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# Forging Consensus

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Andrew Coulson

**Can the School Choice Community Come  
Together on an Explicit Goal and a Plan for Achieving It?**

**LEAD** →  
FOUNDATION

**MACKINAC**  **CENTER**  
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on an Explicit Goal and a Plan for Achieving It?**

**Prepared for:  
The Mackinac Center for Public Policy and  
The Lead Foundation**

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## Table of Contents

**Executive Summary ..... 1**

**Introduction ..... 3**

**The Goal: *What Are We Trying to Achieve?*..... 3**

*What Parents Want*..... 4

**The Strategy: *Smorgasbord or Model System?* ..... 6**

**The Search: *Looking for a Better System of Education* ..... 7**

**The System: *Market Education* ..... 9**

*Parental Choice* ..... 10

*Direct Financial Responsibility for Parents* ..... 11

*Freedom for Educators* ..... 12

*Vigorous Competition Among Schools* ..... 12

*The Profit Motive for Schools* ..... 13

*Where Markets Have Fallen Short* ..... 14

**The Policies: *Which Way to the Market?* ..... 15**

*Vouchers in Theory and Practice* ..... 15

*Tax-Credits in Theory and Practice* ..... 29

*Common Design Considerations*..... 35

*Outline of an Optimal Voucher Program*..... 40

*Outline of an Optimal UETC Tax Credit Program*..... 43

*Vouchers vs. Tax-Credits:*

*Legal and Political Comparison of Optimal Programs* ..... 46

<i>Vouchers vs. Tax-Credits: Functional Comparison of Optimal Programs .....</i>	<b>57</b>
<b>Conclusions and Recommendations .....</b>	<b>69</b>
<i>Recommendations .....</i>	<b>70</b>
<b>Endnotes .....</b>	<b>72</b>
<b>About the Author .....</b>	<b>80</b>

# Forging Consensus

## Can the School Choice Community Come Together on an Explicit Goal and a Plan for Achieving It?

### Executive Summary

Despite sharing a great many ideas and ideals, school choice proponents have yet to agree on a common policy for improving education. This persistent lack of consensus can be traced, in part, to disagreements on the goals of reform, on the best strategy for formulating policies, on what constitutes valid evidence, on the methods for analyzing the evidence, and on the legal and political merits of alternative approaches. With all these underlying differences of opinion, it is no wonder that we have failed to unite behind any single policy prescription.

But this litany of differences not only explains the current gridlock, it also suggests a way to overcome it. Instead of arguing over our preferred legislative proposals as *faits-accomplis*, we should break down the policy formation process into discrete steps. By isolating and clarifying each point of disagreement along the way, we may find that many of our differences become resolvable, and by building upon these incremental resolutions, we can hope to forge a consensus.

Whom, for example, should a school choice program serve? While some reformers focus on low-income children, others seek to improve education for all families. Reformers also differ on whether parents' choices should be totally unfettered or should be circumscribed by officially-mandated curricula and testing.

These differences of opinion rest on testable assumptions. The first assumes that the best way of serving the poor is with a choice program that targets them alone. The second assumes that state content guidelines and oversight can reduce unwise choices and forestall a Balkanization of society. By actually comparing alternative school systems in action, over time and around the world, we can determine whether or not these assumptions hold up. More broadly, we can determine what sort of education system does the best job of serving the public, and use it as a model for evaluating every aspect of our reform proposals.

The particular sort of education system that comes out on top in this survey of international and historical precedents is a parent-driven education market. Using the core characteristics of actual education markets as a guide, many of the school choice movement's most protracted disagreements can be resolved empirically.

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***On the issue of whom a program should serve, universal programs are strongly favored over targeted, or narrowly means-tested, ones.***

On the issue of whom a program should serve, universal programs are strongly favored over targeted, or narrowly means-tested, ones. Education markets function better – for everyone – when larger numbers of schools compete for larger numbers of students. Targeted programs are counterproductive since any reduction in the size of the marketplace limits the degree of competition and the diversity of options available, diminishing the quality and quantity of options from which families can choose.

On the issue of whether parental choices should be unfettered or circumscribed by the state, free choice is favored. Parents have historically made better choices for their own children than state-appointed officials have made for the children of others, so the assumption that government curricula will reduce unwise choices is unjustified. The notion that educational diversity Balkanizes societies into warring factions turns out to be not only mistaken, but actually backwards. Over the centuries, state compulsion, not diversity, has been the chief cause of education-related social conflict. State-imposed curricula and testing limit the choices available to families and spawn “education wars,” as different constituencies battle for control over what children are taught. When parents have been free to direct their own children’s education, such conflicts generally have been avoided.

On the issue of vouchers versus tax credits, the latter are found to be more effective, easier to enact, and easier to defend, than the former. One exception is the case of states whose revenues are drawn primarily from sales taxes, since it is difficult to apply a credit to a sales tax.

In summary, this paper openly confronts and dissects the key differences that have plagued the school reform movement. The school choice community is not immediately expected to unite behind a single policy prototype upon reading it, but it is hoped that we will make real progress toward that goal. Open and honest discussion of our differences can change minds, even among those committed to a particular reform strategy. Analysts at the Mackinac Center for Public Policy, co-publisher of this paper, once favored vouchers over tax credits. They reversed their position after mounting evidence suggested that tax credits enjoy several key advantages over vouchers, although they do not oppose vouchers in those states where tax credits are impractical. At one time, the author of this paper supported the idea of a federal education voucher program, but was forced to withdraw that support after studying the history of education.

In this spirit of open-minded dialogue, readers are encouraged to put fingers to keyboards whenever they come across a point with which they disagree, and to share their thoughts with their fellow reformers. It is only through such a dialogue that we are likely to break out of the current policy gridlock, and bring about the educational transformation to which we all are so deeply committed.



## Introduction

School choice proponents share a recognition that the institution of public schooling is not living up to our ideals of public education. Despite that shared recognition, we champion a diverse and sometimes conflicting set of policies. The purpose of this paper is to improve the movement's prospects for success by identifying our precise points of disagreement, and beginning to work through them.

To be sure that all the root causes of disagreement are uncovered, the following sections methodically lay out the entire process of selecting a reform policy from start to finish. Section one addresses the ultimate goals of reform, section two contrasts different strategies for designing reform policies, section three asks how and where we can look for a model school system that fulfills the goals of section one, section four applies the conclusions of section three and identifies a model school system toward which we should arguably work, and section five asks which real-world policies most closely approach that model school system. Conclusions and recommendations follow.

At each branching point in this decision tree, the author argues in favor of a particular choice. This succession of discrete choices should bring greater clarity and specificity to the disagreements that plague the school choice community. By isolating the specific points in the reform selection process at which we diverge, we can more easily debate the evidence on those individual points, and hopefully resolve some, or even many, of our differences.

So, as you read the pages that follow, be sure to make generous use of your red pens to highlight any assertions with which you disagree, and please feel free share your own views on those points with other recipients of this document.

## The Goal: *What are we trying to achieve?*

If we cannot agree on the ultimate goals of an education system, there is little hope that we can agree on a reform policy. Conversely, by explicitly laying out our goals up front, we can eliminate a possible source of contention down the road.

The brass ring for most school choice advocates is to ensure that families have access to schools responsive to their actual needs and demands. Even at this early point in the process, however, two fundamental cleavages appear. First, we have to decide which families we are talking about. Some reformers want to transform our education system for all families, while others are expressly concerned with helping the poorest and most disadvantaged. This difference in emphasis usually rests on the tacit assumption that the best way to help the poor educationally is to create a program that targets them alone. If, on the other hand, it turns out that the best way of

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***Our education system should not just ensure that schools respond to parental demand. They should maximize the combination of responsiveness to parental demand, sound academic practices, and social harmony.***

helping the poor is to allow all families to participate in one grand reform, then these two groups of reformers will in fact see eye to eye. Rather than try to force all readers to agree on this question immediately, it seems best to defer it until a later section of the paper when the validity of that pivotal assumption can be resolved.

The second decision we are faced with is whether parental choice should be completely unfettered, or should be circumscribed to some extent by the state. Advocates of the former view argue that parents are the best judges of what is good for their children, and hence will do the best job of seeing to their children's diverse educational needs. Proponents of the latter view generally have two concerns in mind: first, that parents must be prevented from choosing unwisely (e.g., some might pick academically ineffective schools), and second, that parents must be prevented from Balkanizing society into antagonistic factions (e.g., increased school diversity might cause social tensions). Proponents of this view believe that state intervention must (and can) correct inevitable flaws in the execution of parental choice.

At its core, this desire for state safeguards is not a distillation of ultimate goals but rather an amalgam of goals and means. State intervention is offered not as an end in itself but only as a means of minimizing undesirable academic and social outcomes. Since we are currently concerned strictly with goals, we can register the concerns of this group of reformers by saying that our education system should not just ensure that schools respond to parental demand, but that they should maximize the combination of: responsiveness to parental demand, sound academic practices, and social harmony.

Though that prescription is a good start, it is a bit vague to be truly useful. The more we flesh out our goals now, the easier it will be to weigh alternative policies later on. To that end, we can review the evidence of public opinion polls and focus groups to determine the most common demands parents have for their children's education.

### ***What Parents Want***

There is no shortage of parent opinion data. The late George Gallup began polling the public's views on education 35 years ago, and his firm has been joined by countless fellow travelers in the years since. Much of this data is irrelevant to the current discussion, however, because it deals with means rather than ends. At this point in the process we are interested in determining parents' ultimate educational goals, not their personal theories on the efficacy or desirability of particular reform proposals.

So what do the polls tell us? Most basically, parents expect schools to prepare their children for productive careers and good, happy lives.<sup>1</sup> To achieve those ultimate ends, parents want their children to accumulate essential knowledge and skills and to develop positive values. The learning environment and physical condition of

schools is also of great concern to parents. They want their children’s schools to be safe and healthy, and to maintain studious, drug-free environments.

The Public Agenda Foundation, a non-partisan opinion research firm, recently summarized the findings of its education polls, and included a report on which skills and areas of knowledge parents considered “absolutely essential” for their children to learn. The results are shown in Table 1.

**Table 1. Knowledge and Skills Parents Consider “Absolutely Essential”**

Basic reading, writing, and math skills	92%
American history and geography	63%
Biology, chemistry, and physics	59%
European and Asian history and geography	48%
Advanced mathematics such as calculus	37%
Sports and athletics	23%

Source: Jean Johnson and Ann Duffett with Jackie Vine and Leslie Moye, “Where We Are Now: 12 Things You Need to Know about Public Opinion and Public Schools,” *Public Agenda*, 2003, p. 17.

Public Agenda has also asked parents about the values they wish their children to embrace, and their answers appear in Table 2.

**Table 2. Values Parents Consider “Absolutely Essential”**

Honesty/truthfulness	91%
Courtesy/politeness	84%
Self-control and self-discipline	83%
Always give maximum effort in school	82%
Independence/self-reliance	74%
Financial responsibility	70%
Good nutritional habits	68%
Charity	62%
Religious faith	61%
Physical fitness	51%
Appreciation of art and literature	33%

Source: Steve Farkas, Jean Johnson, and Ann Duffett with Leslie Wilson and Jackie Vine, “A Lot Easier Said Than Done: Parents Talk About Raising Children in Today’s America,” *Public Agenda*, 2002, p. 18.

The preceding tables can provide guidance in assessing alternative education systems, but they suffer an obvious shortcoming: they describe the *average* level of importance that parents around the country attach to these values

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***The process by which most education policies are developed is ad hoc and only minimally driven by empirical evidence.***

and competencies. Priorities obviously differ from one family to the next. While some families might consider advanced mathematics extremely important, others might rank it well below instruction in creative writing or basic business skills. Even when parents place equal emphasis on a particular subject or value, their agreement can hide important differences. Two families committed to their children's development of religious faith may not see eye to eye on what that faith should be, how it should be taught, or even if it should be taught in school. The ability of a school system to effectively identify and respond to diverse parental demands is thus an important goal in and of itself.

One area in which parents achieve near perfect consensus is in their expectations about the atmosphere and physical condition of their children's schools. For over a decade, polls have revealed that virtually all parents are very concerned about school discipline, drug use, and violence. This is true across economic, geographic, and racial lines. Parents not only want their children's schools to be safe, but to offer their children personal attention and a sense of community. As a result, they generally favor schools that are small enough for the students and staff to know each other by name.<sup>2</sup>

A final consideration to close out our basic set of goals is cost containment. It would be pointless to come up with a system theoretically capable of providing an excellent education if it could do so only at a prohibitive cost. Whoever is financing the system, whether parents, other citizens, or some combination of the two, its ultimate success depends on being able to make the most of every available dollar.

### **The Strategy: *Smorgasbord or Model System?***

The process by which most education policies are developed is ad hoc and only minimally driven by empirical evidence. Typically, education policy ideas are the products of theoretical musings or analogies to other fields, and they are cobbled together based on reformers' preferences and the dictates of political expediency. Put together, in other words, like a plate of luncheon meats at a smorgasbord. The practice of rigid age-based student grouping popularized in the early 1900s, the Life Adjustment<sup>3</sup> curriculum of the 1940s, the New Math movement of the 1960s, and the NCTM mathematics standards of 1989, for instance, were not the products of field tests showing them to be either effective or popular, but rather were the brainchildren of education theorists. Today, charter school, voucher, and tax credit programs are most often advocated by analogy ("markets work in other human enterprises, so...") or by reference to isolated and small-scale experimental programs that often differ substantially from the policies being proposed. Many market-inspired education reforms, moreover, tend to include or exclude particular market characteristics without explaining why some are deemed essential and others dispensable.

Obviously there are many problems with this ad hoc approach to policy design. Theories not vetted against some substantial relevant body of evidence have often been terribly misguided (*viz.*, the medieval theory of bodily humors<sup>4</sup>). Some analogies simply do not hold (what if education, as some have argued, is categorically different from other human enterprises?), and some systems (e.g., ecosystems) can collapse when even a single one of their essential features is impaired or removed (e.g., sunlight<sup>5</sup>). Given these potential pitfalls, it is not surprising that ad hoc education reformers have tinkered feverishly and continuously with public schooling for more than a century without solving most of the problems they have set out to fix.

So how can we minimize the likelihood that we will follow in the often unsuccessful footsteps of earlier reformers? The best way of doing so is to: 1) identify a model education system capable of fulfilling our goals, 2) determine how and why that system works, and 3) develop a policy that instantiates that model system. The model should be derived as much as possible from actual examples of large-scale effective education systems, rather than being based exclusively on analogies or references to small-scale programs. In taking that policy from drawing board to reality, we must also be aware of the model's necessary and sufficient conditions for success, and thereby distinguish compromises that might cause limited harm from those that would hobble the entire system.

## **The Search: Looking for a Better System of Education**

Where and how do we look for a model education system such as the one just described? To begin with, we want a system that is generalizable, scalable, and time-tested. These criteria mean that modern U.S. experiences can only be of limited value. Every state in the nation is overwhelmingly dominated by the same sort of traditional public school system. U.S. voucher, charter, and tax credit programs are tiny, or recent, or both. Step one in our search, therefore, should be to cast a very wide net.

Looking beyond the United States at other wealthy industrialized nations is somewhat more helpful, since educational governance and funding structures depart from the traditional U.S. mold in countries such as Holland (national voucher-like system), Japan (vast private tutoring market), and New Zealand (national charter-school-like arrangement). Developing countries demonstrate even more variety. Some less-developed countries actually have a greater variety of education systems operating *within* their borders than exists *between* most rich countries. India alone, for example, has a public school system, a system of fully government-funded private schools, a system of government-registered but fully parent-funded private schools, a system of unregistered fully parent-funded private schools, and a significant private after-school tutoring market (serving mostly public school students in need of remedial instruction).

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***Formal schooling aimed at the general public dates back 2,500 years, to classical Greece, and the arrangements adopted over the ensuing 25 centuries have covered a remarkably wide gamut.***

Another trove of alternative systems can be found by looking at the history of education. Formal schooling aimed at the general public dates back 2,500 years, to classical Greece, and the arrangements adopted over the ensuing 25 centuries have covered a remarkably wide gamut.

This broad base of historical and international precedents is helpful in meeting the sustainability and scalability criteria, but poses a problem for generalizability. There are, after all, many factors outside the classroom that affect educational performance. How can we know that a system that performed well in early 19<sup>th</sup> century England, or that is currently performing well in Japan, will work equally well in the contemporary United States? To answer that question we need a way of correctly apportioning the credit (or blame) for a society's educational outcomes. We need a way of distinguishing the educational outcomes attributable to the school system itself from the educational effects of prevailing cultural, economic, and technological conditions.

The ideal technique would be to conduct controlled experiments in which students would be randomly assigned to one or another kind of school system. This has been done with a few small-scale voucher experiments in the United States<sup>6</sup>, but it is rarely possible in the international context and it is patently impossible in the historical context. Comparative education policy is not the only field in which randomized experiments are difficult or impossible to implement, however. Anthropologists, epidemiologists, and cosmologists, among others, have all had to find other avenues of investigation. One of the most successful techniques adopted in these fields is the so-called "natural experiment." The idea is to mimic controlled experiments as closely as possible using the data at hand. Jared Diamond, a proponent and practitioner of natural experimentation and author of the anthropological tour-de-force, *Guns, Germs, and Steel: The Fates of Human Societies*, explains that

While neither astronomers studying galaxy formation nor human historians can manipulate their systems in controlled laboratory experiments, they both can take advantage of natural experiments, by comparing systems differing in the presence or absence (or in the strong or weak effect) of some putative causative factor.<sup>7</sup>

My own approach to natural experimentation, applied in *Market Education: The Unknown History*,<sup>8</sup> has been to combine three separate sorts of observations:

- Observing how a given type of school system performs across many different times and places
- Observing how different school systems perform under comparable cultural and economic conditions
- Observing how educational outcomes change (or don't change) when societies move from one type of school system to another

The first sort of observation aims to isolate school system effects from extrinsic social effects, and test their repeatability, by looking for patterns of outcomes across many different settings. The second sort of observation compares the “treatment effects” of alternative school systems by holding social conditions as constant as possible. The third sort of observation uses the pre-reform society as a control group for the post-reform society, and any treatment effects suspected of being caused by the change in school system can be tested for repeatability by comparing them to the pre-reform/post-reform changes that are found in the educational transitions of other societies.

