

# School Choice Without Vouchers

## Expanding Education Options Through Tax Benefits

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*A Pioneer Institute White Paper*

by **William Howell**  
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**PIONEER INSTITUTE**  
PUBLIC POLICY RESEARCH

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## Executive Summary

The school choice movement has suffered a number of severe setbacks during the last decade. California and Michigan voters rejected school voucher ballot initiatives in 2000, state courts in Colorado and Florida ruled that their voucher programs were unconstitutional, and during negotiations over the No Child Left Behind Act, President Bush abandoned provisions that would allow students in failing public schools to switch to private schools. Fifteen years after Milwaukee instituted the nation's first voucher program, fewer than 35,000 non-special education students receive publicly funded school vouchers nationwide.

While the voucher movement has stalled, a number of states have embraced tax deduction and tax credit programs that reduce the cost of private education. In 2004, 225,000 students took advantage of tax benefit programs in Minnesota, quantities that were almost matched in the states of Iowa and Illinois that same year. Arizona, Pennsylvania, and Florida, meanwhile, have created programs that award tax credits for donations to non-profit organizations that provide private school scholarships.

These three states alone hand out twice as many scholarships through their tax credit programs as there are students nationwide participating in more traditional voucher programs. Almost all of these tax credit programs are expanding, in part because they have withstood the constitutional challenges that have forestalled most voucher programs.

Tax benefit programs seek to lower the financial barriers to a private education. The Minnesota program provides tax deductions and credits for money spent on K-12 education. Programs

in Florida and Arizona permit independent organizations to receive tax-deductible contributions and disburse tuition scholarships. From the perspective of parents, the Arizona and Florida programs are virtually indistinguishable from public and private voucher initiatives. Qualifying parents receive financial relief that may enable their children to attend private school. The key difference between a voucher program and these tax benefit programs is that state-approved non-profit organizations, rather than designated state agencies or foundations, dispense scholarships.

What is Massachusetts doing to provide more education options to K-12 students? The Commonwealth's portfolio of vocational-technical schools, charter schools, pilot schools, and the METCO program provides some measure of choice to about six percent of the state's students, many of whom are from poor families. Otherwise, choice in Massachusetts is for those who can afford to shop towns for the best schools, or can pay private school tuition. While choice proponents in other states face political opposition from public school teacher unions and legal impediments derived from interpretations of the state or federal constitution, these hurdles seem to be much higher in Massachusetts.

To surmount the obstacles to greater school choice, Massachusetts can learn from the experience of other states. This Pioneer White Paper surveys the efforts of Minnesota, Arizona and Florida, and presents lessons for those who seek to implement a Massachusetts school choice program centered on tax benefits for private school tuition:

**1) Tax credits provide substantially greater assistance than tax deductions.**

Because the poor have lower tax rates, they receive much less benefit from tax deductions than the wealthy, and never enough to pay the majority of a child's private school tuition. In 2007 in Minnesota, the only one of the three states examined that offers a tax deduction program, estimated average deductions came to just \$71 a household.

**2) Eligibility for charitable scholarships should be based on need.**

As the state of Arizona does not require that need be taken into account, it is not clear whether its scholarships are just "topping off" the tuitions of students who were already headed to private schools. Florida, on the other hand, limits scholarship applicants to those eligible for free or reduced-price lunches. Thus, Florida's program has been reaching students who otherwise would not have been able to attend a private school.

**3) The value of scholarships should approach the cost of tuition.**

Although Arizona has a successful tax credit program for both individuals and corporations, the average scholarship was only \$1,370 in 2005. This amount is less than half the cost of the typical private school's tuition. In the same year, Florida capped its scholarships at either \$3,500 or the cost of tuition, a degree of support that substantially enhances the schooling opportunities for poorer students.

**4) Scholarship money should be provided to families in the fall.**

Tax time is in the spring, far beyond the due date for school tuition and most expenses.

This places the disadvantaged at an additional disadvantage, and makes it harder for their children to enroll in private schools, even when they are awarded a scholarship. Minnesota allows for no-interest loans to low-income families at the beginning of the year in anticipation of tax credits. Florida and Arizona address this problem through the intermediation of scholarship fund organizations that can dispense money at the beginning of the school year.

**5) Tax benefits for tuition should be provided to corporations and nonprofits, as well as individuals.**

Tax benefits are an important incentive for corporations to make charitable contributions. Scholarship fund organizations should be encouraged to seek funding from a variety of sources. Broadening financial support for the education of low-income students can also serve to broaden political support for choice in education.

**6) Tax benefits should be provided to both public and private school students.**

Because public schools now commonly charge activity fees as a condition of participating in extra-curricular activities, a tax credit program could materially benefit both public and private school parents. Additionally, a program that dispenses benefits to both public and private school families may be more likely to withstand constitutional scrutiny.

**7) The state should monitor and regulate the disbursement of scholarships.**

To avoid the kinds of scandals that plagued the Florida program, appropriate levels of oversight and transparency are essential.

## 1. Introduction

The school choice movement seemed to be in full swing in the late 1990s. But by the turn of the new century, the trend seemed to have ebbed. In November 2000, California and Michigan voters rejected school voucher ballot initiatives. In the push to enact the No Child Left Behind Act, President Bush, in response to Democratic opposition, abandoned provisions that would allow students attending failing public schools to switch to a private school.

On the heels of a favorable federal Supreme Court ruling in 2002,<sup>1</sup> state courts in Florida and Colorado subsequently ruled that voucher programs violated their state constitutions.<sup>2</sup> While voucher bills continue to circulate in state legislatures, the vast majority never make it out of committee. Fifteen years after Milwaukee instituted the nation's first voucher program, proponents can still count on one hand the number of initiatives that draw upon public funds to provide private schooling options to low-income families.

So, has school choice stalled?

An optimistic proponent of choice could point to some signs of life. In 2004, Congress funded a pilot program for approximately 1,700 low-income students in the District of Columbia. During the last two years, legislatures in Florida, Arizona, and Utah have either launched or expanded programs serving special needs and foster children. And beginning in 2006, students in Ohio began using vouchers to attend a private school of their choice. The growth in the number of students benefiting from these programs, however, continues to underwhelm. Only about 7,500 more students around the nation used publicly funded vouchers in 2005 than did in 1991.<sup>3</sup>

Including enrollees in the voucher-like tuitioning programs in Vermont and Maine, fewer than 35,000 non-special education students receive publicly funded school vouchers nationwide.

While the growth of voucher programs may have slowed, there is an active school choice movement driven by methods other than vouchers. Around the country, hundreds of millions of dollars in tax credits (which provide dollar-for-dollar reimbursements) and tax deductions (which reduce tax liabilities in proportion to one's tax rate) are being used to reduce the education expenses incurred by parents of children attending private and public schools.

In 2004, Minnesota's tax credit and deduction programs benefited more than 225,000 taxpayers. That same year 167,000 took advantage of the program in Iowa, as did 207,000 in Illinois. Arizona, Pennsylvania, and Florida, meanwhile, have created programs that award tax credits to those who donate to non-profit organizations that provide private school scholarships. In these three states alone, more than twice as many students receive scholarships through tax credit programs each year than do students nationwide who participate in voucher programs.

### *School Choice in Massachusetts*

For the wealthy, there has always been school choice in Massachusetts, whether through what could be called "indirect choice," or selecting where to live based on the quality of a community's public schools, or through "direct choice," by sending their children to private school. At present, approximately 12 percent

of the Commonwealth's students attend private schools.

Massachusetts' portfolio of vocational-technical schools, charter schools, pilot schools, and the METCO, Inc. program provides some choices for those of lesser means. Approximately six percent of students currently take advantage of one of these school choice options. However, thousands of students are stuck on waiting lists, unable to attend the charter or METCO school of their choice. Considering this strong demand for choice in Massachusetts, why have other states had so much more success in expanding education options?

Proponents of choice point to legal and political obstacles. Legally, two amendments to the Massachusetts Constitution, known as the "Know-Nothing" or "Blaine" amendments, deserve much of the blame. First promulgated by the Know-Nothing Party in the mid-nineteenth century and later by United States Congressman James Blaine, these amendments stipulate that:

"No grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining, or aiding any ... primary or secondary school ... which is not publicly owned and under exclusive control, order and supervision of public officers or public agents authorized by the commonwealth or federal authority or both."

Politically, public school teachers' unions can be expected to oppose the introduction of a tax credit program that includes private schools.

Partly due to their influence, as well as the state's longstanding historical commitment to public schools, school choice today is largely limited to options within the public school system. Notably, the number of parochial schools also has decreased, a trend that started in the nineties and has accelerated recently with the fiscal and legal troubles surrounding the Archdiocese of Boston.

Such legal and political factors are not unique to Massachusetts, though the degree of entrenchment may be higher than in other states. Some of these states, however, have successfully advanced school choice in spite of these obstacles.

The core of this paper is a study of tax deduction and tax credit programs in three states: Minnesota, Arizona, and Florida. These particular programs were selected for the remarkable variation in their operations and histories; the types of families who qualify to participate in them; the types of financial arrangements in place; and, crucially, the influence of different judicial and legislative interventions on program design. The paper is descriptive in nature, reviewing the kinds of tax credit programs currently operating, the number and type of students who participate in them, the political conditions that encouraged their enactment, legal challenges to their constitutionality, and possibilities for their future expansion.

The paper closes with a discussion of the constitutional advantages of tax credits as compared to voucher initiatives, and also provides recommendations on how to design a tax relief initiative that could benefit low-income parents and students in Massachusetts.

## 2. Minnesota

### 2.1 The Educational Tax Deduction Program: 1955-2007

In 1955, Minnesota became the first state to enact legislation allowing parents to claim a deduction from their gross income for certain expenses incurred in the education of their children. With backing from several legislators with large numbers of Catholic constituents, the program was enacted by overwhelming majorities, passing 55–0 in the Senate and 117–2 in the House.

Pushed through in the waning hours of a particularly frenetic legislative session, the bill managed to avoid opposition by either the Minnesota Education Association or the Minnesota School Boards Association, both staunch opponents of any program that would divert public education aid to private schools.<sup>4</sup> The law, modestly entitled “For an Act Relating to Taxes Measured by Net Income,” allowed a \$200 deduction per dependent for tuition and transportation expenses incurred by both public and private school parents.

