proportionally larger fertility decreases in sub-Saharan Africa.”

The calculus then is simple: larger populations in the developed world consume more, and as consumption increases, so do carbon emissions, which in turn [results in intensified climate change](#) and environmental degradation that is then [felt most acutely by the poor](#). As the IPCC’s 4th Assessment Report notes: “At the global scale, declining carbon and energy intensities have been unable to offset income effects and population growth and, consequently, carbon emissions have risen.”

In fact, the carbon legacy and [greenhouse gas impact of an extra child](#) is nearly 20 times more important than the adoption of other environmentally sensitive practices, e.g. driving a high mileage car, recycling, or using energy-efficient appliances and light bulbs. Conversely, “reducing fertility rates so as to match the UN’s ‘low fertility’ projections rather than the ‘medium fertility’ projections, which corresponds to an average difference of 0.5 children per woman, [would likely result in a yearly reduction in GHG emissions of 5.1 billion tons of carbon by 2100](#),” that is, reductions “[as large as, or larger than, the annual emissions that could be saved from doubling the fuel efficiency of cars, increasing wind energy 50 fold, or tripling nuclear energy](#).” This is because [the effects of population decreases are exponential](#), i.e. “smaller global populations in one generation lead to smaller populations in the next generation, and the next, and the emissions reductions continue to cumulate,” whereas “the energy efficiency improvements touted by many political leaders and environmentalists as climate change panaceas, often *decrease* over time.”

It is no wonder then that family planning interventions, such as having fewer children, have been shown to be the [most effective way](#) to simultaneously protect the world’s environment and improve human wellbeing. Indeed, [managing population growth has actually proven more feasible](#) than seeking to reduce consumption and emissions. Given that continued [population growth as spurred by large families is unsustainable](#), pronatalist policies are reckless, put the United States in violation of international human rights regimes, and threaten its legitimacy and continuity.

### **The Knock-on Effects of Pronatalist Policies**

While the science to date has honed in on increased emissions as a consequence of pronatalist policies, there is also considerable evidence of the knock-on effects of more people, [in whom we invested less](#) and [failed to prepare for social cooperation](#), all vying for [fewer resources in a less hospitable global environment](#).

### *Poor child welfare outcomes*

Studies have repeatedly shown that [children in larger families are less likely to receive the minimum level of wellbeing](#) they require to thrive. This is what is known as the “[quantity-quality trade-off](#),” where increases in family size dilute the resources that parents can provide each child, thereby increasing the likelihood of behavior problems and cognitive deficits. Worse yet, [the effects of the quantity-quality trade-off continue into adulthood](#), with children of larger families earning less money. Moreover, larger family size is a “[robust predictor of antisocial behavior](#),” having been shown as the [most important predictor of adult criminal convictions](#). Nor is there any merit to the myth of the socially-maladjusted only child, with studies showing that [only children actually score significantly higher](#) than other groups in achievement motivation and adaptability. Finally, [smaller family size is highly correlated with a child’s resilience](#), i.e. his or her ability (developed in early childhood) to overcome the damaging effects of adversity experienced later in life.

### *Income Inequality and the Illusion of Growth*

For decades, neoclassical economists have been doggedly encouraging high fertility rates, all with the single-minded goal of increasing GDP. But the efforts under this administration have taken on a new overt and reactionary dimension, founded on an illusion of growth unlimited by the physical world, blind to our sheer dependency on the health of Earth's natural systems, and compounded by a lack of concern for inequities in the distribution of short-term growth and long-term burdens.

The dangers of increased population growth have been obvious for centuries, discounted as mere “externalities” in order to preserve the traditional growth model, where the profits are privatized and the costs socialized. That is, “costs and benefits of overpopulation under globalization are now distributed by class more than by nation,” with “[labor bear\[ing\] the cost of reduced wage income \[and\] capital enjoy\[ing\] the benefit of reduced wage costs](#).” Unsurprisingly, the vast majority of models that seek to predict the costs and benefits associated with population growth, even when accounting for environmental costs, [mask the adverse effects on the future poor by averaging the economic outcomes rather than looking at income per capita](#).

Nor is there any truth to the notion that pronatalist policies are necessary for a strong economy, as demonstrated for example, by [Japan’s booming economy and shrinking population](#). Contrary to popular belief, incomes tend to be lower in faster growing areas, and unemployment rates tend to be higher. In fact, between 2000-2009, of the 100 largest metro areas, those that have fared the best have the lowest growth rates. Residents of the [slowest-growing metro areas averaged \\$8,455 more per capita](#) in personal income than those of the fastest-growing area. Put simply, “[fertility reduction, while not a sufficient condition for economic growth, may well be a necessary one](#).”

