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City of Atlantic City
1301 Bacharach Blvd.
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Re: Withdraw the Referendum Questions Regarding School Vouchers and Tax Credits

Dear Councilman:

On behalf of its Atlantic City and New Jersey members and supporters, Americans United for Separation of Church and State urges the City Council of Atlantic City to remove the referendum questions regarding school vouchers and tax credits from the November ballot. Voucher programs are bad policy for a host of reasons outlined below and will only exacerbate the problems that the Council appears to seek to address.

Voucher schemes do not save taxpayer money, do not improve opportunities for low income families, deprive students of rights provided to public schools students, are ineffective, lack accountability to taxpayers, threaten religious freedom, and fund discrimination. Accordingly, we ask you to reconsider placing these questions on the ballot.

Vouchers Cost, Rather than Save, Taxpayer Money

According to media reports, the Council's interest in a voucher program is based on claims that it could save the city money.¹ Voucher programs, however, do not save taxpayers money.

In voucher programs generally, the public schools from which students leave for private voucher schools are spread throughout the district. The reduction in students, therefore, is usually negligible at individual schools and does not allow those schools to reduce their operating costs. Public schools are "educating fewer kids[,] yet must still provide a wide array of services."²

In Indiana, for example, the state recently announced that its voucher program resulted in a deficit of \$53 million, disproving its claims that the program actually saved the state money.³ In Milwaukee, which has been disproportionately burdened in a statewide voucher funding scheme,

¹ The property tax credit for parents who home school would clearly cost rather than save money.

² Rachel Morello, *How Wisconsin's Choice Program Affects Public School Funding*, WUWM Milwaukee Public Radio (Jan. 26, 2016), <http://wuw.com/post/how-wisconsins-choice-program-affects-public-school-funding#stream/0>.

³ Claire McInerney, *School Voucher Program Cost State \$18 Million More than Previous Year*, Ind. Pub. Media (July 18, 2016), <http://indianapublicmedia.org/stateimpact/2016/07/18/school-voucher-program-cost-state-18-million-year/>.

the city has had to raise property taxes several times in order to ensure adequate funding for the city's schools.⁴ The Council should expect similar results from a voucher program in Atlantic City.

Vouchers Do Not Improve Opportunities for Kids from Low Income Families

The referendum question itself does not state how much funding each school voucher would provide to students and there have been varied reports in the media. Yet, in voucher programs around the country, voucher payments often do not cover the entire cost of tuition or other mandatory fees for private schools. For example, a 2014 U.S. Department of Education study of the D.C. voucher program found that 68% of high schools and 62% of K-8 schools charged tuition rates above those of the cap on each student's voucher.⁵ Thus, only families with the money to cover the cost of the rest of the tuition, and additional expenditures such as uniforms, transportation, books, and other supplies can use the vouchers. In the end, the families most likely to use a voucher are the ones who could already afford to send their kids to private schools. And in some states, this is what is already happening. In Wisconsin, the State Department of Public Instruction found that 67% of voucher applicants were already enrolled in private schools,⁶ which further undermines the rationale that vouchers will save taxpayer money.

Students Using Vouchers Lose Critical Protections Provided to Public School Students

Despite receiving public money, private schools that participate in voucher programs do not adhere to the same civil rights laws and do not face the same public accountability standards, including those in Title VI, Title IX, the Individuals with Disabilities Act (IDEA), and the Elementary and Secondary Education Act (ESEA) that all public schools must meet. Students who attend private schools with vouchers are also stripped of their First Amendment, due process, and other constitutional and statutory rights offered to them and guaranteed in public schools. And, New Jersey's private schools do not have to comply with the same teacher standards, curriculum, and testing requirements as the public schools. Unfortunately, many parents and students are not even aware of this when they accept the voucher.

State taxpayer dollars should not fund schools that fail to provide students with the same protections and rights we have determined should be provided to them in the public schools.

