



May 26, 2022

The Honorable Jamie Raskin,
Chair, Subcommittee on Civil Rights & Civil Liberties
House Committee on Oversight & Government Reform
Washington, DC 20515

The Honorable Nancy Mace
Ranking Member, Subcommittee on Civil Rights & Civil Liberties
House Committee on Oversight & Government Reform
Washington, DC 20515

RE: Hearing on “Free Speech Under Attack (Part II): Curriculum Sabotage and Classroom Censorship”

Dear Chairman Raskin and Ranking Member Mace:

On behalf of Americans United for Separation of Church and State, thank you for the opportunity to submit this statement for the record of the May 19, 2022, hearing on “Free Speech Under Attack (Part II): Curriculum Sabotage and Classroom Censorship.” As so clearly stated by the Chairman, the true agenda of those behind the recent assault on teaching history, valuing diversity, and protecting LGBTQ rights in public schools is to sow mistrust of the public schools and adopt more private school voucher programs.

Open and nondiscriminatory in their acceptance of all students, our public schools, which serve 90% of the nation’s students, are a unifying factor among diverse communities in our society. Voucher programs siphon limited funding away from public schools to fund the education of a few students at private schools, weakening our public education system, endangering students’ rights, and perpetuating segregation and discrimination. While this outcome may be acceptable and even desirable to anti-CRT and anti-LGBTQ rights activists, anyone who supports public education as a pillar of our democracy must oppose private school vouchers.

Even if the attacks on teaching history or valuing diversity in public school were legitimate, private school voucher programs would not be a “solution.” To the contrary, they undermine public education, fail to improve students’ achievement, lack accountability, and violate the religious freedom of taxpayers.

Americans United

With a national network of more than 300,000 supporters, Americans United for Separation of Church and State is a nonpartisan, not-for-profit educational and advocacy organization that brings together people of all religions and none to safeguard the fundamental American principle of the separation of church and state. We protect the right of everyone to practice the religion of their choice or no religion at all, so long as it does not harm others. Since our founding in 1947, we have fought to ensure that public funds go to public schools, not to private, religious schools through voucher or other funding schemes because they violate religious freedom and undermine public education.

Public Education Is a Public Good

Education is necessary to ensure our children can find fulfilling jobs and live happy lives; but it is also critical to creating a functioning democracy. Education improves our communities and reduces inequalities. Public education, in particular, forges common experiences—9 out of 10 American students attend public schools. And while it is true that our public schools, like the communities we live in, are far from desegregated, our public education system is one of the institutions where we are most likely to encounter, interact with, and get to know people of different races, religions, abilities, and socio-economic backgrounds.

Generally, our public schools have laws barring discrimination against students and teachers. They include programs and protections for students with disabilities. They must adhere to teacher and curriculum standards. And, they are secular and so are welcoming to students of all religions and none.

Public schools are not infallible. They face enormous challenges, including systematic racism and inequality. But the laws at the center of this hearing and private school vouchers won't fix those—instead, they exacerbate them.

Campaigns Against Teaching History & Diversity Aim to Undermine Public Education

The leaders of the attack on teaching about history, race, and LGBTQ issues in public schools have made plain their strategy: first, reduce public confidence in public schools; then, defund public education; and finally, replace public schools with a system of universal private school vouchers.

Chris Rufo, the architect of the right-wing crusade against the teaching of “critical race theory” (CRT)¹ in public schools, admitted that he is “preparing a strategy of laying siege to the institutions” that will lead to parents having “a fundamental right to exit” public schools.² As Chairman Raskin cited in his opening statement, Rufo has explained: “To get to universal school choice you really need to operate from a premise of universal public school distrust.”³

Many on the right have embraced Rufo's plan. Former Education Secretary and longtime-voucher champion Betsy DeVos declared that we should “liberate kids from race indoctrination with school choice.”⁴ Of course, DeVos' solution is to give parents the “power to take the tax dollars allocated for their child to different schools”⁵—in other words, a voucher. In the same month, Nicole Russell, a contributor at *The Washington Examiner*, wrote that “implementing school choice solutions in every state would naturally resolve, and even possibly eradicate, issues such as critical race theory curriculum showing up in every state nationwide.”⁶ Inez Feltscher Stepman of the Independent Women's Forum opined that “universal education choice” would provide “parents' most powerful tool for

¹ CRT is an academic framework devised by legal scholars in the 1970s and 1980s that proposes that racism is more than the result of individual bias and prejudice; it is embedded in laws, policies, and institutions that uphold and reproduce racial inequalities. It is most often taught in law schools—not K-12 schools. But Rufo and others have conflated any discussion of racism, discrimination, accurate historical events, and culturally relevant teaching with “CRT,” leading to the false charge that schools are indoctrinating K-12 students with “CRT.” There is no widespread evidence that K-12 educators are teaching children these legal concepts, or even using curriculum materials or other methods that implicitly draw on them. See Stephen Sawchuk, [What is Critical Race Theory, & Why is it Under Attack?](#), *Education Week* (May 18, 2021).

