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Senator Ron Johnson  
Chairman  
Senate Committee on Homeland Security and  
Government Affairs  
386 Russell Senate Office Building  
Washington, D.C. 20510

Senator Thomas Carper  
Ranking Member  
Senate Committee on Homeland Security and  
Government Affairs  
513 Hart Senate Office Building  
Washington, D.C. 20510

RE: Opposing Reauthorization of the Scholarships for Opportunity and Results Act

Dear Chairman Johnson and Ranking Member Carper:

On behalf of Americans United for Separation of Church and State, representing over 120,000 members and supporters in all 50 states and the District of Columbia, we write to express our opposition to the reauthorization of the Scholarships for Opportunity Results Act (SOAR), which would continue the failed District of Columbia private school voucher program. Americans United opposes reauthorizing the D.C. voucher program not only because it raises constitutional and civil rights concerns, but also because it has simply proven ineffective.

### **History of the D.C. Voucher Program**

The D.C. voucher program was established in 2003 and was intended as a “pilot” program with a slated end date of 2008.<sup>1</sup> The original legislation passed by only one vote in the House,<sup>2</sup> bypassed the Senate altogether because it could not garner the necessary votes, and was inserted into the conference report of a \$280 billion omnibus appropriations bill. After passing continuing resolutions for FY2009 and FY2010 to maintain the program, Congress officially reauthorized the D.C. voucher in 2011 through the SOAR Act.<sup>3</sup> The SOAR Act reauthorized the D.C. voucher program for another five years. Like its predecessor, the SOAR Act only passed in 2011 as part of the FY2011 continuing resolution – a compromise to prevent an imminent government shutdown. Thus, the D.C. voucher legislation has never garnered enough votes in both the House and the Senate to pass as a standalone bill.

### **The D.C. Voucher Program Has Failed to Improve Educational Outcomes**

The D.C. voucher program has proven ineffective and, thus, should not be reauthorized by Congress. Reports issued by the Department of Education in 2007, 2008, 2009, and 2010 all indicate that the program has not lived up to the promises made by proponents and,

<sup>1</sup> Section 304(b) of P.L. 108-199 Stat. 3 (2004); see also Section 302(7) of P.L. 108-199 Stat. 3 (2004).

<sup>2</sup> Spencer S. Hsu, *How Vouchers Came to D.C.*, EDUC. NEXT (2004), available at <http://educationnext.org/howvoucherscametodc/>.

<sup>3</sup> P.L. 112-10 (2011).

instead, make the case against reauthorization.<sup>4</sup> The Final 2010 Report concluded that the use of a voucher had no statistically significant impact on overall student achievement in math or reading.<sup>5</sup> The studies also indicated that many of the students in the voucher program were less likely to have access to key services such as ESL programs, learning supports, special education supports and services, and counselors than students who were not part of the program.<sup>6</sup> In addition, all four studies found that students from “schools in need of improvement,” which are the students targeted by the program, have shown no improvement in reading or math due to the voucher program. Furthermore, participation in the voucher program had no impact on student safety, satisfaction, motivation, or engagement.<sup>7</sup>

### **The D.C. Voucher Program Lacks Accountability**

U.S. Government Accountability Office (GAO) reports from both 2007 and 2013 document the D.C. voucher program’s repeated failure to meet basic and even statutorily required accountability standards.<sup>8</sup> The 2013 report concluded that the D.C. Children and Youth Investment Trust Corporation (Trust), has continually failed to ensure the program operated with basic accountability measures and quality controls, stating that the “Trust’s policies and procedures lack sufficient detail to ensure each participating school in [the voucher program] has the financial systems, controls, policies, and procedures in place to ensure federal funds are used according to the law.”<sup>9</sup> The Trust even failed to maintain adequate records on its own financial accounting; it did not file financial statements for the years 2010-2012 and had no record of its own expenses prior to 2012.<sup>10</sup>

In its 2007 report, the GAO criticized the D.C. voucher program’s annual directory, saying that the program administrator “did not collect or omitted or incorrectly reported some information that would have helped parents evaluate the quality of participating schools.”<sup>11</sup> The most recent GAO report found that six years later, the program still suffered the same flaw.<sup>12</sup> In a similar vein, the 2007 GAO report found that several schools receiving vouchers

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<sup>4</sup> US Dep’t of Educ., *Evaluation of the D.C. Opportunity Scholarship Program: Final Report* xv, xix, 34 (June 2010) (*Final US Dep’t of Educ. Report*); *Final US Dep’t of Educ. Report* at 34; US Dep’t of Educ., *Evaluation of the D.C. Opportunity Scholarship Program: Impacts After Three Years* 34 (March 2009) (*2009 US Dep’t of Educ. Report*); US Dep’t of Educ., *Evaluation of the D.C. Opportunity Scholarship Program: Impacts After Two Years* 34, 36-38 (June 2008) (*2008 US Dep’t of Educ. Report*); US Dep’t of Educ., *Evaluation of the D.C. Opportunity Scholarship Program: Impacts After One Year* xvii, 44, 46 (June 2007) (*2007 US Dep’t of Educ. Report*).

<sup>5</sup> *Final US Dep’t of Educ. Report* at xv, xix, 34; *2009 US Dep’t of Educ. Report* at 39; *2008 US Dep’t of Educ. Report* at 34, 36-38; *2007 US Dep’t of Educ. Report* at xvii, 44, 46.

<sup>6</sup> *Final US Dep’t of Educ. Report* at 20; *2009 US Dep’t of Educ. Report* at xxii, 17; *2008 US Dep’t of Educ. Report* at xviii, 16.