Voucher Programs Lack Appropriate Oversight

It has been suggested that if a voucher program was implemented, "small private schools [] would pop-up to offer different educational options and compete for the vouchers."⁷ Even if that were true, without adequate oversight, the funds will go to poor quality schools. In Milwaukee, for example, students are attending voucher schools that have popped up in strip malls, rundown

⁴ Erin Richards, *MPS Blames Voucher Program for Tax Levy Increase*, *Milwaukee Journal Sentinel* (Oct. 31, 2012), <http://archive.jsonline.com/blogs/news/176617211.html>.

⁵ 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*, 9 (2014).

⁶ Molly Beck, *State Paid \$139 Million to Schools Terminated from Voucher Program Since 2004*, *Wisc. State Journal* (Oct. 12, 2014), http://host.madison.com/news/opinion/column/dave_zweifel/plain-talk-wisconsin-s-school-vouchers-are-a-scam/article_63516c51-ee5c-5fbc-a9c4-1948dfdc1195.html.

⁷ Matt Rooney, *Atlantic City Set for Historic Citywide School Choice Vote This November*, *Save Jersey* (Aug. 19, 2016), <http://savejersey.com/2016/08/atlantic-city-jesse-kurtz-school-choice-referendum/>.

office buildings, and abandoned factories with dirty carpet, peeling walls, and lights that do not work.⁸

The current administrator of the D.C. voucher program admitted that quality control is “a dead zone, a blind spot” of the program.⁹ Indeed, a special investigation conducted by *The Washington Post* found that many of the private schools in the D.C. voucher program are not quality schools. For example, one school, where all its students used vouchers, had just two classrooms in “a soot-stained storefront” where students used a gymnasium two miles down the road.¹⁰ Another voucher school had unkempt and inadequate facilities and students had to use restrooms in an unaffiliated daycare center downstairs.¹¹ Yet another school, where 93% of the students used vouchers, used a “learning model known as ‘Suggestopedia,’ an obscure Bulgarian philosophy of learning that stresses learning through music, stretching and meditation.”¹²

Certainly, Atlantic City does not want to fund such schools.

Vouchers Programs Do Not Improve Student Achievement

Voucher programs have not proven effective in improving academic opportunities for students. A 2016 study of the Louisiana voucher program revealed that students with vouchers actually performed worse on standardized tests—as much as 50% worse in math scores in particular—than their peers not in the voucher program.¹³ A 2016 study of the Ohio voucher program also showed that voucher students performed worse than their public school peers on math and reading tests.¹⁴ And, multiple studies of the D.C.,¹⁵ Milwaukee,¹⁶ and Cleveland¹⁷ school voucher programs reveal that students offered vouchers do not perform better in reading and

⁸ Ruth Conniff, *Voucher School Tour*, *The Progressive* (Aug. 18, 2014), <http://www.progressive.org/news/2014/08/187790/voucher-school-tour>.

⁹ Lyndsey Layton & 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.

¹⁰ Lyndsey Layton, *D.C. School Voucher Program Lacks Oversight, GAO Says*, *Wash. Post* (Nov. 15, 2013) https://www.washingtonpost.com/local/education/dc-school-voucher-program-lacks-oversight-gao-says/2013/11/15/9bb8c35e-4e3d-11e3-be6b-d3d28122e6d4_story.html.

¹¹ *Id.*

¹² *Id.*

¹³ Morgan Winsor, *Louisiana’s Controversial Voucher Program Harms Poor Students, Lowers Grades, New Study Finds*, *Int’l Bus. Times* (Jan. 10, 2016), <http://www.ibtimes.com/louisianas-controversial-voucher-program-harms-poor-students-lowers-grades-new-study-2258417>.

¹⁴ David Figlio & Krzysztof Karbownik, *Evaluation of Ohio’s EdChoice Scholarship Program: Selection, Competition, and Performance Effects* (July 7, 2016).

¹⁵ See, e.g., U.S. Dep’t of Ed., *Evaluation of the D.C. Opportunity Scholarship Program: Final Report*, xv (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.)

¹⁶ See, e.g., Witte, Wolf, et al., *MPCP Longitudinal Educational Growth Study Third Year Report* (Apr. 2010); 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.”).

¹⁷ See, e.g., 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).

math than students in public schools. A voucher program in Atlantic City would likely face the same outcome.

