

The logo for the National Coalition for Public Education (NCPE) features the letters "NCPE" in a bold, blue, sans-serif font. The letters are contained within a white rectangular box with a purple border. The box is slightly offset to the left, with the text appearing to sit on a white surface that extends to the right.

NCPE

**National Coalition for
PUBLIC EDUCATION**

A black and white photograph of a classroom filled with diverse students of various ages sitting at their desks. The students are engaged in their work, some looking towards the camera and others looking down at their papers. The classroom has bookshelves in the background and a whiteboard on the wall. The image is partially obscured by a large purple and blue geometric overlay in the bottom right corner.

Opposing Private School Vouchers: A Toolkit for Legislators and Advocates

Understanding the Supreme Court's Decision in
Espinoza v. Montana Department of Revenue

January 2021

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Who We Are

Founded in 1978, the [National Coalition for Public Education](#) (NCPE) comprises more than 50 education, civic, civil rights, and religious organizations that support the use of public funds for public schools. NCPE opposes funneling taxpayer money to private and religious schools through private school voucher schemes.

Public schools are a cornerstone of our communities and bring together all students regardless of economic status, disability, religion, race, ethnicity, English fluency, sexual orientation, gender identity, or any other personal characteristic. Private school vouchers, however, divert desperately needed public resources away from the public school system to fund the education of a few students at private schools, without improving outcomes for either students who receive vouchers or those who remain in public schools.

For more information on our membership, see our most recent [sign-on letters](#).

Why We Made This Toolkit

This toolkit is designed as a resource to help legislators and pro-public school advocates oppose attempts to create or expand existing private school voucher programs, taking into account the legal landscape after the Supreme Court's June 2020 decision, *Espinoza v. Montana Department of Revenue*. In that case the Court held that if a state creates a private school voucher program, it must allow private religious schools to participate along with private secular schools. The Court concluded that the state of Montana could not refuse to fund religious schools in its voucher program despite the "no-aid clause" in the state constitution, which protects religious freedom to a greater extent than the First Amendment of the U.S. Constitution by barring state funding of schools controlled by religious organizations. The *Espinoza* decision has the potential to impact states across the country by undermining similar state constitutional provisions and emboldening state legislatures to create or expand private school voucher programs.

Types of Private School Vouchers

Private school vouchers can take many forms, but they all are designed to fund private schools with public dollars. The most common forms of private school voucher schemes are:

- **Vouchers:** Sometimes called "scholarships," vouchers are taxpayer dollars used to pay for private school tuition. The government writes a check for tuition at a private school.
- **Education savings accounts (ESAs):** ESAs are vouchers by another name. Rather than giving the taxpayer funds directly to the private school like traditional vouchers, the government deposits taxpayer funds into an account that parents can use to pay for tuition at private schools, as well as for various other private education expenses, such as tutoring, transportation, and supplies.

- **Tuition tax credits (TTCs) / tax credit vouchers:** Under this scheme, individuals or corporations receive a tax credit in exchange for giving money to an intermediary organization, often called a “scholarship granting organization” or “SGO.” Then, the SGO writes a check for tuition at a private school. In short, rather than collecting taxes and then giving a portion to a private school, the government forgoes those tax dollars so long as they go to a private school. This scheme adds an extra layer of bureaucracy to the voucher program, making it ripe for waste, fraud, and abuse.

Section One:

The Espinoza v. Montana Department of Revenue Decision

Background

In 2015, the Montana legislature enacted a tax credit voucher scheme: individuals and businesses received tax credits for donating to scholarship organizations, which, in turn, gave vouchers to certain students to attend private schools.

Montana’s state constitution contains a no-aid clause, which prohibits the use of tax dollars to support religious education. This provision protects religious freedom and ensures taxpayer dollars fund public—not private religious—education. To bring the tax credit voucher program into compliance with this constitutional provision, the Montana Department of Revenue adopted a regulation to limit the voucher program to secular private schools.

Parents of students attending religious private schools challenged the regulation in state court, claiming a right to use the vouchers to attend those schools.

In 2018, the Montana Supreme Court struck down the entire program. The Court explained that the regulation could not save the program because the statute, on its face, permitted vouchers for religious schools, which violated the state no-aid clause. The case was appealed to the U.S. Supreme Court.

The U.S. Supreme Court Decision

In 2020, the U.S. Supreme Court reversed the Montana Supreme Court and held that, in accordance with the Free Exercise Clause of the First Amendment, if a state creates a private school voucher program, it must fund private religious schools along with private secular schools. The Court said that states cannot exclude schools from a voucher program based on their religious status.

This decision is limited to voucher programs in which students and parents make an independent choice about where to use their school voucher. It does not require states to provide funding directly to religious schools.

This decision also leaves the door open for states to bar the use of public funds for religious activities or to refuse to provide funding to religious schools that discriminate.

At least one court, however has already ruled that not all funding of secular schools requires the funding of religious schools. In *Carson v. Makin*, the U.S. Court of Appeals for the First Circuit, interpreting *Espinoza*, recently held that Maine's program that gives vouchers to students who live in rural areas without access to a public school does not have to include private religious schools in the program.

Finally, nothing in the *Espinoza* decision authorizes funding for public charter schools to provide a religious education.¹

The Potential Impact on State Voucher Programs

The Supreme Court's decision in *Espinoza* could affect states beyond Montana by undermining certain state constitutional provisions and emboldening pro-voucher advocates.

Espinoza undermines state no-aid clauses, potentially opening the door to state voucher programs

In the 2002 case, *Zelman v. Simmons-Harris*, the Supreme Court held that private school voucher programs that include religious schools do not violate the First Amendment's Establishment Clause. In that case, Ohio had enacted a voucher program to pay tuition for students in Cleveland to attend private and religious schools. Public school advocates challenged the program under the U.S. Constitution. In a 5-4 ruling, the Supreme Court upheld the program. Rather than acknowledge that the voucher program provided public funds to private schools, the Court claimed that providing funds to parents, who then made an independent private choice to use the money at religious schools, did not violate the First Amendment.

After the *Zelman* decision, challenging state private school voucher programs has often hinged on whether the state has a no-aid clause in its constitution to prevent public funding of religious schools.

The *Espinoza* decision requiring private school voucher programs to include religious schools undercuts state no-aid clauses and the ability of a state to provide church-state separation protections. The decision may affect how voucher programs can be challenged in the future.

¹ Although some have claimed that the *Espinoza* decision opens the door to funding religious charter schools, nothing in the decision requires public funding for religious education. The Department of Justice did recently issue an OLC opinion finding that it is unconstitutional to exclude religiously affiliated charter schools from the federally funded "Expanding Opportunity Through Quality Charter Schools Program," but the opinion draws a clear line between funding religious organizations based on their status versus funding for religious activities. In fact, the OLC opinion states that all charter schools must be nonsectarian in their "programs, admissions policies, employment practices, and all other operations." [Exclusion of Religiously Affiliated Schools from Charter-School Grant Program](#), 44 Op. Off. Legal Counsel ___, 1 (2020).