Of course, given the Administration's track record, it may be quick to suggest immigration bans and deportations as a fix to the overpopulation problem. However, policies that promote better planning of families are clearly the more comprehensive and compassionate solution: while [building walls and tearing immigrant families apart](#) may reduce population growth domestically, it does little to slow the global threat of climate change and other population growth induced crises, and also runs afoul of our historic ideals. Rather than directing its energy toward those crossing our southern border, the Administration should be focused on family planning here and abroad to get to the root cause of many problems at once. In this way, we can achieve genuine economic prosperity at home and protect the environment worldwide, while continuing to honor the foundational American value of welcoming "your tired, your poor, your huddled masses yearning to breathe free."

### *Democracy and Growth*

The ideal of democracy, or self-rule, is defined by an engaged populace determining for themselves the rules under which they will live. However, as the population of any given political entity grows, each person's role in their respective political system is diminished, as each person is [excluded by others from their sovereign self-rule role](#), and more or less so depending on the relative civic quality (which is in large part determined by family planning) of their fellow citizens. Correspondingly, a person's motivation to cooperate and contribute to the broader community is diminished. Thus, while Democrats and Republicans in the U.S. argue about small versus big government, the more important issue may actually be small versus big populace. Consider, for example, that Article I of the Constitution states that "The number of Representatives shall not exceed one for every thirty thousand..." And yet there are now over 600,000 persons per member of U.S. House of Representatives, or an average rate of [loss of democracy \(understood as actual self-rule\) at the national level has been about 1.4% per year](#) since the country was founded.

The increased role of money in political campaigns can also be explained as a function of population growth, with the vacuum left by the lack of meaningful voter participation easily filled by the dollars of a few wealthy individuals. It is no wonder then that voter ignorance persists at such high levels: As conservative law professor [Ilya Somin](#) writes, "[\[t\]he insignificance of any one vote to electoral outcomes makes it rational for most citizens to devote little effort to acquiring political knowledge. They also have little incentive to engage in unbiased evaluation of the information they do know.](#)"

**The Right to Found a Family is Intricate, and Includes Limiting Correlative Obligations and a Collective Action Norm, With Which the Pronatalist Policies Interfere**

While the United States' pronatalist policies may encourage persons, particularly wealthy persons, to have more children, the irony is that it actually discourages thoughtful, caring, and socially-minded persons such as Deanna from having a child in light [of how difficult it becomes to fulfill her parental obligations](#) inherent in the right to found a family under the ICCPR. Because Deanna cares about the world into which her child would be born, now and in the long run future, as well as her impact upon that world through the act of having a child, she is put in a moral and legal dilemma by her own nation's pronatal policies.

For Deanna and all other prospective parents, having a child creates a lifetime of moral and legal obligations, not just to the child but also to the society with whom the child will interact, as well as the obligations related to the child's impact on the natural environment. Deanna's right to found a family includes obligations to ensure her child a minimum level of well-being, a level that is defined and legally enforced in a variety of parental fitness regimes and which could and should rise with the eventual implementation by the U.S. of international law instruments like the Children's Rights Convention. Deanna's right includes broader obligations to the community and larger society with whom the child will interact, obligations defined and legally enforced through a variety of criminal and civil regimes that make her responsible and liable for her child's conduct, as well as more aspirational but crucial political obligations to ensure her child becomes a person capable of meaningful participation in the human-rights based democratic process. Moreover, Deanna's right includes obligations to her child, as well as the community and larger society, with regard to the natural or physical environment in which we all live, e.g. impacts on climate (discussed at length above), as well as other forms of environmental degradation all deriving from and first initiated by human population growth.

Deanna, and all other prospective parents, cannot simultaneously exercise their right to have a child and fulfill the obligations discussed above without acting collectively. She cannot, without cooperation from others, provide her child a minimum level of well-being, since it is contingent on resources no person or larger family can produce in isolation, as well as the requisite social and political conditions, the creation and maintenance of which rely on other parents to raise productive, responsible, empathetic citizens. She cannot, without cooperation from others, ensure her child or the community and larger society, a healthy natural or physical environment. The pronatalist policies discussed above interfere with Deanna's ability to comply with the obligations inherent in her right to found a family by ignoring these sorts of limiting correlative obligations on the right to found a family, and frustrating the development of a collective action norm. As such Deanna must choose between (1) [having a child and thereby exacerbating environmental degradation, degrading her own democracy, and exacerbating income inequality, conditional all of which her child and future generations will inherit](#), or (2) foregoing biological parenthood altogether.

