



# Americans United for Separation of Church and State

## OMAHA CHAPTER

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**Statement of  
Americans United for Separation of Church and State  
submitted on its behalf by  
Richard A. Spellman, Omaha Chapter President  
regarding LB 14  
before the  
Nebraska Revenue Committee  
on March 5, 2013**

On behalf of our Nebraska members and Omaha Chapter, Americans United for Separation of Church and State writes to oppose LB 14, which would establish a tax credit benefit for taxpayers and businesses that contribute funds to qualified scholarship organizations. Instead of providing equal access to high quality education or setting high standards and accountability, tuition tax credits—backdoor vouchers—have proven ineffective, fund discrimination, lack accountability to taxpayers, and deprive students of rights provided to public school students. Taxpayer money should be invested in the public schools, not funneled to private schools through tax credits. LB 14, therefore, should be rejected.

### **Vouchers and Tuition Tax Credits Do Not Improve Student Achievement or Resources**

According to multiple studies of the District of Columbia,<sup>1</sup> Milwaukee,<sup>2</sup> and Cleveland<sup>3</sup> school voucher programs, students offered vouchers do not perform better in reading and math than students in public schools. In 2011, the Wisconsin Legislative Audit Bureau released a five-year longitudinal study, which concluded that students in Milwaukee using vouchers to attend private and religious schools perform no better on standardized tests than their counterparts in public schools.<sup>4</sup> Similarly, the U.S. Department of Education studied the D.C. voucher program for five years and found the program produced no statistically significant improvements overall in educational achievement.<sup>5</sup>

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<sup>1</sup>U.S. Dep't of Ed., *Evaluation of the D.C. Opportunity Scholarship Program: Final Report* (June 2010) (Though the 2009 study showed a marginal gain for some students in reading (but notably, not for the program's targeted group, students from schools in need of improvement), the 2010 Final Report said "[t]here is no conclusive evidence that the [program] affected student achievement" and earlier findings of modest gains "could be due to chance" and were no longer statistically significant.) (Final D.C. Voucher Study); U.S. Dep't of Ed., *Evaluation of the D.C. Scholarship Program: Impact After 3 Years* (Apr. 2009); U.S. Dep't of Ed., *Evaluation of the D.C. Scholarship Program: Impact After 2 Years* (June 2008); U.S. Dep't of Ed., *Evaluation of the D.C. Scholarship Program: Impact After 1 Year* (June 2007).

<sup>2</sup>Witte, Wolf, et al., *MPCP Longitudinal Educational Growth Study Third Year Report* (Apr. 2010); Witte, Wolf, et al., *MPCP Longitudinal Educational Growth Study Second Year Report* (Mar. 2009); Witte, Wolf, et al., *MPCP Longitudinal Education Growth Study Baseline Report* (Feb. 2008); Witte, *Achievement Effects of Milwaukee Voucher Program* (Feb. 1997); Witte, et al., *Fifth Year Report Milwaukee Parental Choice Program* (Dec. 1995).

<sup>3</sup>Plucker, et al., *Evaluation of the Cleveland Scholarship and Tutoring Program, Summary Report 1998-2004* (Feb. 2006); *Evaluation of the Cleveland Scholarship and Tutoring Program, Executive Report 1998-2002* (Feb. 2006).

<sup>4</sup>Legislative Audit Bureau, *Test Score Data for Pupils in the Milwaukee Parental Choice Program (Report 4 of 5)*, 17 (Aug. 2011) ("The project's five-year longitudinal study shows no significant difference in the performance of Choice and similar MPS pupils after four years of participation.")

<sup>5</sup>U.S. Dep't of Educ., *Evaluation of the D.C. Opportunity Scholarship Program: Final Report*, xv, xix and 34 (June 2010).



Voucher and tuition tax credit programs also fail to offer participating students greater educational resources. In fact, the Department of Education studies of the D.C. voucher show that students participating in the program are actually *less* likely to have access to programs for English language learners, learning support and special needs programs, tutors, counselors, cafeterias, and nurse’s offices than students not in the program.<sup>6</sup>

### **Nebraska Should Not Authorize a Program that Aids Discrimination**

Tuition tax credits allow funds to flow to schools that discriminate in hiring and admission. Private schools can limit admission based on religion, gender, economic status, disability, and other criteria. Tuition tax credits allow private schools to maintain these admissions criteria *and* benefit from taxpayer funded tuition. This violates the longstanding principle that government money should never fund discrimination. Taxpayers should not fund programs through tax credits that harm the fundamental civil rights of students and teachers.