Over the past half century, Minnesota’s legislature has revised the tax deduction law repeatedly, increasing the maximum deduction amount and expanding the list of deductible expenses. With the support of two interest groups—the Minnesota Catholic Conference and the Citizens for Educational Freedom—the legislature in 1976 increased the dollar limits for the deduction to \$500 for dependents in grades K–6 and \$700 for dependents in grades 7–12. At the same time, the legislature also expanded the deduction to cover nonreligious textbooks, instructional materials, and equipment. In 1985, the dollar limits for the deduction

were increased again to \$650 for grades K–6 and \$1,000 for grades 7–12. Then, in 1997, the legislature increased the amount of the deduction to \$1,625 for grades K–6 and \$2,500 for grades 7–12, expanded the list of eligible expenses, and allowed the deduction to parents who claimed the federal standard deduction. The list of qualifying expenses expanded to include tutoring, academic summer schools and camps, and up to \$200 of the cost of a computer or education-related software.<sup>5</sup>

### 2.2 Tax Credits: 1971-1974, and 1998-2007

The tax credit portion of Minnesota’s program, meanwhile, is of more recent vintage. In 1971, a Republican-controlled legislature enacted a refundable tax credit for private school tuition and other expenses.<sup>6</sup> While the credit was set at \$100 per student for 1971 and 1972, the amount was raised by the same percentage as growth in school foundation aid for 1973 and subsequent years. Pupil unit weighting made the \$100 credit worth \$50 for kindergarten students, \$100 for students in grades 1 to 6, and \$140 for students in grades 7 to 12. For each family, the average credit claimed increased from approximately \$170 in 1971 to about \$240 in 1973.<sup>7</sup>

Credits could be used for tuition, classroom instructional fees, and nonreligious textbooks. While there was no limit on the number of students for whom a taxpayer could claim the credit, only one credit could be claimed for each student. In addition, parents had to choose between claiming the credit and claiming the dependent education expense deduction. However, in 1974 the Minnesota Supreme Court overturned the tax credit program (more on this below).

As a result, the first iteration of Minnesota's tax credit program was suspended after just three years. Department of Revenue records show that between 44,000 and 45,000 taxpayers claimed the credit in each of the years it was available.<sup>8</sup>

Tax credits reemerged on the legislative agenda in 1997, when Governor Arne Carlson (Independent-Republican) vetoed the state's K-12 funding bill because it failed to increase tax relief to offset families' educational expenses. Through negotiations between the governor and leadership in the Democratic-Farmer-Labor party, the state government reinstated an income tax credit program for education expenses incurred in public and private schools. An important change was that the new credits could not be applied to tuition expenses. The governor signed the legislation and the education tax credit took effect in 1998.

Under the terms of the legislation, an education tax credit of up to \$1,000 per child and \$2,000 per family (in effect limiting the credit to two children per family) was made available to low-income families. Though the original credit covered 100 percent of qualifying expenses,<sup>9</sup> the 2001 legislature limited the credit to 75 percent of qualifying expenses.<sup>10</sup> The 2005 legislature then allowed families to claim the \$1,000 credit for an unlimited number of children in grades K-12.<sup>11</sup>

### 2.3 Evolution in Response to Constitutional Challenges

The 1955 tax deduction program was first challenged in 1978 in *Minnesota Civil Liberties Union v. Roemer*. The federal district court in Minnesota upheld the state's deduction statute on the grounds that it benefited public and

private school children.<sup>12</sup> On appeal, the United States Court of Appeals for the Eighth Circuit affirmed the district court ruling.<sup>13</sup>

In another suit filed a year later, *Mueller v. Allen*,<sup>14</sup> several Minnesota taxpayers challenged the constitutionality of the dependent education expense deduction. Plaintiffs claimed that the deduction amounted to an establishment of religion in violation of the First Amendment because almost all of the taxpayers using the deduction had children in parochial schools, and because the state's public schools were largely tuition-free.<sup>15</sup>

In a five-to-four decision, the U.S. Supreme Court upheld the deduction. The Court's majority found that the deduction met all three parts of the test established by *Lemon v. Kurtzman*, which is often described as the standard criteria for evaluating the constitutionality of government legislation regarding religion.<sup>16</sup> Specifically, the Court found that the Minnesota tax deduction program had a secular purpose, had a primary effect that neither advanced nor inhibited religion, and did not foster excessive government entanglement with religion.<sup>17</sup>

The first incarnation of the state's tax credit program, however, did not withstand judicial scrutiny. In 1971, the Minnesota Civil Liberties Union, Americans United for Separation of Church and State, and seven Minnesota taxpayers challenged the program on the grounds that it violated the U.S. Constitution and the Minnesota Constitution. In 1972, the trial court found the Minnesota statute to be constitutional.

The trial court reasoned that the statute had a valid secular purpose, that it survived entanglement challenges, and that the primary effect of the statute was not to promote the establishment of religion (again passing the three-part *Lemon* test).

The plaintiffs appealed to the Minnesota Supreme Court. While the appeal was pending, the U.S. Supreme Court ruled on *Committee for Public Education and Religious Liberty v. Nyquist*, which overturned a comparable reimbursement program in New York.<sup>18</sup> In 1974, the Minnesota Supreme Court then rejected the argument that Minnesota's tax credit statute could be distinguished from *Nyquist* and found the state's tax credit unconstitutional.<sup>19</sup> The current version of the tax credit program has not been challenged in either state or federal court.

## **2.4 Tax Benefit Programs Today: Design and Impact**

### *The Tax Deduction Program*

Like all tax deduction programs, Minnesota's reduces taxpayers' taxable incomes. Since tax rates are then applied to lower income figures, the tax deduction decreases income tax liabilities in direct proportion to a taxpayer's marginal tax rate and the amount of the deduction. Because Minnesota has three marginal tax rates (5.35, 7.05, and 7.85 percent), higher income taxpayers receive slightly larger deductions.<sup>20</sup> Families with no taxable income do not benefit from the tax deduction program, except insofar as the deduction shifts them into no-tax status.<sup>21</sup>

In 1997, the Department of Revenue estimated that in the following year 73,000 taxpayers

would claim the deduction, for a cost to the state of \$3.8 million. The Department's estimates turned out to be much too low. In total, 144,000 taxpayers claimed a deduction in 1998, for a cost of \$11.7 million. In tax year 2004, the number of taxpayers claiming a deduction rose to 186,000 at a cost of \$13.8 million.<sup>22</sup> In tax year 2007, an estimated 225,000 returns will claim the deduction at an estimated cost to the state of \$16 million.<sup>23</sup> Though the level of involvement is significant, the actual dollar benefits for each individual family are quite small. In 2007, when the largest number of returns is expected to be filed, the average per-family benefit is estimated to be just \$71.

The K–12 education tax deduction currently is available to all families, regardless of income and regardless of whether taxpayers itemize deductions. Minnesota's program allows taxpayers to deduct up to \$1,625 in qualified education expenses for each child in grades K–6 and up to \$2,500 of qualified expenses for each child in grades 7–12.<sup>24</sup>

Unfortunately, available studies on the characteristics of families who claim education deductions in Minnesota are dated. According to a 1984 RAND study of 476 parents of public and private school children residing in and around Minneapolis-St. Paul, the deduction primarily benefited upper-income households and parents who would have made the same schooling choices in the absence of the deduction.<sup>25</sup> The report maintains that both knowledge and use of the deduction were much higher for private school parents than for public school parents.<sup>26</sup> Furthermore, public school parents were more likely to decline the

deduction even if they knew about it, mistakenly thinking that the deduction did not apply to public school children.

For those private school parents who claimed the deduction, only 10 percent said the deduction was very important in their school choice decision. Fully 98 percent of these parents said they would still have sent their children to private school had the deduction not been available. Transportation concerns were far more important to the schooling decisions made by families who used the deduction. About 60 percent of the private school parents reported that their children used the free bus service provided by the state,<sup>27</sup> and 40 percent said the availability of this service was a very important factor in their choice. In fact, 22 percent of transportation users said they could not have sent their children to the school of their choice if the service were not available. Transportation users, it should be noted, were much more likely to be low-income parents of children in lower-tuition schools.

### *The Tax Credit Program*

Unlike tax deductions, credits are subtracted directly from income tax liabilities irrespective of a family's tax rate. Minnesota's K-12 education tax credit equals 75 percent of qualifying expenses. Hence, for every \$100 that a family spends on qualifying education expenses, the family's tax liability drops by \$75, no matter what its marginal tax rate might be.<sup>28</sup> Beginning in tax year 2005, the maximum credit is based on household income and the number of qualifying children in grades K-12. The maximum credit is set at \$1,000 per child,

and families can claim the credit for each child enrolled in grades K-12. Since the credit equals 75 percent of qualifying expenses, a taxpayer would have to purchase \$1,333 of qualifying products and services in order to claim the maximum \$1,000 credit.

Minnesota's program offers a refundable credit, which means that any amount of credit that exceeds tax liability is paid to the claimant as a refund. The credit is also subject to income-based phase-outs. The credit begins to decline when gross income equals \$33,500, and reduces to zero for families with one or two children once income exceeds \$37,500.<sup>29</sup> If parents do not pay taxes, they can still receive the K-12 education credit by simply filing a state tax return. Compared to the tax deduction portion of the Minnesota program, therefore, the tax credit program benefits a considerably larger portion of families.

Also, refund assignments became available on a temporary basis in tax year 2002. They have since been made permanent.<sup>30</sup> Families eligible for the credit may assign their anticipated refunds to participating financial institutions and tax-exempt foundations. These organizations in turn make loans to families, with the loan amount paid directly to a third-party vendor for providing education-related materials and services. Families can use the loans to purchase eligible education-related materials and services in anticipation of qualifying for the tax credit when they file their tax returns the following year. The Department of Education must certify that the products and services qualify for the credit.

## ■ **School Choice Without Vouchers** *Expanding Education Options Through Tax Benefits*

As the statute is currently written, qualifying families can take advantage of both the tax deduction and credit portions of the program. For expenses to qualify for either a deduction or a credit, students must attend a school located in the five-state area: Minnesota, Iowa, North Dakota, South Dakota, or Wisconsin.<sup>31</sup> Eligible schools must comply with the attendance laws of the state and the Civil Rights Act of 1964 and may not be run for profit. Public schools are authorized to charge for some of the education-related expenses that qualify for the education deduction and credit.<sup>32</sup>

All expenses that qualify for a credit also qualify for a deduction. Crucially, though, private school tuition and tuition for college courses used to meet high school graduation standards only qualify for a deduction. Taxpayers may not claim the deduction and credit for the same expenses.<sup>33</sup> Parents who qualify for both the deduction and credit receive the greatest benefit by first claiming up to the maximum allowable under the credit, and then claiming any remaining expenses under the deduction.<sup>34</sup>

In 1998, 38,500 taxpayers claimed an education credit that, on average, was valued at \$369. The number of families claiming the credit initially increased as taxpayers became aware of the credit's availability, but leveled off at between 55,000 and 60,000. A total of 58,593 families claimed the education credit in tax year 2004, for an average amount of \$256. The decline in the value of these credits is primarily due to the reduction in the credit percentage from 100 to 75 percent of qualifying expenses in tax year 2002. Only about one of every four eligible families actually filed for the education tax credit.<sup>35</sup>

## 3. Arizona

### 3.1 Tax Credits and Student Tuition Organizations: 1997-2007

Starting much later than Minnesota, the state of Arizona passed on tax deductions in favor of tax credits. In January 1997, a coalition of Republican lawmakers sponsored legislation to create an education tax credit program in Arizona. The bill was simultaneously assigned to three committees: Ways and Means, Education, and Rules. In each committee, the bill passed largely along party lines, with Republicans generally supporting the bill and Democrats almost unanimously opposing it. In early April, a final bill emerged from the state legislature, with support coming almost exclusively from Republicans who retained majorities in both chambers.<sup>36</sup> On April 7, 1997, Republican Governor J. Fife Symington signed into law House Bill 2074 entitled, “Tax Credit: Student Tuition Organization.”

