

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAN SCHWARTZ, in his official
capacity as Treasurer of the
State of Nevada,

Appellant,

v.

HELLEN QUAN LOPEZ, individually
and on behalf of her minor child,
C.Q.; MICHELLE GORELOW,
individually and on behalf of her
minor children A.G. and H.G.;
ELECTRA SKRYZDLEWSKI,
individually and on behalf of her
minor child, L.M.; JENNIFER CARR,
individually and on behalf of her
minor children, W.C., A.C., and
E.C.; LINDA JOHNSON, individually
and on behalf of her minor child,
K.J., and SARAH SOLOMON AND
BRIAN SOLOMON, individually and
on behalf of their minor children,
D.S. and K.S.,

Appellees

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**BRIEF OF AMICI WISCONSIN ALIANCE FOR EXCELLENT
SCHOOLS, WISCONSIN ASSOCIATION OF SCHOOL DISTRICT
ADMINISTRATORS, ASSOCIATION OF WISCONSIN SCHOOL
ADMINISTRATORS, HORACE MANN LEAGUE, AND NETWORK FOR
PUBLIC EDUCATION**

Leon Greenberg
2965 S Jones Blvd,
Las Vegas, NV 89146
Julie Underwood, Of Counsel
Attorney for Amici

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Equal Education Opportunities Act, 20 U.S.C. §1703.	22
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Ariz. Rev. Stat. §15-2401 to §15-2404.	7
DC Code §38-1851.01 <i>et seq.</i>	6
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Ga. Code Ann. §§20-2-2110 to 20-2-2118.	6
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La. Rev. Stat. §§ 17:4011-4025.	6
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Miss. Code Ann. §§ 37-173-1 to 37-173-31.	6
Miss. Code Ann. §§37-175-1 to 37-175-29.	6
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Ohio Rev. Code §§ 3310.01 to 3310.17.	6-7
Ohio Rev. Code §§ 3310.41 to 3310.43.	7
Ohio Rev. Code §§ 3310.51 to 3310.64.	7
Ohio Rev. Code §§3313.975 to 3313.979.	7
70 Okla. Stat. §§13-101.1 -101.2.	7
Tenn. Code Ann. §49-10-1401 to 49-10-1406.	7
Utah Code §§53A-1a-701-710.	7
16 V.S.A. §§821-822.	6
1989 Wisconsin Act 336.	6, passim
1995 Wis. Act 27.	8
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Wis. Stat. §115.7915.	7
Wis. Stat. §118.60.	8, passim
Wis. Stat. §119.23.	8, passim

OTHER AUTHORITIES

<i>A.C.L.U. v. Wisconsin</i> , U.S. Dep’t of Justice (June 7, 2011), at https://www.aclu.org/files/assets/complaint_to_doj_re_milwaukee_v_oucher_program_final.pdf	21
Robert Bifulco & Helen F. Ladd, <i>School Choice, Racial Segregation, and Test-Score Gaps: Evidence from North Carolina’s Charter School Program</i> , 26 <i>Journal of Policy Analysis and Management</i> 31 (2006).	25
Brief of Nevada State Education Association and National Education Association as Amici Curiae supporting Plaintiff’s Motion for Preliminary Injunction, <i>Lopez v. Schwartz</i> , (No. 150C002071B) (November 23, 2015).	27
Casey D. Cobb, Review of School Choice Demonstration Project Evaluation Report #30, National Education Policy Center (April 12, 2012), at http://nepc.colorado.edu/thinktank/review-Milwaukee-Choice-Year-5	28

Joshua M. Cowen, David J. Fleming, John F. Witte, Patrick J. Wolf, & Brian Kisida (2013). <i>School vouchers and student attainment: Evidence from a state-mandated study of the MPCP</i> , 41 Policy Studies Journal, 147 (2013).	27
David R. Garcia, <i>The Impact of School Choice on Racial Segregation in Charter Schools</i> , 22 Education Policy 805 (2008).	25
Michael Leachman, Nick Albares, Kathleen Masterson, & Marlana Wallace, <i>Most States Have Cut School Funding, and Some Continue Cutting</i> , Center for Budget and Policy Priorities, (January 25, 2016) at http://www.cbpp.org/research/state-budget-and-tax/most-states-have-cut-school-funding-and-some-continue-cutting	31, 32
Letter from Anurima Bhargava et al., U.S. Dep't. of Justice, Civil Rights Div., Educ. Opportunities Sec., to Tony Evers, State Superintendent, Wis. Dep't. of Pub. Instruction (Apr. 9, 2013), at https://www.aclu.org/files/assets/04_09_13_letter_to_wisconsin_dpi_0.pdf	21
Letter from Tony Evers, Wis. Sate Superintendent of Pub. Instruction to the Members of the Joint Committee on Finance, at 5 (May 23, 2011), at http://issuu.com/sparty1216/docs/dpi_letter_tojcf5.23.11	13
Julie F. Mead, <i>Private in Name Only: A Statutory and Constitutional Analysis of Milwaukee's Private School Voucher Program</i> , 21 Washington and Lee Journal of Civil Rights and Social Justice 331 (2015).	8
R.A. Mickelson, M.C. Bottia, & S. Southworth, <i>School Choice and Segregation by Race, Class, and Achievement</i> , 167-192, in G. Miron, K. Welner, P.H. Hinchey, & W.J. Mathis (Eds.).	25
Nevada Legislative Counsel Bureau, Fiscal Analysis Divisions, <i>The Nevada Plan for School Finance: An Overview</i> (2015) at https://www.leg.state.nv.us/Division/Fiscal/NevadaPlan/Nevada_Plan.pdf	39

Gary Orfield & Erica Frankenburg, <i>Educational delusions?: Why choice can deepen inequality and how to make schools fair</i> (2013).....	25
Jaime Potales & Julian Vasquez Heilig, <i>Understanding How Universal Vouchers Have Impacted Urban School Districts' Enrollment in Chile</i> , 22 <i>Education Policy Analysis Archives</i> 1 (2014), at http://dx.doi.org/10.14507/epaa.v22n72.2014	25
Public Policy Forum, <i>Milwaukee Parental Choice Program 2015, 17th Annual Census of MPCP Schools</i> , (June 2015) at http://publicpolicyforum.org/research/milwaukee-parental-choice-program-2015	14, 24, 25
James Shaw & Carolyn Kelley, <i>Making Matters Worse: the Impact of Reducing State Funding and Expanding School Choice on Student Poverty and Achievement Gaps in Wisconsin</i> , Paper presented to the Am. Educ. Research Ass'n (2013)	31
Martin Söderström & Roope Uusitalo, <i>School Choice and Segregation: Evidence from an Admission Reform</i> , 112 <i>Scandinavian Journal of Economics</i> 55 (2010).	26
Southern Education Foundation, <i>A Failed Experiment: Georgia's Tax Credit Scholarships for Private Schools</i> (2011), at http://www.southerneducation.org/getattachment/12d045ec-6960-4715-82fb-26a2b94de61c/Test-Publication-2.aspx	26
U.S. Dep't of Education, <i>Fiscal Year 2015 Budget Summary and Background Information</i> , at http://www2.ed.gov/about/overview/budget/budget15/summary/15summary.pdf	19
<i>U.S. Disability Statistics and Facts</i> (July 26, 2011) at http://www.disabled-world.com/disability/statistics/census-figures.php	20

