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The Amendment Touted by Senator Ted Cruz and His Supporters, Ostensibly to “Help” Parents by Giving Them a “Tax Break” for Homeschooling Their Children, is UnConstitutional and Should Not Become Law.

Senator Cruz, and those who urged him to do this, such as Home School Legal Defense (HSLDA), have made a big mistake. They purportedly want to help parents, but they actually put parents in jeopardy.

In short, either Senator Cruz, is well meaning and was duped into thinking a “tax break” from the IRS for parents who homeschool is a good thing, or, he and his supporters didn’t think things through. Or, even worse, they did think things through and actually want homeschooling parents to be lumped in with other folks who are under the tentacles of the IRS so that they, too, may come under the awesome power of the federal government. Any way you look at it, this definitely is not a good thing for parents.

Mark my words, giving the IRS authority over whether the parents’ homeschool “qualifies” for a “tax break” is not going to bode well for parents.

More to the point, Senator Cruz and his supporters have no Constitutional authority to give such a “tax break” to parents who homeschool, and, as “Constitutional scholars” they should know better.

National Home Education Legal Defense, LLC, (NHELD), long has been opposed to such “tax breaks”, and other proposed federal laws purporting to “help” homeschoolers, since the first such law was proposed by HSLDA over a decade ago.

Both HSLDA and NHELD were formed to help parents, and, I’m sure that Senator Cruz and his colleagues in Congress who voted for the amendment to HR1 thought they were “helping” parents, as well. They were wrong.

The amendment that the Senate just adopted was, and is, unconstitutional. To understand why it is unconstitutional, you have to understand history and our rule of law.

When they formed this country, the people stated, in no uncertain terms, in the Declaration of Independence, that by our very existence, we are endowed by our Creator with certain “unalienable rights”. You know, rights that already exist and that no one can take away. We may voluntarily give some of our rights and powers away, but no one can take them away by fiat.

The people who formed this country then established a federal government, by way of a Constitution, precisely to make sure that the government secures those rights from infringement, to ensure that no one can take them away, not even, and especially, the federal government. As a matter of fact, because the States and the people were so concerned that this new federal government might infringe on the rights that the States and the people already had, the States refused to ratify the Constitution, until and unless, the Constitution was amended to contain a Bill of Rights and assurances that their rights were not going to be infringed or taken away. The first ten amendments, otherwise known as the Bill of Rights, then were adopted, and the Constitution was ratified.

The most important of the first ten amendments were the Ninth and Tenth Amendments. Why? Because those were the amendments that basically said to the federal government: The people gave you certain specifically enumerated powers that they listed in the Constitution itself, and, just in case you can’t understand that, and in case you “misconstrue” or “abuse” those powers, understand this: the enumeration of the specific RIGHTS listed in the Constitution that we gave to you, the federal government, SHALL NOT be construed to DENY or DISPARAGE other rights already RETAINED by the people, (that’s the Ninth Amendment); and, the enumeration of the specific POWERS listed in the Constitution that we gave to you, the federal government, ARE RESERVED to the STATES and to the PEOPLE (that’s the Tenth Amendment).

In other words, the people are born with already existing rights and powers, and the people only voluntarily gave to the federal government a few rights and powers, specifically enumerated in the Constitution, and specifically for the purpose of protecting and securing from infringement the rights that the people already have.

Please note: the people NEVER gave any of their rights to the upbringing and education of their children to the federal government. The people NEVER gave any of their rights concerning education of children, in any fashion, to the federal government. A specifically enumerated grant of power to the federal government regarding the education of children simply, and quite emphatically, DOES NOT EXIST in the Constitution. Read it for yourself.

Now, given those historical, and undeniable facts, why is it that the Constitutional lawyers in HSLDA, and in the Senate, such as Senator Cruz, apparently do not understand them?

Why do they not understand that the people and the States, through the specifically enumerated powers granted to the federal government, did NOT grant to the federal government ANY power over parents and children?

If they did understand this very simple principle, why did they support and adopt the amendment to HR1 allowing the IRS, i.e., the federal government, to have power over what parents can, and cannot, do with their own money spent on the education of their children?

The federal government simply has no authority to have anything to say about the rights of parents, even if it is only purportedly to "help" parents with a "tax break".

You might wonder how the federal government, nonetheless, already has adopted so many laws already regarding the education of children. It is very important that people do wonder why that is.

Yes, the people and the States granted to the federal government taxing and spending power, but the grant of taxing and spending power was very much limited to taxing and spending ONLY for the specifically enumerated powers granted to the federal government. The federal government simply does not have any power to tax and spend for any other purposes.