² Michelle Goldberg, [Democrats Desperately Need Public Schools to Get Back to Normal](#), *The Baltimore Sun* (Nov. 9, 2021).

³ Christopher Rufo, [Laying Siege to the Institutions](#), Address at Hillsdale College as Eugene C. Pulliam Distinguished Fellow in Journalism (Apr. 5, 2022).

⁴ Betsy DeVos, [Let's Liberate Kids from Race Indoctrination With School Choice](#), *Fox News* (July 13, 2021).

⁵ *Id.*

⁶ Nicole Russell, [With School Choice, Critical Race Theory Wouldn't Be a Problem](#), *The Wash. Examiner* (July 19, 2021).

defeating critical race theory.”⁷ And the Heritage Foundation, a leading conservative think tank, released at least three reports in 2021 and 2022 arguing that voucher advocates should “emphasize cultural problems” like CRT and offer vouchers as a solution.⁸

Many lawmakers are taking up this campaign as well. In Congress, Sen. James Lankford of Oklahoma introduced a resolution claiming that school vouchers can “combat destructive ideologies like Critical Race Theory.”⁹ Similarly, state lawmakers in Oklahoma introduced a bill to give vouchers to students who oppose learning about “gender or race diversity concepts,”¹⁰ and in Kansas, state lawmakers proposed a voucher bill as a solution to the “problems” with diversity and inclusion initiatives in public schools.¹¹

This agenda was also promoted at the May 19 hearing by witness Virginia Gentles, from the Independent Women’s Forum, who advocated for vouchers in response to what she called “weak and politicized instruction” in public schools:

Private schools reopened quickly and stayed open during the pandemic...driving support for education freedom to all-time highs. Policymakers should empower parents to leave public schools that do not prioritize academic instruction and enroll their children in options committed to educating students. State and local leaders should fund students directly by creating flexible education savings accounts.¹²

Anti-public-school advocates claim that private school vouchers are the fix to all problems—including their manufactured controversies—in public schools, yet they do not account for the consistent failures of voucher programs. If these advocates were truly concerned about protecting the rights of all students and ensuring students’ academic success, they would not suggest vouchers as an alternative to public education because vouchers strip students of the rights and protections they have in the public school system. And, they don’t lead to better academic outcomes.

Vouchers Are Rooted in Discrimination & Perpetuate Segregation

It is no surprise that those opposed to promoting diversity and inclusion, or truthfully teaching our nation’s troubled history around race, would propose private school vouchers. Private school vouchers were first designed to evade desegregation orders in the wake of *Brown v. Board of Education*.¹³

After *Brown*, Southern policymakers created voucher programs used to fund tuition at “segregation academies.” For example, in Prince Edward County, Virginia, officials opened whites-only private schools, gave out taxpayer-funded tuition vouchers, and shuttered the public school system entirely for

⁷ Inez Feltscher Stepman, [School Choice: Parents’ Most Powerful Tool in Defeating Critical Race Theory](#), in *The Critical Classroom*, The Heritage Found. (Lindsey M. Burke, et al., eds., 2022).

⁸ See e.g., Jay Greene & James Paul, [Time for the School Choice Movement to Embrace the Culture War](#), *The Heritage Found.* (Feb. 9, 2022); Melissa Moschella, [School Choice: Protecting Parental Rights, Resolving Curriculum Wars, & Reducing Inequality](#), *The Heritage Found.* (Mar. 25, 2022); [The Critical Classroom: How Critical Race Theory Undermines Academic Excellence & Individual Agency in Education](#) 163, 227-235, *The Heritage Found.* (Lindsey M. Burke et al., eds., 2022).

⁹ [S. Res. 493](#), 117th Cong. (2022).

¹⁰ [S.B. 1172](#), 2022 Reg. Sess. (Okla. 2022).

¹¹ Sherman Smith & Tim Carpenter, [Kan. Lawmakers Rebrand Complaints With Public Educ. In Push for ‘School Choice.’](#) *Kan. Reflector* (Jan. 30, 2022).

