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Written Opponent Testimony before the
Senate Judiciary Committee

on

SB 541 - Requiring compensation for the use, restriction on use, damage, loss or destruction of property as a result of certain governmental actions; providing that orders and similar actions by public officials relating to face mask mandates, gathering limitations, business restrictions and religious gathering limitations shall not exceed 30 days in duration at a time before being renewed or allowed to expire; prohibiting school officials from issuing or requiring use of a COVID-19 vaccination passport or discriminating against a student based upon COVID-19 vaccination status; requiring schools to recognize exemptions from vaccination requirements and face mask mandates; prescribing powers, duties and functions of the board of education of each school district, the governing body of each community college and the governing body of each technical college related to contagious or infectious disease and modifying judicial review provisions related thereto; removing the sunset provision in the COVID-19 contact tracing privacy act; and authorizing reimbursement of property taxes levied upon businesses shut down or restricted as a result of certain governmental actions related to contagious or infectious disease.

by

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March 7, 2022

Madam Chair, Members of the Committee:

Thank you for the opportunity to comment on SB 541. Our position is based on a statement adopted by our members through our Delegate Assembly that reads as follows:

Because local school boards are elected to determine educational policies in the best interests of the community, they should have the authority to make decisions concerning health emergencies such as the COVID-19 pandemic, and should not have special hearings or judicial appeal requirements in these areas that are different from other board actions.

We therefore oppose the bill primarily because of the provisions in section 7 that reinstate special hearing requirements for certain actions taken by local school boards in response to a contagious or infectious disease.

Like other elected officials, local school boards members have struggled over the past two years to respond to the COVID-19 pandemic. Under the principle of local control, different boards responded in different ways. Each of those school boards was elected by and accountable to voters to make decisions in the best interests of that community, based on all available information.

The accountability for those decisions rests with the voters in those communities. Local policies on masking and other decisions were vigorously debated in communities, boardrooms and in the recent elections. Some board members were defeated, some policies changed, and other communities reelected members knowing the actions they had approved.

Based on that accountability to local voters and communities, we do not believe the special hearing provisions are necessary or appropriate. To our knowledge, no court found that school boards had acted inappropriately when actions were appealed under SB 40. However, boards did have considerable legal costs in these cases.

Another concern is that even when boards “win” these appeals, it does not resolve the issue. Parties can continue to bring challenges in school districts on the exact same grounds. It appears to us that under SB 541, boards must act every 30 days to renew actions or policies, which allows the same action to be challenged again and again.

Students, parents and employees already have grievance rights to appeal to school boards and can challenge district actions in court if they feel their rights are being violated. However, this bill reinstates a very quick process for hearings in front of unpaid school board members and appeals to courts that are dealing with other important cases as well.

We would also note that virtually all cases that we know of where local actions were appealed involved mask mandates in those districts which imposed them. Section 4 of SB 541 appears to allow any person (students, parents, staff and visitors) to be excused from a mask mandate based on a belief that wearing a mask is “wrong” under a religious belief that cannot be inquired about. That would allow students, parents and employees to be exempted from most, if not all, local board policies that have been challenged under Senate Bill 40.

However, should a board not prevail in an appeal or any action, its legal costs would be increased by having to pay the plaintiff’s costs, as well as its own. That means a board would increasingly have to weigh the health interests of the community that elects it against the costs of legal challenge.

Thank you for your consideration.