How does encouraging all qualifying taxpayers to have more children, by increasing incentives while simultaneously cutting off access to reproductive control services like contraception, ensure that each child will be born in [anything approaching](#) optimal – much less minimally satisfactory – conditions? Even with an increased tax credit, more children inherently means less investment in each child, considering [the average cost of raising a child in the U.S. is about \\$230,000](#). How does pronatalism, especially the sort that treats families like isolated units, close [the gap, massive in some cases](#), between [rich kids](#) and [poor kids](#) and enable parents to meet their obligations to give their kids something even approaching a fair start in life in terms of basic necessities like health care, nutrition, education, etc? Pronatalist policies would also prevent parents from fulfilling their obligations to bring children into a safe and secure natural or physical world by exacerbating climate change, and effectively destroying the natural environment Deanna’s children will inherit.

These policies are also likely [to increase teen pregnancies](#), a perfect example, for all of the reasons above, of interference with the collective action norm. That is, an increase in teen pregnancies in developed countries such as the U.S. is especially damaging to the environment because, with decades of childbearing years ahead of them, [teens parents are more likely to go on to have larger \(and environmentally destructive\) families overall](#), precipitating what some scholars have termed disproportionate “[procreative consumption](#)” relative to mothers who delay having children. Moreover, teens, being children and unemancipated persons themselves, necessarily face a greater challenge in providing their children with a minimum level of wellbeing and preparing them to participate in the human rights based democracy which Deanna’s child would also enter. Given the fact that our [levels of empathy are largely contingent on the conditions in which we are born and raised](#), it is all the more important that parents [are sufficiently mature and experienced as to be able to provide that nurturing environment](#).

These policies, which disregard obligations and the possibility of collective action, especially with regard to teens, place Deanna in a dilemma: She can ignore her own obligations and exercise her right to found a family, or forgo her right. Placing her in that dilemma is a violation of her right under Article 23(2), and puts the United States in violation of the Covenant.

### **Article 23(2) of the ICCPR Must Be Interpreted to Include the Limiting Correlative Obligations, and to Further the Development of a Collective Action Norm**

Under Article 23(2), the Covenant recognizes “[t]he right of men and women of marriageable age to marry and to found a family.” The Committee notes that, “the right to found a family implies, in principle, the possibility to procreate and live together.” U.N. Human Rights Committee, General Comment No. 19, art. 23 (Thirty-ninth session 1990) in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at

107, U.N. Doc. HR1/GEN/1/REV. 4 (2000). Given that one has procreated after having a first child, the Committee interpretation [implies a limited right](#) (which is consistent with the most [comprehensive ethical analyses](#) of the right) and that as such [aligns with other international law obligations](#) to future children, the community, and the larger society. This includes, for example, the International Covenant on Economic, Social and Cultural Rights, which recognizes “[mutual responsibility](#)” as a component of family planning and procreation. Yet pronatalist policies lack any such balance, endowing would-be parents with carte blanche to colonize the future, never mind the impacts on poorer communities and the other-than-human world, which is seen merely as a human resource.

Moreover, in *Aumeeruddy-Cziffra v. Mauritius*, the Committee found that the level of protection under Article 23 “depend[s] on different social, economic, political and cultural conditions and traditions.” (Communication No. 35/1978 from the U.N. Hum. Rts. Comm., P 9.2(b)2(ii), U.N. Doc. CCPR/C/12/D/35/1978 (Apr. 9, 1981).) Unlike other rights contained in the Covenant, the right to found a family can be derogated, *see* art. 4, and lacks the stipulation common to other rights that it not be unlawfully restricted. *See e.g.*, art. 22 ¶¶ 1-2 (stipulating, in the context of “the right to freedom of association with others,” that “[n]o restrictions may be placed on the exercise of this right other than those which are prescribed by law”).

The right to “found a family” under the Covenant is even further limited by competing rights and correlative duties as declared in article 5: “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.”); *see also* Universal Declaration of Human Rights, arts. 29, 30 (recognizing that rights must necessarily be limited by others’ rights and by the general welfare).

Chief among these competing rights in the Covenant is article 24(1), which entitles every child “to such measures of protection as are required by his status as a minor on the part of his family, society and the State.” As the Committee notes in its General Comment on Article 6, these “special measures of protection... should be guided by the best interests of the child, by the need to ensure the survival and development of all children, and their well-being.” The Committee also recognizes in its General Comment that the right to life for children and adults alike “depends on measures taken by States parties to protect the environment against harm and pollution.”[1]

Since the right “to found a family” must be interpreted so as not to abrogate competing rights, it must be balanced against the prospective child’s right to life as well as other persons’ right to found a family. After all, human rights are all constructed and limited in order to improve human



wellbeing and freedom, not diminish them. As humans we deserve the positive *freedom to* do the things that require a fair start in life, and consistent with that, the *freedom from* others unwanted influence, embodied in functional democracies operating in healthy and nonhuman, or wild, environments. This is why the Universal Declaration of Human Rights specifically recognizes that one person's rights may be limited by others' competing rights and/or in the interest of the general welfare. And while reasonable people may disagree about where exactly the balance between competing rights should lie, that *some* balancing in the right to found a family cannot be disputed.