The law provides a dollar-for-dollar, state income tax credit for two types of education-related expenditures: donations made to nonprofit “student tuition organizations” (STOs) that award scholarships to students who attend private elementary and secondary schools; and donations and fees paid to support extracurricular activities in public schools. As originally conceived, the bill had restricted the provision of tax credits to “a nongovernmental primary or secondary school of the parents’ choice.” Public schools, therefore, did not qualify to receive tax credit funds.<sup>37</sup> As a compromise with opponents of the legislative bill, however, the tax credit for K-12 public schools (traditional and charter) was added to the program.<sup>38</sup> Both credits became effective in 1998 and could be claimed each year.<sup>39</sup>

As originally enacted, the tax credit legislation offered a \$500 tax credit for donations to STOs, and a \$200 tax credit for public school donations and fees.<sup>40</sup> While the allowable credit for single individuals remained constant during the following eight years, the credit for married taxpayers filing jointly increased three times.

To illustrate, the maximum donation to STOs for married taxpayers filing jointly increased from \$500 to \$625 in tax year 2001, from \$625 to \$825 in tax year 2005, and from \$825 to \$1,000 in tax year 2006. The maximum public school tax credit for married taxpayers filing jointly also increased during taxable years 2001, 2005, and 2006, from \$200 to \$250, \$250 to \$300, and \$300 to \$400, respectively.<sup>41</sup> Neither donations to STOs nor those for public school expenses are subject to a refundable credit; credits may only be used to the extent they reduce a tax liability to zero. However, if a taxpayer’s allowable tax credit for a given year exceeds the taxes due, the taxpayer may carry the credit forward for up to five consecutive years.<sup>42</sup>

The program’s design has expanded in other ways as well. In 2006, Arizona joined Florida and Pennsylvania in offering a tax credit to corporations that donate to STOs. (Arizona remains the only state to offer tax credits to individuals making donations to scholarship organizations).<sup>43</sup> The program’s new provision permits businesses to take a dollar-for-dollar credit for contributions to STOs. The total amount of tax credit available to businesses making contributions to STOs is capped at \$10 million each year. This limit, however, will increase by 20 percent each year until 2011, when business donors will be able to claim up to \$21 million in total tax credits.<sup>44</sup>

As individuals already are permitted to do, corporate donors may carry forward unused credits for up to five consecutive years. All organizations registered as STOs, meanwhile, are eligible for donations from either corporate or individual parties.

### **3.2 Meeting the Challenges: The STO Program's Constitutionality**

Upon passage, House Bill 2074 sparked immediate controversy. In May of 1997, the Arizona Education Association (AEA), in alliance with Citizens for Fair Taxation, attempted to derail the legislative effort through a ballot initiative. Unable to garner the necessary signatures, however, the AEA subsequently opted to join with the Arizona School Boards Association and other organizations (National Education Association, the National School Boards Association, and People for the American Way) in filing a lawsuit challenging the law's constitutionality. In *Kotterman v. Killian*, the plaintiffs argued that the Arizona tax credit program violated the Federal Establishment Clause and three provisions of the Arizona Constitution: article II, clause 12 and article IX, clause 10 (the "religion clauses"); and article IX, clause 7 (the "anti-gift clause").<sup>45</sup>

On January 26, 1999, the Arizona Supreme Court upheld the constitutionality of the tax credit program. In a 3-2 decision, the court ruled that the program met the three-prong test for conformity with the Establishment Clause established in *Lemon v. Kurtzman*.<sup>46</sup> The court

also compared the Arizona tax credit program to the Minnesota program upheld by the U.S. Supreme Court in *Mueller v. Allen*,<sup>47</sup> stating:

"In both, parents are free to participate or not, to choose the schools their children will attend, and to take advantage of all other available benefits under the state tax scheme. Moreover, these programs will undoubtedly bring new options to many parents. Basic education is compulsory for children in Arizona, A.R.S. 15-802(A), but until now, low-income parents may have been coerced into accepting public education. These citizens have had few choices and little control over the nature and quality of their children's schooling because they have been unable to afford a private education that may be more compatible with their own values and beliefs. Arizona's tax credit achieves a higher degree of parity by making private schools more accessible and providing alternatives to public education."<sup>48</sup>

The court went on to hold that the program did not violate the state constitution because "under any common understanding of the words, we are not here dealing with 'public money.'" As the majority opinion noted,

"Even if we were to agree that an appropriation of public funds was implicated here, we would fail to see how the tax credit for donations to student tuition organizations violates this clause. The way in which an STO is limited, the range of choices reserved to taxpayers, parents, and children, the neutrality built into the system—all lead us to conclude that benefits to religious schools are sufficiently attenuated to foreclose a constitutional breach."<sup>49</sup>

In addition, the court did not agree with the petitioners that a tax credit amounted to a “gift.” As the court had already concluded that the tax credit was not an appropriation of public money, it concluded, “One cannot make a gift of something that one does not own.”<sup>50</sup>

In 2000, an Arizona American Civil Liberties affiliate filed a federal suit against the tax credit program on grounds that it violated the Establishment Clause. Issuing its ruling a year later in *Hibbs v. Winn*, the federal District Court in Arizona dismissed the suit under the Federal Tax Injunction Act, which forbids federal courts from interfering in state tax policy.

In 2002, however, the Ninth U.S. Circuit Court of Appeals reversed *Hibbs* and the U.S. Supreme Court subsequently agreed to hear the case. At issue before the high court was not whether Arizona’s tax credit program violated the separation of church and state, but whether the dispute belonged in federal court; in a 5-4 ruling on June 14, 2004, the U.S. Supreme Court upheld the Ninth Circuit of Appeals decision to reverse the dismissal of *Hibbs*. On March 24, 2005, the federal District Court followed the Supreme Court’s instructions and reconsidered the case. The District Court, however, came to the exact same conclusion as before, again opting to dismiss the suit and reaffirm the program’s constitutionality. Opponents of the program have appealed the case to the Ninth U.S. Circuit Court of Appeals, where the case is currently pending.<sup>51</sup>

### 3.3 The STO Program Today: Design and Impact

To qualify as an STO, scholarship organizations must satisfy several state requirements. Specifically, they must be tax exempt under Section 501(c)(3)<sup>52</sup> of the Internal Revenue Code, allocate at least ninety percent of their annual revenues to scholarships or grants,<sup>53</sup> and make their scholarships available to students of more than one qualified school.<sup>54</sup>

In essence, STOs are expected to collect and disburse grant monies that “allow” children “to attend any qualified school of their parents’ choice.” To receive STO grants, meanwhile, private primary and secondary schools must not “discriminate on the basis of race, color, sex, handicap, familial status, or national origin.” They are permitted, however, to limit admission on the basis of religious adherence, preference, or observance.<sup>55</sup>

Prior to 1998, a handful of privately funded school choice organizations operated in Arizona. The Arizona School Choice Trust (ASCT), for instance, was established in 1993 to provide Maricopa County residents who qualified for the federal free and reduced-price school lunch program scholarships to attend private schools of their choice.

For five years, ASCT’s scholarship funding came mostly from private donations, local charities, and matching grants from national school choice philanthropic organizations, such as the Children’s Scholarship Fund and Children First America.<sup>56</sup> With the enactment of the Arizona education tax credit program, ASCT’s ability to grant scholarships grew dramatically. Whereas ASCT awarded 54 scholarships in 1993, the organization awarded 369 in 1999.<sup>57</sup>

In 2004, ASCT provided 3,041 scholarships to 122 different schools, more schools than any other STO.

ASCT's growth trajectory is not exceptional. In 1998, 16 STOs awarded a total of 244 scholarships to qualifying students around the state. A year later, when the Arizona Supreme Court upheld the constitutionality of the program, participation rates grew dramatically. In 2000, some 33 STOs awarded 15,377 scholarships. Four years later, 55 STOs offered 21,160 scholarships. The dollar value of each scholarship also steadily increased during this period. The average scholarship was worth \$811 in 1998, \$899 in 2000, \$1,334 in 2004, and \$1,370 in 2005.<sup>58</sup> All told, from 1998–2005 the Arizona tax credit program generated \$137.8 million in contributions, which financed approximately 120,000 scholarships to private schools throughout the state.<sup>59</sup>

Just as the number of scholarships awarded to students in Arizona increased in the aftermath of *Kotterman*, so too did the volume of taxpayer contributions. In 1998, 4,248 individuals made contributions. A year later, 32,023 individuals claimed the tax credit, and giving has increased in each year since. In 2004–2005, 69,232 donations worth \$42.2 million were made to private school tuition organizations. In addition, with the increase in the maximum credit afforded to married couples filing jointly, the average amount of each donation rose slightly as well, from \$423 in 1998 to \$609 in 2005. Starting in 2006, corporations could also make contributions to STOs. Data, however, are not yet available on these sources of donations.<sup>60</sup>

Given the expansion of STOs and individual and corporate donations, it is hardly surprising that the number of participating private schools has also increased during the tax credit program's lifespan. The number of private schools in Arizona that received scholarship money from student tuition organizations rose from 23 during the 1998 school year to 345 in 2005, an increase of 1,400 percent.<sup>61</sup>

Different STOs allocate scholarships in different ways. While ASCT allows scholarship recipients to choose any private school in the state, many other STOs provide scholarships that can be redeemed only at select schools. Though the state law proscribes STOs from serving a single private school, STOs are allowed to award scholarships for students who are interested in choosing from just a handful of schools.<sup>62</sup> Additionally, though the tax credit program does not mandate any income eligibility requirements, most STOs nonetheless use financial need as the primary condition for allocating scholarships to students.

Though a taxpayer cannot designate a donation for the direct benefit of a dependent, the law allows them to earmark their contributions to other students, and they can request that funds be used at specific private schools in the state. As a practical matter, this enables some families to direct that their funds be used for an acquaintance's child with the understanding that the acquaintance will reciprocate. The *Arizona Republic* reported in 2000 that some parents wrote \$500 checks for their friends' children, who often reciprocated in kind. According to some reports, 96 percent of the donations made

to one STO (the Arizona Scholarship Fund) were earmarked for students already enrolled in private schools.<sup>63</sup>

Conflicting findings have emerged about the socio-economic profile of participating students. Some reports suggest that the program predominantly serves low-income families;<sup>64</sup> others suggest that the program serves a larger share of middle- and upper-income families who already have their children in private schools.<sup>65</sup> Continued research is needed to determine whether the percentage of scholarships dedicated to new students (that is, students who would have to attend public schools in the absence of scholarships) increases as the use of the credit grows and more scholarships become available.<sup>66</sup>

#### *Tax Credits for Public School Extracurricular Activities*

Strictly speaking, families cannot receive tax credits for donations made to STOs on behalf of their own children. The public school portion of the tax credit legislation, however, is different. In addition to providing a tax credit to any eligible taxpayer who donates money for extracurricular and character education programs at public schools, the program also offers tax credits to families as reimbursement for their own education-related expenses.

