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Happy to testify - or have another  
ACLU person testify - on this.

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**TO: Members of the Senate Education Committee**  
**FROM: Allen Gilbert, executive director, ACLU-VT**  
**SUBJECT: Spending caps in H. 361, education reform bill**  
**DATE: April 7, 2015**

I wanted to ensure that the committee is aware of the ACLU-VT's long-held opposition to spending caps placed on schools' budgets, absent differentiation among low-spending vs. high-spending districts.

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The reason is that a low-spending district is unfairly disadvantaged if it wishes to expand education offerings to its students – offerings that might already exist at another higher-spending district's school. The lower-spending district would likely have to increase spending beyond the cap, and therefore couldn't add the program it wanted. Meanwhile, the high-spending district could continue offering its more expansive education program, as long as it stayed under the cap. In this manner, caps lock in inequities of program offerings between schools.

To be clear, the ACLU has never seen the Vermont Supreme Court's *Brigham* decision as requiring all schools to have an "adequate" education program. Rather, *Brigham* requires all districts to have equal access to education funds, with each district deciding for itself the education programs it wishes to offer.

We recognize that the House's education reform bill, H. 361, contains what has been termed TFCs, or "triggered flexible caps." While the bill imposes no immediate caps, it threatens caps if school spending rises above 2.95% in FY 17. It is the possible imposition of caps that concerns us.

I would be happy to testify to the committee on this issue. Or I could see if Bob Gensburg, the lead attorney on the ACLU's *Brigham* case, might be able to do so (perhaps by phone, since the trip from St. Johnsbury can be tiring for him). Josh Diamond, another attorney who worked on the *Brigham* case, may also be available.