

# **The Coalition for Public Schools**

*Private School Vouchers: An Experiment Tax Payers Can't Afford*

3000 S. IH 35, Suite 175 Austin, TX 78704

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**Coalition for Public Schools Testimony to the Senate Education Committee Regarding  
Interim Charge #6,  
School Choice Programs**

August 24, 2012

Louis Malfaro, Co-Chairman, Coalition for Public Schools

Good morning Chairman Patrick and members of the committee, my name is Louis Malfaro and I am Co-Chairman, along with the Reverend Charles Foster Johnson, of the Coalition for Public Schools. Founded in 1995, the Coalition for Public Schools includes a broad array of religious, business, parent, child advocacy, and education organizations representing millions of Texans statewide. Our diverse membership includes the Texas Business and Education Coalition, the Texas Parent Teacher Association, the Christian Life Commission, Save Texas Schools, the Texas Association of School Boards, the Equity Center, the Texas Freedom Network, the Texas School Alliance and a host of organizations that represent public school teachers, administrators, and other professional educators.

The Coalition for Public Schools opposes the expenditure of public funds to support private and religious schools through mechanisms such as tuition vouchers and tax credits. The Coalition does support school choice options within Texas public schools, including approaches such as magnet schools, open-enrollment campuses, and public school transfers. We believe vouchers are a political distraction from the state's most important priority and constitutional obligation: providing high quality neighborhood public schools that meet the educational needs of every Texas child. We also believe that vouchers eliminate public accountability by channeling tax dollars into private schools that do not face state approved academic standards, do not make budgets public, do not adhere to open meetings and records laws, do not report on student achievement, and do not face public accountability requirements contained in state and federal laws, including special education laws that protect and enfranchise children with special needs.

The Texas public has consistently favored improving and strengthening existing public schools rather than seeking private alternatives to our current system of public schools. This broad consensus was reflected in a 2011 Phi Delta Kappa Gallup Poll in which vouchers received their lowest approval rating in 10 years. Two-thirds of respondents said they opposed sending students to a private school at public expense. In the last decade, opposition to private school vouchers has grown among the public.

Skepticism about vouchers is widespread and has persisted for good reason. There exists a sizeable body of evidence that voucher programs do not live up to the claims made by their supporters. In study after study, voucher programs in Milwaukee, Cleveland, Florida and Washington D.C. have failed to live up to promises made regarding improvement in student

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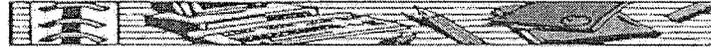
academic achievement, cost savings to the public, and beneficial effects on the public school system generally. The Coalition for Public Schools and several of our member organizations are providing to members of this committee detailed research summaries, including research by present and former voucher advocates, which illustrate the lackluster record of voucher programs to improve educational outcomes for students and which highlight the problems with cost and accountability that are endemic to private school voucher programs.

Because a research-based examination of voucher programs and their track record leads the public and policy makers away from choosing to fund private vouchers, proponents are shifting back to ideological arguments about market forces and economic theories that make unproven claims about efficiency and attempt to minimize the importance of student achievement. We happen to believe that improving student achievement, particularly among the growing number of disadvantaged students in Texas public schools, matters a great deal. We strongly oppose the creation of a new, expensive and inefficient private school voucher program aimed at the few rather than focusing on high-quality public schools for every child in the state.

It is the hope and expectation of the many member organizations of the Coalition for Public Schools- parents, clergy, business people and educators - that the Texas Senate will take the lead in the next legislative session in addressing the pressing needs of the public schools of our state, many of which were caused by the drastic budget cuts of the last legislature, rather than frittering away time and opportunity engaged in an ideological donnybrook focused on private school vouchers.

The state's responsibility, as enumerated in the state constitution, to provide for the education of the burgeoning school population of Texas is an awesome one. In the last ten years, our state gained roughly 850,000 new students – the equivalent of all the school children of Maryland! More than half of all the growth in school enrollment in the nation occurred in Texas in that same decade. Demographers predict Texas will grow in a similar fashion during the decade to come. It is not hyperbole to say that the future of our state, the economic well-being of her people, the democratic fabric of her communities, and the life chances of the largest cohort of Texans in history are all riding upon our collective ability to provide every child a high-quality education. It would be a grave mistake to take our focus from this broad agenda by diverting scarce resources to private school vouchers.

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## The Case Against Private School Vouchers

More than 50 years have passed since Milton Friedman first proposed private school vouchers as a public policy. During that time, proponents have spent hundreds of millions of dollars attempting to convince a skeptical public and lawmakers of the concept's efficacy, and yet, five decades later, vouchers still remain controversial, unproven and unpopular. Opposition to vouchers emanates from constitutional and democratic concerns, as well as from practical and policy-related flaws, including many of those listed below.

