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HF 874
CONSTITUTIONAL AMENDMENT PROPOSED

To whom it may concern:

The proposed change to our state constitution is troublesome in three ways. First, including the term “democracy” in our constitution is lazy at best, will undoubtedly lead to questionable judicial rulings in the future, and is downright subversive at worst.

This may seem like a trivial point, but quite the contrary, the bill should be amended or fail entirely on this point alone. While there is no end to essays on the subject of democracy written by students, partisans, columnists, social media warriors, and anyone else with an opinion, the original concept of “democracy” and still the underlying meaning is that the majority rules. This is important because we are discussing changes to our constitution. A constitution should be revered as a rule book that cannot be easily changed by the whims of a transient majority. It is a framework for the operation of our government. Yes, we have instituted democratic principles into our representative form of government, but we are a constitutional republic.

I find it troubling that this oversight has made it into proposed legislation, not just banal legislation, but legislation that will permanently change our constitution – on the subject of education no less! Since an unqualified democracy has no protections for any minority viewpoint, was this oversight the product of an incomplete or inferior education (I am going to infer by the subject of this bill that it was a public one, of which the author is quite proud), or is there a more intentional and nefarious motive in play? A constitution is the contract between the governing bodies and the people from whom they derive their authority through consent. Any changes to the language or function should require the utmost in careful deliberation, and any unresolved issues or uncertainty should result in a sound rejection of said changes.

The next point that needs to be discussed is the calling out of public education as a fundamental right. The existing language of the constitution expresses the importance of quality education before outlining the mechanism for providing a public education, thereby establishing all forms of education as a fundamental right. By naming one choice in education a fundamental right, the language would effectively remove all other choices of education as a fundamental right. If the only choice in education that is a fundamental right is the public school system, any change or perceived change in funding will result in lawsuits alleging deprivation of rights. Even in cases of public schools with open enrollment, parental choice will be curtailed as the question of funding will be repackaged in the courts as a question of fundamental rights.

Obviously, many private school and homeschool families are very concerned over these changes, as we already pay our bill for public schools through taxes, but have chosen what we believe to be the best options for our families specifically, and for society in general, often at great expense and personal sacrifice to ourselves. We believe that the most fundamental right in all forms of democratic

governance is that of choice. Without diversity of thought, diversity of experience and diversity of perspective, any mention of “democracy” is at best a mockery of the concept.

In the interest of being charitable, again I will assume that this is simply an oversight. However, in legal and technical writing, the implicit creation and exclusion of particular species by using explicit differentia of others is a concept that is well enough known that any further activity with this bill as written can only be interpreted as malicious.

The provision for uniform testing is also problematic. Again, being charitable, I will assume that the intention of this bill is not to outlaw private schools or homeschooling, and that these institutions and practices will continue. The testing provision raises questions about applicability to children outside the public school system. What importance is placed on the test results and how the testing will influence curriculum. Consistent with the history of parents in our position, we are concerned about the erosion of our autonomy when it comes to educating our children.

The definition of “state” is unclear in this bill. In a pure democracy, that would mean the people directly, but I doubt that interpretation was the intended one. For those of you who are unaware, our constitution set up three co-equal branches of government. Under a properly functioning state, any statutes that apply to the general public must originate in the legislative branch, must be approved and executed by the executive branch, and disputes involving said statutes are to be resolved in the judicial branch.

The executive branch, at the direction of the legislative branch, can draft rules to aid in the execution of the statutes, but said rules cannot apply directly to the general public without a license or some other explicit form of consent. It says so right in our constitution.

So which is it, is the legislature tasked with drafting uniform tests? Will these tests be drafted by the same people who are uneducated about what form of government we are (theoretically) operating under? Or is the “state” the executive branch, essentially reaffirming the legislature as useless? Given how much the public school system will be tied up in court over funding/rights, maybe we should just assume that the judicial branch will be the “state” for the purposes of this provision.

The origin and context of the standardized test is important as the tests often tell a great deal about the test writers and their perspective as well as the test takers and theirs. The difference often results in “wrong” answers.

For instance, I am reminded of an anecdote from a friend in Maine. A disproportionate number of children in Penobscot got a multiple choice question wrong because of their personal experience. The question was supposed to measure their understanding of relative temperatures in the real world by asking about the weather when they would visit the beach. Their answers were overwhelmingly the (wrong) answer of 70 degrees because none of them could imagine it being 90 degrees in Penobscot Maine.

Given the diversity of our state and the different skills needed to productively function in its various regions, the more uniform the testing standards, the more the testing protocol will fail both the students and the local economies that they are preparing to enter. We all know brilliant, curious, productive, valuable human beings that tested poorly or did not thrive in conventional education settings, but discovered on their own what their interests were and developed their talents at their own pace. We

cannot allow “uniform achievement standards” to drive our economy when our economy depends on innovation and innovation requires nonstandard thinking.

Since the existing language of the Minnesota constitution already establishes public education as a fundamental right while protecting the fundamental rights of choice in education, provides the framework for funding, and does not prohibit standardized testing, the question needs to be asked: what would this bill accomplish? This is not a rhetorical question presented for thought purposes, this is an actual pointed question for which we demand an answer.

What are you trying to do?

Our sincere hope is that this bill as written is withdrawn or defeated. There is simply too much uncertainty in the language. Should the bill continue, we ask that it is amended as follows:

All children have a fundamental right to a quality ~~public~~ education that fully prepares them with the skills necessary for participation in the economy, our ~~democracy~~ democratic republic, and society, ~~as measured against uniform achievement standards set forth by the state~~. It is a paramount duty of the state to ensure unencumbered parental choice, including, but not limited to, private schools, charter schools, homeschool or quality public schools that fulfill this fundamental right.

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