

Approved: 3-16-95  
Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Vice Chairman Eugene Shore at 3:30 p.m. on February 21, 1995 in Room 519-S of the Capitol.

All members were present.

Committee staff present: Ben Barrett, Legislative Research Department  
Dale Dennis, Department of Education  
Avis Swartzman, Revisor of Statutes  
Lois Thompson, Committee Secretary

Conferees appearing before the committee: Clela Renyer, Right to Life of Kansas  
Bob Runnels, Kansas Catholic Conference  
Tom Kettler, M.D., Shawnee Mission  
Nancy Toth, M.D., Topeka  
Carl Christman, M.D., Wichita  
Deborah Alfano, Director, Bureau of Disease Control  
Jim McDavitt, Kansas Education Watch  
Representative Kay O'Connor  
Mark Bredemier, General Counsel, Landmark Legal Foundation  
Carol D'Amico, Hudson Institute  
Janet Beales, Reason Foundation  
Stan Kennedy, Garden City, Public School Teacher

Others attending: See attached list

Hearings opened from Proponents only on **HB 2301 pertaining to school districts, instruction on human sexuality and AIDS.**

Representative Vickery, bill sponsor, make brief remarks concerning **HB 2301** and thanked committee for hearing this bill.

Cleta Renyer, representing Right to Life of Kansas, appeared in support of **HB 2301**. She stated if sex education has to be offered in our schools, abstinence based is the answer. "It is a popular myth that teenagers are incapable of understanding that it is in their best interests to save themselves for marriage." (Attachment 1)

Bob Runnels, Executive Director, Kansas Catholic Conference, testified in support of **HB 2301**. "This legislation regarding the restrictions that need to be placed on the teaching of Human Sexuality and AIDS represents an important statement on the importance of 'abstinence from sexual activity outside of marriage'". (Attachment 2)

Dr. Tom Kettler, College Park Family Care Center, Stanley, appeared in support of **HB 2301**. "I believe that our present system of sex education is not effective. STD rates, teen pregnancies and AIDS cases have increased, all in the face of the present sex education curriculum. **HB 2301** places abstinence-based teaching as the expected standard--the only standard that is 100% effective in preventing STDs and unintended pregnancy. (Attachment 3)

Dr. Nancy L. Toth, family practitioner, Topeka, testified in favor of **HB 2301**. "I believe there is a move by the general public in the direction of desiring abstinence based sex education. They are realizing the current programs are not working as well as expected and they are ready for a change." (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION, Room 519-S Statehouse, at 3:30 p.m. on February 21, 1995.

Chairman Chronister presided having returned following testimony in the Economic Development Committee.

Dr. Carl Christman, Wichita, a practicing obstetrician and gynecologist since 1974. During those years he has had an opportunity to take care of lots of people. Currently he is attending staff of the young adolescents clinic at Wesley Medical Center and responsible for the teenagers who need to be taken care of prenatally and also for gynecological services. He is excited that **HB 2301** might be passed. If there has been one thing particularly obvious to him over the last 20 years or so in sex education, whatever it is, it is not working and can say that from his experience.

Deborah Alfano, Director, Bureau of Disease Control, Department of Health and Environment, State of Kansas, testified in support of **HB 2301**. "The delivery of HIV prevention messages cannot remain the sole responsibility of the public health community or the public education system. It must become the duty of the community as a whole to support young people making life changing decisions." (Attachment 5)

Jim McDavitt, Executive Director, Kansas Education Watch, appeared in support of **HB 2301**. (Attachment 6)

Copies of letters from Betty Tash, (Attachment 7) Rev. Audie Tash, (Attachment 8) and Judith M. Kennedy (Attachment 9) objecting to curriculum, "Reducing the Risk" being piloted at Riverton and five other schools across the state were distributed to the committee.

The floor was opened to questions from the committee.

Hearings opened from Proponents only of **HB 2217, the Kansas G.I. Bill for Kids.**

Representative Kay O'Connor, sponsor of **HB 2217**, addressed provisions of the bill. This is a pilot program that sunsets at the end of three years. She listed ten benefits which she feels will be derived from passage of the bill. (Attachment 10)

Mark J. Bredemeier, General Counsel, Landmark Legal Foundation, Kansas City, Missouri, appeared to offer legal analysis of **HB 2217** particularly in the provisions of this legislation that permit religious schools to participate in the voucher program as "Kansas schools of choice." It is Landmark Legal Foundation's reasoned conclusion that the better legal arguments support the constitutionality of this bill under the United States and Kansas Constitutions. (Attachment 11)

Carol D'Amico, Hudson Foundation, appeared in support of **HB 2217**. "This year promises to be a big year for school choice initiatives across the country. Last year, in 34 states, school choice legislation of some kind was introduced or pending." She stated two major reasons why advocates on both sides of the political and ideological spectrum believe private schools should be part of any parent choice program. 1) Private schools offer parents more choices of good schools. 2) Private schools do a better job of educating some children than public schools, especially in urban areas. (Attachment 12)

Janet R. Beales, Reason Foundation, testified in support of **HB 2217**. She explained and compared results from the Choice programs in Milwaukee: the Milwaukee Parental Choice Program and the PAVE program. (Attachment 13)

Stan Kennedy, Garden City public high school teacher, spoke in support of **HB 2217**. He contends private schools routinely operate on a very limited budget. The voucher system will bring the much needed aspect of competition to the education process. (Attachment 14)

Bob Runnels, Jr., Executive Director of Kansas Catholic Conference, spoke in support of **HB 2217**. He stated competition is the strength of a free enterprise system. Vouchers would be a vehicle for efficiency and less costly to the state. He concluded by saying non-government schools teach "values" and "discipline" to children. (Attachment 15)

Letters in support of **HB 2217** from Chuck Isaac of Merriam, (Attachment 16) and Charles Jedeke, chairman of KANS were distributed to committee members. (Attachment 17)

The floor was opened to questions from the committee.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION, Room 519-S Statehouse, at 3:30 p.m.  
on February 21, 1995.

Hearing concluded from proponents of HB 2217.

A Resolution from the sub-committee on QPA was shared with committee members. (Attachment 18)

The meeting adjourned at 5:30 p.m.

The next meeting is scheduled for February 22, 1995.

## GUEST LIST

Committee: Education

Date: 2-21-95

NAME: (Please print)	Address:	Company/Organization:
Jeanene Gill	Topeka, KS	Catholic School
Herchel Pace		Cit
Tharon Brinkella		CUA of KS
Charles L. Stewart	Chas. Center, KS	
Tom Halle	Bremen, KS	Bremen Lutheran School
Phillip Friedrichs	Bremen, KS	Bremen Lutheran School
Anna Friedrichs	Bremen, KS	Bremen Lutheran School
Cindy Zilli	Bremen, KS	Bremen Lutheran School
Jack Rumboltz	Paola, KS	Self
Matt Grogger	OVERLAND PARK, KS.	SELF
Marsha Strahm	EW	CUA
Glenda Ryan	Overland Park, KS	Taxpayer
Mike Ryan	" "	" "
Ed Johnson	Lawrence	W O LAW School
Jody Robinson	Jawanda, "	
Katy Melmer	Now	
Allen Kowalski	Topeka	KASB
Cathy Byers	Topeka	Student
Damon Hess	Topeka	Topeka Lutheran
Ken Rankin	Lawrence, KS	Douglas County Christian School
Diane Gjerstad	Wichita	USD 259
K Whiteman	KC	Student
Jordan Coates	Lawrence	Lehman Brandelery
Nancy L. Jahn	Topeka	Myself
Dwight Buzze	Wichita	Kansas Family Research



## RIGHT TO LIFE OF KANSAS TESTIMONY

### HOUSE EDUCATION COMMITTEE

HOUSE BILL 2301      TUESDAY, FEBRUARY 21, 1995

Madam Chairperson and members of the committee, I am appearing to testify in favor of House Bill 2301. My name is Cleta Renyer. I am representing Right To Life of Kansas. We firmly believe that if sex education has to be offered in our schools, abstinence based is the answer. According to "Focus on the Family", since the federal government began its major contraception program in 1970, unwed pregnancies have increased 87% among 15 to 19 year olds, and venereal disease has infected a generation of young people.

It is a popular myth that teenagers are incapable of understanding that it is in their best interests to save themselves for marriage. Attached to my testimony is an article by Gracie S. Hsu of Family Research Council. She writes that the teens themselves have become the champions of the abstinence movement. Please read the attached articles. I have highlighted the major points. Thank you for your time.

Respectfully submitted

*Cleta Renyer*

*House Education  
Attachment 1  
2-21-95*

# ABSTINENCE: THE NEW SEXUAL REVOLUTION\*

Gracie S. Hsu\*\*

Believing that true love waits, hundreds of thousands of young people around the country have committed themselves to sexual purity until marriage. They have made this pledge in conjunction with the 'True Love Waits' campaign....

The campaign is part of a growing movement that is sweeping the country: abstinence. Interestingly, the champions of this movement are teenagers. Their collective voices are drowning out the once popular voice of a culture that pooh-poohed abstinence and heralded condoms.

And the popular media have begun to sit up and take notice:

\*\* The front page of the June 19 *New York Times* Style section splashed the headline, 'Proud to be a virgin: Nowadays, you can be respected even if you don't do it.'

\*\* The *Washington Post* on November 21, 1993, reported that virginity is a new counterculture among America's teens. Teenagers are forming virgin clubs in high schools all across the country, and these 'vocal virgins' are saying that they are proud to be pure.

\*\* The March 1994 *Mademoiselle* featured an article entitled 'The New Chastity,' which stated that "saying no to sex might turn out to be the latest stage in the sexual revolution."

\*\* An article in the March 22 *USA Today* described how fans of TV's 'Beverly Hills 90210' are delighted with the character Donna's preservation of her virginity. Moreover, in stark contrast from Doogie Howser's much hyped loss of virginity a few years ago, characters are now being celebrated for their virginity. On Jan. 14, all three teenage lead characters on 'Family Matters' (Steve, Laura, and Eddie) disclosed that they are virgins. Cody, the most popular character on 'Step by Step,' also refused to have sex before marriage.

While abstinence is not a new concept, this movement is new — and refreshingly different.

Rather than the fear based approach of 'don't have sex or else,' or the stale 'protect your health' lines, this movement is established on freedom and respect.

Just ask the teens, they'll tell you. During her interview with the *Wash-*

4/December 15, 1994

Anderson Newsletter

ington Post, student Yaminah Jackson said that "boys have more respect" for virgins. Darius McCrary, who plays Eddie on 'Family Matters' says that he is saving himself for his future wife because he believes that it's all about respect — respect for himself and for the person he one day will marry. And when asked why she took the 'True Love Waits' pledge, Michelle Donachy told *USA Today* that she's choosing "to give up a moment's thrill for an eternity of rewards."

And research confirms that she is likely to reap many rewards, including:

\*\*1) Greater sexual satisfaction. A recent Family Research Council study found that the people most satisfied with their current sex life are married people who 'strongly' believe sex outside of marriage is wrong. A *Redbook* magazine study during the mid-1970's, the 1993 Janus Report of Sexual Behavior, and a 1992 random sample survey of *Christianity Today* readers, all concur.

According to a research summary by David Larson of the National Institute for Health Care Research, sexual responsiveness is significantly affected by the relational context in which love making takes place. Part of the reason why monogamous married couples have an easier time achieving greater intimacy is because they enjoy greater sexual freedom: freedom from fears of comparisons, rejections, abandonment, and disease, among others.

\*\*2) An enduring marriage. A 1986 study published in the *Journal of Marriage and the Family* found that individuals who engage in sex before marriage are more likely to commit adultery and more likely to divorce than those who do not. Similarly, a 1992 study by two sociologists at Bowling Green University found that couples who live together before marriage are more likely to divorce than other couples.

\*\*3) No regrets. A 1994 survey released by the Sex Information and Educational Council of the United States (SIECUS) found that of the teens who have had sex, more than half wish they had delayed sexual activity. Indeed, many of those who are committing themselves to sexual

purity are teens who have learned the hard way that sex without a lifelong commitment is empty.

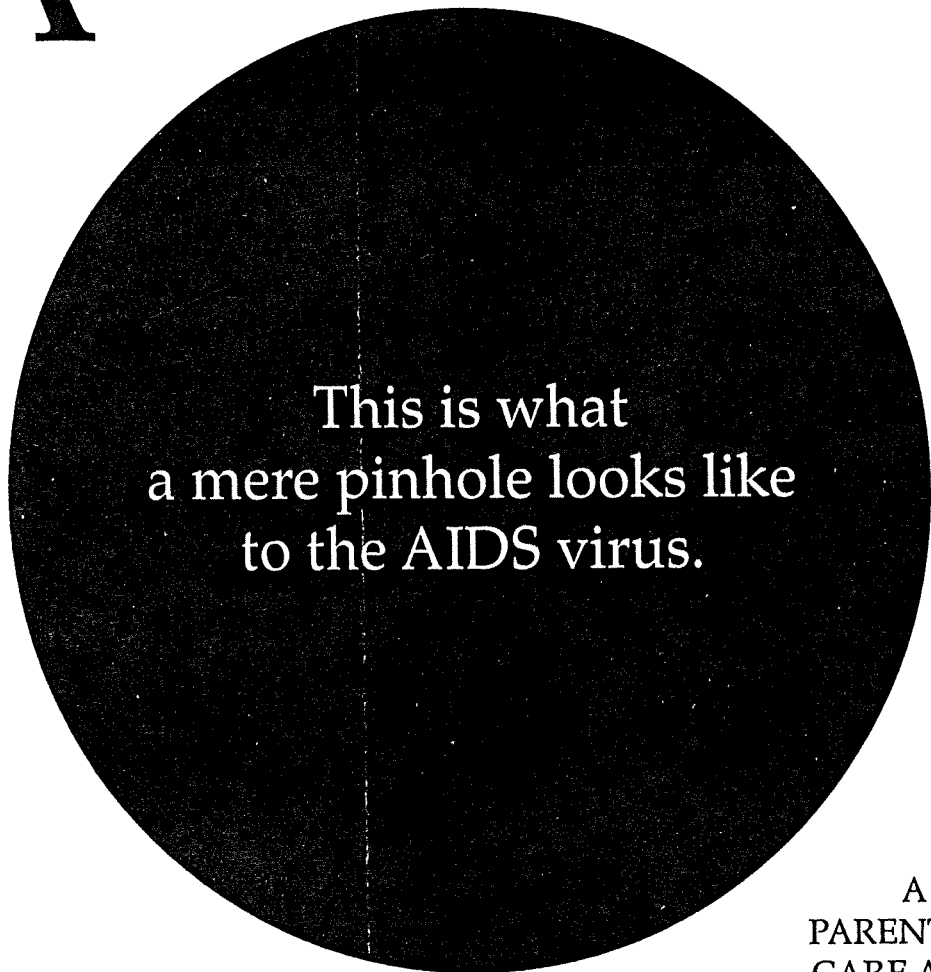
The SIECUS study plan found that teen sexual activity among high-schoolers who report having had intercourse, is declining — from 54% in 1990 to currently 36 percent.

