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Routing

The Public Education Tax Credit

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Executive Summary

Public education is an end, not a means. For a democratic nation to thrive, its schools must prepare children not only for success in private life but for participation in public life. It must foster harmonious social relations among the disparate groups in our pluralistic society and ensure universal access to a quality education. Unfortunately, the American school system has long fallen short as a means of fulfilling these purposes.

This paper offers a more effective way of delivering on the promise of public education, by ensuring that all families have the means to choose their children's schools from a diverse market of education providers. All education providers—government, religious, and secular—can contribute to public education because all can serve the public by educating children.

Educational freedom can most effectively be realized through nonrefundable education tax credits—for both parents' education costs for their own children and taxpayer donations to nonprofit scholarship funds. This paper argues that tax credits enjoy practical, legal, and political advantages over school vouchers. These advantages are even more important for choice programs that target low-income children, as tax credits mitigate some disadvantages inherent to targeted programs. It also contends that broad-based programs are superior to narrowly targeted ones, even when the goal is specifically to serve disadvantaged students. Targeted programs are fundamentally inferior—in both practical and strategic terms—to broad-based programs that include the voting middle class. Finally, accountability in education means accountability to parents and taxpayers. Education tax credits afford this accountability without the need for intrusive government regulations that create political and market liabilities for school choice policies.

To date, school choice policy has spread and grown only slowly, in part because of inadequate legislation. Existing school choice laws fall short in terms of both market principles and political considerations. Pursuing a policy that follows more closely what works economically and politically should increase the likelihood of long-term legislative success, program success, program survival, and program expansion.

Model legislation derived from the policy and political principles detailed below is presented in Appendix B of this paper, and real-world examples of how the legislation would work are given in Appendix A.

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CATO INSTITUTE

The pursuit of highly regulated and targeted programs impedes the rise of a competitive education industry.

Introduction

Formidable obstacles to spreading educational freedom abound. Powerful teachers' unions and a huge government education industry want to preserve their prerogatives; and a broad range of middle-class parents are eager for reform but anxious about major changes to a system they often believe performs adequately in their own communities.[1] These are daunting hurdles for any policy to clear, but most school choice reform efforts to date have taken forms that put them at a disadvantage to these status-quo forces.

Policy elites play a large role in setting the agenda: they produce the articles, papers, arguments, and ideas that legislators draw on when writing legislation. Long before any model legislation is drawn up, policy researchers produce the ideas and strategies that legislators read or talk about with members of the policy elites. Considering the limited time legislators have for exploring policy alternatives, those who go looking for a school choice proposal will likely be influenced by the dominant policy discussion. Therefore, the school choice policy discussion must reflect the best ideas available.[2]

School choice efforts will more likely succeed if greater attention is paid to principles of good policy and politics in the design of legislation.[3] More than 50 years have passed since the birth of the modern school choice idea in America. Serious political efforts have been under way for over a quarter century. And for perhaps 15 years America has enjoyed what can properly be called an organized and active school choice movement. School choice policy during this period has been driven by certain implicit preferences that are, on closer examination, inimical to effective educational choice reform. Specifically, the pursuit of highly regulated and targeted voucher programs impedes the rise of a competitive education industry and creates unnecessary political disadvantages for school choice supporters. A new approach that rests on timeless principles, empirical research, and polling data can move the school choice movement into a new and more successful phase.

This study begins with a detailed analysis of the two most powerful kinds of school choice reform: education vouchers and tax credits. The national discussion on private school choice is dominated by talk of vouchers. However, tax credits have clear advantages over vouchers on many levels. Tax credits are more popular with the public and politicians, less likely to be challenged in court, and more likely to survive most court challenges. They create powerful, positive political dynamics that strengthen the policy over time and make defense and expansion more likely.

The school choice movement's focus on targeted programs is not a helpful short- or long-term strategy, regardless of whether the goal is specifically to serve disadvantaged children or children from all families. Broad-based programs are more likely to lead to long-term legislative success, program success, program survival, and program expansion.[4] And yet, targeted programs dominate the discussion and legislative agenda. Also, under targeted programs, special regulations are often imposed on schools that accept students supported through school choice programs. Such regulations limit those programs' effectiveness in delivering choice and increased student achievement, and sideline many of the most natural allies of school choice reform. Nonetheless they are a common feature of legislation.

The discussion that follows explains these policy issues in detail as well as the considerations that underpin the structure of the model legislation presented in this paper. No existing model legislation is structured in a way that addresses all of these concerns. The Public Education Tax Credit model legislation embodies the principles of good policy and good politics described here.

Toward that end, this paper

- Explains why nonrefundable personal use and donation education tax credits are preferable to vouchers;
- Explains the importance of passing broad based rather than narrowly targeted school choice programs;

- Illustrates why education providers, in addition to parents and children, need to be free of burdensome regulations;
- Summarizes the model tax credit legislation presented in Appendix B in accessible, layman's terms, and gives examples in Appendix A of how it would work in the real world; and
- Presents model tax credit legislation that provides for educational freedom by funding choice through personal use and donation tax credits on state individual and corporate income taxes, state sales taxes, and property taxes.

Why Tax Credits Are Preferable to Vouchers

Supporters of educational freedom, perhaps not surprisingly, sometimes disagree about what constitutes the ideal school choice policy. The late Milton Friedman, among many others, viewed his original proposal for a voucher system as the best practical reform for the public education system. Other supporters of educational freedom prefer education tax credits. Most school choice supporters have little or no preference between these alternatives.[5] They see any expansion of public-private educational choice as a good thing. However, while vouchers and tax credits are both improvements on the status quo, each has particular strengths and weaknesses.

This section explains why education tax credits are preferable to vouchers for both practical and political reasons. This does not mean the current system is preferable to a voucher system—quite the contrary. But school choice reformers face a tremendously difficult task, which can be eased by focusing on the policy with the greatest advantages.[6]

This discussion considers personal use and donation tax credits as two sides of the same coin; personal use credits are helpful to higher-income taxpayers with children who can use them to offset their tax liability, while donation credits create a pool of funds that lower-income families can access for the education of their children. Together, these personal use and donation tax credits can create the most successful system of educational freedom currently possible. This discussion focuses on the inherent advantages of tax credits relative to vouchers, not on the relative limitations or advantages of existing voucher and tax credit programs. All existing voucher and tax credit programs are seriously compromised and limited. Vouchers and tax credits are, however, very different mechanisms for delivering school choice and it is those differences that will be analyzed below. The analysis reveals that tax credits are inherently preferable to vouchers across at least five dimensions.

Legal Considerations

One of the most important advantages tax credits have over vouchers is a legal distinction of great consequence. Courts do not consider tax credits to be government money, whereas vouchers are considered government money.[7] This legal issue has a number of political ramifications. Political concerns, however, are difficult to separate from purely legal ones because the interpretation of the law is often driven by the political dispositions of judges and the legal profession as a whole.[8]

The fact that the courts and the public generally regard vouchers as government funds and tax credits as private funds has a number of important consequences. It means that tax credits are less likely to be challenged in court, less likely to be overturned by a court, less likely to come with burdensome regulations, and less likely to accumulate regulations over time. The most important implication is this: tax credits are a viable option in many states where effective voucher programs are likely to be struck down on state constitutional grounds.

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State courts have repeatedly ruled that vouchers are government funds.[9] The disbursement of government funds to religious schools is expressly prohibited in most states by turn-of-the-century anti-Catholic "Blaine" amendments that were meant to keep public funding in Protestant-influenced public schools and away from Catholic parochial schools. Many states also have what are called "compelled support" clauses, which get the same result through different language, precluding any citizen from being compelled to support religious institutions or activities through their taxes. Eliminating religious schools from choice programs excludes around 90 percent of current private schools, which renders any such program largely ineffectual, at least in the short term. These religious provisions are the highest profile threats to voucher programs, but vouchers are vulnerable to many other common state constitutional clauses regarding education.

Prohibitions against the use of government funds to support religious organizations are not the only serious legal threats to vouchers. Recent defeats in court have been based upon seemingly innocuous education clauses common in state constitutions. In Colorado, vouchers were brought down by a clause mandating local control over local revenue, and in Florida they were overturned on the basis of a clause mandating a "uniform" system of education. Neither of these rulings had anything to do with religion, but both were possible because vouchers are considered government funds.[10]

Two state courts—Wisconsin and Ohio—have ruled that because parents, not the government, spend the government dollars, vouchers do not conflict with the constitution. Three other state courts—Vermont, Colorado and Florida—have found that voucher programs use government funds in ways that violate state constitutional restrictions and have therefore struck them down. Thus, although the use of government funds does not automatically cause vouchers to run afoul of state constitutional restrictions, it does open up myriad avenues of attack—to which nonrefundable tax credits are not vulnerable.

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The legal status of voucher funding makes it difficult for an effective voucher program to survive in many states. University of North Texas professor Frank Kemerer reviewed each state's case law and judicial climate in order to characterize the likely orientation of the courts if a voucher law were to be challenged. He concluded that 17 states have a restrictive orientation toward vouchers, 19 states have a permissive orientation, and 14 states have an uncertain orientation.[11] After the publication of Kemerer's paper, voucher laws were found to violate state constitutions in two of the states (Colorado and Florida) that he had categorized as "uncertain."[12]

The Institute for Justice, a libertarian public interest law firm that has defended many school choice programs in court, comes to a similar, if more optimistic, conclusion in a recently completed comprehensive study of state constitutions and legal precedent.[13] The institute recommends that tax credits, but not vouchers, be pursued in 32 percent of states and that either policy can be pursued in most of the other states. This analysis likely underestimates the legal difficulties vouchers can face in states without restrictive Blaine or compelled support precedents because such amendments are not the only sources of legal trouble for vouchers. The decisions in Florida and Colorado overturning their voucher laws vividly illustrate that courts disposed against vouchers can find creative ways to overturn the programs, relying upon vouchers' status as government funds as well as other constitutional provisions.

Furthermore, the degree of *perceived* legal jeopardy to which a controversial policy is subject, regardless of legal precedent specific to the issue, has been shown to dampen consideration by the legislature in the first place.[14] Politicians and other political actors consider the disposition of the courts and are much less likely to fight for and pass controversial legislation that has a high probability of being voided by the courts. Survey data show that "state legislators admit they write laws in anticipation of responses from the state supreme court," and statistical evidence derived from actual legislative activity supports the conclusion that policymakers respond to "perceived threats or opportunities shaped by the ideological complexion of state supreme courts."[15] The general legal difficulties that vouchers face, in other words, can significantly dampen political and legislative support relative to tax credits.

Perhaps of even greater concern is the possibility that both liberal and conservative judicial predispositions may be equally threatening to voucher legislation.[16] Liberal courts such as Florida's Supreme Court are disposed to discover language or principles in state constitutions that will disqualify the law, regardless of whether or not the constitution prohibits vouchers according to a strict constructionist reading. Conservative courts, which will adhere more closely to a strict reading of the letter and intent of the constitution, may feel constrained to rule against voucher legislation to the extent that the state constitution contains language intended to prevent government funds flowing to religious or private institutions for education. This problem can be mitigated by arguments that funds flow to families, not organizations; however, states with particularly restrictive clauses, precedents, and conservative courts may still face difficulties.

Education tax credits attenuate or avoid many of these legal difficulties because of their status as private, rather than government, funds. The record of court challenges proves the point. The courts have never overturned modern education tax credits or deductions—they have been upheld in all state and federal legal challenges. The Arizona Supreme Court held that tax credits did not violate either the federal Establishment Clause or the state's Blaine amendment against the public support of sectarian institutions.[17] In addition, the U.S. Supreme Court declined to review the decision, possibly because it had already upheld as constitutional Minnesota's state income tax deduction for education in 1983.[18] And in 2004, the latest First Amendment suit brought by the American Civil Liberties Union against a tax credit program was dismissed from federal court.[19] The Illinois Court of Appeals also ruled that the state's weak tax credit program did not violate the federal Establishment Clause, the state's Blaine amendment, or the state constitutional prohibition against compelled support for churches and religious institutions; and the Illinois Supreme Court declined to review the decisions.[20] School choice opponents have thrown everything at education tax credits, as yet to no avail.

Other states are expected to follow suit in dismissing legal challenges to tax credits. People working on the school choice issue overwhelmingly agree that tax credits are more legally viable than vouchers.[21] Sixty-seven percent of respondents in a survey of organizations working on school choice think vouchers are more likely to be challenged in court, compared to just 3 percent who anticipate more challenges on tax credits. By a margin of 53 points, respondents also believe that tax credits are more likely to survive a court challenge. Opponents of school choice also agree that tax credits are more viable than vouchers. Marc Egan, director of the Voucher Strategy Center for the National School Boards Association, has written extensively on the best strategy for defeating school choice efforts. The NSBA is as committed in its opposition to school choice as is the National Education Association. Egan describes vouchers as "cash government payments," but agrees that education tax credits are "technically not government dollars." This leader in anti–school choice strategy describes tax credits as "bullet-proof on constitutional issues" because they have survived every legal challenge to date.[22] People on both sides of the school choice issue agree that tax credits are likely to put legal fears and problems to rest. The record of failed court challenges suggests they are correct.

Education tax credits are viable in every state except Michigan (whose constitution specifically prohibits education vouchers and tax credits) and are less likely than vouchers to face significant legal challenges in the future. Neither Florida nor Pennsylvania, the states with the two largest programs, has been sued over its tax credit program. Thus, an income tax credit for individuals is a viable policy option in the 38 states with personal income taxes; a credit for sales tax is an option in the 44 states with a sales tax; a credit for corporations is an option in the 45 states with corporate income taxes; and a tax credit for property tax payers is an option in all 49 states where private choice is possible. That bears repeating. Education tax credits of some sort are possible in 49 states and the

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In New Jersey, a strong center-left coalition that supports tax credits includes many prominent African American Democratic politicians—most notably, Newark Mayor Cory Booker.

District of Columbia. Vouchers are possible in perhaps 32 states and would face serious and uncertain legal battles in at least 12 of those. Education tax credits, because they come with little of the legal baggage under which vouchers currently strain, are the most legally certain route to school choice.

Regulatory Threats

The fact that tax credits, unlike vouchers, are not government funds is important in other ways. School choice opponents have a more politically and legally compelling case for burdensome regulations on voucher-redeeming schools than they do for schools that benefit only indirectly from tax credit programs. Under most voucher programs, participating private schools must accept students through a random lottery or on a first-come basis. Voucher schools in Cleveland's program, for example, must be "chartered" by the state in order to accept voucher students, and the requirements for chartering can be changed at any time. And although the Milwaukee program was expanded to include religious schools (therefore providing an effective number of choices), the participating schools cannot require religious participation or accept payment above the voucher amount. School choice opponents can be expected to call for many onerous restrictions regardless of the program design. Thus, voucher programs often begin in a weakened position while current tax credit laws place few restrictions on school autonomy. Even where expenses for religious education do not qualify for the tax credit, schools are able to itemize tuition costs and their autonomy remains uncompromised.[23]

One of the driving factors in increasing government control of the economy is the call for government to remedy perceived problems in the functioning of markets.[24] But consider this example: in the case of a Florida school that had a close relationship with a terrorist-connected professor, Sami al-Arian, individual donors and scholarship organizations were able to judge the situation for themselves and take what action they felt was appropriate. For one scholarship organization that meant ending its support of the school.[25] This situation illustrates what is at the very heart of a free-market system: the noncoercive interaction of individuals and organizations within civil society. In a voucher system, taxpayers have no direct control over how their money is spent. It all goes into one pot and is distributed according to the single set of rules on which a majority of legislators could agree. Those who see the government-funded system as inefficient have no alternative but to keep paying into it. In a tax credit system, taxpayers direct their own money to the programs they support.

In a voucher system, the decision on whether or not to continue funding students at any particular school is made by government actors through the political and legal process, not by individuals through market interactions within civil society. If vouchers are pulled from a controversial school, then legal action challenging the decision will likely result. If the funding remains, then public demand for more restrictive or prescriptive rules will build: many people who pay the taxes that directly fund the school will demand that their money not be used for a purpose they oppose. Over time, such regulations, added in response to periodic difficulties, accumulate until little freedom remains for education service providers. Under vouchers, any case of dissatisfaction must engage the political process and coerce an outcome. In contrast, tax credits allow the free exchange of funds and services within civil society and an education market without the need for coercion.

Clearly, tax credit programs, which do not involve government money, have a theoretical advantage over vouchers in regard to their vulnerability to excessive regulation. This theoretical advantage has so far been borne out in practice.[26]

Coalitional Support

Tax credits command support from a larger coalition of conservatives, free market advocates, and private schools than do vouchers, for many of the reasons discussed above: they are not government funds, they are more viable legally, and they pose less danger to the autonomy of private schools that accept them. Tax credits are therefore preferred by many private school, homeschool, and religious organizations that oppose or only weakly support vouchers. The Home School Legal Defense Association, the lead lobbying organization for homeschoolers, published an issue paper titled "Reasons Home Schoolers Should Avoid Government Vouchers" but actively supports education tax credits.[27] Likewise, many religious conservatives are more supportive of tax credits than vouchers. For instance, Maureen Wiebe, legislative representative for the American Association of Christian Schools, said her organization is uncomfortable with vouchers as a vehicle for school choice but wholeheartedly supports education tax credits.[28] These and other organizations fear that vouchers, as general revenue from government coffers, will bring increased regulation and control of private education. Homeschool supporters and social conservatives are a well-organized and successful political constituency with a proven track record of effective grassroots mobilization for policy reform. The school choice movement would be well advised not to emphasize vouchers, which alienate such potentially powerful natural allies.

