



## Voucher Systems are Unfair and Unconstitutional

IDRA Invited Testimony against HB 3, submitted by Paige Duggins-Clay, J.D, to the Texas House Committee on Public Education, March 11, 2025

Dear Chair Buckley, Vice Chair Bernal, and Honorable Members of the Committee:

My name is Paige Duggins-Clay, J.D. I am the Chief Legal Analyst at IDRA, an independent, non-partisan non-profit committed to achieving equal educational opportunity for every child through strong public schools that prepare all students to access and succeed in college.

IDRA opposes House Bill 3 because it creates a constitutionally inefficient and inadequate educational program that will almost certainly have a discriminatory impact on Texas's most underserved and vulnerable student populations.

I am here before you today as a representative of IDRA and also as a parent of four Texas public school students, the proud product of public education, and the daughter of generations of Texas public school educators. I also served as a former law clerk on the Texas Supreme Court, where I learned about the importance of deferring to the plain meaning and intent of statutes and constitutional mandates.

It is with this perspective and training that I offer testimony expressing our grave concern that HB 3, establishing a publicly funded private school voucher program through an "education savings account," is not only bad policy, but it also violates the Texas Constitution.

### Texas Founders Believed in the Promise of Public Education

Since our state's founding, access to quality *public* education has been of primary importance to our state leaders. For example, in our 1836 Declaration of Independence, Texans boldly proclaimed that public schools are vital because, "unless a people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self government."

Acting on this principle, the 1875 Constitutional Convention established a committee on education. As the Texas Supreme Court has noted, the chair of the education committee declared: "I boldly assert that it is for the general welfare of all, rich and poor, male and female, that the means of a common school education should, if possible, be placed within the reach of every child in the State" [*Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 395 (Tex. 1989)].

It is important to remember that, at the time of this constitutional debate, the state did not have an organized or funded system of schools, and instead every family and community had to fend for themselves to either set up a local public school or amass enough individual wealth to send a child out of state to a private school.

Delegate Henry Cline, the education committee member who proposed the term "efficient," which ultimately became a cornerstone of our state constitution's Public Education Article, spoke at

length about the necessity to provide for children in need and to devote funds to *public* education. For example, in a floor speech moving adoption of the Public Education Article, Delegate Cline said:

The fact is... we have a great many children not going to school whose parents cannot pay any amount of tuition; but the amount of tuition paid [by individuals] at private schools, the traveling expenses, costly board and other heavy expenses ... would be sufficient to establish a system of public schools and to educate your children – and mine – to extend even the priceless boon of education to all the children.

Also relevant to today's discussion, when debating whether state dollars should be invested in developing private schools throughout the state, Delegate Cline said:

I want to ask, shall we go on under the proposition made, and build up out of the common school fund the private schools of the country [referring to the Republic of Texas]? It will not be distributed in the districts where the poor reside; the money will go where least needed, and those most needing will get nothing (University of Texas, 1930).

After days of debate, the architects of our state constitution agreed with Delegate Cline, determining that the state's best efforts and best interests were to invest in a statewide system of free public schools (Watts & Rockwell, 1990).

## **The Legislature Cannot Abdicate its Constitutional Duty to Support Public Schools**

To memorialize the commitment made at the Constitutional Convention of 1875, the very first clause of the Public Education Article of the Texas Constitution states that:

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools [Tex. Const. Art. 7 Sec. 1].

Section 1 of HB 3 states that its purpose is, in part, to meet this mandate.

Yet, Texas courts, like courts across the country, have long recognized and applied the reasoning that you cannot create conflicting approaches to the administration of a constitutional responsibility. In other words, well settled Texas law essentially holds that “the expression of one thing is exclusive of another” [*Tex.-New Mexico Sch. Dist. v. Farwell Indep. Sch. Dist.*, 184 S.W.2d 642, 645 (Tex. Civ. App. 1944)].

Article 7, Section 1 is not merely aspirational; it provides a carefully crafted, clear framework for providing an adequate, efficient publicly funded education for all Texas children.

HB 3 seeks to contort this constitutional responsibility by siphoning off funding for our public school system open to all in favor of providing funding through a “savings account” for private use for a limited number of children.

No provision of the Texas Constitution authorizes the creation of a publicly-funded system of private education. Accordingly, the legislature cannot exceed or frustrate its constitutional duty to

support and maintain public schools by establishing a separate, exclusive, competing system of publicly-funded vouchers for private school attendance.

The destructive impact of HB 3 on our state’s public school finance system is not hypothetical. Rather, if enacted, we will see a massive, never-ending underfunding and undermining of the public education system in direct opposition to the duties of the legislature laid out in our Constitution.

For example, when Arizona expanded its voucher program in 2022, over 71% of the new program participants had already been in private and home schools, which caused state costs to increase by millions of dollars (Griffith & Burns, 2024). From 2008 to 2019, Arizona increased its spending on its four voucher programs by 270%. At the same time, spending on public schools dropped by 5.7%, even though the state had a slight increase in public school enrollment (Abrams & Koutsvalis, 2023). There is no evidence suggesting that this will not be the fate of Texas should this policy be enacted.

### **Publicly Funded Vouchers Facilitate Publicly Funded Discrimination**

Finally, a publicly funded voucher program will facilitate discrimination against and segregation of our state’s most vulnerable students, including students historically marginalized on the basis of race, students with disabilities, LGBTQ+ students, rural students and students from low-income families.