¹² *Free Speech Under Attack (Part II): Curriculum Sabotage & Classroom Censorship: Hearing Before the Subcomm. on Civil Rights & Civil Liberties of the H. Comm. on Oversight & Gov’t Reform*, 117th Cong. (2022) (testimony of Ms. Ginny Gentles).

¹³ See Jon Hale, *The Choice We Face: How Segregation, Race, & Power Have Shaped America’s Most Controversial Educ. Reform Movement*, Beacon Press (2021); Chris Ford, et al., [The Racist Origins of Private School Vouchers](#), *Ctr. for Am. Progress* (July 12, 2017).

five years.¹⁴ In Virginia and Georgia, legislators and voters approved amendments to their state constitutions to fund “tuition grants”—or vouchers—for families to attend all-white private schools.¹⁵ Mississippi and South Carolina followed a similar playbook, passing state laws to use tax dollars to defray the cost of private school for white families seeking to avoid desegregation.¹⁶ In 1969, after the U.S. Supreme Court ordered desegregation to move more quickly, the Southern Regional Council, a pro-segregation organization, estimated that 500,000 students enrolled in segregation academies. The result was that the private school population doubled in less than two years.¹⁷

Each of these segregation voucher programs were sold using the same language that is being used to sell “school choice” today. Georgia’s law claimed to “advance the constitutional rights of school children to attend private schools of their choice in lieu of public schools.”¹⁸ The Georgia Attorney General argued that the vouchers would “subsidize the child rather than the school.”¹⁹ The Alabama plan to give money to white students to attend all white private schools was called the “Freedom of Choice Plan” and advocates claimed it “had nothing to do with segregation, but aimed to advance each child’s education.”²⁰ Supporters of vouchers in North Carolina also avoided mentions of race and instead argued that the voucher program would create “competition” that “would stimulate progress in public education” and would “offer all our citizens the broadest possible freedom of choice.”²¹

Private school voucher programs continue the segregationists’ legacy of discrimination even today. National data continue to 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.²² 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.²³ In Indiana, the voucher program has been found to disproportionately benefit higher-income white students, many of whom are already attending private schools, with white students making up 60% of the students who received vouchers in the state program.²⁴

It is no surprise either that those promoting anti-LGBTQ policies in public schools would propose private school vouchers. Some private voucher schools teach anti-LGBTQ curriculum,²⁵ and promote harmful conversion therapy for LGBTQ students.²⁶ And discrimination against LGBTQ students in voucher programs is widespread: for example, in Florida’s voucher program, at least 14 percent of

¹⁴ Hale at 34.

¹⁵ *Id.* at 25.

¹⁶ *Id.* at 24-25.

¹⁷ *Id.* at 26.

¹⁸ Steve Suiitts, *Overturing Brown: The Segregationist Legacy of the Modern School Choice Movement* 15 (2020).

¹⁹ *Id.* at 42.

²⁰ *Id.* at 24-25.

²¹ *Id.* at 42.

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

²³ Jonathan N. Mills, et al., Educ. Res. Alliance, [How Has the La. Scholarship Program Affected Students? A Comprehensive Summary of Effects After Two Years](#) (Feb. 22, 2016).

²⁴ Ford at 8.

²⁵ Samantha Sunne & Donnell Suggs, [Some Ga. Tax Credit Scholarships Go to Anti-LGBT Schools](#), *The Current* (July 1, 2021) (Georgia private schools that accept vouchers have explicit anti-LGBTQ written policies (15 of 100 participating schools) and teach anti-LGBTQ curricula that would not be permitted in public schools (at least 12 participating schools)).

²⁶ 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).

147,000 participating students received taxpayer-funded vouchers to attend private schools where being LGBTQ was explicitly condemned or unwelcome.²⁷

Vouchers Strip Students of Civil Rights & Protections

In private school voucher programs, it is private schools—not students or parents—who have the real choice. Unlike public schools, which are open to all students, private schools can deny students admission or expel them for a number of reasons, including based on their religion, sexual orientation, gender identity, academic abilities, disciplinary history, or disability.

Not only can private schools categorically exclude students, they also do not provide students the same rights and protections as public schools, including those in federal civil rights laws such as in Titles IV and VI of the Civil Rights Act, Title IX of the Education Amendments Act of 1972, the Individuals with Disabilities Education Act, and Title II of the Americans with Disabilities Act. Students who attend private schools do not have the same free speech and religious freedom protections under the First Amendment, the same due process or other constitutional and statutory rights guaranteed to them as in public schools, or the same clear systems for oversight, reporting violations, or enforcing penalties for noncompliance as children and families attending public schools.

