

Florence Lince

From: Senate Education Committee Secretary <no-reply@zoom.us>
Sent: Monday, March 15, 2021 8:30 PM
To: Florence Lince
Subject: Webinar Registration Senate Education Committee

Hi Senate Education Committee Secretary,

Kimberly Bowers (kimberly@quakbo.com) has registered for "Senate Education Committee" on: Mar 16, 2021 3:00 PM Mountain Time (US and Canada)

First Name: Kimberly
Last Name: Bowers
Email: kimberly@quakbo.com
Address: 45 Summit Ridge Road
City: Horseshoe Bend
Zip/Postal Code: 83629
State/Province: ID
Phone: 2089912428
Organization: Homeschool

H0294 Strong students grant, scholarship: Against

Written Testimony: Homeschoolers who accept these funds should be considered public school students, since they are accepting funds and oversight.

Manner of Testimony: Written Only

Webinar Detail Link: <https://us02web.zoom.us/webinar/82315637680>

Florence Lince

From: Senate Education Committee Secretary <no-reply@zoom.us>
Sent: Monday, March 15, 2021 12:46 PM
To: Florence Lince
Subject: Webinar Registration Senate Education Committee

Hi Senate Education Committee Secretary,

Bailey Cain (Bailynnncain@gmail.com) has registered for "Senate Education Committee" on: Mar 16, 2021 3:00 PM Mountain Time (US and Canada)

First Name: Bailey
Last Name: Cain
Email: Bailynnncain@gmail.com
Address: 24336 Farmway Rd
City: Caldwell
Zip/Postal Code: 83607
State/Province: ID
Organization: None

H0294 Strong students grant, scholarship: Against
Written Testimony: The state board of Education should not have authority over homeschoolers. Idaho homeschoolers thrive because of our independenc Manner of Testimony: Written Only

Webinar Detail Link: <https://us02web.zoom.us/webinar/82315637680>

Florence Lince

From: Senate Education Committee Secretary <no-reply@zoom.us>
Sent: Tuesday, March 16, 2021 12:05 PM
To: Florence Lince
Subject: Webinar Registration Senate Education Committee

Hi Senate Education Committee Secretary,

Sheila Murdock (the_murdocks2004@yahoo.com) has registered for "Senate Education Committee" on: Mar 16, 2021 3:00 PM Mountain Time (US and Canada)

First Name: Sheila
Last Name: Murdock
Email: the_murdocks2004@yahoo.com
Address: 4231 E Silverking Lane
City: Meridian
Zip/Postal Code: 83642
State/Province: ID
Organization: Private Homeschooling Idahoan and Homeschool Idaho member

H0294 Strong students grant, scholarship: Against
Written Testimony: Do not pass HB294; wording puts Idaho parents' rights to privately homeschool at risk of disappearing. No to the money!
Manner of Testimony: Written Only

Webinar Detail Link: <https://us02web.zoom.us/webinar/82315637680>

Statement of Jim Jones and Karen Lansing in opposition to House Bill 294

The Hon. Steven P. Thayn, Chairman
Senate Education Committee
March 16, 2021

Honorable Chairman Thayn and Members of the Committee:

Having served in capacities where we often were called upon to deal with questions arising under the Idaho Constitution, we express our concern about the constitutionality of House Bill 294. We speak with the combined experience of 34 years on the appellate courts of Idaho-- former Justice Jim Jones having served 12 years on the Idaho Supreme Court and former Judge Karen Lansing having served 22 years on the Idaho Court of Appeals. We do not purport to speak on behalf of either court. Rather, we here express our personal view that HB 294 is constitutionally infirm, both upon granular view and when considered in a broader context.

Taking a granular view, we think it likely a court would hold that HB 294 violates Article IX, Section 5 of the Idaho Constitution. That provision prohibits the appropriation of any public funds to "aid" or to "help support or sustain" any school controlled by a church or religious denomination. Because public funds provided to parents under HB 294 would have the effect of benefiting sectarian or parochial schools, such funding likely would run afoul of the constitutional prohibition. In Epeldi v. Engelking, 94 Idaho 390 (1971), the Idaho Supreme Court addressed the constraints of Article 9, Section 5, and that decision is very instructive on the issue presented here. There, the challenged statute required school districts to provide student transportation to private schools, including parochial schools. The Supreme Court rejected an argument that the statute gave aid only to the pupils who were transported, not to the parochial schools they attended. The Court said, "Free transportation of pupils induces attendance at the school," and therefore the statute's purpose "is to promote the interests of the private school..." Even though the statute benefited students, the Court concluded, "it also aids those schools by bringing to them those very students for whom the parochial schools were established." Consequently, the Court found that the statute violated the strictures of Article 9, Section 5.

