

# FREEDOM FROM RELIGION *foundation*

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May 18 , 2022

Rep. Jamie Raskin  
Chair  
Civil Rights and Civil Liberties Subcommittee

Re: Testimony on the relationship between Free Speech concerns and voucher schemes

Dear Chairman Raskin and Subcommittee members:

I am submitting this testimony on behalf of the Freedom From Religion Foundation (FFRF) to support the committee's investigation into recent laws meant to chill speech in public schools, and to highlight FFRF's concern that these laws, in part, are paving the way to advance an anti-public education agenda. FFRF is a national nonprofit organization with more than 36,000 members across the country, including members in all 50 states and the District of Columbia. FFRF protects the constitutional separation between state and church, and educates about nontheism.

FFRF appreciates the Subcommittee's attention to the trend of prohibiting public school classroom discussions regarding race, LGBTQ+ issues, and certain aspects of American history. These restrictions have the transparent goal of whitewashing history and demonizing LGBTQ+ individuals. But another, less obvious goal is to undermine the quality and credibility of public education. This secondary effect dovetails with the goal of private school advocates, who wish to expand voucher-type schemes that siphon taxpayer funds into the bank accounts of private schools, under the misleading banner of "school choice."

We understand that some may be advancing vouchers and neo-vouchers as an ill-conceived solution to legislation that chills discourse in public schools. In reality, the same advocates of publicly funding private schools are pushing for the laws the Subcommittee is investigating. They hope that the latter will help to justify the former.

Voucher-type schemes are not a reasonable solution to these Free Speech concerns. To the contrary, students and teachers *abandon* their First Amendment rights when they elect to attend a private school, since private schools are not run by government officials. The solution is not to divert funding from public schools to private schools that have an unfettered ability to stifle speech, but rather to bolster the free speech rights of students and teachers in the public school setting, and to allow experts in the

field—teachers and school officials, not state politicians—to determine which topics are appropriate and most conducive to a well-rounded education.

Surveying voucher programs around the country, the lessons are clear. Vouchers harm public education, provide no discernible benefit to students, and use taxpayer funds for activities that would be unconstitutional in a public school setting. The false narrative of promoting “school choice” is simply more palatable than honestly admitting that private schools would like to receive public funding without public accountability.

One major problem with the laws examined by this Subcommittee is that they stifle robust, well-rounded classroom discussions and lessons. Private schools are free to distort their curricula in any way they want, without even constitutional considerations. Rather than limiting lessons on sexual orientation or gender identity, private schools could simply discriminate against students and teachers because their beliefs do not align with the school’s religious views on LGBTQ+ issues. Transferring students and funds to private schools makes this problem much worse, not better.

Where public money goes, public accountability should follow. Giving public funds without accountability invites fraud and abuse. A voucher scheme in Arizona provides a cautionary tale, in which Steve Yarbrough — who as president of the Arizona state Senate promoted the tuition tax credit system — reportedly personally profited off this program. “The fact that an influential politician can both promote and profit from tax credit vouchers shows what can happen when public funding for education is largely removed from public hands,” a piece by the New York Times stated.<sup>1</sup>

The narrative of vouchers rescuing low-income students from underperforming public schools is simply false. First of all, the voucher program creates the problem it purports to fix by intercepting funds that would otherwise go to public schools. Second, studies of voucher schemes in other states repeatedly show no evidence that the academic situation of students with vouchers is improved compared to public school students.<sup>2</sup> Third, across the country we have seen that the lion’s share of voucher funds ends up paying for the tuition of children who would have gone to private schools anyway.<sup>3</sup>

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<sup>1</sup> Kevin Carey, *DeVos and Tax Credit Vouchers: Arizona Shows What Can Go Wrong*, The New York Times (Mar. 2, 2017).

<sup>2</sup> See, e.g., Jane R. Wettach, *School Vouchers in North Carolina 2014–2020*, Duke Law School Children’s Law Clinic (May 2020), available at [law.duke.edu/childedlaw/School\\_Vouchers\\_in\\_North\\_Carolina-2014-2020\\_\(5-13-20\).pdf](http://law.duke.edu/childedlaw/School_Vouchers_in_North_Carolina-2014-2020_(5-13-20).pdf); Barbara Miner, *Wisconsin Reports on Voucher Program: Program cannot document whether academic achievement is rising for participating students*, Rethinking Schools, available at [rethinkingschools.org/articles/wisconsin-issues-report-on-voucher-program/](http://rethinkingschools.org/articles/wisconsin-issues-report-on-voucher-program/).

<sup>3</sup> See, e.g., Edgar Mendez, *75% of state voucher program applicants already attend private school*, Milwaukee Journal Sentinel (May 20, 2014), available at

Finally, voucher schemes are a backdoor means of funding religious schools with taxpayer money, undermining the separation of state and church. They benefit those denominations that have the most private school infrastructure in place, and leave behind students of minority faiths and of no faith at all. Non-religious Americans are the fastest growing segment of the U.S. population by religious identification — 35 percent of Americans are non-Christians, and this includes the more than one in four Americans who now identify as religiously unaffiliated.<sup>4</sup> Younger Americans are not just religiously unaffiliated, they are largely atheist or agnostic. A recent survey found that 21 percent of Americans born after 1999 are atheist or agnostic.<sup>5</sup>

The vast majority of private schools are religiously affiliated. Whereas public schools must not take sides on religion—protecting the religious liberty rights of *all* students—private schools almost invariably aim to indoctrinate students into one particular mode of belief. This would be a violation of students’ rights at public schools, and funding this indoctrination with taxpayer funds is a deeply counter-productive response to concerns about First Amendment rights at public schools.

Thank you for considering this testimony, and for addressing this pressing and important issue.

Sincerely,



Ryan D. Jayne  
Staff Attorney

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[archive.jsonline.com/news/education/75-of-state-voucher-program-applicants-already-attend-private-school-b99274333z1-259980701.html](https://archive.jsonline.com/news/education/75-of-state-voucher-program-applicants-already-attend-private-school-b99274333z1-259980701.html).

<sup>4</sup> Pew Research Center, “In U.S., Decline of Christianity Continues at Rapid Pace,” (Oct. 17, 2019), available at [pewrsr.ch/2VPiFS7](https://pewrsr.ch/2VPiFS7).

<sup>5</sup> *Atheism Doubles Among Generation Z*, The Barna Group (Jan. 24, 2018), [www.barna.com/research/atheism-doubles-among-generation-z/](https://www.barna.com/research/atheism-doubles-among-generation-z/).