For a more detailed discussion of no-aid clauses and to check whether your state has a constitutional no-aid clause, see [Section Two](#).

Voucher proponents are already using *Espinoza* to push for new state voucher programs

This decision has emboldened pro-voucher advocates to push for new and expanded private school voucher programs across the country. In fact, shortly after *Espinoza* was decided, then-Secretary of Education DeVos urged states to pursue “all education options,” including private school vouchers: “I’m calling on all states to now seize the extraordinary opportunity to expand all education options at all schools to every single student in America.”²

The day the Court decided the case, Tim Keller, a lawyer with the Institute for Justice, which represented the plaintiffs in the case, said, “Policymakers nationwide now have the freedom to enact school choice programs...” He also said that as a result of the Court’s decision, he expected “prompt action” from officials in Missouri, Idaho, South Dakota and Texas to create new voucher programs.³

Advocates will be most emboldened in states that have not implemented vouchers because of their constitution’s no-aid clause. We expect to see legislators cite *Espinoza* to claim voucher programs are now constitutional, which will lead to new legal challenges. It is also likely that states that already have vouchers will push for new voucher programs using funding mechanisms that have been constitutionally prohibited or push to include religious schools in programs that were previously limited to secular private schools.

Public school advocates can still stop voucher bills, even after the *Espinoza* decision

It’s important to note that *Espinoza* doesn’t require states to create new voucher programs or maintain existing ones. Public school advocates can still oppose new programs and program expansions, or work to roll back existing programs, based on the numerous policy reasons to [oppose private school vouchers](#). There are also many ways to oppose vouchers in court that are not foreclosed by the *Espinoza* decision.

For example, there have been successful grassroots campaigns to defeat vouchers in states across the country.

- In 2018, a grassroots volunteer organization in Arizona called Save Our Schools Arizona mobilized to defeat the expansion of the state’s ESA voucher program, placing a measure on the ballot that allowed voters to overturn the expansion by a vote of 65 to 35%.
- In 2019, educators in West Virginia succeeded in defeating private school voucher legislation by going on strike.

² U.S. Dep’t of Educ., [Secretary DeVos on *Espinoza*: Religious Discrimination is Dead](#) (June 30, 2020).

³ Adam Liptak, [Supreme Court Gives Religious Schools More Access to State Aid](#), *N.Y. Times* (June 30, 2020).

- In Texas, coalitions of education advocates and religious groups have successfully prevented the state legislature from passing any school voucher legislation.

Section Two: No-Aid Clauses in State Constitutions

What Are No-Aid Clauses?

Forty-seven states have no-aid clauses in their constitutions. No-aid clauses, many of which were motivated by a desire to keep public funds in public schools, protect the fundamental religious freedom principle that no citizens should be forced to fund someone else's religious activities or religious instruction. These clauses vary from state to state—some are broad, barring taxpayer funds from being used to support any religious institutions and activities, while some are more limited, banning taxpayer support of religious education.

No-aid clauses protect both religion and government by preventing one from controlling the other, allowing religious diversity in America to flourish. They guarantee that each person can decide which religion to support—if any—without government coercion or interference. And they uphold the autonomy of religious institutions by ensuring houses of worship do not become dependent on government money and therefore subjected to government oversight.

Although some state courts have held that their no-aid clauses provide the same protections as the U.S. Constitution's Establishment Clause, many offer even stronger church-state protections. Thus, some state constitutions bar taxpayer funding for religious programs or activities even when such funding would be permitted under the U.S. Constitution. For example, no-aid clauses have been used to strike down private school voucher programs that fund religious schools, including in Arizona, Colorado, Florida, Massachusetts, New Hampshire, South Carolina, Virginia, and Vermont.

The Supreme Court's decision in *Espinoza v. Montana Department of Revenue*, however, has changed how no-aid clauses will be interpreted in the future. The Court held that, in accordance with the Free Exercise Clause of the First Amendment, states cannot exclude private religious schools from a voucher program based on their religious status. The Court made clear that the case does not preclude states from restricting public funds from being used for religious activities such as religious instruction at those schools. The Court also left as an open question whether states could prevent public funding of private schools that discriminate.

History of No-Aid Clauses

Our nation was founded on the principle that governmental aid for religion harms both the taxpayer and religion: it violates the religious conscience of the taxpayers by coercing them to fund religion and endangers religion by entangling it with the state. This principle motivated 47

states to adopt constitutional provisions that explicitly prohibit the government from funding religious activities or religious education.

Some state constitutional no-aid clauses predate the U.S. Constitution. The 1776 New Jersey Constitution, for example, says that no person shall “ever be obliged to pay Tithes, Taxes, or any other Rates, for the Purpose of building or repairing any Church or Churches, Place or Places of Worship, or for the Maintenance of any Minister or Ministry...” Other states added no-aid language to their constitutions throughout the 1800s, and many states reaffirmed their no-aid clauses in the 20th century during state constitutional conventions.

Some wrongly claim that all state no-aid clauses are linked to U.S. Rep. James G. Blaine, who attempted to amend the U.S. Constitution to make it more explicit that government money could not fund religious entities, including schools. Some claim that the Blaine Amendment was rooted in anti-Catholic bias, but the history isn’t that simple. And some incorrectly try to connect that animus to all state no-aid clauses. This historical argument is simply wrong. As explained above, the first state no-aid clauses predate the federal Blaine Amendment by a century, and many other states adopted their no-aid clauses in the early- and mid-1800s, before Blaine’s attempt to amend the federal Constitution. Although some saw Blaine’s efforts as a way to limit the political influence of the Catholic Church, others recognized it as an attempt to ensure that the public schools would be secular and therefore open to all.⁴ No-aid clauses are an important part of America’s history of religious freedom.

States with No-Aid Clauses

No-aid clauses vary by state. Some ban compelled support of—or taxpayer funds being used to support—any religious institution or ministry. Others explicitly ban taxpayer funding being used to support either any private school or specifically religious education. When in dispute, state courts interpret what their state constitutions mean. In some states, the courts have interpreted their no-aid clauses strictly to prohibit voucher programs. Other states have interpreted their no-aid clauses to allow these programs. And in some states, the courts have not addressed whether voucher programs violate the state’s no-aid clause. Although the *Espinoza* decision will likely change the way some state courts interpret their constitutions, it does not invalidate state no-aid clauses.

The following states have one or more no-aid clauses:

State	Constitutional Provision	State	Constitutional Provision
Alabama	Ala. Const. Art. I, § 3; Art. XIV, § 263	Nebraska	Neb. Const. Art. I, § 4; Art. VII, § 11

⁴ Steven K. Green, [Blaming Blaine: Understanding the Blaine Amendment and the No-Funding Principle](#), 2 *First Amend. L. Rev.* 107, 134-37 (2003).