The concern about government funds bringing government control is not exclusive to religious conservatives. The National Association of Independent Schools, the largest association for non–religiously affiliated private schools, does not take a position for its autonomous member schools. However, NAIS director of legislative affairs Amy Sechler says the association recognizes that vouchers often bring more challenges to private school autonomy than do tax credits.[29] And although still low, opposition to vouchers among organizations working on school choice is more than double the opposition to tax credits (13 percent and 5 percent, respectively). Thus, vouchers begin with a serious coalition deficit of otherwise natural allies that tax credits secure.[30]

Furthermore, there seems to be more support and less opposition to tax credits among Democratic political leaders. Arizona, Rhode Island, and Iowa passed tax credit programs last year, and Pennsylvania expanded its existing business-tax credit program. The Arizona, Iowa, and Pennsylvania bills became law with Democratic governors, and the Rhode Island business-tax credit was born in a legislature controlled by Democrats. In New Jersey, a strong center-left coalition that supports tax credits includes many prominent African American Democratic politicians—most notably, Newark Mayor Cory Booker. Finally, Democratic Gov. Eliot Spitzer in deep-blue New York proposed an education tax deduction in his first state budget but opposes vouchers for school choice. Most opponents of vouchers oppose tax credits as well, but some political opposition to tax credits is weakening whereas opposition to vouchers remains relatively solid.

The concept of school choice incites bitter resistance from one of the largest, most politically potent, and well-financed interest groups in the nation: the public school employee unions. To counter that resistance, school choice supporters—even if they doubt the danger that vouchers pose to private schools—need the most powerful coalition they can muster to pass and defend school choice legislation. Indeed, coalitional support is perhaps even more important than popular support when dealing with a divisive issue about which the public knows little.[31]

The vast majority of political and ideological support for school choice resides on the right side of the political spectrum, and the vast majority of opposition comes from the left. When elite opinion on an issue is polarized along ideological lines, mass opinion will move along similar lines as elite messages about the issue become salient.[32] This is not surprising, but it is often overlooked by school choice supporters; as school choice becomes a live issue in a state, liberal elites will tend to drive up liberal and Democratic opposition to school choice, and conservative leadership will drive up conservative and Republican support. Voucher legislation, however, eliminates and enervates large, politically active blocks of the private school, homeschool, and general conservative movements. Education tax credits unify the largest possible coalition while inspiring no more, and possibly less, resistance than vouchers.

The lead lobbying organization for home schoolers published an issue paper titled "Reasons Home Schoolers Should Avoid Government Vouchers" but actively supports education tax credits.

In public opinion polls, education tax credits generally command 5–10 percent more support than do vouchers.

Popular Support

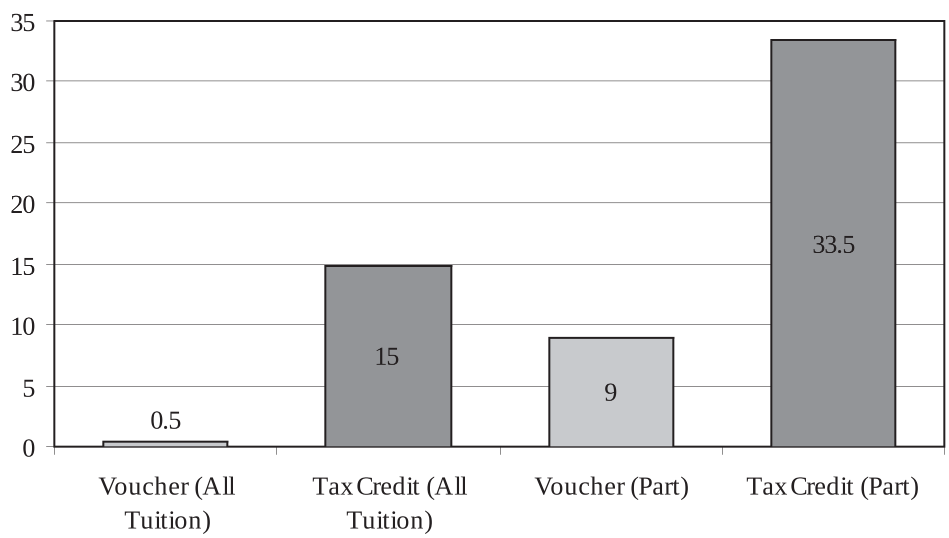
Surveys demonstrate that tax credits are significantly more popular than vouchers among the general population. Although they are subject to some of the same wild swings in support or opposition depending on how the question is asked, education tax credits generally command 5–10 percent more support than do vouchers—in the mid-50 to mid-60 percent range.[33] These poll findings are consistent across multiple years and diverse states for similar questions—that is, when comparing targeted vouchers to targeted tax credits or universal vouchers to universal tax credits. A 2006 poll of leaders in the school choice movement supports these robust findings: respondents chose tax credits over vouchers as the school choice policy most popular with the public by a margin of 38 points (53 percent to 15 percent).[34]

There are very few surveys that ask respondents about both vouchers and tax credits in the same instrument, but these provide our most direct evidence that the public prefers education tax credits over vouchers. The yearly Phi Delta Kappa/Gallup poll on education, perhaps the most widely read survey on this subject, asked about tax credits for only two years in 1998 and 1999, and included multiple questions on vouchers in those years as well.[35] These surveys found major differences in support for and opposition to tax credits and vouchers, with credits significantly outperforming vouchers (Figure 1 and Table 1).

The survey asks respondents about their support for vouchers and tax credits that cover full tuition and vouchers and tax credits that cover only part of a child's tuition. In both cases, public support is much greater for partial tuition programs than full. And in both cases the dominance of the public's preference for tax credits is striking; the margin of support for full-tuition credits is 30 times that for vouchers, and the margin for part-tuition credits is 3.7 times that of vouchers. Voucher support averages 48 percent for full tuition and 52 percent for partial. Tax credit support averages 57 for full tuition and 66 percent for partial. This tax credit dominance in popularity holds for both parents and those without school-aged children, who are an extremely important two-thirds of the electorate.

This greater support for tax credits may result from the many years and significant sums that teachers unions have spent attacking vouchers. However, support for vouchers

Figure 1
Average Margin of Support over Opposition for All Respondents (1998–99)



Source: Lowell C. Rose and Alec M. Gallup, "The 30th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes toward the Public Schools," September, 1998, and "The 31st Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes toward the Public Schools," September, 1999.

Table 1
Average Margin of Support over Opposition (1998–99)

Variable	Voucher	All Tuition Tax Credit	Voucher	Part Tuition Tax Credit
All Respondents	0.5	15	9	33.5
No Children in School	-7.5	5.5	2.5	22
Children in Public School	12.5	28	20	54

Source: Lowell C. Rose and Alec M. Gallup, "The 30th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes toward the Public Schools," September, 1998, and "The 31st Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes toward the Public Schools," September, 1999.

doesn't appear to have declined much over the past 20 years. One well-known poll by Phi Delta Kappa/Gallup showed a significant drop in voucher support, but that decline was likely due to a change in the wording of the question that biased respondents toward negative answers by including "at public expense" instead of a more neutral description. The bulk of well-worded and unbiased voucher poll questions show, if anything, a slight increase in public support for vouchers over the years.[36]

Most recently, a large academic poll conducted by the magazine *Education Next* and the Program on Education Policy and Governance at Harvard University showed significantly more support for tax credits (53 percent) than for vouchers (45 percent), even though the possibly tainted word "voucher" does not appear in the question.[37] This poll also showed much greater opposition to vouchers (34 percent) than to tax credits (25 percent), leaving a 28 point margin of support for tax credits compared to just 11 points for vouchers. Most remarkable, however, is the fact that support for education tax credits among current and former public school employees outweighs opposition by a margin of nearly two to one (50 percent to 28 percent). Vouchers, by contrast, are opposed by public school employees by a two-point margin. Clearly, the use of tax credits to effect school choice is much more popular and less objectionable to the general public, and even to public school employees, than vouchers. It also seems that the word "voucher" appears to have relatively little to do with the tax credit advantage in public support.

One possible reason for the higher popularity of tax credits is that the majority of Americans are familiar with and well-disposed toward tax credits, a common policy vehicle. The Hope Scholarship tax credit and child tax credits, for instance, are widely recognized and popular tax breaks. Various kinds of college tax credits regularly garner over 80 percent support, and popular tax breaks for children and mortgage payments add to the appeal of tax credits generally.[38] Some critics have lamented the proliferation of special interest tax credits and deductions, but they are proliferating for a reason. Tax credits are a popular and relatively easy way to provide benefits for particular kinds of activities. Credits for education expenses have the same advantages. Education tax credits are more popular than vouchers among the general public and lawmakers, and this popularity advantage will likely persist.

Most remarkable is the fact that support for education tax credits among current and former public school employees outweighs opposition by a margin of nearly two to one.

Post-Passage Political Dynamics

Tax credits establish a self-implementing form of school choice that relies on the private sector alone. Voucher laws must establish a new government apparatus to implement school choice or rely on a state education system that is generally hostile to school choice. Regardless of the procedure, the need for this apparatus increases costs and significantly complicates implementation. It also establishes an additional venue for undermining school

Scholarship organizations that arise under donation tax credits form a new and powerful block of political interests that do not exist under vouchers, and they have proven effective advocates for choice programs in Arizona and Pennsylvania.

choice and an additional issue on which to attack the policy.[39] Tax credits are more certain in their translation from bill to practice because they require minimal participation from intervening government agencies.

Experience reveals how implementing authorities can thwart policy objectives, and recent studies have identified significant costs associated with voucher program implementation. Paul T. Hill, director of the University of Washington's Center on Reinventing Public Education and a prominent school choice supporter, published an illuminating report in 2003 titled "The Administrative Costs of Education Voucher Programs."[40] Although the report estimates and highlights the monetary costs associated with implementing a voucher program, the more interesting and serious problems have nothing to do with dollars.

In voucher programs, the state must disburse government funds, which means that they "will be administered by state agencies or joint public-private task forces, which will provide program information and application packets, accept and verify family applications, conduct admissions lotteries, and construct lists of private schools eligible to admit voucher students."[41] This description sounds like a new public school administration, and it highlights once again many of the fears that vouchers elicit among some school choice supporters. Worse still, "all voucher plans are likely to require local public school officials to provide information that they alone have, and to exercise leadership to ensure that school staff and subordinate administrators cooperate fully with the voucher program."[42] Voucher programs must rely, to an alarming degree, on government agencies and on politically controlled school systems that are hostile to educational freedom.

The political advantages of tax credits after passage include more wide-ranging benefits. Because individual taxpayers direct their money to the kind of education they want to support, they become invested in their chosen school or organization. A woman who takes advantage of a tax credit benefits both directly and personally from the policy, even if she doesn't use the tax credit for her own child, because she can enjoy spending her money on a child or educational mission she supports. In a similar fashion, businesses that claim tax credits on donations benefit from and have a stake in the law.

Perhaps the most important post-passage effect of tax credits compared with vouchers is that tax credits create a new and permanent institutional support system for the choice program. The scholarship organizations that arise to administer the donation tax credit form a new and powerful block of political interests that do not exist under a voucher program, and they have already proven effective advocates for the defense and expansion of choice programs in Arizona and Pennsylvania. These organizations can quickly disseminate information to and mobilize parents, businesses, and schools; and they have the funds and financial interests to do so. Everyone who participates—individuals, businesses, and scholarship organizations—has personally invested in the tax credit program and will have a strong and direct interest in defending and expanding the law. Vouchers simply do not create that kind of communitywide, direct, and personal investment because it is the government that decides how and where to allocate funds.

In Pennsylvania, for instance, scholarship organizations funded through the donation tax credit program have become a serious political force. They act as an institutional base for supporters and beneficiaries, translating this constituency into a mobilized political force. Andrew LeFevre, executive director of the REACH Alliance, a Pennsylvania school choice activist organization founded in 1991, describes the role of his organization and that of the scholarship organizations in the state:

> Upon passage of the EITC program in 2001, REACH made a strategic decision to work on helping to set up a scholarship organization (SO) in as many of the 67 counties as possible in order to begin the process of connecting the people involved with the program—most importantly the parents and children—with their elected offi-

cials. As we enter the 2007–08 school year, there are now approximately 180 SOs (as well as over 300 EIOs and 80 Pre-K SOs) that have been created all across the Commonwealth. These groups serve as a vital link between the families that they serve and the legislators that have been responsible for more than doubling the program cap over the past six years.

> REACH works with the participating SOs to help them better understand the importance of maintaining that personal relationship with their elected officials and the media to show the tremendous positive impact that the program has on children and families in their local districts. Many SOs now require their families who receive scholarships to write to their elected officials to thank them for their support of the program; generating thousands of letters a year to Harrisburg on behalf of the EITC program."[43]

A similar dynamic has helped solidify and expand school choice policy in Arizona, where one scholarship organization boasts a state legislator as its president. Churches and other influential community institutions have become invested in the program and eager for its expansion. A former executive director of a major Arizona school choice organization calls scholarship organizations "the critical constituency that protects the program."[44] Tax credits, in other words, create interest groups with a direct interest in defending and expanding the program. In turn, scholarship organizations use their resources to overcome collective action problems and mobilize individuals who benefit from the program.[45]

The Florida tax credit program, in contrast to Arizona and Pennsylvania, has produced relatively few scholarship organizations because they are required to disperse 100 percent of donated funds in the form of scholarships, which means that they must raise money for operating costs from other sources. Arizona allows scholarship organizations to keep up to 10 percent and Pennsylvania sets the limit at 20 percent, thus ensuring quick growth in the number of such institutions. Voucher programs do not create these connective institutions and thereby leave program beneficiaries and supporters with a more difficult organizational task. This disadvantage is compounded in the case of voucher programs targeting low-income families, who have few resources with which to mobilize in any case.

Practical Considerations

Voucher programs do have some practical advantages over tax credits in terms of the simplicity of the concept and its enabling legislation. Vouchers are easier for the public and politicians to understand and therefore potentially easier to sell to both. That advantage, however, is tempered by the considerations laid out above; and tax credits have practical advantages of their own.

Most prominent among these practical advantages is that credits maximize direct payment of education expenses by parents, a factor strongly correlated with academic achievement and efficiency.[46] Non-refundable personal use tax credits are simply targeted tax cuts that allow parents to spend more of their own money on their children's education. Allowing taxpayers to direct their own money where they choose puts the decisionmaking power at the source of the funds, with the individuals most interested in ensuring that it is well spent. In addition, every scholarship organization has large incentives to encourage direct payment by parents, as much as they are able, so that the organization itself can support more families in need. Sometimes, as is the case with the scholarship program administered by the Black Alliance for Educational Options in Philadelphia, volunteering at the school of choice is used as an alternative or addition to parents' direct payments. In all cases, parents are more directly involved and invested in their children's education.

Taxpayers' direct control over their own money also translates into less distortion of cit-

Tax credits maximize direct payment of education expenses by parents, a factor strongly correlated with academic achievement and efficiency.

Education tax credits reduce coercion and market distortion below the level found under voucher programs.

izen behavior with tax credits than with vouchers.[47] Generally, fiscal conservatives oppose the government encouraging or discouraging behavior through the tax code. However, the current system massively distorts behavior by taxing the public and disbursing money directly to district schools, affording neither taxpayers nor educational consumers any control over the use of those funds. In such a system, allowing parental choice alone, as vouchers do, helps because some market forces are introduced. The actual taxpayers, however, are still allowed no discretion over where their money goes under government voucher programs.

Education tax credits minimize coercion and market distortion by allowing taxpayers to spend their money wherever they like, as long as it is on education. The government still distorts taxpayer behavior, but taxpayers directly control where their money goes within the education sector of the economy. Health care reform offers a useful comparison. The general hierarchy of free-market health care reform preferences looks like this: *worst*—direct government, single third-party-payer system (vouchers); *better*—tax subsidized, employer third-party-payer system; *much better*—tax subsidized, individual-payer system (tax credits); *best*—unsubsidized free-market system. Health care reform does not begin with a fully state-financed and state-run medical system, but education reform does begin with a state monopoly. Vouchers are therefore viewed by many school choice supporters as a major step forward. Tax credits, however, are an even better market reform. They are less economically distorting than direct government payments because they allow discretion on the part of the taxpayer within an economic sector. Short of a policy under which the government shuts down all of its schools and no longer assesses education taxes, tax credits offer the minimum amount of behavior distortion.

In the many states with high individual and corporate income taxes, the tax burden will be sufficient to support school choice for higher-income individuals through personal-use credits and low-income families through donation tax credit programs. Since the state share of education funding typically covers more than half of total per pupil spending and the average private school tuition is about half of public school per-pupil spending, there is more than enough money available to support a system of educational freedom through tax credits.

States with no income taxes generally rely on sales taxes for the bulk of the government's revenue and the state's share of education funding. The model legislation presented here provides an easy way for individuals to claim a credit on sales taxes for either direct spending on education services for their children or donations to scholarship organizations. All states with a sales tax can use the tables already developed by the federal government to determine the amount a taxpayer can deduct on their federal taxes[48] for sales tax paid to their state government.[49] Furthermore, as presented in the model legislation, every state can offer credits (for educational expenses) on property taxes, which are the second largest source of education funds. Concern about the sufficiency of funds is thus not an issue for a properly designed tax credit program.