Billboards in Baltimore boldly read 'VIRGIN... Teach your kids it's not a dirty word.' But to really reflect the current trend, perhaps the message should read: 'VIRGIN: Kids are teaching the nation it's not a dirty word.'

\* Excerpted from the article "Teen Virginity Makes a Comeback" by Lucille Roy Townsend, co-publisher of *The National Educator*, 1051-E South Lemon, Fullerton, CA 92632, \$20 @ year.

\*\* Ms. Hsu, M.H.S. is a policy analyst specializing in human sexuality and life issues at the Family Research Council, a Washington-based research and advocacy organization.

# ARE CONDOMS REALLY "SAFE"?



This is what  
a mere pinhole looks like  
to the AIDS virus.

**FACT:** *The AIDS virus is 450 times tinier than a microscopic-size sperm.<sup>1</sup> All it takes is one small pinhole. Or one little rip, slip or tear – and you've got AIDS.*

**FACT:** *In a study of married couples, 30% of the people who relied on condoms for protection from their HIV positive partners caught the virus.*

**FACT:** *nobody knows for sure exactly how deadly "safe sex" is, but we do know that one-in-five adolescents using condoms is pregnant at the end of a year. **FACT:** A boy can only get a girl pregnant one week a month, but an HIV infected partner can give you the AIDS virus 365 days a year.*

**So think about it:** *telling your friend to put a mere balloon between their healthy body and a deadly disease is irresponsible – it's like telling someone who's driving drunk to simply use a seat belt.*

A MESSAGE FROM  
PARENTS & TAXPAYERS WHO  
CARE ABOUT YOUR FUTURE.

1. C.M. Roland, "The Barrier Performance of Latex Rubber," *Rubber World*, Vol. 208, No. 3, June, 1993.



## TESTIMONY

House Education Committee  
Tuesday, February 21, 1995 - 3:30 p.m. - Room 519S

**KANSAS CATHOLIC CONFERENCE**  
Bob Runnels, Jr., Executive Director

**H.B. 2301**

Thank you Chairperson Chronister, and members of the House Education Committee for allowing me to testify today in support of H.B. 2301.

I wish to congratulate the 47 members of the Kansas House who have placed their names in support of this legislation. This legislation regarding the restrictions that need to be placed on the teaching of Human Sexuality and Aids represents an important statement on the importance of "abstinence from sexual activity outside of marriage".

In the great number of years that I have been testifying on legislation, I cannot remember a more moral and correct piece of legislation.

We need solutions to the moral dilemma that we face with our young people. Solutions are not responsible if they ignore moral values, personal worth, dignity, abstinence and parental authority.

This bill acknowledges the clear and inviolable rights of parents in the education of their children.

*House Education  
Attachment 2  
2-21-95*

Testimony - H.B. 2301  
House Education Committee  
February 21, 1995

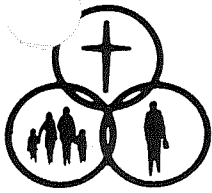
2

Young people must understand the spiritual and moral dimensions of human life.

In the sensitive area of sex education, the goal is not simply the distribution of information, but the formation of the person.

We ask that you report H.B. 2301 favorably for passage.

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College Park Family Care Center P.A.  
"CARE WITH CARING"

Testimony Before the House Education Committee

on HB 2301

Tuesday, February 21, 1995

Overland Park Office

Family Practice Physicians

Mark R. Kahler, M.D.  
Thomas G. Miller, M.D.  
Carol J. Feltheim, M.D.  
Robert L. Schuchardt, M.D.  
Randall W. Madison, M.D.  
Calvin Beck JR., M.D.  
Joyce Simon, M.D.  
Mark L. Gillett, M.D.  
Mark Lee, M.D.  
Jeffrey S. McCollum, M.D.

Physician Assistants

William Simon, R.P.A.-C  
Leslie Smith, R.P.A.-C  
Dorsey Gay, R.P.A.  
Lorri Wiegand, R.P.A.

Stanley Office

Family Practice Physicians

Jeffrey J. Earl, D.O.  
Tom E. Kettler, M.D.  
Ted J. Williams, M.D.  
Yutaka Kawase, M.D.

Physician Assistants

Julie Dehan, R.P.A.

Allergy

Bruce Pfuetze, M.D.

Dermatology

Anne Kettler, M.D.

Dietitian

Bette Bischoff, R.D.L.D.C.D.E.  
Mary Willis, R.D.L.D.

Administrator

Chuck Chambers

Thank you for the opportunity to speak in support of HB 2301. My name is Tom Kettler. I graduated from Wichita State University and then attended medical school at the University of Kansas. I am married and have three children. My wife is a practicing dermatologist and homemaker and I am a practicing family physician in Stanley, Kansas. My history of support for sexual abstinence as the primary prevention of unintended pregnancy and sexually transmitted diseases (STDs) goes back to my family practice residency at Baylor College of Medicine in Houston, Texas, serving the indigent of Harris County. This was my first exposure to thirteen and fourteen year olds being pregnant and contracting life-long STDs. The majority of the teens in my practice now are in the Blue Valley and Shawnee Mission school districts of Johnson County. My patients are now better educated, but I still see fifteen year olds with herpes and cervical cancer and seventeen year olds that have been pregnant three times. Gonorrhea, chlamydia, pelvic inflammatory disease and venereal warts also continue to be part of my practice.

I have participated in group discussions, lectures and panel forums with junior high and high school students regarding abstinence and the "safe sex myth." I also presented testimony before the Senate Education Committee in March of 1994 regarding abstinence based sex education. The opponents during last year's testimony were the following: Planned Parenthood, the YWCA, the ALCU and an ex-member of the State Board of Education. The general feeling was that quality education was already in place and excellent guidelines were present, therefore no change was needed. It is factual that the present information-based sex education is successful in transmitting knowledge to teens. However, does this knowledge translate into positive results? I believe that our present system of sex education is not effective. STD rates, teen pregnancies and AIDS cases have increased, all in the face of the present sex education curriculum.

Tom E. Kettler, M. D.  
HB 2301  
February 21, 1995

The proportion of births that were unintended has risen over the past decade. In 1988, data indicated that more than half (56%) of the 6.4 million pregnancies were unintended. Misuse of contraception accounts for nearly half (47%) of unintended pregnancies among all women age 15-44. Misuse of contraception is a major problem and this is particularly true with teens. Does this mean that we need greater education regarding the use of contraception? Some say that this is the only practical solution. Evidence again points to the fact that misuse sometimes means no use. **Time** magazine, May 24, 1993, asked this question to sexually active teens: How often did you use birth control when you had sex? 61% said every time, 26% said sometimes and 13% said never. An analysis done by the Alan Guttmacher Institute revealed that in the first year of condom use the failure rates ranged from 11.4% up to 36.3%. Failure equals pregnancy in this study, but as you know, STDs can be transmitted every day of the month. Therefore condoms are not as reliable as you may have been led to believe and oral contraceptives are ineffective in prevention of STDs. Why is this important? STDs infect 3 million teenagers annually. Of 12 million new sexually transmitted infections that occur each year it is reported that approximately 8 million (63%) are among women and men under age 25. 500,000 new cases of herpes occur annually. 4 million cases of chlamydia occur annually and it is estimated that 10-30% of 15 to 19 year olds are infected. I think we can all agree that teen pregnancy rates and STDs are a challenge to our educational system.

House Bill No. 2301 is not a teach-abstinence-only bill, but this does place abstinence-based teaching as the expected standard: The only standard that is 100% effective in preventing STDs and unintended pregnancy. I believe in this standard and it is my hope that this bill be passed by our House of Representatives. Thank you for your attention.

Testimony before the House Education Committee  
on HR 2301

Nancy L. Toth, MD  
5101 SW 34th Street  
Topeka, KS 66614

I am a Family Practitioner from here in Topeka. I want to testify in favor of HB 2301.

In earlier testimony, the failure of the comprehensive sex education program in reducing teen pregnancies and transmission of STD's in teens has been explored. Most of the present comprehensive sex education courses are information based, assuming that if given enough facts and information the adolescent will rationally evaluate the information and options and make wise, safe decisions about their sexual activity. In the value neutral context of most sex education courses, abstinence, sexual activity without vaginal penetration, sexual intercourse using contraceptives and other options are all presented as equally acceptable for adolescents.

A major problem with this approach is that it is designed for adult reasoning rather than adolescent thinking abilities. These programs are based on two false assumptions:

1. Adolescents function like adults in that given a wide range of options the adolescent will make a logical, rational choice of sexual lifestyle
2. Teens must inevitably engage in sexual behaviors.

In looking at Piaget's generally accepted stages of cognitive development, adolescents usually move from a concrete operational stage to a formal operational stage sometime after age 16-17. Concrete operators in regards to sexual decision making consider only the immediate concrete experience, can not anticipate future outcomes or consequences, and process information and options in a haphazard illogical way.

Because of the level of cognitive development in most teens, they receive the message that having sex is OK especially if "protected", but studies show that many well-informed teens still do not use contraceptives. Some are unable to understand the concepts of risk taking as it relates to pregnancy; some will engage in spontaneous sex but are unwilling to prepare or plan for sex by taking the Pill or carrying condoms; many do not perceive themselves as being truly at risk - they feel they are invulnerable; many teens also report a strong dislike for condoms. Add to all this

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Attachment 4  
2-22-95

what we have heard earlier that contraceptives are inadequate protection from the risks involved, and I think it is clear that we need to move in a different direction.

Adolescents need to be given a strong message that true abstinence is not just one of many equivalent options, it is the BEST option; the only one that is 100% effective; the only one that builds self-esteem, self- and other respect, character and a sense of responsibility. They need to be clearly directed and told this is the expected standard. According to various statistics, anywhere from 30-50% of teens are virgins. That is a significant number and they need to be strongly supported to continue to abstain from intercourse as well as other sexual activity which usually leads to sexual intercourse. Graphic sexual and contraceptive information in a mixed gender classroom setting with no value attached to any of the options presented actually increases the sexual pressure on abstinent teens.

Teens themselves want to be taught about the positive benefits of abstinence. In two surveys sexually active teens (84% and 90%) wanted more information of how to say "No" to sexual pressure without hurting the other person's feelings.

Parents want abstinence taught. A Louis Harris poll showed most parents want schools to teach sex education. It also showed that 70% of adults want sex education to teach morals and about the same percentage believe programs should urge students not to have sexual intercourse.

Last Friday evening Ted Koppel hosted a Town Meeting called "Teen Sex What'll We Tell Our Kids" in which he had a panel of adult experts (including Dr. Elders), a group of teens, an audience present and computer hook-ups to various locations across the country. They discussed many points as we are doing here, but Ms. Ware, former head of the Office of Adolescent Pregnancy during the Bush administration, received the most enthusiastic and widespread support from the attendees when she said that abstinence must be the focus of any sex education program and not treated as an afterthought as it is in most sex education programs today.

I believe there is a move by the general public in the direction of desiring abstinence based sex education. They are realizing the current programs are not working as well as expected and they are ready for a change. I think by supporting this bill you would be on very safe responsible ground with your constituents.



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**Department of Health and Environment**

James J. O'Connell, Secretary

Testimony presented to  
House Education Committee

by

The Kansas Department of Health and Environment

House Bill 2301

I am here today to testify in support of HB2301 as written, however, the Kansas Department of Health and Environment does not receive federal or state funding to provide HIV/AIDS education in the Kansas public school system. The Kansas Department of Education receives funding to provide HIV/AIDS education in the schools through the Division of Adolescent and School of Health at the Centers for Disease Control & Prevention.

Teaching abstinence as the first line of protection against sexually transmitted disease is part of every program presented by AIDS Program staff of the Kansas Department of Health and Environment. It is the first message delivered when discussing protection against sexual transmission of the Human Immunodeficiency Virus (HIV), the virus that causes AIDS. Every local health department and community-based organization in Kansas receiving funding from KDHE to provide HIV/AIDS education receives training in delivering prevention messages, including that of abstinence from sexual intercourse.

Another message delivered as part of KDHE HIV prevention messages is that of establishing a mutually monogamous relationship. However, this message must be delivered in the clearest of terms, particularly when dealing with adolescents. Frequently, and this can also be true among adults, teenagers will establish a pattern of serial monogamy. That is, they become involved in a series of short-term mutually monogamous sexual relationships. The teen perceives that he or she has been protected by monogamy in each relationship, rather than viewing the series of relationships as another way of having multiple sexual partners.

KDHE supports, and provides for, the teaching of both the concepts of abstinence and long-term mutual monogamy. KDHE includes information about the dangers of alcohol, drug abuse, and the use of contaminated needles. Many of the reasons that cause alcohol and drug use among Kansas youth also causes them to make unwise decisions about sex. The use of alcohol and drugs may also interfere with their ability to control their personal behavior.

The delivery of HIV prevention messages cannot remain the sole responsibility of the public health community or the public education system. It must become the duty of the community as a whole to support young people making life changing decisions. By providing education to everyone in a community, including parents, we open the door to developing community based family approaches to reducing the risk of HIV infection and AIDS for our youth.

Thank you for your time.

Testimony presented by: Deborah Alfano  
Director  
Division of Health/Bureau of Disease Control  
February 21, 1995



February 21, 1995

Testimony of  
Jim McDavitt  
Executive Director  
Kansas Education Watch

### Proponent of HB 2301

I thank the Chair of this committee, Representative Chronister, as well as the committee members for the privilege of testifying in favor of HB 2301 today.