Alaska	Alaska Const. Art. VII, § 1	Nevada	Nev. Const. Art. XI, § 10
Arizona	Ariz. Const. Art. II, § 12; Art. IX, § 10	New Hampshire	N.H. Const. pt. 1, Art. 6; pt. 2, Art. 83
State	Constitutional Provision	State	Constitutional Provision
Arkansas	Ark. Const. Art. II, § 24	New Jersey	N.J. Const. Art. I, § 3
California	Cal. Const. Art. IX, § 8; Art. XVI, § 5	New Mexico	N.M. Const. Art. II, §11; Art. XII, § 3
Colorado	Colo. Const. Art. II, § 4; Art. IX, § 7	New York	N.Y. Const. Art. XI, § 3
Connecticut	Conn. Const. Art. Seventh	North Dakota	N.D. Const. Art. VIII, § 5
Delaware	Del. Const. Art. I, § 1; Art. X, § 3	Ohio	Ohio Const. Art. I, § 7; Art. VI, § 2
Florida	Fla. Const. Art. I, § 3	Oklahoma	Okla. Const. Art. II, § 5; Art. XI, § 5
Georgia	Ga. Const. Art. I, § 2, para. VII	Oregon	Ore. Const. Art. I, § 5
Hawaii	Haw. Const. Art. X, § 1	Pennsylvania	Pa. Const. Art. I, § 3, Art. III, §§ 15, 29
Idaho	Idaho Const. Art. I, § 4; Art. IX, § 5	Rhode Island	R.I. Const. Art. I, § 3
Illinois	Ill. Const. Art. I, § 3; Art. X, § 3	South Carolina	S.C. Const. Art. XI, § 4
Indiana	Ind. Const. Art. 1, §§ 4, 6	South Dakota	S.D. Const. Art. VI, § 3; Art. VIII, § 16
Iowa	Iowa Const. Art. 1, § 3	Tennessee	Tenn. Const. Art. I, § 3
Kansas	Kan. Const. Art. 1, § 7; Art. VI, § 6c	Texas	Tex. Const. Art. I, §§ 6, 7; Art. VII, § 5
Kentucky	Ky. Const. §§ 5, 189	Utah	Utah Const. Art. I, § 4, Art. X, § 9
Maryland	Md. Const. Decl. of Rights Art. 36	Vermont	Vt. Const. ch. I, Art. 3
Massachusetts	Mass. Const. Amdt. Art. XVIII, §2	Virginia	Va. Const. Art. I, § 16, Art. IV, § 16; Art. VIII, § 10

Michigan	Mich. Const. Art. I, § 4; Art. VIII, § 2	Washington	Wash. Const. Art. I, § 11
Minnesota	Minn. Const. Art. I, § 16; Art. XIII, § 2	West Virginia	W. Va. Const. Art. III, § 15
State	Constitutional Provision	State	Constitutional Provision
Mississippi	Miss. Const. Art. 8, § 208	Wisconsin	Wis. Const. Art. I, § 18
Missouri	Mo. Const. Art. I, §§ 6, 7; Art. IX, § 8	Wyoming	Wyo. Const. Art. I, § 19; Art. III, § 36; Art. VII, § 8
Montana	Mont. Const. Art. X, § 6		

In addition to no-aid clauses, all state constitutions have provisions requiring a system of public education that may be useful in challenging the constitutionality of a voucher program. These clauses vary widely, often including provisions that require the state to adequately fund public schools or to provide a uniform system of public schools.

Section Three: Why You Should Oppose Private School Vouchers

The Supreme Court’s decision in *Espinoza* may have changed the legal landscape for voucher programs, but the policy reasons to oppose private school vouchers remain the same. Some of the top reasons include:

1. [Private school vouchers undermine the state’s commitment to public education.](#)
2. [Private school vouchers do not improve academic achievement.](#)
3. [Private school vouchers do not provide the same accountability to taxpayers as public schools.](#)
4. [Funding for private schools violates principles of religious freedom.](#)
5. [Private school vouchers fund discrimination with taxpayer dollars.](#)
6. [Private school vouchers can increase school segregation.](#)
7. [Private school vouchers are particularly harmful for students in need of greater resources.](#)
8. [Private school voucher programs do not save taxpayer money.](#)

1. Private school vouchers undermine the state’s commitment to public education.

Open and nondiscriminatory in their acceptance of all students, American public schools are a unifying factor among diverse communities in our society. Vouchers undermine this vital

function, however, by diverting desperately needed resources away from the public school system that serves the vast majority of students to fund the education of a few, select students at private schools. The government would better serve our children by using taxpayer funds to make our public schools stronger.

2. Private school vouchers do not improve academic achievement.

Repeated studies of voucher programs across the country show that vouchers result in worse test scores for students. Voucher programs have proven ineffective in improving academic opportunities for students. Recent studies of the Louisiana,⁵ Indiana,⁶ and Ohio⁷ voucher programs have demonstrated that students who used vouchers experience worse academic outcomes than their peers. In addition, studies of long-standing voucher programs in Milwaukee,⁸ Cleveland,⁹ and the District of Columbia¹⁰ found that students who received vouchers showed no improvement in reading or math over those not in the program.

3. Private school vouchers do not provide the same accountability to taxpayers as public schools.

Most voucher programs lack accountability measures, and many also lack proper oversight mechanisms to ensure that private schools and program administrators meet even the minimal standards that do exist. Many voucher schools are permitted to take taxpayer money without implementing any requirements for teacher qualifications, testing, or achievement. Some states do not even require private school teachers to hold bachelor's degrees. In addition, many states do not require accreditation for private schools, meaning that taxpayer-funded vouchers are regularly used to pay for tuition at unaccredited schools.

There is a long list of taxpayer-funded state voucher programs where funds have been misspent. For example, in Florida, voucher schools took millions in public funds for kids not even attending those schools;¹¹ in Wisconsin, the taxpayer-funded voucher program paid \$139 million to schools that failed to meet the state's requirements for operation;¹² and in Arizona,

⁵ Jonathan N. Mills & Patrick J. Wolf, Univ. of Ark., [The Effects of the Louisiana Scholarship Program on Student Achievement After Four Years](#) (Apr. 2019).

⁶ Megan Austin et. al., Russell Sage Foundation J. of the Social Sciences, [Voucher Pathways and Student Achievement in Indiana's Choice Scholarship Program](#) (2019).

⁷ David Figlio & Krzysztof Karbownik, Fordham Institute, [Evaluation of Ohio's EdChoice Scholarship Program: Selection, Competition, and Performance Effects](#) (July 2016).

⁸ E.g., Patrick J. Wolf, School Choice Demonstration Project, Univ. of Ark., [The Comprehensive Longitudinal Evaluation of the Milwaukee Parental Choice Program: Summary of Final Reports](#) (Apr. 2010).