Some Arizona school districts immediately sought to raise awareness of the public portion of the tax credit plan. In early July 1998, the Flagstaff school district spent \$3,000 to send to all residents a brochure that advertised the tax credit program. According to the school

district, the mailing along with other efforts raised \$10,000 in eligible donations by the end of that summer.<sup>67</sup> Other districts opted to delay their marketing efforts until after the state Supreme Court upheld the tax credit program in 1999. Over time, though, many districts experienced significant increases in donations. In 1998, 74,242 claimants received a total of \$9 million in credits for public school contributions and fees. Three years later, 166,468 tax filers received credits worth \$20 million. And by 2005, 214,664 people received credits totaling \$35.26 million. During this period, the average credit rose from \$121 to \$164.

Because the tax credit is a delayed reimbursement, only families who earn enough to owe state taxes, and who can afford the upfront public school expenses, benefit from the program. Unlike the recipients of private school scholarships, there is general consensus that this portion of the tax credit program primarily serves the middle and upper class.<sup>68</sup>

According to one study, during the program's first three years Arizona's wealthiest schools received a disproportionately high percentage of the money gathered through the public school extracurricular activity tax credit. Families in the wealthiest quartile of districts statewide received more than five times as much money in reimbursements as families in the poorest quartile of districts.<sup>69</sup>

## 4. Florida

### 4.1 The Corporate Income Tax Credit Scholarship Program: 2001-2007

In May of 2001, the Florida legislature enacted “The Corporate Income Tax Credit Scholarship” program.<sup>70</sup> The Senate passed the law by a vote of 25 to 14, and the House of Representatives by 72 to 44. Although a detailed breakdown of voting by party is unavailable, newspaper reports indicate that yeas and nays predictably followed party lines, with Governor Jeb Bush and his Republican majority in the state legislature falling into the former camp. Vocal opponents included House Democratic leader Lois Frankel, 2002 Democratic gubernatorial candidate Bill McBride, and Florida Education Association president Maureen Dinnen. A judicial challenge to the state’s tax credit program is ongoing.

Like Arizona’s tax credit initiative, Florida’s program awards tax credits to corporations that donate funds to organizations that, in turn, disburse scholarships to low-income families. The Florida program, however, distinguishes itself by the size of the scholarships awarded, the extent of regulation of non-profit organizations that award scholarships and the private schools that accept them, and the pool of corporate donors that qualify for tax credits statewide.

Florida’s tax credit program allows corporations to redirect up to 75 percent of their corporate state income tax liability every fiscal year to eligible nonprofit “scholarship funding organizations” (SFOs), which give low-income students K–12 scholarships that cover private

school tuition or scholarship transportation to attend out-of-district public schools. The Florida Department of Revenue provides participating corporations a dollar-for-dollar tax credit for donations.

Based on the 2001 legislation, corporations could not contribute more than \$5 million to any single scholarship fund; if the credit was not fully used in any one year, the remaining portion could not be carried forward; and, at least 5 percent of the total statewide amount authorized for the tax credit was set aside for small businesses. Beginning in 2003, however, corporations were permitted to carry forward unused credit amounts for up to three years.<sup>71</sup> Then in 2006, the legislature removed the provision that forbids a corporation from contributing more than \$5 million to any single eligible SFO in a given year, and it reduced the amount of credit reserved for small business taxpayers from five to one percent.<sup>72</sup>

According to the original legislation, eligible scholarship funding organizations were required to comply with statutory rules for administering the scholarship program, submit an annual financial and compliance audit to the state, and meet other standards established by the Florida Department of Education. SFOs also had to use all of their contributions made by corporations to finance student scholarships.<sup>73</sup> Consequentially, SFOs could not spend any of the donated money for administrative expenses. Private schools that accepted SFO students, meanwhile, had to demonstrate fiscal soundness as defined by the statute, meet state and local health and safety laws and codes, and comply with all state laws relating to the general regulation of nonpublic schools.

The original tax credit law did not require SFOs to distribute scholarships in any particular way.<sup>74</sup> The law also allowed SFOs to solicit money for and provide scholarships to a particular school, as in the case of the Academy Prep Foundation, which targeted scholarships to Academy Prep middle schools in St. Petersburg and Tampa.<sup>75</sup> In 2006, both of these provisions changed. The legislature then required an SFO to award scholarships on a first-come first-served basis. In addition, the legislature mandated that SFOs could not restrict or reserve scholarships for use at a particular private school or provide scholarships to a child of an owner or operator.<sup>76</sup>

The tax credit law does not offer any financial allowance for the distribution and administration of scholarships. SFOs therefore must raise their administrative funds independently through philanthropic support from individual, nonprofit, and corporate donors. To inform parents and corporations about the tax credit program, SFOs have relied predominantly on word of mouth, though some SFOs have conducted seminars for school administrators and parents.<sup>77</sup>

The program grew quickly. The 2001 legislation capped scholarships at \$3,500 for qualified students enrolling in an eligible private school and \$500 for a scholarship awarded to a student enrolling in a public school outside the student's residential district. The 2006 legislature raised the private school cap to \$3,750. Limits on total tax credit claims also increased. As originally enacted, the total amount of tax credits for the entire state could not exceed \$50 million per fiscal year. In 2003, this limit was raised to \$88 million, but when negative reports on the administration of the program received prominent news coverage (more on

this below), the legislature opted to give the extra \$38 million to the public schools. In 2005, the legislature restored the \$88 million cap on annual donations.<sup>78</sup>

Over the past five years, corporations have contributed more than \$200 million to the program. In 2002, 77 corporations participated in the program, making \$47.7 million in donations that qualified for tax credits. In 2003, the number of corporations making donations increased to 114, for a total credit amount of \$47.6 million. Though in 2004 the number of participating corporations dropped to 102 (\$47.6 million in credits), 113 companies made donations in 2005 worth \$74.1 million.<sup>79</sup>

The program has developed a solid base of corporate donors, securing a 90 percent retention rate from year to year. A sample of participating corporations include Albertsons Supermarket, Chico's FAS, Centex Corporation, Colonial Bank, Brown & Brown Insurance, EverBank, FCCI, First Commercial Bank of Florida, First Data Corporation, Florida Rock Industries, Gate Petroleum, Health Management Associates, Lennar, Lowe's Companies, Marriott International, Progress Energy, Raymond James Financial, Tarmac America, Wachovia, Walgreen's, WellCare Group Inc., and WCI Communities Inc.

## 4.2 Scandal and the Regulatory Response

As originally enacted, Florida's tax credit program required limited state involvement. For the most part, private, nonprofit SFOs administered the program and faced few reporting requirements. Participating private schools and students did not need to demonstrate academic gains of any sort. Moreover, the state Department of Education had little recourse when private schools were shown to have violated programmatic regulations.

Though the state government required annual audits of SFOs to confirm their fiscal soundness and spending patterns, no audits had been filed 17 months after the groups began accepting donations.<sup>80</sup> As a result of the limited state oversight written into the law, the state Department of Education lacked even the most basic data about the characteristics of students receiving scholarships, the schools they were attending, and the cost savings (if any) of the program.

In 2003 and 2004, however, the *Palm Beach Post* published a series of reports that documented widespread mismanagement and abuse within the state's various choice programs, including the tax credit program, the McKay voucher program for students with disabilities, and the voucher initiative linked to the state's A+ accountability system. According to the *Post*, roughly \$300,000 in scholarship monies were given to students attending a Tampa Islamic school whose director and founder, Sami Al-Arian, was awaiting trial for financing terrorist groups.

Also, the founder of one SFO, the Silver Archer Foundation, was charged with stealing \$268,000 in scholarship money.<sup>81</sup> Reports emerged that at least one SFO charged application fees from parents and sought donations from the private schools that received scholarship students.<sup>82</sup> The *Post* also publicized the state's failure to document what kinds of students were participating in the program.<sup>83</sup> And when the *Post* sought applications and supporting documentation of the eight state-approved SFOs that operated in 2002–2003, department officials were able to find paperwork for only two.<sup>84</sup>

In response to such reports, the state promptly established a process by which to monitor the program. In August 2003, Governor Jeb Bush and Education Commissioner Jim Horne introduced a six page questionnaire required of all schools that receive SFO scholarships. The form was designed to identify which schools were receiving scholarships, what kinds of programs those schools offered, whether their teachers were certified, and whether the schools complied with state law. In September 2003, Horne and Bush also announced the creation of a Department of Education database to monitor scholarship schools and students.<sup>85</sup>

After failing to enact accountability measures for the state's choice programs in 2004,<sup>86</sup> the legislature acted aggressively in 2006. The legislature required that SFOs be Florida entities with their principal offices located in the state, and that SFOs obligate (though not necessarily spend) 100 percent of contributions for scholarships in the same fiscal year in which they are received. According to the new regulations, SFOs had to secure prior approval

from the Department of Education before transferring funds among one another. SFOs also were required to maintain separate accounts for scholarship funds and operating funds. The 2006 legislature further required criminal background checks of owners or operators of private schools, eliminated certain private schools from the list of eligible schools (such as correspondence schools and distance learning schools), and prohibited a home school from participating in the program.

The 2006 legislature did not stop there, however. It further required private schools to demonstrate fiscal soundness by being in operation for at least three years or obtaining a surety bond or letter of credit for the amount equal to the scholarship funds. The legislature established regulations governing the hiring of teachers at private schools and the administration of a nationally norm-referenced test comparable to the Florida Comprehensive Assessment Test. It mandated a longitudinal study of student achievement to be conducted by an independent research organization selected by the state Department of Education. Finally, the legislature required the Department of Education to revoke the eligibility of SFOs and private schools that, and students who, failed to meet the requirements of the tax credit program.<sup>87</sup>

### **4.3 The Scholarship Program Today: Design and Impact**

To qualify for an SFO scholarship, students must be eligible for free or reduced-price lunches under the National School Lunch Act. They also must have been counted as a full-time-equivalent student during the previous state

fiscal year for purposes of state per-student funding; or have received a scholarship from an eligible nonprofit scholarship funding organization during the previous school year.<sup>88</sup>

Under the law, students can reapply for a scholarship as long as they have a record of good attendance and their family income does not exceed 200 percent of the federal poverty level. In any given year, however, students can receive only one scholarship from an SFO. Additionally, students are prohibited from simultaneously receiving a scholarship under the McKay Program or the Opportunity Scholarship Program while receiving an SFO scholarship.

SFO scholarships currently are limited to \$3,750 or the cost of tuition, whichever is less. During the 2005-2006 school year, when the scholarships covered up to \$3,500 of tuition, the average tuition of participating schools was \$4,341. As a result, parents contributed upwards of \$1,000 annually to pay the additional tuition and other related school costs, including uniforms, travel, and school fees. Though ineligible for additional tax credit aid, parents were permitted to seek additional financial support from private schools and privately funded programs towards education costs.

