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**To:** House Education Committee  
**From:** Christopher Dodson, Executive Director  
**Subject:** House Bill 1369 - Education Empowerment Program  
**Date:** January 25, 2021

The North Dakota Catholic Conference supports HB 1369.

All children have a right to a state-supported education. This right is rooted in who we are as human persons and the obligations of the political community to concretely assist in the development of all children so that they can reach their full potential.

Just as all children have a right to a state-supported education, all parents have a right to choose the best educational setting for their children. Parents are the primary educators of their children and best know what educational setting suits their particular children.

The two rights are not mutually exclusive and treating them such — as our current system does — violates both the child's and the parent's basic human rights.

Why do we continue with this unjust system that, as too often happens, mostly hurts poorer families and children with special needs? One reason is that some opponents of parental choice hold misunderstandings or long-held prejudices about both public and nonpublic schools and the state constitution. Because we have heard them before, allow me to anticipate and address some of those concerns.

Opponents of parental empowerment will often cite portions of the North Dakota Constitution, such as Article VIII, Section 1, which states that “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.” The provision is cited as if it prohibits any parental choice program. It does not. It merely says that at a minimum there must be a system of public schools. It does not say that the state cannot do more to help children. HB 1369 is about doing more. It does nothing to impair the state's obligation to public schools or to keep them free from “sectarian control.”<sup>1</sup>

The other constitutional provision often cited by opponents of parental choice is Article VIII, Section 5, which states: “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.” Here again, opponents cite the provision as if it should end all discussion about parental choice. HB 1369, however, as it relates to funds that might, as a result of parental choice, end up covering some expenses at a nonpublic school, does not use any funds that were raised for the support of public schools. The money raised for the support of public schools remains untouched.<sup>2</sup>

Some will argue that any money that does not go to public schools is money taken from the “money raised for the support of the public schools.” If we follow that logic, however, money this body appropriates for roads, human services, law enforcement, or anything else is taken from “money raised for the support of the public schools.” The argument fails. In short, nothing in the North Dakota Constitution prevents the state from expanding opportunities for parents and students like that proposed in HB 1369.

Another argument we can anticipate is that the public schools serve all students and are required to do so while nonpublic schools can be selective. What they do not say is that the nonpublic schools could take more special needs students if the parents could afford the costs and tuition.

In any event, these statements are mere attempts at distraction that have nothing to do with the bill before you. HB 1369 is not about public schools or nonpublic schools or which students they take. This bill is not about the schools at all. It is about parents being empowered to choose the best educational setting for their children. The school is merely incidental to parent’s choice.

HB 1369 does not negate the state’s obligations to public schools in any way. It does not violate the state constitution. It furthers, rather than, inhibits the state’s obligations to serve all students, especially those with special needs. In short, it is about doing more and better because our children and their parents deserve it.

The North Dakota Catholic Conference respectfully requests a **Do Pass** recommendation on HB 1369.

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<sup>1</sup> As well-documented by the U.S. Supreme Court, “[i]t was an open secret that ‘sectarian’ was code for ‘Catholic.’” and provisions like Art. VIII, sec. 5 were “born of bigotry” and “arose at a time of pervasive hostility to the Catholic Church and to Catholics in general.” *Espinoza v. Montana Dept. of Revenue*, 140 S. Ct. 2246, 2259 (2020).

<sup>2</sup> In short, on its face, Art. VIII, sec. 5 of the North Dakota Constitution would not apply, but even if HB 1369 was interpreted to use money raised for the public schools, the recent decision by the U.S. Supreme Court in *Espinoza v. Montana Dept. of Revenue* (140 S. Ct. 2246 (2020)) would make Art. VIII, sec. 5 unconstitutional.