When a given approach to organizing schools is consistently associated with a certain set of outcomes across widely varying times and places, when its outcomes consistently differ from those of other school systems operating in comparable cultural settings, and when its expected pattern of outcomes is consistently manifested when societies adopt it and abandon their previous systems, it is possible to conclude with some confidence that the observed pattern of effects truly is attributable to the design of that education system and not to extraneous factors.

## **The System: *Market Education***

When you apply the methodology described above to a large cross section of the world's education systems, from ancient times to the present and from the developing world to the rich world, you arrive at a clear conclusion: free education markets have consistently done the best job of meeting the goals set out at the beginning of this paper. The most market-like school systems are the most efficient, produce the highest student achievement, do the best job of maintaining safe clean facilities and studious atmospheres, create the least social conflict, and are the most responsive to the varied and changing needs of the families they serve. The catalogue of evidence and analysis on which those conclusions are based has already been published at great length elsewhere,<sup>9</sup> and would retain little of its original potency if reduced to a few summary paragraphs here. Readers unconvinced of the assertions in this section are encouraged to refer to the sources cited in the preceding endnote.

Thus taking the evidence favoring education markets as given, the current section purposes to briefly explain *why* markets have enjoyed their consistent

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***Markets allow the decisions of the best-informed consumers to benefit not only themselves but their less-informed fellow citizens as well.***

superiority over alternative systems for organizing education. Distilling the answer to that question down to its simplest meaningful form, we can say that the most successful education systems of the past 2,500 years have shared five characteristics that seem most directly responsible for their success:

- Choice for parents
- Direct financial responsibility for parents
- Professional freedom for educators
- Vigorous competition among schools to attract and retain students
- The profit motive to drive innovation and the dissemination of best practices

The discussion that follows is comprised of five discrete sections that briefly explain each of the above factors. That does not mean that these characteristics function independently. On the contrary, they are deeply interrelated and interdependent. Parental choice, for example, is meaningless unless schools have the autonomy to differentiate themselves. In considering whether or to what extent any of these factors can be compromised for the sake of political expediency, it is therefore necessary to not only take into account the narrow benefits associated with the individual factor itself, but also to consider the impact such a compromise would have on the other factors and hence the system's overall performance.

### ***Parental Choice***

Parental choice has historically offered two distinct benefits. First, it has driven schools to offer effective instruction in the subjects and skills parents value. On the whole, parents have made considerably better educational choices for their own children than state-appointed bureaucrats have made for the children of others.<sup>10</sup> This superiority has manifested itself in countries both ancient and modern, among rich families and poor, among educated elites and the illiterate lower classes. While imperfect, parents' decisions must be compared to the real world alternative of still-less-perfect bureaucratic decision-making, and not to an idealized system in which government education authorities flawlessly execute their responsibilities like Plato's benevolent and all-knowing philosopher king.

Though not all parents are equally well-informed in their education decision-making, markets allow the decisions of the best-informed consumers to benefit not only themselves but their less-informed fellow citizens as well. Each school in a competitive market has to offer the most effective services it can, at the lowest possible cost, or risk losing the business of every family that takes the time to compare prices and outcomes. As a result, even parents who do not spend weeks or months in faithful comparison shopping benefit from the efforts of those who do.

The second advantage of parental choice is that it has helped to avoid social conflicts over the content of instruction. Some of the opposition to parental choice comes not from the belief that parents *won't* get what they want under an education market, but rather from the fear that they *will*. These critics assume that a diverse market of educational options is socially inferior to a uniform system of public schools because they believe that real educational diversity would Balkanize society into warring factions. That fear is not supported by the historical record. Throughout the centuries, far more social conflict has been caused by educational coercion than by educational diversity. The reason is straightforward: When all citizens are forced to pay for and/or attend an official public school system, all wish it to reflect their own views and to repudiate views they oppose. In pluralistic societies, that is impossible. Instead, disparate groups fight each other for control of that system, with the victors imposing their views on their fellow citizens. This educational coercion causes hostility among groups with divergent views, who then attempt to wrest control of the system for themselves. An endless cycle of conflict is thus created. Education systems that allow families free choice, and that otherwise avoid compelling citizens to act against their convictions, avoid this cycle of conflict.

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### ***Direct Financial Responsibility for Parents***

Nearly two-thousand years ago, the Roman attorney and man of letters Pliny the Younger decided to found a high-school in his home town of Como, in what is now Northern Italy. Being wealthy, he could easily have afforded to fully endow the school, but elected not to do so. He based his decision on his long experience as a corruption prosecutor, and his personal knowledge of abuses that occurred “in many places where teachers’ salaries are paid from public funds.” To ensure that teachers at his new school would assiduously serve families, and that parents carefully oversaw their children’s teachers, Pliny required parents to make a substantial co-payment. He reasoned that “People who may be careless about another person’s money are sure to be careful about their own, and they will see that only a suitable [teacher] shall be found for my money if he is also to have their own.”<sup>11</sup>

Pliny was right then, and he is right now. Across the centuries and around the world, direct financial responsibility for parents is associated with significantly better student outcomes<sup>12</sup> and school conditions, with keeping costs more firmly under control, and with the minimization of fraud.

Parental financial responsibility is also indispensable for another reason: it is the only means by which parents have historically managed to retain control over what, where, and by whom their children are taught. Without financial responsibility, parental choice has sooner or later been lost. Third-party payment in elementary and secondary education has consistently been associated with eventual third-party control over the content and delivery of that education. The case of Holland, described in the “Policies” section below, is typical.

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***Teachers in the comparatively free private sector report having much more control over their professional lives, and being much happier with that level of control than are their public school counterparts.***

### ***Freedom for Educators***

Educators must be free to innovate, to set their own prices, and to tailor their services to specific groups of children. All these things are critical to the effective operation of market forces. Prices are a lynch pin of market operation, directing the energies of providers to the areas in which there is the greatest unmet demand. Flexibility in pricing is also key to the cycle of innovation and improvement that has occurred throughout the economy (outside the field of education). Televisions, cell phones, VCRs, and DVD players all began as luxuries but are now mass market commodities. What's more, the VCR that costs \$40 today is technologically superior to the one that cost \$1,000 two decades ago. The possibility of charging a high price for a new and superior service or technology is one of the driving forces behind the creation of such services and devices. Without the existence of providers who can recoup high research and development costs through high initial prices, the commercialization and dissemination of innovations grinds to a halt.

Schools must also be free to target particular audiences. While it is true that we want all children to have access to good schools, it is not true that every school can do a good job of serving every child. Specialization and the division of labor, so well understood and thoughtfully expounded by Adam Smith, must be preserved for the education marketplace to work effectively.

Finally, ensuring that teachers enjoy real professional freedom is a key element in maintaining high morale and motivation. Many teachers burn out and leave the profession because they are frustrated by pedagogical, administrative, or curricular requirements that they feel prevent them from doing a good job. Teachers in the comparatively free private sector report having much more control over their professional lives, and being much happier with that level of control than are their public school counterparts.<sup>13</sup>

### ***Vigorous Competition Among Schools***

One of the reasons for low and stagnant literacy scores in the United States<sup>14</sup> is the influence of prevailing education philosophies on instructional practice. In the absence of competition, public schools have not had strong incentives to base their methodologies on sound research. Instead, they have adopted unproven and sometimes even empirically discredited methods solely because these methods have fit nicely with the notions of influential education philosophers. This pattern has been well documented, particularly in the United States over the past 75 years. Under markets, by contrast, decisions are based more on results and less on ideology.

Competition not only ensures that all schools strive to improve student outcomes, but also forces them to maintain their facilities in good repair and to offer

an environment conducive to learning. In the United States, the level of disrepair of public school buildings is epidemic, despite funding levels far higher than better-maintained non-government facilities. There are 17,200 U.S. public schools with defective or inadequate electrical systems, 19,500 with plumbing problems, and 22,700 with inadequate or malfunctioning heating, ventilation or air-conditioning systems. All tolled, half of our public schools have at least one (but usually more than one) major building feature in less than adequate condition.<sup>15</sup> And all that with an average per pupil expenditure of \$10,000 a year.

The benefits of competition increase in proportion to the number and variety of competitors, and hence to the number of students participating in a given education marketplace. In rural Northern India, where many families cannot afford tuition at fee-charging schools and population density is low, private schools typically have few competitors. Their greatest competitive threat comes not from other schools, but simply from the need to demonstrate that their services are worth the forgone value of their students' labor (or parents might not send their children to school at all). That modest competitive density leads these schools to be only moderately better than their "free" public school counterparts. The situation is utterly different in densely populated Japan, where virtually all children attend for-profit tutoring schools at some point in their educational careers, and where most families can choose from dozens if not hundreds of competing service providers. These *juku*, as they are known in Japan, are incredibly diverse, flexible, responsive, and dynamic, and are credited for much of that nation's strong performance on international tests of mathematics and science.<sup>16</sup> The most recent evidence from Chile's national pseudo-voucher program (see the "Policies" section below) confirms the positive effects of competitive density not just on student achievement but on school efficiency as well.<sup>17</sup>

With that knowledge in mind, we can now return to the very first bifurcation point we struck in the *Goals* section, above. Since the effectiveness of markets depends on maximizing the number of students for whom schools compete, we can conclude that market reforms targeted only at poor families, or, for that matter, at any subgroup of families, will necessarily be less successful in their aims than otherwise similar reforms that allow *all* families to participate in the education marketplace.

### ***The Profit Motive for Schools***

The last and most controversial requirement for an effective education market is that a significant percentage of schools be operated for profit. The importance of profit making can easily be grasped by looking at the different responses that non-profit and for-profit schools have to pent up consumer demand. Even the most highly regarded non-profit schools, such as Philips Exeter and the Laboratory School at the University of Chicago, serve only about a thousand more students today than they did a century ago. They have expanded their waiting lists instead of opening new

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facilities for two reasons: first, they lack an incentive (profits) sufficient to overcome the risks of expansion; and second, they are funded in significant measure by alumni who seek to perpetuate a tradition rather than to commercialize a popular service.

For-profit schools behave differently. When demand for their services rises, they open in new locations, buy-out less successful competitors, and expand existing sites. Kumon, the for-profit Japanese tutoring chain, expanded from one student in one country to 3 million students worldwide in just fifty years. Some non-profit schools, such as those run by the Catholic Church, have expanded without the lure of profits, but for-profit status has proven to be the most effective and universally applicable force in disseminating popular educational services.

### ***Where Markets Have Fallen Short***

The fact that markets are better than the alternatives does not mean that they are perfect. Markets, by themselves, don't ensure the level of access for low-income families that most Americans consider to be absolutely indispensable for the maintenance of a just society. From classical Greece to modern Pakistan, market schools have done a superior job of serving the poor children who have attended them, but poverty has limited the access of many families to market schooling, or shut them out of the education marketplace altogether.

The meritocratic promise of American society hinges on every citizen having a real shot at success, and that promise will remain a lie unless we can implement an education system that ensures universal access to good schools. Determining how best to ensure that universal access in the context of an effective education marketplace is the subject of the following section.

## The Policies: *Which Way to the Market?*

Unfettered education markets with financial assistance for all who need it are clearly the best means of meeting our goals, but how do we get there from here? We need to come up with a policy for reintroducing market education that is viable legally, politically, and functionally. The two most obvious candidates among the existing panoply of school choice programs are vouchers and tax-credits. These programs are put to the test in the sections that follow.

### *Vouchers in Theory and Practice*

Under voucher programs, the state provides money to parents to defray some or all of their children's tuition at the government-approved school of their choice. Typically, voucher programs permit parents to choose from among government-run schools and private schools that adhere to certain rules. True voucher programs deliver a physical check to parents which is then signed over to and redeemed by their chosen school, but some foreign voucher-like programs pay participating schools directly based on their enrollment figures. Voucher programs and proposals also vary in a number of other specifics. Under some programs, vouchers must be accepted as full payment of tuition by participating schools, while under others schools can charge tuition in excess of the voucher amount. Sometimes the voucher amount is uniform for all children, and at others it varies based on financial need, student disability, or other considerations. Some programs have relatively liberal school participation criteria, while others exclude profit-making, religious, or other sorts of schools and impose extensive curriculum, testing, and admissions requirements.

An innovative variation on conventional voucher programs has also been proposed by the Heartland Institute. Under the Heartland Plan, the voucher is set at a comparatively high level, the current average per-pupil public school expenditure, and parents are permitted to keep any portion of the voucher that they do not spend on tuition. This extra money can then be deposited in a savings account and later withdrawn to pay for school fees or tuition in subsequent years (including college tuition). In an alternative formulation of the plan,<sup>18</sup> money from the savings account could also be spent on supplementary tutoring services. When the child for whom the savings account was originally set up reaches the age of 23, any money left over would be returned to the state.<sup>19</sup>

There are currently seven voucher programs operating in six states around the United States, there are well-established national voucher-like programs operating in Chile and the Netherlands, and there is a smaller, more recent voucher-like program in Sweden. The logistical and policy details of the American programs are summarized in the tables below, and these are followed by brief reviews of the major foreign voucher-like programs.

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***We need to come up with a policy for reintroducing market education that is viable legally, politically, and functionally.***

*Summary of U.S. Voucher Programs*

**Table 3. Milwaukee Voucher Program Quick Facts**

Student enrollment	13,268 (2003-2004)
Student enrollment cap	15% of Milwaukee Public School District (MPSD) Enrollment
Number of participating	107 (2003-2004)
Age of program	13 years
Voucher size	The lower of \$5,882 or the school's combined tuition and debt service cost
Total program cost	\$76 million (2003-2004)
Source of funding	45% from reduction in state transfers to MPSD and 55% from the state's general fund
Student participation criteria	- Milwaukee resident
School financial regulations	- Voucher must be accepted as full payment of tuition
School facilities regulations	Must meet all health and safety laws and codes that apply to public schools
School admissions	- must use random lottery if oversubscribed
School personnel	- no discrimination by race, color, national origin
School content regulations	May not require pupils to participate in any religious activities without parental approval
School testing regulations	None
School performance regulations	At least one of the following must be true, in the judgment of the State Superintendent of Public Instruction: - At least 70% of the pupils in the program advance one grade level each year. - The private school's average attendance rate for the pupils in the program is at least 90%. - At least 80% of the pupils in the program demonstrate significant academic progress. - At least 70% of the families of pupils in the program meet parent involvement criteria established by the private school.

Sources: "Milwaukee Parental Choice Program (MPCP), MPCP Facts and Figures for 2003-2004," Wisconsin Department of Public Instruction, Division for Finance and Management (DFM), School Management Services (SMS), p. 1. Obtained online at: [<http://www.dpi.state.wi.us/dpi/dfm/sms/doc/mpc03fnf.doc>]. And: Wisconsin Statutes, sections 119.23 and 121.004. Obtained online at: [<http://www.legis.state.wi.us/statutes/Stat0119.pdf>] and [<http://www.legis.state.wi.us/statutes/Stat0121.pdf>].

**Table 4. Cleveland Voucher Program Quick Facts**

Student enrollment	5,147 (2002-2003)
Student enrollment	Depends solely on the level of funding allocated to the program by the state
Number of	50 (2002-2003)
Age of program	7 years
Voucher size	- A maximum of \$3,000 for K-8th graders (2003-2004)
Total program cost	\$16.4 million (2003-2004)
Source of funding	Program funds are deducted from Cleveland's share of the Disadvantaged Pupil Impact Aid (DPIA) line item of the state's General Revenue Fund. It is not clear if the legislature simply increases the DPIA's total value to offset this loss to Cleveland or if the public school district actually loses money when it loses students.
Student participation criteria	<ul style="list-style-type: none"> <li>- Resident within Cleveland Municipal School District boundaries</li> <li>- Preference to low-income families, significant discretion given to state Superintendent of Public Instruction.</li> <li>- In the current school year the pupil must be entering k-8th grade if he/she is new to the program. Returning students are eligible to attend the 9th grade under the program in 2003-2004, and the 10th grade will open up for returning students in 2004-2005.</li> </ul>
School financial regulations	<ul style="list-style-type: none"> <li>- Fees charged to low-income parents may not exceed 10 percent of voucher amount (with "low-income" defined by the state)</li> <li>- Schools must accept in-kind contributions and services from low-income parents in lieu of fees</li> </ul>
School eligibility requirements	Must either be a member of a government approved accrediting body or must follow the pedagogical/curriculum guidelines set down for public schools by the State Board of Education and submit to and pass periodic inspections by the Board of Education.
School facilities	Same as for other "chartered" private schools
School admissions regulations	<ul style="list-style-type: none"> <li>- Returning students have highest priority, followed by siblings of returning students.</li> <li>- For all other students, the rules differ depending on the grades involved</li> <li>- For grades k-3, school must use two random lotteries to admit students. The first lottery includes only low-income applicants (as defined by the state) and this lottery must account for 20 percent of the preceding year's enrollment for that grade. The second lottery is open to all applicants.</li> <li>- For grades 4 and up, returning students have priority and all subsequent applicants can be accepted or rejected at the school's discretion.</li> <li>- No discrimination based on race, religion, or ethnic background</li> </ul>
School personnel	No discrimination based on race, religion, or ethnic background
School content regulations	<ul style="list-style-type: none"> <li>- Participating schools must be "chartered nonpublic schools." A chartered nonpublic school is one that conforms to the set of rules laid down by the State Board of Education in the Ohio Administrative Code under section 3301-35-12 "Chartered nonpublic schools."</li> <li>- Students must attend school for a number of hours and number of days of attendance equivalent to the hours and days of attendance in public schools.</li> </ul>
School testing	Like all private schools in the state, voucher redeeming schools must participate in
Regulatory bodies	The State Administrative Code requires the State Board of Education to Appoint a nonpublic school committee to advise it on matters related to private schooling. This committee must, by law, be overwhelmingly comprised of representatives of the (mostly religious) currently dominant school accrediting organizations. Three quarters of the members of the advisory committee must be members of these organizations. This cartelizes control over subsidized private education, ensuring that existing organizations dominate the body that influences policies affecting all current and prospective private schools.

