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## MEMORANDUM

**TO:** Interested Persons  
**FROM:** A. Eric Johnston  
**DATE:** February 1, 2022

### **RE: PARENTS CHOICE ACT**

This is an initial review of the above bill which is not yet been dropped. There may be further concerns, but for beginning the conversation here is what we presently see.

Page 6 – Section 4, Line 9- This provision gives the board the ability to “adopt and amend rules presented to the Alabama Administrative Procedure Act.” Rule making authority will give the Parents Choice Board extensive authority. While there will be a public comment period. For proposed rules, great care needs to be exercised in the board not expanding its authority beyond statutory authority.

Page 8 – Section 5 (a) (3) states a “nondiscriminatory process to be used by the public school or non-public school for enrolling participating students.” This is one of the requirements that a participating school must meet. On Page 24, Line 9 there is the prohibition of discrimination on the basis of 42 U.S.C. Section 1981, which prohibits racial discrimination. That reference should be sufficient. We suggest the Page 8 statement be omitted because that will open the door for potential claims of LGBTQ+ and other discrimination claims.

Page 20 – Section 10 (6) provides for publicly rating participating schools. There are no criteria stated here. This could result in discrimination against non-public schools, particularly church and home schools.

Page 24 – Section 12 (d) provides that a participating school will not be required to alter its creed, practices, etc. Presumably, this is meant to protect church schools. However, this potentially conflicts with existing statutes protecting the autonomy of non-public schools. We recommend adding the following as a Section in the bill:

The receipt of funds pursuant to this act directly or indirectly by an education service provider, eligible recipient or parent, which eligible recipient attends a education service provider that is a non-public school, including private, church, parochial or religious schools, offering educational instruction in grades K-12, as well as home school students, does not subject such schools to license or regulation by the state or any political subdivision of the state and does not modify other sections of Alabama law, specifically including Section 16-1-11.1, *et seq.*, 1975

Code of Alabama or otherwise effect the exemptions of church schools from state regulation. The receipt of funds pursuant to this act shall not be considered the receipt of state or federal funding so as to change the exemption and definition of church school as provided in Section 16-28-1 (2), 1975 Code of Alabama.

It may be advantageous to define the various types of non-public schools. However, church school is already defined by Alabama law as noted above. Home schools represent a very wide variety of educational models and attempting to define it may create a problem later on. Existing statutes do not define home schools for that purpose.

**AEJ/pkh**