⁹ E.g., Jonathan Plucker et al., Ctr. for Evaluation & Educ. Policy, Univ. of Ind., [Evaluation of the Cleveland Scholarship and Tutoring Program, Technical Report 1998-2004](#), 166 (Feb. 2006).

¹⁰ E.g., U.S. Dep't of Educ., [Evaluation of the DC Opportunity Scholarship Program: Impacts Three Years After Students Applied](#) (May 2019); U.S. Dep't of Educ., [Evaluation of the DC Opportunity Scholarship Program: Impacts Two Years After Students Applied](#) (June 2018); U.S. Dep't of Educ., [Evaluation of the DC Opportunity Scholarship Program: Impacts After One Year](#) (June 2017).

¹¹ Gus Garcia-Roberts, [McKay Scholarship Program Sparks a Cottage Industry of Fraud and Chaos](#), *Miami New Times* (June 23, 2011).

¹² Molly Beck, [State Paid \\$139 Million to Schools Terminated from Voucher Program Since 2004](#), *Wisc. State J.* (Oct. 12, 2014).

the state's Auditor General found that parents misused over \$700,000 in ESA funds on items such as beauty supplies and sports apparel with no way for the state to recoup the money.¹³

4. Funding for private schools violates principles of religious freedom.

Private school vouchers violate the fundamental principle of religious freedom because they pay for religious education with taxpayer funds. They also threaten the autonomy of religious schools by opening them up to government audits, control, and interference.

Private school vouchers predominantly fund religious schools. Because private religious schools are unable or unwilling to separate the religious components of the education they offer from their academic programs, it is impossible to prevent a publicly funded voucher from paying for religious activities and education. This conflicts with one of the most dearly held principles of religious freedom—the government should not compel any citizen to fund or support a religion with which they disagree, or even a religion with which they do agree. Parents certainly may choose a religious education for their children, but they may not insist that the taxpayers pay for it.

Furthermore, in accepting public funds, religious schools run the risk of being mired in political debates, battles over regulation and accountability, and disruptive inquiries into their school standards in admission, curriculum, and hiring practices. This kind of oversight that must accompany public funds would not be beneficial for either religious institutions or the government.

5. Private school vouchers fund discrimination with taxpayer dollars.

Despite receiving government funds through vouchers, private voucher schools do not provide the same rights and protections to students as public schools, such as those in Titles VI of the Civil Rights Act, Title IX, the Individuals with Disabilities Education Act, Title II of the Americans with Disabilities Act, and the Every Student Succeeds Act. And, students who attend private schools using vouchers are stripped of the First Amendment, due process, and other constitutional and statutory rights guaranteed to them in public schools. The government should never fund discrimination.

Vouchers for religious schools are especially harmful, as religious schools have explicit exemptions from civil rights laws including Title IX and the ADA. Additionally, employees who perform religious duties at religious schools may face discrimination if the schools invoke the ministerial exception, which courts have held applies to, and overrides, employment nondiscrimination protections. For more about the ministerial exception, see [Section Five](#).

¹³ Yvonne Wingett Sanchez, [Parents Spent \\$700K in School Voucher Money on Beauty Supplies, Apparel; Attempted Cash Withdrawals](#), *The Republic* (Oct. 30, 2018).

Students with disabilities

Students with disabilities who attend a private school with a voucher are considered parentally placed in that school and they forfeit many of the protections provided to students and families under the Individuals with Disabilities Education Act (IDEA). For students, this can mean losing services such as those listed on the student's Individualized Education Program (IEP), and the right to be educated in the least restrictive environment. Families also lose due process protections that would provide recourse if they believe their child is not receiving necessary special education services. This is true even in voucher programs intended specifically to serve students with disabilities.

Private voucher schools often deny admission to students with disabilities or to students based on other factors like disciplinary history, which disproportionately affects students with disabilities.¹⁴ As a result, in some state voucher programs, students with disabilities have been systematically excluded from the program.¹⁵

LGBTQ students and families

Private schools that accept taxpayer-funded vouchers often deny admission to, or expel, LGBTQ students and students with LGBTQ family members.¹⁶ Many private voucher schools also teach anti-LGBTQ curriculum,¹⁷ and some promote harmful conversion therapy for LGBTQ students.¹⁸ For example, a 2019 investigation in Florida uncovered 156 private voucher schools with anti-LGBTQ views that educated more than 20,800 students using more than \$129 million dollars in state-funded vouchers.¹⁹

Religious minorities and nonreligious students

Many private voucher schools impose a religious litmus test on students and their families. Some schools discriminate against students based on their or their families' religious beliefs,²⁰ and some condition admissions on adherence to certain religious principles.²¹

¹⁴ Selene Almazan & Denise Stile Marshall, Council of Parent Attorneys & Advocates, [School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice](#) (June 2016).

¹⁵ *E.g.*, [Letter to Tony Evers, State Superintendent, Wisc. Dep't of Pub. Instruction, from U.S. Dep't of Justice, Civil Rights Div., Educ. Opportunities Section](#), Apr. 9, 2013 (intervention by the Department of Justice to require Wisconsin to implement policies and practices to eliminate discrimination against students with disabilities in its administration of the Milwaukee voucher program).

¹⁶ *E.g.*, Chris Fitzsimon, NC Policy Watch, [More Taxpayer Funding for Voucher Schools that Openly Discriminate Against LGBTQ Students and Parents](#) (July 27, 2016) (voucher school's handbook stated that it would refuse to admit and will expel students that are "living in, condoning, or supporting any form of sexual immorality; practicing or promoting a homosexual lifestyle or alternative gender identity").

¹⁷ *E.g.*, Southern Educ. Found., [Issue Brief: Georgia's Tax Dollars Help Finance Private Schools with Severe Anti-Gay Policies, Practices, & Teachings](#) (Jan. 2013) ("at least 115 private schools [participating in the tax-credit voucher program] have explicit anti-gay policies or belong to associations that condemn homosexuality").

¹⁸ Rebecca Klein, [Millions Of Taxpayer Dollars Are Going to Schools that Push Conversion Therapy](#), *HuffPost* (June 10, 2020) (Florida private schools accepting millions in taxpayer-funded vouchers promote conversion therapy for LGBTQ students).

¹⁹ Leslie Postal & Annie Martin, [Anti-LGBT Florida Schools Getting School Vouchers](#), *Orlando Sentinel* (Jan. 23, 2020).

²⁰ Kimberly Quick, Century Found., [Second Class Students: When Vouchers Exclude](#) (Jan. 11, 2017) ("For example, according to its written policy, a North Carolina private school accepting vouchers denies admission to 'those in cults, i.e. Mormons, Jehovah Witness, Christian Science, Unification Church, Zen Buddhism, Unitarianism, and United Pentecostal.'").