Sources: Ohio Legislative Service Commission, "Catalog of Budget Line Items." Obtained online at: [\[http://www.lbo.state.oh.us/fiscal/publications/biennial/COBLI\\_2000\\_2005/edu.pdf\]](http://www.lbo.state.oh.us/fiscal/publications/biennial/COBLI_2000_2005/edu.pdf). Sources continued on next page

Sources continued from previous page

And: David Smole, "Almanac of Policy Issues: School Choice," Congressional Research Service, August 1, 2003. Obtained online at: [[http://www.policyalmanac.org/education/archive/school\\_choice.shtml](http://www.policyalmanac.org/education/archive/school_choice.shtml)].

And: Doug Oplinger and Dennis J. Willard, "More Money for Vouchers," Akron Beacon Journal, June 29, 2003. Obtained online at: [<http://www.ohio.com/mld/ohio/news/6195814.htm>]. And: Ohio Administrative Code 3301-35-12, "Chartered nonpublic schools. Obtained online at: [<http://onlinedocs.andersonpublishing.com/oh/lpExt.dll/OAC/11528/12380/124cd?fn=document-frame.htm&f=templates&2.0>].

And: Ohio Revised Code § 3313.97.7. "Admission of students to registered private school," as invoked by Ohio Revised Code § 3313.97.6. Obtained online at: [<http://onlinedocs.andersonpublishing.com/oh/lpExt.dll/PORC/15e22/169f8/16e7f?fn=templates&fn=document-frame.htm&q=%22scholarship%22&x=Advanced&2.0#LPHit1>]. And: Ohio Statutes § 5104.01, "Definitions." Obtained online at: [<http://onlinedocs.andersonpublishing.com/oh/lpExt.dll/PORC/23cb9/24166/24167?fn=document-frame.htm&f=templates&2.0>].

And: The State Board of Education is empowered to create rules for public and nonpublic schools under Ohio Statutes § 3301.07, "Powers and duties generally; minimum standards." Obtained online at: [[http://onlinedocs.andersonpublishing.com/oh/lpExt.dll/PORC/15e22/15e23/15e4e?fn=templates&fn=document-frame.htm&2.0#JD\\_330107](http://onlinedocs.andersonpublishing.com/oh/lpExt.dll/PORC/15e22/15e23/15e4e?fn=templates&fn=document-frame.htm&2.0#JD_330107)].

And: Ohio Revised Code § 3321.07, "Requirements for child not attending public schools."

And: Ohio Statutes § 3301.07.10, "Statewide program to test student achievement; graduation tests." Obtained online at: [<http://onlinedocs.andersonpublishing.com/oh/lpExt.dll/PORC/15e22/15e23/15e84?fn=document-frame.htm&f=templates&2.0>]. Which was applied to private schools in 1993 (though not implemented until 1995 due to court challenge) under Ohio Revised Code § 3301.16, "Classifying and chartering of school districts and individual schools within district." And: State Administrative Code 3301-35-12, "Chartered nonpublic schools." Obtained online at: [<http://onlinedocs.andersonpublishing.com/oh/lpExt.dll/OAC/11528/12380/124cd?fn=document-frame.htm&f=templates&2.0>].

**Table 5. Florida A+ Voucher Program Quick Facts**

Student enrollment	1,100 (November, 2003)
Student enrollment cap	13,700 (November, 2003)
Number of participating schools	Unknown - roughly 138 private schools are eligible
Age of program	3 years
Voucher size	The state allocation for the participating child if he/she were to attend a public school or the private school's actual tuition, whichever is less. The average voucher is between \$3,500 and \$3,900.
Total program cost	Contingent on student participation (no fixed cap)
Source of funding	State education budget. State allocation follows the student, so districts no longer receive state funds for the students who leave.
Student participation criteria	<ul style="list-style-type: none"> <li>- In the previous year, the student must have attended a public school that received two consecutive grades of "F" in the past two years on the state's annual school grading program, or</li> <li>- The student must be entering kindergarten or the first grade and have been assigned to a public school that was graded "F" in the previous two years, or</li> <li>- The student must have been previously enrolled in the program.</li> </ul>
School financial regulations	- Voucher must constitute full tuition (section 4(i) of enabling legislation).
School eligibility requirements	School must be accredited by a government approved accrediting body. (section 4(f) of enabling legislation)
School facilities regulations	Same code and safety requirements as all private schools.
School admissions regulations	<ul style="list-style-type: none"> <li>- Schools may not discriminate by race, color, national origin, religion, academic history (Section 4(c) of the enabling legislation [Florida Statutes 1002.38 ] requires compliance with 42 U.S.C. s. 2000d and section 4(e) of the enabling legislation prohibits academic and religious discrimination against students)</li> <li>- If there are more applicants than there are places available, students must be accepted on a random lottery basis</li> <li>- Siblings of previously (randomly) admitted students may be given preference</li> </ul>
School personnel regulations	May not discriminate by race, color, national origin, religion
School content regulations	Schools must follow instruction/curriculum guidelines laid down by their government-approved accrediting body (section 4(f)).
School testing regulations	Participating schools must administer the same tests as public schools, including the FCAT reading and mathematics tests and "Florida Writes!"
School performance regulations	To graduate, students must show satisfactory performance on the FCAT or such other graduation tests as are required by the state (section 5(c) of enabling legislation)
School attendance regulations	Schools must follow the attendance requirements set by their government-approved accrediting bodies (section 4(f))

Sources: "Bush says Florida will put up \$2 million for vouchers," *The Associated Press*, November 14, 2003. Obtained online at: [<http://www.heraldtribune.com/apps/pbcs.dll/article?AID=/20031114/APN/311140966>].

And: Matthew I. Pinzur, "Voucher program doubles in size," *The Miami Herald*, July 23, 2003. Obtained online at: [<http://www.miami.com/mld/miamiherald/news/local/6361954.htm>].

And: The figure for total number of eligible schools was arrived at by adding together all the eligible private schools in each of the districts listed on the official program website: [[https://www.opportunityschools.org/Info/OSP/osp\\_fimap\\_private.asp](https://www.opportunityschools.org/Info/OSP/osp_fimap_private.asp)].

And: Florida Statutes Title XLVIII (K-20 Education Code), Chapter 1002 (Student And Parental Rights And Educational Choices). Obtained online at: [[http://www.flsenate.gov/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=Ch1002/SEC38.HTM&Title=%3E2002-%3ECh1002-%3ESection%2038](http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch1002/SEC38.HTM&Title=%3E2002-%3ECh1002-%3ESection%2038)].

**Table 6. Florida McKay Voucher Program Quick Facts**

Student enrollment	9,202 (June, 2003); approximately 12,000 (fall, 2003)
Student enrollment cap	None
Number of participating	Unknown
Age of program	2 years
Voucher size	Average is \$5,840 as of October, 2003. Range was \$4,500 to \$21,000 as of September, 2002.
Total program cost	Contingent on student participation (no fixed cap)
Source of funding	The state education budget (Florida Education Finance Program) allocation
Student participation criteria	<ul style="list-style-type: none"> <li>- Student is disabled and has an Individual Education Program (IEP) written in accordance with the rules of the State Board of Education</li> <li>- Student attended a Florida public school in the preceding year</li> <li>- Student has been accepted at a private school</li> </ul>
School financial regulations	School must provide proof of financial viability to the state
School eligibility requirements	School must be accredited by a government approved accrediting body (section 4(f))
School facilities regulations	Same as those pertaining to other private schools
School admissions regulations	May not discriminate by race, color, or national origin (Section 4(c) of the enabling legislation [Florida Statutes 1002.39 ] requires compliance with 42 U.S.C. s. 2000d)
School personnel regulations	May not discriminate by race, color, or national origin (see above).
School content regulations	None
School testing regulations	None
School performance	None
School attendance	None

Sources: Stephen Hegarty, "Disability heals but voucher remains," October 4, 2003. Obtained online at: [[http://www.sptimes.com/2003/10/04/news\\_pf/State/Disability\\_heals\\_but\\_.shtml](http://www.sptimes.com/2003/10/04/news_pf/State/Disability_heals_but_.shtml)].

And: Florida Statutes 1002.39. Obtained online at:

[[http://www.flsenate.gov/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=Ch1002/SEC39.HTM&Title=-%3E2002-%3ECh1002-%3ESection%2039](http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch1002/SEC39.HTM&Title=-%3E2002-%3ECh1002-%3ESection%2039)].

And: Manhattan Institute Education Research Office website, McKay Scholarship page,

[<http://www.miedresearchoffice.org/mckayscholarship.htm>].

**Table 7. Colorado Voucher Program Quick Facts**

Student enrollment	N/A
Student enrollment cap	<ul style="list-style-type: none"> <li>- A variable function of: the number of participating districts (see below), the size of the participating districts, and the number of years since the program was introduced. For eligible school districts, the number of students who may receive vouchers is capped at 1% in year 1, 2% in year 2, 4% in year 3, and 6% in year four and all subsequent years.</li> <li>- It is estimated that 20,000 students will be eligible by the 2007-2008 school year if the program begins on schedule in 2004-2005.</li> </ul>
Number of participating schools	74 schools provisionally approved
Age of program	passed in 2003 but halted by court injunction
Voucher size	<p>The lesser of the private school's audited cost per-pupil and:</p> <ul style="list-style-type: none"> <li>- For students enrolled in kindergarten, 37½ percent of the district's per-pupil operating revenues (PPOR)</li> <li>- For students enrolled in grades 1-8, 75% of the district's PPOR</li> <li>- For students enrolled in grades 9-12, 85% of the district's PPOR.</li> </ul>
Total program cost	Dependent on participation
Source of funding	District's per-pupil allotment of state funding, with the left-over per-pupil amount being retained by the district to pay for fixed-cost items
Student participation criteria	<ul style="list-style-type: none"> <li>- Students must be in a participating school district</li> <li>- Students must qualify for a free/reduced price lunch, perform poorly academically, and have attended a public school in the prior year</li> </ul>
School financial regulations	Must demonstrate financial viability
School eligibility requirements	Local school districts can deny participation if they construe an applicant school to fall short of the various requirements stipulated in the law.
School facilities regulations	Must meet public school health and safety laws and codes
School admissions regulations	<ul style="list-style-type: none"> <li>- Schools may give preference to returning students and to the siblings of current/returning students.</li> <li>- Apart from the previous exceptions, schools must admit eligible students on a first come first accepted basis.</li> <li>- Schools may not discriminate against eligible children in admissions, dismissals, or other rights or privileges of parents or eligible children, on the basis of race, color, religion, national origin, or disability (Section 22-56-106, Paragraph 1(b)).</li> <li>- Students can withdraw at any time with no penalty</li> </ul>
School personnel regulations	Fingerprinting of staff and criminal background checks
School content regulations	Schools may not advocate or foster unlawful behavior or teach hatred of a person or a group
School testing regulations	Must permit school district officials to come in and administer state-wide assessments, at the private school's expense
School performance regulations	none
Program evaluation	An official government assessment of program outcomes will be carried out during the first four years of implementation

Sources: Colorado Revised Statutes, Section 22, Article 56, Paragraphs 101-110. Obtained online at: [\[http://198.187.128.12/colorado/lpext.dll/Infobase/31283/334f0/3353d/338c0?f=templates&fn=document-frame.htm&q=%22opportunity%20contracts%22&x=Advanced&2.0#LPHit1\]](http://198.187.128.12/colorado/lpext.dll/Infobase/31283/334f0/3353d/338c0?f=templates&fn=document-frame.htm&q=%22opportunity%20contracts%22&x=Advanced&2.0#LPHit1).  
 And: "Vouchers In Colorado: How Do the New Colorado Opportunity Contracts Work?" Head First Colorado website, [\[http://www.headfirstcolorado.org/HB1160.php\]](http://www.headfirstcolorado.org/HB1160.php).

**Table 8. Maine Voucher Program Quick Facts**

Student enrollment	5,614 (fall, 1999)
Student enrollment cap	Limited to students in eligible districts (see below)
Number of participating schools	Approximately 23 schools in Maine and 40 schools outside of Maine
Age of program	130 years
Voucher size	<ul style="list-style-type: none"> <li>- For elementary school, the lesser of the private school's tuition or \$5,421.96, as of 2002-2003</li> <li>- For an in-state high school, the lesser of the private school's tuition or \$6,966.49, as of 2002-2003</li> <li>- For an out-of-state high school, the lesser of the private school's tuition or \$6,333.17, as of 2002-2003</li> </ul>
Total program cost	Approximately \$30 million (no preset limit)
Source of funding	Each district pays for participating students out of its total budget and is then reimbursed by the state.
Student participation criteria	Students must reside within the boundaries of an eligible district.
School district eligibility	Must not have a government operated school
School financial regulations	Schools must provide audited financial records
School eligibility requirements	<ul style="list-style-type: none"> <li>- Schools must be secular (added in 1981)</li> <li>- Schools must be accredited by the state</li> </ul>
School facilities regulations	Same as for other private schools
School admissions regulations	none
School personnel regulations	none
School content regulations	If publicly funded students comprise $\geq 60$ % of a school's enrollment it must implement Maine's "Learning Results," which prescribe the particular things students should know and be able to do at various stages of their education. The "Learning Results" are deliberately intended to bring private schools' curricula into conformance with the knowledge and skills the state believes children should have.
School testing regulations	If publicly funded students comprise $\geq 60$ % of a school's enrollment it must administer the "Maine Educational Assessment" tests. Such schools are treated as public schools by the Department of Education.
School performance regulations	A graduation test requirement has been proposed but was not adopted

Sources: State of Maine, Department Of Education, "2002-2003 Tuition Rates For Private Schools." Obtained online at: [<http://www.state.me.us/education/data/tuitionrates/ptuit03.htm>].

And: Frank Heller, "Lessons from Maine: Education Vouchers for Students since 1873," Cato Institute Briefing Paper no. 66, September 10, 2001, p. 4. Obtained online at: [<http://www.cato.org/pubs/briefs/bp66.pdf>].

**Table 9. Vermont Voucher Program Quick Facts**

Student enrollment	6,505 (1998-99). This number includes many students who attend public schools in neighboring districts using the vouchers)
Student enrollment cap	Number of children in eligible towns (see below)
Number of participating schools	83 private schools (1998-99). Public schools also eligible
Age of program	134 years
Voucher size	For 1999–2000, the voucher was equal to the lesser of the school's tuition or \$7,306 for high schools, \$6,514 for seventh and eighth grades, and \$6,257 for elementary schools
Total program cost	unknown
Source of funding	Town education budget, refunded by the state
Student participation criteria	Resides in eligible district
School district eligibility	Must not have a government operated school
School eligibility requirements	- School must be secular (added in 1961)
School financial regulations	Must provide financial records for state approval
School facilities regulations	Same as for other private schools
School admissions regulations	none
School personnel regulations	"any quasi-public or private elementary or secondary school within the state which directly or indirectly receives support from public funds shall be considered a municipal employer," and hence must abide by the collective bargaining and all other provisions of the Vermont Municipal Labor Relations Act. (21 V.S.A. § 1735) (added in 1975)
School content regulations	"Exercises in commemoration of the birth, life, and services of Abraham Lincoln shall be conducted in all public and independent schools on the last school day before February 12, annually." (16 V.S.A. § 907) (added 1969)
School testing regulations	Must administer the "New Standards Reference Exam"
School performance regulations	none

Sources: Vermont Statutes, Title 21, Chapter 22, Section 1735. Obtained online at: <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=21&Chapter=022&Section=01735>.  
 And: Vermont Statutes, Title 16, Chapter 23, Section 907. Obtained online at: <http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=16&Chapter=023>.  
 And: Libby Sternberg, "Lessons from Vermont: 132-Year-Old Voucher Program Rebutts Critics," *Cato Briefing Paper* no. 67, September 10th, 2001.

Universal Vouchers in the Netherlands

Public schooling was well established in Holland in the early 1800s, and as with most public school systems there was considerable disagreement and conflict over what should be taught in these schools. The major bone of contention was religion. The public schools espoused a lowest common denomination Protestantism,

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***Just as public schools in the United States and elsewhere have been subjected to an ever larger body of regulations, so, too, have the government-funded private schools of the Netherlands.***

just as U.S. public schools did well into the 20<sup>th</sup> century. Dutch Catholics and Calvinist Protestants objected to this practice, and demanded that the public schools serving their children reflect their own beliefs. This led to a highly fractious social conflict over religious public schooling that came to be known as the “school struggle.” By the early 1900s, the school struggle had worsened considerably, and could well have erupted into widespread bloodshed.

