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## MEMORANDUM

**TO:** The Senate of Pennsylvania

**FROM:** Andy Hoover, Legislative Director, ACLU of PA

**DATE:** April 12, 2011

### RE: OPPOSITION TO SENATE BILL 1

Sometime this week- possibly as early as today- the Senate may vote on Senate Bill 1. SB 1 creates a taxpayer-funded scheme to give some students vouchers to attend nonpublic schools or public schools outside the district in which they live. SB 1 is obviously unconstitutional and funnels public funds to institutions that discriminate. The American Civil Liberties Union of Pennsylvania opposes SB 1, and on behalf of the 17,000 members of the ACLU of PA, I urge you to please vote “no” on this bill.

Article III, Section 15 of the Pennsylvania Constitution says:

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 publicly-funded voucher program in SB 1 is exactly the type of program that Section 15 is intended to stop. There is no case law testing this provision because the commonwealth has never before created a funding regime for religious schools. There have been two challenges to the state law that mandates public schools to provide transportation for private school students,<sup>1</sup> and the Pennsylvania Supreme Court only upheld that law because funds were not given to the religious schools. The court considered busing to be a public safety measure, like a publicly-supported firefighting station providing services to a religious school. Clearly, those caveats do not exist with Senate Bill 1.

Article III, Section 29 of the state constitution states:

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(.)

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<sup>1</sup> See *Rhoades v. Abington Township School District*, 424 Pa. 202, 226 A.2d 53 (1967); *Springfield School District v. Department of Education*, 397 A.2d 1154, 1171 (Pa. 1970).

The predecessor to Section 29 has been tested in multiple cases, and the state Supreme Court has overturned a variety of programs that funded religious institutions.<sup>2</sup> Clearly, the vouchers in SB 1 are for an educational purpose and are given to individuals and sectarian institutions.

In the early 1960s, the legislature wanted to provide scholarships and grants for higher education. Due to the language of Section 29, the legislature concluded that this type of scholarship funding would require a constitutional amendment, so Section 29 was amended in 1963 (language omitted above). If the secondary and elementary voucher program in SB 1 were constitutional under Section 29, the constitution would not have needed to be amended in the early 1960s for funding for higher education.

Article III, Section 30 of the Pennsylvania Constitution says:

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.

By definition, private schools are not under the absolute control of the commonwealth. They are created so that their founders can implement an education vision based on their own values, without government interference. SB 1 will require a super-majority vote of 2/3 of both the House and Senate for passage.

The supporters of SB 1 are asking you to believe them, rather than the plain language of the state constitution. This bill cannot avoid these constitutional roadblocks.

The ACLU of Pennsylvania also opposes SB 1 because it provides public funds for private schools that discriminate against kids for a variety of reasons, including disabilities, sexual orientation, and ethnicity (by denying admission due to limited English proficiency). Public schools, meanwhile, accept everyone.

The primary sponsors of SB 1 deserve our gratitude for their dedication to address the commonwealth's struggling schools. SB 1 is not the answer, however. SB 1 will help a small fraction of students while leaving other children behind in struggling public schools that will then have less funding. This legislation is unconstitutional and provides public funds for schools that discriminate. Please vote "no" on SB 1.

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<sup>2</sup> See *Collins v. Kephart*, 271 Pa. 428, 117 A. 440 (1921); *Busser v. Snyder*, 282 Pa. 440, 128 A. 80 (1925); *Collins v. Martin*, 290 Pa. 388, 139 A. 122 (1927).