²¹ See, *e.g.*, U.S. Gov't Accountability Office, GAO-16-712, [Private School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students](#), 27 (2016) (voucher school that required all students in fourth

6. Private school vouchers can increase school segregation.

In addition to the outright discrimination that takes place in private voucher schools, voucher programs also have a sordid history rooted in racism. Voucher programs in the South were first created to allow white students to evade integration orders in the wake of *Brown v. Board of Education* and to fund segregation academies designed to keep black and white students apart.²² Even today, national data show that private schools tend to be more segregated than similarly situated public schools and enroll higher populations of white students compared to public schools. Nationwide, 69% of private school students are white, 9% are Black, and 10% are Hispanic or Latino.²³ In fact, as of 2012, 43% of private school students across the country attended virtually segregated schools, meaning schools where white students comprise 90% or more of the school's enrollment.²⁴

In some state voucher programs, segregation rates are even higher. For example, a 2016 study found that Louisiana's voucher program had a negative impact on integration in private schools.²⁵ Similarly, in Milwaukee a study found that 85% of African American students in the voucher program attended "intensely segregated" schools, as opposed to around 77% of those in public schools.²⁶ A 2010 study of Georgia's tuition tax credit program revealed that while only 10% of white students in public schools attended "virtually segregated" schools, in private voucher schools the percentage rose to 53%.²⁷

7. Private school vouchers are particularly harmful for students in need of greater resources.

Students living in rural areas

Vouchers don't provide an actual choice for students living in rural areas who have little, if any, access to private schools. Many private schools do not provide transportation to students.²⁸ Therefore, in order to use a voucher, students would often be required to endure long, costly commutes. Students' access to transportation can impact attendance rates and tardiness, which also have an effect on student achievement.²⁹

grade and above to follow a list of religious principles); Leslie Postal, [Florida's New Voucher Program Could Prompt Lawsuit](#), *Orlando Sentinel* (May 28, 2019) (private school that "enrolls about 300 voucher students...demands parents abide by a 'lifestyle policy' that forbids 'homosexual and transgender orientation'").

²² Chris Ford, et al., Ctr. for Am. Progress, [The Racist Origins of Private School Vouchers](#) (July 12, 2017).

²³ Nat'l Center for Educ. Statistics, [School Choice in the United States: 2019](#), 22 (Sept. 2019).

²⁴ Steve Suits, *Overturing Brown: The Segregationist Legacy of the Modern School Choice Movement*, 77 (2020).

²⁵ Jonathan N. Mills, et al., Educ. Research Alliance, [How Has the Louisiana Scholarship Program Affected Students? A Comprehensive Summary of Effects after Two Years](#) (Feb. 2016).

²⁶ Lisa Kaiser, [Still Separate, Still Unequal](#), *Shepherd Express* (May 14, 2014).

²⁷ Alex Morris, [The Hidden War Against Gay Teens](#), *Rolling Stone* (Oct. 10, 2013).

²⁸ A 2020 survey of parents with school-age children found that "[m]ore than half of private schools...may not have any provided transportation. Andrew D. Catt, EdChoice, [Commuting Concerns: A Survey of U.S. Parents on K-12 Transportation Before and During the COVID-19 Pandemic](#) (Nov. 2020).

²⁹ *Id.*

Another reason vouchers would either harm or simply be inapplicable to rural communities is that rural and small-town public schools do more than just educate children. They serve a critical social and economic function as the primary employer in small communities; they may offer health care or medical referrals for children and adults, and they frequently offer food pantries, breakfast and lunch programs—and are the location of many other community activities. A decision by a rural family to withdraw a child from the public school and enroll them elsewhere doesn't mean that the family disconnects from the school system—it simply means that the school has fewer resources to provide the non-instructional benefits required in its community.

Vouchers are also especially harmful to the public school systems serving large rural areas because these schools rely more heavily on state funding. The result is that these schools are forced to spread the same fixed costs for facilities, transportation, administration, and instruction over a smaller revenue stream.

Students with disabilities

Private voucher schools do not adequately serve students with disabilities, nor do they provide them the same quality and quantity of services available to students in public schools, including those mandated under each student's Individualized Education Program (IEP).

The Individuals with Disabilities Education Act (IDEA) ensures that students with disabilities are provided with a Free Appropriate Public Education (FAPE) tailored to their individual needs. Students who leave the public schools with a voucher forfeit many of the protections provided to students under IDEA because they are considered parentally placed in private schools. Students accepting vouchers would not necessarily receive all the services listed on the IEP that they currently receive in their public school. Also, when members of the IEP team, which includes parents, cannot agree on the services that a child should receive, the parents have the right to raise their concerns with a hearing officer and ultimately to take the school district to court if necessary. Students who are parentally placed in a private school through a voucher do not have these due process protections.

Military-connected students

Education is a quality-of-life issue for military families that helps to maintain an all-volunteer force. Private school vouchers would undermine many of the supports that school districts, states, and federal agencies have put in place to meet the unique needs of military-connected students. Military families, by attending a non-public school, would forfeit certain benefits. For example, the Military Interstate Children's Compact is an agreement among states and school districts that "addresses key educational transition issues encountered by military families including enrollment, placement, attendance, eligibility, and graduation."³⁰ The compact, adopted by all 50 states and DC, does not extend to non-public schools.

³⁰ Military Interstate Children's Compact Comm'n, [Background](#) (last accessed Jan. 13, 2021).

Voucher programs for military-connected students are also impractical because military families are highly mobile. Military-connected students will attend, on average, six to nine schools before high school graduation and often switch schools within the same school year.³¹

Students who have experienced bullying

One out of every five students report being bullied in school.³² In 2018, Florida created a private school voucher program for students who have experienced bullying or harassment. Since then, other state legislatures have considered similar bills. But using a voucher would actually strip the student of protections. While all 50 states have anti-bullying laws, most state laws apply only to public schools, not private schools. A bullied student could therefore use a voucher to transfer to a private school only to find themselves bullied again, this time with no legal remedy.

In addition, bullied students are not guaranteed that they will find a private school that will accept them. Private schools that would benefit from these voucher programs would be allowed to discriminate in admission based on religion, sexual orientation, disability status, and other criteria—the very same groups of students who are often bullied. And removing the bullied student does not address the underlying issue of bullying. Indeed, “bullying vouchers” would have the bully face no consequence and be left in school to bully again.

Low-income students

Private school vouchers do not adequately serve low-income students because the cost of tuition and fees at schools that accept vouchers generally exceeds the amount of the voucher, making voucher schools unaffordable for most low-income families.

A 2016 Government Accountability Office report³³ found that 13 out of 22 state voucher programs surveyed did not place a cap on private school tuition, allowing private schools to charge more than the voucher award. Thus, only families with the money to cover the cost of the rest of the tuition and additional expenditures such as uniforms, transportation, books, and other supplies can use the vouchers. 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.

Additionally, for many low-income students, traveling outside their county or district every day to attend school—especially in rural areas—is not feasible. This is also true in urban areas. Studies have shown that students of color and low-income students who attend schools of choice have longer commutes than students who live in more affluent neighborhoods.³⁴ A

³¹ Nat'l Military Family Assoc., [Education Revolution. Their Right. Our Fight](#) (last accessed Jan. 13, 2021).