Participation rates in Florida's tax credit program have remained reasonably steady during the past five years. During the 2002-2003 academic year, 15,585 students received SFO scholarships, as did 11,500 in 2003-2004, 10,549 in 2004-2005, 14,061 in 2005-2006, and 14,502 in 2006-07.<sup>89</sup>

## ■ **School Choice Without Vouchers** *Expanding Education Options Through Tax Benefits*

Statistics from the 2005 academic year suggest that the Florida program is effectively serving low-income families. The average income for a household of four receiving scholarships was \$22,074. Approximately 70 percent of families were non-white (most being Hispanic or African-American), and about 60 percent were from single-parent homes. Participating families were less likely to be considered proficient in the English language, and students tended to score lower on standardized tests than their peers in public schools. As one report concluded:

“The overall picture of the Corporate Tax Credit is that it is reaching its intended recipients: poor students.... This is an important result because one might worry that private schools would somehow ‘cherry pick’ especially bright students out of the pool of applicants with Corporate Tax Credit scholarships. Such cherry picking evidently does not occur or is overwhelmed by the program’s disproportionate appeal to students who are struggling in school.”<sup>90</sup>

During the 2005–2006 school year, 895 private schools participated in the program. Among participating students, 81 percent chose a religiously affiliated school and 19 percent chose a nonreligious school. As of November 2006, 879 private schools were participating in the program, 83 percent of which were religious and 17 percent of which were secular.<sup>91</sup> Parents can receive a \$500 SFO scholarship to pay transportation costs to an out-of-district public school, but thus far those monies account for only about one percent of total disbursements.<sup>92</sup>

## 5. Could Massachusetts Expand School Choice with Tax Benefits?

The Minnesota, Arizona, and Florida tax credit and deduction programs are remarkably varied in design. The size of tax liability reductions, the organizations and individuals that qualify for such reductions, the list of expenses that can be claimed, the targeted student beneficiaries, the types of participating public and private schools, and the role of intermediary organizations that dispense scholarships all differ greatly among the three states.

A comprehensive analysis of how each distinguishing feature contributes to programmatic successes and failures exceeds this study's purview. Instead, we identify selected characteristics that augment the capacity of low-income families to take advantage of broader educational opportunities, or that mitigate well-established concerns about the constitutionality of government programs that direct financial resources to parochial schools. We then conclude by recognizing two challenges that advocates of tax credit programs in any state, but Massachusetts in particular, must confront.

### 5.1 Helping Low-Income Families

If tax credit and deduction programs are to expand the array of viable schooling options available to low-income families, the programs must do more than subsidize middle- and upper-income families who have already opted out of the public school system.<sup>93</sup> Unfortunately, it is not immediately obvious that programs will succeed in this regard. Middle- and upper-income families share a disproportionate share of the tax burden and therefore stand to benefit the most from tax relief.<sup>94</sup> Also, middle- and upper-income families are more likely to know about tax credit and

deduction programs. An intention to expand the educational choices of low-income families does not guarantee such an achievement.

Through political compromise and some genuine foresight, legislators have designed programs that address some of the challenges faced by families with few educational options. For starters, it is worth recognizing the important advantages that tax credits have over tax deductions. Because they primarily benefit those who pay taxes, and because they then award relief on the basis of a family's variable tax rate, tax deductions award relatively small and regressive benefits.

Tax credits, which do more than just reduce taxable income, can cover a substantial share of the costs of attending a private school. By awarding rebates to those families who do not pay taxes, tax credit programs do a better job of enabling students in the lowest income brackets to attend private schools.

Other challenges persist. Simply because parents can claim a full tax credit in the spring of an academic year does not mean that they can front the costs of a private education the preceding fall. Since they would find it especially burdensome to assemble the funds required to pay tuition and related fees, many low-income families may forego the benefits of a tax credit program. The programs surveyed here introduce two solutions to this problem. Minnesota allows low-income families to secure no-interest loans at the beginning of a school year, in anticipation of the tax credits they expect to receive at year's end. Though data are not currently available on current recipients, the opportunity to secure a loan should alleviate the financial burdens that low-income families face when trying to send their children to private schools.

The Arizona and Florida programs offer an even more powerful solution. By awarding tax credits to individuals and corporations who donate monies to non-profit organizations that, in turn, dispense scholarships to parents, these states significantly reduce the upfront financial burden of attending a private school.

To be sure, scholarship organizations present oversight problems of their own. As we have seen in Arizona, some evidence has emerged of families gaming the system by donating money that is earmarked (if informally) for their own children's education, and more serious abuses were documented in the early years of Florida's program. Additionally, because many of these organizations serve a handful of private schools, families with pre-established relationships with these schools are more likely to learn about the scholarship programs; if these families tend to be better connected and more privileged, they may be among the first to secure scholarships. The Arizona state government also does not require that student tuition organizations award scholarships on the basis of financial need.

Corrective measures for each of these problems, however, are not difficult to devise: regular audits may reduce the incidence of gaming; states can take tangible steps to encourage the dissemination of information about student tuition organizations; and states may consider offering scholarships on a sliding scale, such that lower-income families receive larger awards. Finally, if legislators seek to substantially expand the array of educational options presented to low-income families, they must ensure that credits and scholarships are reasonably large and cover a wide range of educational expenses.

In this sense, Minnesota's tax credit program is inferior to both Arizona's and Florida's. Minnesota's program covers just 75 percent of spending, is capped at \$1,000 per child, and does not cover tuition costs. Under the law, qualifying Minnesota families claimed on average a credit of just \$250, a small fraction of the total costs associated with sending a child to private school.

By contrast, the scholarships awarded in Arizona generally exceeded \$1,000 and could be used to defray tuition costs, and in Florida, scholarships were almost four times as large. To the extent that program operators can further increase the monetary value of these scholarships, program benefits could reach more low-income families.

## **5.2 Preparing for Constitutional Challenges**

Like many traditional choice initiatives, tax deduction and tax credit programs seek to lower the financial barriers to a private education. From the perspective of parents, the Arizona and Florida programs are virtually indistinguishable from public and private voucher initiatives. In all, qualifying parents receive financial relief that may enable their children to attend private school. The only difference is that state approved non-profit organizations, rather than designated state agencies or foundations, dispense scholarships. Unlike voucher initiatives, however, tax deduction and credit programs have a variety of characteristics that protect them from judicial challenges based upon the current boundaries set by court decisions to separate church from government under the establishment clauses of state and federal constitutions.<sup>95</sup> Focusing on the Arizona and Florida

tax credit programs, this section outlines several of the most prominent advantages.

First, the state never actually retains the monies used to fund scholarships under tax credit programs. There is no line in the state budget that legislators must pass each year, deciding what proportion of government funds will be used to subsidize parochial schools. Instead, money is fronted by individuals, corporations, and interest groups, with the primary consequence to the state government being the reduction of its tax base. Again, from the vantage point of parents, all of this is immaterial. This financial arrangement means that a check is sent to a private school from a non-profit organization, rather than state government. This allays concerns about the “entanglement” of states with religious groups.

By leaving non-profit organizations to assume responsibility for disbursing scholarships, the government defends itself from the First Amendment questions that could result from direct state aid to private schools. In principle, the state’s involvement can be trivial. The state need not decide who qualifies for a scholarship, the size of the scholarship, or the duration of giving. Perhaps more important still, the existence of a tax credit program need not materially enhance the state’s regulation of private schools. The state need only recognize charitable giving to these organizations as qualifying for tax credits, as it currently does for many other organizations, and ensure that such organizations abide by existing anti-discrimination and other standard regulatory laws.

Finally, tax credit and deduction programs retain a key characteristic that state and federal courts have emphasized when upholding voucher initiatives—namely, that the monies are directed to parochial schools by virtue of the independent educational choices made by parents on behalf of their children. As just one example of this line of reasoning, Justice Sandra Day O’Connor noted, in a case affirming the constitutionality of the use of federal funds for computer and other instructional costs in private schools:

“When the government provides aid directly to the student beneficiary, that student can attend a religious school and yet retain control over whether the secular government aid will be applied toward the religious education. The fact that aid flows to the religious school and is used for the advancement of religion is therefore wholly dependent on the student’s private decision.”<sup>96</sup>

With tax credits and deductions, the state therefore is thrice removed from the religiosity of some private schools: the monies used to finance schooling costs are never taken from the state, but instead are transferred from the individual accounts of taxpayers; non-profit organizations, rather than the state, assume responsibility for awarding scholarships; and monies end up in private schools only as a result of the independent choices of parents. To be sure, some state constitutions have other stipulations—such as “uniformity” and “local control” requirements—that further restrict the flow of aid to private schools.<sup>97</sup> But at least as regards the First Amendment of the U.S. Constitution, tax credit programs have clear advantages over traditional voucher initiatives.<sup>98</sup>

Appropriately designed tax credit programs have the potential to significantly expand the educational opportunities of low-income families. Such programs, moreover, may win court challenges where voucher initiatives have lost. Should state legislators in Massachusetts decide to enact a tax credit program, and one that can withstand judicial scrutiny in both the short and longer term, they will confront two challenges—the first involving particular elements of the state constitution, the second a more general penchant to regulate. We address each in turn.

Like other state constitutions with Blaine amendments,<sup>99</sup> the Massachusetts constitution includes language that explicitly restricts the provision of aid to private schools. In the late 1980s, the last time that the state legislature seriously contemplated enacting private education tax deductions, the Supreme Judicial Court of Massachusetts issued an advisory warning. In the Court's words, "If aid has been channeled to the student rather than to the private school, the focus still is on the effect of the aid, not on the recipient."<sup>100</sup>

Whereas other states' courts recognized the private choices of individual parents made on behalf of their children, insisting only that a wide range of options be presented to them, the Supreme Judicial Court found problematic the direction of any aid whatsoever to schools that are not under the direct control of the state. The Court noted that the anti-aid provisions of the state's constitution were "much more specific" than the federal constitution. Barring a constitutional amendment, then, anything more than a mild tax deduction program that offsets educational

expenses for public school parents would probably not withstand judicial scrutiny—at least according to the Court's position two decades ago.

Of course, changing the constitution is no easy task, as tax credit supporters themselves have learned. In 1999, a broad coalition of parents collected the signatures required to strike down the constitution's anti-aid amendment by initiative petition. State officials, however, refused to comply, arguing that the initiative process could not be used to amend or overturn constitutional provisions pertaining to religion.

In 2005, the First Circuit affirmed the state officials' decision, effectively foreclosing the initiative process to plaintiffs interested in paving the way for voucher, tax credit, and other educational choice programs.<sup>101</sup> As it currently stands, changes to the constitution will either have to originate in the state legislature or result from federal court intervention.

It is possible, though, that the Supreme Judicial Court might rule differently today than it suggested it would have two decades ago. After all, the Court's advisory position then was just that: advisory. The justices did not issue a formal ruling that in any way would bind the current Court. Additionally, in the last 20 years a number of other state and federal rulings have upheld the constitutionality of tax credits; and though these cases do not constitute precedent in Massachusetts, they may nonetheless influence justices' thinking on the topic. One can imagine, then, that the Supreme Judicial Court, which has experienced significant turnover in the past two decades, might not see a conflict between the constitution's anti-aid amendment

and a tax credit program, especially one that covered both public and private school education costs.