To defuse this social time-bomb, a constitutional amendment was passed in 1917 under which the government was thenceforward required to provide equal per-pupil funding to government and (participating) private schools, regardless of religion. Though the “Pacification” amendment itself stipulated few requirements for government-funded private schools, it empowered parliament to enact laws regulating such schools. The first line of the amendment states that “Education shall be the constant concern of the Government.”<sup>20</sup> For generations, the Dutch voucher system successfully defused most of the school-related social tensions that had led to its creation. The majority of families, comprised at the time of Catholics, Calvinists, and members of other Protestant denominations, had more or less equal access to government-funded schooling consonant with their religious beliefs.

Today, the per-pupil vouchers issued by the Dutch government are no longer uniform, being larger for children from lower-income families. According to a report by the Organization for Economic Cooperation and Development (OECD), most schools use these larger vouchers simply to reduce the overall size of classes for all students. Voucher schools “rarely [make] a special effort... to meet the goal for which the extra funding was granted, namely individual attention for children from disadvantaged families.”<sup>21</sup>

Though government subsidized schools are forbidden to require parental co-payments as a condition for student admission, and though co-payments seem to violate the desire of many Dutch citizens to achieve educational equality by any means necessary, the government has been reluctant to forbid voluntary co-payments. One reason for that reluctance is that having parents pick up some of the cost is recognized to increase their commitment to their children’s education. Another reason is that an outright prohibition on voluntary co-payments to schools would not in fact achieve spending equality, but would simply redirect the extra money to a private market for supplemental education services outside the voucherized school sector (like the Japanese *juku*<sup>22</sup> industry). Ensuring that any private education spending stays within the government voucherized sector is considered an advantage by most Dutch lawmakers.<sup>23</sup>

Initially, neither the requirements for creating private government-funded schools nor the rules governing their operation were overly burdensome. Over the years, that situation changed. Just as public schools in the United States and elsewhere have been subjected to an ever larger body of regulations, so, too, have the

government-funded private schools of the Netherlands. Today, everything about the shape, operation, and content of Dutch schooling is dictated by the state. Education is officially divided into eight years of primary and four to six years of secondary schooling. All students are promoted automatically from grade to grade at the primary level, not at the independent election of the nation's schools or teachers, but because this is ordained by the state.<sup>24</sup> At the end of primary schooling, students are streamed into one of four secondary schooling categories:

- 4 years pre-vocational education (VBO)
- 4 years general secondary education (MAVO)
- 5 years general secondary education (HAVO)
- 6 years pre-university education (VWO).

Parents and students have some input into this streaming process, but grades on a government primary-school-leaving test are the most decisive determining factor.<sup>25</sup>

The curriculum at the secondary level is also prescribed by the state. A new compulsory core curriculum for all secondary schools, the *Basisvorming*, was introduced by the central government in 1993. The fifteen subjects included in this curriculum, each with matching attainment targets, require from two to three years to complete.<sup>26</sup>

In addition to sharing a core curriculum during the first half of the high-school years, each of the four secondary school streams culminates in its own national secondary-school-leaving test. During the 1990s, students in the latter years of the two academic high-school streams (HAVO and VWO) had some autonomy over what courses they took. That is no longer the case. In March 2001, professor Heleen Verhage of the University of Utrecht wrote that "The freedom which pupils currently have to choose their exam subjects during the senior secondary years of HAVO and VWO will largely disappear, to be replaced by set subject combinations."<sup>27</sup> Required subject combinations and their associated tests had been introduced to both HAVO and VWO by the end of 2002.

The Dutch state's control over the content of voucher-funded schools has recently extended beyond curriculum to pedagogical methods. According to Verhage:

Another new feature of the HAVO and VWO systems is the emphasis on independent learning. This means the role of teachers is changing and instead of them being in control of the teaching/learning process, students are now responsible for their own learning process, while the teachers switch to supervision and encouragement.<sup>28</sup>

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***Having the state impose pedagogical philosophy on an entire nation's schools is an obvious recipe for conflict.***

Anyone who has followed America's "school wars" will likely be familiar with the now popular expression that a teacher should be "the guide on the side, not the sage on the stage." This refers to the "progressive" view that students should direct their own learning, and that teachers should be present primarily as resources to be consulted as the student sees fit. "Guide on the side" teaching contrasts with the traditionalist view that teachers' primary job is to convey systems of knowledge and skills to their pupils. Having the state impose either pedagogical philosophy on an entire nation's schools is an obvious recipe for conflict, and it clearly impedes the specialization and differentiation of schools that are necessary for an effective education market.

Not only does the government of the Netherlands now determine how and what children are taught in voucher schools, it erects significant barriers to the creation of new schools. Professor Benjamin Vermeulen of Vrije University, writes "The current funding conditions are rather strict, and in recent years they have been changed to hinder the establishment of new schools."<sup>29</sup> To be eligible for voucher funding, prospective school founders must demonstrate that their institutions will be attended by very large numbers of pupils right from the start. The minimum pupil count for a new primary school ranges from 200 to 300, depending on the population density in the vicinity of the proposed school. Given the normal operation of the private education market, this requirement seems Draconian. In other countries, newly created private elementary schools often open their doors with only a handful of students in one or a few grades, and then grow and add new grades in successive years. The need to guarantee hundreds of students in the first year of operation is thus an unrealistically high hurdle for many schools. Remarkably, the minimum pupil count for a newly proposed secondary school is even higher than for primary schools.

The process by which school founders must demonstrate sufficient first year enrollment adds yet another level of difficulty. Rather than simply signing up a list of parents who intend to send their children to the new school, a Byzantine indirect forecasting system must be used. The first required step in performing this forecast is to specify the particular religious denomination or educational philosophy (*richting*) of the proposed school. Next, the school's prospective pool of students is extrapolated from existing population figures in the geographical area where it will be created. Finally, open places in existing schools of the same denomination or philosophy are subtracted from the estimate just generated. Consider, for example, someone who wishes to open a new Lutheran primary school in an Amsterdam neighborhood that has an existing Lutheran school with 50 open places. He must show that in this neighborhood there will be 350 or more Lutheran children not already enrolled in other schools.

An obvious problem with this scheme is that it makes it difficult to open new schools, especially in areas already served by one or more unpopular schools of the same philosophy or denomination, since those unpopular schools will likely have

many empty places.<sup>30</sup> The effect of rising minimum pupil counts for new schools can be seen in Dutch school creation statistics. Seventy-four new schools were created in 1990, 67 in 1991, 13 in 1993, and only 5 in 1994.<sup>31</sup>

The rising minimum pupil counts for new schools do not, however, constitute iron-clad protection for existing schools, because the minimum pupil counts for *continued operation of existing schools* have also been rising. During the 1990s, well over a thousand small schools were forced to either merge with other schools or to close down entirely due to rising minimum enrollment figures laid down by the government.

In addition to the above barriers to entry and content controls, the government of Holland also defines teacher accreditation requirements, fixes salary scales, curtails the firing of teachers, sets spending levels, makes it illegal to charge parents more than token facilities fees, and prohibits for-profit schools from receiving government funding.<sup>32</sup>

The Dutch themselves realize that their voucher system has drifted further and further away from a free market and has extinguished most incentives and opportunities for innovation and entrepreneurship. There is now some talk in Holland about ways to lighten the regulatory burden on voucher schools:

One way is to diminish regulation and bureaucracy, e.g. in the negotiations between the government and intermediate representing organisations [sic] and bodies. Thus schools themselves - and not their representing bodies - should obtain real entrepreneurial power and tools. This is not easy path [sic], but it is viewed as of crucial importance for the future quality and status of existing schools. Another way to enhance this development could be the experimental introduction of so called "Regulation free schools",... which are allowed to make their own business and innovation plan without hindrance of government regulation. Members of Parliament have asked for a proposal, but will they accept all of its consequences?<sup>33</sup>

Thus far, the answer appears to be no. The Dutch deregulatory debate has not made the leap from words into action. As already observed, voucher schools have become more heavily regulated in recent years, not less. In fact, given the language in the above quotation, it sounds as though some Dutch policy analysts feel they need to introduce what amounts to a charter school program to reinvigorate their ossified voucher program.

The Dutch system has also begun to falter in the very area it was specifically designed to address: maintaining social harmony. Until the late 20<sup>th</sup> century, Holland was overwhelmingly dominated by Dutch-speaking citizens who were either

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***Faced with the prospect of funding schools that espouse beliefs they find objectionable, many Dutch voters have agitated for limits on the creation of Muslim schools, and/or on the content of their curricula.***

Christian or were the secular descendants of Christian ancestors. This relatively homogenous ethnic and religious makeup meant that relatively few Dutch taxpayers strongly objected to being taxed to pay for schools outside their own particular denomination — virtually all the state-subsidized private schools were Christian, with a few mainstream secular institutions along for the ride. That changed in the 1980s and 1990s, as increasing immigration brought with it a growing minority of non-Dutch speaking Muslim immigrants from Africa and the Middle East. In addition to their religious and linguistic differences, some of these immigrants also brought with them ideas about individual freedom that differed substantially from those of the native population. Modern Holland considers itself to be a very progressive place, an international leader in the equal treatment of women and men, gays and straights, and a country well known for its tolerance of drug use. The culture of many conservative Muslim immigrants differs sharply from the Dutch mainstream on these and other points.

Naturally Holland's new minority population has sought to create schools that reflect its own views and to obtain government funding for these schools in accordance with Dutch law. According to a 2002 report by the Dutch intelligence service (the BVD), about one in five of these government-funded Islamic schools "receives money from the radical Islamic organisation [sic] Al Waqf al Islami, or has members of the school governors who are allied to radical Muslim organizations."<sup>34</sup> A subsequent series of visits to these schools by officials of the government's Schools Inspectorate failed to note any militant teaching or incitement to violence, while acknowledging that teachers could simply have moderated their instruction in the presence of the government observers.<sup>35</sup>

Faced with the prospect of funding schools that espouse beliefs they find objectionable, many Dutch voters have agitated for limits on the creation of Muslim schools, and/or on the content of their curricula. Direct legislative efforts to do so have failed up to now, though more subtle approaches have begun to appear. One such approach is a proposed limit on the percentage of a school's student population comprised of immigrant/minority children. Ostensibly a measure to improve ethnic, racial, and socio-economic integration, the plan could effectively make it impossible to create new government-funded Islamic schools. While explicit barriers to the creation of conservative Muslim schools would almost certainly violate the Dutch constitution, it seems likely that cleverly crafted indirect barriers would pass constitutional muster.

#### *Universal Vouchers in Chile*

Chile's voucher-like program was imposed by the pro-market military dictator Augusto Pinochet in 1981. All regulations controlling teachers' salaries and working conditions were eliminated, teachers' unions were outlawed, and private schools were

given the legal right to receive per-pupil funding directly from the state. Private schools could not charge fees over and above the per-pupil subsidy, whereas public schools often received special funding from their municipal governments in addition to the voucher. This funding arrangement put a comparatively greater burden on newly created private schools since they needed to finance their facilities from the voucher whereas public schools already owned their own facilities.

When the country transitioned to democracy in 1990 with the election of a socialist government, most of the voucher program's essential elements were preserved. A notable exception was the reestablishment of a nationwide teachers' union and the reintroduction of state controls over the education labor market as laid out in the *Estatuto Docente* (Educational Statute) of 1991 and its subsequent amendments.<sup>36</sup> Some provisions of the law, such as detailed wage scales and career ladders, apply only to government owned schools, but an extensive array of regulatory minutiae also applies to private — especially subsidized private — institutions. The minimum teacher's salary,<sup>37</sup> the duration and renewability of teachers' contracts,<sup>38</sup> the school's obligation to pay certain teacher transportation costs,<sup>39</sup> and restrictions on the hiring of specialty teachers<sup>40</sup> are just a few of the employment issues now fixed in law for all private schools. For state subsidized private schools, i.e., those participating in the voucher program, there are also limits on the number of hours a teacher is allowed to teach per week, the total number of hours teachers are allowed to work per week, and the fraction of total work hours that can be spent teaching. No single class may last more than 45 minutes and nighttime work hours are also limited by law.<sup>41</sup>

Another substantive change was made to the voucher program in 1993: subsidized private schools gained the right to charge parents a partial tuition co-payment, if they so chose. Until that year, a subsidized school that charged parents any amount of tuition lost all voucher funding. Since 1993, partial co-payments have been allowed, with the value of the government voucher decreasing as the parental co-payment increases. The maximum allowed size for co-payments is also limited by law. It is known that forty percent of private subsidized schools, enrolling about 65 percent of students in the subsidized private sector, began charging co-payments by 1996,<sup>42</sup> but the effects of these co-payments on educational conditions and outcomes have not been widely studied.

### *Tax-Credits in Theory and Practice*

The most basic form of education tax credit is one that allows parents to reduce the amount of state taxes they owe by one dollar for every dollar they spend on their children's education. This personal use tax credit can be either open to all parents or means tested so that only parents below a certain income threshold are eligible.

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***The ultimate tax-credit solution is to combine conventional personal use tax credits with donation credits.***

Whether means tested or not, personal use tax credits come in two flavors: refundable, and non-refundable. A non-refundable credit simply reduces the amount a taxpayer owes, down to a minimum of zero dollars. Refundable credits, by contrast, can actually produce a negative tax balance, meaning that the taxpayer receives money from the state instead of paying money to it. The term refundable is thus a misnomer, since the taxpayer need not have paid any taxes in order to qualify for the “refund” payment. Refundable credits are equivalent to vouchers in that they constitute an outlay of government funds, while lacking the simplicity of voucher programs. As a result, virtually all modern education tax credit programs and proposals are for non-refundable credits.<sup>43</sup>

A problem with non-refundable personal use credits is that they cannot benefit families who have little or no tax liability. To fill that gap, tax-credit proponents developed the donation tax-credit concept.<sup>44</sup> Under donation credits, tax-paying individuals and/or businesses are credited for contributions they make to non-profit Scholarship Granting Organizations (SGOs). The SGOs, in turn, pay private school tuition for children from low- and middle-income families.

The ultimate tax-credit solution is to combine conventional personal use tax credits with donation credits, creating what the Mackinac Center has dubbed Universal Tuition Tax Credits, or UTTCs. Under a UTTC program, any taxpayer who pays for a child’s education can receive a credit, whether or not the child is his or her own. As yet, no state has implemented a UTTC program, though personal use and donation credits exist independently in a number of states. Because the credits may be applied to educational expenses other than tuition, this paper adopts the term Universal Education Tax Credits, or UETCs.

Summary of U.S. Non-Refundable Tax Credit Programs

**Table 10. Pennsylvania Business Donation Tax Credit Quick Facts**

Scholarship recipients	Between 15,000 and 20,000 (2003)
Cap on scholarship recipients	No preset limit. In practice, enrollment is limited by a function of the amount of money donated and the (variable) size of the scholarships awarded.
Scholarship Granting Organizations	Approximately 150 (abbreviated hereafter as SGOs)
Age of program	2 years
Scholarship Size	Variable. Determined by each SGO
Credit size	<ul style="list-style-type: none"> <li>- Businesses can write off 75% of any single year donation, receiving a credit of up to \$200,000 (i.e. a \$266,666 one year donation would qualify for the \$200,000 maximum credit)</li> <li>- Businesses that commit to making a donation in two or more consecutive years can deduct 90% of each year's donation up to a per-year credit of \$200,000 (i.e. a commitment to donate \$222,222 in two consecutive years would qualify for the \$200,000 maximum credit in each of those years).</li> <li>- The \$200,000 cap supersedes to the original \$100,000 cap starting in the 2004-2005 school year.</li> </ul>
Cap on total credits	A maximum of \$26 million in credits are awarded annually for donations to private scholarship granting organizations, starting in the 2004-2005 school year. The original cap was \$20 million.
Source of funding	Private businesses. Credits can be assessed against a wide range of business taxes.
SGO eligibility requirements	<ul style="list-style-type: none"> <li>- Must be 501c(3) nonprofits</li> <li>- Must contribute 80% of annual receipts to scholarships, and prove this via an independent CPA filing</li> <li>- Must provide a reviewed or audited financial statement prepared by an independent CPA</li> <li>- Must not limit scholarship recipients to choosing a single school</li> </ul>
Student eligibility requirements	To be eligible, a family's total income must be below 60,000 if they have one child, 70,000 if they have two children, and so on.
School eligibility requirements	None other than those pertaining to other private schools
School financial regulations	None other than those pertaining to other private schools
School facilities regulations	None other than those pertaining to other private schools
School admissions regulations	None other than those pertaining to other private schools
School personnel regulations	None other than those pertaining to other private schools
School content regulations	None other than those pertaining to other private schools
School testing regulations	None other than those pertaining to other private schools
School performance regulations	None other than those pertaining to other private schools
Donation regulations	Nothing in the law forbids donor businesses from earmarking their donations for use at specific schools.

Sources: "Educational Improvement Tax Credits," a fact sheet provided by InventPA.com, the website of the Pennsylvania Department of Community and Economic Development (DCED). Obtained online at: [<http://www.inventpa.com/docs/Document/application/pdf/c9310566-4789-4b36-bfbc-b502d5bd1c92/edutaxcreditssummary.pdf>].

And: "List of Scholarship Organizations (Effective 07/01/2003 - 06/30/2004)," provided by InventPA.com. Obtained online at: [<http://www.inventpa.com/docs/Document/application/octet-stream/a10b7a3a-a52f-4b4b-9ea7-9e14bc573930/scholarshiporg.pdf>].

And: The General Assembly Of Pennsylvania, Session of 2001, "House Bill No. 996," the enabling legislation for the tax credit program. Obtained online at: [<http://www2.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0996P1878.pdf>].

And: Edward J. Vassallo, "Perzel hailed as champion of program that aids Father Judge students," NewsGleaner.com, February 25, 2004. Obtained online at: [[http://www.newsgleaner.com/site/news.cfm?newsid=11024041&BRD=2340&PAG=461&dept\\_id=488595&rfi=6](http://www.newsgleaner.com/site/news.cfm?newsid=11024041&BRD=2340&PAG=461&dept_id=488595&rfi=6)].