³² U.S. Dep't of Educ., [Student Reports of Bullying: Results from the 2017 School Crime Supplement to the National Crime Victimization Survey](#), T-6 (July 2019).

³³ U.S. Gov't Accountability Office, GAO-16-712, [Private School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students](#), 25 (2016).

³⁴ Andrew D. Catt, EdChoice, [Commuting Concerns: A Survey of U.S. Parents on K–12 Transportation Before and During the COVID-19 Pandemic](#), 1 (Nov. 2020).

study of students living in cities with many school choice options found that black students have longer school commutes in both time and distance than white students.³⁵

8. Private school voucher programs do not save taxpayer money.

In voucher programs, the public schools from which students leave for private voucher schools are spread throughout a school district. The reduction in students attending a public school, therefore, is usually negligible and does not decrease operating costs of those public schools. Many of the costs to educate students in public schools are fixed, and therefore less malleable to changes in student enrollment. As a result of voucher programs, public schools receive less funding, leading to a decline in available programs and services for their students. That is one of the reasons why some voucher programs have resulted in multi-million dollar deficits and tax increases.

Proponents often claim that vouchers produce savings because the voucher amount for each student is generally less than the state's per pupil expenditure for each student in public schools. This, however, does not mean that the state will save money. For one thing, any potential savings are undercut when students who would have been enrolled in private schools even without a voucher accept and use a voucher.³⁶ In addition, the per-pupil expenditure for public school students does not directly translate into the private school setting. Expenditures in public and private schools cannot be easily compared. Public schools serve all students regardless of ability or expense to educate, including students with disabilities and students who are English learners, and serve higher concentrations of students needing greater resources. According to NCES data, although public schools serve 90% of K-12 students overall, they serve 95% of students with special needs.³⁷ Public schools also serve higher concentrations of students from households below the U.S. Census Bureau's poverty threshold.³⁸ When some students receive vouchers to attend private schools that can pick and choose which students to accept, often the students who remain in public schools are those with the greatest needs and the most expensive to educate.

Section Four: The Pandemic Does Not Justify Using Public Funds to Bail Out Private Schools

Emergency COVID-19 relief funding should be used to support public schools, not private schools. The government should focus on providing more resources to our public schools,

³⁵ Kristin Blagg, et al., Urban Inst., [The Road to School: How Far Students Travel to School in the Choice-Rich Cities of Denver, Detroit, New Orleans, New York City, and Washington, DC](#) (Mar. 2018).

³⁶ See Kevin Welner, Nat'l Educ. Policy Ctr., [How to Calculate the Costs or Savings of Tax Credit Voucher Policies](#) (Mar. 2011); see also Southern Educ. Found., [A Failed Experiment: Georgia's Tax Credit Scholarships for Private Schools](#) (2011) (noting that students in Georgia were enrolling in public schools in order to be eligible for the tax credit voucher program without any intent on actually attending public school).

³⁷ U.S. Dep't. of Educ., Nat'l Center for Educ. Statistics, NCES 2020-009, [Digest of Education Statistics](#), Ch. 2 (2018).

³⁸ *Id.*

which educate 90% of our country's students, not bailing out private schools through private school voucher programs or other mechanisms that funnel public funds to private education.

Many Private Schools Have Already Received Federal Funding for COVID-19 Relief

Congress has already authorized funding through the Paycheck Protection Program (PPP) to assist nonprofit organizations, including private schools, that need financial assistance as a result of the COVID-19 pandemic. Under the PPP, nonprofits, including private schools, were able to receive forgivable loans up to \$10 million to cover payroll and other operational expenses. Indeed, many private and religious schools have utilized this program and received billions of dollars in government funding.³⁹

Public Dollars Should Remain in Accountable Public Schools

Unlike public schools, private schools do not provide the same level of accountability. Without the inclusion of accountability measures such as requiring participating private schools to comply with the same teacher standards, curriculum, reporting, and testing requirements as public schools in their state, there is no way to gauge whether such programs are effective. Public funds should continue to fund our public schools, not unaccountable programs.

Vouchers Drain Money Away from Public Schools

During this challenging time, the government should focus on providing more resources to our public schools and public school educators,⁴⁰ who are best equipped to serve all students. Private school voucher programs, in contrast, undermine our nation's public schools by diverting desperately needed resources away from the public school system to fund the education of a few select students in alternative settings.

Funding for Private Schools Undermines Efforts to Serve Low-Income Students

Private school voucher programs do not adequately serve low-income students. In most voucher programs, the cost of tuition and fees at private schools that accept vouchers generally exceeds the amount of the voucher,⁴¹ making private schools unaffordable for most low-income families. Unless a voucher program created with relief funds could ensure that private schools and online education providers could not charge more than the amount of the voucher, it is likely that low-income families would still not be able to afford to participate in

³⁹ Analysis of the data released by the U.S. Small Business Administration on Paycheck Protection Program loans of \$150,000 or greater reveals that private schools received funding totaling between \$2.67 billion and \$6.47 billion. Samantha Sokol, et al., Ams. United for Separation of Church & State, [The Paycheck Protection Program Has Provided Billions in Federal Funds to Private and Religious Schools](#) (Jul. 29, 2020).

⁴⁰ For example, the Learning Policy Institute estimates that more than 300,000 teaching positions could be lost as a result of the pandemic, based on an estimated 15% reduction in state education funding. Michael Griffith, [The Impact of the COVID-19 Recession on Teaching Positions](#) (Apr. 30, 2020).

⁴¹ See, e.g., U.S. Dep't of Educ., [Evaluation of the DC Opportunity Scholarship Program: Impacts Three Years After Students Applied](#), A-9 (May 2019) (finding that in Washington, D.C., during the 2013-16 school year, 70% of the schools participating in the voucher program had published tuition rates above the maximum amount of the voucher).

such a program.

Similarly, other mechanisms to funnel taxpayer dollars to private schools, such as tax incentives and the expansion of 529 accounts, serve to help wealthy families at the expense of low-income students. It is likely that the families who will benefit from these policies are those who already have the means to send their children to private school without a need for financial aid or tax benefits. A better use of funds is increasing the capacity of public schools to serve all students.

Private Schools Have Access to Private Funds that Public Schools Do Not

When private schools face financial downturns, they have inherent fiscal advantages because they can access private funding that public schools cannot. For example, private schools can apply for private or general commercial loans, refinance or renegotiate existing debt obligations, reach out to alumni and foundations for money or assistance, or have denominations and parishioners that can sustain their schools. Given these advantages, it is inappropriate to insist private schools need additional federal emergency relief funds.

