



## **School Choice – Private Schools**

### **Overview**

Parents have the right, as well as the responsibility, to direct their children's education in a manner consistent with their beliefs and with their knowledge of each child's unique needs, talents, and abilities. No one knows a child's distinctive characteristics as well as his parents. Many states are beginning to recognize this and passing legislation that enables parents to choose the education they deem best for their children. This includes establishing programs to provide parental choice grants so parents can use the money to send their child to a private school if they wish. These private schools should be free of government intervention, offering parents a true alternative to public school education.

### **Expanding School Choice**

Voucher programs, also known as educational choice grants, are a public policy option for expanding school choice. They are not government aid to private schools. Vouchers simply allow parents to direct funds already available for their children's education to the schools of their choice. Vouchers help those with low and middle-level incomes have the same access to private schooling as more affluent citizens because they do not have to pay twice for their child's education – once through taxes and a second time in tuition payments.

Voucher programs may precipitate unwarranted state regulation of private schools. Since vouchers are direct aid to parents, not private schools, voucher programs should be structured to allow voucher-funded schools complete freedom to set curriculum and educational standards. Participating religious schools must be allowed to exercise their First Amendment freedoms without any government interference. No school participating in a voucher program should be required to change its creed, curriculum or practices in order to participate.

Many cities and states are pursuing vouchers as an option to stimulate educational competition. Maine and Vermont have had voucher programs for years. Florida, Milwaukee, Ohio, and Washington, D.C. have also passed voucher legislation. In addition, Iowa, Pennsylvania, and Rhode Island have tax credit programs for citizens who contribute to school choice programs in their states. In 2007, the Utah legislature passed a comprehensive voucher program, which later failed as a ballot measure after the National Education Association poured millions of dollars into an opposition campaign.

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Florida's voucher program was aimed at helping students in the lowest-performing Florida schools. If the school consistently received failing grades, parents could have use vouchers to enroll their children in higher performing public or private schools. Nearly 700 children took advantage of these scholarships, which not only improved their educational opportunities, but also improved the education of those of the children who have not taken advantage of the vouchers. Previously failing schools have been making improvements under the threat of losing more students to the voucher program.<sup>1</sup> However, Florida's Supreme Court ruled in 2006 that the voucher program was unconstitutional based on that state's constitution, saying that the Legislature could not provide educational options other than the public school system. (*Holmes v. Bush*)

Cleveland's school choice voucher system has been upheld by both the United States Supreme Court and the Ohio Supreme Court. The program, aimed at helping children in the poorest areas of Cleveland, has already improved academic achievement by children placed in private schools, increasing reading and especially math performance, a subject in which the voucher students are scoring 16 percentage points higher after just two years in private school.<sup>2</sup> The public schools in Cleveland are now under considerable competitive pressure to improve their performance.

In 2005, the U.S. Congress passed legislation allowing public and private school tuition reimbursement for schools that have taken in Hurricane Katrina victims. The bill allows up to \$6,000 in scholarship money. It was signed by the President on December 30<sup>th</sup>, 2005.<sup>3</sup> In June 2006, the President signed an emergency appropriations act, which included \$650 million in education funding for students affected by the 2005 Gulf Coast hurricanes. This included an additional \$300 million in supplemental funding for the Hurricane Katrina scholarships approved in 2005.<sup>4</sup>

## **Private School Choice in Arizona**

The Arizona Private School Tuition Tax Credit, passed in 1997 and updated in 2005, allows Arizonans to claim a dollar-for-dollar credit against their yearly state income tax liability of up to \$500 for an individual or \$1000 for married couples on donations made to a "School Tuition Organization" (STO). The credit cannot exceed taxes owed, but the taxpayer may carry any unused credit forward for up to five consecutive years.<sup>5</sup>

School Tuition Organizations use the funds to grant scholarships to children attending religious or secular private schools, as long as they do not discriminate on the basis of race, color, handicap, familial status, or national origin.<sup>6</sup>

In 2003, the legislature enacted mandatory financial reporting from STOs. (A.R.S. 43-1089 (E)) According to the information collected by the Arizona Department of Revenue, there are 54 nonprofit STOs in Arizona, who provided 24,678 scholarships to 796 schools in 2006 with an average of \$1,643 provided per student. In 2006, approximately \$51 million was donated to STOs, an increase of 20.9 percent over 2005. This increase is due, in part, to married couples being permitted to contribute up to \$1000, instead of \$850 as in the previous year.<sup>7</sup>

Each student not enrolled in the public schools saves the state what otherwise would have been spent on that student, about \$5,300.<sup>8</sup> Further, the tax credit enables an unknown number of students to remain in private schools who would otherwise return to public schools, increasing the cost to the state.

In 1999, the Arizona Supreme Court heard the case *Kotterman v. Killian*, in which teachers' unions and other education associations charged that these tax credits were a violation of the First Amendment, since some of the schools receiving scholarships were religious. The Court upheld the constitutionality of scholarship tax credits.

The tax credits have also been challenged in federal court. In *Hibbs v. Winn*, the Arizona ACLU is challenging the constitutionality of Arizona's tuition tax credit program. The federal district court originally dismissed the case, but the Ninth Circuit Court of Appeals overturned the decision. This decision was affirmed by the U.S. Supreme Court and sent back to district court. School choice proponents are optimistic about this case, as the Supreme Court already upheld the Cleveland voucher program when its constitutionality was challenged.<sup>9</sup>

### **Corporate Tuition Tax Credits**

In the current Arizona tax code, individuals are given a tax credit for contributions to organizations that provide educational scholarships. Corporate contributions for private schools now allow for more scholarships for low-income families, and broaden the number of families able to choose the education they deem best for their children.