In some cases, complications may arise when executing a property tax credit at the state level because of variations in the collecting entities, tax rates, and purposes to which the revenue is directed. These issues can be overcome; however, a simpler and perhaps politically more palatable approach is to pass state legislation *authorizing*, rather than requiring, counties and other municipalities to give property tax credits for education expenses. Although this option has the disadvantage of kicking the issue down the road to other levels of government, it has the advantage of allowing counties with special need and support for school choice to enact a program first and provide a political base and policy example to the rest of the state. Furthermore, because local officials will retain power over the property tax issue, it will likely incite less opposition and more support from these local officials.

Regardless of the taxes tapped for credits, low-income families typically cannot claim a personal credit large enough to cover the cost of their own children's education because they owe little in taxes. Two solutions present themselves: donation tax credits and refundable tax credits. Donation tax credits have already been described. Refundable tax credits mean that families with little or no tax liability are given government funds to pay for an education of their choice. Unfortunately, making a tax credit refundable is legally equivalent to folding a voucher program in with a tax credit program. The primary legal distinction between tax credits and vouchers is that vouchers are government funds and tax credits are a taxpayer's own money. When a tax credit is made refundable, this distinction is eliminated, leaving the refundable credit program vulnerable to the same legal attacks that have overturned some voucher programs.

The need for families to rely on scholarships will be mitigated by the enactment of sales tax credits, as even low-income families pay a substantial sum in sales tax, especially where this constitutes a major source of government revenue. Nonetheless, low-income children must largely be supported through scholarship organizations that collect money from individual and/or corporate donors who receive tax credits for their donations.

Pennsylvania, Florida, Arizona, Iowa, and Rhode Island all have limited donation credit programs.[50] The states with established programs—Pennsylvania, Florida, and Arizona—demonstrate that a diversity of scholarship organizations, from religious to secular, arise to meet the demand of those who give and those who receive the scholarship money. Many of these organizations provide additional benefits to the families who apply, working to get them placed in schools and helping the often single parents make sure that their children are achieving academically and in the best environment. A diversity of scholarship organizations ensures that schools, parents, and donors all have the flexibility to find the partners that work for them. Donation tax credits have been working particularly well for many years in Pennsylvania, which allows the scholarship organizations to use a portion of donations for operating expenses. The state now has 183 scholarship organizations serving almost 33,500 children. The demand for the donation credits far outstrips the supply of money, capped at $35.9 million, and each year that cap is quickly reached by the many businesses eager to fund the program.[51]

Education tax credits are most frequently criticized on the basis of two practical concerns.[52] For one, critics have argued that credits are incapable of providing sufficient financial assistance to produce meaningful, universal school choice. Clearly, however, a system of educational freedom can be supported through personal use and donation credits against income, sales, and property taxes for both individual and corporate taxpayers. This is particularly true when all taxpayers are able to take advantage of these credits; extended families, friends, and communities can pool their resources to support the education of many children in families that might not have a very high tax burden. These multiple sources of state and local revenue provide a huge reservoir of funds.[53]

Second, some critics of tax credits express concern that using donation tax credits to fund low-income children unfairly subjects these families to the dictates of scholarship organizations. Current donation tax credit programs, however, demonstrate that a diverse range of scholarship programs arise to meet the demands of both donors and parents. Only education tax credits provide a civil-society mechanism for balancing the needs and prerogatives of parents and taxpayers. By contrast, voucher programs subject all recipient families and all participating schools to a single set of government-imposed constraints. That scenario provides low-income families no escape from restrictions they find onerous, and provides taxpayers no escape from the compulsion to fund education they find morally objectionable.[54]

Tax credits provide a mechanism for balancing the needs and prerogatives of parents and taxpayers.

Final Assessment: Tax Credits Are the Best Policy

All of the factors discussed above make tax credits more likely than vouchers to be passed, sustained, and expanded, especially if they are initially small. Greater legal viability makes tax credits more likely than vouchers to be passed in more states, more likely to avoid litigation, and more likely to be sustained when they are challenged in court. The fact that tax credits are not government funds makes them less likely to come with burdensome regulations on private schools and leaves participating schools less vulnerable to added regulation in the future.

These facts bring together a coalition for tax credits that is larger and more energetic than the constituency for vouchers, which suggests a greater chance of passage and sustainability. The self-implementing nature of tax credits ensures that families and private organizations are the chief actors in the marketplace, eliminating both the cost and potential trouble that a government voucher authority creates. These factors also build a larger and more powerful political constituency for the program than can be built through vouchers, establishing a diverse range of institutions and individuals directly invested in the program. Finally, education tax credits are simply more familiar, less threatening, and more popular than vouchers. Education tax credits are the preferable vehicle for educational freedom wherever they are feasible.[55]

Programs that target only low-income families or children in failing schools do not create the market forces or build the political power necessary to transform our education system.

Narrowly Targeted versus Broad-Based Programs

Many school choice supporters prefer targeted programs over broad-based programs for one, or both, of two reasons. Some believe that starting with targeted programs is the best or only way of getting bigger, more inclusive programs in the future. Others support targeted programs because they are concerned only with helping those who have the fewest options and are served most poorly under our government-run school system. Still others hold some combination of these views, desiring bigger programs but convinced that helping low-income families first through targeted programs makes political and moral sense. Principles of politics, common sense, and real-world experience show that supporting targeted choice programs for these reasons is not advantageous.

For over a decade and a half the school choice movement has followed what has been called the "toe-hold strategy," focusing primarily on programs that target special segments of the public. But toe-holds are short-term tactical positions, made only to move on quickly to the final objective. If you stay in a toe-hold too long, your foot will cramp and you will fall.

Passage of the Milwaukee Parental Choice Program was a landmark success, crystallizing and energizing the school choice movement in 1990. After 17 years, however, this first targeted program still covers less than a quarter of all low-income Milwaukee children and serves none of the children trapped in failing schools elsewhere across the state. It took five years for the program to grow from 1.5 percent of Milwaukee students to 15 percent. It took another 11 years to expand the cap to cover 20 percent of Milwaukee students, 22,500 students total. At this rate, it will take at least another 4 years—or 21 years from the program's inception—before all low-income Milwaukee children have school choice. Even then, the Milwaukee voucher program would do nothing for the rest of Wisconsin's needy children or for the middle-class families who struggle to find and finance a good education for their children.

Targeted voucher programs in other states have spread slowly as well, and most of them cover very specific student populations, such as children with disabilities or children in foster care. Obviously, these programs do not cover all the children who would benefit from the injection of market forces into education. These narrowly targeted programs are unlikely to bring good choices to all the children they propose to help, and most in principle exclude the middle class.[56] Programs that target only low-income families or children in failing schools do not create the market forces or build the political power necessary to transform our education system.

The following section explains why broad-based choice programs are preferable to targeted choice programs, regardless of the target population. It also explains how tax credits mitigate some of the political problems related to targeted choice programs. As an old social science saying goes, "programs solely for the poor are poor programs." Broad-based programs can be implemented in increments through various phase-ins or a reduction in the benefits to families. These options are mentioned below and in the model legislation as possible political concessions. In terms of both market and political dynamics, however, programs narrowly targeted to special populations lack the power that broad-based school choice policies promise.

Addressing Common Criticisms of the Broad-Based Strategy

This call for broad-based programs may find a tough audience among many school choice supporters, even among some of those who wish to eventually have broad or universal coverage. It is, after all, at odds with perceptions and theories regarding the politics of school choice which are deeply engrained in the history and structure of the school choice movement. This section attempts to answer some of the most common objections to broad-based programs, and subsequent sections lay out the reasons for pursuing such programs.

Thomas Kuhn's *The Structure of Scientific Revolutions,* a classic in the philosophy of science, describes the progress of science as one of revolutionary shifts in theoretical paradigms.[57] During periods of "normal science," the professional community works with a set of shared assumptions: received theories, facts, methods, values, and goals that compose their discipline's paradigm. During periods of scientific revolution, this paradigm is undermined by anomalous new facts, and new theories are put forth to explain them. Ultimately, a new dominant paradigm emerges and another period of normal science is ushered in. At any given moment, the reigning paradigm enjoys enormous intellectual inertia. Scientists naturally resist the overturning of a paradigm, knowing full well the measurable progress it has allowed them to make.

At the risk of stretching an analogy too far, the school choice community is working under what might be called the "Milwaukee paradigm," wherein the pursuit of targeted vouchers and the cultivation of their constituency is viewed as the best strategy to achieve widespread school choice. Many choice advocates see the targeted-first approach as incontrovertibly superior to the broad-based approach; targeted programs, they claim, have been enacted while broad-based programs have not. Our political system encourages, and possibly requires, incremental rather than revolutionary reform, the argument goes. By this logic, choice supporters should pursue incremental reform, starting with choice programs that target small and sympathetic portions of the population such as special needs children, foster children, and children from low-income families. Furthermore, many critics argue, targeted programs have brought increasing legislative success over the years in many states. Some claim the only broad-based program to have passed thus far was enacted this year in Utah by a razor-thin majority before being overturned in November by a ballot initiative. Targeted programs, it is thus believed, will lead to increasing success, while broad-based programs simply haven't been successful at all.

A number of problems arise from this argument, both factual and theoretical. First is a major factual problem: five broad-based programs have been passed and four have been implemented. Some confusion of terms adds to this problem. Programs can be targeted, broad-based, or universal in their coverage, and programs can also be either generous or limited in the size of the benefit that a typical family obtains. The recent Utah voucher program was universal and relatively comprehensive in its benefits. Arizona's original personal donation tax credit is likewise universal, as it has no eligibility restrictions, but it is limited by the donation cap and prohibition against scholarship trading.[58] It is certainly a broad based program in the sense used in this paper, as it covers and currently benefits many middle-class families who bring political and other resources to the defense and expansion of school choice. The Minnesota tax credit is likewise broad-based, if limited in benefit, as is Iowa's personal tax credit and the Illinois tax credit.[59]

The potential of these programs is often overlooked, perhaps in part because the school choice movement has put most of its resources

The school choice community has been working under what might be called the "Milwaukee paradigm," wherein the pursuit of targeted vouchers and the cultivation of their constituency is viewed as the best strategy.

It is problematic to claim that broad-based programs are more difficult to pass than targeted programs when they have not received similar attention.

behind targeted voucher programs. Tax credit programs that are small and incremental but broad based are largely ignored by school choice supporters. Another, more important, reason for the lack of emphasis on these programs is that they are hobbled by certain deficiencies—chief among them the insufficient value of the benefit they currently provide.

Though seldom discussed today, the federal tax credit proposals of the late 1970s and early 1980s were all broad based, explicitly meant to cover the middle class.[60] For example, in taking up a proposal for a federal education tax credit, President Nixon framed the issue as a matter of fiscal prudence in support of middle-class families, placing "particular emphasis on the dire fiscal consequences should the nonpublic sector be allowed to collapse."[61] Some of these tax credit proposals came very close to passing in the House, did pass the Senate, and drew much more support than the targeted programs that followed.[62] The primary reasons these did not pass is that the teachers unions began a serious lobbying effort. Also, such programs are nearly a straight revenue loss for the federal government because it spends relatively little on education. The latter point is certainly not the case at the state and local level.

Beyond the factual problems with the "targeted success" argument, too few cases of legislative success and too little data on the number of bills introduced exist for a valid comparison between targeted and broad-based programs. How many expansive school choice laws have been proposed in the past 50 years? Data are extremely difficult to gather and have never been marshaled, which means a definitive answer is impossible. Clearly, however, targeted voucher programs have been the focus of the school choice movement, so it seems reasonable to conclude that more targeted than broad-based proposals have been floated.

If both broad-based and targeted programs had a 1 percent chance of passing, and 100 and 500 bills, respectively, were introduced, the result should be 5 targeted programs and only 1 broad-based program passed. Consider another scenario, in which the success rate of targeted bills was 1 percent and that of broad-based bills was double that, at 2 percent. If 500 targeted bills were introduced over the years, 5 bills should have passed. If only 25 broad-based bills were introduced, none would be expected to have passed. In this scenario, broad-based bills were twice as likely to pass, but none would likely have passed to date.

Obviously the number of targeted and broad-based bills passed says little about their respective political potential without knowing the number of each that has been introduced. If very few bills have been introduced, then few if any conclusions can be drawn from the number that have actually been enacted. For the same reason, a statistical analysis cannot be run with data that provide little variation on the relevant variables. There's nothing to analyze if nothing varies. Targeted programs have been the overriding focus of the choice movement for 17 years. It is problematic to claim that broad-based programs are more difficult to pass when they have not received similar attention.

Not only have relatively few broad-based bills been introduced over the years, but most bills, regardless of breadth of coverage, have been voucher programs. As argued in this paper, vouchers, regardless of their scope, are less likely to pass and survive than tax credits. And even if they are broad based, many potential allies are nonetheless lost; many religious conservatives, homeschoolers, and private schools that serve the middle class but value their autonomy too much to risk vouchers only weakly support such legislation or refuse to support it at all. Any analysis that seeks to compare targeted and broad-based legislation will be compromised by the fact that vouchers have political and legal problems that undermine the political advantages of broad-based programs. Examining the political dynamics of targeted and broad-based programs is useful, but any such study must consider the implications of coverage levels for vouchers and credits separately to determine real-world political viability.

The school choice movement's focus, rhetorically and legislatively, on targeted vouchers has had implications beyond the straightforward ones mentioned above. The movement has spent the past 17 years trying to mobilize the constituency for targeted vouchers, not broad-based credits. That means more groundwork must be done up front for broad-based credits, because the issue needs to be redefined and the constituency needs to be mobilized. These considerations, however, do not speak to the inherent political potential of broad-based versus targeted programs. A better way to evaluate the two approaches might be to promote broad-based credits with middle-class arguments for 17 years and see where we stand. That would at least moderate some of the differences in groundwork.

Another common concern is that the American political system allows for only incremental gains. This is certainly true most of the time, although the role of incrementalism in public policy is still much disputed, with much evidence suggesting the system is instead subject to long periods of relative stasis punctuated by nonincremental changes in government structure and power relations (punctuated equilibrium).[63]

As it happens, the model tax credit legislation presented here *is* incremental; it allows individuals and business to opt into the program, provides only a percentage of per-pupil spending, and leaves the government system entirely unchanged and intact (at least initially). Of course, what is considered incremental versus nonincremental policy change can be difficult to determine because the distinction is one of degree, not kind. Is it incremental or revolutionary to allow private investment of 2 percent of an individual's social security payments? What about welfare reform in the 1990's? How about Health Savings Accounts? Whether or not a policy change counts as incremental is to a large extent in the eye of the beholder. However, voters will likely perceive tax credits as less radical than vouchers, whether or not that is in fact the case, because credits are a common and unremarkable method of encouraging certain types of spending. In the event that too many legislators see this model legislation as unacceptably nonincremental, it can be further "incrementalized" through various phase-ins or by reducing the benefits to families which are proposed in the model legislation as possible political concessions.

Finally, many supporters of targeted programs claim that such programs soften the legislative ground and make expanding choice programs and broadening their reach easier in the future. This is a possible outcome; however, focusing on targeted programs first runs the risk of compartmentalizing school choice as a special solution to special problems for special populations. A targeted focus encourages legislators and voters to think of choice as a stop-gap solution that should only be used on a small scale, rather than a general education reform. That approach runs the risk of increasing the difficulty of convincing legislators and voters to support a broad-based program after choice supporters have worked for years to advance the targeted argument and mobilize the targeted rather than broad constituency. Serious institutional and conceptual lock-in effects can make it difficult to switch some paths once taken; politics is very often path-dependent.[64]

Institutional and conceptual lock-in effects can make it difficult to switch policy paths once taken.

Wisconsin and Ohio, host states to the oldest modern voucher programs, certainly don't suggest that targeted choice programs lead to more expansive ones. Arizona, arguably the state with the widest range of choice options, was put on the path to targeted programs by broad-based programs like charter schools, open enrollment, and a universal donation tax credit. The targeted programs came only after a middle-class constituency and institutional base had been built through the tax credit and middle-class constituencies became familiar with choice through these other programs that benefited them. Similarly, the Maine and Vermont "tuitioning" programs that have targeted vouchers to students in small towns without their own public schools have not expanded beyond that initial niche, despite being popular with participants and having been in existence for more than a century. In fact, both programs have actually narrowed in scope over the years, eventually eliminating religious schools from eligibility to redeem the tuition vouchers.[65]

One possible reason that targeted programs are passing now with greater frequency is that more people have come to see them precisely in the severely constrained terms that they advance. Even outright opponents of choice and opponents of broad-based choice see that the challenge these programs pose to the status quo is negligible.

