



Great Public Schools

Great Public Service

**Testimony before the Senate Judiciary Committee
In opposition of SB 2260
Michael Geiermann, North Dakota United
January 24, 2023**

Chairperson Larson and members of the Senate Judiciary Committee. I am Michael Geiermann. I serve as general counsel for North Dakota United. I appear before you today in opposition to SB 2260. This bill purports to grant to parent's fundamental rights to direct their children's education, health care and mental health. The state, political subdivisions and other governmental agencies may not interfere with the exercise of those rights without showing, presumably in a court room, a compelling governmental interest and that the governmental action is the least restrictive method possible. The scope of this bill is incredibly broad. I am only here to address the issues as they relate to education. I am not going to address issues related to health care or mental health. While the bill provides a number of instances of how parents can control their child's education, in the event that control is infringed upon, it then authorizes litigation against the offending parties whether it is the state, political subdivision or an individual employee.

To stand before this committee and oppose this bill may be seen by its supporters as anti-parent. Testifying against parental control will not be taken well by some and will serve as ammunition to criticize the teachers of North Dakota. Nothing could be further from the truth. Teachers welcome parental involvement in their child's education. Teachers want the insight of parents on how best to disseminate ideas and information to students. Teachers encourage parents to get involved in not only the curriculum of the school but all the school-related activities. This bill is not about increasing that parental involvement or participation. It's about changing the very method of providing education to the children of this state. It's about granting absolute control to parents over their children's education and ensuring that control with the threat of lawsuits.

In reviewing this bill, the first issue to be discussed is the establishment of a fundamental right. A fundamental right generally has its origins in the Constitution, not in statute. What does that term "fundamental right" mean in the context of this bill? Do these fundamental rights have their origin in the U.S. or N.D. Constitution? Have the fundamental rights supposedly to be established in this bill been recognized by the North Dakota Supreme Court? Or are these fundamental rights created by the legislature? Can the legislature create a fundamental right to allow a parent to control their child's education? The North Dakota Supreme Court has recognized the fundamental right of a parent to raise their children. However, that right is not unlimited. It is beyond question in this jurisdiction that parents have a fundamental constitutional right to parent their children which is of the highest order. . . . Only a compelling state interest justifies burdening the parent's fundamental right to enjoy a relationship with his or her child, and the state must bear the burden of demonstrating the necessity for doing so in this instance.

However, in the cases decided by the North Dakota Supreme Court in which the Court has addressed a parent's fundamental right to raise their children, those cases did not present the issue of whether parents had fundamental constitutional right to control their child's education. Furthermore, the North Dakota Constitution does provide the right to a public education is a fundamental right. The education provided in North Dakota is to be uniform. Article VIII of the North Dakota Constitution requires:

Section 2. The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.

Section 3. In all schools instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind.

Section 4. 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.

However, the constitutional right to education did not create an absolute right of parents to control that right as set forth by the framers of our Constitution. Nor is there a fundamental right to control education reserved to parents in the Constitution. Before the merits of this bill can be considered, the issues relating to the purported establishment of a fundamental right by the legislature must be initially addressed.

As drafted, the term used in this bill as it relates to a parent's fundamental right is the term "to direct" the child's education. The term is not defined in the statute. Words in statutes are to be understood in their ordinary and everyday meanings. Oftentimes, the North Dakota Supreme Court will look to a dictionary to define an undefined word in a statute. The term "direct" is defined as "to regulate the activities or course of," "to carry out or supervise" and "to dominate and determine." It could be argued "to direct" means to control.

The bill initially contains a general policy statement allowing parents to "direct" their children's education." (Page 1, lines 14-19). This parental control is not absolute as the state or school district can infringe upon that right by showing a compelling governmental interest and that the infringement is the least restrictive method. There are limitations placed upon the rights of the parents.

However, the bill then contradicts the above referenced provisions by stating that parental rights are reserved to a parent "without obstruction by or interference from the state, political subdivision, a governmental entity... to direct the education of a child and to make reasonable choices within a public school for the education of the child" (Page 1, lines 20-23 to Page 2, lines 1-3). The statute uses the word "reserved exclusively." Do these rights already exist or are they created under this statute? If they already exist, where are they

found in the Constitution? It also appears the state's or a school district's ability to object to the control of a parent is eliminated as the bill states "without obstruction by or interference." The parental control appears to be absolute.