Wisconsin Dep't of Pub. Instruction, <i>Funding for Special Education will be Frozen</i> , at https://dpi.wi.gov/sites/default/files/news-release/dpinr2015_59.pdf	20
Wisconsin Dep't of Pub. Instruction, <i>General Aid</i> (2015) at http://dpi.wi.gov/sfs/aid/general/overview	30
Wisconsin Dep't of Pub. Instruction, MPCP Facts and Figures for 2015-2016 (November 2015), at http://dpi.wi.gov/sites/default/files/imce/sms/pdf/MPCP Sept Facts and Figures 2015-16.pdf	12
Wis. Dep't of Pub. Instruction, <i>Overall MPS Results Higher than Choice Schools on Statewide Exams</i> (2011), at https://millermpls.files.wordpress.com/2011/03/dpi-comparison-mps-voucher-wkce-testing.pdf	20
Wisconsin Dep't of Pub. Instruction, <i>PowerPoint Presentation: School Funding Challenges</i> , (2015) at http://dpi.wi.gov/budget/news-resources	34
Wisconsin Dep't of Pub. Instruction, RPCP Facts and Figures for 2015-2016 (October 2015); at http://dpi.wi.gov/sites/default/files/imce/sms/pdf/RPCP Sept 2015-16 Program Facts.pdf	12
Wisconsin Dep't of Pub. Instruction, <i>Wisconsin Information System for Education Data Dashboard</i> , at http://wisedash.dpi.wi.gov/Dashboard/Page/Home/Topic%20Area/Enrollment/	24
Wisconsin Dep't of Pub. Instruction, WPCP Facts and Figures for 2015-2016 (October 2015), at http://dpi.wi.gov/sites/default/files/imce/sms/pdf/WPCP Sept Fact and Figures 2015-16.pdf	10, 12

Wisconsin Legislative Fiscal Bureau, <i>Letter from Christa Pugh to Representative Peter Barca</i> (May 26 2015) at http://media.jrn.com/documents/5.27.15+-LFB+Memo+on+Voucher+Costs.pdf	11
<i>Wisconsin Taxpayer</i> , Volume 84, Number 2, at 8 (February 2016) at https://wistax.org/publication/in-their-own-words	12
John Witte, “ <i>Evaluating Voucher Programs: The Milwaukee Parental Choice Program</i> ,” Testimony before the U.S. Senate Homeland Security Committee Hearing (July 20, 2015).	22

N.R.A.P. 26.1 DISCLOSURE

Pursuant to N.R.A.P. 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in N.R.A.P. 26.1(a) which must be disclosed.

Dated this 7th day of April, 2016.
By:

/s/ Leon Greenberg

Attorney for Amici

STATEMENT OF THE FACTS

Amici adopt the Statement of Facts forth in the Appellees' Brief.

INTEREST OF THE AMICI¹

All Amici are committed to providing equal educational opportunities to all children. All Amici believe the privatization of public education through vouchers will denigrate the education children are afforded. All Amici believe the public education system provides opportunities for *all* children to learn to be active participants in our nation's economy and democracy.

Amicus WAES

The Wisconsin Alliance for Excellent Schools (WAES), founded in 1998, is a broad-based, diverse, statewide coalition working for comprehensive school reform. The WAES membership includes public school districts, individuals, and community organizations. Its mission is to advocate for public schools, which serve the needs of all children and their communities.

<https://www.facebook.com/WAES-Wisconsin-Alliance-for-Excellent-Schools-191723844178541/>

Amicus WASDA

Founded in 1938, the Wisconsin Association of School District Administrators is a

¹ No counsel for a party in this case authored this brief in whole or in part and no person or entity other than the Amici or their counsel made a monetary contribution to the preparation or submission of this brief.

professional education organization for superintendents within Wisconsin.

WASDA is committed to supporting excellence in education and educational opportunities for all children. WASDA advocates on behalf of all Wisconsin's children to receive the highest quality of education possible. <http://www.wasda.org>

Amicus AWSA

Founded in 1978, the Association of Wisconsin School

Administrators is a professional education organization for Wisconsin

school administrators. It exists to support members' ability to

improve the quality of educational opportunities for the youth of

Wisconsin. <https://www.awsa.org>

Amicus Horace Mann League

The Horace Mann League is a national organization founded in 1922

to perpetuate the ideals of Horace Mann, the founder of the American

public school system. The League believes that the public school

system of the United States is an indispensable agency for the

perpetuation of the ideals of our democracy and a necessary unifying

and dynamic influence in American life. <http://www.hmleague.org>

Amicus Network for Public Education

The Network for Public Education is a national advocacy group whose goal

is to preserve, promote, improve and strengthen our public schools, for both current and future generations of students. The Network regularly issues reports, white papers, newsletters, and action alerts to update activists and the public at large regarding issues of importance to public education. The Network is committed to promoting socially just and equitable public schools. <http://networkforpubliceducation.org>

SUMMARY OF ARGUMENT

Enacted in 2015, Nevada's Education Savings Account, Senate Bill 302 (SB 302) is the one of the newest voucher programs in the country. It will permit parents to use tax dollars in the form of state public education aid, that would have funded public education, to be used instead for private education expenses, including private school tuition (Senate Bill 302). We urge this court to be aware of the Wisconsin experience of allowing voucher programs to publicly fund private education to the detriment of public education in the entire state.

Wisconsin's experience demonstrates the high cost of the programs and shows that over time, private schools become reliant on public funds for their operation. In fact, numerous schools only enroll students subsidized by public funds. Moreover, in contrast to Nevada's program, Wisconsin has increased regulatory oversight of its voucher programs, precisely because of the numerous difficulties in holding schools accountable. The history of Wisconsin's programs, particularly the Milwaukee Parental Choice Program, shows that vouchers deepen inequities and provide no improvements in educational outcomes for all children. The minimal results obtained unfortunately come at the expense of the public education system. Subsidies for private education have expanded despite vouchers' poor performance and they have been funded by large cuts to public education. These cuts seriously

jeopardize school districts' ability to provide equitable educational experiences for all children.

This history and the research concerning voucher programs in Wisconsin and elsewhere provide a clear picture of the likely outcome if Senate Bill 302 is implemented creating Education Savings Accounts. Given that Nevada's voucher program is more expansive and has nearly no regulations to ensure that participating private schools are held accountable, it is certain that private schools will become dependent on the public funds collected for public education, but now diverted from the public purpose for which they were collected. Senate Bill 302 will cause irreparable harm to public education in Nevada.

ARGUMENT

I. The history of the voucher programs in Wisconsin demonstrates the harm caused to public education, the high cost of the programs, private schools' reliance on the public funds made available, and lack of public accountability for those funds.

In 1990 Wisconsin became the first state² in the nation to adopt a voucher program 1989 Wisconsin Act 336, §228 (May 11, 1990), that permitted public funds to be used to subsidize private schools by paying for individual students' private school tuition. Since then six other states, including Nevada, have adopted statewide voucher programs.³

² Historically the states of Maine and Vermont have “town tuitioning” programs dating back to the 1800s. These programs provide for the payment of private school tuition where the local school district is too sparsely populated to operate its own school. In which case students are provided public funds to attend either a neighboring public school or a non-sectarian private school. 20-A. M.R.S.A. §2951 and §5204; 16 V.S.A. §§821-822.

³ In addition to state-wide programs, states have adopted programs that are specific to a city: Cleveland Scholarship and Tutoring Program, Ohio Rev. Code §§3313.975 to 3313.979; Washington, DC Opportunity Scholarship Program (2004) DC Code §38-1851.01 *et seq.*; Milwaukee Parental Choice Program (1990) Wis. Stat. §119.23; Racine Parental Choice Program (2011) Wis. Stat. §118.60; and voucher programs that are specifically designed for children with disabilities: John M. McKay Scholarship (2001) Fla. Stat. §§1002.39 & 1002.421; Georgia Special Needs Scholarship (2007) Ga. Code Ann. §§20-2-2110 to 20-2-2118; School Choice Pilot Program for Certain Students with Exceptionalities (2010) La. Rev. Stat. §17:4031; Mississippi Dyslexia Therapy Scholarship for Students with Dyslexia Program (2012) Miss. Code Ann. §§ 37-173-1 to 37-173-31; Nate Rogers Scholarship for Students with Disabilities Program (2013) Miss. Code Ann. §§37-175-1 to 37-175-29; The Equal Opportunity for Students with Special Needs (2015) Miss. Code. Ann. §§37-181-1 to 37-181-21; Special Education Scholarship Grants for Children with Disabilities (2013) (N.C.G.S.A. §§115C-

A. The Wisconsin voucher programs have regularly expanded.

When first enacted, the Milwaukee Parental Choice Program (also referred to as MPCP and the Milwaukee voucher program) limited participation to no more than 1% of the Milwaukee Public School students whose family incomes were no more than 175% of the federal poverty level and permitted attendance at private non-sectarian schools within the city limits of Milwaukee with public funds paying for their tuition. The original law required private schools participating in the program to:

- Accept the voucher as full tuition for the student,
- Admit all students who applied and use a random selection procedure if

112.5 to 115C-112.9; Autism Scholarship Program (2003) Ohio Rev. Code §§ 3310.51 to *Arizona* – Empowerment Scholarship Account (2011) Ariz. Rev. Stat. §15-2401 to §15-2404.