Enrollment in Many Private Schools Was Already Declining

Enrollment in private schools has been declining even before the onset of the coronavirus pandemic. From 1999 to 2017, the number of private school students across the country has not grown, but actually decreased from 6 million to 5.7 million.⁴² Catholic schools have experienced the largest declines, with the number of students enrolled in Catholic schools decreasing from 2.7 million in 1999 to 2.1 million in 2017.⁴³ And, the number of Catholic schools themselves has also declined from around 13,000 Catholic schools across the country in 1965, to now only around 6,000.⁴⁴ Although the pandemic has surely exacerbated financial problems for Catholic and other private schools, it is not uniquely responsible for these schools' declines in enrollment and struggles to maintain financial viability. It is inappropriate to insist that emergency relief funds keep them afloat.

Although some private school and voucher advocates have suggested that the public school system will be overwhelmed if students in private schools can no longer afford tuition and move to public schools, vouchers will not solve this problem. Private school vouchers would provide a means for some students to continue to attend private schools, at the expense of the vast majority of students who attend our public schools—including those with the greatest need and who are the most expensive to educate. It is critical that we fund our public schools, which welcome all students, rather than diverting funding for private school voucher schemes. If we do not sufficiently fund our public schools, there is no fall back.

⁴² Nat'l Ctr. for Educ. Statistics, [The Condition of Education, Private School Enrollment](#) (last updated May 2020).

⁴³ *Id.*

⁴⁴ Rebecca Klein, [At Least 100 Catholic Schools Across The Country May Not Reopen This Fall](#), *HuffPost* (May 19, 2020).

Section Five:

Pitfalls of Trying to “Fix” Voucher Bills

Private school vouchers don’t work, they undermine our public education system, and they harm students in a number of ways. You can learn more about those issues in [Section Three](#). Legislators, however, sometimes attempt to improve voucher programs or reach a “compromise” by adding nondiscrimination protections to these laws. But these features cannot “fix” vouchers because vouchers are inherently harmful.

Limiting the Scope of Voucher Programs Hasn’t Worked

When trying to create a new private school voucher program, state legislatures often design programs that are short-term “pilots” or are targeted to a “narrow” population, such as students with special needs, military-connected students, or students from low-income families. Voucher proponents use the limited scope of these programs to convince skeptical legislators to support them, despite the many flaws associated with the programs.

Experience across the country demonstrates that “short-term” programs become permanent and programs that are initially open to a small number of students are expanded. Here are some examples of voucher programs that extended far beyond their initial parameters:

Washington, DC’s 5-year “pilot program” voucher still exists 17 years later

Congress enacted a voucher program for Washington, DC in 2003 as a five-year pilot program. The legislation was unpopular, could not pass Congress as a standalone bill, and was only approved as part of an omnibus appropriations bill that was necessary to avoid a government shutdown. Despite multiple government studies demonstrating that the program has been ineffective⁴⁵ and unaccountable to taxpayers,⁴⁶ it was reauthorized in 2011, 2017, and 2019—all only as part of omnibus spending bills. Although the program has never been passed as a standalone bill in Congress, it still exists 12 years after it was originally set to expire.

Florida’s voucher population and spending has ballooned

Florida passed the Tax Credit Scholarship voucher in 2001 for low-income students and only families making up to 185% of the federal poverty level (FPL) were initially eligible. But over the last several years, the legislature has greatly expanded eligibility limits by raising the income cap—up to 260% FPL in 2016. It also passed a companion voucher program in 2019 for families making up to 300% FPL and included language that will allow that limit to increase by 25% each year if there is enough money unspent.

⁴⁵ U.S. Dep’t of Educ., [Evaluation of the DC Opportunity Scholarship Program: Impacts Three Years After Students Applied](#) (May 2019).

⁴⁶ U.S. Gov’t Accountability Office, GAO-13-805, [District of Columbia Opportunity Scholarship Program: Actions Needed to Address Weaknesses in Administration and Oversight](#), 19 (2013).

Florida's total voucher population and spending has also increased exponentially. The state's first voucher, passed in 1999, was limited just to students with disabilities. Since then, the number of students using vouchers has expanded to nearly 150,000⁴⁷ across five different programs. When it first passed, total spending on the Tax Credit Scholarship was capped at \$50 million. But the 2019-2020 spending cap has jumped to \$873 million.⁴⁸ And the 2019 voucher could drain nearly \$1 billion from public schools over five years.⁴⁹

Louisiana's voucher expansion sent thousands to failing schools

When passed in 2008, the Louisiana Scholarship Program applied only to a small subset of low-performing schools and the 640 students who attended them. Just four years later, the program was expanded statewide, and the number of students using a voucher nearly tripled from the previous year. The voucher program continues even though a 2019 investigation found that two-thirds of the 6,900 students using the voucher attended schools that performed at the "D" or "F" level.⁵⁰

Adding Nondiscrimination Provisions to Voucher Programs Is Not Enough

One key problem with vouchers is they fail to ensure schools receiving taxpayer funding do not discriminate against potential or enrolled students. Legislation to add nondiscrimination protections to existing voucher programs may provide some level of protection for students, but if this legislation contains a broad religious exemption, the protections will have little, if any, meaning.

Voucher programs lack nondiscrimination protections

The lack of nondiscrimination protections in state private school voucher programs is a grave problem. Taxpayer dollars should never fund discrimination, especially against students. Yet, a 2019 survey of voucher programs across the country found that only 42% of programs provide state-level nondiscrimination protections against racial discrimination.⁵¹ Only 24% of states protect against discrimination on the basis of religion, 24% of states protect against discrimination on the basis of disability, and even fewer states provide protections for sex, sexual orientation, or gender identity.⁵²

⁴⁷ Annie Martin, [Florida Adds New Voucher Program, More Schools Receive Public Money as Participation Declines](#), *Orlando Sentinel* (Jun. 4, 2019).

⁴⁸ Fla. Dep't of Educ., [Florida Tax Credit Scholarships](#) (last accessed Jan. 13, 2021).

⁴⁹ Fla. Educ. Ass'n, [Recently Passed Voucher Plan May Drain Nearly \\$1 Billion from Florida's Public Schools Over the Next Five Years](#) (May 13, 2019).

⁵⁰ Jess Clark, et al., [The Cost of Choice: How Louisiana's Voucher Program Steered Families Into D and F Private Schools](#), New Orleans Pub. Radio (May 7, 2019).

⁵¹ Bayliss Fiddiman & Jessica Yin, Ctr. for Am. Progress, [The Danger Private School Voucher Programs Pose to Civil Rights](#), 3 (May 2019).

⁵² *Id.*

Religious freedom does not require religious exemptions from nondiscrimination laws in voucher programs

Religious schools, when funded by congregants and other donors, are often exempt from nondiscrimination laws and an array of other federal, state, and local laws. If a school accepts taxpayer funding, however, it should be required to adhere to the same nondiscrimination laws as secular schools. Arguments that the government must afford such schools a higher level of autonomy and independence because they are religious hold no weight when the school voluntarily accepts government dollars. Furthermore, requiring schools that accept taxpayer dollars to adhere to nondiscrimination protections actually protects religious freedom—no student should be rejected from a government-funded school because of their religion.

