School Choice on the Move

During the last decade, more and more innovations in educational choice have been inaugurated or approved by different states and the federal government to try to address the continuing crisis in American schooling. Large urban areas are in the worst shape but are not alone. City school boards have been dismissed and mayors have been made czars over their public school systems. Charter schools have been set free from direct control by public education authorities. Options for the poorest children in failing schools to use vouchers to attend nongovernment schools have been approved by the U.S. Supreme Court. Tuition tax credit schemes have been introduced to help some children attend nongovernment schools. And home schooling is on the grow.

These developments have been unfolding in New York City, Cleveland, Milwaukee, Washington, D.C., and Philadelphia, and in states such as Arizona and Massachusetts. The driving motivations are largely pragmatic: high school students are not learning enough; too much violence is impeding teaching; parents want options for the success and moral training of their children.

Yet the forces pushing new choice options in education have been accompanied by a variety of political rationales. The late economist Milton Friedman, who began more than 50 years ago to make the argument for a parent’s right to choose schools in a free market, has been called by many the “father of school choice.” But Friedman’s anti-monopoly, freedom-to-choose libertarianism is not the first or the only source of the school-choice idea.

Long before Friedman, many Catholics, some Protestants and Jews, and other educational innovators were practicing choice in schooling by establishing their own schools and sending their children to them at their own expense since government would fund only the schools it controlled. Some parents want choice for religious reasons, others for elitist reasons, and some simply because they desire something better for their children.

The Center for Public Justice has, from its start 30 years ago, advocated genuine
pluralism in education not primarily for anti-monopoly reasons, as Friedman argued, but for reasons of justice. It is true that a government monopoly on publicly funded schooling is counterproductive for good education. But the more fundamental problem is that educational responsibility does not originate with government; it originates with families and educators. Government’s legitimate interest in wanting to promote an educated citizenry and to give equal treatment to all citizens demands that it do justice to all the families and schools that bear the primary responsibility to educate minor children. Justice can be done, we argue, only if parents are free to choose from among a diversity of schooling options and suffer no financial or legal discrimination, as they now do, in making their choice.

The Center’s proposed alternative of fully equitable pluralism in the education arena has not yet taken hold anywhere in the country. But some of the decisions currently being made by city and state governments may be inching toward full and equal choice for all students. Most recently, the state of Utah passed a statewide voucher law that will give low-income parents and certain other disadvantaged children a voucher to use at any school, including religious schools. These moves at the state level, accompanied by a variety of innovations being tested in many cities may indeed herald the future of equal-treatment pluralism in the United States. For that to happen, however, much work needs to be done to make the justice argument for school choice and not only the anti-monopoly argument and the anti-failing-schools argument.

In Arizona, one step after another has been taken over the past few years to supply scholarships to students who need them to pay tuition at nongovernment schools. Arizona has been a leader on other fronts of school-choice reform as well. For an introduction to Arizona’s experiments, we are pleased to be able to publish the following report by Gail Jansen, a long-time resident of Tucson, Arizona and an active advocate for non-discriminatory school choice.

—The editor

The Case of Arizona

by

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The State of Arizona provides its individual and corporate taxpayers with tax credit options that, within certain parameters, widen opportunities for educational choice. In 1997 Arizona became the first state in the Union to adopt an annual individual income tax credit for donations to fund private school scholarships. In 2006 the Arizona legislature adopted a corporate income tax credit that also aids students who wish to attend nongovernment schools. An examination of these tax credits shows there are significant benefits that accrue to a limited but growing number of Arizona parents and students, many of whom would not have access to private education if it
were not for the scholarships derived from the tax credits. The intent of both laws is to make private education more accessible to a wider range of students.

**Individual Income Tax Credit**

The individual income tax credit allows Arizona taxpayers to make a gift to a school tuition organization (STO) and then, when filing their state income tax return, to reduce their tax obligation dollar for dollar for the amount of that donation. The tax credit on the state income tax return can also be taken as a charitable contribution deduction on the federal income tax return. In 2006 the annual individual tax credit available was up to $1,000 for married taxpayers and up to $500 for single taxpayers or heads of households. These tax dollars are redirected to private education at no cost to the taxpayer.

The statutory requirement for the individual income tax credit is that the taxpayer must contribute to an STO. To qualify as a school tuition organization, the STO must be a charitable organization exempt from federal taxation. The taxpayer may designate a non-government school as the ultimate recipient of the donation, or the taxpayer may permit the STO to select the recipient school. The STO gives educational scholarships or tuition grants to students in qualified schools. The STO cannot limit the availability of scholarships or tuition grants to students of only one school.

Schools that qualify for the individual income tax credit are non-governmental primary schools or secondary schools or a preschool for handicapped students located in Arizona. The school may not discriminate on the basis of race, color, handicap, familial status or national origin, and must satisfy the requirements prescribed by law for private schools in Arizona. Faith-based schools are among the qualified schools.

Individual taxpayers may recommend a child (who is not their own dependent) to an STO as a prospective scholarship beneficiary, but the STO cannot guarantee that the funds donated to the STO will go to any particular child.