### **5.3 Building Political Support**

Suppose then that advocates of tax credits within Massachusetts could overcome these constitutional impediments. The fight will not end there. Rather, supporters will need to brace themselves for an ongoing struggle involving the state legislature—and one that may have consequences for federal judges' longer-term assessments of the program's constitutionality.

As previously discussed, tax credit programs have a variety of characteristics that separate the government from parochial schools. The trouble is that once students begin to use tax credit scholarships, public scrutiny will shift to the private schools who receive new students, and an abusive teacher, financial impropriety, a school's draconian admissions standards, or any other impropriety can be expected to attract widespread media attention. Massachusetts legislators may feel an obligation to either curtail the program or introduce new regulations of religious private schools. Should they choose the latter alternative, which seems likely, legislators may negate the unique jurisprudential advantages that tax credit programs currently enjoy relative to voucher initiatives.

In this regard, Florida's experience is instructive. With a spate of broadly publicized abuses in 2003, legislators in that state responded as legislators are wont to do—by drafting regulations meant to stamp out perceived wrongdoings. As of 2006, every party to the tax credit program—from the students who applied for scholarships to the non-profit

organizations that disbursed them to the private schools that accepted them—was subject to new rules and requirements.

Politically, this makes perfect sense. Legally, though, it presents altogether new problems, as these legislators may have unwittingly stripped the tax credit program of the legal advantages outlined above. By demanding that private schools abide by new strictures involving the hiring and firing of teachers and the testing of students, the tax credit program may introduce a greater degree of state involvement in private religious schools. The public's predilection to equate regulations with solutions, and legislators' willingness to play along, may conspire against the constitutionality of tax credit programs.

The introduction of tax credit programs to Massachusetts will initially require vigorous advocacy, and ensuring the program's longer-term prosperity will require equally vigorous defense.

## 6. Conclusion and Recommendations

Based on our review of the Minnesota, Arizona, and Florida programs, we offer the following lessons and recommendations:

1) **Tax credits provide substantially greater assistance than tax deductions.** Because the poor have lower tax rates, they receive much less benefit from tax deductions than the wealthy, and never enough to pay the majority of a child's private school tuition. In 2007 in Minnesota, the only one of the three states examined that offers a tax deduction program, estimated average deductions came to just \$71 a household.

2) **Eligibility for charitable scholarships should be based on need.** Because the state of Arizona does not require that need be taken into account, it is not clear whether its scholarships are just "topping off" the tuitions of students who were already headed to private schools. Florida, on the other hand, limits scholarship applicants to those eligible for free or reduced-price lunches. Thus, Florida's program has been reaching students who otherwise would not have been able to attend a private school.

3) **The value of scholarships should approach the cost of tuition.** Although Arizona has a successful tax credit program for both individuals and corporations, the average scholarship was only \$1,370 in 2005. This amount is less than half the cost of the typical private school's tuition. In the same year, Florida capped its scholarships at either \$3,500 or the cost of tuition, a degree of support that substantially enhances the schooling opportunities for poorer students.

4) **Scholarship money should be provided to families in the fall.** Tax time is in the spring, far beyond the due date for school tuition and most expenses. This places the disadvantaged at an additional disadvantage and makes it harder for their children will be able to enroll in private schools even when they are awarded a scholarship. Minnesota allows for no-interest loans to low-income families at the beginning of the year in anticipation of tax credits. Florida and Arizona address this problem through the intermediation of scholarship funding organizations, which can dispense money at the beginning of the school year.

**5) Tax benefits for tuition should be provided to corporations as well as individuals.**

Tax benefits are an important incentive for corporations to make charitable contributions. Scholarship funding organizations should be encouraged to seek financial assistance from a variety of sources. Broadening financial support for the education of low-income students can also serve to broaden political support for choice in education.

**6) Tax benefits should be provided to both public and private school students.** Because public schools now commonly charge activity fees as a condition of participating in extra-curricular activities, a tax credit program could materially benefit both public and private school parents. Additionally, a program that dispenses aid to both public and private school families may be more likely to withstand constitutional scrutiny.

**7) The state should monitor and regulate the disbursal of scholarships.** To avoid the kinds of scandals that plagued the Florida program, appropriate levels of oversight and transparency are essential.

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## 7. Notes

1. *Zelman v. Simmons-Harris* 536 U.S. 639 (2002).
2. *Owens v. Colorado Congress of Parents*, No. 03-0364, Col. (2004); *Holmes v. Bush*, No. 04-2323, Fla. (2006).
3. Considerably more students have participated in privately financed school voucher programs, topping out at more than 100,000 in 2000. There too, though, enrollments over the last several years appear to have either leveled off or declined. See Matthew Ladner, *Just Doing It: Surveying America's Privately Funded School Choice Grants Programs for Growth, Impact, and Progress* (Austin, Texas: Children First America, 2001); William Howell and Elena Llaudet, "School Vouchers," in the *International Encyclopedia of the Social Sciences* 2nd Ed (Farmington Hills, MI: Macmillan Reference USA/Thomson Gale, 2007). Data from Ohio is not yet available.
4. For a more detailed description of the legislative history of the Minnesota tax deduction program, see Betty Malen, "Enacting Tuition Tax Credit Deduction Statutes in Minnesota," *Journal of Education Finance*, 11, no. 1, 1985: 1-28.
5. The complete list of qualifying expenses currently includes tuition; tutoring; academic summer camps and after-school enrichment programs; transportation costs paid to others; nonreligious textbooks; required items for courses such as shop, home economics, and art; clothing required for physical education classes; driver's education courses taken for school credit; music lessons; rental or purchase of musical instruments; and up to \$200 for computer hardware and educational software. Some of the expenses that do not qualify include the costs of driving a child to/from school, expenses for overnight trips, school lunches, internet access, non-educational software, sport camps, tuition or expenses at preschool or post-high school classes, and materials used in programs that teach religious beliefs. Nina Manzi and Lisa Larson, "Income Tax Deductions and Credits for Public and Nonpublic Education in Minnesota," Information Brief of the Minnesota House of Representatives, House Research Department, September 2006: 6-7, at [www.house.leg.state.mn.us/hrd/pubs/educcred.pdf](http://www.house.leg.state.mn.us/hrd/pubs/educcred.pdf). The current Minnesota Education Deduction is in Minnesota Statutes 290.01, listed under Subd. 19b (3).
6. As defined in the legislation, "education costs" included tuition, classroom instructional fees, and textbooks. The credit could not be used to defray the costs of textbooks used to teach religious tenets or doctrines.
7. Manzi and Larson 2006: 16.
8. Manzi and Larson 2006: 16.
9. Laws 1997, 1st spec. sess., ch. 4, art. 13.
10. Laws 2001, 1st spec. sess., ch. 5, art. 9. See also Minnesota Revenue. K-12 Education Subtraction and Credit: Income Tax Fact Sheet 8, at [www.taxes.state.mn.us/individ/publications/fact\\_sheets\\_by\\_name/pdf\\_content/fs8\\_05.pdf](http://www.taxes.state.mn.us/individ/publications/fact_sheets_by_name/pdf_content/fs8_05.pdf).
11. Laws 2005, 1st spec. sess., ch. 3, art. 3. The current Minnesota Education Credit is in Minnesota Statutes 290.0674.
12. 514 F. Supp. 998, 1003 (1981).
13. 676 F.2d 1195, 1205 (1982).
14. *Mueller v. Allen*, 463 U.S. 388 (1983).
15. The plaintiffs showed that about 95 percent of Minnesota's 91,000 nonpublic school students attended sectarian schools during the 1979-1980 school year. Plaintiffs also showed that while 87,000 parochial school students represented about 10 percent of the state's total elementary and secondary school population, 71 percent of the \$2.4 million state revenue lost through the tuition deduction was due to taxpayers with children in parochial schools; 820,000 students attended the state's public schools at the time. Manzi and Larson 2006: 10.
16. See *Lemon v. Kurtzman*, 403 U.S. 602 (1971).
17. The Court identified several valid secular purposes for the law: ensuring an educated populace; the continued financial health of private schools, helping relieve the financial burden on public schools; providing all children with the highest quality education. The following factors were relevant in upholding the constitutionality of the deduction under the second part of the *Lemon* test: the deduction was one of many deductions available to Minnesota taxpayers; the legislature had considerable discretion in making tax classifications and distinctions; the deduction was available to parents of both public and nonpublic school children; public funds became available only as a result of "numerous, private choices of individual parents"; the financial benefits to parochial schools were minor. Finally, the Court found that the statute's potential for excessive government entanglement under the third part of the *Lemon* test might come only from state officials' need to decide whether particular textbooks qualify for the deduction. However, the Court found that the administrative involvement implicated in the Minnesota

statute was similar to the government's involvement in other programs that the Court had already approved. Manzi and Larson 2006: 10–11.

18. In the early 1970s, New York provided programs that reimbursed low-income parents for private school tuition, allowed a private school tuition deduction for parents who were not entitled to the tuition reimbursement, and gave direct money grants to private schools for maintaining and repairing school facilities and equipment. In the 1973 case *Committee for Public Education and Religious Liberty v. Nyquist* (413 U.S. 756 (1973)), the U.S. Supreme Court, in a six-to-three decision, found New York's programs unconstitutional. See Manzi and Larson 2006: 16–17.

19. 302 Minn. 216, 224 N.W.2d 344 (1974), cert. denied, 421 U.S. 988 (1975).

20. The largest tax decrease for the maximum \$2,500 deduction is \$196.25, which goes to taxpayers in the 7.85 percent bracket. Taxpayers in the 5.35 percent bracket receive a tax decrease of \$133.75 for a \$2,500 deduction.

21. Nina Manzi. "Income Tax Terms: Deductions and Credits," Information Brief of the Minnesota House of Representatives, House Research Department, July 2005: 3, at [www.house.leg.state.mn.us/hrd/pubs/taxterms.pdf](http://www.house.leg.state.mn.us/hrd/pubs/taxterms.pdf).

22. Nina Manzi and Lisa Larson. "Income Tax Deductions and Credits for Public and Nonpublic Education in Minnesota," Information of Brief of the Minnesota House of Representatives, House Research Department, September 2006: 8, at <http://www.house.leg.state.mn.us/hrd/pubs/educcred.pdf>.

23. Nina Manzi and Lisa Larson. "The K-12 Education Deduction and Credit: An Overview," Information Brief of the Minnesota House of Representatives, House Research Department, September 2006, at <http://www.house.leg.state.mn.us/hrd/issinfo/sseducdc.pdf>. One report estimated deduction participation in 2002 at 19.6 percent of all families and credit participation at 10.5 percent of eligible families. See Greg Forster, *Using School Choice: Analyzing How Parents Access Educational Freedom* (Indianapolis: The Friedman Foundation, 2005): 37.

