

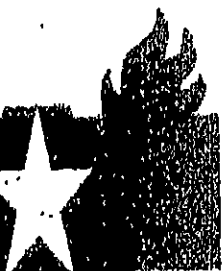
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FACSIMILE TRANSMISSION

To: *Senate Finance Comm.* Date: *4/10/03*
c/o Denise Davis
Facsimile No.: *775. 484-4500* Pages: *5*, including this cover sheet.
From: *Reverend Barry Lynn*
Subject: *SB 376*
COMMENTS:

*Please see attached letter re: SB 376 for distribution
at Senate Finance Committee meeting today @ 4:00.*

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EXHIBIT K Senate Committee on Finance
Date: 4/10/03 Page 1 of 5

Your voice in the battle to preserve religious liberty



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TESTIMONY OF

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE

SENATE BILL 376

PROGRAM OF VOUCHER SCHOOLS

On behalf of the Nevada members of Americans United for Separation of Church and State, we strongly urge you to OPPOSE Establishing the Program of Voucher Schools, SB 376. The Voucher Schools Act would establish a statewide school voucher program. SB 376 is bad policy and bad law.

Americans United for Separation of Church and State is a nonpartisan, national organization committed to preserving the constitutional principles of separation of church and state and religious liberty. Americans United represents over 70,000 individual members and 10,000 religious activists nationwide.

More than 90% of American children attend public schools. Vouchers drain much needed money away from public schools and directs those public funds to private schools that are not accountable for student performance or for how the funds are spent.

Private schools need not accept students with disabilities and special needs, may discriminate in employment, and may expel students at will. In addition, voucher proposals divert attention away from true educational reform.

Vouchers can assist only a limited number of students and will never address the larger problems facing America's public schools. Public schools will be expected to improve with less money (although expenses will remain stable) while higher performing students transfer to private schools. This makes no sense. True educational reform must focus on improving schools that benefit all children.

Beyond the policy concerns, private school vouchers violate the U.S. and Nevada constitutional principle of separation of church and state. Vouchers result in tax dollars flowing to private religious schools, funds that then can be spent on worship, religious training, and religious salaries. Nationwide, approximately 85% of those students enrolled in private school attend religious schools. In many places, the percentage is higher; for example, under the Cleveland voucher program, 96% of the participating students attend sectarian schools. Such schools are considered "pervasively sectarian," in that religion is integrated throughout the curriculum. The Supreme Court has found that, in sectarian schools, "the teaching process is, to a large extent, devoted to the inculcation of religious values and belief." *Roemer v. Board of Public Works*, 426 U.S. 736, 753 (1976).

The U.S. Supreme Court's recent decision in *Zelman v. Simmons-Harris*, 122 S. Ct. 2460 (2002), in which the court held that a Cleveland, Ohio school voucher program did not violate the Establishment Clause of the federal constitution, is not applicable to the Nevada Constitution. Passage of the Education Certificate Act would unquestionably violate the Nevada Constitution. The Education Article (Article XI) prohibits public funds from being used for sectarian purposes (§ 10). Nor is the Vouchers Schools Act saved by a provision in it that apparently prohibits schools from requiring pupil participation in any religious activity upon written request of the parent (§ 15).

The funding of private schools through vouchers is a contentious issue, which has led to litigation in numerous states. The U.S. Supreme Court struck down voucher programs in *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756, 780-89 (1973), and in *Sloan v. Lemon*, 413 U.S. 825, 832 (1973). The Court upheld another voucher program in *Zelman v. Simmons-Harris*, 122 S. Ct. 2460, 2472 (2002), explaining that the program at issue was different from the one struck down in *Nyquist*. The Court in *Zelman* set forth many specific reasons for why it thought that the particular voucher program before it was constitutional, and the Court refrained from overruling either *Nyquist* or *Sloan*. After *Zelman*, the federal constitutionality of voucher programs will hinge on the details of how the programs are designed and implemented - a clear recipe for protracted litigation.

Moreover, vouchers will lead to extensive regulation of private religious schools. Typically, the government regulates what it subsidizes. Many religious groups are rightly concerned about the threat vouchers pose to their independence. For example, members of the Seventh-day Adventist Church, operators of the second largest private school system in the country, oppose voucher plans because they fear their schools will be subjected to excessive government control if a voucher plan is put into place. (Interview with Richard J. Barnett of the Church-State Council, Seventh-day Adventist Church, *Church & State*, vol. 46, No. 8, p. 8 (Sept. 1993)).

Taxpayers also have a right to know how their tax dollars are spent. If the government is going to play a direct role in funding private schools, it has a right and a responsibility to ensure that the funds are being spent for sound educational services. Vouchers will inevitably open the door to extensive state regulation of private schools.

SB 370 does not include any accountability by the private schools to the state or taxpayers. There is no performance or financial audit requirement. Additionally there is no evaluation of academic performance by the students receiving taxpayer-funded vouchers. There is no requirement for the private schools to test or allow for voucher students to be tested using a statewide assessment tool. This effectively removes students from public schools that have been found to be "demonstrating need for improvement" but does nothing to ensure that they have not been removed from one such school to another such school.

There is no requirement in SB 376 for private schools to demonstrate that they are financially capable of continued operation. The state could issue vouchers and the student, parent, and the state discover that the private school is insolvent and incapable of educating the voucher student through the school year. To be accepted into the voucher program a private school should be required to post a surety bond, certificate of deposit or other financial instrument covering the school that demonstrating the school has the financial resources to continue in business through the school year.

While SB 376 does seek to ensure that a private school admissions policy does not discriminate on the bases of a single race or ethnicity (*See Vouchers Schools Act*, § 9(b)) it does not include other civil rights categories such as religion, national origin,

gender, disability, or income. While SB 376 address a single category of discrimination, it does so in admissions policy only, not in other capacities such as employment. Finally, while SB 376 allows for a parent to opt their child out of religious activity the bill does not prevent religion from being an admission factor.

For the foregoing reasons, we strongly urge you to vote against the Voucher Schools Act (SB 376). Thank you for your attention to this matter.