Indiana – Choice Scholarship Program (2011) Ind. Code §20-51 *et seq.*

Louisiana – Student Scholarship for Educational Excellence Program (2008) La. Rev. Stat. §§ 17:4011-4025.

Nevada – Education Savings Account (2015) Senate Bill 302.

North Carolina – Opportunity Scholarships (2013) N.C. G.S.A. §§115C-562.1 to 115C-562.7.

Ohio – Income Based Scholarship Program (2013) Ohio Rev. Code §§ 3310.01 to 3310.17.

3310.64; Jon Peterson Special Needs Scholarship Program (2011) Ohio Rev. Code §§ 3310.41 to 3310.43; Lindsey Nicole Henry Scholarships for Students with Disabilities (2010) 70 Okla. Stat. §§13-101.1 -101.2; Individualized Education Act (2015) Tenn. Code Ann. §49-10-1401 to 49-10-1406; Carson Smith Special Needs Scholarship Program (2005) Utah Code §§53A-1a-701-710); Special Needs Scholarship Program (2015) Wis. Stat. 115.7915.

applicants outnumbered seats available, and

- Limit the number of voucher students to no more than 49% of its student body.

1989 Wisconsin Act 336, §228 (May 11, 1990).

Since that modest beginning, the Milwaukee Parental Choice statute has been amended more than 20 times, expanding the program, its scope, and its impact in significant ways.⁴ Major expansions include:

- Permitting private religious schools to participate. Wis. Act 27, §4002.
- Removing the limit on the number of voucher students in a participating voucher school. 1995 Wis. Act 27, §4003.
- Removing the limit on the total number of voucher students in the program. 2011 Wis. Act 32, §2539, repealing Wis. Stat. §119.23(2)(b), which read: “No more than 22,500 pupils may attend private schools under this section.”
- Removing the family income limit for enrolled voucher students. 2011 Wis. Act 32, §2536c.
- Increasing the limit to 300% of the federal poverty level for new voucher students. *Id.*

⁴ A detailed history of the Milwaukee program is available in Julie F. Mead, *Private in Name Only: A Statutory and Constitutional Analysis of Milwaukee’s Private School Voucher Program*, 21 Washington and Lee Journal of Civil Rights and Social Justice 331-382 (2015).

- Permitting private schools outside of Milwaukee to participate in the program. 2011 Wis. Act 32, §2536.

The Wisconsin legislature has created two additional voucher programs. First, the Racine Parental Choice Program (RPCP), which largely replicates the Milwaukee program in the city of Racine was enacted in 2011. Wis. Stat. §118.60. The Racine Parental Choice Program employs the same income eligibility, although students in RPCP must reside within the Racine Unified School District and must have been previously enrolled in a public school, not previously enrolled in any school, or private school students entering kindergarten, first grade, or ninth grade. Wis. Stat. §118.60(2)(a)(2). Two years later, the Wisconsin legislature passed the statewide voucher program, the Wisconsin Parental Choice Program (WPCP). 2013 Wis. Act 20 (June 30, 2013). It permits students (whose family income during the first year of enrollment is no more than 185% of the federal poverty level) to attend private school at public expense. Wis. Stat. §118.60(2)(bm). Beginning in 2015-16, to enter the statewide program students must have been previously enrolled in a public school, not previously enrolled in any school, or private school students entering kindergarten, first grade, or ninth grade. Wis. Stat. §118.60(2)(a)(2). For the 2015-16 school year, no more than 1% of pupils residing in a single public school district may participate in the Wisconsin Parental Choice Program. That percentage limit will increase by 1% in each successive school year until it is

removed in the 2025-26 school year. Wis. Stat. §118.60(2)(be).2015 Wis. Act 55 (Wisconsin 2015-17 Biennial Budget) changed the manner in which the RPCP and WPCP are funded. Students who participated in those programs prior to the 2015-16 school year continue to be fully funded from state general purpose revenue. Those who begin attending a private school under the RPCP or WPCP in the 2015-16 school year and thereafter are referred to as “incoming”. All students participating in the WPCP must identify their resident public school district (the public school district where they reside on the 3rd Friday in September). Wisconsin public school districts will have their state general (equalization) aid reduced by an amount equal to the amount paid by the state to participating private schools attributable to the “incoming” students residing in the district, including students who were never enrolled in the district and thus have never generated aid for the district. If the resident public school district does not receive an equalization aid payment sufficient to cover the incoming aid reduction, the balance is funded by reducing other state aid received by the district, including possibly categorical aids, e.g. pupil transportation aid or special education aid. Incoming students in the WPCP are included in their resident public school district’s membership for state general aid purposes in the following year, but generate no state general aid for the resident district in the current year. This delayed count results in a deduction of the full amount of the voucher from a

district's state aid, even though no state or local taxes have been collected to cover the costs of that child's education for that academic year.

In all Wisconsin voucher programs, the current voucher amount is set at \$7,214 for each student in grades K-8 and \$7,860 for each student in grades 9-12. The three voucher programs together cost Wisconsin taxpayers nearly \$230 million for the 2015-2016 school year (see Table 1 below). Wisconsin's Legislative Fiscal Bureau estimates that the statewide program alone will cost the state an additional \$600-800 million dollars over the course of the next decade. Wisconsin Legislative Fiscal Bureau, *Letter from Christa Pugh to Representative Peter Barca* (May 26 2015) <http://media.jrn.com/documents/5.27.15+-+LFB+Memo+on+Voucher+Costs.pdf>.

Table 1: Wisconsin Voucher Programs

Program	Year Created	# Students Enrolled	# Schools Participating	Cost to the State
Milwaukee Parental Choice Program (Wis. Stat. §119.23)	1990	27,619	117	\$196,400,000
Racine Parental Choice Program (Wis. Stat. §118.60)	2011	2,127	19	\$15,100,000
Wisconsin Parental Choice Program (Wis. Stat. §118.60)	2013	2,514 ⁵	82	\$18,300,000
Total		32,260	218	\$229,800,000

Sources: Wisconsin Dep’t of Pub. Instruction, MPCP Facts and Figures for 2015-2016 (November 2015), at http://dpi.wi.gov/sites/default/files/imce/sms/pdf/MPCP_Sept_Facts_and_Figures_2015-16.pdf; Wisconsin Dep’t of Pub. Instruction, RPCP Facts and Figures for 2015-2016 (October 2015); at http://dpi.wi.gov/sites/default/files/imce/sms/pdf/RPCP_Sept_2015-16_Program_Facts.pdf; Wisconsin Dep’t of Pub. Instruction, WPCP Facts and Figures for 2015-2016 (October 2015), at http://dpi.wi.gov/sites/default/files/imce/sms/pdf/WPCP_Sept_Fact_and_Figures_2015-16.pdf.

