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To: House Education Committee
From: David Tamisiea, Executive Director
Subject: Senate Bill 2400 - Education Savings Accounts
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The North Dakota Catholic Conference supports Senate Bill 2400.

SB 2400 seeks to improve the way education is provided in North Dakota by respecting a child's right to a quality education and a parent's right to choose the education best suited to their child.

A Principled Approach to Education That Respects the Rights of Parents and Children

Every child has a right to a state-supported education. This right is rooted in the immeasurable dignity of each child, and the obligation of the political community to provide concrete assistance for the education of all children so that they can achieve their potential.

Parents are the primary educators of their children. This is because they are ultimately responsible for their children's growth, formation, and development into adulthood. As the primary educators of their children, parents have a duty and right to choose the kind of education that best meets their child's needs.

SB 2400 respects both the right of the child to a state-supported education and the right of the parent to choose the form of education best suited to the child. It gives families affordable options to choose from through education savings accounts instead of a "one-size-fits-all" approach to education.

Education Savings Accounts

Currently in North Dakota, parents have three options for educating their child: public school, non-public school, and home education. SB 2400 recognizes that these three choices are not equal in terms of the financial burdens placed upon families. It seeks to alleviate the financial burden on parents who choose to educate their child in a nonpublic school or home setting through the use of an Education Savings Account (ESA). It also expands choices for all families so they can utilize educational tools and materials that they otherwise might not be able to afford. The funds deposited into a parent's ESA could be used for qualified educational expenses, including tuition and fees, textbooks, tutoring, curriculum materials, online classes, vocational and life skills education, standardized test fees, advanced placement examination fees, computer technology, educational camps, meals, mental health assistance, and medical appointments necessary for educational benefit.

North Dakotans Strongly Support School Choice

Recently, the North Dakota News Cooperative commissioned a statewide poll on school choice which ran from February 27, 2025, through March 2, 2025. (The ND News Cooperative Poll results are attached to this testimony.) The poll shows that likely voters strongly support school choice and the use of taxpayer dollars to support public, private, and homeschooled kids. Total support for school choice was 64% with only 31% opposed. This data underscores a significant public endorsement for ESAs, which empower parents to allocate funds toward educational environments that best suit their children's unique needs, thereby enhancing educational outcomes across the state.

Do Not Let North Dakota Fall Behind

Parental choice is widely recognized as essential for quality K-12 education. Just last week, the President signed an executive order to expand educational freedom by directing federal agencies to prioritize school choice programs when awarding federal dollars to support state K-12 education.¹ There are currently 33 states that have some form of parental choice in education that allow public funds to be used by parents to access the schools or services that best fit their child's needs.² These state school choice programs include education savings accounts, school vouchers, and tax credits and deductions. When you add public charter schools into the mix, only Kentucky and North Dakota have no school choice options for parents and their children.³ We should not allow North Dakotan families to be left behind without the ability to choose the best form of education for their children.

Education Savings Accounts under SB 2400 Expand Educational Choices for Everyone

Education Savings Accounts under SB 2400 could potentially benefit every student and family in the state of North Dakota. Funds are available for a wide variety of educational uses tailored to meet an individual student's needs. Eligible uses include not only private school tuition and fees, but also textbooks, online classes, tutoring, standardized exam fees, educational camps, and the like for any student.

Current non-public school students could use ESA funds for tuition and fees, and home educated students could use the funds for curricular materials and textbooks. Public school students who could not otherwise afford it could use their ESA funds to attend a non-public school, which may better match their beliefs, values, and needs. Public

¹ "Fact Sheet: President Donald J. Trump Expands Educational Opportunities For American Families," at <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-expands-educational-opportunities-for-american-families/>

² EdChoice, "School Choice in America," at <https://www.edchoice.org/school-choice-in-america-dashboard-scia/>.

³ National Center for Education Statistics, "Fast Facts: Charter Schools," at <https://nces.ed.gov/fastfacts/display.asp?id=30>.

school students could also use the other educational tools to enhance their free public school education.

