

**Written Testimony of the ACLU of Kansas and Western Missouri
In Opposition to HB 2767
March 6, 2012**

Thank you for the opportunity to submit written testimony for the House Education Budget Committee’s hearing on House Bill 2767, the “Kansas Education Liberty Program Act.” Founded in 1920, the American Civil Liberties Union is one of the nation’s oldest civil rights organizations. I am submitting these comments on behalf of the nearly 2,000 ACLU members from across Kansas.

HB 2767 is merely a taxpayer-funded voucher bill in disguise, which would divert scarce funds from our public school system to religious schools, while reducing much-needed state tax revenue. It would allow individuals to claim a 90% tax credit for their donation to a 501(c)(3) “scholarship granting organization” that uses the money to, essentially, award vouchers to students to attend private schools. So, for every dollar an individual donates to a “scholarship granting organization,” the state would lose 90 cents in tax revenue. The “scholarship granting organization” then will donate the monies directly to a private school. Importantly, this bill does not impose a cap on the total amount that can be claimed statewide.

When the government grants a tax benefit, it sacrifices income. Proponents claim that tax credit schemes do not involve public money, but there is no significant difference between “tax credits” and direct taxpayer payments to private and religious schools.

“Tax credit” vouchers will cost taxpayers money

- School districts cannot reduce fixed costs, such as maintenance, utilities, debt service, transportation, even if students switch to private schools. Public schools will be saddled with these same costs, but receive less funding.
- Although “tax credit” voucher proponents often claim that the state will save money when students use the vouchers to switch from public to private schools, this is usually speculative. For example, if not enough students participate in the program, the lost tax revenue will be higher than any savings in education funding. There is no fiscal note or other analysis accompanying HB 2767 showing any alleged cost savings.
- A tax credit results in lost state income. From 1998-2008, Arizona’s tax credit scheme cost the state almost \$350 million in redirected tax revenue.¹

Vouchers do not improve student education

- In addition to the certain loss in tax revenue, other states’ experiences with their voucher programs demonstrate that the quality of student education will not improve.
- Studies of the District of Columbia,² Milwaukee,³ and Cleveland⁴ taxpayer-funded voucher programs demonstrated that these programs do not improve academic achievement.

¹ Arizona Christian School Tuition Organization v. Winn, 131 S. Ct. 1436, 1450 (2011) (Kagan, J., dissenting).

² *2010 DC Final Report*; U.S. Dep’t of Ed., *Evaluation of the D.C. Scholarship Program: Impact After 3 Years* (Apr. 2009); U.S. Dep’t of Ed., *Evaluation of the D.C. Scholarship Program: Impact After 2 Years* (June 2008); U.S. Dep’t of Ed., *Evaluation of the D.C. Scholarship Program: Impact After 1 Year* (June 2007).

- In particular, the Department of Education report on the Washington, DC, program showed that there was no statistically significant difference between students who were offered a voucher and those who were not in their aspirations for future schooling; engagement in extracurricular activities; frequency of doing homework; attendance at school; reading for fun; or tardiness rates. In fact, students who participated in the program may actually have been more likely to be absent from school. Likewise, there was no significant difference in the student-teacher ratios in their classrooms or the availability of before- and after-school programs in their schools.

“Tax credit” vouchers overwhelmingly benefit religious schools

- This program is limited to a “qualified school,” which includes religious schools, and evidence from other states shows that such vouchers are overwhelmingly used for religious schools.
 - For example, 2009 data from Arizona⁵ shows that more than half of the over \$50 million of “tax credit” vouchers went to “scholarship organizations” that required students to attend religious schools as a condition of receiving the voucher.
 - During the 2011-2012 school year, 83.4% of Florida’s students receiving these vouchers were enrolled in religious schools⁶.

“Tax credit” vouchers may violate our state Constitution

- It is important to remember that most religious schools are a ministry of a church. Because religious indoctrination is one of the main purposes of these ministries, the schools thoroughly infuse religion throughout their curriculum and require all students to receive religious instruction and attend religious services. Thus, there is no way to prevent the taxpayer-funded vouchers from paying for these institutions’ religious activities and education.
- Article 6, Section 6(c) of the Kansas Constitution explicitly prohibits public funding of religious education: “No religious sect or sects shall control any part of the public educational funds.”
- Further, Section 7 of our Bill of Rights also clearly states that “The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of or interference with the rights of conscience be permitted, nor any preference be given by law to any religious establishment or mode of worship.” In its analysis of this provision, our courts have observed, “the wording of this section of our Bill of Rights is much more in detail respecting religious freedom than is the First Amendment to the federal constitution.”⁷

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 Education 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).