Corrie Ten Boom wrote a book, called The Hiding Place, about her life during the hardships and trials of standing against the Holocaust. She tells how as a child she would ride with her father around her home country of Holland on his many trips to buy watch parts and jewelry.

On one of those train rides she asked her father a question regarding sexual sin. She says,

My father turned to look at me, as he always did when answering a question, but to my surprise, he said nothing. At last he stood up, lifted his traveling case from the rack over our heads, and set it on the floor.

"Will you carry it off the train for me, Corrie?" he said. I stood up and tugged at it. It was crammed with the watches and spare parts he had purchased that morning.

"It's too heavy," I said.

"Yes," he said. "And it would be a pretty poor father who would ask his little girl to carry such a load. It's the same way, child with knowledge. Some knowledge is too heavy for children. When you are older and stronger you can bear it. For now you must trust me to carry it for you."

I left home when I was 17 and joined the Navy. I have been to many other countries, have sailed most of the world's oceans, and have seen the vacation spots of the Mediterranean. I have canoed in dugouts in the jungle in Central America, with men wearing loin clothes that had their hair plastered with substances I didn't even want to ask about.

I have been married for 25 years, spent 9 years in law enforcement with 4 of those years investigating sexual crimes, and have been blessed with 3 children. And, it wasn't until I read sexuality curriculum from public education that I became informed about the usefulness of a "dental dam".

My youngest child is 13. And I can tell you that I don't want her to have to carry that knowledge.

I want her to know that if she swims in shark infested waters she will loose her life. Regardless of whether she is wearing a raincoat. Staying out of the water is the only safe way.

I want her to know that she will die if she plays in the middle of a 6 lane highway. It won't matter if she had her safety glasses on.

The only percentage rate for a successful long life that I want her to memorize is 100%. I ask this committee to pass HB 2301 favorably.

Jim McDavitt

House Education  
Attachment 6  
2-21-95

## Visit or Call a Clinic

1. Explain that many people—including adults—avoid going to a clinic or local doctor to discuss protection because they don't know what to expect. Besides learning what services are offered at local family planning clinics, this homework assignment asks students to rate their comfort level while at the clinic. Hand out the two-page homework and tell students they can complete the assignment in one of four ways:

- a. They can visit a clinic, complete homework and describe the way to get to a clinic.
- b. They can visit a clinic and complete homework.
- c. They can call a clinic, complete homework and describe the way to get to a clinic.
- d. They can call a clinic and complete homework.

Whichever version of the assignment students choose, they must all complete Visit or Call a Clinic. For additional points, they may complete The Way to the Clinic.

Pass out a local phone directory (or several) and have students find the clinic section in the yellow pages. Select two or three conveniently located clinics (or the clinics that have agreed to participate) from which they can choose. Have them choose in class so you can control the number of students contacting each clinic. (If there is only one clinic, consider the alternatives below.)

Have students write the name of their clinic in the space provided on the worksheet. If the clinics have given you information about the best times to answer questions, etc., share those with students. As a general rule, encourage them to visit the clinic in pairs, but discourage going in groups larger than three. Encourage students to go with their boyfriends or girlfriends, even those who aren't in the class. Tell students they should bring back some literature available from the clinic. This could be a pamphlet or a flier describing services. Remind them that clinics are professional places and that they should use their best behavior. Additionally, they should keep to themselves the names of anyone they see at the clinic.

2. Conduct a brainstorming session to generate some questions that can be used when visiting the clinic.

### When condoms don't work

The rate of breakage of condoms ranges from 0.6% to 6% during vaginal intercourse. Condoms can be broken or damaged during sexual activity by:

- a) being torn with fingernails, jewelry or other sharp objects during unwrapping
- b) being ripped or broken because of pulling instead of rolling onto the penis
- c) being pulled too tightly with no room left at the tip
- d) use of oil-based creams or lubricants (safe lubricants that won't damage condoms include KY Jelly, saliva, surgical and most contraceptive jellies).

Most condom failures probably result from incorrect use.

### When using condoms (Teacher Demonstrates)

1. Open the package carefully.
2. Determine which way the condom unrolls but do not unroll the condom before putting it on.
3. Hold the tip of the condom to squeeze out air and leave some extra room for the semen.
4. Put the condom on the end of the erect penis before there is any contact between the penis and the vagina, anus or mouth. While still holding the tip, unroll the condom onto the penis all the way down to the pubic hair. Do not pull at the condom while unrolling it.

After sex:

- Pull the penis out immediately after orgasm (coming).
- Hold onto the rim of the condom and pull the penis away from the partner. This prevents any spillage of semen.
- Remove the condom from the penis and throw it away. (Condoms should never be reused.)

### The Role of Spermicides

Spermicides are chemicals that kill sperm and bacteria.

Spermicides work best for pregnancy and STD prevention when used with condoms. The U.S. Centers for Disease Control (CDC) recommends that spermicides be applied to both the outside and inside of the condom for vaginal and anal sex, and to the inside only during oral sex.

### The Role of Dental Dams

Dental dams are small, thin squares of latex that are used to provide a barrier against HIV during oral sex. Dental dams, which are stretched and placed over the vaginal opening or anus, need to be used from start to finish of any oral sexual activity.

In summary, using condoms, spermicides and dental dams during every sexual encounter needs to become a habit. It is easy to learn and can save lives.

6-21

Representative Rochelle Chronister:  
State Capitol Room 446-N  
Topeka, Kansas 66612-1504  
Feb. 17, 1995

Dear Representative Chronister:

The State Department of Education and the Kansas Board of Education are sponsoring a pilot Sex Education program here at Riverton and at five other schools across the state. The curriculum being piloted is called, *Reducing the Risk, Building Skills to Prevent Pregnancy, STD & HIV*, 2nd ed., Richard P. Barth, MSW, Phd.; ETR Associates, Santa Cruz, California, 1993. I am personally appalled that materials like this are being taught in our schools. If the schools are going to teach our children, every effort should be made to teach what is right.

This program is very objectionable because of the coarse and graphic manner in which the material is presented and because of the misinformation that it contains. This program encourages premarital sexual relationships and this is a travesty of the trust that parents have placed in our schools. This program attempts to indoctrinate children with the idea that they cannot get HIV or other STDs if they use 'protection' properly. It would seem that this curriculum is actually miseducating our children and I am shocked that the State Department of Education and the Kansas Board of Education are sponsoring this pilot program. Does a whole generation of Kansas children have to become infected with STDs and/or HIV before it is admitted that abstinence until marriage and then commitment to that marriage partner after marriage is the only safe sex there is?

I certainly hope that you will check out a copy of this *Reducing the Risk* curriculum from the resources available to you and examine it. I hope that after examining this book you will agree with me that it has no place in our schools. I hope that you will be willing to address this issue on my behalf.

Sincerely,

Betty Tash

House Education  
Attachment 7  
2-21-95

Representative Rochelle Chromister:  
State Capitol Room 446-N  
Topeka, Kansas 66612-1504  
Feb. 17, 1995

Dear Representative Chromister:

The State Department of Education and the Kansas Board of Education are sponsoring a pilot Sex Education program here at Riverton and at five other schools across the state. The curriculum being piloted is called, *Reducing the Risk: Holding Steam to Prevent Pregnancy, STD & HIV*, 2nd ed., Richard P. Barth, MSW, Phd.; ETR Associates, Santa Cruz, California, 1993. I am personally appalled that materials like this are being taught in our schools. If the schools are going to teach our children, every effort should be made to teach what is right.

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Sincerely,

Rw. Audie Tash

House Education  
Attachment 8  
2-21-95

Representative Rochelle Chronister  
State Capitol Room 446-N  
Topeka, Kansas 66612-1504  
Feb. 17, 1995

Dear Representative Chronister:

The State Department of Education and the Kansas Board of Education are sponsoring a pilot Sex Education program here at Riverton and at five other schools across the state. The curriculum being piloted is called, *Reducing the Risk, Reducing Risks to Prevent Pregnancy, STD & HIV*, 2nd ed., Richard P. Barth, MSW, Ph.D.; ETR Associates, Santa Cruz, California, 1993. I am personally appalled that materials like this are being taught in our schools. If the schools are going to teach our children, every effort should be made to teach what is right.

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Sincerely,

Judith M. Kennedy

House Education  
Attachment 9  
2-21-95

STATE OF KANSAS

KAY O'CONNOR  
REPRESENTATIVE, DISTRICT 14

TOPEKA ADDRESS:  
STATE CAPITOL—431-N  
TOPEKA, KANSAS 66612-1504  
(913) 296-7672

OLATHE ADDRESS:  
1101 N. CURTIS  
OLATHE, KS 66061  
(913) 764-7935



TOPEKA


HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: GOVERNMENTAL ORGANIZATION &  
ELECTIONS  
PUBLIC HEALTH & HUMAN SERVICES  
EDUCATION  
LEGISLATIVE EDUCATION PLANNING  
COMMITTEE (JOINT)

TOPEKA HOTLINE  
DURING SESSION - 1-800-432-3924  
TTY 913-296-8430  
KC AREA LOCAL CALL 782-5000

TO: Chairperson Rochelle Chronister and Committee Members

FROM: Representative Kay O'Connor 

DATE: February 21, 1995

RE: HB 2217, Kansas G. I. Bill for Kids

Madam Chair and committee members, thank you for the opportunity to speak before you on behalf of HB 2217, the Kansas G. I. Bill for Kids.

In December, you received a copy of the attached summary of the bill. I am giving you this second chance to look over my explanation of HB 2217, just in case you may have been too busy to read the first one!

As you are probably aware, this is a pilot program that sunsets at the end of three years. I have maintained from the beginning that this is a bill that will:

- 1) Save Kansas taxpayers millions of dollars.
- 2) Help low income families have more choices in where their children will be educated like those of better means currently have.
- 3) Encourage more parent involvement by giving parents more power to make decisions that are now currently denied them.
- 4) Allow private school parents to be able to access some of their own tax contributions for educating all Kansas students to be used in the school of their choice.

*House Education  
Attachment 10  
2-21-95*

Page two

- 5) Create more fair competition between public and private schools. Currently, all private schools are at a financial disadvantage in that they are denied access to the huge pool of education funding dollars, while at the same time their taxpaying parents must support the public school monopoly and also be doubly taxed to support the education of their own children in a non-government school.
- 6) Give private school teachers the possibility of an increase in their salaries which are currently about 70 percent of public school teachers' salaries.
- 7) By the leverage of school vouchers, put poorly performing public schools on notice that they may lose funding if they do not address problems, while at the same time doing no harm to current good public schools.
- 8) By spending less dollars educating those who prefer a lower cost voucher choice education and reducing the draw on the g e n e r a l fund, create a pool of funds that could be used to increase funding for good public schools, special ed, roads, prisons, tax reduction, or whatever.
- 9) Encourage entrepreneurs to start up schools to meet specific needs in specific areas of education; at risk, special ed, magnet schools, etc.
- 10) Create a college trust fund that will make Kansas the envy of the nation. Imagine a few short years from now, Kansas students graduating with money "in the bank" to pay for their college. We are liable to see prestigious universities such as Yale, Harvard, or Notre Dame setting up satellite universities in Kansas where the trust fund can only be spent. We could become the education capitol in the nation - truly world class!

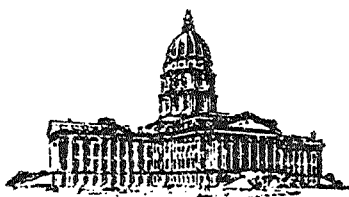
I could go on virtually for hours, but I wish to give as much time as possible to my fellow conferees and to allow time for questions.

Page three

Thank you for your kind attention and I will stand for questions at the pleasure of the Chair.

Note: I will go through the attached summary of the bill if the committee wishes.





TOPEKA

HOUSE OF  
REPRESENTATIVES

KAY O'CONNOR

REPRESENTATIVE, DISTRICT 14

## TOPEKA ADDRESS:

STATE CAPITOL—303-N

TOPEKA, KANSAS 66612-1504

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## COMMITTEE ASSIGNMENTS

MEMBER: GOVERNMENTAL ORGANIZATION &  
ELECTIONS  
PUBLIC HEALTH & WELFARETOPEKA HOTLINE  
DURING SESSION - 1-800-432-3924

November 20, 1994

Dear Fellow Legislator:

Now that elections are over, it is time to consider new legislation and work on support for our own bills. As many of you are already aware, I will be introducing the school voucher legislation "**GI Bill for Kids**" again this year. This issue has statewide public support and is very dear to my heart. (Per Emporia Survey this year, 53% statewide and over 60% in metro counties support school vouchers and only 35% are opposed school vouchers statewide.)

I have watched carefully through various media surveys to see where my fellow legislators stand. A frequent response was "undecided" and I can easily understand, especially for newcomers.

This letter/survey is to help you understand the ramifications of my bill and to get a more informed response as to your potential support. I apologize up front for the length, but with the bold print and bullets I hope to keep the reading as easy as possible.

The bill itself is short (less than 10 pages) but it accomplishes a variety of goals to address many questions and concerns expressed by the thousands of citizens who have heard my presentations over the past year and a half.

**THE FOLLOWING IS A SUMMARY OF THE BILL:****Voucher value phase in - annual per pupil**

year 1:	50% of Kansas State Base - \$1800 *	year 4:	80% " " " " - \$2880 *
year 2:	60% " " " " - \$2160 *	year 5:	90% " " " " - \$3240 *
year 3:	70% " " " " - \$2520 *	year 6:	100% " " " " - \$3600 *

\*This could change if the \$3600 base changes

**Eligibility phase in - K-12**

year 1:	current public schoolers, free lunch qualified (guarantees no cost - only savings)
year 2:	public and limited number of private school, free lunch qualified
year 3:	public and limited number of private school, reduced lunch qualified
year 4:	same as year 3
year 5:	same as year 3
year 6:	all Kansas citizens

**Public School Protection**

yr 1 only: No public school district can lose more than 10% (smaller percent in smaller districts) of its previous years student population.

**Special Education**

1 1/2 times voucher value if otherwise qualified

**College Trust Fund**

This very attractive part of the bill is a necessary incentive to keep private school tuition as low as possible and not be raised to match the value of the voucher.

If the value of the voucher is worth, say \$2000 and the tuition is, say, \$1500; the \$500 difference would be deposited in a State trust fund in the name of the child. This will be held until the student graduates from high school at which time it would be available to use for fees at any college or University in Kansas. In the event of premature death or upon reaching the age of 26, any unused funds return to the state. Any interest earned also stays with the state.