**Table 11. Arizona Personal Donation Tax Credit Quick Facts**

Scholarship recipients	Approximately 19,000
Cap on scholarship recipients	No preset limit. In practice, enrollment is limited by a function of the amount of money donated and the (variable) size of the scholarships awarded.
Scholarship Granting Organizations	Approximately 47
Age of program	6 years
Scholarship Size	Variable. Determined by each SGO
Credit size	<ul style="list-style-type: none"> <li>- Individuals can write off 100% of their donations to scholarship granting organizations up to a maximum of \$500.</li> <li>- For married couples, the maximum donation is \$650.</li> </ul>
Cap on total credits	No preset cap
Source of funding	Individual donations that qualify for credits against the state income tax
SGO eligibility requirements	<ul style="list-style-type: none"> <li>- Must be 501c(3) nonprofits</li> <li>- Must contribute 90% of annual receipts to scholarships (and prove this via an annual financial filing)</li> <li>- Must make scholarships available to more than one school</li> </ul>
Student eligibility requirements	none
School eligibility requirements	None other than those pertaining to other private schools
School financial regulations	None other than those pertaining to other private schools
School facilities regulations	None other than those pertaining to other private schools
School admissions regulations	None other than those pertaining to other private schools
School personnel regulations	None other than those pertaining to other private schools
School content regulations	None other than those pertaining to other private schools
School testing regulations	None other than those pertaining to other private schools
School performance regulations	None other than those pertaining to other private schools
Donation regulations	Nothing in the law forbids donors from earmarking their donations for specific schools or even specific children, so long as the children in question are not their own.

Sources: Carrie Lips Lukas, "The Arizona Scholarship Tax Credit: Providing Choice for Arizona Taxpayers and Students," *Arizona Issue Analysis #186*, Goldwater Institute, December 11, 2003.

And: Arizona Statutes 43-1089, "Credit for contributions to school tuition organizations." Obtained online at: [<http://www.azleg.state.az.us/ars/43/01089.htm>].

**Table 12. Illinois Personal Use Tax Credit Quick Facts**

Taxpayers claiming credits	Number unknown
Cap on scholarship recipients	No limit
Scholarship Granting	N/A
Age of program	6
Credit size	- Individuals can write off 25% of their eligible education expenses for their own children, up to a maximum credit of \$500. - Eligible expenses include tuition, book fees, and lab fees in excess of \$250.
Cap on total credits	None
Source of funding	Credit against parents'/guardians' personal income taxes
SGO eligibility requirements	N/A
Student eligibility requirements	Under 21, attending an eligible school (see below)
School eligibility requirements	Public schools or private schools that satisfy Title VI (non-discrimination provision) of the Civil Rights Act of 1964 and that satisfy the compulsory attendance provision of section 26-1 of the Illinois School Code.
School financial regulations	None other than those pertaining to other private schools
School facilities regulations	None other than those pertaining to other private schools
School admissions regulations	None other than those pertaining to other private schools
School personnel regulations	None other than those pertaining to other private schools
School content regulations	None other than those pertaining to other private schools
School testing regulations	None other than those pertaining to other private schools
School performance regulations	None other than those pertaining to other private schools
Other	Private schools in Illinois need not register with the state, nor belong to a state-approved accrediting body

Sources: Illinois Compiled Statutes, Chapter 35, Article 5, Section 201, Subsection m (35 (ILCS) 5/201). Obtained online at: [<http://www.legis.state.il.us/legislation/ilcs/ilcs4.asp?DocName=003500050HARt%2E+2&ActID=577&ChapAct=35%AOILCS%A05%2F&ChapterID=8&ChapterName=REVENUE&SectionID=39344&SeqStart=2300&SeqEnd=4300&ActName=Illinois+Income+Tax+Act%2E>]

**Table 13. Florida Business Donation Tax Credit Quick Facts**

Scholarship recipients	15,000 (2002-2003) (55,000 children applied)
Cap on scholarship recipients	All children who qualify for free/reduced price lunch (1,098,140 as of the fall of 2002). In practice, enrollment is limited by the amount of money donated and the size of the individual scholarships awarded.
Scholarship Granting Organizations	7 (November 2003)
Age of program	2
Credit Size	There is no limit on the total amount of creditable donations a given business can make other than the overall cap on the entire program (see below), and the fact that the business's donations to a single SGO may not exceed \$5 million per year.
Scholarship size	- Variable, up to the lesser of \$3,500 or the school's tuition - No child may receive more than \$3,500 whether from a single scholarship organization or cumulatively from multiple such organizations
Cap on total credits	\$88 million (2003)
Source of funding	Corporate donations eligible for credit against state taxes
SGO eligibility requirements	- Must be 501c(3) nonprofits - Must make scholarships available to multiple schools - Must give priority to students who received a scholarship in the previous year - Can only accept donations for specific children already identified as eligible and for which private school places have been identified - Must spend 100% of scholarship donations on scholarships in the year in which the donations are made. Interest from donations must be spent on scholarships Annual financial filing by an independent CPA is required - Must confirm that scholarship is restrictively endorsed to the school of choice (to prevent kickbacks?)
Student eligibility requirements	- Must qualify for free or reduced price lunches - Student must be just starting school or, in the previous year, student must have either been enrolled as a full-time Florida public school student or have already been participating in the scholarship program. - As a corollary, students already enrolled in private schools are not eligible
School eligibility requirements	None other than those pertaining to other private schools
School financial regulations	Must have been in operation for at least a year, or submit CPA filing stating it is/will be solvent, or file a letter of credit to the state in the amount of the scholarship
School facilities regulations	Meet state and local health and safety laws and codes
School admissions regulations	Comply with the anti-discrimination provisions of 42 U.S.C. s. 2000d
School personnel regulations	Comply with the anti-discrimination provisions of 42 U.S.C. s. 2000d
School content regulations	None other than those pertaining to other private schools
School testing regulations	None other than those pertaining to other private schools
School performance regulations	None other than those pertaining to other private schools
Donation regulations	Donation may not be earmarked for a specific child
Other	Parents must inform their public school district within fifteen days of having accepted a scholarship to a private school

Sources: 2003 Florida Statutes, Title XIV, Chapter 220.187, Sections 2 and 3. Obtained online at: [[http://www.flsenate.gov/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=CH0220/SEC187.HTM&Title=%3e2001-%3eCH0220-%3eSection%20187](http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=CH0220/SEC187.HTM&Title=%3e2001-%3eCH0220-%3eSection%20187)].  
And: The Manhattan Institute website corporate scholarships page. Obtained online at: [<http://www.miedresearchoffice.org/corporatetaxscholarships.htm>].

## *Common Design Considerations*

The discussion that follows relates the characteristics of effective market education to voucher and tax-credit programs. In doing so, it points to specific features that both sorts of programs must have if they are to produce the results expected of them.

### *Budgetary Considerations*

Properly designed market education programs should impose lower costs on state budgets than do current public school systems. Holding the kind and condition of school facilities constant, private schools are, on average, less costly to operate than public schools.<sup>45</sup> That means voucher, personal use tax credit, and donation scholarship amounts can all be set lower than existing per-pupil spending in public schools. The savings that accrue from choice programs can be assigned to whatever use voters and state legislators deem best. In the present climate of state budgetary crises, these savings will be most welcome.

From a political standpoint, it is tempting to redirect at least some of the savings from a choice program back into the traditional public school system. This is widely believed to increase public support for market education programs, but choice proponents should proceed with caution if they choose to follow this path. There is empirical evidence from the Chilean pseudo-voucher program that giving extra money to poorly performing public schools only makes them *less* efficient and *less* responsive to competition. Public schools that do not receive this extra funding tend to be more efficient and responsive to competition, though they are still significantly less efficient and responsive to competition than are private schools. This, of course, makes perfect sense. The schools with the most to lose from failing to meet their students' needs tend to make the greatest effort to satisfy those needs. Schools that receive extra funding regardless of how well they are performing are under less pressure to perform well, and hence their performance deteriorates.<sup>46</sup> So while redirecting some choice program savings back into the traditional public school system may improve the prospects for passage of a choice program, it is likely to diminish the effectiveness of that program.

### *An Absence of Mandatory Curricula and Testing*

In practice, parental choice and school autonomy are both dependent on education regulations being kept to a minimum. One of the most damaging sorts of government intervention in the education market is the imposition of a mandatory curriculum. No single official curriculum can adequately reflect the diversity of parental demands and preferences. A mandatory curriculum undermines the value of

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***Properly designed market education programs should impose lower costs on state budgets than do current public school systems.***

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***Education bureaucracies are staffed by the same flawed human beings who comprise education markets, but those bureaucracies lack the superior incentive structure that guides decision-making in a competitive market.***

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parental choice by homogenizing the options from which parents can choose. It limits the ability of schools to innovate, respond to variations in parental demand over time, and target particular niche clientele. In other words, it takes the market out of market education.

Government imposed testing regimes are similarly harmful, for a number of reasons. First, they tend to drive the curriculum implicitly, as schools focus on the high-profile tested subjects and sideline those that are not tested. This brings about the same market-stifling conditions as an explicit official curriculum, and it is precisely what occurred, for example, under the English “Payment by Results” testing program of the 1870s.<sup>47</sup>

Many education reformers favor mandatory state testing because they believe it is necessary for (and capable of) improving academic achievement and ensuring that schools use effective pedagogical methods. These beliefs are misplaced. As already noted, parents historically have made wiser educational decisions for their own children than education officials have made for the children of others.<sup>48</sup> Education bureaucracies are staffed by the same flawed human beings who comprise education markets, but those bureaucracies lack the superior incentive structure that guides decision-making in a competitive market. Tests designed at state expense by education experts and officials are no less likely to encourage dubious and faddish teaching methods than they are to promote proven and effective ones.

The Program for International Student Assessment (PISA) is one of the most recent, lavishly funded, and widely talked-about international tests, and it measures exactly the kind of “fuzzy” mathematics practices that are popular among most government-school-affiliated mathematics educators, but which are less highly regarded by actual mathematicians, concerned parents, and *pro-mandatory-testing school reformers*.<sup>49</sup> Unlike the National Assessment of Educational Progress (NAEP), which allows the use of calculators only on selected items, and unlike the Third International Mathematics and Science Study (TIMSS), which does not allow the use of calculators, PISA allows calculators to be used freely on all questions. PISA was expressly designed, however, to *not* be computationally intensive. It has 8 questions requiring numerical computation compared to 44 such questions on the NAEP and 55 on the TIMSS.<sup>50</sup> Not surprisingly, pedagogically traditional parent-funded private schools that emphasize computation and other “non-fuzzy” mathematical skills did not fare as well on this test as they do on countless other more conventional ones. One study even suggests that they were in fact *surpassed* by public schools on the PISA, after controlling for a vast array of student, school, and socio-economic characteristics — an almost unheard of reversal.<sup>51</sup>

There is no question that enshrining PISA as a mandatory government test would force private schools to modify their curricula and adopt the “fuzzy” math curriculum that PISA is designed to test. Schools that tried to resist would appear

inferior to prospective customers using the official government test scores as a basis for choosing their children's schools.

Another argument, that mandatory testing should be imposed because parents want their children tested, is logically invalid. To the extent that parents want test results, they can and will seek testing for their children in an open education marketplace. Mandatory imposition of government tests is thus not only counterproductive, it is unnecessary. The private sector is capable of providing, and in fact already does provide, extensive independent testing and certification services within the field of education and training (such as professional software proficiency certification exams), and these highly-valued services would be expanded under a competitive K-12 marketplace. The vast for-profit unregulated private tutoring industry in Japan provides numerous opportunities for parents to test their children's proficiency in countless fields of knowledge — no compulsion is required.

Finally, while the imposition of mandatory curricula and testing might make school choice legislation easier to pass into law, choice proponents should be aware that these victories would ring hollow. Legislation that imposed a government curriculum and testing package would not create a market at all, but rather an arrangement more akin to the contracting out of public schools to private managers. The educational goals would be defined by the state, and satisfying the requirements of the state, not families, would become the first priority of private schools—as is now largely the case in the Netherlands.

### Financial Responsibility for Parents

As already explained, schools paid for at least in part directly by parents tend to perform better across the board than schools paid entirely by a third party. Direct payment, furthermore, has also been the only reliable means by which parents have remained in the educational driver's seat, keeping the freedom of choice that is crucial to the effective operation of the market. Both tax credit and voucher programs should thus be designed to maximize direct financial responsibility while still ensuring universal access to the marketplace. The broadest base of evidence supports fully parent-funded schools, so maximizing the percentage of parents who can cover all of the cost of their own children's education with their own resources is of particular importance.<sup>52</sup>

Though it is tempting to waive co-payments for all low-income families and to give them larger compensatory funding, the Dutch experience suggests that most schools will not use the extra funds to specifically help the children they are meant to serve, but instead use it to improve the working conditions of their own employees by reducing class sizes across the board.

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***To the extent that parents want test results, they can and will seek testing for their children in an open education marketplace.***

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***School choice laws that are explicitly limited to serving just a few thousand children do not and cannot create vigorous competition.***

### Cost Control

Education spending under public schooling has skyrocketed since the 1920s when the system's modern bureaucratic form was first taking shape. Per-pupil expenditures in the public schools are up by a factor of 15 in inflation-adjusted dollars if you use the Average Daily Attendance figures (ADA), or by a factor of 19 if you use the average fall enrollment figures.<sup>53</sup> To remain politically viable and practically acceptable over the long term, market education programs will have to be designed to avoid perpetuating this problem.

### Universality and Competition

For education markets to work effectively, there needs to be more than just a token level of competition among schools. The largest possible number of families should be able to choose from among numerous education service providers and there should be sufficient new demand for private schooling to justify the creation of new schools. School choice laws that are explicitly limited to serving just a few thousand children, especially those that scatter the eligible children over a large geographical area, do not and cannot create vigorous competition. Instead, eligible children fill some of the empty places in existing schools and few if any new schools are created. This is not a market, it is a modest benefit package for existing private schools, and it will not fulfill the goals that we have set out to achieve.

More specifically, education reformers whose chief concern is the improvement of educational options for low-income children must realize that programs serving *only* these children are counterproductive. By limiting the number of participating students, targeted or narrowly means-tested programs lower the total number of competing schools; the vigor of the competition among schools; the incentives for quality, innovation and efficiency; and the diversity of specialized services available.

### Program Phase-in

No program is going to create a vigorous competitive market overnight, but there are ways of maximizing competition even in programs that are phased in gradually. Introducing a market education program in stages can have practical benefits as well. By targeting the first phase at low-income families it is possible to front-load the program with migrators from government to private schooling rather than taking-in substantial numbers of existing private school students right from the start. This would prevent the situation that arose in Arizona, where the donation credit program has been criticized for doing little to help the poor, concentrating its benefits among middle class families whose children were already enrolled in private schools

to begin with.<sup>54</sup> Similarly, front-loading the program with younger students by phasing it in by age cohort can also reduce the system's initial cost, since elementary schooling is generally less expensive than secondary schooling.<sup>55</sup> The participation of children already enrolled in private schools or homeschools could also be phased-in over a number of years to assure that the program never has a negative fiscal impact on the state budget.

In their book *Education and Capitalism*, Herbert Walberg and Joseph Bast make a helpful distinction between gradual program phase-ins that are built into the enabling legislation and incrementalism, which they define as the passage of limited trial programs with the expectation that these will eventually be followed by legislation expanding their scope. Incremental expansion has some precedent in the Milwaukee voucher program, which initially excluded religious schools and limited student participation to about a thousand children, but later added religious schools and saw its student cap rise to about 15,000 students. Between phase-in and incremental approaches, however, the evidence seems to favor phase-ins. First, consider that the Vermont and Maine voucher programs have both been around for over a century and neither has been followed by significant scope-enlarging legislation. On the contrary, both have been legislatively circumscribed over the years by the elimination of religious schools from eligibility to participate. Of the world's two existing universal voucher programs, those of Chile and the Netherlands, neither was built up incrementally. Both emerged, Athena-like, as fully formed national programs.

While it is important to appreciate the political and functional benefits of a gradual phase-in, we must also be aware of some potentially serious pitfalls. The particular risk is that a too-limited initial phase/increment of the program will yield disappointing or simply unimpressive results and thereby undermine support not only for its expansion but for its continued existence. The most obvious way in which this could happen would be for the early phase of the program to fail to bring about a vigorously competitive market. After all, the benefits of market education are not ensured simply by passing a law with the words "parental choice" or "competition" in its title. They are brought about through vigorous competition among numerous relatively unfettered providers.

Consider the enacted, but legally enjoined, Colorado voucher program. The initial stages of this program would scatter very small numbers of eligible students across numerous districts around the state. With only handfuls of students eligible for vouchers in any given neighborhood or district, it would not likely stimulate the creation of new private schools, and would do little to increase market pressures on existing schools. If the courts allow the program to go ahead, it will certainly present a laudable escape hatch for the children who receive vouchers, but the shortcomings just described are a cause of genuine concern. The lack of competitive density and new school creation is likely to minimize its impact on achievement and few new

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***Vouchers should be partial rather than full.***

educational options are likely to appear. If such uninspiring results do indeed materialize, even the current escape hatch could well be slammed shut by a skeptical legislature.

Unfortunately, virtually all of the existing tax credit and voucher programs suffer from varying degrees of this same problem. Pennsylvania's donation tax credit, for example, is capped at \$26 million and its beneficiaries can live anywhere in the state. That means that few if any communities may have enough new private school students to create a single new school, let alone to create a vigorously competitive private market. Milwaukee's trial voucher program is marginally better, supporting about 13,000 voucher students within the district's boundaries, but it has very nearly reached its cap. With a maximum of just 15% of the city's students eligible to participate, market forces will necessarily remain limited.

