

March 16, 2023

Testimony before the Vermont House Committee on Education

Good afternoon committee members. My name is Jay Badams and I am a relatively new Vermont (and New Hampshire) superintendent, so for the past five years, I have done more listening and learning than speaking. Thank you for the opportunity to share my thoughts about H. 258 and any other such legislation currently under consideration. I came here in 2017 from a medium-sized urban school district in Erie, PA where I was very active in public education policy, advocated for educational equity, and served on the PA State Board of Education. I entered service in the Hanover / Norwich Schools just as Act 46 was being implemented, and have had to learn about the school funding mechanisms, laws, and policies of both states. After almost six years, I feel that I have a reasonable understanding of both systems. I testify today as both a public school administrator and as a concerned citizen and taxpayer from South Strafford, VT. It is also important for me to point out that I am the husband of an educator at The Sharon Academy, which makes this testimony particularly difficult. The ideas I share here are mine alone. In the wake of the U.S. Supreme Court's *Carson v. Makin* decision, you are faced with both a daunting challenge and a rare opportunity and I am grateful for your service.

I recently read Alex Hanson's February 19<sup>th</sup> article entitled *Tuition Changes a Threat to Some* and found it to be a thought-provoking catalyst for what should be an important debate about public education rather than a premature requiem for independent schools. In a state that faces a population decline, public school enrollment will follow suit. The Vermont Legislature's Joint Fiscal Office issued a report on state population trends in January of this year. They observed that from 2010 – 2021, our state's 0 to 17 year-old population decreased by 12,000, or nine percent. Mr. Hanson's description of the closure and consolidation of high schools in the White River Valley SU is an obvious example of the impact of this trend. Superintendent Jamie Kinnarney's observation that even with that consolidation, the SU's remaining high school is under-enrolled further emphasizes the point. Along with downward pressure on enrollment, these demographic trends contribute to significant staffing challenges in our schools.

Scarcity fuels competition for resources, which I believe is why the most important philosophical and political aspects of this debate are overshadowed by the zero-sum economics involved. I find it ironic that in the wake of Act 46 we continue to publicly fund a parallel school system with negligible regulation, minimal oversight, and with complete independence from duly elected school boards. We passed Act 46 in the name of efficiency and sustainability largely to deal with the issue of declining enrollment, yet allow independent school choice even when nearby public schools have plenty of room. Funding two parallel systems will become untenable as our population declines. Statewide statistics on the percentage of students who are publicly-funded at independent schools are misleading. In my town for example, the majority of our high school students attend independent schools when there are nearby public schools with capacity. Vermont's long-standing practice of funding private school tuition amounts to one of the oldest and most well-established voucher systems in our country. In terms of equity, parents who don't live in so called "choice towns" are excluded from this so-called "public benefit."

In Hanson's article, The Sharon Academy's Head of School, Mary Newman, warned that since 80% of TSA's students are publicly funded, the provisions of S. 66 and H. 258 "would likely mean closing the school." The school's website states that 85% of the students are publicly funded. I would argue that an "independent school" that is 80-85% publicly funded is not an independent, but rather a *dependent* school. In TSA's case, there is plenty of public school capacity nearby. Without public funding, the school would be unsustainable, at least under current conditions. In most other states, a school with a funding profile like TSA would likely be a public charter school, but VT is one of five states with no charter school law. Mr. Hanson wrote that TSA's administration "...has brought the school closer to public school status than it has been before." How much

closer? Do independent school educators and administrators need to be licensed and maintain licensure through ongoing continuing education? With the exception of special educators, no. Are independent schools' state assessment results, along with a wide array of other accountability factors, required to be posted annually in an online "report card?" No. Do the citizens, who pay the bill for independent school students, get to vote on the independent school's budget at town meeting? No. Are independent school employees protected by collective bargaining agreements and labor unions? In only two of Vermont's historic academies are teachers organized, and the rest of our independent school colleagues are not. While public schools are required to submit data about student performance that is publicly reported, independent schools do not. Do independent schools use public funds to provide services or scholarships for privately funded students? How well do students at independent schools learn math? How well do they read? What do they know about science? What are their post-graduation outcomes? How many days of instruction do they provide? As a parent, I'd like to know how well they're doing compared to their neighbors who choose to go to other public or approved independent schools. They may be doing great. Maybe independent school parents and students know the answers to these questions, but those of us sharing the bill don't. As a taxpayer, I'd like to know if my ever-increasing property taxes are being well-spent.