- **Either you're for accountability or you're not** —Vouchers eliminate public accountability. Vouchers channel tax dollars into private schools that do not face state-approved academic standards, do not make budgets public, do not adhere to open meetings and records laws, do not publicly report on student achievement, and do not face the public accountability requirements contained in state and federal laws, including special education laws. They also do not have to accept all students.
- **Vouchers divert critical dollars and commitment from public schools**—Vouchers divert attention, commitment and dollars from public schools to pay private school tuition for a few students, including many who already attend private school. A dollar spent on a tuition voucher is a dollar drained from public education. Even proposals that purportedly create a “new” funding stream to pay for vouchers miss the mark: if new public money is available for education it should be invested in strengthening the schools that educate the vast majority of our students and are accountable to all taxpayers – our *public* schools.
- **Vouchers are no way to raise student achievement for all**—Despite built-in screening advantages for private schools, a GAO report to Congress on the Cleveland and Milwaukee voucher programs noted that the most credible research found “*little or no difference in voucher and public school students' performance.*” The federal evaluation of the Washington, D.C. voucher experiment discovered the same two years running.
- **Vouchers waste taxpayer money**—Vouchers force taxpayers to support two school systems: one public and one private, the latter of which is not accountable to all the taxpayers supporting it. Existing private school students usually are eligible to receive vouchers, creating a new cost to taxpayers.

- **Vouchers leave behind many students, including those with the greatest needs—** Vouchers leave behind many disadvantaged students because private schools may not accept them or do not offer the special services they need.
- **Vouchers give choices to private schools, not parents—** Private schools decide if *they* want to accept vouchers, and then how many students *they* want to admit. And even if a voucher student does gain acceptance into a private school, the school can later reject him or her for numerous reasons.
- **Vouchers remain publicly unpopular—** Utah voters, in 2007, overwhelmingly voted to repeal a state voucher program by a margin of 62 percent to 38 percent. This marked the 11<sup>th</sup> time in 11 referenda over the past 30 years that *voters* have decisively rejected specific voucher or tuition tax credit proposals.

### The Voters' Choice:

#### A History of State Referenda on Vouchers and Tuition Tax Credits

State <i>(including Washington, D.C.)</i>	Year	Proposal	Result
Maryland	1972	Vouchers	Rejected 55% to 45%
Michigan	1978	Vouchers	Rejected 75% to 26%
Washington, D.C.	1981	Tuition tax credits	Rejected 89% to 11%
Oregon	1990	Tuition tax credits	Rejected 67% to 33%
Colorado	1992	Vouchers	Rejected 67% to 33%
California	1993	Vouchers	Rejected 70% to 30%
Washington	1996	Vouchers	Rejected 64% to 36%
Colorado	1998	Tuition tax credits	Rejected 60% to 40%
Michigan	2000	Vouchers	Rejected 69% to 31%
California	2000	Vouchers	Rejected 71% to 29%
Utah*	2007	Vouchers	Rejected 68% to 32%

\*Voters in Utah repealed a program already created by the state Legislature, as opposed to voting on a proposed program.

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American Jewish Committee

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League of Women Voters of Texas

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Parents for Public Schools of Houston

Pastors for Peace

People for the American Way Foundation

Texas Advocacy, Inc.

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## The Case Against Special Education Vouchers

**Either You're For Accountability or You're Not:** Vouchers would send taxpayer dollars to private schools that are *not accountable to the public* for producing results.

**Vouchers Would Be a Step Backwards in Serving Students with Disabilities:** Over the past thirty years, federal and state laws have evolved to ensure that students with disabilities receive a free appropriate public education; private schools are not required to provide the legal procedures mandated by federal and state laws to protect the rights and interests of students with disabilities.

**Vouchers Promote Segregation:** State and federal laws require public schools to educate students with disabilities in regular classes to the greatest extent possible in order to promote their education and foster social integration and tolerance; vouchers allow parents to segregate students with disabilities in private programs that cater only to students with special educational needs.

**Vouchers Provide Choice for Schools Not Students:** Vouchers increase choice for private schools, not students. Private schools have a profit motive to admit students who have the fewest educational challenges. Therefore, most private schools will not admit students with pervasive disabilities.

**Vouchers Provide Choice for Some, Not All:** Vouchers would disproportionately benefit students with disabilities who live in urban areas; students in rural areas would not have equal access to private schools that serve students with disabilities, as few such private schools exist in those areas.

**Vouchers would disadvantage low-income and middle income students.** School districts are required by federal law to provide transportation to students with disabilities; private schools are not. Vouchers will cover the cost of tuition and transportation to a private school. Consequently, wealthy families will benefit, but few low- or middle-income families will be able to take advantage of vouchers. During the 2007 school year, the majority (56%) of students in Texas public schools were economically disadvantaged.

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## Texas Constitutional Prohibitions Against Private School Vouchers

In 2002, the U.S. Supreme Court ruled in *Zelman v. Simmons-Harris* that the publicly-funded voucher program in the Cleveland school district does not violate the "separation of church and state" provision in the U.S. Constitution. However, since that case, several courts have ruled voucher programs unconstitutional on state constitutional grounds (see the "Key Court Decisions" fact sheet). Below are the provisions in the Texas Constitution that collectively prohibit the appropriation of state funds for the support of private and/or religious entities.