**Academic Test Required**

Any student who uses a voucher will be required to show academic progress or lose voucher

10-4

eligibility. (Special needs student is addressed.) Acceptable tests named include Iowa 1 of Basic Skills, California Achievement Test, and Stanford Achievement Test. "Academic" will be defined with inclusions and exclusions.

### **Teacher Certification**

As the student will be tested for academic progress, there need be no requirement in the bill for school accreditation or teacher certification. The parents, students, and schools will be free to choose, however, if they wish to avail themselves of these professional services.

### **Home Schoolers**

Home schooling is technically illegal in the state of Kansas. What we currently have more accurately stated is private schools in the home. The bill does not attempt to legalize "home schooling". If a private school in the home is otherwise qualified, the voucher would be available to that student.

### **No Mandates**

No school or student is required to use a voucher. Schools must follow current law regarding safety, discrimination, teaching illegal subjects; such as animal torture, treasonous activities such as terrorism, etc.

### **Separation of Church and State**

Although the Attorney General opinion of last year was critical in 3 areas, we believe we have addressed them all. Distribution of funds is similar to the G.I. Bill. It is common knowledge that these funds are used without constitutional violation by some students attending high school and even seminary schools. Since the benefit is to the taxpaying individual, where the voucher is used is of no interest to the government as long as the school is otherwise operating legally.

## **THERE ARE AT LEAST 3 REASONS TO SUPPORT VOUCHERS**

### ● **PARENTS RIGHTS/RESPONSIBILITY**

All students deserve an equal opportunity to a basic academic education. Parents have a primary right and the responsibility to decide what is in the best interest of their own children. This right/responsibility is currently denied many families of modest and low income. Without a scholarship or grant the choice of a private school or even a safer public school is financially out of their reach. School vouchers address this unfair discrimination by opening up these additional options to these disadvantaged families.

### ● **LARGE FINANCIAL SAVING TO THE STATE OF KANSAS**

The bill will guarantee no cost to the State of Kansas and in fact the more the "program" is used the more the State stands to save!

#### **Explanation:**

Current average cost per pupil in Kansas public school is approx. \$6,000.  
(About \$4500 state, \$500 local, \$1000 federal)

Current average cost per pupil in 90% of Kansas private schools is \$3000.  
(this is cost - not tuition).

#### **When this happens:**

- **Public schoolers to voucher use = savings to State**
- **Private schoolers to voucher use = Cost to State**

#### **Therefore:**

Year 1 can only produce savings as no current private schoolers will be eligible.

Year 2 will only allow as many current private schoolers on board as the previous years savings will finance. (I believe there will be excess funds)

Year 3 repeat year two

End of Year 3 sunset: requires legislators to study and decide whether to continue on course, accelerate, or repeal.

Estimated potential savings: (my estimation based on various sources)

Year 1: 5 to 50 million dollars

Year 2: up to 200 million dollars

Year 3 - 6: annual decreasing potential down to only 70 million savings final years.

As you can readily see, the potential financial ramifications to the State of Kansas is very attractive.

**Does this mean that public schools will loose large sums of state aid?**

If a good public school has the support of all its local families, it cannot lose a dime. In fact more \$\$ will be made available at the state level for them to make application for and receive if justified.

If a public school is doing a poor job (drugs, violence, poor academic results, etc.) and their students choose what appears to be a better school, yes, that school may suffer a threat of substantial loss of state aid. This will be a powerful incentive for this school to get better or face the possibility of being replaced by a better public or private school. I believe this is as it should be.

#### ● **COMPETITION**

This third reason to support school vouchers is partially addressed in # 2. But competition will, best of all, improve the product (education) made available to our young citizens who are the future leaders of our great country - the best in the world!

This competition is not only between public and private schools, but among public schools as well who stand to be the prime beneficiaries. The bill would allow a voucher to be used when a public school student wishes to cross-district to another public school.

#### **WHAT ABOUT THE REAL FEAR OF GOVERNMENT INTRUSION?**

##### ● **Fear of government regulations tied to voucher use**

This is a legitimate fear, but as our current constitution gives very broad authority over "all educational interests" in the state to the 10 member elected State Board of Education, this fear is well founded even without vouchers in place. It will be, as it currently is, the job of the legislature and citizens to monitor this very real potential threat.

**The following are a few of the "smoke and mirror" objections to school vouchers I have heard:**

##### ● **Poor people won't be able to get to private schools without buses.**

This is certainly a possibility but it has not been a problem voiced where privately funded vouchers are currently in place in a dozen cities in the nation. These programs all have waiting lists of poor families wanting to participate.

##### ● **A class system will be created with the better students being "cherry picked" by private schools, leaving only poor students in public schools.**

First, in my bill any "cherry picking" in the first five years will be from poor and low income families as no one else is eligible. Secondly, the "danger" is more likely the reverse. Public schools have more dollars at their disposal and have more and better facilities and expensive technical teaching tools and better salaries to offer their teachers. Even with vouchers, private schools will probably be at a financial disadvantage.

- **Expensive "special ed" students (nearly all served by public schools) will increase percentage and cause a heavier burden on public schools.**

if "special ed" students choose not to use vouchers, this could be true. However many private schools currently enroll "special ed" students, but because of expensive ADA requirements, the "special ed" student must be transported to a public school part of the day for their special needs. With a 1 1/2 value voucher for "special ed" students perhaps more private schools may be able to afford to become ADA qualified and actually reduce this burden on the public schools.

- **School vouchers will destroy the public school system**

The public school system will be destroyed if it does not respond to the wishes of the parents and taxpayers of each local area. This is the "most local control" you can have - the parents/taxpayers. As stated previously, a school cannot lose a dime of state aid unless a student chooses to go elsewhere. If students are happy with their current school (as 75% so stated in the Emporia Survey) and elect to stay put, the school vouchers bill changes nothing in their normal financing.

As taxpayers we should not be required to be sending dollars to public schools that cannot or will not address some admittedly very serious concerns, especially if a nearby school can and does address them.

The most vocal and strongest objection to school vouchers comes from the National Education Association and its affiliates. (This is the largest union in the nation.) The enclosed CEF brochure has interesting information about the NEA and a statement made by Keith Gieger, NEA president and an even more condemning statement by Albert Shanker, AFT president. Although the brochure is a membership request as well, I neither officially endorse the group, encourage your membership, nor am I member myself. Feel free to question the NEA about any of the enclosed information.

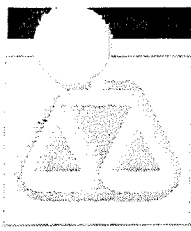
Also enclosed is a copy of a Q. & A. brochure that might be of interest.

Please fill out the survey on the enclosed card and return it to me at your earliest convenience. Also I want to thank you for taking your, I very well know, precious time to read this admittedly long presentation on my school voucher legislation. It is hoped that the "undecided" will become supporters, the "opposed" will reconsider and none of the supporters will "jump ship".

Again thanks and remember to fill out and return the survey card or you may fax it to me at (913) 764-7935.

Sincerely,

Kay O'Connor  
State Representative 14th District



# LANDMARK Legal Foundation

## TESTIMONY OF MARK J. BREDEMEIER

General Counsel  
LANDMARK LEGAL FOUNDATION  
Kansas City, Missouri

Presented to the

KANSAS HOUSE EDUCATION COMMITTEE  
Hon. Rochell Chronister, Chair

Re

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HOUSE BILL No. 2217

"KANSAS G.I. BILL FOR KIDS"

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State Capitol, Room 519 South  
Topeka, Kansas

February 21, 1995

## Introduction

Chair Chronister and Members of the Committee. My name is Mark Bredemeier and I am General Counsel of Landmark Legal Foundation. Landmark is an eighteen-year-old public interest law organization headquartered in Kansas City, Missouri and active in a wide array of constitutional litigation and public policy debates throughout the United States. Accompanying this written testimony is my brief biographical sketch and an outline of Landmark's recent accomplishments. Unless there are questions regarding my professional experience or the Foundation's general history, I will move on to discuss the issue at hand: parental choice in education.

Landmark comes before the Legislature today at the request of Representative O'Connor and other sponsors of House Bill 2217, the landmark school choice legislation known as the "Kansas G.I. Bill for Kids." We are here to offer our legal analysis of this bill at the request of this legislative body. Specifically, we have focused on the provisions of this legislation that permit religious schools to participate in the voucher program as "Kansas schools of choice." Nothing presented here is to be construed as an attempt to aid or hinder the passage of any measure before the Legislature.

With that said, it is Landmark legal Foundation's reasoned conclusion that the better legal arguments support the constitutionality of this bill under the United States and Kansas Constitutions.

## Background

Landmark has been involved in the school choice legal debate almost from the beginning. We were the first legal group to help Wisconsin Representative Polly Williams defend the Milwaukee Parental Choice Plan -- the nation's first such program. Representing eligible low-income Milwaukee families in the litigation known as *Davis v. Grover*, Landmark won a significant decision in the Wisconsin Supreme Court in 1990 which upheld the plan under Wisconsin law.

Because the original Wisconsin legislation limited participation to "nonsectarian" private schools, Landmark in 1993 filed suit in federal court seeking to expand these parental choices to include religious schools. Directly at issue in this *Miller v. Benson* lawsuit are the Free Exercise Clause and Establishment Clause constitutional questions which pertain to House Bill 2217. Briefs and arguments have been submitted to the federal judge and a decision is expected anytime. Meanwhile, Governor Tommy Thompson and Wisconsin legislative leaders are poised to revise the original legislation to give Landmark's plaintiffs the relief we are asking for in federal court, the right to

choose religious schools under the choice plan. Several weeks ago, I traveled to Madison to participate in an informational briefing of the constitutional issues for legislators and media hosted by the Governor and Assembly Education chair Chuck Coleman.

In recent years, we have assisted Jersey City Mayor Bret Schundler and met with Governor Whitman's representatives in their efforts to enact a comprehensive parental choice pilot program in New Jersey. These efforts are ongoing. Landmark also has worked with political and policy leaders seeking to draft and adopt school choice proposals in Pennsylvania, Connecticut, California, Arizona, Missouri, and, of course, Kansas. In addition, we have worked with and advised the many, many privately-funded school choice scholarship programs operating today in places like Indianapolis, New York, Atlanta, Milwaukee, San Antonio, and Portland.

The time for school choice reform is truly at hand. The constitutional issues involved in this important reform must be addressed, especially those pertaining to the inclusion of religious schools in an authentic parental choice plan.

#### **House Bill No. 2217**

The "Kansas G.I. Bill for Kids" proposes a "statewide program under which the parents of eligible children are empowered to exercise choice in the selection of schools" for their children. House Bill No. 2217, Section 1 (the "Act"). Under the Act, the state board of education "shall establish and effectuate a program under which the parent of any program eligible child receives from the state board in each school year, upon application, a voucher that may be redeemed for payment of the costs of enrollment of the child at a Kansas school of choice selected by the child's parent." Section 3(a)(1). Eligible schoolchildren and voucher amount calculations are set forth in the Act, *see* Sections 2(a) & 2(g), as is the manner in which vouchers are redeemed and converted to warrants for payment by a parent to the chosen school. Section 6(a).

More importantly for purposes of the constitutional questions, the Act defines a "Kansas school of choice" to include religious or parochial "nonpublic" or "private" elementary and secondary schools that are accredited by the state or otherwise meet specified Kansas statutory requirements, Sections 2(d), 2(e) & 2(f), and that choose to accept vouchers. Section 2(d). No "nonpublic" or "private" school must participate in the program.

## The Federal Constitutional Question

*Does the Act's inclusion of religious or parochial "nonpublic" or "private" schools violate the Establishment Clause of the First Amendment to the U.S. Constitution?*

No.

There is perhaps no more confused or unpredictable area of federal law than that pertaining to the First Amendment's Religion Clauses.<sup>1</sup> In 1985, in *Wallace v. Jaffree*, 472 U.S. 38, 110-11 (1985) (Rehnquist, J., dissenting), Chief Justice William Rehnquist acknowledged the randomness and acute inconsistency of the Supreme Court's Establishment Clause jurisprudence, particularly in litigation involving state aid and private education.

Nevertheless, several recent Supreme Court decisions -- particularly the 1993 opinion in *Zobrest v. Catalina Foothills School District*, 113 S.Ct. 2462 (1993) -- are applicable to an evaluation of House Bill 2217 and support the conclusion that religious or parochial schools' participation in this voucher program as "Kansas schools of choice" is constitutional. Many Court observers have interpreted *Zobrest* as signaling a willingness on the part of at least five justices to find "that a carefully structured publicly funded voucher program would survive an Establishment Clause challenge." M. Heise, *Public Funds, Private Schools, and the Court: Legal Issues and Policy Consequences*, 25 Tex. Tech L. Rev. 137, 143-44 (1993). This interpretation of *Zobrest* ratifies the pre-*Zobrest* position of liberal scholar Laurence H. Tribe, who, in analyzing earlier precedent, declared:

These decisions suggest that the [Supreme] Court would uphold an educational voucher scheme that would permit parents to decide which schools, public or private, their children should attend. The [E]stablishment [C]ause probably would not stand as an obstacle to a purely neutral program, at least one with a broad enough class of beneficiary schools and one that channeled aid through parents and children rather than directly to schools.

L. Tribe, *American Constitutional Law* 1223 (2d ed. 1988).

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<sup>1</sup>There is an abundance of analytical thrust and parry on this subject. See, e.g., D. Laycock, "Nonpreferential" Aid to Religion: A False Claim About Original Intent, 27 Wm. & Mary L. Rev. 875 (1986); P. Kurland, *The Origins of the Religion Clauses of the Constitution*, 27 Wm. & Mary L. Rev. 839 (1986); J. Choper, *The Religion Clauses of the First Amendment: Reconciling the Conflict*, 41 U. Pitt. L. Rev. 673 (1980).



We agree with these interpretations and conclude the school selection and voucher features set forth in House Bill 2217 create just such a "carefully structured" and "purely neutral" parental choice plan consistent with the strictures of the Establishment Clause.

A.

The First Amendment to the U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion . . . ." In its seminal 1971 decision in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the Court set forth a three-prong test intended to guide the assessment of potential infringements of this establishment prohibition. Challenged legislation must have some secular legislative purpose; the principal or primary effect of the law must be one that neither advances nor inhibits religion; and the statute must not foster an excessive government "entanglement" with religion. 403 U.S. at 612-14.

