

Coloradans for Public Schools

For immediate release
May 20, 2003

For further information,
contact Deborah Fallin at
303-837-1500, 800-332-5939

Constitutionality of Voucher Program Challenged

DENVER – Public education supporters today filed a lawsuit in Denver District Court challenging the constitutionality of the school voucher program enacted by the 2003 Colorado General Assembly. The plaintiffs charge that the program violates a number of provisions of the Colorado Constitution.

Lead plaintiff is the Colorado Congress of Parents, Teachers and Students, commonly known as the PTA. Colorado PTA President Mark Townsend said, “On behalf of the children of the state of Colorado, as well as their parents and teachers, we are going to court to defend public education and to prevent the state from implementing this program which is in direct violation of the Constitution of the State of Colorado.”

The complaint charges that the school voucher program violates the State Constitution on a variety of fronts. The school voucher program removes local control from school boards, compels taxpayers and parents to support religion, gives tax dollars to sectarian and private institutions, diverts monies from the Public School Fund, and undermines the thorough and uniform system of free public schools. The sections of the Constitution cited in the lawsuit are at the end of the release.

In addition to Colorado PTA, other organizational plaintiffs are League of United Latin American Citizens (LULAC), The Interfaith Alliance of Colorado, and the Colorado NAACP. The lawsuit is also being filed on behalf of various individuals who are parents, students, taxpayers and others who will be harmed by the implementation of this law. Defendants are Governor Bill Owens and the State of Colorado.

PTA President Townsend expanded on the reasons for filing the lawsuit. “The school voucher program passed by the Legislature and signed by Governor Owens is detrimental to the 750,000 children attending public schools in Colorado. When our state was established in 1876, a number of very specific decisions were made about providing for a uniform system of public schools, financed by public funds and controlled by elected school boards. The voucher program undermines those tenets and harms our children. PTA agrees with Colorado’s founding fathers that tax dollars should be used to support and improve public schools for all of the children.”

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Angelina Najar, state director of LULAC, said, “Nothing is more important than making sure our children get good educations. We must work to strengthen our public schools so that all children, not just a few, have access to quality education. Vouchers take resources, focus and attention away from our neighborhood public schools. We are certain this is not what the framers of the State Constitution had in mind when they established a thorough and uniform system of public schools for all of Colorado’s children.”

Rabbi Joel Schwartzman, president of The Interfaith Alliance of Colorado, stated, “The faith community is very concerned about the voucher program’s violation of three specific sections of the Colorado Constitution. First, Colorado’s Bill of Rights says that no one shall be required to support any religion against his consent. Since the vast majority of non-public schools in Colorado are affiliated with some religion, Coloradans will be forced to support those religions with their tax dollars.

“Even more specific are Article V, Section 34 and Article IX, Section 7,” continued Rabbi Schwartzman. “In two separate places, the Colorado Constitution forbids government appropriations to sectarian institutions or entities controlled by sectarian denominations. Our founding fathers were very clear. They did not intend for the state or any of its subdivisions to provide financial support to religious schools. This prohibition is not directed at any particular religion; it is meant to keep government out of all religions.”

In addition to charges concerning violations of the establishment and funding of public schools and of support for private and religious or sectarian schools, the lawsuit also alleges that the voucher law violates a constitutional provision prohibiting special laws concerning the management of public schools.

The lawsuit is supported by numerous national organizations with Colorado affiliates and members including the American Civil Liberties Union, American Federation of Teachers, American Jewish Committee, American Jewish Congress, Americans United for Separation of Church and State, League of United Latin American Citizens, National Education Association, the NAACP, National PTA, and People for the American Way Foundation.

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Pertinent sections of the Colorado Constitution follow.

COLORADO CONSTITUTION
Selected Sections (with emphasis added)

ARTICLE II – Bill of Rights

Section 4. Religious freedom. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness or justify practices inconsistent with the good order, peace or safety of the state. *No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent.* Nor shall any preference be given by law to any religious denomination or mode of worship.

ARTICLE V – Legislative Department

Section 25. Special legislation prohibited. *The general assembly shall not pass local or special laws* in any of the following enumerated cases, that is to say; for granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys and public grounds; locating or changing county seats; regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates and constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions or giving effect to informal or invalid deeds; summoning or impaneling grand or petit juries; *providing for the management of common schools*; regulating the rate of interest on money; the opening or conducting of any election, or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; the protection of game or fish; chartering or licensing ferries or toll bridges; remitting fines, penalties or forfeitures; creating, increasing or decreasing fees, percentage or allowances of public officers; changing the law of descent; granting to any corporation, association or individual the right to lay down railroad tracks; granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever. In all other cases, where a general law can be made applicable no special law shall be enacted.

Section 34. Appropriations to private institutions forbidden. *No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.*

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ARTICLE IX – Education

Section 2. Establishment and maintenance of public schools. *The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously. One or more public schools shall be maintained in each school district within the state, at least three months in each year; any school district failing to have such school shall not be entitled to receive any portion of the school fund for that year.*

Section 3. School fund inviolate. *The public school fund of the state shall, except as provided in this article IX, forever remain inviolate and intact and the interest and other income thereon, only, shall be expended in the maintenance of the schools of the state, and shall be distributed amongst the several counties and school districts of the state, in such manner as may be prescribed by law. No part of this fund, principal, interest, or other income shall ever be transferred to any other fund, or used or appropriated, except as provided in this article IX. The state treasurer shall be the custodian of this fund, and the same shall be securely and profitably invested as may be by law directed. The state shall supply all losses thereof that may in any manner occur. In order to assist public schools in the state in providing necessary buildings, land, and equipment, the general assembly may adopt laws establishing the terms and conditions upon which the state treasurer may (1) invest the fund in bonds of school districts, (2) use all or any portion of the fund or the interest or other income thereon to guaranty bonds issues by school districts, or (3) make loans to school districts. Distributions of interest and other income for the benefit of public schools provided in this article IX shall be in addition to and not a substitute for other moneys appropriated by the general assembly for such purposes.*

Section 7. Aid to private schools, churches, sectarian purpose, forbidden. *Neither the general assembly, nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money or other personal property, ever be made by the state, or any such public corporation to any church, or for any sectarian purpose.*

Section 15. School districts - board of education. *The general assembly shall, by law, provide for organization of school districts of convenient size, in each of which shall be established a board of education, to consist of three or more directors to be elected by the qualified electors of the district. Said directors shall have control of instruction in the public schools of their respective districts.*