For years, however, the federal government has ignored that fact. For years, Congress has adopted laws, unconstitutionally, taxing and spending for purposes other than the powers granted to the federal government, such as education. Congress, and their supporters, know, full well, that these laws are unconstitutional. How do I know that? I know that because of the manner in which the laws are adopted. In other words, Congress simply does not adopt a law that DIRECTLY regulates the education of a child by the parent or by the States. That's because Congress knows it has no authority to do so. Instead, Congress adopts a law, such as No Child Left Behind, for example, that says, in effect, that Congress will give to the States an inordinate amount of money, or some other benefits, IF the States adopt their own State laws that mirror that which is recited in the federal law. Now, the States could say "No", we will not adopt a law that mirrors what you have in that bill, voluntarily binding ourselves to do as the federal government wishes, and that would be perfectly Constitutional to just say "No". That's because, again, the federal government has no specifically enumerated power to adopt any law directly affecting education. The federal government knows that, obviously, by the manner in which it adopted the law in the first place. The States also know that. Most of the States, however, go along with adopting laws that mirror the federal laws, thus voluntarily binding them to do as the federal government wishes, in order to receive the federal funding or other benefits. Parents and children, then, indirectly are affected when they are enrolled in those schools that are compelled under the State laws to do as the federal government wishes. Again, this type of regulation is NOT a direct regulation of the right of parents to the education of their child. It is indirect regulation.

Now, it appears, however, that, with the backing and promotion of HSLDA, Senator Cruz and his colleagues in the Senate, successfully proposed and adopted an amendment to HR1, that similarly is unconstitutional, and that now DIRECTLY regulates the rights of parents regarding the education of their children, by providing a direct "benefit" to them. A benefit that has unknown, but potentially, very negative, long term consequences, despite its innocuous and beneficial sounding language.

This time, the law does not provide for a "grant" of money. Instead, it provides for a "grant" of a tax exemption. In essence, it is a "grant" by the federal government, a beneficent gift, to allow the IRS to determine whether some of the money a parent earns will NOT be taxed, i.e., will not be taken by the federal government for tax purposes. Whether it is an outright "grant" of money to a person, or it it a "grant" of a "benefit" to a person that the federal government will NOT exercise what it believes to be its authority to take that person's money, it is unconstitutional. Congress, in essence, is saying to the people that the federal government HAS the authority to adopt regulations affecting the rights of parents over the education of their children through how they 'are allowed' by the federal government to keep the money they spend on the education of their children. Congress NEVER had that power, however, and still doesn't.

No matter how good a law sounds, or how "beneficial" it is to any particular person, the fact remains, the law may be either constitutional or unconstitutional. The federal government either has the specifically enumerated power to do that which it deems

"beneficial", or it does not have the specifically enumerated power to do it. Here, the federal government simply DOES NOT HAVE THAT SPECIFICALLY ENUMERATED POWER to do it. The amendment simply is unconstitutional.

Aside from that fact, the consequences of allowing a federal agency to intrude, in any way, shape or form, on the unalienable right of parents regarding the education of their children are enormous. If a federal agency does not already exist to "implement" a law adopted, one inevitably will exist to do so. In this case, the Internal Revenue Service has been designated to implement this law. Think about that. That means that the IRS, with all its power and might, now will determine who "qualifies" for this new federal "grant" of tax exemption, and under what circumstances and conditions they "qualify". How will the IRS do that? Any way it deems appropriate. Does that mean that the IRS can ask you now to furnish information about how you homeschool, about what curricular materials you use, about your child, whether your homeschool is treated as a homeschool or a private school for purposes of State law, whether your child is dual enrolled, and what educational therapies your disabled child is receiving, all in the name of determining whether you "qualify" as homeschooling, whether your curriculum and materials "qualify" as legitimate educational expenses, and whether your child "qualifies" as a "designated beneficiary"? Of course, the answer is "Yes". Could it also mean the IRS could audit you regarding the expenditures you made for the education of your child? Again, the answer, undoubtedly, is "Yes". Did Senator Cruz, his colleagues, or any of the proponents of this amendment, such as HSLDA, even consider these consequences before promoting and adopting the bill? Is this really what the people want? Is this not an extreme example of unconstitutional infringement on the unalienable rights of parents and children?

Just exactly where in the Constitution does it say that Congress, let alone the IRS, has the specifically enumerated power to do any of that?

Given that the proponents of this amendment consider themselves to be Constitutional scholars, why don't they know there is no such Constitutional authority? Or, do they know, and simply don't care?

Given the unconstitutionality of the amendment, and given all of the negative potential consequences of its implementation, why, on earth, would these Constitutional scholars propose, and laud, this unconstitutional amendment?

Could someone please explain that? It simply makes no sense whatsoever.

Thank goodness, it is not too late to correct this, however. The Senate adopted this unconstitutional amendment, but HR1 still has to be reconciled with the House adopted version of the larger bill. Let us hope that this amendment does not survive to become law.

Read the Constitution for yourself, think about it, and make your own decision about whether or not you want to allow this unconstitutional amendment to survive.

In any case, please provide this information to all of your Senators and Congressmen, and to President Trump. Ask them to act only when they have the Constitutional power to do so.