Parents of students who wish to receive scholarships or tuition grants apply for these at the qualified school of their choice, or directly to an STO. Recipients of the STO scholarships come from varying economic situations. The scholarship students of some STOs come only from low-income families. Other STOs provide tax credit dollars to students from high, middle and low-income households.

Statistics available on the web site of the State of Arizona Department of Revenue are current through taxable year 2005. They report that in 2005 more than $42.1 million was donated by individual taxpayers to 54 STOs. Scholarships were paid out in 2005 for 22,522 students attending 345 nongovernment schools throughout Arizona. Ninety-five of those schools received more than $1 million in tax-credit dollars in 2005.

Arizona’s individual tax credit statute has withstood constitutional scrutiny by the Arizona Supreme Court. In 1999, the court noted in *Kotterman v. Killian* that the Arizona Legislature has taken steps to increase academic choices for parents and
students by establishing charter schools and by encouraging private schools through the tax credit legislation. The Court concluded in its decision that “the tuition tax credit does not prefer one religion over another, or religion over nonreligion. It aids a ‘broad spectrum of citizens,’ . . . allows a wide range of private choices, and does not have the primary effect of either advancing or inhibiting religion.” (Kotterman v. Killian is currently on appeal at the 9th Circuit Court of Appeals.)

Concurrent with the passage of a tax credit for private schools the Arizona state legislature adopted a tax credit for contributions to public schools including charter schools to support extracurricular activities and character education programs. Extracurricular activities that qualify must be school-sponsored activities that require enrolled students to pay a participation fee to cover items such as band uniforms, athletic equipment or uniforms, and scientific laboratory materials. In 2006, the public school tax credit available to married couples filing a joint return was $400. The Arizona Supreme Court remarked in Kotterman v. Killian that the tax credit for public schools makes the tax credit for private schools “only one among many” available to Arizona taxpayers, and thus the private school tax credit did not advance religion in ways disallowed by the Constitution.

The Corporate Tax Credit

The corporate tax credit for contributions to STOs was adopted in 2006. The total amount that all corporations together could contribute in the first year was capped at $10 million, but thereafter the cap is increased by 20 percent annually. In contrast to the individual tax credit, there is no dollar limit on the tax credit that a particular corporation can receive as long as the $10 million cap for all corporate tax credits in the state is not exceeded. In the first year of the program more than 70 businesses sought to donate $7 million. The tax credits are granted on a first come, first served basis. A corporation that wishes to contribute should make its application earlier rather than later in the fiscal year.

A corporation that desires a tax credit for a donation to fund a private school scholarship must comply with a rather laborious series of steps. First the corporation must notify the STO of its intended contribution. The corporate donor cannot designate any specific student recipient. Before the STO can accept the contribution it must notify the Arizona Department of Revenue (DOR) and request preapproval of the intended contribution amount. The DOR has 20 days to approve or deny the contribution and notify the STO of its decision. If preapproved, the STO then immediately notifies the corporate taxpayer of the preapproval. The corporate taxpayer has 10 days from the notification to make the contribution.

Corporate contributions received by STOs must be awarded as educational scholarships and tuition grants to students who attend qualified schools (defined as nongovernmental primary or secondary schools). However, these students must not already have been enrolled in a private school at the time of receiving the scholarship. They must have attended a governmental primary or secondary school as a full-time student for at least the first 100 days of the prior fiscal year and transfer from a
governmental primary or secondary school to a qualified school, or enroll in a qualified school in a kindergarten program to receive the scholarship. The law is intended to facilitate bringing new students into the private school sector either at the kindergarten level, or through transfer from public to private schools. Once a student has transferred into a private school with the assistance of a corporate tax credit, the student may continue to receive additional corporate tax credit assistance in subsequent years of private schooling.

As a further stricture on the use of corporate tax credits, STOs receiving corporate tax credit donations must use at least 90 percent of the contributions to provide educational scholarships or tuition grants only to children whose family income does not exceed 185 percent of the income limit required to qualify a child for reduced price lunches under the national school lunch and child nutrition acts. The scholarships cannot exceed $4,200 for grades K-8 and $5,500 for grades 9-12 in 2006. These limitations are increased by $100 each year after 2006.

Why would corporations participate in such an arduous process to fund private school scholarships? They may believe that expanded school choice will improve the quality of education in Arizona, which ranks low nationally in this area. They may also hope that the outcome will be a better educated citizenry and work force.

Private education tax credits in Arizona make it possible for low-income families to have an opportunity to utilize nongovernment schools. The credits assist those schools in providing scholarship dollars that would otherwise have to be raised privately through tax-deductible donations. Many of Arizona’s private schools have come to depend upon these tax-credit dollars for a significant portion of their enrollment and their budget.

Tax credits are an important step in the pursuit of education choice for all parents and students, yet their scope is limited and their future uncertain as the statutes that authorize the tax credits continue to make their way through the lengthy appellate process. The tax credits are also subject to “sunset review” every five years by the state legislature.

Practical reasons for continuing the tax credits cited by proponents include claims backed by statistics, that private school students outperform public school students and that the cost of educating public school students is twice that of private school students, thereby saving taxpayers money. In addition to these pragmatic reasons to support tax credits, the principles of justice should guide governments to see that equitable treatment of all students, families, and educators should be implemented and upheld.

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