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TESTIMONY BY RICHARD CHAMOVITZ
BEFORE THE HOUSE SUBCOMMITTEE ON SPECIAL EDUCATION
REGARDING THE SPECIAL NEEDS ASSISTANCE PROGRAM ACT
APRIL 8, 2008 – HARRISBURG, PENNSYLVANIA

Good morning Madame Chairperson and members of the House Subcommittee on Special Education. Thank you for inviting me to testify today about the draft Special Needs Assistance Program Act (the "Act") that you introduced yesterday. My name is Richard Chamovitz. I am an attorney who focuses on representing people with special needs in the educational system, the juvenile justice system and elsewhere. I am a member of the Governor's Advisory Committee for People with Disabilities. I am the Past President of The Arc of Chester County, and I chair its Government Affairs and Advocacy Committee. I am a former Board member of The Arc of Pennsylvania. I serve on the Human Rights Committee of The Arc of The United States. I am also President of Hope Springs Equestrian Therapy, Inc., a non-profit organization that provides equine-facilitated riding and educational opportunities for individuals with varying disabilities and at-risk teenagers. My wife and I have a son with neurologically based challenges that impact him globally. He is a determined and courageous third-grader at Valley Forge Elementary School in the Tredyffrin/Easttown School District. I am confident that you and the members of this subcommittee can empathize with the sleepless nights my wife and I have spent worrying about and planning for his future. I am testifying today in my personal capacity only.

Madame Chairperson, I applaud your vision in proposing the Act. There is some comfort in knowing that Pennsylvanian's representatives are concerned about the issues affecting families of individuals with special needs every day. As everyone on this subcommittee is aware, disabilities are a natural part of the human experience and individuals with special needs are inextricably woven into the very fabric of our society. Our society spends billions of dollars on educating individuals with special needs only to undermine that investment by not erecting

bridges from the public education system into a meaningful adult life as a full participant in our community. While a general societal prejudice towards individuals with special needs still exists because of a lack of understanding about the valuable contributions individuals with special needs make to society on many levels, the truth is that society benefits by the inclusion of individuals with special needs throughout the community. Among other things, individuals with special needs make excellent, dedicated employees, devoted friends and loving, supportive family members. The experience of having a meaningful relationship with an individual with special needs consistently alters people for the better. The proposed Act is a positive effort to further the investment of the public education system by creating a vehicle for supporting the transition of our loved ones with disabilities into adult life.

My wife and I recently experienced the morass of planning for our son's future when we refocused our attention on our long-range financial plans for ourselves and for our son. We found the effort to navigate the financial planning maze to be dizzying. The process required us to explore the potential cost for Kyle to live a productive, self-actualized and meaningful life as a full participant in our community. We had to consider that government benefits might stop when his eligibility for special education services IDEA terminates because he does not have mental retardation. Since we cannot predict with any degree of certainty at this point that he will be able to support himself or hold a job that will offer health insurance benefits, we had to be careful not to jeopardize the possibility of his eligibility for government benefits as an adult, which can be worth hundreds of thousands of dollars. We had to estimate what his needs might be at each stage of his life and guess at the cost of meeting those needs. We had invested in a 529 plan for him because we anticipated that he would need funds for vocational training even if college would not be an option for him. We have not ruled out that possibility, however. To our dismay, we learned that the investment in his post-secondary education could render him ineligible for government assistance as an adult. We had to go back to the drawing board to reconfigure our financial plan. We are not unique. All families of children with special needs face similar dilemmas.

My reading of the proposed Act indicates that Special Needs Assistance Program (“SNAP”) accounts are for the purpose of providing families with a means of contributing financially to the supports and services their children with special needs will require to transition from high school to higher education or trade school so that they can pursue meaningful employment or educational programs. The Act provides a Pennsylvania state tax exemption and that the funds can be redistributed to other family members without undue tax ramifications if not needed by the individual with special needs for whom it was initially created. These are sound provisions that contemplate the guesswork involved in attempting to predict the financial needs of a loved one with special needs and the need for flexibility in redistributing the funds invested in SNAP accounts that are no longer needed by the individual with special needs.

The central issue concerning the viability of SNAP accounts will be their treatment under federal tax laws and their impact on eligibility determinations for state and federal government benefits. The Act contemplates that investments in SNAP accounts will be excluded from consideration when determining eligibility for financial aid related to higher education and vocational training, in addition to the state tax exemption discussed above. The Act does not provide that funds invested in SNAP accounts cannot render a person ineligible for other state benefits. The Act also does not and cannot create a federal tax exemption for SNAP account investments or provide that these investments will not render a person ineligible for federal benefits such as Supplemental Security Income (“SSI”) and Medicaid. The impact on eligibility for all state and federal benefits and the federal tax ramifications of SNAP accounts must be evaluated.

Recent federal legislation (S. 2741) proposed by United States Senator Christopher Dodd of Connecticut indicates that the federal government may be attempting to address transition and other issues faced by adults with special needs and their families. The Disability Savings Act of 2008 proposed by Senator Dodd provides a tax exemption and exclusion from consideration for government benefit eligibility for investments in these accounts. His proposal, however, limits the definition of eligibility to those who have disabilities as defined under the Social Securities Act and explicitly provides that funds invested in these accounts cannot be for the purpose of supplanting government benefits. The future of Senator Dodd’s proposed legislation and discussions with federal agencies will inform whether the broader eligibility language in the Act

and its provision that SNAP account funds can be used to provide for physical and medical care will negatively impact the treatment of SNAP accounts under federal tax and government benefit laws.

Should SNAP accounts clear these hurdles, you might want to consider adding guidance concerning future regulations that the Act contemplates. While the Act provides for warnings concerning federal tax treatment of SNAP accounts, it does not provide for similar warnings related to eligibility for government benefits. You might want to consider requiring the enactment of regulatory framework for SNAP accounts that would include a requirement of providing explicit precautions to individuals who might try to establish an account without being able to afford sound financial and/or legal advice. At present, the same questions that parents must face when creating any type of special needs trust will exist with creating SNAP accounts.

Documentation about SNAP accounts could include explicit warnings in bold, oversized lettering that the use of these accounts could jeopardize an individuals eligibility for government benefits and have unanticipated adverse tax consequences unless specific requirements are met. It is not beyond contemplation that someone would assume that funding a SNAP account, which is authorized under Pennsylvania law, would have no impact on eligibility for government benefits. Most individuals are not aware of the legal doctrine of pre-emption, which provides that federal law overrides state laws that conflict directly with federal laws. In other words, Pennsylvania can enact laws and regulations that create state tax incentives related to SNAP accounts or criteria whereby SNAP accounts would not negatively impact eligibility for Pennsylvania's governmental programs. These Pennsylvania enactments would not, however, require the federal government to follow suit. Accordingly, for SNAP accounts to be meaningful, Pennsylvania will need clear federal guarantees that the United State will treat SNAP accounts consistent with their treatment by Pennsylvania.

In conclusion, the Act is an excellent step towards addressing the needs of individuals with disabilities and their families. Should you have any questions, please do not hesitate to contact me.