DIOCESE OF MANCHESTER

February 24, 2023

The Honorable Rick Ladd, Chair
And Members, House Education Committee
Legislative Office Building
Concord, New Hampshire 03301

Re: CACR 7 (Repealing the New Hampshire Blaine Amendment)

Dear Mr. Chair and Members of the Committee:

As Director of the Office of Public Policy of the Roman Catholic Diocese of Manchester, and on behalf of Bishop Peter Libasci, I write to express our **support for CACR 7**, which would repeal the New Hampshire Blaine Amendment, a provision that was adopted in order to prohibit religious schools from receiving public funds. I am sorry that I am unable to be present to testify in person at the public hearing on this measure.

The language at issue, contained within Part II Article 83 of the New Hampshire Constitution, states that "no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination." This language was adopted as an amendment in New Hampshire in 1877 as part of a national effort to have this sort of measure (colloquially referred to as a "Blaine amendment", after US House Speaker James Blaine who introduced the initial proposal) placed into state constitutions in the wake of a failed attempt to get such an amendment inserted into the United States Constitution.

In considering CACR 7, it is first essential to recognize why the Blaine amendments arose in the first place. As the US Supreme Court has recognized, "[t]he Blaine Amendment was born of bigotry and arose at a time of pervasive hostility to the Catholic Church and to Catholics in general; many of its state counterparts have a similarly shameful pedigree." *Mitchell v. Helms*, 530 U.S. 793, 828-829 (2000) (plurality opinion). It was "an open secret that 'sectarian' was code for 'Catholic' in the Blaine amendments". *Id*. at 828. In practical terms, the "sectarian" schools that the ban on public funding was aimed at were Catholic schools. See *Zelman v. Simmons-Harris*, 536 U.S. 639, 721 (2002) (dissenting opinion of Justice Breyer). Thus, the DNA of the New Hampshire Blaine amendment has been plainly discriminatory from its very inception.

The US Supreme Court has rendered several decisions in recent years that demonstrate how application of a Blaine amendment violates the Free Exercise Clause of the First Amendment to the US Constitution. In *Espinoza v. Montana Department of Revenue*, 140 S.Ct. 2246 (2020), the Court held that the application of the State of Montana's constitutional "no-aid" provision unlawfully discriminated against religious schools and the families who wish to attend those schools.

"The Free Exercise Clause protects religious observers against unequal treatment and against laws that impose special disabilities on the basis of religious status. " *Espinoza*, 140 S. Ct at 2254. "Disqualifying otherwise eligible recipients from a public benefit solely because of their religious character imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny." *Id.* at 2255. The Court recognized that the Montana provision barring aid to religious schools plainly excluded the schools from governmental aid "solely because of their religious status", and thus determined that the application of that no-aid provision contravened the First Amendment. *Id*.

The New Hampshire Blaine Amendment does exactly the same thing as the Montana amendment at issue in *Espinoza*. Like the Montana amendment, Part II Art. 83 expressly disqualifies religious schools "solely because of their religious status." Therefore, because application of the language at issue in CACR 7 inescapably would violate the Free Exercise Clause, the language should be repealed and the "shameful pedigree" of the Blaine amendment be made a thing of the past.

I acknowledge the wide diversity of views on the question of whether public funds *should* be provided to religious schools. That is not the question presented by CACR 7, however. The question here is whether a *categorical ban* on providing public funds to religious schools is in accord with the First Amendment to the US Constitution. The US Supreme Court has answered that question, and so I ask you to recommend CACR 7 as ought to pass.

Thank you as always for your kind consideration of our views.

Very truly yours,

Robert E. Dunn, Jr., Esq.
Director, Office of Public Policy