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**Testimony of HSLDA Staff Attorney Michael Donnelly**  
**Presented to the New Hampshire House Education Committee**  
**on April 2, 2008 in opposition to S.B. 337**

Good morning, Mr. Vice-Chair and members of the committee. My name is Mike Donnelly. I am a staff attorney for the Home School Legal Defense Association. I am a member of the New Hampshire Bar. I am also an adjunct professor of constitutional law at Patrick Henry College, and perhaps most important, I am a New Hampshire taxpayer. I grew up in New Hampshire, graduating from Mascoma Valley High School in Canaan, N.H. in 1985. My name is carved on the Veterans of War monument on the Grafton Town Common, and I was awarded the Granite State Operation Desert Storm Medallion from Governor Judd Gregg in 1991. I say all of this so that you know in my heart I have a real interest in New Hampshire. I moved to West Virginia from Enfield about 18 months ago to work with HSLDA. HSLDA is the world's largest homeschool advocacy organization with over 83,000 member families. We've been in courts and legislatures for over 25 years, representing the interests of parents who choose to privately teach their children at home. As a staff attorney for HSLDA I'm privileged to serve nearly 10,000 homeschoolers in 9 states, nearly 500 in New Hampshire. In my capacity, I travel all over the country to represent homeschoolers and to testify before legislatures and school boards about why increasing regulation on homeschoolers is not in the interest of either the government or parents. That's why I'm here today.

You heard have already heard Representative Itse talk about the New Hampshire Constitution. I would add that in Part 1, Article 3, the N.H. Constitution wisely observes that "When men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others; and, without such an equivalent, the surrender is void." In the 1982 *Appeal of Pierce* decision, the N.H. Supreme Court agreed with the United States Supreme Court's jurisprudence

articulated generally in *Wisconsin v. Yoder* that ... “while the state may adopt a policy that children be educated, it does not have the unlimited power to require they be educated in a certain way at a certain place.”

The U.S. Supreme Court has long recognized a fundamental liberty interest that parents have in the right to direct the upbringing and education of their children. This right is incorporated by the 14<sup>th</sup> Amendment as applying to the states. Because the state already requires parents to submit assessments of their children, the proposed is unnecessary to meet the constitutional requirement of “ensuring the protection of others” and thus would appear to fail to meet the standard envisioned by the framers of the N.H. Constitution for regulating the natural rights of New Hampshire citizens.

As legislators, it is your duty to safeguard and protect their rights under the N.H. Constitution and to preserve the freedoms of the citizens from needless regulation. There is an appalling lack of any kind of evidence pointing to a real public policy need for the proposed regulation. The sponsor of this bill herself acknowledged that homeschooling is working in New Hampshire but then contradicts herself to say but there are children falling through the cracks. First, I can tell you from personal knowledge and experience that this is an argument used by nearly every public policy maker who wants to justify additional regulation on parents teaching their own children. I have heard this tired argument time and again. But the truth is that there is no credible evidence that shows any children falling through any cracks because of homeschooling or a lack of regulation. And furthermore, if there were such evidence, the proposed regulation simply fails to address this issue. The proposed legislation adding a timeline and a curriculum submission will do nothing to catch children falling through the cracks.

There is, however, a large and growing body of evidence that shows that homeschooled children are well educated and socially well adjusted. In 2006, homeschoolers were shown to have achieved significantly higher scores than their public or private school peers on the ACT college tests. In 2002, a study was conducted that compared homeschooled performance on the SSRS, a standardized test of social competency, skill and self concept. Homeschoolers again scored higher than their counterparts. The 1998 Rudner study looked at 34,000 homeschooled families and found that the parents’ of homeschoolers are intensely interested in their children’s education and invest far more time in their children personally than do parents who enroll their children in private or public schools.

The trend in our nation is toward reducing regulation on homeschoolers, not increasing it. Twelve states in recent years have significantly reduced the amount of oversight and regulation on

homeschoolers. For example, Nevada last year repealed nearly all of its regulations, opting for a single, one-time notification and removing the requirement for any kind of assessment. And this approach is how the majority of states approach addressing parents who want to educate their own children. New Hampshire actually has among the more highly regulated frameworks for homeschooling even without the curriculum notification.

But, the “cracks argument” is really a smokescreen and a red herring for public policy makers who believe that it is the state’s responsibility to educate children. Such policy makers chafe at the idea that parents are somehow out of the control of the state — but really, who is responsible for the education of children? The Supreme Court has recognized that parents are the primary caretakers of their children and have the high calling and duty of preparing them for their calling in life. I’ve already mentioned the state’s interest is adequately addressed by the current law.

Furthermore, abuse and neglect laws are the proper place to deal with problems of children falling through the cracks. And I can assure you that New Hampshire is not particularly deficient in investigating allegations of abuse or neglect on homeschoolers. I know because I represent New Hampshire homeschoolers in such situations. Education laws are to ensure that the state interest is being met in knowing that children are being educated. Social welfare laws are the proper place to address problem situations of abuse and neglect. National studies have shown that allegations of abuse and neglect are primarily made through non education related reporters. This shows that such frameworks work to detect problems of abuse and neglect and that homeschoolers do not have to have an extra layer of oversight for this purpose.

In New Hampshire, homeschoolers save taxpayers a lot of money. They produce productive and literate members of society. Those proposing this legislation have failed to document any overriding public policy goal that justifies further regulation on New Hampshire parents. I think it is far more keeping with the spirit of New Hampshire to refuse to regulate in an area that needs no regulation where there is no pressing problem to solve especially when such an important liberty interest ought to be upheld as that high calling of parents who exercise their right and duty to educate their children.

I think the best thing for this committee would be to simply recommend that this legislation be inexpedient and allow the current legal framework to continue to operate for a more substantial period of time before considering such changes.