The legislative success of some targeted programs in recent years may also have a very dark side; choice supporters may have walked down a seemingly easier path, only to find that it leads to a dead end, or at least a cliff they must scale. Certain kinds of choice not only fail to beget more choice but may actually make expanding choice in a meaningful way more difficult. Targeted programs have proven easy to contain both programmatically and conceptually, as Wisconsin and Ohio appear to demonstrate. Where is the rising demand for broad-based choice coverage in these states? Shouldn't it be evident by now, after 17 and 12 years of targeted programs, respectively? If not, why not? After years of arguing for choice in targeted terms, mobilizing the targeted constituency, alienating middle-class interest groups and constituencies, releasing some pressure from the system by opening an escape valve for those served most poorly by the system, why expect it to be easier, rather than more difficult, to expand choice to the middle class or even to all of the working poor? Is a legislator who grudgingly supported a tiny, inexpensive targeted charity program more likely to support covering all low-income families or the middle class? The arguments and calculus that led a reluctant legislator to support a targeted program are likely to be very different from those necessary to secure a vote for broad-based programs.

In the meantime, few arguments have been formulated or constituencies mobilized to convince legislators to come along with a broad-based program. What has been gained long-term? What has the effort built? What opportunity costs has the choice movement paid? *Some* choice doesn't necessarily beget choice on a *meaningful scale*.

Targeted school choice programs cannot create effective markets in education services.

Market Considerations

Targeted school choice programs cannot create effective markets in education services.[66] In the worst case scenario, small numbers of eligible children are scattered all over a state, creating so little new demand, and at so low a concentration, that the program would not lead to the creation of even a single new school. This was the case with Florida's A+ voucher program prior to its invalidation by the state Supreme Court in January 2006. More generally, the tiny customer base created by most targeted choice programs means that few new providers will arise, and those that do will have little ability or incentive to invest in research and innovation. Heavy research and development investment presupposes the prospect for substantial market growth if effective new techniques and products are developed. Narrowly targeted programs provide no such growth potential, and hence, at the outset, eliminate the core mechanism by which markets drive costs down and quality up.

Market efficiency relies on the informed choices of consumers compelling producers to offer better and better services at lower and lower costs. Any given consumer may be ill-informed about some, most, or even all details about the quality or cost-effectiveness of a particular provider's services. But in large markets, the effect of these limits on individual consumers' knowledge is modest, because enough consumers know enough about some providers' services to pressure all providers to raise quality and lower costs. The larger the number of consumers in a given market, the less any one consumer needs to know about quality and cost-effectiveness in order to be assured of receiving a good service at a good price. Limiting school choice programs to a small fraction of the population thus undermines a key benefit of markets. Limiting choice programs to subpopulations who themselves have less educational experience than the public at large (a likely effect of programs targeted at disadvantaged children) may be particularly harmful, robbing them of the beneficial market effects that result from the choices of highly educated consumers.

Choice programs of limited size also allow little room for schools to specialize and tailor their educational environment to students with particular needs. The demand for specialized services in any category is always smaller than the demand for general services. And because the overall customer base under targeted programs is already very small, it is unlikely that there will be enough customers with the same specialized demands to support schools that cater to those special needs. Specialization and the division of labor are essential elements of markets, so suppressing these factors will impede or prevent the development of effective markets.

With few new schools created and limited prospects for specialization, competitive pressures on education service providers remain weak, necessarily reducing any performance improvements that would result from competition. Government schools may respond to private-sector competition, but their response is attenuated to the extent that competition is attenuated.[67] A drastically limited market in education can have, by definition, only a limited impact on the overall educational system and student performance.

These policy problems lead directly to political problems. The public and politicians may easily but mistakenly come to think of severely restricted school choice programs as examples of true education markets. The sometimes underwhelming effects of targeted programs can thereby undermine support for large-scale programs and impede the prospects for the expansion of targeted programs themselves. A number of additional serious political problems with targeted school choice programs are discussed in detail below.

Political Considerations

Targeted school choice programs do not build a politically effective constituency for school choice. The importance of this consideration should not be underestimated. Opponents of school choice are powerful, and success requires the largest possible pool of support. In addition, the passage of legislation is only the end of a battle, not the end of the war.[68] An organized and politically powerful constituency is vital for the defense and expansion of a program after its initial passage.

These principles are particularly relevant to reform efforts, broadly speaking, which attempt to significantly change existing power and institutional structures. The opposition to such reform is well-organized, well-provisioned, and deeply entrenched, with massive influence in the legislature that passes or repeals the policy and in the agencies that implement the policy. When the opposition is defeated in the legislature, they can regroup to persuade lawmakers to roll back the legislation, work to prevent expansion in future sessions, appeal for relief in other venues such as the courts or the agencies overseeing the policy, or undermine the policy through the agency responsible for implementation.[69]

Because the school reform opposition is the status-quo power, its representatives have longstanding relationships with individuals in all of the relevant venues: the legislature, courts, and government agencies. School choice opponents are typically better organized and funded than reformers. Following the passage of legislation, they can therefore mount a counterattack that is difficult if not impossible for reform elements to match in the aftermath of a hard-fought victory. To counter such longstanding strengths, school choice proponents need to build permanent institutions with a direct and powerful interest in defending and expanding reform. This is necessary for successful implementation, survival, and expansion. Targeted vouchers do not encourage the development of these institutions.

Furthermore, the only individuals directly benefiting from most targeted voucher policies are low-income parents and their children. These individuals have the fewest resources to spare for political activity and therefore have a low degree of political influence. The political disadvantages of low-income parents are also massively compounded by the existing interest group structure.[70] The organizations most active in representing the interests of low-income and urban individuals and communi-

The sometimes underwhelming effects of targeted programs can undermine support for better-designed large-scale reforms.

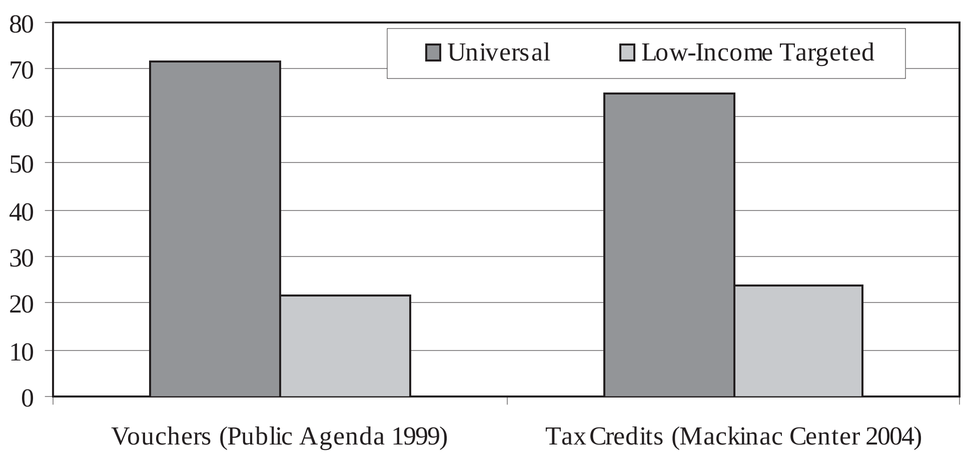
A 2003 survey found that 65 percent of the public preferred a universal tax credit program over one targeted to low-income children.

ties are typically the most active opponents of school choice.[71] The Urban League, the NAACP, much of the Democratic Party establishment, and other organizations with a reputation for and an organizational focus on low-income, urban, and minority issues are staunch foes of private school choice—despite the overwhelming support for school choice among the populations for whom they claim to speak.[72] In addition, the organizations that support school choice do not typically have a reputation for or an organizational focus on low-income, urban, and minority issues.

In terms of passing school choice legislation in the first place, the benefits to backing targeted programs for political expediency are uncertain at best. Many potential allies are lost when a targeted program is pursued, while a larger program will drive off few or no allies. Low-income families receive benefits in both targeted and broad-based programs. A large number of private schools, private-school parents, and homeschoolers, however, receive no direct benefits from targeted programs and so will only weakly support targeted choice efforts, if they support them at all. Promises of future expansion and the "camel's nose under the tent" theory are abstract and distant promises that ring increasingly hollow with each passing year. Furthermore, much of the energy and enthusiasm of the core school choice supporters will be dissipated, as they strongly prefer broad-based coverage.

Programs covering all children are much more popular among school choice supporters and the general public than are those that cover only low-income children (Figure 2). The principle of universality permeates America's political culture, and universal school choice programs are consistently much more popular with the general public than are targeted programs. The margin of preference is often huge—two or three to one in favor of universal programs—and the results have proven consistent over the years, across states, and even across different political dispositions.[73] Head-to-head comparisons are dramatic; a survey conducted for the Mackinac Center in 2003 found that 65 percent of the public preferred a universal tax credit program over one targeted to low-income children, whereas only 24 percent preferred the targeted program. Targeted vouchers were opposed by the public by a margin of 22 points, while universal vouchers enjoyed a 7-point margin of support.[74] These numbers confirm a 1999 survey by Public Agenda that showed a heavy

Figure 2
Percent Support for Universal versus Targeted Choice Programs



Source: Steve Farkas, Jean Johnson, and Anthony Feleno, "On This Ice: How Advocates and Opponents Could Misread the Public's Views on Vouchers and Charter Schools," Public Agenda, 1999; and Andrew J. Coulson, "Forging Consensus: Can the School Choice Community Come Together on an Explicit Goal and a Plan for Achieving It?" Mackinac Center for Public Policy, 2004.

preference for universal choice; 72 percent of the public supported universal vouchers while only 22 percent support a program targeted to low-income families.[75] Republicans, Democrats, and Independents all prefer universal programs to targeted ones.[76] In addition, the margin of support for universal programs is 25 points higher than it is for targeted programs among organizations already involved in supporting school choice efforts.[77] Controversial reform issues like school choice require the largest and most energized coalition possible. Targeted programs needlessly shrink and enervate the school choice coalition.

The most comprehensive analysis of voucher opinion to date, Moe's *Schools, Vouchers, and the American Public,* nonetheless concludes that targeted programs are politically most viable.[78] His recommendation is based primarily on the response to one question that asks respondents to choose one of two arguments: "In order to promote the greatest reform and include the most children, vouchers should be made available to all children in the state," or, "Because a voucher plan would be such a big change, it is better to start with a smaller plan that is limited to children whose educational needs are the greatest." Respondents chose the targeted first argument by an 8-point margin of 48 to 40 percent. It should be noted that the implication in the targeted choice is that a universal program would follow, but we know from the history of targeted voucher programs that this is not the case. A more typical method of limiting the initial impact of a major policy change is to phase in the implementation of the change over a number of years to allow adjustments and assessments. Unfortunately, this choice was not given to respondents.

Moe's data on the public's general and overwhelming preference for universal programs over targeted is consistent with all other surveys, showing a 28-point margin of support for universal over targeted even after the survey introduces through earlier questions a number of arguments in favor of targeted programs and numerous arguments against universal ones. For instance, one question asks respondents to agree or disagree with this statement: "I worry that a large-scale voucher plan might be too risky and experimental to try out on all of our kids." The question is problematic for at least two reasons. First, it suggests that small-scale programs have not been tried already and that further such programs are therefore necessary—certainly a very arguable point given the research conducted on existing targeted voucher programs. Second, it introduces significant negative considerations into the survey with no equivalent negative considerations for targeted programs, such as that they may never be expanded to include all families, since the statement arguing for a targeted-first approach implies that broad-based programs will necessarily follow successful targeted programs.

We are therefore left with a few facts from Moe's and other surveys. The public overwhelmingly prefers universal to targeted programs. Even opponents of vouchers, when forced to choose one kind of program over the other, choose universal over targeted by a 10-point margin.[79] When asked how to *implement* what is *implied* to be a universal program, people support what sounds like a low-income-first implementation rather than an immediate full-coverage program by an 8-point margin. Moe takes this rather thin support for gradual implementation to mean that there is significantly more support for targeted programs and that targeted voucher programs are the most politically viable policy. Although he recognizes that the "vast majority of people are universalists and believe that a voucher system should be broadly based," school choice supporters, Moe argues, "should start with programs for needy kids."[80] The survey questions on which Moe relies do not support the conclusions he draws.

Broad-based programs can certainly raise concerns among legislators about the potential impact of large programs, but these can be addressed without eliminating allies or permanently hobbling the program. The easiest and most effective way to address these concerns is by pointing out the savings involved with the switch of each student from government-run to independent schools.[81] Fiscal worries that make targeted programs seem less risky can be turned to advantage. The more students enrolled in a

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Education tax credit programs have expanded much more rapidly than vouchers despite how recently most were passed.

choice program, the more the state saves by avoiding the need for new or expanded schools, allowing school staff reductions, or avoiding tax increases while class sizes and per-pupil spending increase. Staff reductions, it seems reasonable to speculate, most likely will be concentrated among the ballooning administrative ranks in the government system—which act as a drag on performance—rather than among teachers who directly provide the service. Independent schools on average have far fewer administrators but more teachers per student than government schools.

Another way of addressing concerns regarding the effect of a broad-based program is to phase it in by grade level, so that the change occurs gradually over a number of years. This allows more time for the system to adjust and makes short-term effects more predictable, although it also leaves the program itself more vulnerable. A school choice program can also be steeply means-tested in initial years (or indefinitely, like the recently defeated universal voucher law in Utah), with full low-income coverage effective immediately and a gradual increase in middle-class coverage over time. These modifications will ensure active and widespread support by middle-class interests while also guaranteeing that the program has a benign budgetary impact even in its early stages.

Finally, a school choice program can be permanently means tested, reducing the benefits to wealthy families and the overall cost of the program. This is good policy as well as good politics. The goal of a universal school choice program is to enable universal freedom of choice in education, and that is not the same thing as universal participation in an education tax credit or voucher program. Individuals are most careful with their own money, and markets work best when people spend their own income on a service.[82] The model tax credit legislation presented here therefore recommends that high-income families be allowed to direct their education dollars where they choose through donations but gradually phases out personal tax benefits for their own children's education. This provision can ensure universal choice in education without extending tax benefits to those who already have ample access to the educational marketplace.

There is, it must be noted, a political tradeoff between the number of families covered and the size of vouchers or tax credits. The politically savvy choice is usually to err on the side of reducing the size of a benefit rather than the number of eligible families in order to build a wider constituency of supporters. The limit to this logic is the benefit floor below which the amount becomes too small to matter. That amount will be quite low relative to the overall costs of education: $500 is a substantial sum to middle-class and lower-income families, but it's only about 5 percent of the average per-student spending in the government system (or about 10 percent in the private sector). In addition, according to a well-known principle, prospective losses are more noticeable and much more important to individuals than are prospective gains.[83] The rollback of even relatively small benefits will be noticed by the beneficiaries, making politicians reluctant to reverse them once established. A small benefit is also an important symbol of progress and momentum. Incremental victories, as long as they are structured correctly and build political capital, can be used by school choice organizations to encourage participation in the movement and to make future victories seem more plausible and participation more attractive.[84]

Targeted vouchers occasionally get passed, but they expand slowly and with difficulty because they do not bring on board organized and powerful political constituencies with an interest in fighting for expansion. In targeted voucher programs, individual low-income parents apply through a governmental body to receive checks, just as with public housing vouchers. This is a tenuous political base for defending, let alone expanding, a policy.

Education tax credit programs have expanded much more rapidly and cover far more children than vouchers despite how recently most were passed; they already support about eight times as many children as do voucher programs. Among the state choice programs that target low-income families or children in failing schools, tax credit programs support nearly 3.5 times the number of students that vouchers support using about the same amount of money.[85] This obviously means that the scholarship going to each child is smaller in tax credit programs than it is in voucher programs; some find this concerning, but it is a strength of tax credits that they do not set an artificial price for education or a scholarship. Scholarship organizations are able to work with families and schools to determine the amount necessary to get a child the education she needs, and that amount is usually far less than government per-pupil spending or even many set voucher amounts. This flexibility in funding levels means that tax credit programs can respond more precisely to a family's needs and are able to assist many more families than voucher programs with the same amount of funding. Tax credits are more cost-effective and build a larger customer base for choice, both of which are politically very helpful.

Not surprisingly, targeted tax credits cover more children from low-income families than do targeted vouchers. Even targeted tax credit programs still require the involvement of taxpayers, businesses, and scholarship organizations, which then provide crucial organizational and political support for the programs and their expansion that compensate in part for a constituency that is small and commands few financial or political resources.

Expanding Tax Credits to State-Run Schools

Expanding the school choice coalition by expanding coverage to the broad middle class is the best option. Reformers, however, often attempt to reduce opposition and expand the supporting coalition by including provisions allowing tax credits for educational expenses incurred in or donations to the government system. Public school provisions are typically viewed as a political compromise necessary for passing school choice legislation, but they are in fact a counter-productive policy feature.

The goal of a school choice program should be to bring educational freedom to the current monopoly system. Public schools are already fully and directly funded through government funds at a level well above per-pupil spending in the private sector, putting independent schools at a severe disadvantage. Allowing tax credits for education expenses outside of the government-funded system expands educational options for all families by providing a new avenue for pursuing public education. Adding additional private funding streams to the government system through tax credits reduces the beneficial competition between the sectors and exacerbates the existing financial discrimination against independent schooling. That reduces the incentives for public schools to improve and the ability of private schools to serve families. The Pennsylvania tax credit program, for instance, allows tax credits for donations to Educational Improvement Organizations that fund "innovative programs" in public schools. Although this is preferable to unrestricted donations, the schools are still getting additional funding for additional services and are therefore given even greater advantages over the independent sector.