Relying on this test, the Court in *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973) struck down a New York law designed to provide direct monetary grants to parochial schools, tuition reimbursements for children attending parochial schools, and income tax benefits for those who did not qualify for the tuition reimbursement. The Court found this scheme violated *Lemon's* second prong. 413 U.S. at 774, 779-80, 783 & 785-89. However, the opinion did leave open the option of "some form of public assistance (e.g., scholarships) made available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefited." *Id.* at 783 n.38. The majority even distinguished New York's direct aid legislation from the educational assistance provisions of the federal "G.I. Bill." *Id.* See 38 U.S.C. Section 1651.

Although subsequent decisions employed to various degrees the *Lemon* analysis, see *Grand Rapids School District v. Ball*, 473 U.S. 373 (1985); *Aguilar v. Felton*, 473 U.S. 402 (1985); *Meek v. Pittenger*, 421 U.S. 349 (1975), this strict test has been significantly diluted over the course of time through decisions and proposed alternative approaches. See *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 655-62 (1989) (Kennedy, J., dissenting) (Justice Kennedy's "coercion" test); *Lynch v. Donnelly*, 465 U.S. 668, 688-93 (1984) (Justice O'Connor's "endorsement" test). The *Lemon* test may be dead, though not yet officially interred.<sup>2</sup>

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<sup>2</sup>The Court's most recent Establishment Clause decision in *Board of Education of Kiryas Joel Village School District v. Grumet*, 62 U.S.L.W. 4665 (U.S. June 27, 1994), considered a "special and unusual" state statute carving out a separate school district that provided only special education services exclusively for handicapped children of members of the Satmar Hasidim religious enclave. Other village children attended

B.

The Court's analysis in *Zobrest v. Catalina Foothills School District*, 113 S.Ct. 2462 (1993), offers drafters of school choice plans the best insight into relevant Establishment Clause considerations. There, the Court held that the provision of deaf interpreter services under the Individuals with Disabilities Act to an eligible student attending a parochial high school did not violate the Establishment Clause. 113 S.Ct. at 2469. Writing for the majority,<sup>3</sup> Chief Justice Rehnquist stressed the Court has never held that the First Amendment bars religious institutions "from participating in publicly sponsored social welfare programs." *Id.* at 2466.

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private religious schools. In another divided opinion, written by Justice Souter, the Court concluded that "this unusual act is tantamount to an allocation of political power on a religious criterion and neither presupposes nor requires governmental impartiality toward religion . . . ." *Id.* at 4665-66. This civil power was not exercised "in a manner neutral to religion . . . ." *Id.* at 4669. Therefore, the scheme violated the Establishment Clause.

The "anomalously case-specific" nature of this special legislation, *id.*, makes this situation quite distinguishable from recent Establishment Clause precedent and of little application to considerations involved in the "Kansas G.I. Bill for Kids." The true import of *Kiryas Joel* is that a majority of the justices once again ignored the *Lemon* test. The majority opinion is bereft of any application of the three-prong analysis. *See id.* at 4673 & 4674 (O'Connor, J., concurring in part) (for evolution in the Court's case law to occur it must be "freed from the *Lemon* test's rigid influence" and "distorted framework"); *id.* at 4683 (Scalia, J., dissenting) (the Court's "snub of *Lemon* today . . . is particularly noteworthy"). The test's defense was reduced to Justice Blackmun's observation that a small portion of the plurality opinion referenced a 1982 case that in turn had relied on the 1971 *Lemon* "criteria." *Id.* at 4671 (Blackmun, J., concurring). Also of tremendous significance is the apparent willingness on the part of five justices to reconsider the *Aguilar, supra* and *Ball, supra* decisions. *Id.* at 4673 (O'Connor, J., concurring in part), 4677 (Kennedy, J., concurring in the judgment) & 4683 (Scalia, J., dissenting). These 1985 cases were among the last opinions able to muster a majority in support of the three-prong test.

<sup>3</sup>Although this decision came down to a 5-4 vote, Justices O'Connor and Stevens dissented primarily on jurisdictional grounds. They did not believe as a matter of "judicial restraint" the constitutional question was procedurally ready for determination. 113 S.Ct. at 2475. If required to make a substantive decision on the merits, Justice Stevens likely would have remained with the dissenting justices; based on her previous writings, Justice O'Connor likely would have joined the Chief Justice's majority.

The opinion pointed out this decision simply extended the Court's reasoning in *Mueller v. Allen*, 463 U.S. 388 (1983) and *Witters v. Washington Dept. of Services for the Blind*, 474 U.S. 481 (1986). In *Mueller*, the Court upheld a state law allowing educational expense income tax deductions for parents whose children attended private schools. Despite the fact most of these families selected religious schools, the income tax benefit was found to apply broadly to the educational expenses of all parents. 463 U.S. at 398. Moreover, public funds became available to religious schools "only as a result of numerous private choices of individual parents of school-age children" and not as a result of "the direct transmission of assistance from the State to the schools themselves," as had occurred in the earlier 1970s cases. *Id.* at 399.

In *Witters*, the Court upheld a state vocational assistance expenditure allowing a blind person studying at a private Christian college to become a pastor, missionary or youth director. Any state aid provided under the program that "ultimately flow[ed] to religious institutions [did] so only as a result of the genuinely independent and private choices of aid recipients." 474 U.S. at 487. As Professor Tribe noted, these "individuals' private choices eliminate[d] any impermissible effects" of the state aid. Tribe, *supra*, at 1223. The *Witters* Court again stressed that this government benefit program was "made available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefited." 474 U.S. at 487 (quoting *Nyquist, supra*, 413 U.S. at 783 n.38).

The *Zobrest* majority found these principles applicable with "equal force." 113 S.Ct. at 2467. The deaf interpreter services constituted "a general government program that distribute[d] benefits neutrally" to any qualified child without regard to the sectarian-nonsectarian, public-nonpublic nature of the school selected. *Id.* "By according parents freedom to select a school of their choice, the statute ensures that a government-paid interpreter will be present in a sectarian school only as a result of the private decision of individual parents." *Id.* Any financial benefit for religious institutions was "indirect," "attenuated," and "cannot be attributed to state decisionmaking." *Id.* at 2467-69.

The Court in *Zobrest* concluded that children and parents were the "primary" beneficiaries of this government program; participating schools, whether religious or nonsectarian, were "only incidental beneficiaries." *Id.* at 2469. Consequently, the Establishment Clause does not bar "a neutral government program dispensing aid not to schools but to individual . . . children" where such aid "is attributable to the private choices of individual parents." *Id.*

C.

Viewed within the framework set forth in these recent Supreme Court decisions,

House Bill 2217's parental choice voucher program likewise should be upheld as in accord with Establishment Clause requirements. The program is broad in its application and generally available to all eligible Kansas parents and schoolchildren. *See* Sections 2(a), 2(b) & 2(c). The opportunity to participate as a "Kansas school of choice" is open to "any public school operated in a unified school district . . . that has opted to accept vouchers," Section 2(d), as well as "any nonpublic school" accredited by the state or any "private elementary or secondary school" in compliance with state law. Sections 2(d), 2(e) & 2(f).<sup>4</sup>

School selection, the voucher application process, and the voucher redemption process all involve decisions voluntarily and exclusively dictated by the private choices of individual parents. Sections 3(a)(1), 3(b) & 6(a). Vouchers are "redeemed for payment of the costs of enrollment of the child at a Kansas school of choice selected by the child's parent." Section 3(a)(1). Vouchers may be redeemed, and converted to warrants, only after a parent enrolls that child in the chosen school. Section 6(a). These warrants are issued to the parent of an enrolled child and will be "delivered to the school in which the child is enrolled." *Id.*

The Kansas plan confers a neutral government benefit on parents and children, not schools or institutions. It is consistent with the *Zobrest-Witters-Mueller* precedent, the historical operation of decades-old federal educational assistance benefits like the "G.I. Bill" and the Pell Grant program, and more recent benefits like the federal child care program. The better legal arguments favor a holding of constitutionality.

### **The Kansas Constitutional Questions**

*Does the Act's inclusion of religious or parochial "nonpublic" or "private" schools violate the "religious establishment" provision of Section 7 of the Kansas Bill of Rights or the "religious sects" provision of Article 6, Section 6(c) of the Kansas Constitution?*

No and No.

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<sup>4</sup>These participating nonpublic and private elementary and secondary schools must follow other basic requirements under the Act pertaining to academic performance assessment, enrollment costs, publication of instructional and disciplinary information, and equitable allocation of admission slots. *See* Sections 7(b), 5(a), 7(a)(1)(B) & 4(b). However, the Act expressly prohibits any general expansion of state power to otherwise regulate nonpublic schools. Section 10.

The Kansas Bill of Rights, in Section 7, provides:

The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of or interference with the rights of conscience be permitted, nor any preference be given by law to any religious establishment or mode of worship . . . .

Article 6, Section 6(c) of the Kansas Constitution further provides that "[n]o religious sect or sects shall control any part of the public educational funds."

These two provisions -- together with a dated federal Establishment Clause analysis -- have formed the basis for previous objections to Kansas voucher proposals that would permit the choice of religious or parochial schools. *See* Attorney General Opinions 94-37 & 92-55. First, it is argued, such a voucher program would constitute a "preference" to a "religious establishment or mode of worship"; second, a parent's decision to apply state financial aid toward religious school tuition would trigger a religious sect's "control" of state education money.

These objections are misplaced. Our state constitutional analysis should reach a different conclusion in light of the more recent and applicable Supreme Court decisions discussed above. Attorney General Opinion 94-37 acknowledges that, in addressing religious establishment questions, Kansas courts have cited Section 7 "in passing and generally rely on the federal constitutional provision in reaching a[n establishment clause] determination." *Op. Att'y Gen. 94-37* at 14. Relevant federal constitutional law now emphasizes the importance of individual beneficiary decisionmaking -- rather than government decisionmaking -- in cases where publicly funded benefits are applied by individuals to religious institutions.

Attorney General Opinion 94-37 observed that the Kansas Constitution was patterned after Ohio's and Indiana's constitutions. *Id.* at 10-11. Unfortunately, neither of those states were found to have cases helpful to the voucher analysis. *Id.* Nearby Wisconsin's Constitution, however, is nearly identical to Kansas' and does provide some guiding caselaw. Article 1, Section 18 of the Wisconsin Constitution provides:

The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit

of religious societies, or religious or theological seminaries.

This provision encompasses both relevant Kansas provisions and is equivalent in meaning.

Wisconsin courts have analyzed the propriety of state money flowing to religious institutions and have long acknowledged that some incidental benefit may accrue to a religious organization. In one case, *State ex rel. Warren v. Nusbaum*, 55 Wis.2d 316, 198 N.W.2d 650, 658 (Wis. 1972) (*Nusbaum I*), the Wisconsin Supreme Court determined that the phrase "for the benefit of" is not to be read "as requiring that some shadow of incidental benefit to a church-related institution brings a state grant or contract to purchase within the prohibition of the section."

Another case, *State ex rel. Warren v. Nusbaum*, 64 Wis.2d 314, 219 N.W.2d 577, 584 (Wis. 1974) (*Nusbaum II*), concerned the constitutional validity of a 1973 legislative enactment providing for comparable educational benefits without charge to the state's special education students. The legislation provided that where public facilities were inadequate, the state could contract with private facilities, including religious facilities, to provide necessary services. The *Nusbaum II* court concluded that the legislation was clearly secular in purpose. Further, the court recognized that "the mere contracting for goods or services for a public purpose with a sectarian institution is appropriate state action. It is only when such a contract has a primary effect of advancing religion that the constitutional prohibitions come into effect." 219 N.W.2d at 583. The court concluded that it "has not accepted the recurrent argument that all aid is forbidden because aid to one aspect of an institution frees it to spend its other resources on religious ends." *Id.*

These Kansas Attorney General opinions reflect the erroneous thinking that where a state benefit is created for parents and children in a manner that allows them to apply their benefit to religious schools, the state is conferring the benefit directly to the religious institution. Opinion 94-37 concludes that a government voucher benefit that a Kansas parent may apply to a religious school constitutes direct aid to the school: "[I]f the state confers money upon a sectarian school, the result is, unavoidably, state support of a form of worship . . . . The parent serves merely as a conduit through whom the state aid passes." *Id.* at 14.

The Wisconsin Supreme Court wisely rejected this logic in the *Nusbaum* cases. More importantly, the United States Supreme Court has rejected the underlying proposition that the federal Establishment Clause prohibits any program which in some manner aids an institution with a religious affiliation.

This AG conclusion is not even supported by the Kansas cases cited in the

opinion. The cases of *Wright v. School District of Woodson County*, 151 Kan. 485 (1940) and *A., T. & S.F. Rld. Co. v. City of Atchison*, 47 Kan. 712 (1892) both dealt with *direct* payments by the state government to religious groups. In both of these cases, the state legislature made the decision to extend government aid to religious institutions. House Bill 2217's parental choice plan is expressly dependent on the parent for the selection of a religious, nonsectarian private or participating public school. These cases are not relevant to the voucher issue.

A more relevant guidepost on this topic can be found in the Kansas Legislative Council's 1965 Education Committee Report. This report addressed the education amendment adopted by voters in 1966 that became Section 6(c). It contained an historical discussion validating the constitutional soundness of our conclusion:

[This section] continues the provisions of present Section 8 of Article 6 which prohibits any religious sect from controlling any part of the common-school or university funds of the state. . . . *This language does not prohibit the appropriation of public funds to indirectly benefit private institutions, associations, or corporations.*

In connection with the drafting of federal aid to education bills in Congress, it was decided that wording such as is used in [this section] would not prevent the distribution of public funds for students in private schools. *As long as the funds remain under public control* they can be distributed to pupils attending private schools. Present constitutional interpretation is that neither the existing constitution nor the proposed amendment prohibits the distribution of public funds for the benefit of pupils in private parochial schools. Administration of tax revenues, distribution, control and receipt of funds must remain under public control. As long as these conditions are met, funds may be distributed for the purpose of benefiting pupils in the private schools. *The child, rather than the private organization, thus is benefited.* Therefore, there is nothing in the proposed language that would impede or obstruct the distribution of federal funds to private schools.