Beginning in 2014, parents with children attending private schools not eligible for the voucher programs were given a state income tax deduction for tuition paid up to \$4,000 for K-8 students and \$10,000 for high school students. In the first year alone, 37,240 tax filers claimed deductions totaling \$174.2 million. According to a recent analysis by the Wisconsin Taxpayers Alliance the deduction reduced state income taxes owed by about \$11.2 million. *Wisconsin Taxpayer*, Volume 84,

⁵ Enrollment in the WPCP for 2015-2016 is limited to no more than 1% of students from any one school district other than Milwaukee or Racine. Wis. Stat. §118.60(2)(be).

Number 2, February 2016, at <https://wistax.org/publication/in-their-own-words>.

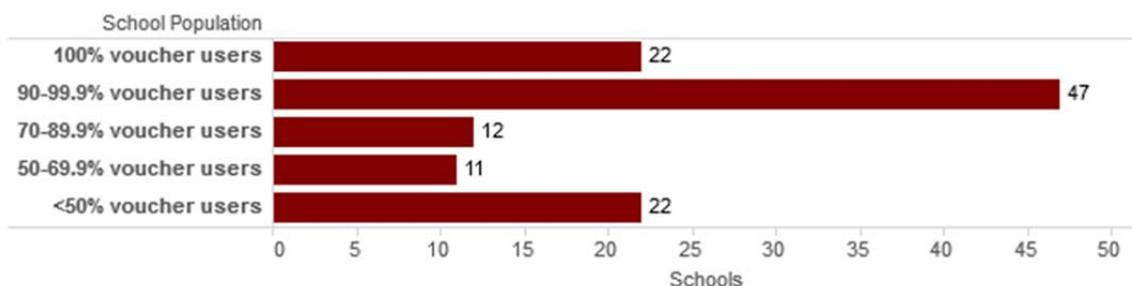
B. Many Milwaukee voucher schools are *fully funded* by the state through this program.

Most of the Milwaukee private voucher schools are significantly dependent on public funding for their entire operating budget. For the most part, state law requires each participating school to accept the voucher as full payment of tuition.

The law does permit high schools to charge additional tuition only when the student's family income is at least 220% of the federal poverty level. Wis. Stat. §119.23(3m). Twenty-two of the voucher schools have a student body entirely comprised of voucher students, *i.e. all tuition funds for these schools are state-paid monies*. The average voucher school enrolls more than 80% of its students by means of the publicly funded voucher. In an additional 47 schools the state pays for 90% or more of the students' tuition through vouchers. Figure 1 depicts the reliance of the voucher schools on public funding. This persistent pattern of private schools being fully funded by state funds caused State Superintendent of Public Instruction Tony Evers to pose the following question: "*If only one in five students enrolled in a [voucher] school pays tuition, then when do [voucher] schools stop being private schools and become something else?*" Letter from Tony Evers, Wis. State Superintendent of Pub. Instruction to the Members of the Joint Committee on Finance, at 5 (May 23, 2011), at

http://issuu.com/sparty1216/docs/dpi_letter_tojcf5.23.11. Others have characterized the voucher schools as “private in name only.” *ACLU v. Wisconsin, U.S. Dep’t of Justice*, at 3 (June 7, 2011), https://www.aclu.org/files/assets/complaint_to_doj_re_milwaukee_voucher_program_final.pdf.

Figure 1: Voucher Concentration in Private Schools Participating in the Milwaukee Parental Choice Program



Source: Public Policy Forum, *Milwaukee Parental Choice Program 2015, 17th Annual Census of MPCP Schools*, (June 2015) at <http://publicpolicyforum.org/research/milwaukee-parental-choice-program-2015>

C. Wisconsin voucher programs draw most of their students from private schools, just shifting the financial burden of enrollment from private sources to the state.

Data for the first year of implementation of the Racine Parental Choice Program and statewide Wisconsin Parental Choice Program show that these programs will *not* save the state funds, nor are they used to provide families the opportunity to move from public schools to private schools. It is clear that the voucher programs operate to shift the financial burden of paying private school tuition from the

individual to the state. In the Racine Parental Choice Program 73% of the funded students were enrolled in private – *not public* - schools the previous year. Only 18.6% of the participating students moved from a public school to a private school to enroll in the voucher program. In the state-wide program 83.5% of the students had already been in a private school the year prior to their participating in the voucher program. In other words, the programs’ primary effect has been to subsidize students *already attending private schools* with public tax dollars. This means that the school district whose public funds are being decreased because they have fewer students, do not in fact have significantly fewer students due to the program. The shift is *not* in the student enrollment, but in who pays their tuition bill. There is no savings to the public school district, just the *additional* cost of paying tuition for students whose parents previously had paid tuition for their decision to enroll in a private school.

Table 2: 2015-2016 Type of School for Racine Parental Choice Program Students Before Enrollment in the Program

2014-2015 Enrollment	3rd Friday in September 2015			
	Headcount	% of Headcount	FTE	% of FTE
Wisconsin Private School**	1,557	73.2%	1,544.3	75.1%
Wisconsin Public School	396	18.6%	387.8	18.9%
No School	161	7.6%	110.5	5.4%
Homeschooled	12	0.6%	12	0.6%
Out of State	1	0.0%	1	0.0%
Totals	2,127	100%	2,055.6	100%

Source: Wisconsin Dep’t of Pub. Instruction, *Racine Parental Choice Program, Facts and Figures for 2015-2016*.

Table 3: 2015-2016 Type of School for Wisconsin Parental Choice Program Students Before Enrollment in the Program

2014-2015 Enrollment	3rd Friday in September 2015			
	Headcount	% of Headcount	FTE	% of FTE
Wisconsin Private School**	2,100	83.5%	2,083.1	84.2%
Wisconsin Public School	308	12.3%	306.1	12.4%
No School	69	2.7%	47.8	1.9%
Homeschooled	4	0.2%	4	0.2%
Out of State	33	1.3%	31.5	1.3%
Totals	2,514	100%	2,472.5	100%

Source: Wisconsin Dep't of Pub. Instruction, *Wisconsin Parental Choice Program, Facts and Figures for 2015-2016*.

D. Although the voucher schools are heavily funded by the state, there is little public control or accountability.

Another troubling aspect of the voucher programs, particularly the Milwaukee voucher program, has been repeated concerns about a lack of accountability for public dollars. In fact publicity about problems in Milwaukee Parental Choice Program schools has involved a number of issues including, inflating voucher enrollments, lack of teacher pay, fiscal mismanagement, and sudden mid-year school closings.⁶

⁶ E.g. Annysa Johnson, *State recovers \$375,000 from failed Milwaukee voucher school*, Milwaukee Journal Sentinel, Feb. 1, 2016; Meghan Dwyer, *Milwaukee Choice school shuts down nine days into school year*, at <http://www.Fox6Now.com>, September 14, 2015; Erin Richards, *Milwaukee voucher school Life Skills Academy closes "in the dead of the night"*, Milwaukee Journal Sentinel, January 14, 2014; Erin Richards, *Operators of defunct Life Skills Academy now receiving Florida tax dollars*, Milwaukee Journal Sentinel, January 20, 2014; Erin Richards, *State moves to remove private school from Milwaukee voucher program*, Milwaukee Journal Sentinel, December 24, 2013; Erin Richards, *Judge orders former Milwaukee voucher school operator to repay \$300,000*, Milwaukee Journal Sentinel, August 15, 2013; Erin Richards, *Photo*

When the Milwaukee Parental Choice Program was first enacted, the Department of Public Instruction had virtually no authority to oversee the program other than to inform parents about the program and ensure that each private school met its choice of *one* of the following standards:

- 1) At least 70% of the pupils in the program advance one grade level each year.
- 2) The private school's average attendance rate for the pupils in the program is at least 90%.
- 3) At least 80% of the pupils in the program demonstrate significant academic progress.
- 4) At least 70% of the families of the pupils in the program meet parent involvement criteria established by the private school.

