

PRESIDENT	J. Michael Smith, Esq. CA, DC, VA
VICE PRESIDENT	James R. Mason III, Esq. OR, DC
SENIOR COUNSEL	Scott A. Woodruff, Esq. VA, MO Darren A. Jones, Esq. CA, DC Michael P. Donnelly, Esq. MA, NH, WV, DC
ATTORNEY	Thomas J. Schmidt, Esq. CA Peter K. Kamakawiwoole, Esq. MO, VA Daniel T. Beasley, Esq. CA, WI
OF COUNSEL	Mary E. Schofield, Esq. CA Tom Sanders, Esq. TX

### Testimony in Opposition to HB 3658

Testimony for: Minnesota Senate Education Policy Committee

From: Michael P. Donnelly, JD, LLM, HSLDA Senior Counsel

Date: Friday, March 6, 2020

RE: HF 3658

My name is Michael Donnelly I am Senior Counsel for The Home School Legal Defense Association (“HSLDA”) which advocates for the rights of parents to direct the education and upbringing of their children. With nearly 85,000 member families we are the world’s largest homeschooling association. In Minnesota we work with our partner MACHE and speak on behalf of thousands of families. For the previous 13 years I have instructed students in the federal constitution and Supreme Court opinion at Patrick Henry College and I am adjunct Professor of Law at Regent Law School.

Our association opposes FV 3658 because it would violate federal constitutional presumptions, important societal norms and existing rights.



Testimony in Opposition to HF3658/SF3277  
March 6, 2020  
Michael Donnelly, JD, LL.M, HSLDA Senior Counsel

Research and experience show that when government grows the people have less freedom. But when parents are able to choose freely among many options there are better educational outcomes and opportunities.

We are concerned that by asserting that “all children have a fundamental right to a quality PUBLIC education” the state of Minnesota would create an unconstitutional preference for public education which could lead to the abolition of nonpublic education.

History shows this is not a crazy conspiracy theory. In 1925, the United States Supreme court invalidated a 1922 Oregon voter referendum that required all children to receive public education effectively banning nonpublic education. The case was *Pierce v. Society of Sisters* and the court found that

“The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. 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.”

If a child has a “right” to a public education – would parents who home educate or enroll their child in a nonpublic school be denying this right? Would parents now be subject to educational neglect investigations for denying the rights of their children?

This amendment is contrary to the societal understanding that families are fundamental units in our society. The proposed amendment would slice into the family and set up the “quote unquote” “State” as the ultimate authority in a determining a child’s education.

By recasting the government’s constitutional duty to provide educational opportunities using a child’s rights formulation, the amendment rejects the constitutional presumption affirmed by the United States Supreme Court in *JR v Parham* that parents are presumed to act in the best interests of their children. The idea of the state as the agent with final educational authority is also a principle embedded in the United Nations Convention on the Rights of the Child – a treaty which the US has declined to ratify for many good reasons and which our association has long opposed.

By setting up the state as the final arbiter of whether parents are appropriately providing for the education of their children, this amendment violates the deeply rooted history, norms, and traditions of our constitutional republic.

Finally, the Amendment eradicates the important constitutional notion of separation of powers. the principle of the separation of powers is one of the great American ideas our founders wrote into our constitution to protect us from the power of unitary governing authorities. Our democratic system works best to protect citizen’s rights when power is separated rather than combined. But this

Testimony in Opposition to HF3658/SF3277  
March 6, 2020  
Michael Donnelly, JD, LL.M, HSLDA Senior Counsel

amendment affirmatively assigns educational authority to the “state” not the legislature as under the current constitution.

Under this new approach, how would the various responsibilities of the “state” be assessed? Each branch of government would now have its own grant of power to argue that it is responsible to provide a quality public education and would be duty bound to assert it.

Ultimately, because these would be new constitutional questions, this issue would be decided by judicial elites rather than elected representatives. But Policy debates on how to allocate resources and organize government institutions are best had in the legislature where elected representatives are the closest to the people and have more time and appropriate mechanisms to seek public input and to debate competing demands and values. With so many new terms, principles, rights and duties in the proposed amendment it would take decades to unravel through constitutional litigation which would certainly involve both state and Federal Courts. Under the proposed amendment, one individual judge’s swing vote could determine with finality Minnesota educational policy.

In *Democracy in America*, Alexis De Tocqueville wrote about one of the key attributes of American greatness that this amendment would undermine.

Testimony in Opposition to HF3658/SF3277  
March 6, 2020  
Michael Donnelly, JD, LL.M, HSLDA Senior Counsel

*Everywhere that, at the head of a new undertaking, you see the government in France and a great lord in England, count on it that you will perceive an association in the United States.*

*In America I encountered all sorts of associations of which, I confess, I had no idea, and I often admired the infinite art with which the inhabitants of the United States managed to fix a common goal to the efforts of many men and to get them to advance to it freely.*

Government funded education consumes massive resources. Lawmakers and school administrators should seek the very best outcomes possible. But the answer to issues of quality and equity is not more government – it is less government and more empowered families. The more government grows the less the people are free. If we want better educational outcomes for our kids, then we need more freedom for families not more government interventions.