<sup>7</sup> *Final US Dep’t of Educ. Report* at 43-47; *2009 US Dep’t of Educ. Report* at xxvi, xviii, 35, 44-45, 49-50; *2008 US Dep’t of Educ. Report* at 42-43, 50, 57; and *2007 US Dep’t of Educ. Report* at xx, 53-55.

<sup>8</sup> U.S. Gov’t Accountability Office, District of Columbia Opportunity Scholarship Program: Actions Needed to Address Weaknesses in Administration and Oversight, Publication No. GAO-13-805 (Nov. 2013) <http://www.gao.gov/assets/660/658416.pdf> [hereinafter 2013 GAO Report]; 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 26 (Nov. 2007) <http://www.gao.gov/new.items/d089.pdf> [hereinafter 2007 GAO Report].

<sup>9</sup> 2013 GAO Report at 19.

<sup>10</sup> *Id.* at 28.

<sup>11</sup> 2007 GAO Report at 36.

<sup>12</sup> 2013 GAO Report at 12-16 (noting that the 2012-2013 directory listed only one tuition cost for each school even though many schools offer discounts and varying prices, failed to list certain fees associated with attending the schools, and it did not provide updated information on schools’ accreditation status).

lacked valid certificates of occupancy.<sup>13</sup> In response, Congress included a provision in the SOAR Act specifying that private schools accepting vouchers must obtain and maintain one.<sup>14</sup> Nonetheless, in 2013 the GAO reported that nine of the ten schools they investigated still did not meet the certificates of occupancy requirement.<sup>15</sup>

The interim executive director of the Trust even admitted that “quality oversight of the program as sort of a dead zone, a blind spot.”<sup>16</sup> And a special investigation conducted by the *Washington Post*<sup>17</sup> corroborated findings that private schools in the program lacked important quality controls. The *Washington Post* described one school that consisted entirely of voucher students as existing in just two classrooms in “a soot-stained storefront” where students used a gymnasium two miles down the road.<sup>18</sup> Another voucher school was operated out of a private converted home with facilities so unkempt that students had to use restrooms in an unaffiliated daycare center downstairs.<sup>19</sup> And yet another school, where 93% of the students had vouchers, used a “learning model known as “Suggestopedia,” an obscure Bulgarian philosophy of learning that stresses learning through music, stretching and meditation.”<sup>20</sup>

### **The D.C. Voucher Program Denies Students Civil Rights and Constitutional Protections**

The voucher program also strips students of civil rights protections. Despite receiving public funds, the private schools participating in the D.C. voucher program are not subject to all federal civil rights laws and public accountability standards that all public schools must meet, including those in Title VI, Title IX, the Individuals with Disabilities Education Act (IDEA), Title II of the Americans with Disabilities Act, and the Elementary and Secondary Education Act (ESEA). Students who attend private schools with vouchers are also stripped of their First Amendment, due process, and other constitutional and statutory rights provided to them in public schools. Schools that do not provide students with these basic civil rights protections should not be funded with taxpayer dollars.

### **The D.C. Voucher Program Predominantly Funds Religious Schools**

Private school vouchers predominantly fund students to attend private, religious schools. In fact, in 2014 the Department of Education found that 62% of D.C. voucher schools were religious, but when that data was weighted by the number of students served in each school, the religiously affiliated schools rose to 81% of all voucher schools.<sup>21</sup>

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<sup>13</sup> 2007 GAO Report at 34.

<sup>14</sup> Pub. L. No. 112-10, § 3007(a)(4), 125 Stat. 38, 203.

<sup>15</sup> 2013 GAO Report at 21.

<sup>16</sup> Lyndsey Layton and Emma Brown, *Quality Controls Lacking for D.C. Schools Accepting Federal Vouchers*, WASH. 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).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (revealing details about Academia de la Recta Porta).

<sup>19</sup> *Id.* (discussing Muhammad University of Islam, which enrolled one-third voucher students).

<sup>20</sup> *Id.* (discussing the Academy for Ideal Education).

<sup>21</sup> U.S. Dep’t of Ed., *Evaluation of the D.C. Scholarship Program: An Early Look at Applicants and Participating Schools Under the SOAR Act*, 10, 29 (2014).

Most religious primary and secondary schools are part of the ministry of the sponsoring church. Because these schools either cannot or do not wish to separate the religious components of the education they offer from their academic programs, it is impossible to prevent a publicly funded voucher from paying for these institutions' religious activities and education. This conflicts with one of the most dearly held principles of religious liberty—the 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. Vouchers also threaten the religious liberty and autonomy of religious schools, as vouchers open them up to government audits, monitoring, control, and interference from which they would otherwise be exempt.

### **The D.C. Voucher Program Allows Government-Funded Discrimination**

The D.C. voucher scheme permits religious schools that accept vouchers to discriminate on the basis of religion in hiring and on the basis of gender in admission. A central principle of our constitutional order, however, is that “the Constitution does not permit the State to aid discrimination.”<sup>22</sup> In addition to raising constitutional concerns, federally subsidized religious discrimination raises significant public policy concerns. When funding any school, whether public or private, the government should not surrender the longstanding principle of equal treatment for all—all students should be treated the same regardless of sex and all teachers the same regardless of religion. Taxpayer money should not fund programs that harm the fundamental civil rights of students and teachers.

### **Conclusion**

The federal government should fund public schools rather than funnel taxpayer funds to private schools that lack accountability, religious liberty, and civil rights standards—and most importantly, do not meet the goals of helping D.C. students. Accordingly, we oppose reauthorization of the D.C. voucher program.

Sincerely,



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Americans United for Separation of Church and State

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<sup>22</sup> *Norwood v. Harrison*, 413 U.S. 455, 465-66 (1973).