



**Statement of the ACLU of Minnesota
In Opposition to SF 256
January 24, 2017**

The ACLU of Minnesota (ACLU-MN) is a nonpartisan, nonprofit organization dedicated to protecting the civil liberties of all Minnesotans under the United States and Minnesota constitutions. We have over 22,000 supporters throughout Minnesota, and promote our mission through litigation, public education and lobbying efforts.

SF 256, at its core, funnels taxpayer funds to private and religious schools. As such, there is no meaningful difference between “tax credits” and direct taxpayer payments (i.e. vouchers) to private and religious schools.

Private school vouchers likely violate the Minnesota Constitution. First, Article 13 §1 requires the legislature to “establish a general and uniform system of public schools.” By creating a scheme whereby some students receive taxpayer-funded instruction at private schools, SF 256 essentially abandons the state’s constitutional obligation to provide a uniform, thorough and efficient system of public schools throughout the state.

Second, Article 13 §2 prohibits that “any public money or property be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught.” This provision goes further than the Establishment Clause of the First Amendment and directly prohibits the use of public funds to support schools where doctrines, creeds, or tenets of any religion are promulgated or taught.

Although the Minnesota Supreme Court has not ruled on the issue of private school vouchers, the Court has rebuffed attempts to fund private elementary or high schools with public money. In Minnesota Civil Liberties Union v. State, 224 N.W.2d 344 (Minn. 1974), the Minnesota Supreme Court struck down a statute giving parents a tuition tax credit finding that the statute advanced religion and was, therefore, unconstitutional. By providing public funds for some students to attend private religious schools, SF 256 would likewise unconstitutionally advance religion.

In Americans United v. I.S.D. 622, the Minnesota Supreme Court examined a state law that authorized the use of government funds to bus children to religious schools. 179 N.W.2d 146 (Minn. 1970). The Court examined the program under the “No Aid” clause and ultimately upheld the law. In doing so, the court cautioned that, “we do so with the conviction that this legislation



brings us to the brink of unconstitutionality.” Id. at 154. If providing transportation to students brings us to the brink, public funds for students to attend religious schools takes us over the edge.

In addition, vouchers threaten civil rights. Private schools are exempt from many civil rights laws, including the Individuals with Disabilities Education Act (IDEA). Accordingly, any voucher program could result in state funded discrimination. Furthermore, where voucher funds may be used for sectarian educational purposes, a voucher program could require taxpayers to support instruction in religions that may be contrary to their own.

The requirement that eligible schools comply with the Minnesota Human Rights Act is also illusory because the MHRA includes an exemption that allows private religious schools to discriminate in admissions based on the religious beliefs of the student, and an exemption that allows discrimination based on sexual orientation.

In addition, the bill does not hold private schools to the Pupil Fair Dismissal Act, so decisions relating to expelling and excluding students can be a backdoor way for a private school to exclude low-performing students or students with disabilities.

Because SF 256 represents bad public policy and it likely violates the Minnesota Constitution, we respectfully urge you to oppose it.