24. There currently is no family maximum subtraction, only the per-child maximum. Minnesota Revenue, "K-12 Education Subtraction and Credit: Income Tax Fact Sheet 8," at [www.taxes.state.mn.us/individ/publications/fact\\_sheets\\_by\\_name/pdf\\_content/fs8\\_05.pdf](http://www.taxes.state.mn.us/individ/publications/fact_sheets_by_name/pdf_content/fs8_05.pdf).

25. Prior to tax year 1998, the deduction was available only to taxpayers who claimed itemized deductions at the federal level. Thus, according to the report, the deduction had virtually no effect on private school costs for low-income parents because most of them could not itemize. Linda Darling-Hammond and Sheila Nataraj Kirby, with Priscilla M. Schlegel, *Tuition Tax Deductions and Parent School Choice: A Case Study of Minnesota* (Santa Monica, CA: The Rand Corporation, 1985). See also Sheila Nataraj Kirby and Linda Darling-Hammond "Parental Schooling Choice: A Case Study of Minnesota," *Journal of Policy Analysis and Management* 7, no. 3, spring 1988: 506-517.

26. While nearly two-thirds of respondents to this study had heard of the deduction, only 28 percent had ever claimed it, including 11.5 percent of public school parents, 8.3 percent of lower-income parents, and 7.7 percent of nonwhite parents. For all of these groups, the amounts claimed were mostly below \$100.

27. The Transportation of School Children Act, enacted in 1969, required the provision of transportation services to all children, regardless of whether they attended a public or private school. Darling-Hammond, Kirby, and Schlegel 1985.

28. Prior to 2002, the amount of the K–12 education credit was 100 percent of allowable expenses rather than 75 percent.

29. The household income limit increases by \$2,000 for each additional qualifying child—to \$39,500 for three children, \$41,500 for four children, and so on. Income includes nontaxable interest, Social Security, and public welfare benefits. (The same broad income measure is used to calculate phase-outs under the state's property tax refund and dependent care credit). Married persons filing separate returns do not qualify for the credit. Beginning in tax year 2005, only one person may claim the qualifying expenses paid for a given child. See Manzi and Larson 2006: 12; Forster 2005: 36; Minnesota Revenue, "K–12 Education Subtraction and Credit: Income Tax Fact Sheet 8," at [www.taxes.state.mn.us/individ/publications/fact\\_sheets\\_by\\_name/pdf\\_content/fs8\\_05.pdf](http://www.taxes.state.mn.us/individ/publications/fact_sheets_by_name/pdf_content/fs8_05.pdf).

30. See Laws 2001, 1st spec. sess., ch. 5, art. 9, sec. 12; and Laws 2003, ch. 127, art. 3, sec. 23.

31. Minnesota Revenue, "K–12 Education Subtraction and Credit: Income Tax Fact Sheet 8."

32. Minnesota Statutes, section 123B.36 lists school-related costs for which school boards may charge fees. Some of the authorized education expenses qualify for both the tax deduction and credit.
33. Minnesota Revenue, “K–12 Education Subtraction and Credit: Income Tax Fact Sheet 8.”
34. Manzi and Larson 2006: 14.
35. William Belanger, “Senator Belanger Offers Tax Time Tips—Availability of Free Filing and Valuable Education Credit Programs Often Overlooked Says Senator,” news release, January 11, 2006, available at [www.senate.leg.state.mn.us/members/member\\_pr\\_display.php?id=33](http://www.senate.leg.state.mn.us/members/member_pr_display.php?id=33). Data on the number and type of public and private schools attended by students whose families claim deductions and/or credits, however, are not currently available.
36. In the House, 30 of 36 Republicans and one Democrat supported the measure. In the Senate, three Republicans opposed the measure and one Democrat voted for the measure. Dan Laitsch, “School Choice and Privatization Efforts in the States: A Legislative Survey,” AACTE Issue Paper, October 1998, at [www.edpolicy.org/publications/documents/priv.htm](http://www.edpolicy.org/publications/documents/priv.htm). See also Arizona Legislative Information System at [www.azleg.gov/legtext/43leg/1r/bills/hb2074o.htm](http://www.azleg.gov/legtext/43leg/1r/bills/hb2074o.htm).
37. See Glen Wilson, “The Equity Impact of Arizona’s Education Tax Credit Program: A Review of the First Three Years (1998–2000),” Arizona State University Education Policy Studies Laboratory, March 2002: 3, at [www.asu.edu/educ/eps1/EPRU/documents/EPRU%202002-110/epru-0203-110.htm](http://www.asu.edu/educ/eps1/EPRU/documents/EPRU%202002-110/epru-0203-110.htm).
38. Arizona Legislative Information System at [www.azleg.state.az.us/legtext/43leg/1r/laws/0048.htm](http://www.azleg.state.az.us/legtext/43leg/1r/laws/0048.htm).
39. Arizona Department of Revenue. “School Tax Credits,” Publication 707, revised September 2006: 1, at [www.azdor.gov/brochure/707.pdf](http://www.azdor.gov/brochure/707.pdf).
40. Such activities include band uniforms, equipment or uniforms for varsity athletics, and scientific laboratory materials. The public tax credit was expanded in 2003 to include support of character education programs. A character education program as defined in Arizona Revised Statute 15-719 must include instruction in the definition or application of at least six of the following character traits: truthfulness, responsibility, compassion, diligence, sincerity, trustworthiness, respect, attentiveness, obedience, orderliness, forgiveness, and virtue.
41. Bill 1529 (Chapter 334) amended A.R.S. 43-1089.01 (credit for fees paid or contributions made to public schools) for tax year 2005, 2006, and later years. See “2005 Arizona Legislative Summaries,” Arizona Tax News: 7, at [www.azdor.gov/Newsroom/TaxNews/0805news.pdf](http://www.azdor.gov/Newsroom/TaxNews/0805news.pdf). See also Arizona Revised Statutes 43-1089.01, at [www.azleg.state.az.us/ars/43/01089-01.htm](http://www.azleg.state.az.us/ars/43/01089-01.htm).
42. Arizona Revised Statutes 43-1089, at <http://www.azleg.state.az.us/ars/43/01089.htm>.
43. Additionally, the 2006 law created scholarship programs for foster children and special education students. Arizona’s Democratic Governor, Janet Napolitano signed the foster care and special education school choice programs into law and allowed the corporate tax credit bill to become law without her signature. See “Arizona Enacts Nation’s First School Choice Scholarship Program for Foster Children,” Alliance for School Choice, June 21, 2006, at [www.allianceforschoolchoice.org/media\\_center.aspx?IITypeID=3&IIID=2712](http://www.allianceforschoolchoice.org/media_center.aspx?IITypeID=3&IIID=2712). See also Dan Lips and Evan Feinberg. “School Choice: 2006 Progress Report,” Heritage Foundation Backgrounder, no. 1970, September 18, 2006, at [www.heritage.org/research/education/bg1970.cfm](http://www.heritage.org/research/education/bg1970.cfm).
44. Jacobs Engineering, “Rehabilitation and Restoration of the Longfellow Bridge,” Public Information Meeting, May 24, 2006, <http://www.mhd.state.ma.us/default.asp?pgid=longfellowbridge/longfellow&sid=level2>. Accessed August 31, 2006.
45. *Boston Globe*, January 22, 2006, <http://www.boston.com/news/local/massachusetts/articles/2006/01/22>. Accessed March 5, 2007.
46. American Society for Testing and Materials, “Standard Practice for Measuring Life-Cycle Costs of Buildings and Building Systems,” ASTM-E917-94, January, 1995.
47. Lips and Feinberg 2006. See also press release, “Four New School Choice Measures Make History,” Goldwater Institute, June 21, 2006, at [www.goldwaterinstitute.org/article.php?/1042.html](http://www.goldwaterinstitute.org/article.php?/1042.html). The Arizona legislature passed a corporate scholarship tax credit program under Senate Bill 1499 earlier in 2006. The new plan has expanded the cap on tax credit contributions from \$5 million to \$10 million.
48. *Kotterman v. Killian*, 972 P.2d. For a useful summary of the case, see Dan Laitsch. “School Choice and Privatization Efforts in the States: A Legislative Survey,” AACTE Issue Paper, October 1998, at [www.edpolicy.org/publications/documents/priv.htm](http://www.edpolicy.org/publications/documents/priv.htm).

46. *Kotterman v. Killian*, 972 P.2d.
47. *Mueller v. Allen*, 463 U.S. 388, 390-91 (1983).
48. *Kotterman v. Killian*, 972 P.2d at 615. See also Krista Kafer, “School Choice in 2003: An Old Concept Gains New Life,” *Heritage Foundation Legal Memorandum No. 9*, March 19, 2004: 7, at [www.heritage.org/research/education/lm9.cfm](http://www.heritage.org/research/education/lm9.cfm).
49. *Kotterman v. Killian*: 27.
50. *Kotterman v. Killian*: 29–30.
51. See Tim Keller, “School Choice under Attack in Arizona—Again,” *Liberty and Law* 13, no. 4 (August 2004) at: [www.heritage.org/research/education/schoolchoice/Arizona.cfm](http://www.heritage.org/research/education/schoolchoice/Arizona.cfm); George A. Clowes, “Federal Court Upholds Arizona Tax Credit,” *School Reform News*, Heartland Institute, May 1, 2005 at [www.heartland.org/Article.cfm?artId=16876](http://www.heartland.org/Article.cfm?artId=16876).
52. To qualify as a 501(c)(3), STOs must supply the Internal Revenue System with copies of the scholarship application and program brochures, rules of eligibility, selection criteria, and scholarship processing procedures.
53. Administrative costs include establishing and incorporating the STO as a non-profit organization, office equipment, employee time, office supplies, and marketing fees. For obvious reasons, limits on administrative expenses are especially burdensome on small STOs. In 2004–2005, the Catholic Tuition Organization of the Dioceses of Phoenix received approximately \$9.6 million in donations and could use up to \$960,000 for administrative purposes. In contrast, Carden Schools Scholarship Fund received \$9,990 and could allocate only \$999 for its administrative costs. See Wilson 2002 and Arizona Department of Revenue, Office of Economic Research & Analysis, “Individual Income Tax Credit for Donations to Private School Tuition Organizations: Reporting for 2005,” March 23, 2006: 6 at [www.azdor.gov/ResearchStats/private\\_schl\\_credit\\_report\\_2006.pdf](http://www.azdor.gov/ResearchStats/private_schl_credit_report_2006.pdf).
54. Arizona Department of Revenue, “School Tax Credits,” Publication 707 at [www.azdor.gov/brochure/707.pdf](http://www.azdor.gov/brochure/707.pdf).
55. According to a 2004 Goldwater Institute survey, three-quarters of private schools in Arizona are sectarian, yet 83 percent of these schools do not require religious affiliation for admission. See Vicki Murray and Ross Groen, “Survey of Arizona Private Schools: Tuition, Testing, and Curricula,” *Goldwater Institute Policy Report*, No. 199, January 5, 2005: 22, at [www.goldwaterinstitute.org/pdf/materials/506.pdf](http://www.goldwaterinstitute.org/pdf/materials/506.pdf).
56. Dan Lips, “The Impact of Tuition Scholarships on Low-Income Families: A Survey of Arizona School Choice Trust Parents,” *Goldwater Institute Policy Report*, no. 187, December 11, 2003: 4.
57. Lips 2003: 3.
58. Most scholarships do not cover the full tuition at most private schools in Arizona. Based on a Cato Institute survey of private schools during the 2000–2001 school year, 71 percent of private schools charge \$4000 or less, with the modal tuition running between \$2000 and \$3000. All the schools with tuition below \$2000 were parochial. Despite the disparity between scholarship awards and tuition expenses, many STOS have waiting lists, especially those that service independent, non-parochial schools. Carrie Lips and Jennifer Jacoby, “The Arizona Scholarship Tax Credit Giving Parents Choices, Saving Taxpayers Money,” *Cato Institute Policy Analysis*, no. 414, September 17, 2001:6, at [www.cato.org/pubs/pas/pa414.pdf](http://www.cato.org/pubs/pas/pa414.pdf); Arizona Department of Revenue, Office of Economic Research & Analysis, “Individual Income Tax Credit for Donations to Private School Tuition Organizations: Reporting for 2005,” March 23, 2006: 3, at [http://www.azdor.gov/ResearchStats/private\\_schl\\_credit\\_report\\_2006.pdf](http://www.azdor.gov/ResearchStats/private_schl_credit_report_2006.pdf).
59. Arizona Department of Revenue, Office of Economic Research & Analysis 2006: 3. Students are allowed to receive scholarships from more than one STO, so the reported number of participants will be somewhat lower than the number of scholarships actually awarded. Data are not available on the precise number of students receiving scholarships from multiple STOs. Families are required to reapply for their scholarships every year for as long as they participate.
60. Arizona Department of Revenue, Office of Economic Research & Analysis 2006.

