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## Why the ACLU of Utah Opposes H.B. 148, “Education Vouchers”

During its 2007 general session, the Utah State Legislature passed H.B. 148, “Education Vouchers,” which seeks to put into place an expansive, statewide voucher program to provide scholarships for students to attend private schools. The law is the subject of a citizen’s referendum, and this November, voters will decide the fate of the voucher program. The ACLU of Utah answers questions about vouchers and outlines the reasons why voters should reject Utah’s controversial program by voting against H.B. 148 on “Citizen’s State Referendum Number 1.”

### What are school voucher programs?

In recent years, state and local governments have attempted to use tax money to support private schools. There are a variety of different mechanisms by which governments have attempted to accomplish this goal, including the use of voucher programs, tuition tax credits, and individual and corporate tax credit deductions. School vouchers, also known as education vouchers, are payments to parents or schools from the state, which must be used to pay for the education of their children at a private school of their choice. Educational tax credits and tax deductions reduce tax liability for parents who have incurred educational expenses on behalf of their children. Corporate and individual tax deductions typically reduce tax liability for corporations or individuals who have made contributions to nonprofit organizations that give scholarships to students.

### Why does the ACLU challenge voucher programs?

The ACLU’s primary concern with school voucher programs and other public funding of private schools centers on the bedrock principle, rooted in both the federal and Utah constitutions, that taxpayers should not fund religious activities and institutions. While voucher programs, including the proposed program in Utah, provide that vouchers may be used at all private schools, including non-religious or secular institutions, the reality is that in the voucher programs enacted to date around the country, the vast majority of government funds go to religious schools. The reason behind this phenomenon is economic: most non-religious private schools charge far more in tuition than parochial or religious schools. Parents certainly have the right to send their children to religious schools; however, the ACLU believes that this is not an expense that should be borne by taxpayers.

Additionally, private schools receiving taxpayer funds are not required to comply with state laws that require schools to hire certified teachers, have open records and meetings, report drop-out rates, comply with free speech, anti-discrimination, and due process regulations, and provide data, including attendance rates. Public schools however, must meet these requirements, as their receipt of public monies is conditioned on remaining accountable to the public.

### What is the current legal status of school vouchers?

State and local governments have long attempted to pass laws establishing school voucher programs, but few have actually been enacted. Of those that have, most have been subject to judicial challenge

on grounds that voucher programs violate the First Amendment's Establishment Clause. In 2002, the U.S. Supreme Court upheld a Cleveland, Ohio voucher program and found that the program did not violate the Establishment Clause of the U.S. Constitution. State constitutions, however, often contain stricter prohibitions on the use of public funding of religious schools than the U.S. Constitution, and Utah's Constitution is no exception. Indeed, the Utah Constitution expressly prohibits the use of public funds in support of religious institutions. In order to achieve statehood, Congress required, among others, that "provision . . . be made for the establishment and maintenance of a system of public schools . . . free from sectarian control." Utah Enabling Act, Ch. 138, 28 Stat. 107 (1894). Additional Utah constitutional provisions make clear that early Utahns intended for religion and public education to reside in distinct and separate spheres. *See* Utah Const. art. I, §IV and art. X, §9 ("No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment," and "[n]either the state of Utah nor its political subdivisions may make any appropriation for the direct support of any school or educational institution controlled by any religious organization."); *see also Gubler v. Utah State Teachers' Retirement Bd.*, 192 P.2d 580, 586 (Utah 1948) (stating that should a law or act "in the slightest degree introduce [ ] sectarian education and observance into the public schools, [or] had a tendency to aid or support religious schools or a religious faith, [the Court] would cast it aside."). Thus, the constitutionality of voucher programs with regards to state claims is still in question, both across the nation and in Utah.

### **Don't vouchers mean parental choice as to where students attend school?**

While proponents claim that voucher programs give parents choice in education, the fact remains that private schools are the final arbiter in deciding whom to admit. Students are often denied admission to private schools that accept vouchers due to admissions criteria including academic performance, religion, gender, behavior history, and disability, among other factors. In addition, Utah's proposed voucher program limits the "choice" of parents, particularly in lower income families. This is because while voucher amounts are capped at \$3,000 per student, there is no corresponding cap on tuition at participating private schools. Thus, the reality is that the choices for many parents will be limited to those schools where tuition does not exceed the awarded voucher amount. Moreover, tuition is but one cost associated with attending private school. Parents with children in private schools often must also pay for transportation to and from school, uniforms, and books, among other expenses. These additional costs, above and beyond tuition, often make the "choice" of a private education impossible for many low- and middle-income parents.

### **Who would qualify for vouchers and how much money will be awarded?**

If enacted, H.B. 148 would create a universal voucher program. In other words, unlike the programs already in place around the country, Utah's program would not target students in failing schools or students without access to public schools. Rather, Utah's proposed program will eventually be available to every student in Utah. Students currently enrolled in Utah's public schools and certain low-income children currently attending private schools will initially qualify for vouchers. The program will also offer scholarships to all students entering kindergarten in the fall of 2007. By 2020, all children in the state will have the opportunity to participate.

Vouchers will be awarded on the basis of family income and will range in amount, from \$500 to \$3,000. Unfortunately, in a state where tuition ranges from \$2,200 to nearly \$15,000 a year (see "Tuition Still Unaffordable For Poorest," *The Salt Lake Tribune*, April 16, 2007), voucher award amounts will not suffice to cover tuition at many of the private school "choices" made available to parents.

### **Do voucher programs improve student achievement?**

There is no credible evidence that voucher programs improve student performance. After adjusting for factors such as minority status and family income, student achievement under existing voucher programs, such as the Cleveland program, proved no greater than that of students in the public school system.

### **Where does the ACLU of Utah stand on November's referendum on vouchers?**

The ACLU of Utah believes that the voucher program to be enacted by H.B. 148 is constitutionally flawed. Utah's constitution is explicit in prohibiting the public funding of religious schools, thus Utah's proposed voucher program cannot withstand constitutional scrutiny.

Moreover, Utah's proposed voucher program does not serve the best interests of Utahns. The program undermines public accountability in education and funnels money away from public schools, an institution that is fundamental to the health and general success of our state and nation. Not only do public schools provide educational benefits to every student, without exception, but they also provide broader benefits to society as a whole, including the creation of an active and responsible citizenry, a reduction in inequalities in an increasingly diverse society, and the formation of a sense of neighborhood community.

### **This November, Say No to School Vouchers**

**Vote Against H.B. 148 "Education Vouchers" on "Citizen's State Referendum Number 1."**

#### **Additional Resources:**

2007 Voter Information Pamphlet at <http://elections.utah.gov/Vouchers.Arguments.htm>

"Vouchers," National Education Association, at <http://www.nea.org/vouchers/index.html?source=google&paidkeyword=school+vouchers>

Nancy Kober, "Why We Still Need Public Schools: Public Education for the Common Good," Center on Education Policy, January 1, 2007, at <http://www.cep-dc.org/document/docWindow.cfm?fuseaction=document.viewDocument&documentid=11&documentFormatId=777>

"School Vouchers: Settled Questions, Continuing Disputes," The Pew Forum on Religion and Public Life, August 2002, at [http://www.pewtrusts.com/pdf/religion\\_pew\\_forum\\_voucher.pdf](http://www.pewtrusts.com/pdf/religion_pew_forum_voucher.pdf)

"Vouchers Are NOT Like Pell Grants," National Coalition for Public Education, at <http://www.aclu.org/FilesPDFs/factsheet%20-%20voucher%20vs.%20pell%20grants.doc>

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