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Testimony for: Legislative Task Force on Child Protection

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

Date: Friday, March 11, 2020

RE: Testimony in Opposition to SF3692 and Relative to Child Welfare Reform

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 headquartered in the Washington, DC area and are the world’s largest homeschooling association. In Minnesota, we work with our partner MACHE and represent the interests of thousands of families. I am a constitutional law instructor at Patrick Henry College. I have been involved in thousands of interactions between families and CPS workers in dozens of states and work with other attorneys who have similar experience.

HSLDA supports the legitimate role of law enforcement and other state departments, such as CPS, who protect children from imminent serious harm and uphold the law. Regrettably, it is inarguable that some agents of government, by actions or policy, exceed their constitutional authority and violate the civil rights of individuals in ways that can be quite traumatic. Repeated consistently, such behavior and policy undermine people’s faith in government. In this context the mere appearance or mention of a CPS investigation creates fear and concern in most parents who have heard increasingly



frequent stories about how CPS agents abuse their authority and wrongfully take children away or traumatize them while seeking to conduct intrusive investigations.

Convincing evidence shows a serious need to take a big step back to re-evaluate the current methods, processes and approaches to identifying, reporting, screening, investigating, and adjudicating child protective concerns. For example, national datasets including the 2017 U.S. Department of Health & Human Services Administration for Children and Families *Child Maltreatment Report*¹ indicates that most, perhaps as high as 90%, of screened-in reports of abuse or neglect are determined to be unfounded after they are investigated. This is a serious problem. Every single false positive represents unjustified, intrusive, and in many cases, traumatic interventions into families which are well documented. The obvious effect of this is that well-meaning child protection authorities are stretched so thin by a deluge of unfounded reports that adequate responses to serious situations are less likely to occur, sometimes with tragic consequences both for children but also on for entire communities.

Rather than passing more intrusive protocols that require the state to intrude in families, like SF 3692, I suggest targeted reforms that would make a more significant difference and promote an appropriate role of the state to protect children and respect families.

The bottom line to my testimony is that requiring case workers interview children age 4 or older first and separate from caregivers during maltreatment investigations violates federal constitutional presumptions and removes necessary discretion which case workers must have to effectively assess child safety. This is not a good idea. While there may be times when this is an important consideration, such cases should be the exception rather than the rule. If a situation is so serious to merit an interview of a child under such

¹ Available at <https://www.acf.hhs.gov/cb/research-data-technology/statistics-research/child-maltreatment>

conditions, then an appropriate court order should be obtained. Our Constitution and American tradition of justice *requires* due process prior to the deprivation of rights. Investigating children separate from their parents is a *facial* violation of the most deeply rooted and historical notions of liberty in our constitutional republic.



Minnesota child welfare law requires many reforms, but this is not one of them. Reducing the number of cases and providing greater flexibility to well-trained social workers who are able to apply a scaled investigative protocol will enhance operational effectiveness and child safety. No longer permitting anonymous reporting would provide an incentive for only good faith reporting and make it harder of people to weaponize CPS agencies.² It is un-American to impose rigid legislative investigative protocols that presume care givers are guilty.


What does Homeschooling have to do with Child Welfare Reform?

Today, there are tens of thousands of homeschooled children in Minnesota and close to 3 million in the United States – this is around 4% of the school age population. At one time, homeschooling was considered kind of weird (maybe it still is by some) and our members were frequently subjected to CPS investigations just because their children were not in school. This still happens – although on a per capita basis with less frequency than before.

Child protective issues can also implicate homeschooling in poorly thought out legislative proposals that are based on a suspicion that parents are guilty first. For example, in both

² Dale M. Cecka, *Abolish Anonymous Reporting to Child Abuse Hotlines*, 64 Cath. U. L. Rev. 51 (2015). Available at: <https://scholarship.law.edu/lawreview/vol64/iss1/6>.


Ohio and West Virginia, child fatalities allegedly related to children who were “homeschooling” have resulted in legislative proposals to increase regulations on homeschooling families.³ Although this shot gun approach was rejected by the 2020 West Virginia legislature that has recently ended its session, there have been numerous such proposals in recent years demonstrating how child welfare proposals can implicate our community.

Rigid investigative protocols, poor training, pre-judgement, and improperly motivated workers are all threats to the judicial administrative of the state’s role in protecting children who are at risk of serious or imminent harm. HSLDA undertakes to sue state agents that violate the civil rights of parents in such cases. One example is Holly Curry of Hardin County, KY, who ran into a café for about 5 minutes to buy muffins for her 5 children who she safely left in the car.⁴ She broke no law and her children were never in danger. However, the following day a police officer and a social worker came to her door and threatened to get an emergency custody order if she did not let them in. Upon entering the male police officer and social worker conducted intrusive interviews and strip searched her children. At no time were there ever any allegations of physical abuse or neglect. This is not a novel situation but one that occurs frequently. 


Such behavior by state authorities is shocking and completely unnecessary to protect the safety of these children. It is an affront to the dignity of the child and to the federal

³ See *Homeschool Freedom Doesn’t Harm Children* available at: <https://hslda.org/content/hs/state/oh/20200117-homeschool-freedom-does-not-harm-children.aspx> and See Also *House Bill 4440 is Unconstitutional, Un-American and Unnecessary* available at <https://hslda.org/content/hs/state/wv/20200122-HB-4440-is-unconstitutional-un-American-and-unnecessary.aspx>

⁴ See *The Curry Case* available at: <https://hslda.org/content/legal/cases/curry/>

constitutional presumption that fit parents act in the best interests of their children. 

Scholarly research has documented that such interventions are very harmful to children

both on a short- and long-term basis.⁵ Such behavior should never be permitted under any policy or ever seen as reasonable. 

The intentions of the advocates of this proposal are assumed to be motivated by a desire to protect children. However, my concern is that SF 3692 is yet another step in the wrong direction of mandating unconstitutional and unjustified interventions in innocent families. SF 3692 would be more likely to harm children and families and would violate federal constitutional presumptions, as well as important societal norms.

We are concerned that by *requiring* that children 4 or older would have to be interviewed before any caregiver and separate from their caregiver would traumatize many children and families and unconstitutionally infringe on the federally protected constitutional rights of parents to the care, custody, and control of their children. By creating a legally mandated intervention of this kind, the legislation violates the constitutional presumption affirmed by the United States Supreme Court in *Parham v. JR* (442 U.S. 584) that parents are presumed to act in the best interests of their children. The idea of the state as the agent with final authority to decide what is in the best interests of children is also a principle embedded in the United Nations Convention on the Rights of the Child – a treaty which the U.S. has declined to ratify for many good reasons and which our association has long opposed.⁶

⁵ Doriane Lambelet Coleman, Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment, 47 *William and Mary Law Review* 413-540 (2006) available at: https://scholarship.law.duke.edu/faculty_scholarship/1266

⁶ See generally www.parentalrights.org

Testimony in Opposition to SF 3692
March 11, 2020
Michael Donnelly, JD, LL.M, HSLDA Senior Counsel

The more appropriate answer to child protective concerns is not more government - it is greater empowerment and support for parents and families. When government grows, freedom shrinks. If we want better outcomes for our kids, we need more support for families. When families are strong, children flourish. The state has a role in protecting the family as a unit. While there are times for dramatic interventions, these should be considered as the exceptions rather than the norm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael P. Donnelly". The signature is written in a cursive style with a long, sweeping tail on the final letter.