Applying the lessons of Epeldi, we conclude that Section 4 of HB 294, which would establish scholarships for parochial school students, is unconstitutional. The dollar value of the scholarships is so substantial that much of the appropriated funds would almost

certainly be used by parents to pay tuition or other charges directly to the schools. Even if not used for such direct payments, this financial assistance would make it more affordable for parents to enroll students in parochial institutions and would thereby channel students to the schools. It would thus benefit parochial schools, just as did the transportation assistance that was struck down in Epeldi. The constitutionality of the grant program established by Section 3 of HB 294 is a closer question, but we believe it may also be constitutionally infirm because the grants could encourage parochial school enrollments by making such schools more affordable for parents.

Taking a broader view of House Bill 294, the legislation is constitutionally infirm because it benefits private individuals and schools with public funds that can and should be used to meet the Legislature's constitutional duty to provide adequate funding for Idaho's public school system. Article IX, Section 1 of the Idaho Constitution commands: "it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform, and thorough system of public, free common schools."

The Idaho Supreme Court has repeatedly ruled that these are not idle words. Rather, the Legislature must provide adequate funding to operate our public school system. There can be no argument that the Legislature has failed to carry out this solemn obligation for many years. The issue was considered by the Supreme Court in a long-running case titled Idaho Schools For Equal Educational Opportunity v. State, generally referred to as ISEEO. The case was filed in 1990 and came before the Court on five occasions, producing five decisions.

In its second decision, the Court indicated the State might not be adequately funding the instructional side of the education system and sent the case back to the district court for further consideration of that issue. The Legislature thereafter increased school appropriations and called for certain rule changes by the State Board of Education.

In the third round of the litigation, the focus became the proper meaning of a "thorough system" of public schools. The Supreme Court determined that, "a safe environment conducive to learning is inherently part of a thorough system of public, free common schools...." ISEEO III, 132 Idaho 559, 566 (1998). It indicated the Legislature may have done enough to fund school operations, but that further proceedings were necessary to determine whether school facilities--buildings and fixtures--were being adequately financed. The case was remanded back to the district court for a determination as to whether the Legislature was providing sufficient funding for school facilities.

When the case came back in its fifth iteration, the Court ruled that the Legislature had not met its constitutional duty to provide a thorough system of education with regard to

school facilities. ISEEO V, 142 Idaho 450 (2005). The ruling specified, "it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate" making it clear the Legislature could not try to place the primary funding responsibility upon local school districts. Further, the Court approvingly quoted an Ohio Supreme Court decision for the proposition that property taxes are an insufficient means of fulfilling the constitutional mandate: "The valuation of local property has no connection whatsoever to the actual education needs of the locality, with the result that a system overreliant on local property taxes is by its very nature an arbitrary system that can never be totally thorough."

In a special session of the Legislature in 2006, legislation proposed by then-Governor Jim Risch was approved to reduce reliance on property taxes and shift the burden to sales and income taxes. In the last ten years, the burden on property taxpayers has substantially increased because the Legislature has failed to carry out its responsibility to provide adequate funding for either school facilities or instructional operations. Supplemental property tax levies increased from \$136.3 million in 2010-11 to \$216.6 million in 2020-21. Plant facilities levies were \$52.9 million this year.

The Legislature is clearly shirking its constitutional duty to provide a thorough system of public schools. Ever since the deep recession of 2008, public leaders, such as former Governor Otter and any number of legislators, have admitted this to be the case. Yet, the Committee now has before it legislation that would further siphon off funds that should have a constitutional home in the public school system and put them to the benefit of private and parochial schools.

The Idaho Constitution does not authorize the Legislature to fund private schools, but the Constitution is very clear about this body's unequivocal duty to adequately fund the public school system. We consider HB 294 to be violative of the Idaho Constitution and subject to court attack. We respectfully request that it not be permitted to move forward to the floor.

Supplement to testimony of Jim Jones and Karen Lansing in opposition to House Bill 294

Honorable Chairman Thayn and members of the Senate Education Committee:

Following circulation of the written testimony of Judge Lansing and myself, a member of the Committee emailed me, posing a completely legitimate question. "Had we considered how the Supreme Court's recent Espinoza decision affected our analysis? I thought Idaho's Blaine Amendment was similar to Montana's." Here is my response to the question:

It should be noted that Article IX, Section 5 of the Idaho Constitution, which prohibits State funding of sectarian schools, is sometimes referred to as the "Blaine Amendment." A similar provision was at issue in the U.S. Supreme Court's decision in Espinoza v. Montana Department of Revenue, 140 S. Ct. 2246 (2020). The question posed to me was whether that decision might eliminate restraints in Idaho's Constitution against providing State monies to religious schools. The Espinoza decision does not require the State of Idaho to provide assistance to private schools or students, whether religious or secular. Chief Justice Roberts stated the crux of the decision in these simple words: "A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious." 140 S. Ct. at 2261.

