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Members of the House of Delegates
General Assembly Building
Capitol Square
Richmond, VA 23219

Re: H.B. 947

Dear Delegates:

Recognizing that the right to freedom of religion, enshrined in the First Amendment to the United States Constitution, is the “first freedom” of every American, The Rutherford Institute has been at the forefront of the battle to protect religious freedom for more than 30 years.

Over the course of the past three decades, Institute attorneys have not only helped secure countless legal victories at all levels of the judicial system in defense of religious freedom, but we have also advised various branches of the state and federal governments, including Congress, on legislation intended to respect religious liberty. Additionally, The Rutherford Institute laid much of the legal groundwork relating to the rights of homeschoolers, including the right of homeschooled children to take part in public school activities, both curricular and extracurricular.

Thus, we have followed the progress of House Bill 947¹ relating to “participation in public school interscholastic programs by nonpublic school students” with particular interest, believing it to be a long-overdue and much-needed acknowledgment by the Commonwealth of Virginia that homeschooled students are entitled to take part in public school programs paid for by their parents’ tax dollars and not be discriminated against because they are homeschooled.

House Bill 947, dubbed the “Tim Tebow law” after the homeschooled football player who went on to become a pro football, Heisman-trophy winning quarterback and star, is similar

¹ Patrons—Bell, Robert B., Minchew, Ramadan, Farrell, Helsel and Morris; Senator: McDougle, “House Bill 947,” <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+HB947>.

to legislation in effect in at least 14 other states,² which allow homeschooled students to participate in public school sports. A total of 28 states currently allow homeschooled students to participate in public school sports.³

By preventing Virginia public schools from enforcing provisions of the rules of the Virginia High School League (VHSL) that bar homeschooled children from participating in the interscholastic sports activities of their local public school, House Bill 947 serves to recognize and correct the inherent inequity of barring homeschooled students from public school sports teams. Moreover, the bill would also place pressure on VHSL to either lose the vast majority of its member schools or eliminate its requirement that only students enrolled in a school can compete with the members of that school's teams.

Opponents of House Bill 947 have voiced a number of concerns about allowing home school students the opportunity to compete for positions on public school teams, all of which are either addressed by the proposed legislation or existing law.

Homeschoolers would be required to demonstrate academic excellence for two years prior to trying out. Critics have questioned whether homeschooled students will be required to maintain the same academic eligibility standards required of students enrolled in the public schools. House Bill 947, however, requires that homeschooled students demonstrate the academic progress demanded by state law for the two years *prior* to their request to participate in the public school athletic program. Local public schools also monitor the instruction of homeschooled students by reviewing annually the curriculum and plan of study for the student.⁴ Indeed, the idea that homeschooled students might fail to meet minimal academic standards is belied by studies showing that homeschoolers tend to *outperform* public school students on standardized tests.

Homeschoolers would be restricted to their public school attendance zone. Fears that the law would lead to recruiting abuses by coaches are also unfounded. House Bill 947 provides that “[e]ligibility shall be limited to participation in interscholastic programs at the school serving the attendance zone in which the student lives.” Thus, a homeschooled student would be allowed the opportunity to try out and play only for the “local” team, eliminating the possibility that a student would be subjected to a high-pressure recruiting war.

Given that parents of homeschooled children pay the same taxes other families pay to support the activities and programs of public schools, they should have access to the

² “‘Tim Tebow homeschool law’ gains momentum in Virginia,” available at http://www.washingtonpost.com/blogs/answer-sheet/post/tim-tebow-homeschool-law-gains-momentum-in-virginia/2012/01/23/gIQAFAYpOQ_blog.html.

³ “It’s a first! ‘Tebow Bill’ goes to House floor,” available at <http://bearingdrift.com/2012/02/01/its-a-first-tebow-bill-goes-to-full-house-for-vote/>.

⁴ Va. Code § 22.1-254.1(B) and (C).

programs, including athletic programs, their hard-earned dollars support. This kind of access is particularly necessary in Virginia's rural areas where organizing sports leagues is difficult and the public school sports program may be the only option for athletically inclined students. "Public" schools should be just that: open and available to the members of the public who "own" those schools and who provide the financial support necessary for their operations. Moreover, public school athletics programs constitute *the* forum in which high school athletes vie for the attention of scouts from college athletic teams. The continued closure of this forum to home schooled athletes may well mean the denial of significant future opportunities for them to continue both their education and their athletic pursuits.

Ultimately, the policies of the Commonwealth should foster and support the development of our children in all areas, and House Bill 947 would do that by providing home schooled students with opportunities to develop their talents and skills in the athletic arena—opportunities that they have heretofore been denied. The chance to compete with one's peers, to fully develop one's potential, and to perhaps earn a scholarship to attend an institution of higher learning that might otherwise not be within a family's reach should be available to all Virginia students, including homeschooled students.

For the Commonwealth to continue to prohibit home schooled students from just having the opportunity to compete for positions on the sports teams of their local public school is to condone a blatant form of discrimination which must be eliminated. Therefore, it is our hope that the General Assembly will recognize the need to ensure equal opportunity for all students by enacting House Bill 947.

Sincerely yours,



John W. Whitehead
President