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Before the

TEXAS SENATE
COMMITTEE ON EDUCATION

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Madam Chairwoman, Sen. Patrick and members of the Committee, thank you for the opportunity to submit this testimony. I appreciate the opportunity to share the Anti-Defamation League's ("ADL") perspectives on Senate Interim Charge 6: *Study the impact of school choice programs in other states on students, parents, and teachers. Explore the use of education tax credits and taxpayer savings grants, and examine potential impacts on state funding.*

Organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races and to combat racial, ethnic, and religious prejudice in the United States, ADL is today one of the world's leading organizations fighting hatred, bigotry, discrimination, and anti-Semitism. For almost 100 years, ADL has been an ardent advocate for religious freedom for all Americans - whether in the majority or minority. We believe the best way to safeguard religious freedom is through the separation of church and state embodied in the First Amendment's Establishment Clause. As a leading religious freedom advocate, ADL continues to meet challenges to religious freedom through friend of the court legal briefs, lobbying and legislative activity, and grassroots education.

By way of a brief personal introduction, I am ADL's Jean & Jerry Moore Southwest Civil Rights Counsel. In that capacity, I provide legal assistance and guidance to ADL's Regional Offices in the Southern United States, including Texas. As you may know, ADL maintains three offices in Texas, in Dallas, Houston and Austin. ADL's constituents are the numerous Texans who sit on our boards and who participate in the thousands of hours of community programming we provide in Texas.

Most Americans believe that improving our system of education should be a top priority for government at the local, state and federal levels. Legislators, school boards, education professionals, parent groups and community organizations are attempting to implement innovative ideas to rescue children from failing school systems, particularly in inner-city neighborhoods. Many such groups champion state or local school voucher or "neo-voucher" programs.

The standard school vouchers program proposed in dozens of states, and adopted in some states across the country, would distribute government-funded vouchers (typically valued between \$2,500 and \$7,500) to parents of school-age children, usually in a low income bracket or in troubled inner-city school districts. Parents can then use the vouchers towards the cost of tuition at private schools, including those dedicated to religious indoctrination. Neo-voucher programs essentially work in the same way as traditional school voucher programs. They are government programs providing corporate or other tax credits for donations to state authorized "scholarship organizations." These organizations provide qualifying students scholarships or vouchers to attend private schools, including those dedicated to religious indoctrination.

Superficially, school vouchers or neo-vouchers might seem a relatively benign way to increase the options poor parents have for educating their children. In fact, vouchers and neo-vouchers pose a

serious threat to values that are vital to the health of American democracy. These programs subvert the constitutional principle of separation of church and state, and they threaten to undermine our system of public education.

U. S. Constitutional Issues

Proponents of vouchers and neo-vouchers are asking Americans to do something contrary to the very ideals upon which this country was founded. Thomas Jefferson, one of the architects of religious freedom in America, said, "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves... is sinful and tyrannical." Yet voucher programs would do just that; they would force citizens — Christians, Jews, Muslims and atheists — to have their tax dollars pay for the religious indoctrination of school children at schools with narrow parochial agendas. In many programs, 80 percent of vouchers would be used in schools whose central mission is religious training. In most such schools, religion permeates the classroom, the lunchroom, even the football practice field. Channeling public money or tax income to these institutions flies in the face of the constitutional mandate of separation of church and state. As demonstrated recently in Louisiana, 99% of the schools selected to participate in the state voucher program are sectarian.¹

While the U.S. Supreme Court upheld a Cleveland, Ohio school vouchers program in the *Zelman v. Simmons-Harris* case, vouchers have not been given a green light by the Court beyond the narrow facts of this case. Indeed, Cleveland's voucher program was upheld in a close (5-4) ruling that required a voucher program to (among other things):

- Be a part of a much wider program of multiple educational options, such as magnet schools and after-school tutorial assistance;
- Offer parents a real choice between religious and non-religious education (perhaps even providing incentives for non-religious education); and
- Not only address private schools, but also ensure that benefits go to schools regardless of whether they are public or private, religious or not.