### THE TEXAS CONSTITUTION

#### ARTICLE 1. BILL OF RIGHTS

Sec. 7. APPROPRIATIONS FOR SECTARIAN PURPOSES. 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.

#### ARTICLE 7. EDUCATION

Sec. 1. SUPPORT AND MAINTENANCE OF SYSTEM OF PUBLIC FREE SCHOOLS. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Sec. 5 PERMANENT SCHOOL FUND; AVAILABLE SCHOOL FUND; USE OF FUNDS; DISTRIBUTION OF AVAILABLE SCHOOL FUND.

(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.

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## Key Court Decisions on Vouchers and Tuition Tax Credits

The first education voucher program was implemented in Milwaukee in 1990. Since then, four states, including Colorado, Florida, Ohio, and Wisconsin, and the District of Columbia have adopted publicly-funded voucher programs. In 2002, the U.S. Supreme Court ruled that the publicly-funded voucher program in the Cleveland school district does not violate the "separation of church and state" provision in the U.S. Constitution. However, since then, several courts have ruled voucher programs unconstitutional on state constitutional grounds.

Below is a summary of the litigation on voucher and tuition tax credit programs to date:

***Ford v. Browning***, No. 08-1529, Fla. Supreme Ct. (2008):

Florida Supreme Court struck down three ballot initiatives, including two that would amend the state constitution and permit private and religious school vouchers. See *Holmes v. Bush* case below.

***Joyce v. State of Maine***, No. 08-24 (Me. 2008)

The Maine Supreme Judicial Court ruled a state statutory ban on using state funds for tuition payments to sectarian schools also bars a municipality from making such payments using general funds.

***Cain v. Horne***, No. 07-0143 (Ariz. App. Div. Two, 2008)

An Arizona appeals court has struck down two state voucher programs, finding that although they do not violate the state constitution's ban on funding religion, they do violate the constitution's ban on taxpayer funding of private schools.

***Anderson v. Town of Durham***, No. 04-591 (Me. 2006)

The Maine Supreme Judicial Court has ruled that the state's tuition payment statute, which allows school districts that do not operate a public high school to provide public funds for students to attend private, nonsectarian high schools, does not violate the U.S. Constitution's First and Fourteenth Amendments.

***Holmes v. Bush***, No. 04-2323 (Fla. 2006)

In a 5-2 decision, the Florida Supreme Court ruled that the state's Opportunity Scholarship Program (OSP), a private school voucher program, violates the Florida constitution's requirement that the state provides "a uniform, efficient, safe, secure, and high quality system of free public schools."

***Owens v. Colo. Cong. Of Parents***, No. 03SA364 (Colo. 2004)

The Colorado Supreme Court ruled in a 4-3 decision that the state's voucher program violated the state constitution's "local control of public instruction" requirement. The program, enacted by the legislature, was never implemented.

***Zelman v. Simmons-Harris***, 1225 S. Ct. 2460 (2002)

U.S. Supreme Court ruled in a 5-4 decision on June 27, 2002 that Ohio's Cleveland voucher program is constitutional under the U.S. Constitution, even though state funds are provided directly to religious schools.

***Winn v. Killian***, 207 F.3d 1011 (9<sup>th</sup> Cir. 2002)

U.S. Court of Appeals for the Ninth Circuit ruled that taxpayers could maintain a suit challenging the constitutionality of Arizona's tuition tax credit law on Establishment Clause grounds. The Ninth Circuit returned the case to federal district court for further consideration.

***Kotterman v. Killian***, 972 P.2d 606 (Ariz. 1999)

Arizona Supreme Court upheld the state's tuition tax credit that provides tax relief to parents with children in religious schools. The U.S. Supreme Court denied certiorari in October 1999, 528 U.S. 921 (1999).

***Bagley v. Raymond School Department***, 728 A.2d 127 (Me.1999)

The Maine Supreme Court upheld the state's educational tuition program that prohibits tuition payments to religious schools. U.S. Supreme Court denied certiorari in October 1999, 528 U.S. 947 (1999).

***Strout v. Albanese***, 178 F.3d 57 (1<sup>st</sup> Cir. 1999)

U.S. Court of Appeals for the First Circuit upheld Maine's educational tuition program's religious school prohibition on Establishment Clause grounds. U.S. Supreme Court denied certiorari in October 1999, 528 U.S. 931 (1999).

***Jackson v. Benson***, 578 N.W.2d 602 (1998)

Wisconsin Supreme Court held that the state's Milwaukee Parental Choice Program (voucher program) was constitutional even though state voucher funds were being paid to private religious schools. The U.S. Supreme Court denied certiorari in November 1998, 525 U.S. 997 (1998).