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Home School Legal Defense Association

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March 17, 2025

The Honorable Pat D. Heinert
Chairman
House Education Committee

RE: ***Testimony in Opposition to Senate Bill 2400***

Dear Chairman Heinert and members of the House Education Committee:

I write to voice our opposition to S.B. 2400, as drafted.

My opposition to this legislation is threefold: first, the bill contains vague and confusing language; second, home educated students should be removed; and third it provides for the public funding of private home education.

S.B. 2400 contains inconsistent, vague and confusing language.

First, the bill does not use consistent languge. S.B. 2400 provides a number of definitions but frequently doesn't use these defined terms, substituting undefined terms instead. For example, on Page 2, line 18, the bill uses "school participating" instead of "participating school." Similarly, on page 4, line 12, the bill references "A nonpublic school" when it should state "A participating school…," which the bill defines as a non-public school.

Second, also on Page 4, line 12, the bill uses the phrase "…or other providers of qualified education expenses." However, a "provider of … expenses" does not exist. There are providers of *services* for which an *expense* may be qualified, but the language as drafted in confusing at best.

Third, the current language ignores the reality that many students are enrolled in public and non-public schools in a non-fulltime basis. Page 4, lines 20 and 22, simply state, "attends a public school" and "is enrolled in and attends a nonpublic school…," respectively. Of course, the amount of tax-payer assistance for the respective categories varies, so how the bill address full-time or part-time students matters. For example, is

a child who is enrolled for a single course at the local public school eligible for $500? What about an eligible student who is enrolled for 2 classes at a participating school that has an annual income less than or equal to three hundred percent as set forth on page 4, lines 24-27? Is this child eligible for the full $3,500, or is their eligibility pro-rated because they do not attend the participating school full-time?

Fourth, page 3, line 22, references "accountability standards established under this chapter." However, this new chapter only sets forth these standards for participating schools (starting on page 5, line 9). Since there are there no accountability standards for "education service providers," is the inference that none exist. Also, is there a reason page 3, line 21 references "education providers" rather than the defined term of "education service providers?" Are these the same, and if they are, why does the bill not use the same term? Finally, the bill essentially gives the superintendent of public instruction the authority to define what it means to "routinely fail to comply" which is problematic.

Fifith, S.B. 2400 gives the superintendent of public instruction the authority to bar a participating school or education service provider from participating in the program if they determine they have "failed to provide the eligible student with the educational services funded by the education savings account." The problem here is that "educational services" is completely undefined and, as such, there is no way to know based on the language of the bill what "failure to provide" means.

Home education students should be removed from eligibility in the program and a separate compulsory exemption created

I urge this committee to remove students participating in a home education program be removed from the education savings account program. In order to accomplish this, four specific changes need to be made

First, amend 15.1-20-01 to add a new subsection (f) to include a new exemption for students participating in the education savings account program.

Second, make clear that an "education service provider" does not include a parent supervising home education in accordance with chapter 15.1-23

Third, delete "participates in a home education program in accordance with chapter 15.1-23" on page 5, line 3, and replace with language akin to "has been approved for an education savings account payment but does not attend a public school or participating school full-time…"

Fourth, make clear in the bill that a parent may not be approved for an education savings account and have on file a statement of intent to home educate for the same student for the same year. Also, make clear that approval of such an education savings account created under this chapter constitutes revocation of the statement of intent for that child for that school year.

We oppose the public, tax-payer subsidized funding of private home education.

HSLDA, as the world's largest homeschool advocacy organization, opposes the public funding of private home education. We believe that public tax-payer aid directly to home educating families is poisonous to the homeschooling movement.

First, a child participating in a home education program under state law is explicitly included. It appears that a homeschool family would be defined as an "education service provider" under Section 1. I appreciated the language on page 6 of the proposed bill that states an education service provider "is autonomous and not an agent of the state of government." However, it is clear that anyone who received tax-payer funds is funded by the state and, as such, is government by the requirements of state law regarding expenditure of funds. One need not look any further than the "accountability standards" already provided in the proposed legislation and in the authority vested in the superintendent of public instruction.

I commend the desire to make education in North Dakota the best it can possibly be. We whole-heartedly support that child in America receive a great education. But, we belive that public funds should not be explicitly provided to families who home educate under current state law.

If the North Dakota Senate desires to fund a parent's decision regarding the education of his or her child, they can and should do so in a manner that does not jeopardize the freedom of home education. I have outlined above steps this committee can take to do this. Several states have done this, and I am happy to provide examples of how this can be accomplished and work with the committee if needed to successfully accomplish this. Arizona, Florida, West Virginia, Utah and other have created tax-payer funded education savings account that create a separate compulsory exemption category and leave home education as it is.

It is also worthwhile to note that there is ample evidence that public funding of private education has not produced the results many desire. Just look to the examples of Arizona, Florida, West Virginia, Arkansas and others to find recent examples of the high cost of these programs, the significant implementation challenges and the bureaucratic hurdles they create.

A headline in West Virgina just today (Monday, March 17) states that the pricetag for the Hope Scholarship Program (the WV ESA equivalent) cound be as high as $315 million for this upcoming school year. In Arizona, which passed the first universal ESA program in the nation, there have been over a dozen bills filed just this legislative session that would change the ESA program in some manner.

Additionally, the public, taxpayer funding of private home education places, at least in some small manner, the responsibility for approving decisions of home educating families in the hands of the state. After all, when the government collects tax dollars from residents and gives those taxes dollars to others via an education savings account, the state ought to know how those funds are being spent. Isn't fiscal transparency and responsible stewardship of tax payer funds still a good thing?

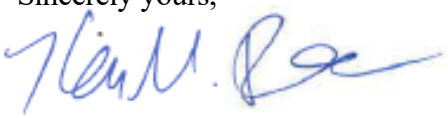
Moreover, this legislation does not provide any additional educational options for any North Dakota children. S.B. 2400 does nothing to provide any additional choice, but simply provides state funds to the choice that parents already (or want to) make. It forces the tax-payers of North Dakota to pay for the private educational decisions of other families and does not provide any additional education options for families in the state.

In closing, state aid to home education is premised on the notion that the education of children is a state responsibility based on the interests of the state. We disagree. We agree with the Supreme Court when it stated 100 years ago in *Pierce v. Society of Sisters*: "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." (268 U.S. 510 (1925)). It is the parent who has this duty, not the state.

For over four decades, HSLDA has stood for homeschool freedom. We continue to stand for this freedom today: a freedom that is jeapordized by infusing public, tax-payer funds into this manner of education.

I urge a "do not pass" recommendation on S.B. 2400

Sincerely yours,



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