1989 Wisconsin Act 336, §228 (May 11, 1990).

The Wisconsin State Superintendent does not now, nor has ever had, the authority to take direct action if a school fails to deliver an adequate education. Given concerns about accountability in the program, *supra*, in 2004 the legislature increased the Department of Public Instruction's authority but only in cases of risk to health and safety and when evidence documented fiscal mismanagement. 2003

appears to show Milwaukee teacher sleeping at defunct school, Milwaukee Journal Sentinel, June 13, 2013; John Diedrich, *Former voucher school boss indicted, denies charge*, Milwaukee Journal Sentinel, January 5, 2011; *Voucher School Owes State \$330K; Teachers Gripe Over Pay*, Capital Times, Madison, WI, December 12, 2003, at 12C; *State Has Few Options with School*, Capital Times, Madison, WI, September 15, 2003, at 5A; Sarah Carr, *2 Schools of Thought Clash on Voucher Plan Controls*, Milwaukee Journal Sentinel, October 12, 2003, at A1; Sarah Carr and Nahal Toosi, *Voucher School May Be in Financial Trouble*, Milwaukee Journal Sentinel, December 12, 2003, at B1.

Wis. Act 155 (March 31, 2004). In 2006, schools were required to be accredited and the Wisconsin Department of Public Instruction was directed to oversee schools' accreditation status. 2005 Wis. Act 125 (March 25, 2006). By current statute, the State Superintendent has the authority to bar or suspend private schools from program participation *only* if

- The school misrepresents itself,
- The school fails to pay fees or return overpayments,
- The school fails to obtain or maintain accreditation, or
- There is imminent risk of harm to children due to health or safety concerns.

Wis. Stat. §119.23(10); Wis. Stat. §118.60(10).

Even though the Wisconsin Department of Public Instruction's authority is extremely limited and relatively new, numerous schools have been removed from the program. The *Wisconsin State Journal* reported that between 2004 and 2014 the state paid \$139 million to the 50 schools it subsequently banned from voucher programs during that time. Moreover, a large number of those failed schools (approximately 67%) had been substantially dependent on the voucher program for their funds and open 5 years or less. Molly Beck, *State paid \$139 million to schools terminated from voucher program since 2004*, *Wisconsin State Journal*, October 12, 2014, at

http://host.madison.com/wsj/news/local/education/local_schools/state-paid-million-to-schools-terminated-from-voucher-program-since/article_d4277f72-51ca-5da3-b63d-df2a7834569b.html.

II. Vouchers exacerbate educational inequities and do not improve educational outcomes for all children.

A. The Milwaukee voucher program has increased the concentration of students with disabilities in the Milwaukee Public Schools.

The Individuals with Disabilities Education Act (IDEA) requires that states ensure that “[a]ll children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.” 20 U.S.C. §1412(2)(3). Local education agencies fulfill this obligation through a combination of federal, state, and local funds. Currently, the federal reimbursement rate stands at approximately 16% percent. U.S. Dep’t of Education, *Fiscal Year 2015 Budget Summary and Background Information*, at <http://www2.ed.gov/about/overview/budget/budget15/summary/15summary.pdf>, at 32. The state of Wisconsin reimburses districts for 26.8% of special education

costs. Wisconsin Dep't of Public Instruction, *Funding for Special Education will be Frozen*, at https://dpi.wi.gov/sites/default/files/news-release/dpinr2015_59.pdf.

Accordingly, local districts are responsible for approximately 57.2% of the costs of special education for any student they educate.

In general, the expected incidence of disability is estimated to be approximately 12% of the student population. *U.S. Disability Statistics and Facts* (July 26, 2011), <http://www.disabled-world.com/disability/statistics/census-figures.php>. However, only about 2% of Milwaukee voucher student enrollment is comprised of children with disabilities, while 20% of Milwaukee Public School's students have disabilities. Wis. Dep't of Pub. Instruction, *Overall MPS Results Higher than Choice Schools on Statewide Exams* (2011), available at <https://millermmps.files.wordpress.com/2011/03/dpi-comparison-mps-voucher-wkce-testing.pdf>. Simply put, students with disabilities are not enrolled in voucher schools, leaving the responsibility to educate students with disabilities the Milwaukee Public Schools.

The small number of students with disabilities in the voucher program and the resulting hyper-concentration of students needing special education in MPS resulted in a 2011 complaint to the U.S. Department of Justice. Disability Rights Wisconsin and the American Civil Liberties Union alleged that the state's

operation of the Milwaukee voucher program violated the Americans with Disabilities Act (ADA). *A.C.L.U. v. Wisconsin*, U.S. Dep't of Justice (June 7, 2011),

https://www.aclu.org/files/assets/complaint_to_doj_re_milwaukee_voucher_program_final.pdf. In resolution the U.S. Department of Justice issued a letter *Letter*

from Anurima Bhargava et al., U.S. Dep't. of Justice, Civil Rights Div., Educ.

Opportunities Sec., to Tony Evers, State Superintendent, Wis. Dep't. of Pub.

Instruction (Apr. 9, 2013), at

https://www.aclu.org/files/assets/04_09_13_letter_to_wisconsin_dpi_0.pdf,

underscoring the state's obligations of private schools to observe Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181 (2012) and the state's own obligations under Title II to ensure that all its programs are operated free from discrimination. 42 U.S.C. § 12132 (2012) (noting that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”).

Title III of the ADA requires only that the private schools reasonably accommodate students with disabilities within existing programs and does not require schools to add personnel or programming in order to meet the specific needs of a child with a disability. 28 C.F.R. § 36.302(a) (2014) Accordingly,

providing special education and related services is simply an act of discretion on the part of private school officials. Private schools can legitimately reject any student who needs special education; those students needing special services must remain in the public schools. As such, the private voucher schools, to the extent they serve any children with disabilities, serve only those children with mild conditions requiring little or no additional special attention. The public schools, in contrast, are mandated to serve all children and therefore have the responsibility for meeting the full range of student needs, including low prevalence disabilities that encompass high cost, difficult to serve populations. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.* 34 C.F.R 300 *et seq.* As such, the legislature's refusal to ensure that all children can participate in the Milwaukee Parental Choice Program has resulted in segregation on the basis of disability, a largely local expense.

B. The Milwaukee voucher program has increased the concentration of students whose first language is not English in the Milwaukee Public Schools.

Similarly, private schools are not required to provide specialized instruction to children learning English. Under federal law, public schools must ensure that children whose first language is not English are given sufficient instruction to permit them to acquire English proficiency. The Equal Educational Opportunities Act (EEOA) requires that: "No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by... (f)

the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.” 20 U.S.C. §1703. Likewise the Every Student Succeeds Act (ESSA), the most recent reauthorization of the Elementary and Secondary Education Act states the purpose of Title III of the Act to be “to help ensure that English learners, including immigrant children and youth, attain English proficiency and develop high levels of academic achievement in English” 20 U.S.C. §6812. Moreover, as a condition of receiving federal funds appropriated under ESSA, each state must assist local education agencies in “(i) identifying and implementing effective language instruction educational programs and curricula for teaching English learners; (ii) helping English learners meet the same challenging State academic standards that all children are expected to meet; (iii) identifying or developing, and implementing, measures of English proficiency; and (iv) strengthening and increasing parent, family, and community engagement.” 20 U.S.C. §6821(1)(D).

For private schools this is a matter of discretion, not a requirement. Accordingly, just as with children with disabilities, public schools must provide the necessary special services to children learning English, whether or not state and federal funds are sufficient to cover the costs of doing so. Private schools share none of the responsibility and none of the cost.

C. The Milwaukee voucher program has increased segregation of students by racial and ethnic groups.

The racial and ethnic demographics of the Milwaukee Public Schools and the Milwaukee voucher schools differ significantly. The Milwaukee voucher schools (MPCP) are more segregated by race and ethnic group. Together the Milwaukee voucher schools enroll a substantially larger proportion of White students than does MPS. And taken separately many of the Milwaukee voucher schools serve students from a single racial or ethnic group.

