March 8, 2012

Senator Edward J. Kasemeyer, Chair

Senate Budget and Taxation Committee

Maryland Senate

Miller Senate Office Building

Annapolis, MD 21401

**Re: Oppose SB 844 – Partnership for Student Education and Investment Tax Credit**

Dear Chairman Kasemeyer,

On behalf of Maryland’s members of Americans United for Separation of Church and State, we urge you to **oppose SB 844**, which would establish a tax credit benefit for individuals and corporations that contribute funds to qualified student assistance organizations. Americans United is a nonpartisan, national organization committed to preserving the constitutional principles of separation of church and state and religious liberty. We oppose this tax credit scheme because it is nothing more than a back-door voucher system, and has the same constitutional flaws inherent in voucher systems, as they are both subsidized by the state. This bill represents misguided education reform policy, and, in turn, we urge your opposition.

**This Voucher Program Will Cost, Rather than Save, Taxpayer Money**

State funding for private schools harms our public education system by misappropriating funds that could be used to aid our cash-strapped public schools. This tax credit will not decrease education costs. Rather, tax money that would ordinarily go to public schools would instead pay the tax benefit, thus limiting the capacity of the public schools. Maryland is currently addressing major financial issues, which could include devastating budget cuts that would alter the landscape of the state’s public services.[[1]](#footnote-1) In these hard economic times, it is especially inappropriate to spend $15,000,000—plus additional costs associated with new personnel and considerable administrative burdens to carry out the program—of taxpayer funds for students to attend private school.

In addition, such a system simply fails low-income families. These backdoor vouchers would use taxpayers’ money to subsidize the education of only a small minority – only families with the money to cover the cost of the rest of the tuition, uniforms, transportation, books, and other supplies at private schools can benefit from this scheme. Instead, Maryland should invest taxpayers’ money in public schools for the benefit of all students.

**Vouchers Do Not Improve Student Achievement**

The fact that public funding of private schools has, in no way, been successful in improving student achievement, provides even less reason for legislators to consider such a program. In short, vouchers do not work. According to multiple studies in the District of Columbia,[[2]](#footnote-2) Milwaukee,[[3]](#footnote-3) and Cleveland[[4]](#footnote-4) school voucher programs, students offered vouchers do not perform better in reading and math than students in public schools. Last August, the Wisconsin Legislative Audit Bureau released a five-year longitudinal study,[[5]](#footnote-5) 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. Against this background, we especially urge you not to instate a back-door voucher program that is costly for Maryland and proven not to work.

**This is an Inappropriate Time for the Maryland Legislature to Consider Vouchers**

In contrast to unsound voucher programs, Maryland’s recent educational reforms led to marked improvements. Maryland has shown such significant improvement that it received $250 million dollars over four years in federal funding as part of the Race to the Top competition.[[6]](#footnote-6) As part of the competitive program, Maryland will revise its State Curriculum, build a statewide technology infrastructure that monitors and improves student achievement, redesign teacher evaluation, and implement the Breakthrough Center approach for transforming low-performing schools.[[7]](#footnote-7) None of these reforms are complemented by vouchers. **Reform requires commitment to and funding of the public schools, not the diversion of students and money out of the public schools**. In fact, it is likely that Maryland would not have received the federal grant if it had relied on a voucher program.

**Students with Special Needs Are Left out of These Programs**

The DC voucher program demonstrated that private schools that accept taxpayer funds are not equipped to serve students with special needs. Indeed, students who accept vouchers are often forced to leave their voucher school because they were less likely to have access to key services—such as ESL programs, learning support, and special needs programs—than students who were not part of the program.[[8]](#footnote-8)

Students who do leave the public schools with the proposed backdoor voucher would have to forfeit many of the protections provided to students under the Individuals with Disabilities Act (IDEA). In addition, students accepting vouchers would not receive all of the services that are listed on their individualized education plans (IEPs) that they are currently receiving in their public school. And, parents lose any due process rights to raise concerns about their child’s special education services.

Further, backdoor vouchers for students with special needs run contrary to IDEA’s fundamental purpose as a civil rights law,whichisto bring students with disabilities into the public school system, provide them access to the general education curriculum, and protect against the history of exclusion of students with disabilities from public schools. Vouchers place students in private schools—institutions that do not have to follow the same inclusionary practices as public schools—and thus may isolate students with disabilities from their nondisabled peers. With the Ohio autism voucher, for example, fully 75% of claims for vouchers were for use at providers “created to primarily or exclusively serve disabled students.”[[9]](#footnote-9) **Under IDEA when a public school cannot provide students with the special needs services they require, the government may place the student in a private school**.Unlike with a backdoor voucher, however, the tuition is **fully covered** by the government and the students **maintain their IDEA protections**.