Families in rural areas could also benefit immensely from greater access to educational resources with an ESA. A recent study of families using Florida's ESA program found that rural families utilized more of their ESA funds than urban and suburban families.⁴ The study also found that rural families spent smaller portions of their ESA funds on non-public school tuition and more on the other educational materials and tools tailored to their needs.

It is also not true that there are no non-public schools in rural North Dakota. There are non-public schools in Rugby, Langdon, Valley City, Sentinel Butte, Watford City, Belcourt, Fort Yates, Fordville, Wahpeton, Williston, Devils Lake, and Jamestown. Rural families in these areas could use ESA funds to pay for non-public school tuition.

The bottom line is this: whether a student is educated in a public school, non-public school, or home setting, whether one lives in an urban, suburban, or rural area, every North Dakota family stands to benefit from an ESA program under SB 2400.

It Is Entirely Appropriate to Use Public Funds for Non-Public Schools

Opponents object to public funds being directed to non-public schools. Detractors see this as an inappropriate use of tax-payer funds since these are private organizations and not state-run entities.

This objection is misplaced since these funds would be deposited into ESAs and then the parents would use the funds to make the best educational choices for their children. Nothing would go directly to a non-public school. If the parent chose to send their child to a non-public school, this would only be an indirect payment consequent to the decision of the parent.

Moreover, why do opponents insist that public funds can only be used by public schools to educate our children? Like all states, the state of North Dakota directs public funds to private organizations in other areas besides education to help carry out essential social services for its citizens. For example, North Dakota directs public funds to private religious non-profit organizations to conduct adoptions like Catholic Charities North Dakota and Christian Adoption Services. Further, the state directs medicaid payments to cover medical services given to the poor at private hospitals and clinics throughout the state. North Dakota also provides public funding to Dakota Boys & Girls Ranch and Home on the Range to care for troubled youth. In addition, state funds are directed to the Anne Carlsen Center and other providers to care for children with behavioral and developmental challenges. Many more examples could be offered. The point is that it is entirely appropriate for state funds to be used by parents to pay for non-public schools.

⁴ Loftin, Michelle and Michael Lueken (2021). Distribution of Education Savings Accounts Usage Among Families: Evidence from the Florida Gardiner Program. (EdWorkingPaper: 21-426). Retrieved from Annenberg Institute at Brown University: <https://doi.org/10.26300/baz8-7757>.

North Dakota's Non-Public Schools Are More Regulated by the State Than Any Other Non-Public Schools in the Country

Another objection against directing public funds to non-public schools is that these schools are not accountable to the state. This is not true for two reasons.

First, SB 2400 directs public funds directly into ESA accounts for a parent to use for their child's educational needs. No funds go directly to non-public schools, and a parent may use the funds for other approved educational resources. It is the parent's choice. Second, even if a parent chooses to use ESA funds to pay for tuition at a non-public school, North Dakota non-public schools are regulated by the state more than any other non-public schools in the country.⁵ North Dakota is one of only eight states that require all non-public schools to be approved by the state. In only two of these states - Massachusetts and North Dakota - are the approval requirements for non-public schools identical to the requirements for public schools. Only one of these two states - North Dakota - requires non-public school teachers to be licensed by the state. This leaves North Dakota as the only state in the nation that mandates both state approval for nonpublic schools identical to that for public schools and requires state-licensing for nonpublic school teachers.

Education Savings Accounts Are Constitutional

Art. VIII, Sec. 1: Opponents of public funds going toward education savings accounts also claim Article VIII, Section 1, of the North Dakota Constitution prohibits the use of public funds for private education. This is not what this section says. Rather, it merely says, "The legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control" ("sectarian" = religious). North Dakota *has* established a public school system "free from sectarian control" and "open to all children of the state of North Dakota." But there is nothing in our state Constitution that limits the legislature *only* to establishing public schools for educating our children.

