



# SR 388 IS UNNECESSARY, OPENS THE DOOR TO SCHOOL VOUCHERS, AND IS BAD FOR RELIGION AND SCHOOLS

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Almost 200 years ago, the citizens of Georgia set out certain protections in our constitution to protect religious freedom. Like in the majority of states, our State provision currently provides stronger religious liberty protections in its constitution than there are in the federal constitution. **It is because of that provision that religion has flourished in the State of Georgia. There is no reason to strip away those protections. Such freedoms are easy to strip away, but difficult to reinstate after they are gone.**

In addition, stripping this provision is aimed at opening the door to school vouchers. But in a time when the state is trying to cut spending, it seems particularly unwise for it to be taking steps to funnel taxpayer funds to private schools.

## SR 388 IS UNNECESSARY: THE STATE ALREADY CAN & DOES CONTRACT WITH RELIGIOUS ORGANIZATIONS.

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Religious organizations can and do already receive money from the government to perform secular functions. Indeed, in its 2006 decision, *Taetle vs. Atlanta Independent School System*, the Georgia Supreme Court said that the state may not fund religious activities, but "...that is not to say that a political subdivision of the state cannot enter into an arms-length, commercial agreement with a sectarian institution to accomplish a non-sectarian purpose." And, according to the most recent Georgia Attorney General opinion on the matter, our state constitutional provision does not say "that every organization that may have some affiliation with a religious group" is prohibited from receiving federal funds."<sup>1</sup> Indeed, this resolution has been introduced (and rejected) year-after-year based on the case *Bellmore v. United Methodist Children's Home*, which involved a challenge to a state-funded children's home, in part because the Home refused to hire a Jewish counselor for a state funded job based upon his religion alone. That case settled in 2003—9 years ago. In the last nine years, not one lawsuit has been filed challenging the funding of a religiously affiliated social service organization under the current state constitution. And, even more surprising considering the claims of proponents, the Methodist Children's Home still gets state funding.

## SR 388 OPENS THE DOOR TO SCHOOL VOUCHERS, WHICH HARM EDUCATION.

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Our current constitutional provision prohibits the state from giving funds to religious schools. With such a provision, no voucher scheme could practically be put in place, as voucher programs are usually dominated by private religious schools. Indeed, in the DC voucher program, 80% percent of the students in the program attended a faith-based school.

Vouchers, of course, are bad for education. According to multiple studies of the District of Columbia,<sup>2</sup> Milwaukee,<sup>3</sup> and Cleveland<sup>4</sup> school voucher programs, students offered vouchers **do not perform better in reading or math** than students in public schools. And, **vouchers lack oversight, accountability, and internal controls.** Indeed, most voucher programs have serious accountability problems as they do not have to adhere to the same standards set for the public schools.<sup>5</sup>

Furthermore, vouchers **deprive students of rights and protections** they are given at public schools. Despite receiving public money, private schools that participate in voucher programs are not subject to all federal civil rights laws, and do not face the same public accountability standards that all public schools must meet, including those in Title IX, IDEA, and ESEA. And, private schools can deny students admission based on disability, gender, and religion.

## SR 388 ABDICATES THE RIGHT TO DEFINE GEORGIA'S RELIGIOUS FREEDOM PROTECTIONS TO THE FEDERAL GOVERNMENT.

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This resolution is not just an Amendment but a **repeal** of our constitutional provision. The State would be **abdicated all** of its power in defining religious liberty to the **federal courts**. The state courts and the state legislature would have to defer to the federal courts in order to understand their own state protections. Although that may seem just fine to you today, what happens if the courts' interpretations change? Isn't it better to have our own language for the State of Georgia?

## SR 388 THREATENS THE VOLUNTARINESS AND AUTONOMY OF RELIGIOUS INSTITUTIONS.

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The plan would convert religious organizations into subcontractors of the government, **subject to regulations, restrictions, and government oversight**. They would have to report on individuals getting services and turn their books over to the government. Government money will also make religious organizations, which are often the conscience of the community, **less likely to speak out** on issues that may ruffle government feathers for fear of losing those funds. The plan also **pits religions against each other** in a fight over government money and gives legislators the role of judging which religions are worthy and which are not worthy of government funding. We do not want such government and religious entanglement.