Government Funding of Religious Education Violates Religious Liberty

Voucher schemes undermine the constitutional principle 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*.¹⁸ Religious worship and instruction must be funded by voluntary contributions, not taxation. That is why Article I, Paragraph 3 of the New Jersey Constitution specifically prohibits any person from being “obliged to pay tithes, taxes, or other rates . . . for the maintenance of any . . . ministry. . . .”¹⁹

A school voucher program in Atlantic City, however, would likely violate the New Jersey Constitution, by primarily—if not entirely—funding private religious schools. Earlier this year in *ACLU v. Hendricks*, the Appellate Division of the Superior Court of New Jersey ruled that a state-funded grant to two religious institutions of higher learning violated the state constitution, which “specifically prohibits the use of tax revenues for the maintenance or support of a religious group.”²⁰ The only two private schools in Atlantic City are religious and function as ministries. For instance, Our Lady Star of the Sea Regional School teaches religion daily, and each class celebrates Mass often throughout the school year. A voucher program would similarly violate the state constitution.²¹

Funding Private Religious Schools Results in Taxpayer-Funded Discrimination

Private religious schools often have religion-based admissions and hiring policies. Religious schools, for example, can refuse to admit or expel a student for refusing to take a religious oath; for being gay, or having gay parents; for being pregnant, or having a parent who is unwed and pregnant. They can segregate students or apply different policies based on gender. These schools can also refuse to hire a teacher because he or she is an adherent to the wrong religion or does not adhere to the school’s religious teachings and tenets (like violating a prohibition on divorce or remarriage).

Taxpayers, however, should not be funding these practices through school vouchers. Indeed, it is a clear violation of one of the central principles of our constitutional order: “the Constitution does not permit the State to aid discrimination.”²² When funding any school, whether public or private, the government should not surrender the longstanding principle of equal treatment for all.

¹⁸ Virginia Statute for Religious Freedom, 1789.

¹⁹ N.J. Const. art. I ¶3

²⁰ *Am. Civil Liberties Union of New Jersey v. Hendricks*, 139 A.3d 92, 104-05 (N.J. Super. Ct. App. Div., 2016)

²¹ There are also serious concerns about whether a voucher program in Atlantic City, with only two religious private schools, would violate the U.S. Constitution. In *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), the Supreme Court held that for a voucher program to be constitutional, it must be one of “true private choice” which requires that (1) the program is neutral in all respects towards religion; (2) the choice to attend a program is a result of genuine and independent decisions made by way of deliberate choices of numerous individual recipients; (3) the program provides no incentives that skew beneficiaries towards selecting religious services; and (4) the beneficiary has genuine opportunities to select from a religiously neutral *menu of service providers, including secular options*.

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

Voucher and voucher-like programs, however, frequently do fund discrimination. A 2013 study found that “at least 115 private schools participating in Georgia’s tax-funded scholarship program have explicit, severe anti-gay policies or belong to state and national private school associations that promote anti-gay policies and practices among their members.”²³ And this year, a report found that schools participating in North Carolina’s voucher program discriminated against LGBT students.²⁴

Atlantic City should not follow in these footsteps.

Conclusion

Although we appreciate that the Council is seeking ways to address its budget crisis, vouchers are not the answer. Indeed, they will likely exacerbate the problem, while simultaneously, inviting new problems. Therefore, we urge you to remove the voucher and tax credit questions from the ballot.

Please contact us if you should have any questions or want further information.

Sincerely,



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²³ Southern Education Foundation, *Georgia’s Tax Dollars Help Finance Private Schools with Severe Anti-Gay Policies, Practices, & Teachings* (Jan. 2013), <http://www.southerneducation.org/getattachment/857328be-3d6b-415f-af8b-da7bd3b75519/Georgia%E2%80%99s-Tax-Dollars-Help-Finance-Private-Schools.aspx>.

²⁴ See Editorial Board, *In NC, Vouchers Support Private Schools that Discriminate*, *News & Observer* (Aug. 17, 2016), <http://www.newsobserver.com/opinion/editorials/article96295292.html>.