For students with disabilities, the consequences of losing the rights and protections provided in public schools are often especially problematic. Private schools accepting vouchers do not provide students with disabilities with the same quality and quantity of services available to students in public schools, including those mandated under each student's Individualized Education Program (IEP). Students who leave the public schools with a voucher forfeit many of the protections provided to students under the Individuals with Disabilities Education Act (IDEA)—including the right to a Free Appropriate Public Education (FAPE) tailored to their individual needs—because they are considered parentally placed in private schools. In many cases, students with disabilities are often categorically excluded from private school voucher programs because private schools cannot adequately serve them.

Vouchers Are Ineffective

Private school vouchers fail to achieve what proponents claim is their most basic goal: improving educational opportunities for students. Recent studies of the Louisiana,²⁸ Indiana,²⁹ and Ohio,³⁰ voucher programs have revealed that students who used vouchers perform worse academically than their peers. Multiple studies of the D.C.³¹, Milwaukee,³² and Alabama³³ school voucher programs revealed similar findings: students offered vouchers do not perform better in reading and math than students in public schools. As one example, researchers estimate that the negative impact on

²⁷ Leslie Postal & Annie Martin, [Anti-LGBT Fla. Schools Getting School Vouchers](#), *The Orlando Sentinel* (Jan. 23, 2020).

²⁸ Jonathan Mills & Patrick Wolf, [The Effects of the La. Scholarship Program on Student Achievement after Four Years](#) 4 (EDRE Working Paper No. 2019-10, May 10, 2019).

²⁹ Joseph R. Waddington & Mark Berends, [Impact of the Ind. Choice Scholarship Program: Achievement Effects for Students in Upper Elementary and Middle School](#), 37 *J. Pol'y Anal. & Mgmt.* 783, 796, 803 (2018).

³⁰ David Figlio & Krzysztof Karbownik, Thomas B. Fordham Inst., [Evaluation of Ohio's EdChoice Scholarship Program: Selection, Competition, & Performance Effects](#) 2 (2016).

³¹ *E.g.*, U.S. Dep't of Educ., [Evaluation of the D.C. Opportunity Scholarship Program: Impacts Three Years After Students Applied](#) (May 2019) (2019 Dep't of Educ. Study); U.S. Dep't of Educ., [Evaluation of the D.C. Opportunity Scholarship Program: Impacts Two Years After Students Applied](#) (June 2018) (2018 Dep't of Educ. Study); U.S. Dep't of Educ., [Evaluation of the D.C. Opportunity Scholarship Program: Impacts After One Year](#) (June 2017); U.S. Dep't of Ed., [Evaluation of the D.C. Scholarship Program: Final Report](#) (June 2010).

³² *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).

³³ Joan M. Barth, et al. [Evaluation of the Ala. Accountability Act: Acad. Achievement Test Outcomes of Scholarship Recipients 2016-2017](#), Univ. of Ala., Inst. for Soc. Sci. Res. (Sept. 1, 2018).

academic achievement of attending a voucher school in the D.C. voucher program may be equivalent to missing out on nearly one-third of the year of classroom learning.³⁴

Voucher programs also often provide fewer educational resources than the public schools. The most recent Department of Education studies of the D.C. voucher program show that students participating in the program are less likely to have access to English as a Second Language (ESL) programs, learning supports, and services for students with disabilities than students not in the program.³⁵ Likewise, a survey of the private schools in Milwaukee's voucher program found that nearly 35% reported offering no art, music, physical education, library or technology specialist teachers.³⁶

Vouchers Lack Accountability

In addition to these failures, private school voucher programs lack accountability to taxpayers and basic oversight measures. Many voucher schools are permitted to take taxpayer money without implementing any standards for financial accountability, teacher qualifications, testing, or achievement. Some state voucher programs do not even require teachers to hold Bachelor's degrees.³⁷ In addition, many states do not require accreditation for private schools, thus, taxpayer-funded vouchers are regularly used to pay for tuition at unaccredited schools.