Supporters of educational freedom need to consider these compromises very carefully and structure any such policy compromises to ensure they do as little as possible to undermine the choice law. One way to include parents of children in public schools in the tax credit program, without adding funding directly to the government system, is to allow parents to opt for tutoring services provided *outside* the government system *in place of* class time for the particular subject. In other words, parents would be authorized by the legislation to have their children opt out of a subject, such as mathematics, and provide for their education in math through an independent school or tutoring service.

This approach expands options for children in public schools without sending additional funds directly to those schools. The schools will, of course, benefit from reduced class sizes in those subjects with which parents are dissatisfied. Parents, in turn, will be introduced to the services offered by independent education providers and to the concept of

Adding more private funding streams to the government system through tax credits reduces competition between the sectors and exacerbates financial discrimination against independent schooling.

being education consumers with expanded options. A political compromise such as this is preferable to adding a new funding stream to support the government system. Still, expanding coverage to include the middle-class is best.

Final Assessment: Broad-Based Policy Is the Best

To provide the neediest children with access to a good education, a powerful political constituency must be brought to bear. No school choice program should eliminate the broad middle class in deference to political expediency or arguments about incrementalism, toeholds, or providing for the needy first. Such compromises are no bargain and may well be a dead-end for school choice reform. Low-income children are best served by a large, vigorous, and free education market, and the only way to get that is to include the broad middle class.

Policies that provide for universal school choice are overwhelmingly more popular with important coalition members and the general public than the targeted programs that are usually pursued. A program may have to be steeply means-tested at first, but the principle of inclusive coverage should be established from the start. The voting middle class must see some real benefits and have a stake in expanding the policy. Their inclusion will help ensure a program's survival and growth. Finally, when a targeted program is pursued, education tax credits can substantially mitigate the problems inherent to limited policies.

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Regulatory Issues

A properly designed school choice program should keep regulations on education service providers and consumers to a minimum, relying on existing regulations for similar nonprofit organizations. Proponents of school choice must keep the focus on direct accountability to parents and taxpayers and point out the ineffectiveness of accountability to bureaucrats. Many of the most common and seemingly benign school choice regulations seriously compromise choice programs both politically and functionally.

Market Considerations

For a market to operate effectively, both consumers and producers must be free of undue regulation. Consumer freedom is an explicit part of the school choice concept and readily understandable by most supporters.

Producer freedom is equally necessary for a well-functioning school choice program but is largely overlooked or misunderstood. The primary problem with the regulations most commonly seen in school choice programs is that they limit the size and diversity of supply in educational choices. Producer freedom means allowing education providers to offer a diverse menu of options from which consumers can choose. This is essential to meaningful consumer choice.

Specialization and the division of labor are the core attributes of free markets, and without these any market will be crippled. If the government mandates that all schools supported by vouchers or tax credits must follow a particular curriculum, for instance, then in practice parents have only one curriculum to choose from and therefore little effective freedom of choice. Likewise, if all schools supported by vouchers or tax credits are required to admit students on a first-come or random lottery basis (such as in the Milwaukee voucher program), then the schools will be incapable of tailoring their mission and pedagogy to serve students with particular needs, characteristics, or interests. The result will be a lack of diversity in the kinds of schools from which parents can choose.

Children do not all learn in the same way; some, for instance, may thrive in an environment of self-direction while others need a more structured environment to succeed. Many schools help children excel through immersion in an environment animated by a particular religion, philosophy, or mission. If schools have no control over their admissions policies, and hence are unable to ensure the commitment of their students to the institution's values and mission, their ability to shape their environments and character is impeded. While every child must be served by the education system as a whole, it is unrealistic to imagine that every child can be well served by every school within that system. Even the traditional public school system sends hundreds of thousands of children with special needs to the private sector to be educated because it is unable to serve these students itself.[86] The notion that every public school must and can serve every student is a myth.

Parents overwhelmingly share a deep concern about a core set of academic outcomes—reading, writing, arithmetic, and social studies—and schools will be forced to compete with each other on the basis of those results. Some parents might demand test results in particular grades for comparison, and some might demand real-world evidence of success such as student admission rates to competitive high schools from a particular grade school, or to competitive colleges from a high school. Most parents are interested in all of these measures. The overwhelming majority of parents want their children to succeed and will hold schools more broadly and meaningfully accountable for that success than any suite of state-mandated tests.[87] A school choice program arms parents with the freedom to leave a school if they are dissatisfied, and that is the most effective accountability system of all.

Political Considerations

Many common choice program regulations are debilitating to school choice efforts for political reasons as well. Many independent schools are unwilling to submit to these regulations, and that means the mobilized constituency for choice will be restricted from the beginning. Most independent schools are defined by a particular mission. The mission might be to serve low-income families or the wealthy, Catholics, Jews, or Protestants, children with disabilities or gifted children; that is, most independent schools are likely to have an identity and a market niche. Both are compromised or destroyed by many of the most common school choice program regulations.

Lottery admissions policies eliminate a school's prerogative to admit the children that fit the school's mission, and the school thereby loses its ability to control that mission. As noted above, diversity of missions provides consumers with real choices. Also, devotion to a particular mission underlies the devotion of many good teachers to their work. Any regulation that undermines a school's autonomy undermines its incentive to support or participate in a school choice program.

Not surprisingly, many schools refuse to participate in programs with lottery admissions. One study notes that "the more regulation, the less likely it is that independent schools will participate. In Florida, only 23 of 1,603 independent schools statewide signed up to participate in a voucher scheme requiring lottery admissions."[88] Regulations are especially concerning for strongly religious schools when participation requirements restrict their religious character, such as through mandates that all children be allowed not to participate in religious instruction or that the school not discriminate in admissions or hiring on the basis of religion.

Independent school organizations, schools, and parents who are otherwise supportive of school choice will only weakly support, and may even oppose, school choice policies that undermine independent school autonomy. Writing in 2001, then-president of the National Association of Independent Schools Peter Relic commented, "I have not yet seen a single local or state voucher plan in which I would recommend independent school participation, because of the governmental intrusion into the schools' admission policy and judgment of applicants."[89] The private education industry has a direct stake in the school choice debate and is a natural ally of the reform effort. Policies that discourage or eliminate these coalition partners debilitate the choice reform effort.

Final Assessment: Parents Are the Best Regulators

Choice opponents have had considerable success framing the debate over accountability, defining it as accountability to government bureaucrats. But there is no greater accountability than for schools to be directly accountable to parents armed with freedom of choice. As for accountability to taxpayers, tax credits are better than both voucher programs and the status quo

Independent school organizations, schools, and parents who are otherwise supportive of school choice will only weakly support, and may even oppose, school choice policies that undermine independent school autonomy.

in making schools more accountable to taxpayers without school-aged children, because those taxpayers can direct their money to scholarship organizations of their choosing. If they become dissatisfied with the results, they can shift their money elsewhere. A tax credit system thus makes public education accountable to both parents and taxpayers in a way that is impossible in a government system or voucher program. The public and politicians will understand these considerations, even if it takes time and education. Conceding the argument that accountability means accountability to bureaucrats is a recipe for continually increasing regulations and an end to the independent school system. Accountability means accountable to parents and taxpayers.

Although many school choice supporters are reluctant to pass judgment on the relative merits of various choice proposals, the movement for educational freedom can ill afford such niceties.

Conclusion: Broad-Based Tax Credits Are the Best Policy

Although many school choice supporters are reluctant to pass judgment on the relative merits of various choice proposals, the movement for educational freedom can ill afford such niceties. Beneficiaries of the government education monopoly are powerful and determined, and have the easier task of defending the status quo with the many checks and vetoes our political system provides. School choice reformers must identify and advance the very strongest policy and couple that with the strongest message possible. The discussion above leads to two solid conclusions: tax credits are preferable to vouchers and broad-based programs are preferable to targeted programs.

Because tax credits are not government funds they are less likely to be challenged in court and more likely to survive when challenged. Because tax credits are not government funds, they make unwarranted government regulation of participants less likely, thus bringing more support to the coalition from conservative individuals and interest groups. Tax credits are also more popular with the general public and incite less unified opposition from Democratic politicians. Perhaps most important, tax credits directly involve higher-income individuals and businesses in the program. These groups have more to gain with the passage of tax credits than with vouchers, and their organized support and resources make tax credit programs more likely to survive and expand after passage.

In addition, short- and long-term success in establishing true school choice is more likely when the broad middle class is included than when a program narrowly targets a special population. In school choice as in other areas of reform, low-income citizens are most likely to get the help they need when the middle class is included in the program. Broad-based school choice programs command much more support from political elites, interest groups, and the general public than programs targeted to special populations. Although a choice program may need to be introduced incrementally by phasing in the program, heavy means-testing, or reducing the size of the benefit, the breadth of coverage should not be limited in an attempt at political compromise. Targeted programs cut away powerful coalition partners and are left vulnerable. Tax credits mitigate many problems inherent to targeted programs because tax credits require the participation of resource-rich individuals and organizations. A broad-based strategy that argues for a choice program with wide coverage as a general education reform is most likely to lead to freedom in education.

The Public Education Tax Credit Act, model tax credit legislation that embodies these principles and conclusions, is presented in Appendix B. This bill provides a comprehensive framework for transforming a state's education system from a government monopoly into a system of educational freedom for all citizens. Because it is comprehensive and attempts to address all known problems with existing programs, the legislation can appear complicated at first glance. Extensive endnotes to Appendix B explain the purpose and meaning of many provisions, and Appendix A provides examples that should help clarify how the individual provisions will make the program as a whole work seamlessly.

The model legislation attempts to balance political and market concerns in a way most likely to produce a free and vibrant system of public education characterized by choice and progress. This comprehensive education reform may look daunting in its complexity but is in fact quite simple. The Public Education Tax Credit Act allows all taxpayers, businesses, and individuals to claim dollar-for-dollar credits on their state sales and income taxes and the education portion of local property taxes for education expenses, both for personal use on their own child or for donations to support children who need financial aid to get a good education. Fortunately, good policy is often good politics.

Notes

1. James E. Ryan and Michael Heise, "The Political Economy of School Choice," *Yale Law Journal* 111, no. 8 (June 2002): 2043–2136.

2. See John W. Kingdon, Agendas, *Alternatives, and Public Policies* (New York: Longman, 2003), chaps. 6, 8; Donald E. Abelson, *Do Think Tanks Matter? Addressing the Impact of Public Policy Institutes* (Ithaca, NY: McGill-Queen's University Press, 2002).

3. Many of the issues discussed in this paper have received detailed treatment in Andrew J. Coulson's "Forging Consensus: Can the School Choice Community Come Together on an Explicit Goal and a Plan for Achieving It?" Mackinac Center for Public Policy, 2004, http://www.educationreport.org/article.aspx?ID=6517. See also George Clowes and Jay Greene, "Forging Consensus Comments," Mackinac Center for Public Policy, 2005, http://www.educationreport.org/article.aspx?ID=7328.

4. Section 2 will address in detail the shortcomings of narrowly targeted programs.

5. See Adam B. Schaeffer, "School Choice Snapshot: A 2006 Survey of U.S. Policy Organizations" Mackinac Center for Public Policy, 2006. This survey of organizations involved in school choice showed a bare majority, 50 percent, has no preference between vouchers and tax credits, whereas 32 percent prefer tax credits to vouchers and 17 percent prefer vouchers to tax credits.

6. Again, the reader is encouraged to explore these issues in more detail by referring to Coulson's "Forging Consensus."

7. For an extensive discussion of the legal issues in each state, with relevant case law, see Richard D. Komer and Clark Neily, "School Choice and State Constitutions: A Guide to Designing School Choice Programs," Institute for Justice and American Legislative Exchange Council, April 2007, http://www.ij.org/publications/other/sc50_state_report.html.

8. David O'Brien, *Storm Center: The Supreme Court in American Politics* (New York: Norton, 1986).

9. *Colorado Congress of Parents, Teachers and Students v. Owens,* 03SA364 (Col. 2004); *Holmes v. Bush,* 04-2323 (Fla. 2006); *Jackson v. Benson,* 97-0270 (Wis. 1998); *Simmons-Harris v. Goff,* 97-1117 (Ohio 1999). The courts in *Jackson v. Benson* and *Simmons-Harris v. Goff* did not dispute that the voucher funds were public funds, but ruled that they did not violate the constitutional provisions under consideration because the parents rather than the state were the recipients of those funds.

10. *Holmes v. Bush,* 04-2323 (Fla. 2006). The Florida Supreme Court ruling has been rightly criticized as an exercise in unalloyed political activism from the bench and demonstrates that some courts will find little restraint in the letter and intent of state constitutional provisions. Tax credits are therefore not exempt from such misuses of judicial authority. The ruling under consideration here, however, relied on the status of vouchers as "public funds" in overturning the Florida Opportunity Scholarship program. In order to overturn tax credits, the court would need to find, contrary to widespread legal precedent, that they are "public funds" or develop an even more novel objection. The following excerpts have italics added for emphasis. The summary of the ruling stated: "The issue we decide is whether the State of Florida is prohibited by the Florida Constitution from *expending public funds* to allow students to obtain independent school education in kindergarten through grade twelve, as an alternative to a public school education." The court ruled that the program is a violation of the uniformity provision because "it diverts *public dollars* into separate private systems parallel to and in competition with the free public schools that are the sole means set out in the Constitution for the state to provide for the education of Florida's children. This diversion not only reduces money available to the free schools, but also funds independent schools that are not "uniform" when compared with each other or the public system. Many standards imposed by law on the public schools are inapplicable to the independent schools receiving *public monies*." The legal distinction between public and private funds is central to this ruling overturning vouchers just as it has been central in rulings upholding tax credits in other states.

11. Frank R. 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, July 2002.

12. Voucher laws in Colorado and Florida have been overturned, whereas programs in Wisconsin

and Ohio were upheld. Colorado Congress of Parents, Teachers and *Students v. Owens,* 03SA364 (Col. 2004); *Holmes v. Bush,* 04-2323 (Fla. 2006); *Jackson v. Benson,* 97-0270 (Wis. 1998); and *Simmons-Harris v. Goff,* 97-1117 (Ohio 1999).

13. Komer and Neily.

14. Laura Langer and Paul Brace, "The Preemptive Power of State Supreme Courts: Adoption of Abortion and Death Penalty Legislation," *Policy Studies Journal* 33, no. 3 (2005): 317–40.

15. Ibid., p. 331.

16. O'Brien.

17. *Kotterman v. Killlian,* 972 P.2d 606 (Ariz.), cert. denied, 528 U.S. 921 (1999).

18. *Mueller v. Allen,* 463 U.S. 388 (1983).

19. *Hibbs v. Winn,* (02-1809) 542 U.S. 88 (2004).

20. *Griffith v. Bower,* 319 Ill. App. 3d 993 (5th Dist.), app. denied, 195 Ill. 2d 577 (2001); and *Toney v. Bower,* 318 Ill. App. 3d 1194 (4th Dist.), app. denied, 195 Ill.2d 573 (2001).

21. Schaeffer, "School Choice Snapshot."

22. Telephone interview, October 4, 2005.

23. Minnesota and Iowa exclude expenses for religious instruction from their tax credit programs (as well as Minnesota's tax deduction) but allow religious schools to itemize expenses to allow parents to claim benefits on the nonreligious portion of instruction.

24. F. A. Hayek, *The Road to Serfdom,* 50th anniversary ed. (Chicago: University of Chicago Press, 1994).

25. Kimberly Miller, "Money to Terror-Tied School Halted," *Palm Beach Post,* July 19, 2003. See also Coulson, "Forging Consensus," p. 55.

26. The historical record of various school choice arrangements has been investigated in detail by Andrew J. Coulson in *Market Education: The Unknown History* (New Brunswick, NJ: Transaction Publishers, 1999). The evidence reviewed in this work suggests that vouchers accumulate more and more onerous regulations over time than do less direct forms of support for education. See also Coulson, "Forging Consensus."

27. See the HSLDA position at http://www.hslda.org/docs/nche/Issues/E/EducationTaxCredit_State.asp.

28. Telephone interview, November 1, 2005.

29. Telephone interview, October 6, 2005.

30. Schaeffer, "School Choice Snapshot."

31. For detailed poll results regarding the public's awareness of school choice politics, see Terry M. Moe, *Schools, Vouchers, and the American Public* (Washington: Brookings Institution Press, 2001).

32. John A. Zaller, *The Nature and Origins of Mass Opinion* (New York: Cambridge University Press, 1992).

33. See Coulson, "Forging Consensus." These data are confirmed by a review of all tax credit and voucher polls in the iPOLL databases of opinion polling, http://www.ropercenter.uconn.edu/data_access/ipoll/ipoll.html, and in unpublished data collected in research conducted by Adam B. Schaeffer for a dissertation in the politics department of the University of Virginia.

34. Schaeffer, "School Choice Snapshot."

35. Lowell C. Rose and Alec M. Gallup, "The 30th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes toward the Public Schools," September 1998, and "The 31st Annual Phi Delta Kappa/ Gallup Poll of the Public's Attitudes toward the Public Schools," September 1999.

36. See Moe, pp. 198–205.

37. William G. Howell, Martin R. West, and Paul E. Peterson, "What Americans Think about Their Schools," Education Next, Summer 2007, http://www.hoover.org/publications/ednext/8769517.html.

38. See iPOLL databases of opinion polling, http://www.ropercenter.uconn.edu/data_access/ipoll/ipoll.html, for multiple polls on this topic.