I'm not aware that the State of Idaho provides aid to private schools or subsidizes private education, religious or otherwise. Because the State's funding of the public school system is constitutionally deficient, it certainly would have no business subsidizing private schools or their students. House Bill 294 proposes to confer some benefits upon private school students that are not made available to public school students, which might well give rise to equal protection concerns under the U.S. Constitution and violation of the "equal protection and benefit" language of Article I, Section 2 of the Idaho Constitution. Public school students are made ineligible for Strong Student Scholarships under the new Idaho Code section 33-1032 contained in House Bill 294, sort of the reverse of the situation in Espinoza. That would essentially deprive public school kids of the equal benefit of the scholarship program.

Espinoza did not invalidate the Blaine Amendment. It merely held that it could not be used to deny State funding to religious schools, only if the State chooses to open up its treasury to private schools. House Bill 294 does open the door for State support of private schooling, so that same door would be opened for religious schooling. The more the State steps into the role of subsidizing private schools, the more we will be on the hook to subsidize church-run schools.

It should be mentioned that a valid legal argument can be made that the writers of our State Constitution intended that no State support or funding would be made available to any private schools, religious or otherwise. By explicitly commanding that the Legislature "establish and maintain a general, uniform and thorough system of public, free common schools," the drafters may have implicitly intended to prohibit State support to private schools of any sort. If House Bill 294 is enacted into law, it may be up to the courts to sort out all of these issues.

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 Danel T. Beasley, Esq. CA, WI Amy R. Buchmeyer, Esq. WI
OF COUNSEL	Mary E. Schofield, Esq. CA Tom Sanders, Esq. TX

March 12, 2021

Senate Education Committee
P.O. Box 83720
Boise, ID 83720-0081

Dear Chairperson Thayne and Members of the Senate Education Committee,

By way of introduction, the Home School Legal Defense Association (HSLDA) is a national organization with a mission to protect the fundamental constitutional right of parents to direct the education and upbringing of their children. With over 100,000 member families, including over 1,000 in Idaho, we are the world's largest homeschool advocacy organization.

I am writing concerning H 294, a bill currently before your committee and on the agenda for discussion March 16th. H 294 creates a grant and scholarship program for certain education expenses. Currently, it includes homeschoolers as eligible recipients. **Homeschoolers have consistently and repeatedly requested to be removed from this bill.** The House of Representatives ignored homeschoolers' wishes.

I ask that you amend H294 to remove homeschoolers. It can easily be done by replacing "a person in kindergarten through grade 12, public school or nonpublic school student" with "a student enrolled full time in kindergarten through grade 12 at a public school or private school located in Idaho."

Why remove homeschoolers?

- Homeschoolers did not ask for government money, nor do they want it. Idaho homeschoolers value their independence. Government money invites government intrusion into their homes.
- Despite this bill's assurance that it does not give the state authority to regulate nonpublic school students, it still authorizes the Department of Education to regulate the program. This will include homeschoolers who participate.
- Even if this bill only regulates those homeschoolers who accept the money, it opens the door for further regulation as homeschoolers get treated differently based on whether they accept government money. It is a slippery slope towards further regulation and homeschoolers do not want to be placed on that path.

Homeschoolers do not object to regulation of this program. As stewards of taxpayer dollars, the legislature should put measures in place to make sure the money is spent for its intended purpose. But homeschoolers do ask to be left out.



In Idaho, parents have incredible freedom and flexibility when educating their children. But this bill would change that. By accepting money from the state, homeschool families would allow the government into their homes and into their children's education. Many families remove their children from public school because they wanted to be independent of government overreach into their children's education. This bill invites the government right back in—it just does so with a carrot instead of a stick.

Thank you for thinking of homeschoolers, but please listen when we say we do not want government money in any form. If you have questions, please reach out at 540-338-5600 or amy.buchmeyer@hslida.org.

Sincerely,

A handwritten signature in cursive script that reads "Amy Buchmeyer". The signature is written in black ink and is positioned above the printed name and title.

Amy Buchmeyer, Esq.
HSLDA Staff Attorney



March 15, 2021

To: Senate Education Committee

From: League of Women Voters of Idaho, Susan Ripley, president

RE: Opposed to H 294

The League of Women Voters of Idaho opposes H 294. The League supports consistency in state education funding based on long-term goals. To allow local school districts to plan more effectively and deal with local needs, caution is urged in the use of one-time funding and in attaching detailed "strings" to school appropriations.

Public school districts and charter schools are held accountable for taxpayer funding through required annual reports for academic achievement, attendance, and high school graduation. There is no accountability for home school students or private schools and this bill states that nothing in the bill "shall be construed to give the state the authority to regulate the education of non-public students."

This bill would unfairly discriminate against rural and poor families using public school funding for private education. And these scholarships only fund a minuscule number of students with the \$5 million. Idaho is going to lose \$15 million from the loss of Powerball, can the state afford to pay for the grants and scholarships that focus on only a few students?

The state needs to fund education for ALL students at a level higher than the bottom of the nation where we are now.