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MEMORANDUM

TO: Senate Education Committee

FROM: Andy Hoover, Legislative Director

DATE: February 28, 2011

RE: OPPOSITION TO SENATE BILL 1

On Tuesday, the Senate Education Committee is scheduled to consider Senate Bill 1. SB 1 creates taxpayer-funded vouchers for low-income students to attend private, parochial, or public schools outside the students' home districts. The proposal in SB 1 violates three different provisions of the Pennsylvania Constitution. In addition, the bill provides state funding to non-public schools that discriminate against kids for a variety of reasons. The American Civil Liberties Union of Pennsylvania opposes SB 1, and on behalf of the 18,000 members of the ACLU of Pennsylvania, I urge you to please vote "no" on this bill.

An inability to reconcile SB 1 with one provision of the state constitution would be enough for it to be declared unconstitutional. But the bill has three constitutional problems. First, Article III, Section 15 of the state constitution declares:

No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school.

The funding for the scholarships in SB 1 will derive from the state funds that would be sent to the public school district in which the student resides, and SB 1 places no restrictions on funding scholarships for sectarian schools. Thus, if a student uses a scholarship to attend a religious school, such use would violate the constitutional prohibition on funding sectarian schools with funds that were otherwise raised for public schools.

There is no state case law upholding the appropriation of funds for sectarian schools. The state Supreme Court has upheld a statute requiring public schools to provide transportation for students to religious schools, but the court made clear that the statute did not violate Article III, Section 15 because students were only receiving transportation and not instruction.

In addition, Article III, Section 29 of the Pennsylvania Constitution says:

No appropriation shall be made for charitable, educational or benevolent purposes to any person or community nor to any denomination and sectarian institution, corporation or association(.

Again, SB 1 faces a constitutional problem. The state courts have overturned funding to sectarian organizations by using the predecessor to Article III, Section 29, and while the Pennsylvania Supreme Court has also ruled that funding to religious homes for foster children is not a violation of Section 29, the court clarified that it did so because it represented a governmental duty, rather than a charitable or benevolent purpose. State payments for vouchers for religious schools, meanwhile, are clearly for educational purposes and, thus, a violation of Section 29.

Finally, Article III, Section 30 states:

No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House.

Private schools are inherently not under the absolute control of the commonwealth. If SB 1 does not pass both the Senate and House by a supermajority of two-thirds of all members, it would also find constitutional troubles under Section 30.

The ACLU of Pennsylvania also opposes SB 1 because it provides state funding to private and parochial schools that can and do discriminate against students for a variety of reasons. The real choice under SB 1 belongs to the non-public schools that can choose the students they will and will not accept. They can deny admission on the basis of disability, limited English proficiency, religion, sexual orientation, and gender identity or expression. Taxpayer dollars do not belong in the coffers of schools that can discriminate against kids in this way.

Public schools, meanwhile, take everyone.

While the ACLU of Pennsylvania's mission does not speak to the broader education issues at stake, it is clear that there are other proven ways to address the problems in struggling schools that the sponsors of SB 1 hope to solve. SB 1, though, isn't the answer. This bill fails to pass constitutional muster and provides state dollars to schools that discriminate. Please vote "no" on SB 1.