Religious exemptions undermine nondiscrimination protections

Adding nondiscrimination protections to existing programs would do little to protect students if the bill also includes a religious exemption. Instead, such legislation would give the green light to unacceptable, taxpayer-funded discrimination. The vast majority of private schools that participate in voucher programs are religious. Therefore, if religious schools are exempt from following nondiscrimination protections, the majority of schools in the program still would not have to provide any protections to students.

Many private voucher schools currently discriminate against students based on the students' or their families' religious beliefs,⁵³ and some schools also condition admission on adhering to certain religious principles.⁵⁴ For example, a Maryland religious school accepting voucher students claimed it had the right to suspend or expel students for failing to follow the school's code of conduct requiring that students dress according to their assigned gender at birth and align their conduct with the belief that marriage is between one man and one woman.⁵⁵

Some states have proposed a religious exemption to address a desire by religious schools to continue to give preferential admission to students of their own religion. But no school—not even a private religious school—should be allowed to discriminate with taxpayer dollars against qualified students because they are the “wrong” religion. Furthermore, the impact of these exemptions is far broader. Religious schools could cite the exemption to engage in discrimination such as expelling a student who became pregnant or refusing to admit a student who has LGBTQ parents, so long as they claimed that doing so was required to

⁵³ Kimberly Quick, Century Found., [Second Class Students: When Vouchers Exclude](#) (Jan. 11, 2017) (“For example, according to its written policy, a North Carolina private school accepting vouchers denies admission to ‘those in cults, i.e. Mormons, Jehovah Witness, Christian Science, Unification Church, Zen Buddhism, Unitarianism, and United Pentecostal.’”)

⁵⁴ See, e.g., U.S. Gov't Accountability Office, GAO-16-712, [Private School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students](#), 27 (2016) (identifying, for example, a voucher school that required all students in fourth grade and above to follow a list of religious principles); Leslie Postal, [Florida's New Voucher Program Could Prompt Lawsuit](#), *Orlando Sentinel* (May 28, 2019) (describing a private school that “enrolls about 300 voucher students . . . and demands parents abide by a ‘lifestyle policy’ that forbids ‘homosexual and transgender orientation.’”).

⁵⁵ Complaint at 7, *Bethel Ministries, Inc. v. Salmon*, 1:19-cv-01853 (N.D. Md. filed June 24, 2019).

adhere to a religious tenet or code of conduct. In effect, the exception for religious schools would swallow the nondiscrimination rule.

Implementing a sweeping religious exemption is also politically unwise. It would allow voucher proponents to claim they have taken appropriate steps to curb discrimination while simultaneously allowing the vast majority of schools in the program to engage in discrimination with state dollars.

Nondiscrimination protections do not totally eradicate discrimination in voucher programs

Even when state voucher programs contain nondiscrimination protections, they rarely include appropriate enforcement mechanisms to ensure voucher schools comply with the law. So while efforts to add effective nondiscrimination protections to existing programs should be lauded, legislators and advocates must realize that these provisions will not be enough to stop discrimination by private schools.

For example, under Title VII of the Civil Rights Act of 1964, religious schools can prefer coreligionists in hiring. If the state voucher law does not explicitly prohibit such discrimination with voucher dollars, the schools may continue to discriminate with state money.

Moreover, religious schools can claim an exemption from nondiscrimination provisions under the ministerial exception. The ministerial exception is rooted in the First Amendment of the U.S. Constitution and is designed to allow religious institutions to make decisions about who can preach and teach the faith without governmental interference. It has been construed by courts to allow religious schools to fire teachers who qualify as ministers, overriding employment nondiscrimination protections. In this way, publicly funded voucher programs would continue to fund discrimination in religious schools, even with explicit nondiscrimination provisions.

State legislators and public school advocates can most effectively prevent discrimination by opposing any efforts to create or expand private school vouchers.

Section Six: Private School Voucher Referenda

Since 1970, voters have rejected the creation or expansion of private school vouchers every time they have been proposed.

Arizona, 2018: After the Arizona legislature passed a bill to expand the state's Empowerment Scholarship voucher program, a volunteer grassroots organization mobilized to have the voucher expansion proposal placed on the ballot. Voters rejected the expansion proposal, Proposition 305, by a vote of 65% to 35%.

Florida, 2012: Amendment 8 would have removed the no-aid clause of the Florida Constitution and paved the way for vouchers. Under Florida law, the measure needed to get 60% approval to pass but fell far short of that, garnering only 45%.

Utah, 2007: Advocates of public education successfully put a measure on the ballot to roll back a voucher plan that had been passed by the legislature. Voters repealed the scheme, 62% to 38%.

California, 2000: A venture capitalist funded a ballot measure that would have essentially privatized education in California. Under Proposition 38, every child in the state would have received \$4,000 per year to pay for education. The plan was easily defeated, 71% to 29%.

Michigan, 2000: Dick DeVos, president of the Amway Corp. and husband of former U.S. Education Secretary Betsy DeVos, bankrolled a scheme to phase in vouchers gradually, starting with pupils attending public schools deemed “failing” in urban districts. Voters rejected the scheme, 69% to 31%.

Colorado, 1998: Initiative 17 would have given a tax credit to the parents or legal guardians of children enrolled in public, private schools, and non-public home-based educational programs. The initiative failed by a vote of 60% to 40%.

Washington, 1996: Initiative 173 would have required the state to pay for vouchers for students attending private schools. The initiative failed by a vote of 65% to 35%.

California, 1993: Activists proposed Proposition 174, a sweeping measure that would have repealed the no-aid provision of the California Constitution and allocated billions in state funds for a broad private school voucher scheme. The measure failed by a vote of 70% to 30%.

Colorado, 1992: Amendment 7, a constitutional amendment that would have allowed state funds to be used for vouchers, including for private schools and for homeschooling, was placed on the ballot. Voters defeated the amendment by 67% to 33%.

Oregon, 1990: Measure 11 would have established a tax credit voucher plan in the state. The measure lost by a vote of 67% to 33%.

Utah, 1988: Voucher proponents proposed a tax credit voucher program known as Initiative C. Voters defeated the initiative, 70% to 30%.

District of Columbia, 1981: A right-wing anti-tax group called the National Taxpayers Union (NTU) won a spot on the ballot for a scheme to establish tax credits vouchers. D.C. voters rejected the plan, 89% to 11%.

Maryland, 1972: Voters voted down a proposal to create a voucher program by 55% to 45%.

Nebraska, 1970: Voters rejected a state constitutional amendment that would have allowed taxpayer funding of religious schools by 57% to 43%.

For more information on opposing private school vouchers, including fact sheets, letters, studies, and more, contact us [here](#) or visit www.ncpecoalition.org.

