

**Testimony in OPPOSITION to House Bill 737
Alternative Education Options – Right to Learn and Broadening Options and
Opportunities for Students Today Programs (Right to Learn Act of 2022)**

**House Ways & Means Committee
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The Maryland State Education Association stands in strong opposition to House Bill 737, which codifies Maryland's school voucher program, Broadening Options and Opportunities for Students Today (BOOST), with a mandated appropriation and creates a new voucher program, the Right to Learn Program. MSEA continues our request for the complete elimination of the BOOST program.

MSEA represents 75,000 educators who work in Maryland's public schools, teaching and preparing our 896,837 students for careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3-million-member National Education Association (NEA).

Public dollars should fund public schools. The BOOST private school voucher program has been highly controversial since its inception and diverts attention and resources from the real needs of our students and public school communities.

To better serve struggling students and students from low wealth communities, funds should be used to implement the Blueprint for Maryland's Future and even expedite some of its most important provisions. That would be precious public dollars better spent. There are a myriad of things our schools, students, and communities need right now to help us recover from the COVID-19 pandemic. Every school system across the state is facing staggering staffing shortages. The \$10 million annually diverted to private schools through the use of vouchers in the BOOST program under this bill could go a long way in hiring the desperately needed substitute teachers across the state. Those dollars could help hire more bus drivers, to help ensure that students get to school safely, and parents and guardians are able to consistently make it to work on time. Those funds could be used to ensure there is a school nurse in every building, who is coordinating contact tracing and keeping the school community safe. That funding could go directly towards the many community schools we are working to stand-up across the state, with a proven record in helping to provide wrap-around services and family support to students living in concentrated poverty.



Next, the minimum nondiscrimination standards in this bill have already been difficult to enforce. The collective priority, if the vouchers are to continue in anyway, should be looking for ways to strengthen those protections. BOOST and other programs which send taxpayer dollars to private institutions have been a target for lawsuits and litigation that cost time and money of the Attorney General and the Maryland State Department of Education (MSDE).

MSEA is increasingly concerned about the possible long-term legal ramifications of continuing to codify and fund this voucher program. The case of *Espinoza v. Montana Department of Revenue* involved a scholarship program created by the Montana legislature that provided a dollar-for-dollar tax credit of up to \$150 for individuals and businesses who donated to private scholarship organizations. The money donated to the organizations was to be used to provide scholarships for children to attend private schools, the vast majority of which, in Montana, are religious. Citing language in its state constitution banning aid for churches and religious schools, the Montana Supreme Court invalidated the entire tax-credit program. In its brief to the Court, the state argued that because the program had been invalidated in its entirety, the plaintiff's claim was no longer about the tax credit program itself but about the state's constitutional provision to not aid religious institutions. Pointing to the *Trinity Lutheran v. Comer* case, the state argued that by eliminating the program for everyone (religious or secular schools), it could not be found to be violating the Free Exercise Clause.

Chief Justice Roberts, writing for a conservative majority, said, "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." He went further by adding, "The Montana Legislature created the scholarship program; the Legislature never chose to end it, for policy or other reasons...The program was eliminated by a court, and not based on some innocuous principle of state law. Rather, the Montana Supreme Court invalidated the program pursuant to a state law provision that expressly discriminates on the basis of religious status."

As it is currently implemented, the BOOST voucher program clearly does not run afoul of the First or Fourteenth Amendments by distinguishing between nonpublic schools that are secular versus those that are religious. However, given the conservative leanings of a majority of the justices on the Supreme Court and their clear inclination to view Montana's decision through the "free exercise" lens as opposed to the "separation of church and state" lens, we are deeply concerned that any efforts undertaken by members of the General Assembly to enforce the BOOST program's prohibitions against discriminatory policies or actions would be perceived by these justices as an unfettered attack on religion or a legislative effort to deter public funding from going to nonpublic schools for no other justification than the school's parochial nature. It is very possible that such enforcement would be deemed unconstitutional. Our concern here is elevated by the flag raised by the justices in the minority when they note that the Montana legislature's step to eliminate their program in no way deterred their conservative colleagues on the Court from seeking some remedy for a perceived "injustice" that no



longer existed. However, we ardently contend that allowing the voucher program to continue, even more so if the program is codified, only increases the probability that such a defense of the program's long-term continuation only stands to make just such litigation even more eminent.

The State and education stakeholders (parents, students, educators) have spent five years working to determine how we can increase standards for our students and educators through the Blueprint for Maryland's Future. Schools that participate in the BOOST voucher program do not have the same rigorous standards or accountability to legislators or taxpayers. They are not required to administer the same standards-based assessments, the certification requirements for their teachers are not comparable, and educators are not evaluated similarly, yet these schools are given public tax dollars. Public funding should go to public schools with high standards to serve ALL Maryland students.

The legislature should focus on the implementation of the Blueprint and responding to the urgent needs of our public schools. Students and families are counting on us to get this right, and to help them recover from the pandemic. Our kids can't wait.

MSEA strongly urges an Unfavorable Report on House Bill 737.