Table 4: MPS - Milwaukee PCP Comparison of 4 Racial/Ethnic Categories of Student Enrollment

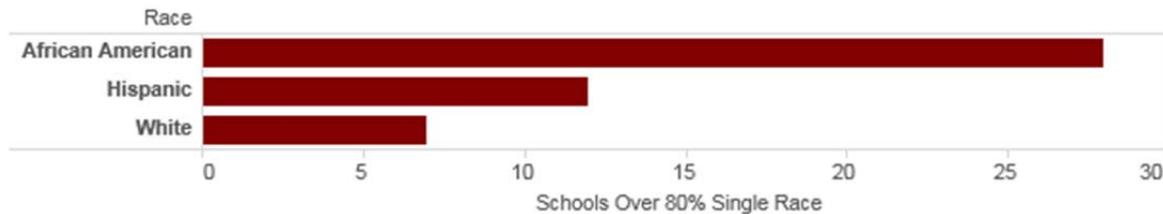
Racial/Ethnic Category	MPS Enrollment	MPCP Enrollment
African American	53.5%	44%
Asian	6.3%	3%
Hispanic	25.5%	28%
White	12.9%	21%

Sources: Wisconsin Dep’t of Pub. Instruction, *Wisconsin Information System for Education Data Dashboard*, at <http://wisedash.dpi.wi.gov/Dashboard/Page/Home/Topic%20Area/Enrollment/> and Public Policy Forum, *Milwaukee Parental Choice Program 2015, 17th Annual Census of MPCP Schools*, (June 2015) at <http://publicpolicyforum.org/research/milwaukee-parental-choice-program-2015>

The Public Policy Forum found that 47 of the 84 voucher schools enroll 80% or more of their students from a single racial/ethnic category. *Id.* The largest group of racially imbalanced schools (28 schools) enrolls a disproportionate number of African American students when compared to the overall Milwaukee voucher schools or MPS population. *Id.* Figure 2 depicts these concentrated racial/ethnic

enrollments.

Figure 2: Milwaukee Voucher Schools Reporting 80% or Greater Enrollment of One Race



Source: Public Policy Forum, *Milwaukee Parental Choice Program 2015, 17th Annual Census of MPCP Schools*, (June 2015) at <http://publicpolicyforum.org/research/milwaukee-parental-choice-program-2015>

This racial segregation in the Milwaukee voucher program is consistent with research on other voucher programs and other forms of school choice across the county. E.g. Gary Orfield & Erica Frankenburg, *Educational delusions?: Why choice can deepen inequality and how to make schools fair* (2013); R.A.

Mickelson, M.C. Bottia, & S. Southworth, *School Choice and Segregation by Race, Class, and Achievement*, 167-192, in G. Miron, K. Welner, P.H. Hinchey, & W.J. Mathis (Eds.), *Exploring the School Choice Universe: Evidence and Recommendations* (2012); David R. Garcia, *The Impact of School Choice on Racial Segregation in Charter Schools*, 22 *Education Policy* 805 (2008); Robert Bifulco & Helen F. Ladd, *School Choice, Racial Segregation, and Test-Score Gaps: Evidence from North Carolina's Charter School Program*, 26 *Journal of Policy Analysis and Management* 31 (2006). Specifically, the Southern Education

Foundation reports that in Georgia's voucher program (tax credit scholarship program), "Georgia's private schools eligible for tax-funded scholarships are significantly more segregated by race and ethnicity than the state's public schools."

Southern Education Foundation, *A Failed Experiment: Georgia's Tax Credit Scholarships for Private Schools* (2011), at

<http://www.southerneducation.org/getattachment/12d045ec-6960-4715-82fb-26a2b94de61c/Test-Publication-2.aspx>. Similarly, research from other countries

concludes that voucher programs increase racial/ethnic segregation. *E.g.* Jaime

Potales & Julian Vasquez Heilig, *Understanding How Universal Vouchers Have Impacted Urban School Districts' Enrollment in Chile*, 22 *Education Policy Analysis Archives* 1 (2014),

<http://dx.doi.org/10.14507/epaa.v22n72.2014>; Martin

Söderström & Roope Uusitalo, *School Choice and Segregation: Evidence from an Admission Reform*, 112 *Scandinavian Journal of Economics* 55 (2010).

In short, voucher programs balkanize student populations.

D. The participating voucher programs provide no better educational outcomes than public schools.

Even though the voucher schools do not serve comparable populations of students, research demonstrates that academically they do no better than traditional public

schools.⁷ As John Witte, principal investigator for the evaluations of the Milwaukee Parental Choice Program explains, “Thus, in summary our best estimates over ten years of study were that for achievement tests, there were *no consistent differences* from the base year between voucher students and comparison groups drawn from public schools.” John Witte, “*Evaluating Voucher Programs: The Milwaukee Parental Choice Program*,” Testimony before the U.S. Senate Homeland Security Committee Hearing (July 20, 2015)(emphasis added). Results of so-called academic attainment studies report a modest advantage for Milwaukee Parental Choice Program students, concluding that students exposed to voucher schools are 4-7% more likely to attend college. Joshua M. Cowen, David J. Fleming, John F. Witte, Patrick J. Wolf, & Brian Kisida (2013). *School vouchers and student attainment: Evidence from a state-mandated study of the MPCP*, 41 Policy Studies Journal, 147 (2013). Yet, the study’s authors identified severe limitations that hamper its utility for policy-makers, including results drawn from only 44% of the students who began the study, a focus on voucher “exposure” so that students were categorized as voucher students even if they left the program and graduated from a public school, and the fact that less than 25% of voucher schools served high school students at the time meaning that the study

⁷ For a full discussion of voucher academic performance research, see Brief of Nevada State Education Association and National Education Association as Amici Curiae supporting Plaintiff’s Motion for Preliminary Injunction, *Lopez v. Schwartz*, (No. 150C002071B) (November 23, 2015).

examined less than 5% of Milwaukee PCP students. *Id.* In fact, the authors conclude:

If policymakers should interpret these results as evidence that voucher students are performing slightly better on one metric—attaining a given level of education—the results nonetheless ***do not*** support a comprehensive conclusion that the Milwaukee voucher program necessarily provides a better learning environment than its public school counterpart. *Id.* at 164.

For a detailed critique of these and other limitations of the study, see also Casey D. Cobb, Review of School Choice Demonstration Project Evaluation Report #30, National Education Policy Center (April 12, 2012), at <http://nepc.colorado.edu/thinktank/review-Milwaukee-Choice-Year-5>.

E. The Wisconsin voucher programs have created two unequal systems of publicly funded schools.

Wisconsin's voucher programs have resulted in two sets of publicly funded schools. One set, traditional public schools, are accountable to the state and provide universal access to all students (taking on significant costs to do both). Another set, publicly subsidized private voucher schools serve only the students they elect to serve in schools with high levels of racial, ethnic, and ability homogeneity. Further, since voucher schools draw their students from those without disabilities and without English Language learning needs, the voucher program in Milwaukee has resulted in a both systems being more segregated than

they would otherwise be. There are two systems of schools – one, publicly funded and publicly accountable and one publicly funded and unaccountable. Even with these inequities, research demonstrates that the voucher program has not resulted in improved educational outcomes for students.

III. Vouchers subsidize the private choices of individual parents at the expense of the public education system.

A. Voucher programs do not reduce the number of students in the public schools; they transfer the obligation for private school tuition to the public.

Wisconsin's voucher programs are funded at the expense of public schools. As noted in Table 1, *supra* for the 2015-16 school year the three voucher programs cost state taxpayers a total of nearly \$230 million. The presumption undergirding vouchers assumes that vouchers pull children from public schools; and when a public school no longer has the responsibility of educating a child it will save an amount equivalent to the voucher amount that now subsidizes the child in a private school. That erroneous assumption neglects several facts.