The Texas Bill of Rights unequivocally states, “Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin” [Tex. Const. Art. 1, Sec. 3a]. HB 3’s explicit authorization and even incentivization of private discrimination through public funds clearly violates this sacred principle.

HB 3 not only lacks civil rights protections for program participants, it also explicitly allows private education providers paid through the voucher to discriminate against students, family members, and employees on a variety of otherwise unlawful grounds. This includes allowing discrimination on the basis of religion, gender, disability status, national origin, and emergent bilingual status. The bill also explicitly requires students to forfeit many of their civil rights upon admission into the program.

Also troubling, research has shown that across the country “voucher programs are more likely to increase school segregation than to promote integration or maintain the status quo” (Potter, 2017). As discussed at length in the resources included in this written testimony, this is also likely to be the case in Texas (*see, e.g.*, PFPS, 2023).

For example, in Indiana, researchers have concluded that the introduction of a voucher in 2013 has “increasingly benefit[ed] higher-income white students, many of whom are already in private schools, and diverts funding from all other students who remain in the public school system” (Ford, Johnson & Partelow, 2017). As enrollment numbers have grown, the percentage of Black students participating dropped to 12% – down from 24% at the program’s inception in 2013. And while participation by white and Asian American student populations increased over the last decade, Latino student participation remained virtually unchanged (Shaffer & Dincher, 2020).

This should be particularly concerning to this body, given the legislature’s problematic history on this topic. In 1955, a year after *Brown v. Board of Education*, the Texas Legislature convened an “Advisory Committee on Segregation in the Public Schools.” Among the committee’s charges was to solve the “problem” of the “prevention of forced integration.” To address this problem, the

committee recommended “that the legislature give serious consideration to some sort of tuition grant plan, whereby a parent who does not wish to place his child in an integrated school may receive state funds to have the child educated in a segregated, non-sectarian private school.”

Similarly, in a 1954 amicus brief, then Texas Attorney General Jon Sheppard submitted an amicus brief to the U.S. Supreme Court, which was considering the second *Brown v. Board of Education* case. The brief, filed on behalf of the state of Texas, asserted that the legislature would respond to the Supreme Court’s integration mandate through, among other things, “turning the state schools into private schools” so that if parents desired, they “could select a school in which the majority of the other pupils are of the same race as the child, or... in which the other pupils are of both races, thereby providing equality of opportunity and freedom of individual choice” (Sheppard, 1954; Duggins-Clay, 2023).

Proposals to funnel public tax dollars to private schools bear a chilling resemblance to the discriminatory policies of the not-so-distant past and at the very least warrant reflection and serious consideration of vouchers’ invidious history.

## Recommendations

HB 3 would create an unconstitutional, seismic shift in the foundation of our public school finance system. Rather than further abdicate its responsibility to adequately and equitably support and maintain an efficient system of public education, and rather than invest public dollars to finance private discrimination, the legislature should:

- Raise per-pupil public school funding through the basic allotment and adjust for inflation;
- Increase targeted student funding that makes investments in students who need it most through the bilingual education allotment, compensatory education allotment, and special education funding;
- Sustain state education investments without reducing local school districts’ ability to raise local revenue; and
- Ensure public education funds stay in public schools.

IDRA is available for any questions or further resources that we can provide. Thank you for your consideration. For more information, please contact Paige Duggins-Clay, J.D., IDRA’s chief legal analyst, at [paige.duggins-clay@idra.org](mailto:paige.duggins-clay@idra.org).

## Resources

Abrams, S.E., & Koutsavlis, S.J. (March 2023). The Fiscal Consequences of Private School Vouchers. Southern Poverty Law Center, Education Law Center, Public Funds Public Schools.

[https://pfps.org/assets/uploads/SPLC\\_ELC\\_PFPS\\_2023Report\\_Final.pdf](https://pfps.org/assets/uploads/SPLC_ELC_PFPS_2023Report_Final.pdf)

Duggins-Clay, P. (February 7, 2023). School Segregation through Vouchers – What Policymakers Can Learn from a History of State Efforts to Use Vouchers to Avoid Integration. IDRA Knowledge is Power.

<https://idra.news/VoucherSegregation>

Ford, C., Johnson, S., & Partelow, L. (July 12, 2017). The Racist Origins of Private School Vouchers. Center for American Progress. <https://www.americanprogress.org/article/racist-origins-private-school-vouchers/>

Griffith, M., & Burns, D. (February 12, 2024). Understanding the Cost of Universal School Vouchers: An Analysis of Arizona’s Empowerment Scholarship Account Program. Learning Policy Institute.

<https://doi.org/10.54300/682.951>

PFPS. (September 19, 2023). The True Cost of Private School Voucher Programs. Public Funds Public Schools.

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Potter, H. (2017). Do Private School Vouchers Pose a Threat to Integration. The Century Foundation.

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- University of Texas. (c1930). Debates in the Texas Constitutional Convention of 1875 Texas. Constitutional Convention. Tarlton Law Library. [https://tarltonapps.law.utexas.edu/imgs/constitutions/files/debates1875/1875\\_10\\_11\\_dbt.pdf](https://tarltonapps.law.utexas.edu/imgs/constitutions/files/debates1875/1875_10_11_dbt.pdf)
- Wats, M., & Rockwell, B. (1990). The Original Intent of the Education Article of the Texas Constitution. *St. Mary's Law Journal*, Vol. 21, No. 4, Art. 8. <https://commons.stmarytx.edu/cgi/viewcontent.cgi?article=1934&context=thestmaryslawjournal>