The constitutionality of neo-voucher programs is an open question. However, in *Arizona Christian School Tuition Organization v. Winn*, 131 S. Ct. 1436 (2011), the Court significantly limited the ability of individuals to challenge neo-vouchers programs on church-state grounds.

These decisions, however, do not disturb the bedrock constitutional idea that no government program may be designed to advance religious institutions over non-religious institutions. ADL believes that its stated goals, as well as the general stability of our democracy, are best served through strict separation of church and state and commensurately strict enforcement of the protections of the Free Exercise Clause.

ADL emphatically rejects the notion that the separation principle is inimical to religion, and holds, to the contrary, that a high wall of separation is essential to the continued flourishing of religious practice and beliefs in America, and to the protection of minority religions and their adherents. From day-to-day experience serving its constituents, ADL can testify that the more government and religion become entangled, the more threatening the environment becomes for each. A majority of American Jewish children attend public schools, and the resulting interaction between Jews and non-Jews has helped the Jewish community to thrive in the United States. It would be short-sighted indeed for the Jewish community or any religious minority to undermine our public education system by encouraging

¹ <http://www.louisianaschools.net/ldc/uploads/20180.pdf> last visited August 23, 2012.

government funds to flow to religious organizations. That is a recipe for divisiveness, unseemly competition, and religious isolation. In the familiar words of Justice Black: "A union of government and religion tends to destroy government and degrade religion." *Engel v. Vitale*, 370 U.S. 421, 431 (1962).

Texas Constitutional Issues

Finally, and of critical importance, the Texas Constitution provides for a higher wall of separation between church and state or other requirements pertaining to education. The Texas Constitution expressly prohibits using taxpayer money to fund religious education:

Tex. Const. Art. 1, § 7: "No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes."

Tex. Const. Art. VII, § 5(c): "The available school fund shall be applied annually to the support of the public free schools. Except as provided by this section, the legislature may not enact a law appropriating any part of the permanent school fund or available school fund to any other purpose. The permanent school fund and the available school fund may not be appropriated to or used for the support of any sectarian school. The available school fund shall be distributed to the several counties according to their scholastic population and applied in the manner provided by law."

A critical concern for the Committee should be under a voucher program, there is no way to prevent taxpayer funds from paying for an institution's religious activities and education. Based upon constitutional prohibitions on state funding of sectarian schools in Texas, and if implemented in a similar manner as Louisiana's voucher program—where the majority of participant schools are sectarian, voucher programs will likely have a hard time surviving litigation in Texas courts.

Vouchers and Neo-Vouchers Undermine Public Schools

Implementation of voucher and neo-voucher programs sends a clear message that we are giving up on public education. Undoubtedly, vouchers or neo-vouchers may help some students. But the glory of the American system of public education is that it is for all children, regardless of their religion, their academic talents or their ability to pay a fee. This policy of inclusiveness has made public schools the backbone of American democracy.

Contrary to this policy of inclusiveness, most school voucher or neo-voucher programs allow participating private schools to discriminate in some form or another. For instance, some programs allow schools to reject applicants because of low academic achievement or discipline problems. Other programs permit participating schools to discriminate on the basis of disability, gender, religion, sexual orientation or gender identity. Furthermore, some private schools promote agendas antithetical to the American ideal.

Proponents of vouchers argue that these programs will allow poor students to attend good schools previously only available to the middle or upper classes. The facts tell a different story. A \$5,000 voucher or neo-voucher supplement may make the difference for some families, giving them just enough to cover the tuition at a private school. With some private schools charging over \$12,000 annual tuition, however, such families would still have to pay thousands dollars to make up the difference between the voucher and tuition amounts. But voucher programs offer nothing of value to families who cannot come up with the rest of the money to cover tuition costs.

In many cases, voucher programs will offer students the choice between attending their current public school or attending a less expensive school run by the local church or other house of worship. Not all students benefit from a religious school atmosphere — even when the religion being taught is their own. For these students, voucher or neo-voucher programs offer only one option: to remain in a public school that is likely to deteriorate even further.