### ***Outline of an Optimal Voucher Program***

#### ***Voucher Size***

To preserve as much financial responsibility for parents as possible, vouchers should be partial rather than full, and they should be phased-out at the highest income levels. A minimum co-payment of 10 percent of tuition could be required, with an optional exemption for the lowest-income parents. Exempted parents could instead be required to volunteer some amount of their time in their children's schools, a contribution that would provide a comparable sense of personal investment as a co-payment. Once parents' incomes reach a certain level, the value of the voucher should be gradually reduced. It should only be phased out completely for the wealthiest families, however, since we must not sacrifice universal access in our effort to maximize personal financial responsibility. Partial vouchers would not only maintain a level of parental responsibility, but would also help to control total program cost.

The Heartland Plan has been suggested as another way of both controlling costs, by fostering price competition between schools, and of maintaining parents' financial responsibility. Under this plan, the reader will recall, parents are permitted to save any voucher funds they don't immediately spend on tuition, and then spend these accumulated funds on school fees and tuition (including college tuition) at a later date. Heartland is to be commended for offering this innovative idea, but it is regrettably not likely to achieve its stated goals. The problem is that the voucher surplus accounts created under the Heartland Plan are not equivalent to traditional Education Savings Accounts (ESAs), as they are presumed to be.<sup>56</sup> ESAs like the federal Coverdell program allow parents to save *their own money* in tax-free accounts. The Heartland Plan allows parents to accumulate *Other People's Money* (sometimes referred to as OPiUM). Voucher surplus accounts are thus not a mechanism for increasing parents' personal financial responsibility.

The ability of voucher surplus accounts to control the costs of a voucher program is also in serious doubt. The notion that parents would be as judicious with these funds as they would be with their own is not credible. It seems highly likely, for example, that schools would begin to charge optional “computer fees,” legally payable from voucher surplus accounts, which would basically be a conduit for parents to buy marked-up home computers with taxpayer dollars. The combined ingenuity of education entrepreneurs all over the country would be focused on finding ways to ensure that there is never a dime left in a voucher surplus account by the time the student reaches the cutoff age at which the money would be returned to state coffers.

Even if there were a sudden rash of concern among parents and business people to be thrifty with taxpayers’ money, voucher surplus accounts would simply represent a windfall for higher education. Frugal parents would economize on K-12 tuition, saving up the voucher surplus to help pay for college. Most U.S. colleges and universities could undoubtedly find something to spend this additional money on. Whether parents spend any government voucher surplus on K-12 education, or wait to spend it until college tuition bills start arriving, it is a virtual certainty that the full voucher amount will eventually be spent, nothing will be left in the account at the student’s cutoff age, and the cost of operating the voucher program will not be held in check. As a result, voucher surplus accounts are not recommended.

### Regulation of Voucher-Redeeming Schools

Regulation of private schools accepting vouchers should be kept to a minimum. As argued above, no mandatory testing or curricula should be imposed. Similarly, voucher schools should not be obliged to hire only government-certified teachers or to belong to government-approved school accrediting associations. Though it would be preferable not to dictate voucher schools’ admissions policies, this is almost certainly unavoidable for legal reasons. Either a random lottery or first-come-first-served protocol would have to be specified for a voucher law to have a real chance of passing and being upheld in the courts.

Some voucher proposals include a provision meant to protect private schools from being deluged with new regulations after they begin accepting the government subsidies. When the enabling legislation is a constitutional amendment it has been suggested that it could require a supermajority in the legislature for any future regulations to be added to private voucher-redeeming schools, but this could be a very tough sell politically.

Alternately, some conventional voucher bills include language stipulating barriers to future regulatory encroachment of voucher-redeeming schools. Unfortunately, there is nothing to stop subsequent legislatures from amending any

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***Though it would be preferable not to dictate voucher schools’ admissions policies, this is almost certainly unavoidable for legal reasons.***

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***Rigid age-based grading is frequently dispensed with by market education systems. Market schools often use performance-based grading under which children are promoted from one level to the next based on mastery of the material.***

such provisions or from simply ignoring them. Consider the case of the 10<sup>th</sup> Amendment to the U.S. Constitution, which reserves to the states and the people any powers not enumerated in the Constitution. While quaint and heartwarming to proponents of limited government, the 10<sup>th</sup> Amendment has been repeatedly violated in often outlandish ways. The very existence of a federal Department of Education is a case in point, since neither the word education nor the word school appears in the Constitution. Still, there's no obvious harm in having a provision against the regulation of voucher-redeeming schools, and it would at least make the enactors' legislative intent more obvious, so there is no reason not to add such a provision.

#### Homeschooling

The options for homeschooling under voucher programs are not good. If homeschoolers are not regularly inspected by the state, not required to use a state curriculum and testing package, and not obliged to hold state teaching credentials, the perceived potential for abuse and fraud is substantial and the prospects for passage through a legislature are dismal. On the other hand, if homeschoolers are brought completely under the state's educational control and oversight, the merits and appeal of homeschooling are all but eliminated. This dilemma alone makes it best not to include homeschoolers in voucher programs.

#### Program Introduction

There are two obvious techniques for phasing in a voucher program gradually while still ensuring a critical minimum level of competitive density right from the start. The first approach is to localize the program geographically, by phasing in one region or district at a time. By doing so, all the currently eligible children would be concentrated in a small enough area for them to justify the creation of new schools and engender considerable competition among both new and pre-existing schools. The second approach, which can be combined with the first, is to phase in the program by student age cohort, starting with the youngest children and working upward in age with each successive year. This approach is consistent with the common practice of starting a private or charter school to serve an initial group of young children, and then adding more advanced classes as the students grow older. Note that it is best to use student age ranges rather than grades for this phase-in because rigid age-based grading is frequently dispensed with by market education systems. Market schools often use performance-based grading under which children are promoted from one level to the next based on mastery of the material.

## Outline of an Optimal UETC Tax Credit Program

### The Personal Use Credit

The personal use credit should be claimable by any parent with a school-aged child who is not enrolled in a public school. Ideally, there would be no restrictions<sup>57</sup> on how the credited earnings are spent, just as there are no use restrictions imposed by the federal child tax credit (i.e., you can spend the money on anything). Parents could spend their earnings, credited or otherwise, on private school tuition, tutoring services, equipment and supplies for homeschooling, any combination of the preceding options, or any other purpose.

Naturally, political expediency dictates that some restrictions must be imposed on the use of the credit. Given that reality, the best approach is to limit the credit to only education-related expenses, just as is done with the federal Coverdell ESAs. Allowing the credit to be used for any of a wide range of educational expenses is crucial to the effective operation of the market. Narrow use restrictions would stifle specialization and innovation in educational services. We cannot say, in advance, what sorts of services educational entrepreneurs will offer, or which services parents will find most valuable in decades to come, and so we must not narrowly tie the credit to full-day tuition or textbook expenses alone.

Homeschooling expenses should be eligible for credit under a UETC program, for several reasons. Unlike vouchers, personal use tax credits are not government money (see the discussion in the next section), so the public policy case for imposing additional regulations on homeschoolers who claim a credit is substantially weaker than it is for vouchers. Homeschoolers could be expected to be just as thrifty with their tax credited earnings as they are with the rest of their earnings. Though legislators in Oregon apparently threatened to seek stricter controls on homeschooling if an education tax credit passed in that state,<sup>58</sup> it is not clear that there would be any more broad-based legislative support for such a tightening under a credit program than there is without such a program. Oregon happens also to be the home of the *Pierce v. Society of Sisters*<sup>59</sup> case of 1925 in which the U.S. Supreme Court ruled that parents are entitled to direct their own children's education. An excessively burdensome homeschool regulation package might well be challenged on the grounds that it impinged the freedoms established by that case.

The personal use tax credit could either be phased out in the highest income brackets or not, and there are reasonable arguments for both options. The argument in favor of phasing out the credit is dictated by the purpose of the program, the desire to minimize negative budgetary impact, and the desire to reduce the threat of regulatory encroachment to an absolute minimum. The purpose of the program is to make the education marketplace universally accessible. If Bill Gates and other wealthy parents

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***Unlike vouchers, personal use tax credits are not government money, so the public policy case for imposing additional regulations is substantially weaker than it is for vouchers.***

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***Tax credits do the best job of simultaneously making market education universally accessible and minimizing the threat of government interference.***

already can easily pay for private schooling for their children, the program's purpose is little advanced by giving them tax credits. If Gates and other wealthy parents are not given a credit, the program's effect on state revenue generation will also be reduced, making it more appealing politically and fiscally.

The issue of regulatory encroachment is somewhat more complex. The next section of this paper argues that tax credits do the best job of simultaneously making market education universally accessible and minimizing the threat of government interference in that marketplace. That said, even non-refundable personal use credits represent some degree of special treatment for one group of taxpayers (parents with school-aged children).<sup>60</sup> Though a personal use credit may not attract the same level of government interference as would a government subsidy, it nevertheless presents a target for die-hard opponents of market education and for those with an overweening faith in the effectiveness of government regulation. In Florida, for instance, some public officials have called for additional regulations to be imposed on schools whose students benefit from that state's tax credit program. Given that reality, it may make sense to limit personal use tax-credits to only those families who need them, and thereby minimize the range of schools and families affected by any regulatory burden that could eventually be attached to the credits.

If the personal use credit is to be phased out, this should be done gradually and only at a comparatively high income level. These conditions are necessary to ensure that the only families excluded from claiming the credits would be those who could readily afford private education without them, and to avoid the situation where a small increase in a parent's salary results in the loss of a substantial tax credit.

The argument for not phasing out the credit for the wealthiest families is one of fairness. On what moral grounds can wealthy parents be excluded from participation in this credit program? This is an enormously difficult question given that the entire enterprise of taxation itself can be questioned on moral grounds. In the end, the percentage of families with school-aged children who earn very high salaries is quite small, since people generally reach their peak earning years after their children are finished elementary and secondary education. The means test described here would therefore not affect large numbers of families, and so its presence or absence would not likely have a decisive impact on the program's overall operation.

Parents (or guardians) with multiple children should be able to claim a separate credit for the education of each one of their children. Though some might argue that this would create an incentive for larger families, that seems unlikely. Given the costs (including non-financial costs) associated with raising a child, the existence of a per-child education tax credit will not alter the total financial child-rearing equation sufficiently to have a significant impact on parents' decisions regarding how many children to have.

### The Donation Credit

The scholarship donation credit should be claimable by anyone who gives to a Scholarship Granting Organization (SGO) that pays for a child's education outside the public school sector. SGOs should be allowed to cater to or exclude particular constituencies such as religious schools, homeschoolers, etc., at their own discretion. No additional regulations should be applied to private schools serving scholarship students beyond those already applying to all private schools. There should obviously be no means test for taxpayers wishing to claim donation credits, since it is the wealthiest taxpayers who have the means to help the greatest number of children by making the largest donations.

Since the purpose of the donation credit is specifically to serve those families who benefit insufficiently from personal use credits, eligibility for *scholarships awarded by SGOs* must be means tested. In other words, only families below a certain income threshold, taking number of children into account, should be eligible for an SGO scholarship. The income eligibility cut-off must be set high enough, however, to ensure that middle income families can participate. This is due to the fact that personal use credits alone may not provide sufficient benefit for middle income families to cover the cost of their children's educational expenses.

It is difficult to recommend a single universally applicable income cut-off figure because of the significant variation in the cost of private schooling from one state to the next. For the purpose of illustration, however, let's take an arbitrary figure of \$65,000 as our base cut-off for families with one child. That cut-off figure could be raised by \$5,000 or \$8,000 for each additional child. If we choose the \$5,000 increment, then a family with four children could earn up to \$80,000 and still be eligible to receive scholarships.

The size of the scholarships awarded to families should be left to the discretion of the SGOs, however, to allow for varying student ages, family incomes, and family circumstances. SGOs would almost certainly give larger per-child scholarships to a family with four children earning \$25,000, than they would to a family of the same size earning \$80,000. Another obvious example would be that some SGOs might want to offer a higher scholarship for older students, since the tuitions charged by high schools are higher, on average, than those of elementary schools.

### Program Introduction

Ideally, both the donation and personal-use credits should be introduced simultaneously, to ensure that a critical level of competitive density is achieved as quickly as possible. If that is not possible for political or fiscal reasons, the donation

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***No voucher or tax credit program has yet been enacted as the direct result of a popular vote.***

credit could be introduced immediately and the personal-use credit added a few years later. This would make the achievement of revenue neutrality easier and preempt criticisms that the program underserves the neediest families.

To increase competitive density and further help maintain fiscal neutrality, both the personal use and donation credits should be phased in by age group, starting with the youngest children first.

#### Administrative Costs

SGOs should be allowed to spend some modest fraction of donations they receive on their own administrative costs. Doing so ensures a healthy population of SGOs, because it is easier to maintain a scholarship organization if it can cover at least part of its operating costs out of donations it receives. Florida, which forbids SGOs from using any fraction of donations to cover overhead, has only 7 SGOs after two years of operation. Arizona, which allows up to 10 percent of donations to be used for overhead has 47 SGOs after six years. Pennsylvania, which allows a perhaps too generous 20 percent of donations to be used for administration, has a whopping 150 scholarship organizations after just two years. A cap in the vicinity of 8 or 10 percent would thus seem to provide the most reasonable balance of program cost to SGO population.

Having a large and diverse group of SGOs benefits both donors and scholarship-receiving families, because it maximizes the chances that both groups will find an SGO with which they are happy to be associated. That increased potential for good matches between SGOs, donors, and recipients will in turn encourage the growth and strength of the program.

Interested tax-payers and education reporters could also refer to the IRS filings that SGOs would have to make under their status as 501(c)(3) non-profit organizations. This information would allow donors to see each SGO's administrative, fundraising, and program expenses. All other things being equal, taxpayers would probably direct more money to more efficient SGOs.

### ***Vouchers vs. Tax-Credits: Legal and Political Comparison of Optimal Programs***

#### Ease of Enactment

No voucher or tax credit program has yet been enacted as the direct result of a popular vote. When market education programs are put before voters at the ballot

box, they are generally rejected by a wide margin. The reason is not hard to fathom. Polls that ask citizens what they know about market education reforms reveal an overwhelming lack of understanding. Sixty-three percent of the general public and 66 percent of parents told Public Agenda Foundation pollsters that they knew “little or nothing” about vouchers, and roughly 80 percent of both groups said they needed to know more.<sup>61</sup> So, when it comes time to choose between a devil they know (public schooling) and a reform they don’t (vouchers, UETC programs, and the like) caution dictates that they maintain the status quo.

Both vouchers and tax credits will remain difficult to sell directly to the public until they are more widely understood. Still, it is worth noting that over the past three decades, the greatest support shown for a market education proposal at the ballot box was garnered by a tax credit plan. The bill, which was put before Colorado voters in 1998, received 41 percent support. The greatest support for a voucher bill over that same period was 36 percent (Washington state, 1996). Vouchers do hold the top all-time spot, having received 45 percent of the vote in Michigan, but that was back in 1972, and only 26 percent of the state’s voters supported a subsequent voucher measure in 1978.<sup>62</sup>

Legislative campaigns to pass market-inspired education reforms have of course been more successful. And though there are more voucher programs than tax credit programs currently in existence, the experience of the last decade suggests that tax credits may now be the easier path. Voucher programs were proposed in the late ‘90s in Pennsylvania, Minnesota, and Arizona, but failed to win enough support for passage. After these unsuccessful voucher forays, tax credit legislation was ultimately signed into law in all three states. While these tax credit bills are not optimal, the same can be said of the voucher proposals that preceded them.

Clearly it is possible to enact *some kind* of voucher or tax credit plan if enough time and energy are expended. But what about enacting an *optimal* program, one that has a real chance of instantiating a competitive education marketplace? Though neither an optimal voucher nor an optimal tax credit program has yet been put into place, both experience and polling data suggest that it may be easier to pass an optimal tax credit plan.

Looking first at U.S. school choice programs passed in the last few decades, most voucher laws have imposed significantly more intrusive regulation than most tax credit laws. Four of the five modern voucher programs dictate what admissions policies participating schools must follow (either random lotteries or first come first served). The only exception is Florida’s McKay voucher plan for special education students, which leaves schools with more admissions freedom because of the unique complexities involved in serving disabled students. Voucher programs are more likely to forbid (in the Florida A+ and Milwaukee programs) or strictly limit (in Cleveland) the charging of fees by schools to participating students. Voucher programs can

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***Over the past three decades, the greatest support shown for a market education proposal at the ballot box was garnered by a tax credit plan.***

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forbid schools from making certain subjects compulsory (e.g., religious instruction under the Milwaukee program). They are more likely to impose stricter *public* school building code standards on participating *private* schools (in Milwaukee and Colorado). Voucher programs more often require mandatory state testing (in Colorado, Florida A+, and Cleveland), and they more often set graduation requirements (Florida A+) or student performance conditions (Milwaukee). All of these restrictions violate either the parental choice or school autonomy requirements of effective education markets.

As a counter-example to the above evidence, it has been suggested that the federal HOPE higher education tax credits created by the Clinton administration also “raise [the] regulatory burden” on private education.<sup>63</sup> As it happens, though, the requirements imposed by HOPE are strictly concerned with financial filing requirements and do not affect the freedom or financial responsibility of parents, the pedagogical autonomy or competitiveness of schools, or the legality of profit making. In other words, the “burden” imposed by HOPE tax credits is not as burdensome to the operation of market forces as is the case with typical voucher regulations.