39. Frank R. Baumgartner and Bryan D. Jones, *Agendas and Instability in American Politics* (Chicago: University of Chicago Press, 1993).

40. Paul T. Hill, "Administrative Costs of EducationVoucher Programs," University of Washington Center on Reinventing Public Education, 2003, http://www.crpe.org/pubs/pdf/AdminCostsVouchers_web.pdf.

41. Ibid., p. 17.

42. Ibid.

43. Personal communication, August 9, 2007.

44. Personal communication, August 2, 2007. The speaker requested anonymity.

45. For information regarding the pervasive problems for collective action in politics, see Mancur

Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard University Press, 1971); Sydney Tarrow, *Power in Movement: Social Movements, Collective Action and Politics* (Cambridge, MA: Cambridge University Press, 1998); and Kristin A. Goss, *The Missing Movement for Gun Control in America* (Princeton, NJ: Princeton University Press, 2006).

46. See Andrew J. Coulson, "How Markets Affect Quality," *Educational Freedom in Urban America:* Brown v. Board *after Half a Century* (Washington: Cato Institute, 2004), pp. 265–364; and Coulson, "Forging Consensus."

47. See Coulson's "Forging Consensus" for a lengthier discussion of why tax credits are less distorting of citizen behavior than vouchers.

48. The question of whether or not state education tax credits should be permitted as a federal deduction is left open here. The tax credits can be used or directed by the taxpayer but only to advance what has been deemed a public good: education. This is, in any case, an issue for the federal government.

49. Internal Revenue Service, *State and Local General Sales Taxes,* http://www.irs.gov/publications/p600/index.html.

50. The powerful political benefits that flow from donation tax credits minimize many of the problems associated with targeted programs, which are discussed below.

51. Milton and Rose D. Friedman Foundation, *The ABCs of School Choice, 2006–2007 Edition,* p. 40, http://www.friedmanfoundation.org/friedman/downloadFile.do?id=102.

52. For a concise overview of these points, see Joseph L. Bast, "Tax Credits versus Vouchers: Time to Decide," *Heartlander,* March 2002, http://www.heartland.org/Article.cfm?artId=10705.

53. For further discussions of the criticisms of tax credits, see Joseph L. Bast, "Why Conservatives and Libertarians Should Support School Vouchers," and Andrew J. Coulson, "Giving Credit Where It's Due: Why Tax Credits Are Better Than Vouchers," *The Independent Review* 7, no. 2 (Fall 2002). See also Coulson, "Forging Concensus," and Mackinac Center, "Forging Consensus Comments."

54. Coulson, "Forging Consensus," pp. 57–58, 62–65.

55. See endnote 15 in Appendix B for a discussion of a potentially serious difficulty for some tax credits and a mechanism for addressing it. Tax credits may not be feasible for reasons such as the particular political actors involved at the state level or, in the case of Michigan, a specific state constitutional prohibition of education vouchers and tax credits.

56. Voucher programs targeting special needs students typically include the middle class but are limited to an even smaller population than low-income targeted programs.

57. Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1970).

58. Families donating money to scholarship organizations are prohibited from donation-swapping: earmarking a donation for a particular student and having his family in turn support the first family's child. The donations, in other words, cannot be used to ensure that one's own child or any other specific child receives a scholarship. This limits the freedom of taxpayers and families and the effectiveness of the program by eliminating personal relationships and interests from the program.

59. For a good overview of school choice program details, see Friedman Foundation.

60. Martin R. West, "The Future of Tax Credits," in *The Future of School Choice,* ed. Paul E. Peterson (Stanford, CA: Hoover Institution Press, 2003).

61. Ibid., p. 161.

62. James Catterall, "Politics and Aid to Private Schools," *Education and Policy Analysis* 6, no. 4 (Winter 1984): 435–40.

63. Baumgartner and Jones.

64. Paul Pierson, "Increasing Returns, Path Dependence, and the Study of Politics," *American Political Science Review* 94, no. 2 (June 2000): 251–67, http://links.jstor.org/sici?sici=0003-0554%28200006%2994%3A2%3C251%3AIRPDAT%3E2.0.CO%3B2-Z.

65. Joan Biskupic, "Maine School Voucher Law Stands," *Washington Post,* October 13, 1999, p. A2. See also David M. Ackerman, "Education Vouchers: Constitutional Issues and Cases," CRS Report for Congress no. RL30165, Congressional Research Service, 200, http://carper.senate.gov/acrobat%20files/rl30165.pdf.

66. The market problems inherent to targeted school choice programs have been explored in detail elsewhere. See Andrew J. Coulson, "The Cato Education Market Index," Cato Institute Policy Analysis no. 585, December 13, 2006, for a thorough discussion of the necessary components of a

competitive education market and the way in which programs and states can be measured according to market standards. See also John Merrifield and David Salisbury, "The Competitive Education Industry Concept and Why It Deserves More Scrutiny," *Cato Journal* 25, no. 2 (2005), for a more general treatment of the concept.

67. Small, targeted programs do have a positive impact on public schools and their student achievement, but the effect, like the programs, is limited. See Jay P. Greene, *Education Myths* (New York: Rowman & Littlefield, 2005); and Frederick M. Hess, *Revolution at the Margins* (Washington: Brookings Institution Press, 2002).

68. Eric Patashnik, "After the Public Interest Prevails: The Political Sustainability of Policy Reform," *Governance: An International Journal of Policy, Administration, and Institutions* 16, no. 2 (April 2003): 203–34.

69. Frank R. Baumgartner and Bryan D. Jones, eds., *Policy Dynamics* (Chicago: University of Chicago Press, 2002).

70. See Patrick J. McGuinn, "Race, School Vouchers, and Urban Politics: The Disconnect between African-American Elite and Mass Opinion," paper delivered at the 2001 Annual Meeting of the American Political Science Association, San Francisco, August 30–September 2, 2001; and Jeffrey R. Henig et al., *The Color of School Reform: Race, Politics, and the Challenge of Urban Education* (Princeton, NJ: Princeton University Press, 1999).

71. This is not to say that the interests of low-income individuals are best served by the policy positions of these organizations. The interests of low-income families are best served by pro-growth economic policies, low urban tax burdens and regulations, and school choice—all of which provide greater economic, social, and educational opportunities. It is a fact, however, that these organizations are seen by most of the media, public, and low-income individuals themselves as their representatives and are trusted as such.

72. See Moe, p. 211, for a discussion of minority support for vouchers; see also David Bositis, "Diverging Generations: The Transformation of African American Policy Views," Joint Center for Political and Economic Studies, 2001. For polling data on the opposition of the black leadership to vouchers, see David Bositis, "Changing of the Guard; Generational Differences among Black Elected Officials," Joint Center for Political and Economic Studies, 2001, p. 19. The traditional black leadership's opposition to vouchers may arise for a variety of reasons, from the use of school choice to maintain segregated schools in the South to the financial interests of the urban middle class, for which the public school system is a very significant employer. Whatever the specific reasons, the cluster of history, politics, and interests ensure that the opposition is stable and strong.

73. Coulson, "Forging Consensus."

74. Ibid.

75. Steve Farkas, Jean Johnson, and Anthony Foleno, "On This Ice: How Advocates and Opponents Could Misread the Public's Views on Vouchers and Charter Schools," Public Agenda, 1999.

76. Unpublished data collected in research conducted by Adam B. Schaeffer for a dissertation in the Department of Politics of the University of Virginia.

77. Schaeffer, "School Choice Snapshot."

78. Moe, *Schools, Vouchers, and the American Public.*

79. Ibid., p. 323.

80. Ibid., pp. 342–43.

81. The cost of educating each student in the private system is much less than in the government-run system, approximately one-half to two-thirds the cost. There is a large and growing number of school choice fiscal impact studies that demonstrate very small costs and in many cases very substantial savings from school choice programs. For a comprehensive assessment of most of these programs, see Susan L. Aud, *Education by the Numbers: The Fiscal Effect of School Choice Programs, 1990–2006,* (Indianapolis: Milton and Rose D. Friedman Foundation, 2007).

82. See Coulson, *Market Education,* and "How Markets Affect Quality."

83. David Kahneman and Amos Tversky, "Prospect Theory: An Analysis of Decision under Risk," *Econometrica* 47 (1979): 263–91. See also David Kahneman and Amos Tversky, "Choices, Values, and Frames," *American Psychologist* 39 (1984): 341–50.

84. For a discussion of how incremental policy victories are beneficial to the success of social movements for reform, see Goss.

85. This analysis was conducted by the author using data on existing school choice programs found on the Milton and Rose D. Friedman Foundation and the Alliance for School Choice websites.

86. Janet R. Beales and Thomas F. Bertonneau,

"Do Private Schools Serve Difficult-to-Educate Stu-dents?" Mackinac Center for Public Policy, October 1997, http://www.mackinac.org/article.aspx?ID=982.

87. For evidence of parental interest in academic quality and competence as evaluators see Coulson, Market Education, p. 260, and Caroline M. Hoxby "If Families Matter Most," in *A Primer on America's Schools*, ed. Terry M. Moe (Stanford, CA: Hoover Institution Press, 2001), p. 117.

88. Richard D. Kahlenberg, "Socioeconomic School Integration through Public School Choice: A Progressive Alternative to Vouchers," *Howard Law Journal* (Winter 2002): 7.

89. Peter Relic, "Independent Perspective: Independence, A Concerted Effort," *Independent School,* Spring 2001.

Appendix A: How the Public Education Tax Credit Act Works

The Public Education Tax Credit Act allows all taxpayers, individual and corporate, to claim education tax credits for direct payment of educational expenses and for contributions to organizations that provide educational scholarships to lower-income families. Taxpayers can claim these credits against their state income, sales, and local property taxes where these are applicable.

All education providers—government, religious, or secular—constitute public education because all serve the public by educating children. Expanding the embrace of "public" education is an overdue recognition of educational reality, not political semantics. This model legislation presents a more effective way of fulfilling the ideals of public education, by ensuring that all families have the means to choose their children's schools from a diverse market of education providers.

The act is designed to provide universal access to the educational marketplace, not to create unnecessary dependence on third-party education funding or government programs. It therefore limits access of higher-income individuals to the scholarships funded by donation tax credits and phases out personal-use credits at the highest income levels. All individuals, regardless of income, can claim credits for education donations.

This proposal is the most comprehensive and broad-based tax credit model legislation yet developed. It offers the strongest prospects for creating a public education system that is dynamic, productive, and driven by freedom rather than coercion. Although this model tax credit legislation combines many aspects of previous proposals, it breaks new ground in the following five crucial respects.

1. Taxpayers are allowed to take credits against all three primary sources of non–federal government revenue: state income taxes, state sales taxes, and property taxes. This will ensure that the tax liabilities are sufficient to underwrite universal educational freedom.

2. The program is not capped at an arbitrary dollar amount. Each child is eligible to receive tax-credit-derived funds up to an amount that is less than current per pupil spending in government schools. Taxpayers may donate all of their tax liability for education; the total amount will be limited by the needs of each scholarship organization, which must use the funds for scholarships based on need and return any funds in excess of a 25 percent reserve. Therefore, money will be saved—as is the case in current choice programs—with each student's switch from the government system to the tax credit system.

3. Scholarship eligibility is not capped at an arbitrary income level. Families can secure scholarship assist-ance on a sliding scale relative to their tax liability. As family income increases, so does the tax liability against which it can claim personal-use credits. And as this personal-use credit increases, the amount of scholarship funds for which they are eligible decreases correspondingly.

Every family will have a "child credit cap" for each child, with the amount varying by family income. For example, say one family's child credit cap is $3,000 and they have one child. If that family pays enough taxes to claim $1,000 in personal-use credits, then it is eligible to use up to $2,000 in scholarship funds derived from donation tax credits. If it can claim $2,000 in personal-use credits, it can use only $1,000 in scholarship funds.

This formula will ensure that there is no coverage gap or unfair penalty for middle-class families who are able to pay for a significant portion of their education expenses but still need assistance.

4. The tax credits cover all education expenses, not just tuition. This aspect of the legislation ensures that parents have the greatest flexibility in choosing the best education possible for their child. It will enable the use and encourage the development of educational services such as distance learning, tutoring, and education support networks such as those for home schooling. It will produce the most dynamic education market choice for families possible.

5. Anyone can directly donate money for the education of a child. Grandparents, uncles and aunts, other relatives or friends, and even businesses can all pitch in together to help educate a child. This provision will ensure that friends and families take responsibility for a child's education before strangers do, helping to strengthen family and community bonds.

Although the concepts presented here are similar to ones contained in other model legislation and existing law, a number of innovations may require additional explanation. The extensive endnotes explain important provisions in the model legislation and are crucial to understanding the legislation.

The legislation can appear more complicated than it is, and the need to spell out in technical detail all provisions can make it difficult to see the big picture. The examples below show how the act would work for a variety of families and businesses. Two short scenarios and a few longer examples highlight the flexibility and comprehensive coverage of the Public Education Tax Credit Act.

Lower-income family—short example. Nancy Williams just moved to a new city to look for work. She found a job right away but isn't earning much money, doesn't have a partner, and has no family in the area. The biggest worry for Nancy is her son, John, who's in the sixth grade and not doing well. John is getting in trouble at school and falling behind academically.

Nancy knows she has to get John out of the failing school he's assigned to but can't imagine how she would pay for tuition, even at the Catholic school down the street which costs only $2,500. Luckily, Nancy's neighbor tells her about a scholarship organization that helps out with his daughter's tuition.

Nancy calls the school the next day at lunch, and they tell her that she clearly qualifies to get John a scholarship. The scholarship organization will cover $2,340—all but $160 for the year. She knows that saving even that small portion of the tuition will take an effort, but the scholarship organization promises to help her with financial planning. Nancy is relieved to know that John will be in a safe, disciplined environment next year with a solid academic reputation, and she's proud to be supporting her son's education as much as she can right now.

Middle-Income Family—Short Example. Mr. and Mrs. Jones have a four-year-old daughter, Emily, and an income of $45,000. They have been thinking about preschool and would love to send her to a great Montessori school down the street, but the $4,800 tuition is out of their price range.

The Joneses started asking some friends with older kids about preschool options, and one couple told them that they should take a look at the state education tax credit program, which lets them keep their money to spend on education instead of sending it to the state in taxes. It sounded too good to be true, but Mr. Jones looked at an information page online and saw that they could use the $3,100 they owed in combined state income and local property taxes to help pay for the Montessori school.

That weekend, the Joneses took a look at their budget and saw that they could pay the $1,700 left on the tuition after claiming their tax credits if they made some changes to their budget. The Joneses quickly signed Emily up for the next year and started telling all of their friends about the great tax credit program that let them control their own education funds.

Lower-Income Family. Mr. and Mrs. Smith have one child, Joe, and a family income of $27,000. They live in a state that spends $10,000 per student in the government system (the national average). Because they qualify for the Free or Reduced-Price Lunch Program, they can use Public Education Tax Credits worth 80 percent of government school per-student spending, which means $8,000 (that limit is called the "child credit cap").

During the summer, the Smiths aren't sure what they are going to do, but they know they need to get Joe into a better school. The one he's assigned to just isn't working for him. They've talked to friends and neighbors and have heard about a state program to help parents do exactly what they want to: choose another school for Joe. When they ask friends from their church, they discover that it actually runs a scholarship program to help parents choose a school. The church established its own scholarship organization a few years back by filing an application with the state, an easy process since it was already a registered nonprofit. The Smiths get some pamphlets the next Sunday and set up an appointment with an administrator to talk about their options.

At the meeting, Sue, from the church's scholarship organization, explains the program and gets them started. The Smiths have a small state sales tax credit that they can claim for education expenses. But that only comes to about $500 for the year. They are going to need a lot of help to get Joe into a better school.

Sue tells the Smiths that they can use up to $8,000 total under the tax credit program. Of that amount, they can get $7,500 in scholarships and claim the remaining $500 in credits from their own tax liability. Sue says that the church will be happy to give Joe scholarship money to go to a good school, but she reminds them to ask relatives if they can help out too. She explains that Joe's grandparents or uncle, or even a family friend or employer, can help pay and claim tax credits for Joe's education expenses (thanks to the credit, their contributions may cost them little or nothing).

Sue gives the Smiths a few forms and helps fill them out. She also gives them a list of schools in their area to ask around about. Then she sets up another meeting so they can see how much scholarship money Joe will need to go to the school his parents choose.

At their next meeting, the Smiths tell Sue that Apple Elementary looked great, and that Joe's grandparents filled out their form to claim $1,000 in tax credits on their taxes that year and write a check to the school. Since Apple Elementary costs $3,000, Sue files the church scholarship application for $1,500, along with a $500 loan that will let Mr. and Mrs. Smith pay their share up front, and tells them that they will have their confirmation letter in a week. The Smiths file their application with Apple Elementary and hear back in a few weeks that Joe has been accepted for the fall.

Middle-Income Family. Mr. and Mrs. Johnson have two children, Jack and Jill, and a family income of $58,000. They live in a state that spends $10,000 per student in the government system. Because their income is more than 1.5 times the Free or Reduced-Price Lunch Program but less than 3 times that limit, they can use Public Education Tax Credits worth 50 percent of government school per-student spending, which means $5,000 for Jack and $5,000 for Jill (the child credit cap).