Conflicts between these rights may be justly resolved by the imposition of limiting correlative obligations, which for the reasons described above – Deanna's dilemma – require a collective action norm. Under the prenatal policies this dilemma will only worsen, for those alive today, and especially for those born in the future.

### **The Administration and Congress Must Take Immediate Action to Protect the Right to Found a Family, For People Now and In the Future**

While increased access to contraceptives and reproductive health services is of course essential to protect the right to found a family, [it is insufficient on its own](#) without changing reproductive norms and thereby increasing demand and effective use. Accordingly, we must develop a collective action norm that furthers prospective parents' ability to cooperatively comply with their obligations.

The history and tradition of human rights and democracy, enshrined in the Universal Declaration of Human Rights and implementing covenants, demands that [instead of growing an economy and intensifying inequality](#), we need to build – and through family planning as a first order of business – true democracy and the freedoms discussed above. That means the ensuring the intergenerational coming together of free and equal people, or a right to found a family conceptually oriented around children's right to a fair start in life. And that, in turn, means decentralizing power and resources and diffusing them among future citizens through a collective action family planning system that builds democratic communities – literally out of future people – in which each person belongs and has an equally influential voice. To be consistent with the Declaration, those communities must reflect a [natural confluence](#) between smaller families, higher investments in each child, smaller and more democratic communities where each citizen has more of a voice and was raised to be capable of true self-rule, as well as a healthier and more secure natural environment. The intricate right to found a family is the key to building those communities, and acts as a *grundnorm* overriding conflicting rights and interests.

One option for a collective action norm is the [Fair Start family planning system](#) that incentivizes and also assists would-be parents to have children only in conditions that begin to ensure that child a fair start in life, relative to other kids in their generation. We can continue the progressive evolution of family planning systems (which have nonetheless failed to account for things like climate change, inequality, the erosion of democracy, etc.) by now linking them to what kids need, before those kids are born. By focusing on the specific short-term benefits of waiting longer and having fewer children, the Fair Start model both temporalized and concretizes the issue, thereby avoiding the pitfalls that previously befell advocates who bumped up against the disconnect between the clarity of the here and now and the nebulosity of the future. After all, [humans are hardwired to respond to short-term, rather than long-term, problems, particularly where there is a degree of uncertainty involved](#). In other words, we can create a nation with fewer persons overall but a greater number of engaged, empathic individuals like Deanna Young and the child she could have.

What would a child first, Fair Start family planning look like? Recently, Republicans moved to modify tax-advantaged “529” educational savings accounts [to allow fetuses to become beneficiaries](#). Instead, why not work with states to fully fund those accounts for prospective parents and children, including college tuition, through progressively scaled contributions that also require some cooperative contribution from parents, before they have kids? Doing so would mean a future world filled with happy and healthy children, equal opportunities for all, smaller and more connected communities, and functional democracies in a healthier environment.

The Fair Start model adopts a holistic approach that addresses the rights of parents, prospective children, and their communities, and as such fully integrates the objectives of human rights and environmental protection. That means all children have the fundamental human right to begin their lives in conditions that create equitable opportunities that are socially and environmentally sustainable relative to other children born in their generation. Correlative to that right, families and communities have a duty to plan together to secure the fair start of every child, creating and promoting smaller families while maximizing resources to improve conditions of entry. In addition to buttressing efforts to reduce unintended pregnancies, the Fair Start model can actually reduce the number of *overall* pregnancies by leveraging the impact of an increasing number of role models who demonstrate the ways in which smaller families help to provide children with a fair start in life, in addition to benefiting the parents themselves, the greater community, and the environment.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Anne".

Anne Green  
Executive Director  
Having Kids

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[1] While some nonbinding sources of international law do implicate a broader procreative right, even these nonbinding sources qualify a parent's right to have as many children as she wishes by specifying the manner in which that right should be exercised. *See* United Nations: Report of the International Conference on Population and Development, UN Doc No A/CONF.171/13, Cairo, Egypt, 5–13 September 1994 (18 Oct 1994) (“In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities toward the community.”); *see also* Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968)(“Parents have a basic human right to determine freely *and responsibly* the number and spacing of their children...”)(emphasis added).