#### Recent Poll Results

While it has already been noted that voter initiatives and referenda may not be the best avenue for passing market education legislation in most states,<sup>64</sup> due to the public’s lack of familiarity with these programs, public opinion data are still relevant. Legislators will not generally support bills that they think will hurt their chances for re-election, so the relative popularity of vouchers and tax credits will likely affect their respective prospects for passage. According to a fall 2003 survey of voters in 10 states,<sup>65</sup> tax credits were consistently preferred over vouchers (see next page).

**Table 14. Support for Vouchers and Tax Credits in 10 States**

		AR	IN	FL	LA	ME	MD	MI	NE	NV	WI	Avg
Individual donation tax credits	Support	58	58	50	65	52	57	57	56	53	53	56
	Oppose	34	34	44	26	40	36	37	36	38	40	36
Corporate donation tax credits	Support	58	60	54	63	57	61	62	56	58	57	59
	Oppose	33	32	39	27	35	30	34	34	34	36	33
Universal v. targeted tax credit	Universal	65	66	65	67	61	61	73	67	69	59	65
	Targeted	26	24	21	22	29	28	20	23	22	29	24
Universal vouchers	Support	50	51	47	58	49	49	47	49	50	52	50
	Oppose	39	38	45	30	43	45	44	39	43	40	41
Targeted vouchers	Support	34	33	30	40	33	40	37	34	29	33	34
	Oppose	54	56	63	48	57	52	55	53	62	56	56

Source: Basswood Research, Washington, DC, October 2003. The full text of the questions can be found in the endnotes. <sup>66</sup> For further details, please contact the Mackinac Center for Public Policy at: [www.Mackinac.org].

As Table 14 reveals, majorities in each of the surveyed states approved of donation tax credits,<sup>67</sup> averaging 56 percent support to 36 percent opposition. The greatest margin of approval for tax credits was 39 points, in Louisiana. Vouchers won approval from a plurality of voters in each state, but not always from a majority, and averaged 50 percent support to 41 percent opposition. Once again, the greatest margin of support was to be found in Louisiana, at 28 points. States that support vouchers by a wide margin tend to be strongly behind tax credit programs as well, but the reverse is not always the case. In Maryland and Michigan, for example, tax credits enjoy a wide margin of support but voucher support exceeds voucher opposition by only three or four points. Among Republicans, vouchers and tax credits usually receive comparable levels of support, but the appeal of tax credits is substantially higher than vouchers among independents and especially Democrats.

More striking than the difference in support for vouchers versus tax credits is the gap in support between universal and targeted programs. When asked to choose between a tax credit aimed at helping all students, versus one aimed solely at helping low-income students in underperforming schools, respondents preferred the universal program by more than two-and-a-half-to one (a margin of 41 percent). The margin of preference for universal programs was an astounding 53 percent in Michigan. Universal programs are preferred by all economic and ethnic groups, though the margins are smaller among low-income and African American respondents.

This consistent preference for universal over narrowly targeted programs is good news given that the success of market reforms depends on ensuring substantial

***When asked to choose between a tax credit aimed at helping all students, versus one aimed solely at helping low-income students in underperforming schools, respondents preferred the universal program by more than two-and-a-half-to one.***

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vigorous competition. The benefits do not end there, however. Because universal programs serve so many more people, they offer the prospect of much greater lobbying to support passage of school choice legislation. Programs that benefit only a small percentage of families in one or two districts cannot energize the same large base of activists as programs that benefit all families and communities across a state.

The significance of these polling data must not be underestimated, but it must also not be overestimated. A key difference between vouchers and tax credits is that vouchers have born the full brunt of the teachers' unions' anti-choice, anti-market advertising and lobbying campaigns. Vouchers, especially among the constituency most receptive to the teachers' unions' views (i.e., Democrats), have accumulated a fair bit of negative baggage over the past few decades. Tax credits have also been subjected to criticism from the teachers' unions, but the attacks have thus far been less intense. Should that change, tax credits' margin of superiority over vouchers may erode somewhat. What's more, opponents of market education are aware of the relative popularity of tax credits and are doing everything they can to weaken it. In Florida, several of the major newspapers consistently refer to that state's donation tax credit program as a "voucher program." The fact that it is patently not a voucher program is rarely mentioned. The fundamental differences between the programs are seldom emphasized. Florida, whether coincidentally or otherwise, happens to have the lowest support for tax credits of any of the 10 states surveyed. Still, Florida voters support tax credits by a roughly 10 point margin, compared to a 2 point margin for vouchers.

*If You Pass It, They Will Sue: Vouchers and Tax Credits in the Courts*

Enacting a market education policy is one thing; defending it in the courts is another. So how well do voucher and tax credit programs compare in their ability to survive the legal gantlope?

In *Zelman v. Simmons-Harris*,<sup>68</sup> the U.S. Supreme Court found that Cleveland's voucher program does not violate the U.S. Constitution. In the wake of that ruling it is generally accepted that other carefully designed voucher and tax credit programs will also pass federal constitutional muster, even if they include religious schools. The same cannot be said at the state level. Originally, both the Vermont and Maine voucher programs permitted the participation of parochial schools, but they amended their voucher statutes in 1961 and 1981, respectively, to exclude religious schools. During the 1990s, lawsuits were filed in both states to try to restore the ability of religious schools to participate, but lower courts upheld their exclusion. On appeal, the state Supreme Courts of each state confirmed the lower court decisions. The two state Supreme Court rulings were ultimately appealed to the U.S. Supreme Court, and both appeals were denied in 1999.<sup>69</sup> In other words, there are two cases in which a) states ruled against vouchers for religious schools and b) the U.S. Supreme Court permitted the exclusion of religious schools to stand.

An important distinction between these two cases is that while the Maine ruling was based on the federal Constitution, the Vermont ruling rested entirely on state constitutional grounds. The Supreme Court of Maine ruled in 1999 that including religious schools in its voucher program violated the First Amendment's Establishment Clause. In the wake of *Zelman*, that ruling is almost certain to be reversed at some point. The one catch is that while the federal Constitution has now been read to *permit* the inclusion of religious schools in voucher programs, it has not been read to *require* their inclusion. Since Maine law now excludes religious schools from redeeming vouchers, it would have to be amended by the state legislature in order to once again permit their participation.

Vermont's ultimate rejection of religious voucher schools stemmed not from the federal Establishment Clause, but rather from the state's own constitution. A lower court initially invalidated the participation of religious schools on both state *and* federal grounds, but the Vermont Supreme Court was more cautious and more prescient. Stating that "the construction of the federal constitution ... faces an uncertain future," and thus anticipating the *Zelman* ruling that was yet to come, the state's supreme justices came down against the inclusion of religious schools solely on state constitutional grounds. Vermont's highest court found that the inclusion of religious schools violated Chapter I, Article 3 of the state constitution which stipulates that "no person ought to, or of right can be compelled to... erect or support any place of worship..., contrary to the dictates of conscience."<sup>70</sup>

The counter example to the Vermont case is that of Milwaukee, Wisconsin. In *Jackson v. Benson* (1998),<sup>71</sup> the Wisconsin Supreme Court upheld the Milwaukee voucher program's inclusion of religious schools despite the fact that Wisconsin, like Vermont, has a constitutional provision prohibiting "compelled support" of religion. Article I, Section 18 of the Wisconsin constitution states that no person shall "be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent." Under the Milwaukee voucher program, taxpayers are compelled to pay for schools that are both ministries (in that they inculcate specific religious beliefs) and places of worship (in that they practice organized school prayer). Nevertheless, the Wisconsin Supreme Court concluded that the compelled support clause was not violated. The Court arrived at that conclusion by applying the compelled support clause only to students and not to taxpayers. The Court's justification for not considering taxpayers, when this was the group to which the plaintiffs had specifically drawn attention, is murky and unconvincing.<sup>72</sup> The case of students was, on the other hand, crystal clear. Since voucher students could voluntarily opt out of devotional religious classes in Milwaukee, the Justices concluded that they were not being compelled in violation of the state's constitution. Having so concluded, they deemed the entire compelled support clause satisfied and upheld the voucher program's inclusion of religious schools.

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***Under the Milwaukee voucher program, taxpayers are compelled to pay for schools that are both ministries and places of worship.***

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***All but three states have a “compelled support” clause and/or a Blaine amendment in their constitutions. Every voucher program enacted in a state with one of these clauses will be litigated.***

The compelled support clauses that exist in Vermont, Wisconsin, and 17 other states represent only one of two state constitutional barriers to government funding of religious schools. The other is the notorious and ubiquitous Blaine amendment. The original proposal of James G. Blaine, a failed 19<sup>th</sup> century presidential candidate, was to amend the U.S. Constitution to forbid government funding of religious schools and other institutions. The public schools of the time were pervasively Protestant, and this amendment was aimed at preventing Catholics from gaining their own government-funded schools. Blaine’s amendment was never adopted at the federal level, but 36 states and the Commonwealth of Puerto Rico eventually amended their own constitutions in accordance with his idea, forbidding state funding of religious institutions or practices.

All but three states have a “compelled support” clause and/or a Blaine amendment in their constitutions.<sup>73</sup> Every voucher program enacted in a state with one of these clauses will be litigated. “Compelled support,” for instance, is one of the two legal pegs on which the ongoing Colorado voucher lawsuit has been hung.<sup>74</sup> Readers may judge for themselves whether current and future legal decisions are more likely to follow the Vermont interpretation of “compelled support” (i.e., that it applies to taxpayers) or the Wisconsin interpretation (that it does not). In any event, states that do find that either or both of these provisions preclude the participation of religious schools are not apt to be overruled by the U.S. Supreme Court, given that the Vermont ruling was allowed to stand.

On February 25<sup>th</sup>, 2004, the United States Supreme Court ruled in *Locke v. Davey*<sup>75</sup> that Washington state had the right to deny Joshua Davey a government-funded college scholarship. Davey was a theology student studying at a religious college to become minister. Not surprisingly, there is virulent disagreement over the implications of this decision for government-funded K-12 voucher programs. Does it mean that states could exclude religious schools from voucher programs without running afoul of the Free Exercise Clause of the First Amendment? People for the American Way (PFAW), a group opposed to vouchers, suggests that it might, asserting that the ruling has “broad consequences” for all government funding of religious instruction. Richard Komer,<sup>76</sup> of the pro-voucher Institute for Justice, presents a different view:

The Court issued a narrow, historically based decision involving special state-level concerns that deal with funding the training of ministers.... These concerns clearly are not implicated in school choice programs.<sup>77</sup>

On the face of it, Komer would appear to be right. In deciding this case, the majority weighed two competing principles: the Free Exercise Clause (which arguably favored equal treatment of religious and non-religious degrees) and the Establishment Clause (which arguably proscribes state funding for the training of

clergymen/women). Free Exercise mitigated for allowing Davey's scholarship, while Establishment mitigated against it. The Justices, as already noted, concluded that Washington state *did* have a compelling Establishment Clause interest in not funding clerical training, whereas Davey's Free Exercise rights *were not* substantially circumscribed.

The pivotal statement in Chief Justice Rehnquist's majority opinion was that: "we... cannot conclude that the denial of funding for *vocational* religious instruction alone is inherently constitutionally suspect."<sup>78</sup> Rehnquist defended the 7-to-2 ruling, in part, on the grounds that Promise scholarships are not overly burdensome on religion because they *are* available for students attending pervasively religious schools, even to those taking devotionally religious courses (so long as they are not specifically pursuing a career in the ministry).

Despite the narrowness of this ruling, there are two reasons to suspect that the Court might also uphold a state's right to exclude religious schools from a K-12 government voucher program. First, the Court already had an opportunity to strike-down Vermont's exclusion of religious schools from its voucher program, and it elected not to do so. This is not equivalent to the Court explicitly upholding the Vermont law, but it is certainly suggestive.

The second reason is that, in the wake of *Zelman*, voucher cases will likely turn on a fundamentally different legal argument than did the *Locke* case. *Locke* pit Free Exercise against Establishment because training the clergy was argued to represent precisely the kind of government support for religion that the Establishment Clause was intended to prevent. But *Zelman* has already determined that neutrally available K-12 voucher programs that include religious schools *do not constitute an Establishment Clause violation*. With that argument gone, future voucher litigation will inevitably pit Free Exercise against Free Exercise. The question will be: does the free exercise right of parents (who want to use vouchers for religious schooling) trump the free exercise right of taxpayers (who object on moral or religious grounds to paying for that schooling). Because the federal Constitution does not provide clear guidance on how to resolve this conflict, the Supreme Court may well defer to state constitutional provisions that forbid compelled support of religion or state funding of devotional instruction.

When it comes to these religion-based legal challenges, tax credit programs have a distinct advantage over vouchers. In *Kotterman v. Killian*, opponents of Arizona's donation tax credit program sued the state, alleging that tax credits constituted government spending and hence violated that state's Blaine amendment.<sup>79</sup> The Arizona Supreme Court rejected the plaintiffs' premise, ruling that credits *were not government spending* and hence did not violate the state's Blaine amendment. In other words, tax credits just let taxpayers keep more of their own money, and if they choose to claim a credit and make a donation to a religious scholarship granting

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***When it comes to religion-based legal challenges, tax credit programs have a distinct advantage over vouchers.***

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***The Arizona Supreme Court ruled that credits were not government spending and hence did not violate the state's Blaine amendment.***

organization, they do so entirely voluntarily. No one is compelled to support educational practices that violate their convictions. The Arizona Supreme Court decision was appealed to the U.S. Supreme Court, but the nation's highest court refused to hear the appeal, letting stand the lower court ruling and the reasoning on which it was based.

While state supreme court rulings do not constitute legally binding national precedents, there is considerable evidence that other courts share Arizona's interpretation of tax credits. In reaching their conclusion, the Arizona justices referred to numerous precedents from other states including Maryland, Indiana, Nebraska, South Dakota, California, Kentucky, and New Mexico, all of which agreed that tax credits are not state money (and hence cannot violate Blaine's compelled support clauses). The issue was also raised in two separate Illinois Circuit Court cases, both challenging that state's 1999 tax credit law. In each case, the courts rejected the argument that tax credits are legally equivalent to government spending.

Even scholars skeptical of market education as a whole generally acknowledge this difference. Two researchers writing for the predominantly anti-market Center for the Study of Privatization in Education at Columbia University's Teachers' College concluded that "ETCs [Education Tax Credits] – because they are not government funds – are less likely to face legal barriers compared to reforms such as educational vouchers."<sup>80</sup>

*Regulatory Encroachment*

Once a voucher or tax credit policy has been enacted and the inevitable spate of legal attacks overcome, it faces its most difficult challenge: resisting the gradual build-up of market-suffocating regulations that can destroy its effectiveness. When first introduced, both the Maine and Vermont programs allowed the participation of religious schools, and were subsequently amended to exclude them. The Dutch system suffered comparatively little regulation when first established in the 1920s, but has since succumbed to a dramatic regulatory expansion including government curriculum and testing, extensive personnel regulations, rising barriers to the creation of new schools, forced consolidation of small schools, etc. Maine's program has also begun to accumulate a curriculum and testing burden. In Chile, significant parts of the education labor force deregulation ushered in by the voucher program during the 1980s were reversed in the 1990s.

It is true that there are exceptions. The Milwaukee program originally forbade the participation of religious schools and was subsequently amended to include them, and Chilean voucher-redeeming schools gained the right to charge co-payments in 1993, but these are exceptions to the overall trend. Historically, every time a

government has begun to fund private schools, it has eventually assumed control over what is taught and who can teach in them. The cases of Holland and Chile actually seem rosy when compared to the system in India. India has both government-funded private schools and parent-funded private schools. Though parent-funded schools have preserved most of their autonomy, government-funded private schools are all but indistinguishable from their government-run counterparts. In some Indian states, government-funded private schools cannot even hire their own teachers, being forced to accept whichever individuals are assigned to them by the education authorities. The freewheeling educational market of the early medieval Islamic empire was similarly stifled by encroaching state control that followed the rise of official state funding. An account of this historical pattern spanning the entire 2,500 year history of formal education can be found in my 1999 book *Market Education: The Unknown History*.

Some school voucher proponents have argued that voucher and tax credits will suffer equally from this threat to their long-term success. John Humphreys, a research economist with Australia's Centre for International Economics, writes that

Using either a direct expenditure (education voucher) or a tax expenditure (education tax credit), the government will still provide financial assistance to parents who fulfill the necessary requirements. This will necessitate a degree of government regulation as to what institutions or arrangements are appropriate for educational purposes.

It seems unlikely that there would be any stricter standards under a voucher system than a tax credit system...<sup>81</sup>

But, as already demonstrated, non-refundable tax credits are *not* generally considered to be government expenditures. By eschewing the use of government money, tax credits not only overcome the Blaine amendment hurdle, they remove a chief justification for regulatory encroachment. This is not to say that tax credit programs will be immune from regulatory interference. There have already been calls in Florida, for instance, to add conditions to that state's corporate donation tax credit program.<sup>82</sup> But credits clearly do not present the same *level* of danger as government voucher programs.

To understand this difference between tax credits and vouchers, it helps to look at a concrete example. During the summer of 2003, it was discovered that hundreds of students were receiving scholarships from an SGO in Florida and using them to attend an Islamic school co-founded by Sami al-Arian,<sup>83</sup> the alleged North American head of the terrorist group Islamic Jihad. The scholarship organization immediately halted funds to this school pending an investigation. No lawsuit needed to be filed, no legislation needed to be passed. The SGO is a private organization

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***The freewheeling educational market of the early medieval Islamic empire was stifled by encroaching state control that followed the rise of official state funding.***

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***By eschewing the use of government money, tax credits not only overcome the Blaine amendment hurdle, they remove a chief justification for regulatory encroachment.***

receiving private donations and when it became uncomfortable funding the school it had the right and the freedom to withhold its scholarships immediately. This is true despite the fact that al-Arian is innocent until proven guilty and the school has not been charged with any crime.