This bill allows parents to control their child's education within the framework of the public school system. It allows parents to make "reasonable choices within a public school for the education of their child." (Page 2, lines 2-3). What is the definition of reasonable? Anything the parent wants for the education of their child, short of abuse and neglect, will be seen as reasonable because by its terms, the school district and the state have no authority to object or refuse the demand of the parent. The parents run the show!!

The bill, in section 2, then requires significant involvement of the school district in drafting and enforcing policies relating to the exercise of these parental rights. The bill requires the development of a plan for parent participation designed to improve parent and teacher cooperation in the areas of homework, attendance, and discipline. Since the rights are individual to each parent, does that require a personalized plan for each parent? Does the parent have the right to control when their student does homework, attends certain classes or the type of discipline for the child? And if a school district sets forth a plan and the parent objects, does the school district and teachers relent and allow for the parents control because of fear of litigation? Of course, under the statute, if the school district or the teacher cannot come up with an approved plan with the parent, they face the possibility of being sued and paying attorney fees. (Page 4, lines 4-24, Page 5, lines 24-29).

The district and ultimately the teachers who establish the curriculum are then required to establish a policy to notify the parent at least three days in advance if the class will be discussing anything to do with gender, sexual or romantic issues. If the parent objects, their child may be excused from the lesson on the material. This provision of this section of the bill is straight forward. (Page 4 lines, 25-28).

The portion of the bill which is confusing and ambiguous is the requirement to establish procedures for a parent to object to a specific presentation or instruction which is "harmful." Who determines if the presentation or instruction of a particular subject or topic is harmful? It appears the parent has an unfettered right to do so and if the district or the teacher believes otherwise or disagrees, they get sued. (Page 4. lines 29-31). The examples of the unworkable nature of these procedures are obvious. The identification of hot button issues is easy for the proponents: gender issues, sex, AIDS. The examples are much more difficult when the issues are the instruction and explanation of slavery in the United States, the Civil War, the Holocaust, the internment of patriotic Japanese Americans during World War II, the need for a Civil Rights Act, and Watergate. If a parent believes these topics are harmful to their child, under this bill, the child is excluded. Does the child simply skip those lessons? Is there an alternative lesson to be taught? Is the teacher required to teach that the Civil War was about state's rights and not about slavery? Are those subjects then excluded from the test? Does the child whose parents have excluded them from the class or lesson receive the same grade and credit as compared to a child who attends all the lessons or presentations? Does the objection by a few parents deny someone

else's child in the class their constitutional right to learn about "harmful" topics? It will be far easier for a teacher to exclude a "harmful" topic from the curriculum than to get sued.

This bill in essence creates another layer of administration for teachers. If an elementary teacher has 29 students in her classroom, under this bill, she has to now legally answer to 29 sets of new administrators on how she believes she should teach her students. That number will grow if the parents are divorced. If the teacher works in a high school, that teacher must now answer legally, with the threat of litigation, to an extraordinary number of parents who now have the same authority as administrators when it comes to subject matter, curriculum, presentation of that curriculum and academic freedom.

While the current system may not be perfect, North Dakota teachers, administrators and school districts provide one of the best educational systems in the country to their students. The system can always be improved. This bill is not an improvement. It is a hinderance. There are mechanisms in place for teachers and administrators to seek, receive and implement parental input as to the education of their students. This bill simply increases the pressure on already overworked and underappreciated teachers and administrators.

This bill does not help alleviate the critical teacher shortage we face in this state and all over the nation. North Dakota needs to recruit new teachers, not discourage them. Bills like this will force remaining teachers out of the profession and will cause new teaching candidates to second guess teaching as a potential career path. This bill is simply a blatant form of censorship. Realistically, as soon as the class or lesson is over, the excluded student whose parents believe the content of the lesson was "harmful" can obtain the same information on the internet.

I have watched the teacher shortage crisis evolve in this state for 35 years. I have seen the rights given to teachers continually attacked and diminished. This bill continues that attack. Our teachers deserve respect. They deserve to be trusted as they have earned it. They should not be subjected to lawsuits when they assert a well-intentioned and qualified curriculum for their students.

I would urge a do not pass recommendation from this committee to SB 2260.