⁴ *Cleveland 1998-2004*; Plucker, et al., *Evaluation of the Cleveland Scholarship and Tutoring Program, Executive Report 1998-2002* (Feb. 2006).

⁵ ACLU Press Release, “Supreme Court Rules Arizona Taxpayers Lack Standing To Challenge Tax Credit System Used To Award Religious-Based Scholarships” (April 4, 2011). Located at <http://www.aclu.org/religion-belief/supreme-court-rules-arizona-taxpayers-lack-standing-challenge-tax-credit-system-used>. (Last accessed January 12, 2012).

⁶ Florida Department of Education. *Florida Tax Credit Scholarship Program* (Nov. 2011). Located at http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2011.pdf. (Last accessed January 9, 2012).

⁷ *State v. Smith*, 155 Kan. 588, 127 P.2d 518 (1942). 155 Kan. at 594.

“Tax credit” vouchers enable discrimination with public funds

- To be accredited by the state, Kansas private schools need neither adopt a nondiscrimination policy nor abide by state anti-discrimination laws⁸. Thus, HB 2767 would not protect students from discrimination based on their race, religion, sex, ethnicity, disability, and/or familial status.
 - Unlike public schools, “scholarship granting organizations” and the private schools receiving the taxpayer-funded vouchers are not subject to the full complement of civil rights laws, which include Title VI of the Civil Rights Act of 1964 (protecting against discrimination based on race, color, or national origin); Title IX; and the Individual with Disabilities Education Act (IDEA).
- Students attending private school would be stripped of their First Amendment, due process, and other statutory and constitutional rights that protect them in public schools.

Vouchers will not improve opportunities for kids from low income and minority families

- Voucher payments often do not cover the entire cost of tuition or other mandatory fees for private schools. Thus, only families with the money to cover the cost of the rest of the tuition, uniforms, transportation, books, and other supplies can use the vouchers.
- In Cleveland, the majority of families who were granted a voucher but did not use it cited the additional costs as the reason they could not use the voucher.
 - A 2003 study concluded: “For many families, the financial burden of paying even the relatively small portion of their children’s private school tuition is more than they can bear.”⁹
 - And students who stopped using vouchers tended to be from families with lower incomes in comparison to continuous voucher users.¹⁰ 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.¹¹
 - Moreover, in Cleveland, a study of the minority status of students during their first year of voucher use suggests a decrease in the percentage of minority students using vouchers since the inception of the program.¹² Former voucher users who returned to public schools were significantly more likely to be of minority status than voucher users.¹³

Taxpayer-funded vouchers are unpopular

- In the last 30 years, every time citizens have been asked to vote on a taxpayer-funded voucher referendum, they have voted them down by large margins.
 - Overall, 22 states and D.C. have rejected ballot initiatives. Most recently, in November 2007, Utah’s voters rejected that state legislature’s attempt to establish a taxpayer-funded voucher scheme, by a margin of 62% to 38%.

In conclusion, we would urge you to oppose HB 2767, which would undermine our public school system and starve our state of needed tax revenue to the detriment of our students.

⁸ U.S. Department of Education, “State Regulation of Private Schools,” located at <http://www2.ed.gov/admins/comm/choice/regprivschl/regprivschl.pdf>. (Last accessed March 5, 2012).

⁹ Metcalf, *Evaluation of the Cleveland Scholarship and Tutoring Program: Exploring Families’ & Educational Choices: Technical Report*, 162 (Dec. 2003).

¹⁰ 2003 Cleveland Technical Report at 53, 146.

¹¹ 2006 Cleveland Technical Report at 126, 42, 47; 2003 Cleveland Technical Report at 43, 44-45.

¹² 2006 Cleveland Technical Report at 37.

¹³ 2003 Cleveland Exploring at 126.