During the summer, the Johnsons made a tough decision. Their daughter Jill is doing well at the government school she's assigned to, but Jack is really struggling. They know Jack needs to go to a school that has more structure and discipline but don't know how they can pay for tuition at Maple Middle School, a school they know has done wonders with a boy who used to play soccer with Jack.

Mrs. Johnson remembers reading something in the newspaper about a state program that gives parents a tax break to help pay for education expenses, just like their mortgage tax deduction helps them with house payments. Mrs. Johnson calls Maple Middle School to ask about applying to the school and to find out more about the education tax break. She sets up a meeting for the next week. In the meantime, Mrs. Johnson looks at the Public Education Tax Credit information website the man at the school recommended.

The Johnsons find that they can claim a sizeable amount of money in tax credits. Between their property taxes that fund local schools, sales taxes, and income taxes, they can claim $2,000. Mrs. Johnson also finds out that her employer has an employee donation policy and will pay $2,500 for each child of every employee—because they can adjust their tax payments and claim a tax credit for the donation, it only costs them a little paperwork. Also, Mr. and Mrs. Johnson discover they can adjust their state income tax withholding according to the state sales and income tax credits they will claim at the end of the year. That way they won't have to pay everything out-of-pocket before they file their return.

The Johnsons are excited but still a bit concerned because Maple Middle School costs $5,500 and they only have $4,500 in credits so far. They speak with the school admissions advisor, and he informs them that the school has a scholarship fund supported by former students and community businesses which can be used to help fill the gap. The Johnsons are eligible for up to $3,000 in scholarship funds, because their tax liability is only $2,000 and their child credit cap for each child is $5,000. Since Mrs. Johnson's employer gave them $2,500, they can use $500 in scholarship funds. The Johnsons and the admissions advisor work out a plan whereby the school scholarship fund will give Jack $500 and the Johnsons will pay the last $500 out of their own pocket without a credit.

The school advisor gives them a few papers to fill out, and the Johnsons rest easy knowing that Jack will be in a school that's a better fit this year. And they now know they can get more help for Jill if she needs to switch schools later on. Mrs. Johnson's employer would donate another $2,500 in credits if Jill needed to find another school, and they would be eligible to get Jill another $2,500 in scholarship funds since they used all of their personal tax credits on Jack. The school advisor assures them that they can work out a combination of scholarships and payments if they find that Maple Middle School or Oak High School is where Jill would do best.

Upper-Income Family. Mr. and Mrs. Garcia have one child, Isabel, and a family income of $200,000. They live in a state that spends $10,000 per student in the government system. Because their income is more than six times the Free or Reduced-Price Lunch Program, they can't use any Public Education Tax Credits for Isabel. But they can claim credits on 100 percent of their state tax liability for donating money directly to another family or to a scholarship fund.

Mr. Garcia heard about the state education tax credit program on a radio news program and talked about it with a friend and business colleague over lunch. His friend said he'd learned about it through his accountant and business manager, who recommended it as a good option for his business and for him personally—it's a great way to help people and donate money instead of letting it be wasted by the government school bureaucracy, he said.

Mr. and Mrs. Garcia spoke about it that night, and the next day Mr. Garcia met with his accountant. The Garcias can claim credits on $22,000 of sales taxes, property taxes that fund local schools, and income taxes. They decided they want to divide the credits among a few different scholarship organizations: $15,000 would go to a scholarship organization that works with schools that have tremendous success raising achievement levels of children from lower-income families in the city; $5,000 would go to a scholarship organization at a school that specializes in science and math (since Mr. Garcia is an architect and Mrs. Garcia is a biologist); and $2,000 would go to the scholarship organization to help families at the school where Isabel is enrolled.

The Garcias are excited to be able to spend their money directly on schools that work and the kinds of education that they personally find important. Finally, with the Public Education Tax Credit, they are able to see their money make a difference rather than send it to disappear in the bureaucratic maze of the government school system.

Business. The scenario for businesses is much the same as the example for a high-income family, because most businesses are S-Corps or LLCs, where business income is in many ways equivalent to individual income. All corporations are allowed to claim tax credits for donations to scholarship organizations and expenses incurred in support of a qualifying student's education expenses.

The Public Education Tax Credit Act is model legislation that doesn't address each state's specific taxes. Businesses should, however, be allowed to claim tax credits against any state business taxes in addition to property and income taxes. In addition, businesses could donate directly to employees or other parents needing aid for the education of their eligible children.

Appendix B: The Public Education Tax Credit Act (Donation and Family-Use Education Tax Credits)

Summary: This legislation creates an education tax credit for direct payment of educational expenses and for contributions to organizations that provide educational scholarships to eligible students in order to allow all parents to choose the best education for their children.

Section 1: Title

The Public Education Tax Credit Act[1]

Section 2: Definitions

A) "Program" means the program established by the Public Education Tax Credit Act.

B) "Department" means the state Department of Revenue.

C) "Educational expenses" means tuition at a qualifying school; transportation related to educational activities; tutoring services; educational association membership or testing fees; and educational materials such as books, school supplies, and academic lessons and curricula. Educational expenses for students taught in a nonpublic home-based program do not include expenses for tutoring or academic lessons if the parent conducts them. Educational expenses for a student who is enrolled in a public elementary and/or secondary school in our state, but who is not a resident of that school district include only transportation and out-of-district tuition expenses. Educational expenses do not include athletic fees or expenses.[2]

D) "Eligible student" means a student who:

> 1) is a resident of the state no less than age 5, is no more than age 18, and has not graduated from high school; and
>
> 2) was eligible to attend a government school in a preceding semester or is starting school for the first time, and is not enrolled in a public elementary or secondary school;[3] or
>
> 3) is not a resident of the school district of the public school in which the student is enrolled.

The eligible student must otherwise be in compliance with state education law.[4] Notwithstanding the above, the student for whom someone is claiming a credit against property taxes must be a resident of the school district in which that person is claiming the credit.[5]

E) "Scholarship organization" means an organization that receives donations from taxpayers and gives educational scholarships to eligible students.

F) "Parent" includes a guardian, custodian, or other person with authority to act on behalf of the student.

G) "Educational scholarships" means grants to students to cover part or all of the educational expenses of an eligible student.

H) "Funding benchmark" means the dollar amount equal to the average per-pupil expenditures for public schools from both state and local government sources during the year of enactment, with this amount adjusted each year in the same manner that brackets are adjusted in Section 1(f) of the Internal Revenue Code.

I) "Child credit cap" means the percentage of the funding benchmark a family is eligible to use for each eligible student as determined in Section 5.

J) "Government school" means a public government school as defined in Section x of state law.

Section 3: Basic Elements of the Public Education Tax Credit Act[6]

A) Individuals and corporations may claim a Public Education Tax Credit (donation) against relevant taxes detailed in Section 4 by contributing to scholarship organizations or by contributing directly to the payment of an eligible student's educational expenses.[7]

B) Parents may claim a separate Public Education Tax Credit (personal use) for the educational expenses of each child who is an eligible student.

C) Public Education Tax Credits are nonrefundable.[8]

D) Scholarship organizations may solicit contributions from individuals and corporations and provide educational scholarships to eligible students.

E) A corporate taxpayer, an individual taxpayer, or a married couple filing jointly may carry forward unused Public Education Tax Credits (for donation and personal use) for three years.[9]

F) For corporations, the amount of the Public Education Tax Credit (donation) shall equal any contributions to scholarship organizations during the taxable year for which the credit is claimed, up to 100 percent of the taxpayer's tax liability.[10]

G) For parents, the total amount of the Public Education Tax Credit (personal use) claimed for their eligible children shall equal no more than their total direct payments for educational expenses for all of their dependent eligible children, up to the child credit cap for each child or their total applicable tax liability, whichever is less, during the taxable year for which the credit is claimed.

H) For parents, the total amount of the funds used for their eligible children which is derived from scholarship organizations cannot exceed the total amount of their child credit caps minus their total tax liability against which a Public Education Tax Credit can apply (total amount available for personal use).

I) For an individual taxpayer or a married couple filing jointly, the amount of the Public Education Tax Credit claimed shall equal the total direct payments for educational expenses of eligible students (personal use credit) plus any contributions to scholarship organizations (donation credit) during the taxable year for which the credit is claimed, up to 100 percent of the taxpayer's tax liability.[11]

Section 4: Application of Tax Credits to Income, Sales, and Property Taxes[12]

A) Tax credits may be claimed against a taxpayer's full income tax liability in accordance with Sections 3 and 5.

B) Tax credits may be claimed against a person's full sales tax liability in accordance with Sections 3 and 5. The state sales tax liabilities against which individuals may claim credits will be determined according to tables produced by the Internal Revenue Service in accordance with the Tax Relief and Health Care Act of 2006, *Publication 600, State and Local General Sales Taxes* for the most recent year available.[13]

C) Tax credits may be claimed against a taxpayer's full property tax liability,[14] in accordance with Sections 3 and 5, to the extent that it derives from property taxes imposed for school operating purposes but not from property taxes levied for bonded indebtedness or payments pursuant to lease-purchase agreements for capital construction.[15] The eligible student for whom the person is claiming the credit must be a resident of the school district in which the person is claiming the credit.

1) The department shall develop forms for administering and claiming the credit for property tax purposes. The person or person's agent must use these forms to claim the credit. Tax collecting entities shall make the forms available at offices and locations where tax information is distributed.
2) The person shall claim the credit for

property tax purposes at the time payment is made and shall furnish the collecting entity a completed form, a copy of the receipt, and payment for the amount due, if any, after application of the credit.

Section 5: Determining the Child Credit Cap[16]

A) An eligible student's family can use a combination of Public Education Tax Credits up to the total amount of the child credit cap for each dependent eligible student.[17]

B) Notwithstanding the above, an eligible student's family can use educational scholarships derived from Public Education Tax Credit donations that amount to no more than the total of all child credit caps for all dependent eligible students minus the family's total tax liability for which a tax credit is available during the taxable year in which the scholarship is claimed.[18]

C) The child credit cap is:[19]

1) 80 percent of the funding benchmark for each dependent eligible student in a family with a current-year taxable income not exceeding the family size and income standards used to qualify for a reduced-price lunch under the national Free or Reduced-Price Lunch Program (42 USC Section 1751 et seq.).
2) 70 percent of the funding benchmark for each dependent eligible student in a family with a current-year taxable income not exceeding 1.5 times the family size and income standard used to qualify for a reduced-price lunch under the national Free or Reduced-Price Lunch Program (42 USC Section 1751 et seq.).
3) 50 percent of the funding benchmark for each dependent eligible student in a family with a current-year taxable income not exceeding *3.0 times* the family size and income standard used to qualify for a reduced-price lunch under the national Free or Reduced-Price Lunch Program (42 USC Section 1751 et seq.).[20]
4) 25 percent of the funding benchmark for each dependent eligible student in a family with a current-year taxable income not exceeding 6.0 times the family size and income standard used to qualify for a reduced-price lunch under the national Free or Reduced-Price Lunch Program (42 USC Section 1751 et seq.).
5) 0 percent of the funding benchmark for each dependent eligible student in a family with a current-year taxable income that is *more than 6.0 times* the family size and income standard used to qualify for a reduced-price lunch under the national Free or Reduced-Price Lunch Program (42 USC Section 1751 et seq.). These families *are* still able to claim credit for donations to scholarship organizations or direct payment of educational expenses for nondependent eligible children.[21]

D) Notwithstanding the above, each family that makes use of a combination of both donation and personal use credits must ensure that the total used does not exceed the total in child credit caps for which they are eligible according to the guidelines in section 5C above. If a family overestimates the scholarship funds for which they are eligible, the taxpayer must adjust downward the personal tax credit claimed on their income tax return for the current year.

Section 6: Responsibilities of Parents Claiming or Using Public Education Tax Credits[22]

A) Parents may claim the Public Education Tax Credit only for expenses they actually paid.

B) On a form prescribed by the department, parents will provide a detailed listing of the educational expenses for each child for whom they claim or have used a tax credit. They will attach to the form all receipts necessary to document these expenses.

C) On a form prescribed by the department, parents will provide a detailed listing of all taxpayers claiming tax credits for the educational expenses of the parents' dependent children and/or all scholarship organizations providing funds for the educational expenses for each dependent child. For each taxpayer and/or scholarship organization, parents will list the full name, address, total funds provided, and date of funding.[23]

Section 7: Responsibilities of Taxpayers Claiming Tax Credits

A) On a form prescribed by the department, taxpayers will provide a detailed listing of the scholarship organization(s), child or children, and family or families to which they provided funds. In each case, taxpayers will list the full name, address, total funds provided, and date of funding.

Section 8: Responsibilities of Scholarship Organizations[24]

A) Each scholarship organization shall:[25]

1) notify the department of its intent to provide educational scholarships to eligible students;
2) demonstrate to the department that it has been granted exemption from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code;
3) distribute periodic scholarship payments to parents or education providers serving specified parents for the specified educational expenses;
4) provide a department-approved receipt to taxpayers for contributions made to the organization;
5) ensure that at least 85 percent of revenue from donations is spent on educational scholarships, and that all revenue from interest or investments is spent on educational scholarships;
6) verify annually by written and signed statement from each family or guardian the total scholarship amount for which each child is eligible according to Section 5;
7) demonstrate its financial accountability by:

   a. submitting a financial information report for the organization, conducted by the certified public accountant, that complies with uniform financial accounting standards established by the department; and
   b. having the auditor certify that the report is free of material misstatements.

8) file with the department prior to the start of the school year financial information that demonstrates the financial viability of the scholarship organization if it is to receive donations of $50,000 or more during the school year.[26]

B) Notwithstanding the above, each scholarship organization may keep no more than 25 percent of total revenue from the previous fiscal year unused in a reserve fund. Any unused revenue in excess of this amount must be remitted to the taxpayer on or before a date one month prior to the tax filing deadline.[27]

Section 9: Responsibilities of the Department of Revenue[28]

A) The department shall develop a standardized form for education service providers to document the amount paid by a parent for qualified educational expenses.

B) The department shall ensure that parents are aware of the Public Education Tax Credit and that all procedures for claiming the credit are easy to follow.

C) The department shall establish guidelines for parents to easily assign their tax credit to their student's qualifying school and to easily adjust their state income tax withholding to reflect tax credit claims.[29]

D) The department shall require all scholarship organizations to register and annually report the information the department needs to carry out its responsibilities.

E) The department shall adopt rules and procedures consistent with this act as necessary to implement the Public Education Tax Credit Act.

F) The department shall annually report to the legislature on the number of parents claiming the tax credit, the dollar amount of the credits claimed by parents, the number of schools accepting eligible students who received a tax credit or educational scholarship, the number of scholarship organizations, the number and dollar amount of contributions to a scholarship organization, and the number and dollar amount of educational scholarships given to eligible students.

G) The department shall have the authority to conduct either a financial review or audit of a scholarship organization if possessing evidence of fraud.

H) The department may bar a scholarship organization from participating in the program if the department establishes that the organization has intentionally and substantially failed to comply with the requirements in Section 8.

I) If the department decides to bar a scholarship organization from the program, it shall notify affected scholarship students and their parents of this decision as quickly as possible.

J) The department shall allow a taxpayer to divert a prorated amount of state income tax withholdings to a scholarship organization of the taxpayer's choice up to the maximum credit allowed by law, including carry-over credits. The department shall have the authority to develop a procedure to facilitate this process.[30]

K) A qualifying school is autonomous and not an agent of the state or federal government. Neither the department nor any other state agency may regulate the educational program of a provider of educational services that accepts payments from eligible students under this program. The creation of the Public Education Tax Credit program does not expand the regulatory authority of the state, its officers, or any local school district to impose any additional regulation on education service providers.

Section 10: Effective Date

The Public Education Tax Credit may first be claimed in the next calendar year.[31]

Notes on the Public Education Tax Credit Act

These notes are intended to provide guidance to legislators on some of the key policy questions they will encounter in drafting and debating school choice tax credit legislation.

1. The model legislation has been drafted to make the tax credits for tuition and scholarship assistance immediately available in the next tax year. This may represent too great a transition for the state to make at one time. To increase competitive density and help maintain fiscal neutrality, both the personal use and donation credits can be phased in by age group, starting with the youngest children. It is important to use students' age rather than school grade as a phase-in metric, since some schools do not use a rigid age-based grading system.

2. The definition of "educational expenses" has been left intentionally broad. Parents should be allowed to choose the combination of educational products and services that best serves their children. Limiting education tax credits to tuition at a traditional brick-and-mortar school significantly compromises consumer freedom, inhibiting the use of alternative educational services and the development of a truly innovative education market. It is particularly important to allow room for, rather than to discourage, the further development of educational services such as distance learning, tutoring, and education support networks such as those for home schooling. Legislators should clearly define categories of expenses that they wish to allow because experience has shown that some hostile revenue agencies have disallowed legitimate homeschooling expenses such as music and language lessons. When enumerating such legitimate expenditure categories, the legislation should note that such lists are not meant to be exclusive, using language

such as "eligible expenses include, but are not limited to, the following...."