**Vouchers Harm Religious Liberty Rights of Maryland Taxpayers, Students and Parents**

Most private schools, and most schools that will opt to accept students under this scheme, will likely be religious in nature;[[10]](#footnote-10) thus, this backdoor voucher system serves just as a way to divert public money to religious schools. As a result, students could be forced to participate in religious activities, despite the fact that their school expenses are being paid by the state. Moreover, all state taxpayers, regardless of their religious affiliation, will be paying for religious education. These outcomes are anathema to constitutional notions of religious freedom.

Despite the bill’s requirement that schools comply with Title VI of the Civil Rights Act of 1964, this legislation fails on several fronts to ensure the religious liberty rights of parents and students. Participating non-public schools will continue to be exempt from complying with anti-discrimination laws. Title VII of the Civil Rights Act, which prohibits discrimination in employment on the basis of race, national origin, color, religion, or sex, contains exemptions for religious organizations. This is also true for the Americans with Disabilities Act (ADA)’s employment provision. As a result, nothing would prevent a private religious school receiving these government funds from hiring co-religionists only or requiring that employees’ personal conduct conform to the “tenets and teachings” of the schools’ associated faiths. There is also no guarantee that families who take advantage of a scholarship will be notified about the potential for discrimination against their teachers. As drafted, the legislation does not require disclosure to either parents or students regarding the hiring policies or admissions policies, particularly as they pertain to participation in religious activities that may conflict with the faith values of the family. In contrast, public schools must truly operate in an open and non-discriminatory manner.

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Americans United is committed to the protection of public education. However, we strongly believe that the nation’s civil liberties must be upheld even in difficult circumstances. It is wrong to capitalize on the plight of students in failing schools by attempting to push through a divisive and unsound tax credit proposal that would severely undermine a longstanding commitment to public education. If you have any questions about this legislative proposal, please do not hesitate to contact Americans United at (202) 466-3234.

Sincerely,



Amanda Rolat

State Legislative Counsel

1. Giles, “Maryland Doomsday Budget Spells Bug Cuts for Education, Police Aid,” *Washington Examiner*, March 6, 2012 *available at* <http://washingtonexaminer.com/local/maryland/2012/03/md-doomsday-budget-spells-big-cuts-education-police-aid/343651>; Hill, “Maryland Lawmakers Now Turn Focus on Budget, Cuts, Taxes,”*Washington Times,* February 26, 2012 *available at* <http://www.washingtontimes.com/news/2012/feb/26/maryland-lawmakers-now-turn-focus-budget-cuts-taxe/?page=all>. [↑](#footnote-ref-1)
2. U.S. Dep’t of Ed., *Evaluation of the D.C. Scholarship Program: Final Report* (June 2010). [↑](#footnote-ref-2)
3. 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 Educational 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). [↑](#footnote-ref-3)
4. 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). [↑](#footnote-ref-4)
5. 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.”) [↑](#footnote-ref-5)
6. *This information is available at:* <http://www.msde.maryland.gov/MSDE/programs/race_to_the_top>. [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. 21.6 percent of the students who rejected a voucher and 12.3 percent of students who left their voucher school did so because the schools lacked special needs services. *See* U.S. Dep’t of Ed., *Evaluation of the D.C. Scholarship Program: Final Report* , 25-26; 56-57. [↑](#footnote-ref-8)
9. *Analyzing Autism Vouchers in Ohio*, 41 and Executive Summary, 2. [↑](#footnote-ref-9)
10. For example, in *Zelman v. Simmons-Harris,* the Supreme Court found that, of the 3,700 students participating in Ohio’s Pilot Project Scholarship Program in the Cleveland City School District, 96% enrolled in religiously affiliated schools. *See Zelman v. Simmons-Harris,* 536 U.S. 639, 647 (2002). Indeed, approximately 80% of the students participating in the DC voucher program attend religious schools. *See* U.S. Dep’t of Ed., *Evaluation of the D.C. Scholarship Program: Final Report,* 17-18 (June 2010). [↑](#footnote-ref-10)