

January 26, 2017

To Members of the Revenue Committee:

Re: Opposition to LB 295
Tax credits to private schools

The ACLU of Nebraska is a non-profit, non-partisan organization that has worked tirelessly for over 50 years to defend and strengthen the individual rights and liberties guaranteed in the United States and Nebraska Constitutions through policy advocacy, litigation, and community empowerment. Today, we proudly represent thousands of supporters statewide and almost a million members nationally. Last biennium our organization took a position on over a hundred unique pieces of legislation and our position prevailed an impressive 76% of the time.

ACLU Nebraska strongly opposes LB 295 for raising serious state constitutional issues as well as for simply being poor policy.

The primary objection to allowing government subsidies of religious entities is that it violates the Nebraska State Constitution's requirement of separation of church and state. Article 1-4, our state corollary to the U.S. Constitution's First Amendment, is far more explicit and robust than the federal protection.¹

We also have grave policy concerns about the overt discrimination that is permitted to private religious entities. Government money should not be used to subsidize private and religious schools that do not have to comply with many federal, state and local civil rights laws. Private schools are exempt from many important civil rights laws, including the Individuals with Disabilities in Education Act (IDEA) and Title IX.

We note that LB 295 only permits funding to schools that do not discriminate on the basis of race, color, or national origin. Notably, it would permit donations to schools who discriminate on the basis of religion, disability, familial status, or gender. Public schools are held to higher standards, and any private school benefiting from funding of this sort should, too.

When tax dollars are handed over to private religious organizations, those dollars are diverted from the public education system. According to recent studies, 90% of the nation's children attend public schools. The government should be concerned with maintaining its own system of education to the highest degree possible in order to best serve this vast majority of students.

Rather than giving precious tax resources into the private sector, which has available all the fundraising possibilities of any religious organization, we should keep that money in the public schools to support the bulk of students. There is a myth that parents who put their children in

¹ State constitutional challenges to funding schemes such as LB 118 have been successful in other states. See, e.g., *Chittenden Town School Dist. v. Dept. of Education*, 169 Vt. 310; 738 A.2d 539 (1999); *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006).

private religious schools get a better education. There is a wide array of research that supports the opposite conclusion, including two congressionally-funded studies from 2007 and 2008.²

For these reasons, ACLU Nebraska urges the committee to indefinitely postpone LB 295.

Amy Miller
Legal Director

²“Evaluation of the DC Opportunity Scholarship Program: Impacts After One Year,” Institute of Education Sciences, U.S. Department of Education, June 2007, available online at <http://ies.ed.gov/ncee/pubs/20074009/>. Second Year Report issued June 16, 2008, available online at <http://ies.ed.gov/ncee/pdf/20084024.pdf>