Education Report of the Kansas Legislative Council, Pub. 256 at 36-37 (December 1965) (emphasis added).

Even applying this 1965 standard, parents' application of Kansas school voucher funds to private religious schools would not violate what is now Article 6, Section 6(c). A neutrally-tailored voucher program would provide private school choice benefits to families and not schools -- parents and children are thus "benefited." The funds for this voucher program, and responsibility for the program's secular implementation, remain

under public control. *See* Sections 3(a)(1) & 3(b) (state board establishes voucher application requirements and process); Section 4(b) (state board establishes equitable placement criteria); Section 6(a) (state board certifies voucher redemption); Section 7(b) (state board monitors academic performance); Section 11 (state board evaluates program and makes recommendation to governor and legislature).

The secular purpose of this school choice program continues to be to "empower" parents to select the most suitable educational environment for their children. Any financial benefit to any private institution -- religious or nonsectarian -- is incidental, a result of individual choices and not the State of Kansas' transmission of financial aid.

### **Conclusion**

The "Kansas G.I. Bill for Kids" promotes a secular purpose; it does not primarily seek to advance any religion or religious institution; and it does not "excessively entangle" state government with private religious institutions. The voucher benefit created by House Bill 2217 is governed by "the private choices of individual parents." This voucher benefit devolves to eligible families. Any financial benefit for participating institutions, religious or otherwise, is incidental and not a state subsidy.

This parental choice plan constitutes a "neutral government program dispensing aid not to schools but to individual . . . children" in accord with recent United States Supreme Court Establishment Clause precedent. Furthermore, the voucher program does not create a "preference" for "any religious establishment" or turn over control of public educational funding to "religious sects" in violation of state constitutional provisions.

The important constitutional questions can be answered satisfactorily in federal or state court. The better legal arguments support the constitutionality of this bill.



# LANDMARK ACCOMPLISHMENTS

Landmark Legal Foundation is a national, non-profit, public interest law firm headquartered in Kansas City, Missouri with offices in Washington, D.C. Landmark does battle across the country through original action litigation and active participation in regulatory and legislative proceedings. The Foundation fights to preserve free enterprise, limited government and individual liberty. Our Center for Civil Rights advocates economic liberty and equality under the law by challenging arbitrary government-imposed barriers to entrepreneurial opportunity.

Landmark represents average people -- in some instances entire communities -- with important cases that address fundamental constitutional issues of landmark significance:

In **Oregon**, Landmark sued Governor Barbara Roberts on behalf of proponents of the Full Employment Program, a **welfare reform** initiative stifled by liberal political opposition despite 58% voter approval. This plan offers welfare recipients jobs in place of government subsidies. After Landmark successfully fended off attempts to dismiss its special mandamus action, the parties agreed to a strategy resulting in federal waiver authorization necessary to carry out this unique pilot program.

Landmark has returned to **Milwaukee** to build on its extraordinary 1992 **choice in education** victory. In a case watched by the entire nation, the Wisconsin Supreme Court declared Representative Polly Williams' parental choice program constitutional over the vociferous objections of the public education establishment. This one-of-a kind plan allows public funds to be spent for private school tuition. Landmark's new suit will preserve the free exercise rights of families to choose religious schools as part of this program. The **religious liberty** and **education reform** implications of our case will be dramatic.

Abuse of the separation of powers doctrine was the focus of Landmark's defense of former **Attorney General Ed Meese** in the **Iran-Contra** proceedings, where Independent prosecutor Lawrence Walsh falsely accused the Reagan Administration of a massive, high-level government conspiracy. We assisted with Mr. Meese's response to the Walsh report and persuaded the special appeals court to acknowledge the shortfalls of **independent counsels**. Landmark attorneys highlighted these constitutional infirmities in articles published in the *Wall Street Journal*, *National Review*, the *Washington Times*, *Legal Times* and the *National Law Journal*.

In **California**, Landmark won a tremendous decision on behalf of African-American families challenging a **paternalistic, race-conscious** statewide special education testing prohibition. A federal judge agreed to rescind his 1986 order that had precluded black families from access to intelligence tests available to all other schoolchildren in the state, thus restoring their freedom to make their own educational decisions.

Landmark currently represents the interests of more than 10,000 members of Nebraska agriculture, banking, recreation and conservation groups in their efforts to preserve their private property rights and access to a dependable water supply. These rights are under attack by environmental groups who will be using licensing proceedings in the Federal Energy Regulatory Commission to impose oppressive environmental restrictions throughout the Western states without regard to human and economic costs for farmers and others who depend on the land.

President Clinton's retroactive taxes are the subject of Landmark litigation in a Washington, D.C. federal appeals court. A decision reversing these unconstitutional gift and estate taxes will have a far-reaching impact on the federal government's power to tax American individuals and enterprise.

With Landmark's assistance, Jersey City Mayor Bret Schundler lead an effort to revamp the state's most troubled school district with what was to be the most comprehensive school choice legislation in the country. Landmark hoped to defend the plan from challenge, but resistance in the state legislature led by teachers' unions, the education establishment and the ACLU stopped the effort short. Mayor Schundler hopes to continue his battle later this year and Landmark will be there to provide assistance.

In Kansas City, Landmark opposed a federal judge's decision to levy taxes to fund the nation's most extravagant school desegregation plan. After years of litigation in federal and state courts challenging judicial taxation, the Foundation recovered more than \$40 million in tax refunds for almost 14,000 taxpayers protesting this unprecedented expansion of judicial

authority. The Foundation also successfully represented minority families and organizations seeking an end to strict racial admissions quotas for magnet schools. Most recently, Landmark urged the United States Supreme Court not to adopt an unprecedented outcome-based unitary status determination in the Kansas City case.

Public housing residents in St. Louis called on Landmark to protect their right to elect tenant commissioners to the city housing authority under a new Missouri statute intended to free low-income families from government control. Housing bureaucrats and political forces had initiated a lawsuit to thwart this tenant management reform, but the Foundation responded with a counter-petition that brought about the recent election of two tenants to the housing authority. A final judgment upholding this new law is expected soon.

Landmark represented a young Hispanic entrepreneur whose fledgling jitney service was shut down by Houston authorities pursuant to a 1924 streetcar ordinance. This antiquated and anti-competitive law, like dozens across the country, was designed to restrict free enterprise; it particularly penalizes entrepreneurial opportunities for minorities. A federal judge agreed with Landmark's argument that the ordinance was unconstitutional and ordered the City of Houston not to enforce it further.

In Washington, D.C., Landmark represented black entrepreneur Ego Brown and two homeless people he employed in their challenge to a Jim Crow-era ordinance banning shoeshine stands on public streets. After hearing Landmark's arguments of economic liberty and discrimination, a federal judge declared the prohibition unconstitutional.

## MARK J. BREDEMEIER

Mark Bredemeier is the General Counsel of Landmark Legal Foundation, a not-for-profit public interest law foundation based in Kansas City, Missouri with offices in Washington, D.C. Landmark is active in constitutional lawsuits and public policy debates throughout the country, defending the principles of free enterprise, limited government, individual rights, separation of powers and federalism. As Landmark's General Counsel, Mark has been involved in a broad array of litigation dealing with free speech and association, desegregation, mail ballot voting, racial quotas, school choice initiatives, judicial taxation, welfare reform, tenant management of public housing, the independent counsel system, government regulation of business and education, and private property rights.

Mark is a *summa cum laude* graduate of William Jewell College, a small liberal arts school in Liberty, Missouri. At Jewell, Mark was president of the College Union Activities Board, lieutenant commander of Sigma Nu Fraternity, and a varsity letter winner in football. He was elected to Who's Who Among Students in American Colleges and Universities and to Aeons, the senior men's honorary fraternity.

Mark received his law degree in 1982 from the University of Missouri- Kansas City School of Law where he was named to the Law Review and the National Moot Court Team. He also was the recipient of the Candler S. Rogers Writing Award, the Thomas E. Deacy, Sr. Trial Practice Award, and the American Trial Lawyers National Moot Court Best Regional Oral Argument Cup.

Prior to joining the Foundation in 1985, Mark was associated with the Kansas City law firm of Polsinelli White Vardeman & Shalton where he specialized in business, tort and public law litigation. Mark is admitted to the bars of the United States Supreme Court, the Missouri Supreme Court and numerous federal circuit and district courts.

From 1987 to 1989, and again briefly in 1993, Mark served as the specially appointed Legal Advisor to the Jackson County (Missouri) Legislature. Mark was the 1990 Republican candidate for Jackson County Executive. Mark recently was elected to the Lee's Summit, Missouri R-7 Board of Education.

Mark was born in Kansas City. He and Viki live in Lee's Summit, Missouri where they are busy raising their four children, Jeff, Angie, Aubree and Alyse.

**WRITTEN TESTIMONY BY  
CAROL D'AMICO  
FEBRUARY 21, 1995**

Kansas is in very good company. This promises to be a big year for school choice initiatives across the country. Last year, in 34 states, school choice legislation of some kind was introduced or pending, and this year promises to be as active, if not more so.

Programs similar to the one you are considering today either have or will be introduced this session in Arizona, Florida, Indiana, Ohio, Illinois, Michigan, Pennsylvania, Texas, and Wisconsin. In some of these places, these programs were introduced last year and lost by narrow margins. For example, in Arizona and Connecticut, they were defeated by one vote.

The debate about whether parents should choose their children's schools has really been settled. Although unheard of only five short years ago, today, most districts and states allow parents some say in where their children attend school. In fact, it seems rather old fashioned when you hear about a district that still assigns children to schools without any input from the parents.

The debate now focuses on not whether parents should have a choice of school, but if that choice should include non-public schools as well as public ones. Currently, only Milwaukee has a choice program that includes private schools. The program allows up to 1000 parents to choose either public or private schools for their children. While this choice includes only non-sectarian private schools, Republican Governor Tommy Thompson is teaming up with Milwaukee's Democratic Mayor John Norquist and State Senator Polly Williams to urge legislature to expand the number of children who can participate and to include religious schools in the program.

There are two major reasons why advocates on both sides of the political and ideological spectrum believe private schools should be part of any parent choice program. First, private schools offer parents more choices of good schools. As has been found out in places like Minnesota, it is not enough just to give parents a choice of public schools. Public schools tend to all look alike, in part because they are so highly regulated. Choice among public schools has been compared to having a choice on which post office to go to. Parents are looking for schools that meet their children's needs, and one size doesn't fit all children. In many cities, parochial schools represent the majority of existing private schools, and to exclude them dramatically reduces the options available to parents. This is the biggest problem in Milwaukee. Parents do not have enough good schools to choose from since sectarian schools can't accept vouchers.

A second reason for including private schools is that they can do a better job of educating some children than public schools, especially in urban areas. The research shows that private schools do a better job of educating low-income children in urban areas than do public schools. Private schools pay their teachers less, have larger class sizes, and less fancy facilities, but

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children who attend them outperform their counterparts in public schools in a variety of measures of academic performance.

Fortunately, we have a pretty good idea of how these choice programs would actually work in practice. In addition to the Milwaukee program, there are some 12 privately-funded choice programs across the country. The first one was started by Pat Rooney, Chairman of Golden Rule Insurance Company in Indianapolis, and they have sprung up in cities such as Atlanta, Boston, Little Rock, Detroit, Grand Rapids, Milwaukee, San Antonio, and Washington, D.C.

Scholarships are from private sources and range from \$400-\$3000. The average award is around \$900 per student, and, in every case, a family co-payment is expected. This means that parents -- even poor parents -- must make a contribution to their childrens' education. Yet, the choice programs are oversubscribed. Parents know where they can get a good education for their children, and they will "vote with their feet" and leave the public system if they have even partial help with tuition payments. If you throw Washington, D.C. out of the mix because the average tuition there is so high (probably because most members of Congress send their children to private schools there), the average tuition is a little over \$1500. A very large percentage of the families receiving these scholarships are minorities. In many cities, over 50% of the families are minorities.

We've learned a lot from these programs:

Private schools in inner cities don't discriminate against low income or minority students. A recent report on Indianapolis private schools confirmed this. In four private Catholic schools in Indianapolis, there was a higher percentage of minority and low-income families than in the City's public schools. This is the case in most cities.

Private schools don't seem to "cream" the best students. Most of the programs accept children on a first come, first serve basis, and, as is the case in Indianapolis, the vast majority of students admitted from the public schools are "C" and "D" students.

Transportation does not seem to be an issue. In the Indianapolis voucher program, this has not been a problem for one single family.

The issue of student achievement always comes up in debates about choice. Opponents of these programs want proof that children learn more because of choice (which is pretty interesting since most public schools can't prove much about their own students' academic performance.) But, nonetheless, most of these programs have an evaluation component.

And the data to-date are mixed and inconclusive. Parents, students, and teachers are more satisfied with their schools in a choice environment. Teacher and student attendance is better and test scores are mixed. One reason is that many students who come to private schools from public schools are so far behind that they do not show achievement gains until three or more years into the program. Milwaukee is the longest running choice program, and there does not appear to be

significant widespread gains in test scores, which is not surprising given the problem I just mentioned and the fact that parents have limited choice of schools since sectarian schools can't participate. However, a recent report by the Reason Foundation found that students in Milwaukee's privately funded voucher program, which includes religious schools, perform better than those students in Milwaukee's public schools and those in the Milwaukee choice program which does not include religious schools. It is clear from whatever study you use that students do not do worse in private schools -- while being educated at a cost that is one half (or less) than the per pupil costs of public education.

The issue of choice will not go away. Poll after poll show that parents want this for their children -- especially parents in the minority community. Overall, the percentage of parents who want choice is about 70%, up from 43% the first time the question was asked in the Gallop Poll in 1973. The percentage is around 80% among minority parents. One would only need look at the long waiting list for the private-funded choice programs to realize that parents in our cities are desperate for a good education for their children.

Thank you for asking me to testify, and I would be happy to answer any questions.

Testimony presented by Janet R. Beales, Reason Foundation, February 21, 1995.

A question on a lot of peoples' minds is "does school choice work?" Most of the evidence we have says, "yes, school choice works." We find evidence in many places.

In our system of higher education, the U.S. is the envy of the world. Students come from other countries to attend American colleges and universities. Yet at the primary and secondary level, the U.S. ranks behind many other nations in math, science, and language skills.