As demonstrated in the Wisconsin voucher programs, the majority of those participating in the voucher programs have never attended public schools. When students enroll in the voucher program most of them are not leaving the public school system, they are just shifting the cost of their tuition to public funding. They remain in the private school system, most in the same private school. *But their*

tuition bill is paid by the state, rather than from private resources.

All this does is increase the number of students who are being funded through state dollars – some in the public schools and some in private schools. Accordingly, unless the state legislature puts more monies into the fund from which vouchers are paid, bringing more children into public funding *results in less money being spent per student*. In other words, it creates what may be called the dividend-divisor problem. Simple arithmetic dictates that when the dividend remains constant (the amount of money available for public education) and the divisor increases (those attending public schools and an increasing number of private school students now funded by public dollars), the quotient gets smaller.

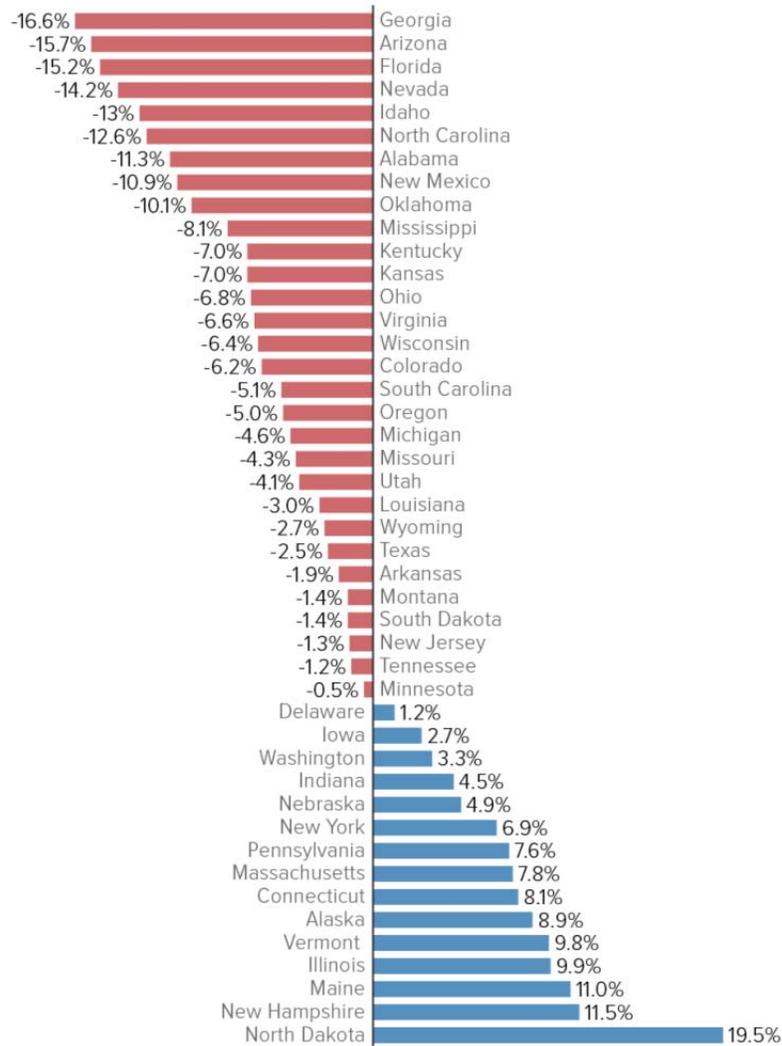
B. The reduction in funding through the voucher program corresponds to a reduction in general education funding.

In fact, budget analysis shows that during the same period that Wisconsin dramatically expanded vouchers in Wisconsin (2011-2015),⁸ it simultaneously reduced the amount of state aid available for public education by \$792 million and reduced school district taxing authority by \$1.6 billion for the 2011-2012

⁸ The Milwaukee Parental Choice Program was expanded in 2011 by increasing the income eligibility to 300% of the federal poverty level, 2011 Wis. Act 32, §2536c and by removing any limitation on total program participation, 2011 Wis. Act 32, §2539. Vouchers were expanded to Racine by creating the Racine Parental Choice Program in 2011, 2011 Wis. Act 32, §2532m. Vouchers were expanded statewide by creating the Wisconsin Parental Choice Program in 2013, 2013 Wis. Act 20.

biennium. 2011 Wis. Act 32, §2539 (June 30, 2011). See also, James Shaw & Carolyn Kelley, *Making Matters Worse: the Impact of Reducing State Funding and Expanding School Choice on Student Poverty and Achievement Gaps in Wisconsin*, Paper presented to the Am. Educ. Research Ass'n (2013). Moreover, the legislature has yet to reinvest in public education such that districts have recouped those losses. The Center for Budget and Policy Priorities reports that Wisconsin's total state and local support per pupil remains 6.4% below 2008 levels (See Figure 3). State aid alone is 14.2% less than provided in 2008. Michael Leachman, Nick Albares, Kathleen Masterson, & Marlana Wallace, *Most States Have Cut School Funding, and Some Continue Cutting*, Center for Budget and Policy Priorities, (January 25, 2016) at <http://www.cbpp.org/research/state-budget-and-tax/most-states-have-cut-school-funding-and-some-continue-cutting> at 4. In other words, as the legislature enacted provisions to ensure that public funding for private schools expanded, it likewise elected to ensure that funding for public education diminished.

Figure 3: Combined State and Local Funding Per Student Below 2008 Levels in Most States (Percent Change, inflation adjusted, fiscal years 2008-2014)



Note: California, Hawaii, Maryland, Rhode Island, and West Virginia are excluded because the data necessary to make a valid comparison are not available.

Source: CBPP budget analysis and National Center for Education Statistics enrollment estimates.

Source: Leachman, et al, *Id.*

The presumption undergirding vouchers assumes that when a public school no longer has the responsibility of educating a child, it will save an amount equivalent to the voucher amount that now subsidizes the child in a private school. That erroneous assumption neglects several facts. First, school districts have a number

of fixed costs (e.g., the cost of insurance for a school building, the cost of maintaining the buildings and grounds). Those fixed costs remain regardless of the number of students served by a building. Second, there are marginal costs that cannot be recouped when students who exit the system. For example, even if the size of a kindergarten class is reduced from 18 to 15 students, the salary of the teacher remains the same. Third, as demonstrated above, the majority of those participating in the voucher programs have never attended public schools.

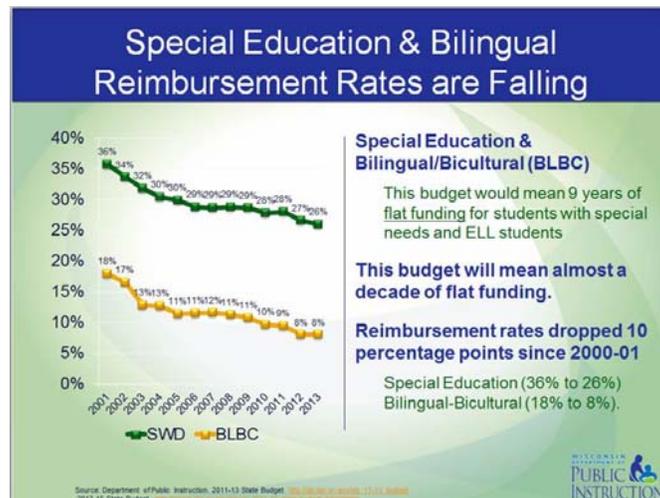
Moreover, the manner in which education funding is calculated in conjunction with how vouchers are funded introduces both instability and unpredictability into the system. For example, equalization aid is calculated on the enrollment from the *previous year*. But students may enroll in the program during the current year and the private schools have received their aid based on the *current year*. Moreover, instability and unpredictability increases the difficulty of educational planning.