Even when voucher programs require minimal standards by law, the programs often fail to enforce them. For example, U.S. Government Accountability Office reports from both 2007 and 2013 document how the D.C. voucher program has repeatedly failed to meet even the most basic, statutorily required accountability standards, such as maintaining certificates of occupancy and adequate financial records.³⁸ And, in two of the three states with the largest tax credit voucher programs in the country, the state does not conduct any ongoing monitoring of private voucher schools.³⁹

This lack of accountability and oversight makes voucher programs a ripe target for waste, fraud, and abuse. Indeed, there is a long list of taxpayer-funded voucher programs where funds have been misspent. For example, in Florida, voucher schools took millions in public funds for students not even attending those schools⁴⁰; in Wisconsin, the voucher program paid \$139 million to schools that failed to meet the state's requirements for operation⁴¹; and in Arizona, the state's Auditor General found that parents misused more than \$700,000 in voucher funds on items such as beauty supplies and sports apparel with no way for the state to recoup the money.⁴²

³⁴ Ulrich Boser, et al. [The Highly Negative Impacts of Vouchers](#), Ctr. for Am. Progress, (March 2018).

³⁵ 2019 Dep't of Educ. Study at A-11; 2018 Dep't of Educ. Study at 16.

³⁶ Erin Richards, [Report: Choice Schools Lack Specialty Teachers](#), *Milwaukee J. Sentinel* (Feb. 13, 2013).

³⁷ U.S. Gov't Accountability Office, [Private School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Servs. to Eligible Students](#), Pub. No. GAO-16-712 at 27 (2016).

³⁸ U.S. Gov't Accountability Office, [District of Columbia Opportunity Scholarship Program: Actions Needed to Address Weaknesses in Admin. & Oversight](#), Pub. No. GAO-13-805 (Nov. 2013); U.S. Gov't

Accountability Office, [District of Columbia Opportunity Scholarship Program: Additional Policies & Procedures Would Improve Internal Controls & Program Operations](#), Pub. No. GAO-08-9 at 26 (Nov. 2007).

³⁹ U.S. Gov't Accountability Office, [Private School Choice: Accountability in State Tax Credit Scholarship Programs](#), Pub. No. GAO-19-664 (Sept. 2019).

⁴⁰ Gus Garcia-Roberts, [McKay Scholarship Program Sparks a Cottage Industry of Fraud & Chaos](#), *Miami New Times* (June 23, 2011).

⁴¹ Molly Beck, [State Paid \\$139 Million to Schools Terminated from Voucher Program Since 2004](#), *Wisc. State J.* (Oct. 12, 2014).

⁴² Yvonne Wingett Sanchez & Rob O'Dell, [Parents Spent \\$700K in School Voucher Money on Beauty Supplies, Apparel; Attempted Cash Withdrawals](#), *The Republic* (Oct. 30, 2018).

Vouchers Violate Religious Freedom

Voucher programs predominantly fund students to attend private, religious schools. For example, a review of Indiana's voucher program found that 98% of participating schools were religious,⁴³ and in the D.C. voucher program, 81% of participating students attended religious schools.⁴⁴ This conflicts with one of the most dearly held principles of religious freedom: the government should not compel anyone to fund 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 demand that the taxpayers foot the bill.

Nor should taxpayer dollars be used to fund schools that can refuse to admit students or hire employees based on their religion. Yet many religious schools impose a religious litmus test on students, teachers, and their families. Furthermore, because oversight must accompany public funds, vouchers threaten the autonomy of religious schools by opening them up to government audits, control, and interference.

Conclusion

Private school vouchers would not solve the manufactured controversies about teaching history and protecting LGBTQ rights in public schools, nor would they solve the real challenges that public schools face. Rather than funneling taxpayer money into voucher programs that have proven to be discriminatory, unsuccessful, and unaccountable, we would best serve the nation's students by ensuring that taxpayer funds remain in public schools. We can only counter the harmful agenda of anti-CRT and anti-LGBTQ rights activists by defending public education, not undermining it.

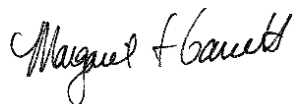
If you have any questions, please contact Maggie Garrett (garrett@au.org) or Sam Sokol (sokol@au.org).

Thank you for your consideration.

Sincerely,



Rachel Laser
President & CEO



Maggie Garrett
Vice President for Public Policy



Sam Sokol
Federal Policy Advocate

⁴³ Andrew D. Catt, [Exploring Indiana's Private Education Sector](#), Friedman Foundation (2014).

⁴⁴ U.S. Dep't of Ed., [Evaluation of the D.C. Scholarship Program: An Early Look at Applicants and Participating Schools Under the SOAR Act](#) at 10, 29 (2014).