This model legislation allows students to use a scholarship to attend a government school outside their district as well as a nongovernment school. Parents should have the widest possible array of choices so that they can choose the school that best meets their child's needs. Making sure parents can choose either a public or nongovernment school is not only the right policy but also the best legal strategy. The U.S. Supreme Court and various state courts have all cited this broad array of choices as an important part of the reason they have found school choice programs constitutional. In addition to ruling that tax credits are not "public money," the courts have reasoned that these tax credit and scholarship programs are not an inappropriate subsidy of religious institutions because the purpose was secular (the education of children) and the parents were given many options including government schools, charter schools, nonpublic secular schools, and nonpublic religious schools. If a state already has open enrollment or some other form of government school choice, then this legislation should be made consistent with the existing program. In fact, if a state already has a broad array of school choice options available to parents, then a state may be able to add an option for nongovernment schools without encountering constitutional questions.

3. Provisions that allow tax credit donations to government schools are typically viewed as a political compromise necessary for passing school choice legislation, but it is a counter-productive policy feature. Adding additional private funding streams to the government system through tax credits reduces the beneficial competition between the sectors, exacerbates the existing financial discrimination against independent schooling, and thereby reduces the benefits of the program to the educational system.

If a government school compromise must be made, it could include a provision allowing parents of children in government schools to opt for tutoring services provided *outside* the government system *in place of* class time for the particular subject and claim tax credits for those expenses. In other words, parents would be authorized by the legislation to have their children opt out of a subject, such as mathematics, and provide for their education in math through an independent school or tutoring service such as the increasingly popular Kumon chain. This approach expands options for children in government schools without sending additional funds directly to those schools. The schools will, of course, benefit from reduced class sizes in those subjects with which parents are dissatisfied. Parents in turn will be introduced to the services offered by independent education providers and to the concept of being education consumers with expanded options.

4. This provision is meant to allow the greatest flexibility possible in a child's education while requiring that parents adhere to state laws regarding compulsory education and homeschooling. The definition for an eligible student in this model legislation includes students already enrolled in government schools outside their districts and in nongovernment schools. As a result, some families presently sending their children to schools of their choice will qualify for Public Education Tax Credits. This may reduce initial savings from the program. As more former or prospective public-school students opt for private education services, however, the program will become a large source of net savings to taxpayers. A fiscal analysis demonstrating these savings is forthcoming.

5. Note that this requires that the property tax credit claimed must go to a child who *resides* in the school district where the property tax credit is claimed. This will ensure that the district that forgoes the tax revenue will be the same one that benefits from a student transfer out of the government system. The child using the credit funds can attend school at any location.

6. Government school spending should be tied to enrollment and calculated on a per-pupil basis so that government schools are funded only for the children they actually enroll. In states where this is not the case, legislators should consider passing legislation for this purpose first or incorporating such changes into the Public Education Tax Credit Act. This will prevent what could become a rapid build-up of per-pupil funding to astronomical levels in the government system as kids leave for the private sector, which would put independent schools at an even greater disadvantage. In the event of such a process, however, the rapidly building independent education sector and the scandal of massively increased funding for decreasing student populations should provide political leverage for changes to the education funding formula.

7. To create the most robust education market possible, all taxpayers must be allowed to pay for a student's education directly. Extended family members, friends, and employers may thereby assist parents by directly paying for some or all of the student's educational expenses rather than routing such funds through scholarship organizations. This flexibility in funding streams will ensure a strong, personal network of support for education and foster widespread community involvement in education. Organizations such as community groups and churches will be able to act as scholarship organizations, and individual members will be able to support fellow members directly as well.

8. Tax credit refundability is a tempting method of providing more education funds to low-income families who lack a tax liability sufficient to cover their educational costs, but this mechanism makes a tax credit bill vulnerable to the same kinds of legal challenges that have successfully been used to overturn many voucher programs. A key legal strength of education tax credits is their legal status as private, rather than public funds. Numerous state and federal court decisions have ruled that tax credits do not constitute "public funds" and therefore cannot violate any of the numerous state constitutional provisions prohibiting the use of government funds at religious schools. This bill provides for the support of low-income children through tax credits donated to scholarship organizations as well as for direct support of children by family members, friends, and employers.

9. Individual incomes and corporate profits are often quite volatile. As a result, taxpayers may not have a liability against which to claim a credit in certain years. Yet a student's need for tuition payments or scholarship assistance is likely to be relatively constant. Therefore, taxpayers should be allowed to carry forward unused tax credits into other tax years to ensure that parents eventually receive the financial assistance for their child's tuition and that contributors have an incentive to continue contributing to scholarship organizations even in years when they have no tax liability.

10. Some tax credit proposals cap the total spending for the program at a dollar amount, and others limit the percentage of tax liability that can be claimed. However, because some taxpayers will be eager to participate in the education tax credit program and some will not wish to participate at all, it is essential to allow those who are interested in participating to claim all of their tax liability in order to provide a ready and reliable flow of funds. The total cost of the program will instead be controlled through the child credit cap defined in Section 5(C), as well as by the stipulation that scholarship organizations may not carry a reserve account larger than 25 percent of the scholarships awarded in the past year.

11. If a family has an income tax liability greater than the amount they claim for any dependent children, they may claim the balance in donation tax credits to scholarship organizations or in direct payment of education expenses for eligible students who are not claimed as dependents. This allows higher-income families to support their own child's education and still support lower-income children through donation tax credits. See note 10 above for fiscal and other concerns.

12. There is often a wide range of additional state taxes specific to businesses. These taxes should be added to the bill language in each state to allow businesses to claim credits against them.

13. See http://www.irs.gov/publications/p600/index.html for the main site, and for the 2006 tables see http://www.irs.gov/pub/irs-pdf/p600. pdf.

14. Property taxes can be complicated and vary greatly across the country and within states. An alternative approach to instituting a state property tax credit is to pass state legislation allowing municipalities to enact property tax credits of their own. This would allow local and county governments to control revenue that is raised locally, and thus reduce the complexity that can compound at the state level.

15. In some states, most notably Pennsylvania where the courts have prohibited tax breaks for any subset of taxpayers, "uniformity" clauses in the state constitution can make constructing a viable tax credit program more difficult. Such interpretations require that all individual taxpayers be taxed at the same rate, not simply that they are all able to take advantage of a tax benefit. This means that tax credits and deductions for individuals are prohibited. In Pennsylvania, the state Supreme Court has ruled that tax credits and deductions for any subset of taxpayers are unconstitutional but allows these for corporations (Pennsylvania has a thriving corporate donation tax credit program). Other states have similar restrictions on the taxation of property, thus making property tax credits more difficult to implement.

One way to address these "uniformity" restrictions is to provide automatic tax credits to all individual taxpayers, at the same rate, for education expenses. The tax credit can be claimed by tax filers who submit receipts of their education expenses. The credit allocated to taxpayers who do not claim the credit for expenditures listed in their tax return will be automatically deposited by the state into an "Education Trust Fund," created by the same statute, dedicated to funding the government education system. A check box might be used on state tax forms requiring the taxpayer to check either "Education Trust Fund" or "Other Educational Expenses," with the latter requiring the submission of receipts for donations or tuition against which to claim the credit. A similar system could be established to avoid uniformity problems with property tax credits.

Choice provisions with solid court precedent in support of their constitutionality are often challenged as a matter of course by choice opponents. Any program like the one described here will likely be challenged on the grounds of uniformity and other provisions. This approach has not been tried in any state, and its constitutionality under a strict "uniformity" precedent therefore remains an open question. Its constitutionality does, however, appear probable under such restrictive rulings.

16. This legislation addresses variations in family need only in terms of income. Many school choice bills in recent years have addressed the more complicated, personal, and specific requirements of special-needs students. The programs, such as Florida's John M. McKay Scholarship for Students with Disabilities (Title XVI, Chapter 229.05371), require that the special-needs student have an Individualized Education Plan and have been enrolled in government school in the prior year. Because of these additional complications and the special character of the targeted student population, we recommend drafting separate legislation to address the needs of students with disabilities.

17. This provision ensures that a family can claim no more than the child credit cap allowed under the program, regardless of any combination of scholarships or personal use tax credits.

18. This provision ensures that families will only be able to use scholarships to fill the gap between what they can pay through their own funds and the total allowed child credit cap. This will prevent unwarranted "double-dipping" by families claiming tax credits on their own liabilities and also using scholarships. Because families are the consumers of educational services and the unit that qualifies for the benefits of various tax credits, it is most efficient and effective for each family to determine and document its own eligibility. A family's eligibility is determined by family income and the number of eligible dependent students. Family income determines the level of the child credit cap and, therefore, the dollar amount they are able to use for each dependent eligible student. Any amount left between their own tax liability and the total child credit cap is the scholarship amount for which they are eligible.

The goal of this legislation is to give all parents the opportunity to send their children to the schools that best meet their needs, regardless of family income. The need for scholarship assistance is obviously greatest among low-income families. This requirement ensures that scholarship assistance is targeted to the families who need it. Direct payment of educational costs by parents is the ideal funding mechanism, associated with greater school efficiency and responsiveness, and so third party payment should be limited to an as-needed basis.

19. Most tax credit legislation uses a total dollar cap on the donations that can be made. In contrast, this model legislation caps the total benefit on a per-child basis, using a means-tested percentage of per-pupil spending in government schools. This is more equitable because it adjusts the cap according to both family need and state budget considerations, allows all taxpayers the opportunity to donate as much of their tax liability as they desire, and eliminates the need for an arbitrary cap on the dollar amount of the tax credit program. Because the credit cap is always less than per-pupil spending in government schools, it also ensures that taxpayers are saving money on education whenever parents use tax credits to switch their child from public to independent education. Using a percentage of per-pupil spending in government schools as the basis of the credit cap also helps reveal the falsehood of claims that choice programs drain money from government schools.

The exact amount of the tax benefit and the income cut-offs given here is a best estimate of how to balance the concern with eliminating the tax penalty incurred when a family sends their child to an independent school and the concern with ensuring that parents directly support their child's education with the minimum tax benefit possible. Many choice supporters will come to different conclusions depending on their concerns and political necessities.

20. In the interest of keeping costs down and encouraging direct, non-tax-credit parental financial contributions to their child's education, and also in recognition of the lower average cost of private education, middle-class families are limited by a child credit cap of only 50 percent of the funding benchmark. Individuals take the most care with decisions that involve personal direct payments. The relatively modest child credit cap will therefore strengthen consumer responsibility. The child credit cap for family use is phased out at higher income levels, first reduced and then eliminated. In recognition of the greater needs of children in lower-income families, the larger child credit cap of 70–80 percent is warranted.

The Free and Reduced-Price Lunch standard is used here for several reasons: 1) the program is familiar to both schools and many parents; 2) the verification procedures are simple and familiar to school administrators; 3) the income guidelines are used for a number of existing state and federal programs; 4) the federal government annually adjusts the income guidelines; and 5) the income guidelines are adjusted for family size.

The 50 percent credit cap for the middle-class makes sense because states *on average* cover about one-half of per-pupil education spending. This means that even if state taxes alone are tapped for the credit program, switches from government to independent schools will be approximately revenue-neutral on average for the state. Since local dollars are retained when a student leaves the government school system, school districts will have more money per pupil for each family that opts for private providers. These savings at the local level will substantially ease pressure for increased spending at the state level and will help offset any temporary losses due to private-school families claiming tax credits and variations in the state-funded portion of per-pupil spending across districts. Determining the credit cap through a single function of income that would produce a continuous and decreasing curve would provide a more concise but potentially more difficult approach to means-testing.

Concern over the fiscal impact of tax credits used for children already in independent schools should be addressed first by reducing the credit cap amount across the board rather than excluding families already in the private sector. This is first a matter of fairness, as these families deserve education tax benefits as much as anyone. It is also a matter of coalitional politics, as families already in the independent education sector are the strongest base of support for school choice and will help ensure the program's success and defense in early years. Cost could also be minimized and adjustment time maximized by phasing in the program according to the age of the child, as discussed in note 1.

21. This legislation should be considered a universal school choice program because all families will be ensured freedom of choice in education and allowed to participate in the program. Although it is recommended that this tax incentive for family consumption of education services be phased out entirely at higher income levels in order to reduce the financial impact of the program and encourage responsible consumption of education services, all families regardless of income are allowed to claim education tax credits for donations and direct payments for eligible nondependent children up to 100 percent of their tax liability. This will ensure that wealthy individuals with an interest in advancing the ideals of public education will be able to do so.

22. Unlawful behavior is an unfortunate but inevitable problem, and all laws are subject to some level of abuse. To discredit the program, choice opponents often portray abuse as peculiar to the school choice program, rather than as an unavoidable problem in a free society (and in conventional government schooling). The simple record keeping required here will reduce the temptation among criminals to abuse the program and will provide schools, taxpayers, and government officials with an easy method for resolving many questions and conflicts without the need for a full audit. Although ideally, it would be preferable to have no government-imposed record-keeping requirements, the real-world potential for abuse makes necessary some mechanism for dissuading and discovering such abuse. Record keeping that allows quick and comprehensive follow-up to any complaints will help preempt calls for tighter restrictions on consumer and producer freedom and help prevent the accumulation of burdensome regulations that are portrayed as attempts to eliminate program abuses.

23. Because families are the consumers of educational services and the unit that qualifies for the various tax credits, it is most efficient for each family to determine and document its own eligibility. Requiring families to list identifying information for any scholarships and donations for which tax credits were claimed will ensure that a simple and easily cross-referenced record is available in the event that fraud is alleged.

24. The model legislation requires the establishment of scholarship organizations to protect and inform scholarship recipients, frustrate attempts at fraud, and measure the effect of the program without heavy government regulation of private contributions and independent schools. Incentives for rigorous self-regulation are preferable to intrusive and often counterproductive government regulation.

25. Legislators and the public generally seek more regulation of programs directly funded by the government than of tax credit programs because, according to legal precedent and common perception, tax credits are private funds kept by taxpayers rather than public funds expended by governments. Markets are most effective when they can operate freely; however, insufficient accountability can produce situations that undermine public and legislative support for a program. Thus, this proposal recommends minimal state regulations for scholarship organizations and individual participants in the tax credit program. These regulations should, at most, reflect general state standards for nonprofits and the requirements for claiming other tax credits or deductions. These regulations should rely to the greatest extent possible on basic record keeping for reference in the event that fraud is suspected.

Some critics of school choice programs will demand that participating schools comply with all of the regulations placed on government schools in order to ensure "academic accountability" for taxpayers. The effect of such restrictions would be to either kill the program by diminishing school participation rates, or to eliminate its ability to produce market benefits by stifling specialization and the division of labor. Parental and taxpayer accountability and transparency are the most effective accountability provisions and these are ensured in the legislation—to a far greater extent than exists under current government monopoly school systems.

26. Surety bonds can be expensive or intrusive for some institutions, so the legislation allows these organizations to demonstrate by some other means that they have the financial wherewithal to fulfill their scholarship obligations. This might include personal guarantees, reserve accounts, or escrow accounts.

27. Because tax credits can be carried forward for up to three years, a person filing taxes early who is refunded a donation by a scholarship organization that is over its limit may attempt to donate the credit again the next year or include the amount in the total tax liability owed in the next year.

28. Substantial savings should result from this program, however if a fiscal analysis shows that the savings would be distributed unevenly between the state and local level, a savings-sharing provision could be included in the legislation to ensure that savings are enjoyed at by both state and local governments. One major component of other model bills has been left out of this legislation: mandated external program evaluation. Additional evidence that school choice results in greater student achievement and parental satisfaction at a lower cost per pupil is potentially helpful for encouraging program support. But such additional evidence will not likely prove decisive in expanding or reducing support after passage. The cost of the program will be easily determined through the state Department of Revenue. A mandate for studying program effectiveness imposes additional costs on the program while providing little or no data to support the effectiveness of the program during the crucial first years of implementation.

In addition, school choice programs need time for schools and market mechanisms to mature before the full benefits are seen. Premature evaluation may result in premature judgments of the program's effectiveness. The recent furor over the general absence of statistically significant academic gains in the Washington, D.C., voucher program after children had been enrolled in schools of choice for an average of only seven months is a case in point. (See Amit R. Paley and Theola Labbé, "Voucher Students Show Few Gains in First Year," *Washington Post,* June 22, 2007, B1.)

Furthermore, by requiring such studies the government would be imposing a de facto standardized test on the independent schools by defining the parameters of success rather than relying on the judgment of parents, taxpayers, and scholarship organizations. That is a dangerous precedent with which to begin a school choice program.

More important to the long-term survival of the program is the diverse and widespread participation of individuals, families, community associations, scholarship organizations, and businesses. Any additional state money would be better spent on advertising the existence of the program and publishing brief guides to individual and organizational involvement in the tax credit program. Academic institutions, state policy organizations, and other interested parties are likely to study the effects of the tax credit program without a state-mandated project.

29. Parents may wish to assign their anticipated Public Education Tax Credit to their child's qualifying school, which allows them to effectively pay part or all of their tuition in the fall by promising the tax credit to the school. The cash flow challenge is thus shifted from the family to the school (and, if necessary, schools would be able to borrow funds using the assigned tax credits as collateral). The department will therefore facilitate any such arrangements by providing the necessary guidelines and documentation.

30. The legislation allows the department to establish a mechanism that facilitates regular contributions from a taxpayer's income tax withholdings to a scholarship organization in anticipation of the taxpayer claiming a tax credit. This would likely encourage greater contributions to scholarship organizations.

31. It is fairly common for legislators to consider including severability clauses in new legislation. Legislators should make sure that if such clauses are included and exercised, the remaining legislation produces a program that is workable and achieves the original intent of the bill.

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