#### *Religious Discrimination*

Vouchers and tuition tax credits primarily fund private religious schools because their tuition at these schools is commonly less expensive than their secular counterparts. In addition, they allow funds to flow to scholarship organizations that limit their scholarships to only particular religious schools. A Nebraska tuition tax credit program would allow these religious schools to take taxpayer funded tuition and continue to discriminate in admission and hiring on the basis of religion. A religious school can limit admissions not just to co-religionists, but also to only those students—and the parents of students—who follow its teachings and tenets. For example, “nearly a quarter of the participating schools in [the] Georgia [Tuition Tax Credit program] require families to make a profession of religious faith, according to their websites.”<sup>7</sup> These schools can also segregate students or apply different policies based on gender.

Religious schools can also use religious criteria in hiring. Thus, these schools can refuse to hire a teacher because he or she is an adherent to the wrong religion. They can also fire an unwed mother or a teacher going through a divorce, if either violates the religious teachings of the school.

Such discriminatory policies should never be supported and funded with Nebraska taxpayer funds.

### **Vouchers and Tuition Tax Credits Lack Accountability**

Most voucher and tuition tax credit programs lack sufficient accountability measures. They lack regulation, reporting, monitoring, and transparency. The current administrator of the D.C. voucher program, for example, admitted that quality control is “a dead zone, a blind spot” of the program.<sup>8</sup> And, a report issued by the Government Accountability Office (GAO) revealed that the D.C. program has failed to meet even basic statutory requirements. For example, the administrator permitted schools to participate—and allowed students to attend schools—even

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<sup>6</sup> U.S. Dep’t of Educ., *Evaluation of the D.C. Opportunity Scholarship Program: Final Report*, at 56, 57, 60 (June 2010).

<sup>7</sup> Stephanie Saul, “Public Money Finds Back Door to Private Schools,” *The New York Times*, May 12, 2012, <<http://www.nytimes.com/2012/05/22/education/scholarship-funds-meant-for-needy-benefit-private-schools.html>>, (*Public Money Finds Back Door to Private Schools*).

<sup>8</sup> Lyndsey Layton and Emma Brown, “Quality Controls Lacking for D.C. Schools Accepting Federal Vouchers,” *The Washington Post*, Nov. 17, 2012, <[http://articles.washingtonpost.com/2012-11-17/local/35507144\\_1\\_voucher-program-voucher-dollars-private-schools](http://articles.washingtonpost.com/2012-11-17/local/35507144_1_voucher-program-voucher-dollars-private-schools)>.

though they lacked a valid D.C. occupancy certificate, failed to submit required financial data, and failed to submit required annual operational reports with basic information on curriculum, teachers' education, and school facilities.<sup>9</sup> Indeed, some participating schools failed to submit information on accreditation or educational soundness, yet voucher students were directed to and attended those schools.<sup>10</sup>

Similarly, the state of Georgia has given out \$170 million dollars in tuition tax credits since 2008, yet it is difficult to determine "how the money was spent and on whom."<sup>11</sup> There is no way to determine whether the private schools funded are successful or failing, whether the program is serving low-income students, or whether the program is supplying tuition to kids who were and would be attending private schools regardless of the tuition tax program.<sup>12</sup>

Proponents of the Nebraska bill might claim that there are accountability measures in the bill, but the bill lacks procedures for ensuring these requirements are met. And, it does not provide for the recovery of funds that are improperly spent. The Georgia Tuition Tax Credit program, for example, also limits how much money can be used for administrative costs, but the state does not properly monitor the Student Scholarship Organizations (SSO) to enforce this rule. As a result, "based on the available federal records for 2008 and 2009, most of the tax funds diverted by SSOs were not used in accordance with the basic provisions of the tax credit law."<sup>13</sup> The Nebraska bill is subject to the same threats of abuse.