It's no accident that our higher education system of freely chosen schools is thriving, while our K-12 monopoly is in bad shape.

Nor is it an accident that most of the countries which surpass the U.S. in academic performance are countries which have school choice. Australia, Denmark, Sweden, the Netherlands, and Chile, to name a few, all have some form of choice, and give almost equal support to public and private schools.

Here at home, we know from the research of sociologist James Coleman and others, that private schools outperform public schools, even after adjustment for socio-economic background of the students. We also know that private schools, on average, tend to be more racially integrated than public schools. When people say school choice is untested,—that it will lead to the Balkanization of education—they ignore some 250 years experience with private education in this country that proves otherwise.

More evidence that school choice works comes from pilot school-choice programs around the country. The best known is the government-run Milwaukee Parental Choice Program in Milwaukee.

But there are also roughly a dozen privately funded school-choice programs in cities like San Antonio, Indianapolis, Los Angeles, and Milwaukee. Privately funded choice programs were started by people who wanted to give low-income children a choice of schools. These programs typically pay half a child's tuition, at any school the child's family selects, up to a cap.

Parents literally can't get enough of choice. All the programs--privately funded and government funded--have long waiting lists to get in. In surveys, Choice parents say the most important reasons they had for choosing a school were educational quality, school discipline, and the school atmosphere.

In Milwaukee, drop-out rates and attrition rates are much lower in the choice programs than in the public schools. Choice is helping to keep more students in school, and off the streets.

In some important ways the two Choice programs in Milwaukee are different.

In the Milwaukee Parental Choice Program, test scores have been flat. No change, up or down.

That may be because the Milwaukee Parental Choice Program is dealing with greater numbers of disadvantaged students than the public schools.

Compared to other low-income students in the public schools, more Choice students come from single-parent families, their families are poorer on average, and they had been at the bottom of their class academically. It wasn't the A & B students who signed up for the Milwaukee Parental Choice Program, it was the C & D students.

Rather than skimming off the best students from the public schools, as many had feared, school choice was seen as an alternative for those students who were having trouble in the public schools.

At the very least, school choice has halted the academic decline common among disadvantaged students.

Natasha Collins is pretty typical of Milwaukee Parental Choice students. Her mother made her stay 2 years in the second grade because she wasn't learning to read. When the public schools tried to pass Natasha into the third grade, she still couldn't read. Natasha told her mother that she couldn't wait to grow up so she could drop out of school just like her cousins. That's when her mother enrolled her in the Choice program. Now that Natasha is in the private Urban Day School, her mom says she is much happier. Natasha is still struggling—this year she had a C average. But she can read, and she's not falling further and further behind. Most importantly, Natasha, who is now 13 years old, is making plans for college.

Better academic results come from the privately funded PAVE program. (See page 2 of handout).

When we break the PAVE students into two groups—those left public schools for private ones, and those students who have always been enrolled in private schools, we immediately notice that those students who have always been in private education have much higher academic performance than those who spent time in the Milwaukee Public Schools.

Yet, in virtually every other characteristic—marital status of the family, low-income status, race, parental education, parental involvement—the two groups are exactly the same.

In other words, the only difference between these two groups of PAVE students is their academic performance, and their past school experience.

This indicates that having the opportunity to attend a private school of choice can change the lives of low-income students.

Let me emphasize that the PAVE program is very different from the Milwaukee Parental Choice Program. PAVE is much less regulated, and allows low-income parents to choose any private school—including religious schools.



Because it is more open, PAVE reaches many more students. Even though parents have to pay half the tuition cost, low-income parents like PAVE more. Demand for the PAVE program is about four times as great as for the Milwaukee Parental Choice Program, judging by the number of applicants.

One reason may be because they have more choices. While the Milwaukee Parental Choice Program gives parents a choice among 12 schools—none of them religious—the PAVE program enables parents to choose from over 100 private schools in Milwaukee. Not only are parents more likely to find a school in their own neighborhood, they can also find one that reflects their own values and goals for their children.

These low-income parents make tremendous sacrifices for Choice. Joy Smith is one of these parents. To get a break on her half of tuition at the parish schools her children attend, she volunteers in one of the schools every morning. Her oldest son works in the cafeteria every day at his high school for reduced tuition. One Saturday a month, the whole family pitches in to clean the local church. But still, that wasn't enough. Last year, she and her husband decided to give up their medical insurance so that they could continue to pay their share of tuition.

This is a letter Joy wrote about school choice.

(letter)

I'd like to read you excerpts from some other letters from low-income parents. (letters)

What all of these parents say is that school choice has been the turning point in their families' lives. For low-income parents especially, education is the best hope for their children's future success.

What these pilot programs also show is that school-choice programs are not all the same. The ones that work the best, that provide the most opportunities to children, and are most sought after by parents, are the ones that are the broadest in scope and involve the least amount of government regulation.

A good school choice program will have many schools to choose among;

It will not impose limits on who can participate;

It will not cap the tuition charged at private schools--allowing parents to add on to the voucher amount if they think the school is worth it.

It will not impose new regulations on private schools.

Most importantly, a good school choice program will make parents the ultimate guardians of their children's education.

Parents know their children better than anyone else. If we ever hope to improve education for every child, they must be the ones to choose.

## SCHOOL CHOICE IN MILWAUKEE

	Partners Advancing Values in Education PAVE	Milwaukee Parental Choice Program MPCP	Milwaukee Public Schools MPS
Year est.	1992-93	1990-91	
Eligible pop.	Low-income	Low-income	
Enrollment	2,560	830	100,200
Waiting list	2,000	64	
Schools	102	12	154
Grades served	K-12	K-12*	pre-K-12
Voucher or expenditure per student	50% of tuition up to \$1,500	\$3,209	\$6,324
One-year drop-out rate	< 1% ***	< 1% **	17.4%
Attrition/mobility	3%	23% ****	40%

\* Only two high schools participate in the MPCP and both are alternative schools for at-risk students who are teen parents, former drop-outs, adjudicated youth, or have behavioral problems.

\*\* Of the 521 low-income students who enrolled in the MPCP during 1991-92, two students dropped out of school.

\*\*\* In 1992, the only year data is available, no students reported dropping out of school.

\*\*\*\* Nearly one in ten students who left the MPCP did so because of a lack of religious training in the choice schools.

Source: John F. Witte, *Fourth-Year Evaluation of the Milwaukee Parental Choice Program*, and *Third-Year Evaluation*; Partners Advancing Values in Education (PAVE), the Wisconsin Department of Instruction.

### Iowa Tests of Basic Skills Median Scores for Transfer and Private-School-Only Students in the 7th Grade

		PAVE students transferring from public to private schools. (n=52)	PAVE students who have always attended private schools. (n=47)
Reading	Grade Equivalent Score*	7.2	7.9
	National Percentile Ranking (mean scores)	48.5%	66.0%
Math	Grade Equivalent score*	7.1	7.8
	National Percentile Ranking (mean scores)	44.0%	73.0%
Composite	Grade Equivalent score*	7.5	8.2
	National Percentile Ranking (mean scores)	47.0%	69.0%

\* Grade equivalent scores benchmark test scores to the standard of achievement for each grade level. The first digit corresponds to a particular grade level, while the second digit refers to the number of months beyond that grade level.

Source: *Second-Year Report of the PAVE Scholarship Program*.

(Note that the lower performing PAVE students in Table 12 who had transferred from public schools appear to outperform all other MPS control groups shown in Table 11 on academic tests. However, due to the large differences in sample size, more data are needed before meaningful conclusions can be drawn.)

My name is Stan Kennedy. I'm a public high school teacher in my 14th year of teaching, all at the same school in southwest Kansas. Despite my career and profession as a public school teacher, I'm an avid supporter of Representative O'Connor's bill, House Bill #2217, the Kansas G.I. Bill for Kids.

Part of my support comes from the fact that like many, many of the nation's public school teachers, my wife and I have our daughters enrolled in a private school. And we support this bill even though we would probably not be eligible for vouchers for several years.

Another basis for my support is the beneficial effects I believe the Kansas G.I. Bill for Kids will have on education itself, which in turn will benefit Kansas students. I firmly believe that education is the foundation on which a person builds the rest of their life. But let me make equally clear that education is a very broad word not exclusively talking about our public school system in Kansas. The core subjects of math, reading, writing, etcetera, are important--but not any more so than the teaching of right and wrong, discipline, morality, sacrifice, responsibility, respect for everyone, patriotism, consequences of actions, and many others. I'm sure we've all heard stories of people who taught themselves the core educational subjects, and those who barely, if ever, learned them, but yet went on to build and lead very successful lives. Abraham Lincoln was for the very large part self-taught, and is commonly regarded as our greatest president. I have read and heard many historical figures, motivational speakers, ministers, business people, and others who, by anyone's definition, have succeeded in life. And in 100% of the cases, they succeeded without structured education but they couldn't have succeeded without the more important disciplines of

responsibility, morality, respect, and so on. I mention this because this is where our public school system has failed so miserably. All of

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these things must be taught for our children to be fully and properly prepared for life, and public schools aren't doing it. There is a big push now in our school and others to do school to work programs which are designed to prepare them for work. The problem is that while preparing them for this one type of work, they will more likely than not change jobs several times in their lives. Computer training that is occurring now will be obsolete in just a few years. It is better to train them in disciplines, than in programs. If they learn discipline, responsibility, work ethic, and consequences now, then they will have the qualities that will prepare them to succeed later. I submit the poor showing of American students is due to a lack of this kind of instruction.

I also support the Kansas G.I. Bill for Kids for tax reasons. It is well-documented that even though funding for public schools as risen dramatically over the last several years, it is equally well-documented that test scores have and are dropping, intelligence levels have decreased, skills have not improved. The only thing rising are the problems. On the other hand, private schools and home schools have proven to do an excellent job in preparing students academically and done it without the incredible expenditures of money. In the Civil War, when a Union general continually requested more troops for battle, then did nothing with them once he got them, Lincoln made this comparison to the situation: "Sending troops to that man is like shoveling fleas across a barnyard; most of them never make it to the other side." And so it is with education money from the State. I am doing the state board of education's social studies assessment test this year. I can't begin to tell you how much money has been spent on this test, but I do know that the State Board of Education hired teachers from across the state to come to Topeka last summer to write the test, then told the teachers last fall that the

board didn't like their test so they turned the assignment over to some graduate student department at KU to write. I know these teachers were paid a pretty good stipend to do this, plus room, board, and travelling expenses to Topeka. (Wouldn't teachers know how to write tests for high school students?) Why didn't the board go to KU from the start and save all that money? Teachers will be hired this summer to come together to evaluate these tests and if we choose to grade them we can be reimbursed for the time it takes us to grade them. In fact, it was implied to us to do this so we could get a larger reimbursement for whatever time it does take; re.: take more time to grade so your reimbursement is bigger. The only thing we will get for all this time and money spent is to tell us what any respectable teacher already knows: our students don't read, write, spell, comprehend, or explain things as well as they should. The state board of education may get more--namely power. Richard Leighty, the board's social studies consultant, said at a meeting in Sublette, in October, that if local districts come in to low on their assessments, the state will come in and rewrite the district's social studies curriculum. Besides giving the state more control over local districts, it should be obvious that this will require more money to take over, oversee, rewrite, and manage the local districts at the state level, and education will not improve at all, and will likely decline.

What about waste at the local level. In my district we have made plans to <sup>hire</sup> higher an assistant superintendent, a full-time certified public accountant to do the books, and a brand new Suburban truck to go along with the superintendent's own vehicle, a driver's ed car, and two fairly new eight-passenger vans. I understand a school district in our area hired a full-time in-service program director at \$40,000 a year. She is the superintendent's wife. My district hired a

consultant from Georgia to advise us on a school-to-work program to better prepare students for getting a career and then brought him to Kansas to speak; I don't know the cost of all this. I do know he recommended eliminating easy classes--he specifically used a weightlifting class as an example--in favor of more useful classes. We're not eliminating any weightlifting classes, and maybe none of our study halls which has its own full-time teacher plus another teacher who has a couple of study halls because not enough students signed up in his classes, yet he makes more salary than I do because he's taught longer. My district has four full-sized gymnasiums for physical education classes and athletic competitions. The newest one isn't supposed to be used for actual games since they didn't budget for a score clock but it does have a nifty volleyball net setup than can be raised and lowered from the ceiling like a basketball goal. A friend was just hired on as the head football coach at one of the state's larger districts. His teaching load will be two weightlifting classes a day and that's it. He may also coach a junior high basketball team. For this he will be paid as a full-time teacher, plus his supplementay salary. I'm assured by teaching veterans who are more knowledgeable--and not nearly as naive--as I am, that this is common. The point is very obvious by these few examples: school districts get plenty of money to educate children but they're using it in an unwise manner to do too many other things, some only remotely related to education.

In comparison, private schools routinely operate on a very limited budget; money is not thrown around foolishly. Our school is grades kindergarten through sixth grade. We have an administrator, a kindergarten teacher, a grades first through third teacher, and a grades fourth through sixth teacher. The teachers make probably less than half what public school teachers make and our

administrator makes less than the teachers which is as it should be. We rent space from a local church, parents teach non-essential classes like physical education, art, music, and we have a nonstaff science teacher. Parents volunteer to do before- and after-school supervision as well as lunchroom supervision, and we have a volunteer financial officer to pay bills and audit our accounts. I heard a radio commercial the other day saying their company serves its customers better because the employees own 90% of the company. This same reasoning applies to schools where the parents are involved to the greatest possible extent. At my school, out of 82 students I've met 30 of the student's parents, mostly at conferences; I only know maybe ten of those well enough to have any conversation with them, and only then because I know those ten by sight and name--the others I've met once and wouldn't recognize them again. This isn't a trivial matter. More parents want to be involved in their children's education. The nature of public schools doesn't allow or encourage this, but the Kansas G.I. Bill for Kids will. For those parents that have already decided that a private school is their best option, the voucher system will relieve them of the heavy personal financial investment they're required to make. For those that would like their children to attend private school but can't afford the tuition, it will make that option available to them. Both of these will have a tremendous positive benefit to the parents and children who make that choice. According to the bill's provisions, public schools will have several years to prepare for changes in student population enrollment, then they will benefit from relief of overcrowding, streamlining curriculums and schedules. Taxpayers will benefit from money being spent more efficiently and reduction of taxes paid.

