



Americans United for Separation of Church and State

DELAWARE VALLEY CHAPTER

Written Testimony of Janice Rael
Vice-President of the Delaware Valley Chapter of
Americans United for Separation of Church and State
regarding A2869
before the
Education Committee of the New Jersey General Assembly
February 11, 2013

My name is Janice Rael. I am a lifetime resident of New Jersey and am the Vice-President of the Delaware Valley Chapter of Americans United for Separation of Church and State. I am submitting this testimony on behalf of the Delaware Valley chapter and all of Americans United's members and supporters in the state. Thank you for allowing me to explain why we strongly oppose A2869.

First, let me state that I appreciate just how important it is to provide students with special needs the services they require. But, I also appreciate the importance of religious freedom and the limits the Constitution and our founding principles places upon using taxpayer money to fund religious institutions, instruction, and education. This bill serves solely to eliminate the bar on taxpayer funding of sectarian services, which violates the Constitution and our founding principles of religious freedom.

Religious Education Is Important, But Government Funding is Inappropriate. Americans United recognizes the value of religious education, and understands that parochial schools can serve an important role in the lives of many children. But, because most parochial schools either cannot or do not wish to separate the religious components of the education they offer from the academic programs, these schools must be funded by voluntary contributions, not taxation. For example, *The Wall Street Journal* published a piece this month by *Cardinal Anthony Dolan, the archbishop of New York*, in which he explained that Catholic schools “won’t back away from insisting that faith formation be part of our curriculum, even for non-Catholic students.”¹ Such a stance, of course, is unobjectionable when the school is supported by church funds. Our objection is to using taxpayer funding to support such curriculum.

Indeed, 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

¹Cardinal Anthony Dolan, *The Plan to Save Catholic Schools: How to combat falling enrollment while keeping standards high*, *The Wall Street Journal*, February 1, 2013, A11,
<http://online.wsj.com/article/SB10001424127887323701904578275921970228476.html?mod=googlenews_wsj>.

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she *disagrees*, or even a religion with which he or she *does agree*.² This bill clearly violates that tenet. It specifically permits funds to go not just to religious institutions, but also religious “services.”

Funding Private Religious Schools Results in State Funded Discrimination.

Private religious schools can 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. Religious schools can 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. For example, one New Jersey private religious school recently forced the girls at the school to sign an anti-cursing pledge, while simply reminding the boys “not to swear in the presence of ladies.”³ Such discriminatory policies should never be supported and funded with New Jersey taxpayer funds.

A recent study in Georgia 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.”⁴ This discovery has, of course, outraged many. New Jersey should not follow suit and fund schools that could adopt or already follow similar policies.

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. Permitting funds to flow to these schools appears to conflict with New Jersey anti-discrimination laws, which state that no “contract shall be awarded by the State...no shall any moneys be paid thereunder to any contractor, subcontractor or business firm which has not agreed and guaranteed to afford equal opportunity in performance of the contract.”⁵ It is unclear how this conflict will be resolved, however. Will the state require these schools to abandon their religious hiring criteria for all teachers and employees working with the state placed students? Or will the state instead fund religious discrimination?

A2869 places no bar on funding schools with religion-based admissions and hiring policies. Allowing government money to flow to these institutions without holding

² Virginia Statute for Religious Freedom, 1789.

³ Leslie Brody, “Girls at North Arlington School Swear Not to Swear as Part of Lesson in Civility,” *The Record*, Feb. 2, 2013, http://www.northjersey.com/news/education/education_news/Girls_at_North_Arlington_school_swear_not_to_swear_as_part_of_lesson_in_civility.html?page=all.

⁴ Southern Education Foundation, “Georgia’s Tax Dollars Help Finance Private Schools with Severe Anti-Gay Policies, Practices, & Teachings” <<http://www.southerneducation.org/getattachment/135f0b35-4738-441e-a2ac-013eaa255183/Georgia%20Tax-Dollars-Help-Finance-Private-Schools.aspx>>.

⁵ N.J.S.A. § 10:5-32.

them to non-discrimination laws is a clear violation of one of the central principles of our constitutional order: “the Constitution does not permit the State to aid discrimination.”⁶ When funding any school, whether public or private, the government should not surrender the longstanding principle of equal treatment for all regardless of religion. Taxpayer money should not fund programs that harm the fundamental civil rights of students and teachers.

Funding Religious Schools Threatens the Autonomy of Religious Schools.

Private religious schools exist to provide religious education and, when such education is funded with private tuition, the government should have no role in directing that religious education. When private religious schools accept taxpayer funds, however, they should adhere to government rules. Thus, in accepting government funds, they run the risk of being mired in political debates, battles over regulation and accountability, and disruptive inquiries into their school standards and curricula. Control over these religious institutions would not be beneficial for either religious institutions or the government.

Direct Funding of Religious Schools Violates the Constitution.

Some may argue that this bill is constitutional because the Supreme Court in *Zelman v. Simmons-Harris*,⁷ upheld the Cleveland voucher program, which included funding for religious schools. But this bill does not create a voucher program.⁸ Instead, it is akin to a direct grant program, which make direct payments to religious schools for religious instruction and services. This, the Constitution forbids.

Zelman only applies only when the student has “true private choice” to pick a school. “True private choice” 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.⁹ These factors are not present in this situation before us.

Instead, the funding stream in this bill is more akin to “direct” aid to religious schools and for sectarian services, which is a clear violation of the U.S. and N.J. Constitutions. The Establishment Clause of the First Amendment to the U.S. Constitution prohibits the government from directly funding religious activities, such

⁶ *Norwood v. Harrison*, 413 U.S. 455, 465-66 (1973).

⁷ 536 U.S. 639 (2002).

⁸ In addition, the Supreme Court analyzed the Cleveland program under the U.S. Constitution, but the New Jersey constitution has a more detailed and strict constitutional provision of its own: Article I, paragraph 3 of the New Jersey Constitution states: “[N]or shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.”

⁹ *Zelman*, 536 U.S. at 652.

as religious worship or instruction, with government money.¹⁰ And it prohibits the government from making direct cash grants—such as tuition—to pervasively sectarian organizations, such as religious schools.¹¹ This, however, is the very outcome this bill seeks to achieve.

For all of the reasons stated above, I, on behalf of Americans United, urge you to oppose A2869.

¹⁰ *Mitchell v. Helms*, 540 U.S. 793, 840-41 (2000)(O'Connor, J., concurring); *Bowen v. Kendrick*, 487 U.S. 589, 631 (1988).

¹¹ *Bowen*, 487 U.S. at 610-12.