## GEORGIA'S CURRENT CONSTITUTIONAL PROVISION IS NOT ANTI-CATHOLIC.

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The real history of our amendment begins almost 100 years before Governor Blaine. In fact, our constitution has had some version of our current provision since 1777. The current provision was adopted as part of an entirely new constitution during the 1981 constitutional convention (ratified in 1983) and does not even contain the same language as the so-called Blaine amendments. Furthermore, as explained by Steven K. Green, who is currently a law professor at Willamette College of Law in Salem, Oregon, "The origins of the no-aid rule predate by about 10 years the first drive by the Catholic Church to receive funding for its schools. That does not deny the fact that the concept was sometimes used against Catholics, but the constitutional principle against funding religious institutions developed apart from anti-Catholic animus." He also explained "Part of the drive for Blaine amendments came from Republicans, who wanted to ensure that there would be universal, free and non-sectarian public education," Green said. " **To try to tar the Blaine amendment solely as anti-Catholic is short-sighted. To be sure, there was some of that in the debate, but that was not the only factor.**" <sup>6</sup>

## CHANGING OUR CONSTITUTION COULD OPEN THE DOOR TO STATE FUNDED RELIGIOUS DISCRIMINATION.

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Religious organizations are exempt from civil rights laws that prohibit religious discrimination in hiring. This is appropriate and even constitutionally required, in some circumstances, when they are using their own money. **But this change to our constitution could result in allowing Faith-Based organizations to discriminate on the basis of religion using taxpayer money.** At the national level, the Bush administration adopted policies that allowed religious organizations to engage in discriminatory hiring for the very positions being filled with taxpayer dollars. The Obama Administration has, so far, left those policies in place. Although we strongly believe that such policies are violations of the federal constitution and are bad policy, we cannot risk allowing state money to go towards discrimination. Our constitution must provide protections against discrimination.

## THE BALLOT LANGUAGE OF THE RESOLUTION IS MISLEADING.

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The ballot language provided on the resolution claims that passage of the bill would “prevent discrimination” against religious organizations. But, these groups can get state funding today, as long as they play by the same rules as secular groups. Religious organizations are special in our society—that is why they get extra protections, accommodations, and exemptions in the law. But, if those organizations want to take state money, they should play by the same rules as other organizations—they should be accountable to taxpayers, and they should not subject beneficiaries and students to proselytization or be allowed to serve or hire people based on religion. Ensuring these protections is no easy task.

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[1] AG Opinion 2000-5 (2000).

[2] U.S. Dep’t of Ed., *Evaluation of the D.C. Scholarship Program: Final Report* (June 2010) (Though the 2009 study showed a marginal gain for some students in reading (but notably, not for the program’s targeted group, students from schools in need of improvement), the 2010 Final Report said “[t] here is no conclusive evidence that the [program] affected student achievement” and earlier findings of modest gains “could be due to chance” and were no longer statistically significant.); U.S. Dep’t of Ed., *Evaluation of the D.C. Scholarship Program: Impact After 3 Years* (Apr. 2009); U.S. Dep’t of Ed., *Evaluation of the D.C. Scholarship Program: Impact After 2 Years* (June 2008); U.S. Dep’t of Ed., *Evaluation of the D.C. Scholarship Program: Impact After 1 Year* (June 2007).

[3] Witte, Wolf, et al., *MPCP Longitudinal Educational Growth Study Third Year Report* (Apr. 2010); Witte, Wolf, et al., *MPCP Longitudinal Educational Growth Study Second Year Report* (Mar. 2009); Witte, Wolf, et al., *MPCP Longitudinal Education Growth Study Baseline Report* (Feb. 2008); Witte, *Achievement Effects of Milwaukee Voucher Program* (Feb. 1997); Witte, et al., *Fifth Year Report Milwaukee Parental Choice Program* (Dec. 1995).

[4] Plucker, et al., *Evaluation of the Cleveland Scholarship and Tutoring Program, Summary Report 1998-2004* (Feb. 2006); *Evaluation of the Cleveland Scholarship and Tutoring Program, Executive Report 1998-2002* (Feb. 2006).

[5] U.S. Gov’t Accountability Office, *District of Columbia Opportunity Scholarship Program: Additional Policies and Procedures Would Improve Internal Controls and Program Operation*, Publication No. 08-9, 34 (Nov. 2007); Mead, *Information Underload: Florida’s Flawed Special-Ed Voucher Program*, Education Sector 1 (June 2007).

[6] Rob Boston, “The Blaine Game: Supporters Of Government Aid To Religious Schools Are Trying To Eliminate State Constitutional Provisions That Stand In Their Way,” *Church & State*, at <http://www.au.org/churchstate/cs9021.htm>.

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