61. Lips and Jacoby 2001; Arizona Department of Revenue, Office of Economic Research & Analysis 2006. p. 3.
62. Only seven of the 54 STOs operating in 2005 gave scholarships to 25 or more private schools. Four STOs gave scholarships to only one private school, though students ostensibly could have used scholarships from these STOs to attend another private school. Arizona Department of Revenue, Office of Economic Research & Analysis. "Individual Income Tax Credit for Donations to Private School Tuition Organizations: Reporting for 2005," March 23, 2006, at [www.azdor.gov/ResearchStats/private\\_schl\\_credit\\_report\\_2006.pdf](http://www.azdor.gov/ResearchStats/private_schl_credit_report_2006.pdf). In its fiscal analysis of the tax credit law for years 1997–1999, the Joint Legislative Budget Committee (JLBC) believed that private schools would take advantage of the tax credit by setting up "school tuition organizations" to provide scholarships to their students. Arizona Legislative Information Service at [www.azleg.gov/FormatDocument.asp?inDoc=/legtext/43leg/1r/fiscal/2074.htm](http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/43leg/1r/fiscal/2074.htm). See also Lips and Jacoby 2001.
63. Elliot Mincberg, Arohi Pathak, and Dwight Holmes, "A Model to Avoid: Arizona's Tuition Tax Credit Law," People for the American Way Foundation, September 2001.
64. Lips and Jacoby 2001.
65. Wilson 2002: 18; Mincberg, Pathak, and Holmes 2001.
66. Carrie Lips Lukas. "The Arizona Scholarship Tax Credit: Providing Choice for Arizona Taxpayers and Students," *Goldwater Policy Report No. 186*, December 11, 2003, at [www.goldwaterinstitute.org/pdf/materials/380.pdf](http://www.goldwaterinstitute.org/pdf/materials/380.pdf).
67. Paul Davenport, "Districts Promote Tax Credit to Benefit Schools, Taxpayers," Associated Press State & Local Wing, August 29, 1998.
68. "Abuse of School Tax Credit Must Stop," *The Arizona Republic*, April 17, 2000, as cited in Mincberg, Pathak, and Holmes 2001: 4.
69. Wilson 2002: 18.
70. Florida 2001 Statutes Section 220.187.
71. Florida 2003 Statutes Section 220.187 (7)(a).
72. Florida 2006 Statutes Section 220.187 (2)(b), (5) (b). See also National Conference of State Legislatures, "Tuition Tax Credit and Deduction," at [www.ncsl.org/programs/educ/schoolchoicetaxdeduction.htm](http://www.ncsl.org/programs/educ/schoolchoicetaxdeduction.htm).
73. Additionally, 75 percent of each scholarship must cover tuition costs to an eligible nonpublic school. The remaining 25 percent can be used to cover tuition or other education expenses, such as textbooks or transportation.
74. The one exception concerns the prioritization of qualified students who received a scholarship from an eligible nonprofit scholarship-funding organization during the previous school year.
75. S.V. Dáte and Kimberly Miller, "Tougher voucher rules proposed," *Palm Beach Post*, April 29, 2003, at [www.palmbeachpost.com/news/content/news/vouchers/vouchers0829.html](http://www.palmbeachpost.com/news/content/news/vouchers/vouchers0829.html).
76. Florida 2006 Statutes Section 220.187 (6)(e)(f)(g).
77. HEROES and Children First-Central Florida held 12 such meetings in 2005 with 550 participants; Florida PRIDE held 28 meetings with 1,860 participants. See 2005 Step Up For Students Annual Report at [www.stepupforstudents.com/SUFS-ANNUAL-REPORT-06.pdf](http://www.stepupforstudents.com/SUFS-ANNUAL-REPORT-06.pdf).
78. Florida 2005 Statutes Section 220.187 (3)(b).
79. As cited in Manzi and Larson 2006: 25.
80. Kimberly Miller, "Terror-Tied School Gets State Perk," *Palm Beach Post*, July 17, 2003, at <http://www.palmbeachpost.com/search/content/news/vouchers/vouchers0717.html>.
81. Kimberly Miller, "Voucher Reform Died after Leader's Attempt at a Deal," *Palm Beach Post*, May 3, 2004, at [www.palmbeachpost.com/news/content/news/vouchers/vouchers/050304.html](http://www.palmbeachpost.com/news/content/news/vouchers/vouchers/050304.html).
82. S.V. Dáte and Kimberly Miller, "Biggest Distributor of Vouchers Quitting," *Palm Beach Post*, January 15, 2004, at [www.palmbeachpost.com/news/content/news/vouchers/vouchers0115.html](http://www.palmbeachpost.com/news/content/news/vouchers/vouchers0115.html).
83. Kimberly Miller, "67 Schools Haven't Answered Voucher Survey," *Palm Beach Post*, November 5, 2003, at [www.palmbeachpost.com/search/content/news/vouchers/vouchers1105.html](http://www.palmbeachpost.com/search/content/news/vouchers/vouchers1105.html).
84. S.V. Dáte and Kimberly Miller, "Voucher Entity's Approval Reviewed," *Palm Beach Post*, August 26, 2003, at [www.palmbeachpost.com/news/content/news/vouchers/vouchers0826.html](http://www.palmbeachpost.com/news/content/news/vouchers/vouchers0826.html).

85. S.V. D te, "Voucher group head accused of looting \$268,000," *Palm Beach Post*, January 30, 2004, at [www.palmbeachpost.com/news/content/news/vouchers/vouchers0130.html](http://www.palmbeachpost.com/news/content/news/vouchers/vouchers0130.html).
86. The 2004 Legislature failed to reach agreement on accountability measures for the state's choice programs. Kimberly Miller, "Lawmakers Fail on Voucher Accountability Bill," *Palm Beach Post*, May 1, 2004, at [www.palmbeachpost.com/search/content/news/vouchers/a10a\\_vouchers\\_0501.html](http://www.palmbeachpost.com/search/content/news/vouchers/a10a_vouchers_0501.html). See also Kimberly Miller, "Voucher Reform Died after Leader's Attempt at a Deal," *Palm Beach Post*, May 3, 2004, at [www.palmbeachpost.com/search/content/news/vouchers/050304\\_legis.html](http://www.palmbeachpost.com/search/content/news/vouchers/050304_legis.html) and S.V. D te, "Squabble over Standards Splits Voucher Advocates," *Palm Beach Post*, January 4, 2004, at [www.palmbeachpost.com/search/content/news/vouchers/vouchers010404.html](http://www.palmbeachpost.com/search/content/news/vouchers/vouchers010404.html).
87. For a complete listing of regulations, see: Florida 2006 Statutes Section 220.187 (2)(a)(2), (6); National Conference of State Legislatures. "Tuition Tax Credit and Deduction," at [www.ncsl.org/programs/educ/schoolchoicetaxdeduction.htm](http://www.ncsl.org/programs/educ/schoolchoicetaxdeduction.htm).
88. In 2002, the definition of "qualified student" expanded to include students eligible to enter kindergarten or first grade. See Florida 2002 Statutes Section 220.187 (2)(e).
89. See quarterly reports available at [www.floridaschoolchoice.org](http://www.floridaschoolchoice.org).
90. Caroline Hoxby and Sonali Murarka, "Comprehensive yet Simple: Florida's Tapestry of School Choice Programs" in Paul E. Peterson (ed), *Reforming Education in Florida: A Study Prepared by the Koret Task Force on K-12 Education* (Stanford, CA: Hoover Institution Press, 2006): 196.
91. See quarterly reports at [www.floridaschoolchoice.org](http://www.floridaschoolchoice.org).
92. S.V. D te and Kimberly Miller. "Vouchers Plan's Cost, Oversight Criticized," *Palm Beach Post*, April 23, 2003, at [www.palmbeachpost.com/news/content/news/vouchers/voucher\\_plan1.html](http://www.palmbeachpost.com/news/content/news/vouchers/voucher_plan1.html). See also Karla D. Shores, "Tax Credit Scholarships Helping Needy Children in Florida," *Sun-Sentinel*, February 12, 2003.
93. Unfortunately, no research has been conducted to date on this issue. Though we have clear estimates of the number of students participating in tax credit programs, we do not know how private school attendance rates would differ in the absence of these programs. This clearly is an issue requiring further study.
94. See Clive R. Belfield and Amy L. Wooten, "Education Tax Credits for America's Schools," National Center for the Study of Privatization in Education, Teachers College, Columbia University, February 2003: 1.
95. For a useful discussion on the topic, see Frank Kemerer, "The U.S. Supreme Court's Decision in the Cleveland Voucher Case: Where to from Here?," Occasional Paper No. 51, National Center for the Study of Privatization in Education, Teachers College, Columbia University, July 2002.
96. *Mitchell v. Helms*, 120 S.Ct. 2530 (2000), p. 2559. Emphasis in original.
97. The state supreme courts in Colorado and Florida both have overturned voucher initiatives on such grounds. For citations, see footnote 2 above.
98. For more on this, see Justice Stephen Breyer's dissenting opinion in *Zelman*.
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100. *Opinion of the Justices to the Senate*, 514 N.E. 2d 353 (Mass. 1987).
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