This bill, passed into law in 2005 and updated in 2006, enables corporations to receive tax credits on a first come-first served basis for contributions made to School Tuition Organizations (STOs) until 2011, up to an overall total of \$10 million per year. The bill allows low-income families whose children currently attend public schools or are preparing to start kindergarten to qualify for an educational scholarship. The child must attend the new school for a full year, or the family must refund part of the scholarship.<sup>10</sup> The ACLU and the Arizona School Boards Association are challenging this program in Maricopa County Superior Court.

### **Arizona's Voucher Programs**

In 2006, Arizona became the first state in the nation to provide a school choice scholarship program for foster children. In this pilot program, every year, up to 500 of Arizona's children in foster care can receive up to \$5000 to attend to the eligible private school of their custodian's choice.<sup>11</sup>

Also in 2006, Arizona began providing scholarships to students with disabilities. The Arizona Scholarship for Pupils with Disabilities Program allows disabled students to qualify for a full scholarship to attend the eligible private school of their parents' choice.<sup>12</sup>

Only a few months after the enactment of these two laws, the American Civil Liberties Union, People for the American Way, and the Arizona Center for Law in the Public Interest brought a lawsuit that sought to overturn the brand-new programs and deny educational choice to foster care and disabled children. The Arizona Supreme Court declined to hear the case, and the Maricopa County Superior Court upheld the programs on the second challenge. The case is currently on appeal.

## Conclusion

Every student in a private school in Arizona saves the taxpayers of Arizona thousands of dollars by not enrolling in a public school. Yet the parents of children in private schools pay the same income tax, property tax, sales tax, and other taxes as parents of children in public school. Private school families, therefore, help support the public school system with their tax dollars while also saving the public schools money. The tax credit allows more of these parents to exercise the education choice they deem best for their children. According to a September 17, 2001, policy analysis by the Cato Institute, Arizona's private school tuition tax credit is a "...net winner for Arizona taxpayers, expanding school choice to thousands of families while saving taxpayers millions."<sup>13</sup>

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<sup>1</sup> *American Legislative Exchange Council*. Retrieved January 24, 2008, from <http://www.alec.org/meSWFiles/pdf/0424insert.pdf>

<sup>2</sup> *National Center for Policy Analysis*. Retrieved January 24, 2008, from <http://www.ncpa.org/pub/bg/bg155/>

<sup>3</sup> President Bush Signs Historic School Choice Bill [Alliance for School Choice]. (2005, December 30). Message posted to [http://www.allianceforschoolchoice.org/media\\_center.aspx?IITypeID=3&IIID=2456](http://www.allianceforschoolchoice.org/media_center.aspx?IITypeID=3&IIID=2456)

<sup>4</sup> Smole, D. P. (2006). *School Choice: Current Legislation* (Rev. ed.). Congressional Research Service. Retrieved December 5, 2007, from <http://www.house.gov/english/pdf/schoolchoice.pdf>, Library Of Congress. H.R. 4939- Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006. Retrieved December 5, 2007, from <http://thomas.loc.gov>

<sup>5</sup> A.R.S. 43-1089

<sup>6</sup> *Ibid.*

<sup>6</sup> Arizona Department of Revenue. (2007, April 2). Individual Income Tax Credit for Donations to Private School Tuition Organizations: 2006. *Arizona Department of Revenue Press Release*. Retrieved December 5, 2007, from [http://www.azdor.gov/ResearchStats/private\\_schl\\_credit\\_report\\_2007.pdf](http://www.azdor.gov/ResearchStats/private_schl_credit_report_2007.pdf)

<sup>8</sup> "Staff Memorandum." Joint Legislative Budget Committee. 2006.

<sup>9</sup> Arizona School Choice: Winn v. Hibbs [Institute for Justice]. (2004, September 27). Message posted to [http://www.ij.org/schoolchoice/az\\_taxcredits2/index.html](http://www.ij.org/schoolchoice/az_taxcredits2/index.html)

<sup>10</sup> Arizona-Corporate School Tuition Organization Tax Credit [Alliance for School Choice]. (2006). Message posted to [http://www.allianceforschoolchoice.org/school\\_choice\\_programs.aspx?IICatID=0&IIID=2812](http://www.allianceforschoolchoice.org/school_choice_programs.aspx?IICatID=0&IIID=2812)

<sup>11</sup> Arizona-Displaced Pupils Choice Grant Program [Alliance for School Choice]. (2006). Message posted to [http://www.allianceforschoolchoice.org/school\\_choice\\_programs.aspx?IICatID=0&IIID=2812](http://www.allianceforschoolchoice.org/school_choice_programs.aspx?IICatID=0&IIID=2812)

<sup>12</sup> Arizona Scholarship for Pupils with Disabilities Program [Alliance for School Choice]. (2006). Message posted to [http://www.allianceforschoolchoice.org/school\\_choice\\_programs.aspx?IICatID=0&IIID=2814](http://www.allianceforschoolchoice.org/school_choice_programs.aspx?IICatID=0&IIID=2814)

<sup>13</sup> Lips, C., & Jacoby, J. (2001). *The Arizona Scholarship Tax Credit: Giving Parents Choices, Saving Taxpayer Money* (Issue Brief No. 414). Washington D.C.: Cato Institute.