C. While vouchers increase the proportion of public school students with disabilities and English language learners, when vouchers are implemented the state funding for these children has not been adjusted to account for the increased concentration within the public system.

In addition to cutting state aid during the period of voucher expansion, the Wisconsin legislature has also failed to increase categorical funding designed to support districts' efforts to serve children with disabilities and those learning English. This is during the period when the obligation to serve these students

resides within the public – not private – schools. Figure 4 depicts two graphs produced by the Wisconsin Department of Public Instruction illustrating this decline in state support for special populations. The state now funds only 26% of the cost of providing special education and only 8% of the cost of English language learner (ELL) services. Wisconsin Dep’t of Pub. Instruction, *PowerPoint Presentation: School Funding Challenges*, (2015) at <http://dpi.wi.gov/budget/news-resources> at 24. With full knowledge of the increased responsibility of public schools, the legislature made the choice to deny needed funding for public schools while simultaneously increasing public subsidies for private schools.

Figure 4: Wisconsin Department of Public Instruction Data Showing Declining Special Education and Bilingual Reimbursement Rates



Source: Wisconsin Dep’t of Pub. Instruction, *PowerPoint Presentation: School Funding Challenges*, (2015) at <http://dpi.wi.gov/budget/news-resources> at 24.

D. Voucher funding for private schools comes at the direct expense of the public schools.

Compounding the overall reduction in general and categorical state aid for public education, Wisconsin's voucher programs are funded by reducing a school district's general state aid to pay for each voucher. Wis. Stat. §118.60(4d). Since the state guarantees the amount of the voucher, but does not guarantee the amount of state aid per pupil received by a public school district, local taxpayers must fund any difference. For example, Figure 5 shows the difference between the amount a private school receives for a voucher (\$7214 for an elementary voucher student; \$7860 for a high school voucher student) and the state aid received by three public school districts. As shown, local taxpayers would fund between \$1854 and \$3272 of the \$7860 voucher in the three school districts shown for a high school student. Moreover, since state funding requires that vouchers be paid first, public school districts are left only with the remainder in the public coffer. Vouchers are funded at a sum certain level, and public schools are left with what is leftover. Clearly, Wisconsin funds its vouchers at the expense of public education.

Figure 5: Local Share of WPCP Voucher for Three Districts



Source for data: Wisconsin Dep't of Pub. Instruction, *General Aid* (2015), at <http://dpi.wi.gov/sfs/aid/general/overview>.

IV. Both the history of existing voucher programs and research conducted about them clearly demonstrate that SB 302, Education Savings Accounts, will cause irreparable harm to public education in Nevada.

First, SB 302 makes available a universal voucher; *i.e.* it has no income eligibility requirements for participation in the program nor does it limit the total number of vouchers available. The only limitation in SB 302 requires a child to have been enrolled in a Nevada public school for at least 100 school days prior to become voucher eligible. Senate Bill 302, Sec. 7(1). However, the State Treasurer has promulgated regulations such that students may satisfy the 100-day rule by simultaneous enrollment in a private school and just one public school course. NAC Chapter 385, Sec. 9(4). News outlets report that current private school students are enrolling in public schools solely for the purpose of developing

eligibility for the voucher program. *E.g.* Ian Whitaker, *Private School Parents: 100-day mandate for voucher money isn't fair*, Las Vegas Sun (July 17, 2015) at <http://lasvegassun.com/news/2015/jul/17/private-school-parents-100-day-restriction-voucher/>; Steven Miller, *100-day rule for ESAs stresses families out*, Nevada Journal (August 24, 2015) at <http://nevadajournal.com/2015/08/24/100-day-rule-esas-stresses-families-out/>. Regulations also exempt children entering kindergarten (between the ages of 5 and 7) and those whose parents are active military stationed in Nevada. NAC Chapter 385, Sec. 9(7). Therefore, a significant number of Nevada's voucher students will be students who had not previously been counted for the purposes of state aid or school funding.

SB 302 also includes virtually no accountability requirements for private school which are participating in the program. Religious schools are exempt from the licensure requirement in Nevada. NRS §§394.201-394.351. Since the majority of private schools in Nevada are religious, the majority of schools that elect to participate in Nevada's program will be exempt from the standards of the Chapter 394. Participating private schools need satisfy no other requirements. They may charge as much tuition as they wish and they may have selective admissions policies. And like the schools which participate in Wisconsin's programs, they have no obligation to serve children with disabilities or children learning English.

Accordingly, even if one considers only kindergartners, the combined effect of universally available vouchers and no requirements for private school participation means that with each incoming class, most, if not all, private school kindergartners will be publicly subsidized in whole or part. So in approximately 13 years, all or nearly all students enrolled in Nevada's private schools will likely be publicly funded. This in reality creates a state obligation to fund all schools, both public and private.

It is also likely that enrollment in Nevada's vouchers will be as, or more segregated, by race, ethnicity, and disability than the Wisconsin voucher schools. The absence of income requirements coupled with Nevada voucher schools' ability to charge tuition above the amount of the voucher suggests that Nevada's program is also likely to exacerbate segregation on the basis of family income. Trevon Milliard, *Most Takers for private school money come from Nevada's wealthiest areas*, Reno Gazette-Journal (December 16, 2015) at <http://www.rgj.com/story/news/education/2015/10/29/many-wealthy-few-poor-apply-private-school-money/74783380/>. This creates a system of publicly funded segregated schools.

Funding of SB 302 also comes at the expense of public education. Reportedly a total of approximately 4,500 Nevada families applied for vouchers during the first

round of applications. Michelle Rindels, *Judge puts sweeping Nevada school choice program on hold*, Las Vegas Sun (January 11, 2016) at <http://lasvegassun.com/news/2016/jan/11/judge-puts-sweeping-nevada-school-choice-program-o/>. Even if no more applications were received,⁹ more than \$22.5 million will be diverted from the public school fund in year one of its implementation. And as noted earlier, since a significant number of students are previously enrolled private school students, public school districts will lose state aid even though the student was not previously counted in the formula used to determine the state funding available. Nevada Legislative Counsel Bureau, Fiscal Analysis Divisions, *The Nevada Plan for School Finance: An Overview* (2015) at https://www.leg.state.nv.us/Division/Fiscal/NevadaPlan/Nevada_Plan.pdf.

Moreover, as shown in Figure 4, *supra*, the Nevada legislature has elected to expand vouchers even though the combined state and local funding per pupil is 14.2% less than 2008 funding levels. Implementing privately funded vouchers will severely limit Nevada schools from recouping the losses already experienced and will compromise school districts' ability to meet their educational obligations.

If the Education Savings Accounts are permitted to go forward, Nevada will see

⁹ It is inevitable that this number will increase since the State Treasurer is accepting addition applications through March 31, 2016 at <http://www.nevadatreasurer.gov/SchoolChoice/Parents/Application/>.

immediate and irreparable damage to its public education system.

CONCLUSION

For the foregoing reasons, the District Court's order granting the preliminary injunction should be upheld.

Respectfully submitted this 6th day of April 2016.

/s/ Leon Greenberg

Leon Greenberg (NSB 8094)
Leon Greenberg Professional Corporation
2965 S. Jones Boulevard, Suite E-3
Las Vegas, NV 89146

Julie Underwood, Of Counsel

Attorney for Amici

Certificate of Compliance With N.R.A.P Rule 28.2

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using 14 point Times New Roman typeface in Word.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 7267 words.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this April 6, 2016

Respectfully submitted,

/s/ Leon Greenberg

Leon Greenberg (NSB 8094)
Leon Greenberg Professional Corporation
2965 S. Jones Boulevard, Suite E-3
Las Vegas, NV 89146

Julie Underwood, Of Counsel
Attorney for Amici

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed with the Clerk of the Court for the Nevada Supreme Court on April 7, 2016 and served upon all counsel of record in this matter by electronically filing the document using the Nevada electronic filing system.

By: *Leon Greenberg*

Attorney for Amici