As our country becomes increasingly diverse, the public school system stands out as an institution that unifies Americans. Under voucher and neo-voucher programs, our educational system and our country would become even more Balkanized than today. With the help of taxpayers' dollars, private schools would be filled with well-to-do and middle-class students and a handful of the best, most motivated students from inner cities. Meanwhile, public schools would be left with fewer dollars to teach the poorest of the poor and other students who, for one reason or another, were not able to attend or chose not to attend private schools. Such a scenario could seriously impair public education.

Finally, as an empirical matter, reports on the effectiveness of voucher programs have been mixed. Indeed, recent research reflects that "vouchers do not have a strong effect on students' academic achievement."²

Vouchers and Neo-Vouchers Are Not Universally Popular

When offered the opportunity to vote on voucher-like programs, the public has consistently rejected them. Since 2000, voters in three states — Michigan, California, and Utah -- have rejected voucher proposals. In 1998, Colorado voters rejected a proposed constitutional amendment that would have allowed parochial schools to receive public funds through a complicated tuition tax-credit scheme. And over the last 46 years, voters have rejected vouchers and voucher-related proposals 22 out of 23 times. Indeed, according to a recent Gallop Poll, 65 percent of Americans oppose allowing students and parents to choose to attend a private school at public expense.³

A Brief Look at Louisiana's Voucher Program

Although recently implemented, Louisiana's voucher program is already receiving extensive review and criticism:

- In LA, over 100 of the 119 school participant schools have a religious affiliation, the majority of which are Catholic schools.⁴
- At least 20 schools explicitly state on their websites that they teach creationism or creationist theories.⁵ There is little accountability or explanation for how and where this is taught, and the Committee should specifically be concerned regarding the teaching of creationism as science in science class, which undermines science education.
 - These 20 schools have been awarded 1,365 voucher slots and can receive as much as \$11,602,500 in taxpayer money annually.

² Center on Education Policy, *Keeping Informed about School Vouchers A Review of Major Developments and Research*, July 2011, at 3.

³ See *Highlights of the 2011 Phi Delta Kappa/Gallup Poll What Americans said about the public schools* (http://www.pdkintl.org/poll/docs/pdkpoll43_2011.pdf last visited July 16, 2012).

⁴ <http://www.louisianaschools.net/ide/uploads/20180.pdf> last visited August 23, 2012.

⁵Note: these 20 schools are the only ones that explicitly state on their websites that they teach creationism. It may be assumed that many more participant schools also teach it. (<http://www.opednews.com/Diary/Stop-Governor-Jindal-s-Cre-by-Zack-Kopplin-120716-764.html> last visited August 22, 2012).

- Only one Jewish school is currently participating in the program—New Orleans Jewish Day School.
- Only one public school is currently participating in the program—Park Vista Elementary.
- Only one Islamic school, the Islamic School of Greater New Orleans, was participating in the program. However, after coming under fire by state lawmakers who asserted that the voucher program was not meant to fund Islamic teaching, the school withdrew from the program.⁶
- There is little accountability for the schools. The schools are graded on 150 point scale. Schools receiving a grade of 50 or less and that have either 1) 40 or more voucher students, or 2) ten or more voucher students in one grade cannot accept additional voucher students. However, these schools can retain their current voucher students.
 - Participating schools should not be able to discriminate in student admissions, or terms or conditions on the Title VI criteria or religion, gender, disability, sexual orientation, gender identity, discipline record, or academic achievement.
 - Any school or entity which espouses racist, anti-Semitic or other extremist views should not be able to participate in Louisiana's voucher program.

Conclusion

ADL believes school voucher and neo-voucher programs undermine two great American traditions: universal public education and the separation of church and state.

Instead of embracing vouchers or neo-vouchers, communities across the country should dedicate themselves to finding solutions that will be available to every American schoolchild and that take into account the important legacy of the First Amendment.

⁶ <http://tfinsider.org/2012/06/13/louisiana-loves-vouchers-but-not-the-muslims/> last visited August 22, 2012.