Public schools are highly regulated by state government and directly accountable to locally elected school boards. Independent schools that receive our public tax dollars are minimally regulated by the Agency of Education, and their unelected boards of directors have no significant obligation to the public in exchange for public money, which at some independent schools constitutes a significant portion if not a majority of their revenue. This amounts to abdication of local control. While the parents of students enrolled in independent schools have choice, their neighbors who pay for it do not. I would urge you to hold any schools funded by public dollars to the same quality standards, anti-discrimination and open enrollment policies. Current rules allow independent schools to meet quality standards through NEASC accreditation. NEASC accreditation is granted on a ten-year cycle. There is no mechanism for accountability tied to NEASC recommendations decade to decade, and as long as a school is "working on it," I'm unaware of any schools in the region losing that status.

Which brings me to what I believe is the true debate. Given the well-documented needs of our public education system, should we be funding ways to opt out? "School Choice" has been a conservative rallying cry for decades. Milton Friedman himself popularized the idea that "the money should follow the child," whether to the local public school, private school, or religious school. People who share his belief in the power of the free market to derive educational excellence from competition have spawned all sorts of voucher programs, charter schools, "opportunity scholarships," and home-schooling co-ops, all of which involve some degree of freedom from local, state, and federal governance and oversight. These efforts have also provided opportunities for discrimination, segregation, and abuse of public funds. Any legislation that you create that perpetuates Vermont's voucher program should contain provisions that prevent such negative policy implications.

TSA Head of School Newman stated it clearly in the Valley News article when she said that she "would rather see all students in Vermont have choice than see it restricted." Just try for a minute to imagine the management of such a system – the organizational task alone is hard to contemplate, let alone the dangers of discrimination as soon as some students are denied admission. Coincidentally, school choice for all is exactly what Florida Governor Ron Desantis and the state's Republican legislature are trying to do right now with HB 1, the Universal School Choice bill. Conservatives propose these measures as a way to break the "public education monopoly," "combat the leftist teachers' unions," and provide alternatives to "the government schools." These efforts are well underway in New Hampshire where choice and voucher policies have already been enacted that threaten to undermine public schools. Vermont's practice of allowing public funds to be used for private school tuition should be the envy of all of the states that have made school choice their top legislative priority for 2023, including Arkansas, Texas, Florida, and Wyoming, to name a few. In fact, if you do a little internet research,

you'll find our current tuitioning system lauded by organizations like the libertarian Foundation for Economic Education. Again, I'm not advocating a partisan position on this matter, simply pointing out that our long-standing practice is clearly situated as a policy priority of the political right. Maybe the conservative argument has merit. Maybe choice is the solution to problems we face in public education. Maybe the best way to improve our schools is to continue to allow people to vote with their feet, and allow our towns to pay tuition to independent and religious schools. But, as I said before, if we continue down this road, we should certainly level the playing field if we decide to commit to a free-market educational system. A system that imposes government regulations on one group of organizations and reduces or eliminates them from another group is blatantly inequitable, and I would argue should be unacceptable to progressives and conservatives alike.

In any event, the US Supreme Court's decision in the *Carson v. Makin* case is calling the question. The Court was clear in restating its declaration from the earlier *Espinoza v. Montana* case that "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." You must decide how you will respond to this decision given your position between the rock of the Compelled Support clause in the Vermont Constitution and the hard place created by the Court's ruling. Half steps, or obvious attempts to preserve the status quo will only serve as speed bumps in the race to litigate, or worse, will provide the ammunition for the predictable battles. In both relevant cases, and in several tangential ones, the court has signaled that the "free exercise" prong of the religious provisions of the First Amendment will likely trump the "establishment" prong. If you craft a law that deviates from the central element of the *Espinoza v. Montana* decision, you should expect to pay not only for the independent schools that work to meet whatever guidelines you impose, but for those religious schools who find anti-discriminatory regulations contrary to the free exercise of their religious beliefs upon which their institutions are founded.

Personally, as an ardent supporter of public schools and also as a believer in peoples' right to attend independent schools at their own expense, I see a few different ways forward. The first would be to let these efforts fizzle and die as they have before. Another would be to pass these bills, stick to principle and allow independent schools to be self-sustaining, or truly independent, and let the free market choose the winners and losers, as we've seen with many of our small private colleges. For those independent schools that fill a community need because of a lack of public school capacity or proximity, and that currently rely on public funding, a third option would be to **make them public schools**. Allow them to continue operating, but hold them to the same standards we insist on from our public schools. It would seem an easy bit of legislation to create a chartering process to allow certain existing private schools to apply for a public charter, continue to receive public funds, but then comply with state regulations and operate transparently. A charter law could be written that prevents the well-documented problems that other states have encountered by limiting charters to already "approved" independent schools. Because public charter schools are widely recognized as truly public institutions in 45 other states, I believe this solution could lead us out of the "establishment" vs. "free exercise" trap, and bring us closer to equity in public school policy.

Whatever course you choose, I urge you to craft legislation that will serve our children and our towns well, support our public schools, and avoid costly litigation, the outcome of which will no doubt follow the trend the current U.S. Supreme Court has so far demonstrated.

Respectfully,

Jay Badams  
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