Nothing prevents the legislature from doing *other* things in addition to a public school system to support and enhance education in North Dakota, like providing public funding for ESAs to support parental educational choice. In fact, under Article VIII, Section 4, of the North Dakota Constitution, it says "The legislative assembly shall take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific, and agricultural improvements."

Art. VIII, Sec. V: Opponents also frequently claim that Article VIII, Section V, of North Dakota's Constitution prohibits educational funds going toward anything other than

⁵ State Regulation of Private and Home Schools, U.S. Department of Education, 2025; Specific State Laws, at <https://www.ed.gov/sites/ed/files/about/its/ed/non-public-education/files/permission-to-operate-comparison-chart.pdf>.

public schools, because it says, “No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school.”

This constitutional provision banning the use of public funds for the support of religious schools is known as the “Blaine Amendment.” The Blaine Amendment is named after James Blaine, a 19th-century Maine politician who in 1875 unsuccessfully tried to have this provision added as an amendment to the U.S. Constitution. Nevertheless, Congress forced new states, including North Dakota, to include the Blaine Amendment in their state constitutions as a condition of obtaining statehood.⁶

The U.S. Supreme Court has in three recent decisions declared that state Blaine Amendments banning the use of government funds to support religious schools violate the First Amendment of the Constitution by interfering with the free exercise of religion and are therefore void and unenforceable. In *Trinity Lutheran Church v. Comer* (2018), the U.S. Supreme Court held that the state of Missouri violated the First Amendment by excluding a faith-based preschool from a state program that provided recycled tires for playground resurfacing simply because it was religious. In *Espinoza v. Montana Department of Revenue* (2020), the U.S. Supreme Court held that the Montana Supreme Court violated the First Amendment when it invalidated, on state constitutional grounds, a private-school-choice program because it included faith-based schools. Likewise, in *Carson v. Makin* (2022), the U.S. Supreme Court held that Maine unconstitutionally excluded religious schools from a publicly-funded scholarship program for students in rural school districts. In all three cases, the Court held that withholding public funds from private religious schools under a state constitution’s Blaine Amendment was unconstitutional.

On November 29, 2022, Attorney General Drew Wrigley issued a formal legal opinion affirming the unconstitutionality of the Blaine Amendment in North Dakota’s Constitution.⁷ (The AG’s opinion is attached to this testimony.) The Attorney General’s opinion states: “the Blaine Amendment is not enforceable under United States Supreme Court case law” and “the United States Supreme Court has barred the state from enforcing its Blaine Amendment.” Blaine is dead. While the state of North Dakota is not obliged to fund private religious schools under our state constitution, nothing prohibits the state from directing public funds to religious schools.

Nevertheless, we continue to hear from opponents of educational choice that, although the state’s Blaine Amendment is unconstitutional, the legislature should respect the intent of the state’s Founders and enforce it legislatively anyway. This assertion is deeply troubling. The state’s Blaine Amendment is unconstitutional because it violates the First Amendment of the United States Constitution that protects American citizens against unjust religious discrimination by the government. Proponents of keeping its “spirit” because of “tradition” or respect for the state’s founders are asking this

⁶ Act of Feb. 22, 1889, 25 Stat. 676, ch. 180 (1889)

⁷ North Dakota Attorney General Opinion 2022-L-07.

legislative body to knowingly violate the First Amendment of the U.S. Constitution and the religious rights of North Dakotans.⁸

Conclusion

Education savings accounts respect the rights of children to a state-supported education and the rights of parent to direct the education of their children. Education savings accounts are constitutional and would expand educational opportunities for all families in North Dakota. Education savings accounts are also strongly supported by North Dakotans.

We urge a **Do Pass** recommendation on Senate Bill 2400.

⁸ North Dakota's founders did not willingly choose to include the Blaine Amendment in the state constitution. Congress, which was swept up in anti-Catholic and anti-immigrant hysteria at the time, forced North Dakota and other states to include the Blaine Amendment in their state constitutions as a condition of obtaining statehood. (Act of Feb. 22, 1889, 25 Stat. 676, ch. 180 (1889).)