Also like the Georgia program,<sup>14</sup> this program is touted as one that will help low income students access private schools. But, once a student enters the program, he or she may continue to receive taxpayer supported tuition until high school graduation, regardless of the economic status of the parent. And, there is no requirement that the scholarship organizations report on the economic status of tuition recipients, making it impossible for Nebraska taxpayers to determine whether the program is serving such students in the future. This could lead to the same results as Georgia, where "the money has also been used to attract star football players, expand the payrolls of the nonprofit scholarship groups and spread the theology of creationism."<sup>15</sup>

### **Nebraska Taxpayers Should Not Be Forced to Fund Religious Schools and Education**

As explained above, the tuition tax credit program will provide a financial windfall to private religious schools and religious scholarship organizations. We recognize the value of religious education and know that parochial schools can serve a valuable role for many children, but because most parochial schools either cannot or do not wish to separate the religious

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<sup>9</sup> US Gov't Accountability Office, *District of Columbia Opportunity Scholarship Program: Additional Policies and Procedures Would Improve Internal Controls and Program Operations*, Pub. No. 08-9 at 34-35 (Nov. 2007) (GAO Report).

<sup>10</sup> *Id.* at 34.

<sup>11</sup> Maureen Downey, "Private School Tax Credit: A \$170 million tax diversion that Georgia lawmakers cloak in secrecy. Why?" *The Atlanta Journal Constitution*, Feb. 17, 2012 <[http://blogs.ajc.com/get-schooled-blog/2013/02/17/private-school-tax-credit-a-170-million-tax-diversion-that-georgia-lawmakers-cloak-in-secrecy-why/?cxntfid=blogs\\_get\\_schooled\\_blog](http://blogs.ajc.com/get-schooled-blog/2013/02/17/private-school-tax-credit-a-170-million-tax-diversion-that-georgia-lawmakers-cloak-in-secrecy-why/?cxntfid=blogs_get_schooled_blog)>.

<sup>12</sup> *Id.*

<sup>13</sup> The Southern Education Foundation, *A Failed Experiment: Georgia's Tax Credit Scholarships for Private Schools*, at 20 (2011), <[http://www.southerneducation.org/content/pdf/A\\_Failed\\_Experiment\\_Georgias\\_Tax\\_Credit.pdf](http://www.southerneducation.org/content/pdf/A_Failed_Experiment_Georgias_Tax_Credit.pdf)>.

<sup>14</sup> "Public Money Finds Back Door to Private Schools," *supra* note 7.

<sup>15</sup> *Id.*

components of the education they offer from the academic programs, these schools must be funded by voluntary contributions, not the taxpayer. One of the most dearly held principles of religious liberty is that government should not compel any citizen to furnish funds in support of a religion with which he or she *disagrees*, or even a religion with which he or she *does agree*. Voucher and tuition tax credit programs, however, violate that central tenet: they use taxpayer money to fund primarily religious education. Parents certainly may choose such an education for their children, but no taxpayer should be required to pay for another's religious education.

In addition, religious organizations and schools that rely on voluntary participation and contributions are likely to flourish. Government funds, however, threaten to shift religious schools' monetary source from the followers of their religion to the government treasury. And, with that shift, they also risk losing their religious identity, teachings, and message. To remain healthy, a religious school should follow the dictates of its adherents rather than the dictates of a government uninterested in its religious mission. To do this, they must reject government funding.

#### **Tuition Tax Credits Cost Rather than Save Nebraska Taxpayers Money**

The tuition tax credit program would grant a dollar for dollar reduction to income taxes the donor owes to the state up to 60 percent of the total contribution. This, of course, is a greater windfall to the donor than a tax deduction and a greater loss to the state treasury. And, although the state is limited to granting \$10 million worth of tax credits in the program's first year, that total will rise to more than \$20 million.

Tax credits will significantly reduce the state treasury, but, like vouchers, will not decrease public education costs. Rather, tax money that would ordinarily go to public schools would instead pay for tax credits, thus limiting the capacity of public schools. A 1999 study of Cleveland's voucher program showed the public schools from which students left for private voucher schools were spread throughout the district. The reduction in students, therefore, was negligible at the individual schools. Thus, the public school district lost state funding to pay for vouchers without being able to cut overall operating costs.<sup>16</sup>

For all of the above reasons, Americans United opposes LB 14 and urges members of the Committee to reject the measure.

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<sup>16</sup> KPMG, LLP, *Cleveland Scholarship and Tutoring Program: Final Management Study* (Sept. 1999).