The voucher system will bring the much needed aspect of competition to the education process, which will do much to enhance

the education system. Competition will not lead to the death of the public school system as a whole. But it may lead to the closing of some individual schools, who, for whatever reasons, couldn't attract students/customers. In it's place a more suitable school will arise. Some people will always choose the public schools for convenience sake, because they offer more in the way of classes and extracurricular activities, or even because they do a better job educating students than the private schools in the area. But we'll never know how good a job any of our institutions do in educating students until we have something to compare them to. What better example is there than right here in Kansas: the competition between the publicly-funded state universities and junior colleges, versus the private colleges and universities. The question shouldn't be how is education funded but where will we get the most bang for our buck? Where will we get the best education process possible for our students and for the most efficient price? Can anyone, especially those opposed to vouchers, suggest that competition between the state and private universities hasn't had enormous positive effects for Kansas? I myself went to Kansas State my freshmen year before transferring to Southwestern College in Winfield. K-State was and is a great place, but I needed a smaller school setting, where I would have greater contact and involvement with fellow students and the faculty. Going to Southwestern was a great experience, and my training for history and teaching was probably better than what I would have gotten at KSU, for me. Had I wanted to be an architect, I would have stayed at KSU. This is where competition between schools is so vital: no school can possibly be everything to everyone, but it can concentrate on those areas it feels would be best for it and its students. This is no less true for public elementary, Junior and senior high schools than it is



for colleges and universities. Competition always produces the best product and services, even in education.

So what about the argument that public money shouldn't go to religious schools? This is a totally bogus and disingenuous argument. When I was at Southwestern I received a government loan for my last two years to attend college (and I paid it all back). This was acceptable then, and still goes on today, and rightfully so. There are many instances where war veterans used their G.I. bill money not only to attend private, religious institutions, but also to be educated and trained to go into various ministerial occupations. What about at state supported universities where there are chapels and ministerial people working there, on the state's payroll? Or classes as part of the curriculum that teach religion, usually Islam, Buddhism, or something similar? People seem to have no problem with these, and indeed most people would expect that. My first history teacher at K-State was an avowed card-carrying member of the Communist Party; she even wore the leather hat that you often see Lenin wearing in photographs. She used her class not only to teach western civilization, but to expound on the greatness of communism. Does anybody seriously think that the majority of Kansas taxpayers paid money to support this communist party recruiting? In the final argument, the money I and everybody else pays is still our money, that we only give over to the state to do those things we feel are worthwhile. I give my money to the state to use for educational purposes to teach my children the basic disciplines and provide an environment where they are safe--and I will teach my children about everything else. And because it is my money I should be able to use it for those groups I support and that will help my children, and not be forced to support institutions that I don't support, that teach things contrary to my beliefs. For me, our private school is far

ahead in teaching my girls. Why support other schools that don't produce?

This opinion from the Chicago Tribune was quoted by former Secretary of Education William Bennett in his book The De-Valuing of America: "The quickest, surest way to explode the bureaucratic blob, escape from the self-seeking union and develop schools that succeed for children is to set up a voucher system. That would bring new people into school management, assure local control, empower parents, squeeze out bad schools and put the forces of competition to work for improving education." (p. 67) Bennett and the Chicago Tribune recognize the danger of the "bureaucratic blob" and we also need to. There are many people today who are willing to let someone else educate their children, so they need the State to do this. But many others know just as adamantly that they know what is best and don't need the state. I can't help but feel that that is what QPA and assessment tests are all about: state agencies feeling defensive and in fear of losing their jobs, trying to justify their existence by creating programs--and expensive ones, at that--to keep them in business. Last year during the debate of a bill to make it easier for districts to remove disruptive students from the school, one legislator felt that removing these students from school would just create another problem, that of putting delinquents on the street where they might cause more serious problems. This lawmaker felt it would be better to keep them in school where the school and the teacher could keep an eye on them and keep them from causing problems. Is this the intended purpose of schools now? The good students who want an education are forced to suffer the hoodlums just because we don't know what else to do with them? Is it any wonder our whole system is failing, and taking the students down with it, with this kind of attitude? During last year's committee hearing on vouchers, a

legislator proposed an example of a special education student, who would be lost in the shuffle because if money was cut from school budgets, then special education departments would be the first to be defunded. This has been my experience with special education in my school. In our first several years there were only a few students; now they are up to around 15 or 20. Some of these truly have learning problems, and others (most, literally) are just discipline problems, who have gotten away with everything to the point that they feel no compelling reason to abide by any rules. There is one full-time staff person, a full-time paraprofessional, and another para who helps some but she brings a student from another district who is wheel-chair bound and suffers extensively from muscular dystrophy, to the point that he is unable to do anything. While I admire these people for what they're attempting to do, they are overwhelmed by the number of students they have, the student's various problems and needs, and the expectations of everybody else. The department got a very nice, new computer earlier in the year; 95% of the time I go by the room, the computer is operating and a student is playing solitaire on it. Again, is this the best that can be done with tax money and the best that can be done for the students? Absolutely not! The need for quality education in all areas exists everywhere, and in our economic system, if the need is there, there are business people who will provide the service if there are people willing to pay for it. If I had a special education student, I would not put them in any program that was stretched so thin in personnel and resources. I would look for a private group that could spend more individual time and effort to concentrate on the special needs of my student. A voucher system would give more parents the opportunity to do this, which would give rise to more programs to fill these needs, while at the same time freeing the state from providing such funds and programs. It goes

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without saying that private programs would cost less, be more efficient, and be more successful than the state operated classrooms. This same reasoning applies to all classrooms.

Last week John Marshall of Harris News Service wrote an editorial that at first glance of the headline, seemed to be another diatribe against conservatives and fundamental Christians, which it still might have been. But further into the editorial, he hit the issue square on the nailhead just as the Chicago Tribune had done. He asked the question, "Why do we have schools"? Then he answers his own question by saying we don't know. He discusses the solutions that should have worked--money, class size, teacher training--but didn't. In Marshall's conclusion there are two root causes: one, we don't know what creates an effective learning experience or how to make a teacher effective, and two, schools are asked to do too much. On the latter problem Marshall points out, "We expect schools to overcome the failures of parents. . . We expect schools to show youngsters how to march in a band, carry a football, drive a car. . . reduce crime, balance inequalities of sex, race, and economic status, overcome ethnic problems and meet the special needs of the handicapped and gifted--for starters. In all this, something has to give. And what gives in an over-burdened education system is education."

Will the Kansas G.I. Bill for Kids solve all of these problems? For everybody, probably not. Will a continuance of the present system be a solution? How can it when it is responsible for the current state of education. Recently a public school superintendent challenged me by saying that vouchers hadn't worked anywhere they had been tried. It was a classic case of someone being in denial, and a severe case at that. Every place they have been used, there are always more requests for vouchers than what is available. Private schools are proven to more successful than public, and the students in

private schools are better educated and more productive than the public school students. Will vouchers solve all of our problems in education? Not all, but it will solve more problems than it creates.

# TESTIMONY

House Education Committee  
Tuesday, February 21, 1995 - 3:30 p.m. - Room 519S

**KANSAS CATHOLIC CONFERENCE**  
Bob Runnels, Jr., Executive Director

H.B. 2217

Thank you Chairperson Chronister and members of the House Education Committee both for your interest in education and for my chance to appear and testify in support of H.B. 2217.

Our forefathers from the beginning of our Republic recognized the importance of education. Their support was first for private education that later evolved into a public education system.

## COMPETITION THE STRENGTH OF A FREE ENTERPRISE SYSTEM

Recent history tells us of the folly of governments not forced to compete. Certainly one of the major reasons Communism failed was because it did not have to compete ... and year by year it became less efficient.

Today the nations with a free enterprise system have a much higher standard of living than in the countries that lived so long under Communism.

*House Education  
Attachment 15  
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#### VOUCHERS AS A VEHICLE FOR EFFICIENCY

Each year you have appropriated large increases of aid for education in Kansas. The cost of educating a child in Kansas (K-12) is now over \$6,000 a year.

At the same time educating a child in our system is around \$1989 for (K-8), and \$3737 for 9-12.

#### WHAT IS BEST FOR THE CHILD

Competitive testing scores place our students at a higher level of achievement than those in public education.

One of the keys of non-government education's success is that it emphasizes the basic skills of reading, writing, and arithmetic.

Other key ingredients are the emphasis on parental involvement, student discipline, homework requirements, respect for others and dedicated teachers.

#### SOME STRENGTHS OF THIS LEGISLATION

It is first directed towards poor children who currently have no education choice.

It employs a need based test for the program's first five years.

The gradual increase in voucher value eliminates the concern that it will be a "budget buster".

Testimony - H.B. 2217  
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There are protections against "mass movement" of students from any school.

The bill is sensitive to society's poor, and by providing for special education students, it is equally sensitive to the educationally disadvantaged.

#### A FINAL THOUGHT

Non-government schools teach **VALUES** to children ... and **DISCIPLINE**. Beyond test scores this is the greatest benefit. A sad fact is that there are one-half as many children in our schools today than there were 40 years ago ... and our state and you are the losers. Without some support those children who need our help ... just won't be able to have a choice. The continued higher cost in government education is putting education in non-government schools beyond the reach of a great segment of our population.



To: Rochelle Chronister - House Education Committee

Rochelle,

I am writing to express my support for House bill HB 2217, "The Kansas GI Bill for Kids".

I moved to Merriam, KS from Kansas City, KS about 4 years ago mainly due to the quality of education provided by the Shawnee Mission school district. Upon checking out the district and meeting with the local school administrators I was appalled to find out and be told that I could only expect a "Mediocre" education from public school. My son, who is in Kindergarten this year, I believe deserves more than a mediocre education. I was told by our public school principle that children in the Shawnee Mission district did enter a formal reading program until the 2nd grade.

I could share many more items that clearly told me that the quality of public education was clearly lacking. The fact is that parents do not have a role in determining quality education for their children. The problem is exacerbated by the fact that the public schools have a monopoly and no incentive to improve or die if necessary.

School voucher models such as the one used in the state of Minnesota, clearly show the value of a competitive school model. The best way to make education equitable in our state is to let those who know the needs of the children best, their parents, be able to actively select the school their child attends. This will promote healthy competition and program improvement. It also solves the long standing problem of inner city schools being able to get away with poor quality while the suburbs offer a far superior education.

I have expressed my views to my local Representative, Cliff Franklin. I appreciate you entering my request into this important debate for our state.

If you or others would like to discuss this matter with me feel free to call me.

Sincerely,

Chuck Isaac  
10024 W. 70th Terrace  
Merriam, KS. 66203  
913-677-6058 (office)  
913-236-6030 (residence)

*House Education  
Attachment 16  
2-21-95*



February 20, 1995

Rep. Chronister  
Education Committee of the  
House of Representatives  
State Capitol  
Topeka, KS

Dear Representatives:

On behalf of the 32,000+ students enrolled in the Kansas Association of Non-government Schools, I wish to submit the following testimony in support of House Bill No. 2217, "Kansas G.I. Bill for Kids".

The State of Kansas has a responsibility to provide for the children of the state the best possible education available. The history of Kansas Non-government Schools demonstrates that these schools have provided an education superior to that of the public schools at substantially less cost.

In the marketplace of Kansas, people have always desired better quality at less cost when given a choice. This bill would give choice in education to the poor and middle class of Kansas when fully implemented.

Every year parents of students in Non-government Schools must sacrifice more to educate their children because the school's tuition increases. Remember at this time parents and those who support non-government schools pay double. As the state takes a larger percentage of income in taxes it is more difficult to pay the non-government schools support.

This bill is not only about money. It is also about the quality of education provided our children by all schools in Kansas. Whenever consumers are given a choice, they choose quality at less cost. Those businesses that can't meet the above criteria go out of business. Schools in the private sector face the same criteria. Shouldn't public schools?

Give the children of Kansas a choice in education and the quality of education that schools provide will increase.

Sincerely,

*House Education*  
Charles Jedele, Chairman KANS

*Attachment 17*

KANSAS ASSOCIATION OF NON-GOVERNMENT SCHOOLS

*2-21-95*

## **Resolution**

Whereas the state of Kansas should Aim for an Improvement Model for accreditation of its schools; Be it therefore resolved that:

1. For accreditation, each school will be required to develop a school improvement plan that will include targets and strategies for improvement developed locally and approved by the local board of education.
2. The State Board shall define a list of indicators of student academic performance that are measurable. Schools will only be required to report data to the state on those academic indicators and local indicators for school improvement. These indicators will be the basis of statewide reporting and accountability on school performance.
3. Schools will be accredited based on whether they are demonstrating improvement on their target areas, and maintaining performance on the state student academic indicators.
4. The State Board shall not require any particular curriculum, instructional methods, strategies or techniques. These will be determined by the local school and school board.
5. The State Board should continue working to simplify and streamline reporting requirements and paperwork required for accreditation.
6. The State Board should eliminate Outcome V.
7. Assessments tests should continue to be evaluated and monitored as benchmark levels in mathematics, science, communications, including reading, writing, speaking and listening, and social studies, including American history and geography. All other tests developed should be optional for district evaluation.

*House Education  
Attachment 18  
2-21-45*

**Statutory Change - Working from HB 2173**

Section 1

a) In order to accomplish the mission for Kansas education, the state board of education shall design and adopt a school accreditation system. The accreditation of schools shall be based on the improvement in performance on outcomes identified by the state board of education that reflect high academic standards, are framed in measurable terms and are based on the goals established by the local boards of education.

b) The state board of education shall establish standards indicating an identifiable level of academic excellence and shall provide a means of assessment for pupils in Kindergarten through grade 12 in the skills mathematics, science, communications and social studies. The standards shall be reviewed at least every three years.

(c)(1) Each school in every district which operates more than one school shall establish a school site council composed of the principal and representatives of: teachers and other school personnel, parents of pupils attending the school, the business community, and other community groups. A school site council may be established in school districts which operate only one school or, in lieu thereof, the board of education of the school district shall serve as the council. School site councils shall be responsible for providing advice and counsel in evaluating state, school district, and school site performance goals and objectives and in determining the methods that should be employed at the school site to meet these goals and objectives.

(2) The state board of education will evaluate the work of the school site councils and the effectiveness thereof in facilitating educational improvement and restructuring. The results of the state board's evaluation will be contained in a report that will be published on July 1, 1995.