Had the al-Arian-linked school been participating in Florida's A+ voucher program instead of receiving SGO scholarship students, it is unlikely that it could have been so quickly cut off. If the Department of Education had chosen to act so quickly and decisively, it may very well have wound up in court for capriciously violating the voucher statute (because the school would have remained in compliance with the voucher legislation). No matter what the government voucher program did, it would have caused considerable tension. Either it would have continued to allow the school to accept voucher students, in which case many voters would have been furious and would have demanded stricter regulations on voucher schools, or it would have found itself in a difficult court battle. If the state won the court battle, it would have established a legal precedent for the government to arbitrarily exclude schools from the program. If the state lost the court battle, it would have provided public support for voucher opponents who wished to impose stricter regulations on voucher schools.

This Catch-22 is not simply theoretical. It is all but identical to the situation that exists in Holland over that country's conservative Islamic voucher schools. Recall that some of these schools are asserted by the Dutch intelligence service to be receiving funding from a radical Islamist group, and to have radical Islamists on their governing boards. Despite a considerable and ongoing hue and cry from parts of the Dutch public, all these schools are still receiving voucher funding because a pre-announced inspection by education officials did not find any radical or violent teachings being conveyed on the days the schools were visited. Pressure to find some way of preventing the creation of new Islamic schools of all descriptions has been intense, and some current proposals have a very good chance of both passing constitutional muster and effectively shutting the door to not only all Muslim schools but to any schools catering to particular religious or ethnic minority groups.

Note that in the case of the Florida tax-credit program, there is nothing to stop another SGO that believes in al-Arian's innocence from offering scholarships to students attending the school he co-founded. Since that new SGO would only be spending private donations that were given to it voluntarily, it would not generate the same kind of animosity as continued Dutch government support is generating against conservative Islamic schools in that country. Certainly the tax credit program could still be legally challenged for allowing scholarship funds to go to the school, but unless al-Arian is convicted, such challenges would be unlikely to succeed. Opponents of the tax credit program will surely use this case to seek more regulations on private scholarship-accepting schools, but their public policy argument is undeniably weaker than it would be under a government-funded voucher program.

Universality and Public Support

Ongoing public support is clearly necessary to protect choice programs from being curtailed or even eliminated by political opponents. The biggest difference in this regard is not between vouchers and tax credits, but between targeted and universal programs. By serving only a limited segment of the electorate, targeted programs not only reduce the effectiveness of the education market, they also limit the program's political support base. During budget crunches or changes in the political winds, targeted programs that tax everyone to serve only a small fraction of voters are much more vulnerable than universal programs from which all families and taxpayers can benefit. The Milwaukee voucher program, for example, has come very close to being killed by the Wisconsin legislature, arguably for this very reason. In the summer of 2001, the *Milwaukee Journal Sentinel* reported that that year's legislative budget process saw

... Milwaukee's voucher program pummeled and on the ropes as never before. The Democratic Senate sought to cut in half the amount of the voucher payment a needy parent receives to send his or her child to a private school - a move that would have virtually killed [the] program.<sup>84</sup>

***Vouchers vs. Tax-Credits:  
Functional Comparison of Optimal Programs***

One of the most decisive determinants of the effectiveness of an education marketplace is the degree to which parental choice and school autonomy are unfettered by regulation. The optimal voucher and tax credit programs described earlier both minimize the intrusiveness of such regulation, but no legislation is immutable. As previous sections have argued, broad-based tax credits may have the greatest resistance to regulatory encroachment over time. A few decades into the operation of these programs, therefore, vouchers could well suffer substantially more regulatory encumbrances than tax credits. The functional implications that flow from that conclusion are occasionally referred to explicitly in the discussion that follows, but even when they are not, the reader should keep the issue of differential regulatory encroachment in mind.

Responsiveness to Families

The central goal identified at the start of this paper was to make school systems more responsive to families. Some have argued that vouchers and tax credits are more or less equivalent in this respect. In the words of one economist:

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***By serving only a limited segment of the electorate, targeted programs not only reduce the effectiveness of the education market, they also limit the program's political support base.***

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***Like vouchers, donation tax credits constitute third-party payment, but they too retain an edge over government vouchers.***

[B]oth a voucher and a tax credit system ensure that schools are more responsive to parents, as parents would directly control school funding through choosing a school for their child. It is this increased ability to influence schools, and the greater choice between schools, that will encourage parents to become more involved in their children's education, not the medium through which they gain their benefit.<sup>85</sup>

The claim, in other words, is that parental choice matters while parental financial responsibility does not. This belief is confuted by the historical and modern evidence. The services offered by government-funded private schools in India are less responsive to parents' demands than are the services of the country's fee-charging private schools. This is particularly noticeable in the much greater availability of popular English language instruction in fee-charging schools. The religious charity schools of 19<sup>th</sup> century Britain were less responsive than contemporaneous fee-charging "Dame" schools that served families from the same towns and neighborhoods. Church of England charity schools often chose not to teach writing to their poor patrons because they did not wish to upset the prevailing class structure by contributing to upward social mobility and the written expression of political dissent. Charity schools set up in the post-Bellum South by white philanthropists usually prepared African American students for manual labor alone, despite the enormous pent up demand among black families for literacy and academic instruction.<sup>86</sup>

Only non-refundable personal-use tax credits preserve parents' full and direct financial responsibility, and it is only this mechanism that is likely to enjoy the full benefits of the fee-charging schools described above. Because schools respond to these fee-paying parents by adjusting their services accordingly, other parents, whose educational expenses are subsidized, will also benefit to the extent that they share the needs and demands of the fee-paying consumers.

Like vouchers, donation tax credits constitute third-party payment, but they too retain an edge over government vouchers. While vouchers are a single-payer system, donation-funded scholarships are available from multiple SGOs. Restrictions imposed by one SGO will not necessarily be imposed by another, so parents with a given set of preferences can shop around for the SGO whose scholarship restrictions are the least intrusive and problematic for them. This is not possible under single-payer voucher programs. Voucher families in Holland or Maine seeking an alternative to the official curriculum and testing structure have no place to turn within the subsidized education sector. Worse yet, competition from the nationally subsidized voucher sector has all but eliminated parent-funded schooling in the Netherlands, drying up the supply of truly independent education.

In addition to the varying level of direct financial responsibility between voucher and tax credit programs, an examination of the characteristics of existing laws reveals that, in practice, tax credit plans typically impose fewer constraints on the freedom of parents to

choose and the freedom of schools to tailor their services to specific groups of parents. Voucher plans more often impose mandatory curricula and testing, for example, as well as rigid admissions policies that prevent schools from catering to distinct clienteles. Though not currently widespread, the considerable barriers to the entry of new schools erected under the Dutch voucher system are also worrisome.

### School Atmosphere, Size, and Physical Conditions

Parents want schools that are clean, sound, and safe, and usually ones that are small enough so that students and staff can all know one another by name. Though comparative data are extremely scarce on this point, schools paid for directly by parents may have an edge. A study in the Indian state of Tamil Nadu, for example, found that schools paid for by parents had better (and better-maintained) facilities than government-funded schools (both privately- and government-run).<sup>87</sup> Once again, families assuming the cost of their children's education with the help of personal tax credits would stand to benefit from this effect, to whatever extent it in fact exists.

The prospects for keeping schools small under voucher programs are also somewhat worrisome given the situation in Holland. There, the government is on a long-standing school consolidation binge much like the one that has gripped U.S. public schools since the 1920's.<sup>88</sup> There is an analogous consolidation program under way in New Zealand at the moment as well, though it applies to that country's national system of charter-like schools rather than to a voucher program. The current kiwi Labour party government has been frenziedly closing and merging small schools for over a year. In both the Dutch and New Zealand cases, the ostensible aim is the same as it has been in the U.S.: controlling government spending. Of course, Herbert Walberg and William J. Fowler have revealed that this is only wishful thinking. In the U.S. at least, larger public schools and school districts are generally *less* efficient.<sup>89</sup>

There are no established large-scale UETC programs to which we can compare this voucher consolidation pressure, but the fact that tax-credit programs do not use public money is likely to insulate them somewhat from governments' quixotic efforts to increase the efficiency of their spending.

Though the long-standing voucher programs in Maine and Vermont have not led to forced school consolidations, this may be due, in part, to the fact that they are "escape-hatch" programs for small numbers of children in areas not served by public schools, rather than universal programs in which virtually all schools are offered (and accept) government funding.

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***In practice, tax credit plans typically impose fewer constraints on the freedom of parents to choose and the freedom of schools to tailor their services to specific groups of parents.***

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***To the extent that voucher programs come under heavier curriculum and testing controls over time, they would also be less likely to spur pedagogical innovation.***

### Academic Achievement

Student performance, like school responsiveness and physical condition, is usually found to be superior under fee-charging systems than under government-funded systems. This is most noticeable when comparing fully parent-funded private schools with fully government-funded private schools, as in India. There is also evidence, however, that under partially-parent-funded school systems, the schools that receive a greater share of their funding from parents do better academically, when comparing schools with comparable per-pupil spending (as in Indonesia).<sup>90</sup>

Since more parents would be assuming greater direct financial responsibility for their children's education under a tax credit plan than under a voucher plan, tax credits may enjoy a long-term advantage in this area.

To the extent that voucher programs come under heavier curriculum and testing controls over time, they would also be less likely to spur pedagogical innovation. Restrictive school admissions policies would also preclude voucher schools from targeting bright or slow students, or students with particular academic strengths or weaknesses. Since performance-based student grouping has been found more effective than heterogeneous grouping, this could well have a negative impact on achievement.<sup>91</sup>

To the extent that state-imposed curricula and testing cause schools to change what and how they teach, the skills at which students become proficient will also diverge from those parents might value most highly. A state's imposition of the PISA mathematics test, for instance, would likely lead to students developing different skills than they would without a state mandated testing system.

### System-Wide and School-Level Efficiency

Large-scale evidence from Indonesia shows that school efficiency is positively correlated with the share of school finances that come directly from parents. Put another way, the higher the share of government funding a school receives, the less efficient it is. This is true of both private and public schools, though for a given share of parental funding, private schools have a slight edge over public schools. These findings are bolstered by the fact that they were derived from an analysis of 68,000 schools of widely varying descriptions.<sup>92</sup> Similar results obtain in India, where fee-charging private schools are generally found to be more efficient than either government-funded private schools or public schools. Certainly these results are consistent with the view that people expect more from a service provider when they spend their own money than when they spend someone else's. So, because of the greater parental financial responsibility under a tax credit program, tax credits may enjoy a long-term edge in school-level efficiency.

Tax credits also offer an advantage over government vouchers, at least in principle, in system-wide cost control. In practice, government vouchers have been limited to defraying the cost of tuition at government-approved schools. In their 2003 book *Education and Capitalism*, Herbert Walberg and Joseph Bast state that vouchers are issued “for the purpose of paying tuition at a participating private or public school.”<sup>93</sup> This means that if the value of the voucher is raised, voucher-redeeming schools will necessarily benefit from the entire increase (voucher savings accounts *à la* Heartland Plan were rejected earlier). That is a clear and substantial incentive for voucher-redeeming schools to band together and lobby for higher vouchers just as public school employees’ unions have done under public schooling. Over time, the cost of such lobbying can add up, *viz.*, the more than fifteen-fold increase in public schools’ inflation adjusted per-pupil spending since 1920.

In an earlier publication, Joseph Bast suggested that the opposite might happen under voucher programs: that efficient private schools might “join with taxpayers... to form a coalition *against* increasing the value of the vouchers.”<sup>94</sup> There is as yet no evidence of such an anti-spending coalition forming in any of the existing U.S. or international voucher programs. There is, however, evidence that government-subsidized private schools can and do lobby for *larger* vouchers. In Chile, for example, “[p]rivate school associations... have proven adept at lobbying for increases in the size of the voucher.”<sup>95</sup>

To the extent that personal use education tax credits can be claimed against expenses other than tuition, the benefits of a higher credit will not necessarily accrue directly to private schools, as is the case with vouchers. And there are precedents that personal use tax credits and other tax benefits can be applied to a broader range of expenses than can direct government subsidies. The Illinois personal use credit can be claimed not only for tuition but also to pay for school books and lab fees. The federal child dependent credit does not place any limits on how the taxpayer may spend the money he saves. Federal tax-free Coverdell Education Savings Accounts allow parents to use the tax-benefit program to pay not only for tuition but also for tutoring services and even home computers.

Under a personal use tax-credit program, parents may thus choose to obtain a variety of educational services from different providers (difficult or impossible under vouchers), to buy educational items such as books or computers, or even to spend some of the money on other activities they think will be of benefit to their children. The incentive for schools to lobby for higher credits is thus weaker than the incentive of schools to lobby for larger vouchers, because the lobbying schools might not enjoy any of the additional funding under a larger credit. (This, again, only applies when the credit is fungible across a wide range of educational expenses).

Personal use credits are of course only a part of the optimal UETC program, and likely a smaller part than donation credits. With donation credits, the cost control

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***Because of the greater parental financial responsibility under a tax credit program, tax credits may enjoy a long-term edge in school-level efficiency.***

***The incentive for schools to lobby for higher credits is weaker than the incentive of schools to lobby for larger Vouchers.***

case is yet clearer. None of the existing or proposed tax credit programs tie the size of the credit to the size of the scholarship. That means that increasing the size of the credit will not necessarily translate into larger scholarships and hence tuitions (the money could instead go to increase the number of scholarships available or the range of things parents can spend the scholarships on). Private schools thus do not have the same incentive to lobby for larger credits as they would for larger vouchers.

### Fraud

Another issue central to controlling system-wide costs is the minimization of fraud. Any third-party payment system opens the door to fraud. Under vouchers, for instance, no amount of regulation or bureaucratic oversight will be able to prevent abuses. The current U.S. public school system is saturated with regulations and yet it is rife with fiscal malfeasance.<sup>96</sup> If it is possible for public school officials to cheat the system by drawing funds for non-existent students, and it is,<sup>97</sup> then the same thing is possible under vouchers. Parents, by contrast, tend to know how many children they have, and can't be duped into paying tuition for any additional ones. Kickback schemes also become feasible under vouchers, since schools can offer to hand back some fraction of the voucher under the table to parents who choose their schools. When parents pay their children's tuition themselves, kickbacks are meaningless.

With donation tax credits, however, there is no reason to think that SGO employees would be any less likely to try to defraud their donors than voucher program administrators would be to try to defraud taxpayers. There are in fact two SGOs under investigation for possible fraud in Florida as of late 2003.<sup>98</sup> If fraud is proven, these SGOs will undoubtedly be shut down, but even if it isn't they are unlikely to attract any new donations unless they somehow manage to convince donors that they are indeed squeaky clean. And that is a key difference between donation tax credits and either government vouchers or traditional public schools: tax credit donors can direct their funds to the organization in which they have the greatest confidence, cutting off a questionable SGO at the first hint of a scandal. Taxpayers, on the other hand, cannot stop paying for government voucher or public school systems no matter how badly those programs might be wracked with corruption or mismanagement, and few if any public schools have ever been shut down in response to evidence of fraud or corruption.

### Conviction, Compulsion, and Conflict

It is in the nature of voucher programs that all taxpayers are compelled to support every type of legal schooling, regardless of their personal convictions. Unfortunately, compulsion has been the single greatest source of education-related social conflict in history. Most often it has taken the form of compelling students to

receive instruction that is contrary to their parents' wishes, but compelling citizens to pay for the inculcation of views they find objectionable has also created much strife. The religious character of early U.S. public schools led to animosity and even violence between Catholics and Protestants, for example. In the late 1800s, Catholics objected to having to fund openly Protestant public schools with their taxes since Catholic public schools were not provided for them. When Philadelphia did allow public schools with predominantly Catholic enrollments to use the Catholic Bible instead of the Protestant one, a mob of rioters burned St. Augustine's Church to the ground, and 13 people were killed in the ensuing violence.

Today, many school choice advocates downplay the significance of this issue, reducing it to a simple legal discussion of Blaine amendments. Since Blaine amendments were unquestionably motivated by religious bigotry, and since they have usually been found to prohibit sectarian schools from participation in voucher programs, school choice proponents have often criticized them.

It is possible that the U.S. Supreme Court may eventually rule, as the Institute for Justice<sup>99</sup> and others have argued, that Blaine amendments and "compelled support" clauses represent unconstitutional discrimination against religion and in favor of secularism. Alternately, some state supreme courts may decide that taxpayer-funded vouchers for religious schooling do not violate these state constitutional provisions, as happened in Wisconsin. But even if every such constitutional provision in the country is either overturned or ignored, we will still have to wrestle with the fact that voucher programs force some citizens to violate their convictions. It is easy, for those of us in favor of greater parental freedom in education, to get caught up trying to "win" the legal battles without realizing that some legal victories may be Pyrrhic — i.e., they may come at too high a cost to American ideals and social peace. *Is it right to increase parents' freedom of choice at the expense of taxpayers' freedom of conscience?*

The harm of such a Faustian bargain is not limited to the compulsion of individual taxpayers but extends to the social friction that this compulsion creates. Consider the situation in the Netherlands. Disconcerted by what they perceive as sexist, isolationist, and anti-Western teachings in the more conservative Islamic schools, many Dutch citizens and several politicians have been searching for ways to preclude the creation of any more such schools. If they fail, their convictions will be trampled as they are forced to continue funding these schools, and if they succeed, the educational choices of all Muslim families will be much diminished and their religious freedom trampled. The fires of resentment will thus be stoked in one group or the other, no matter the outcome.

In an effort to eliminate this Catch-22, I suggested some years ago that states with voucher programs could add a check-box to their tax forms. The box would read, in essence: "check here if you do not wish your taxes to support devotional religious

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***Compulsion has been the single greatest source of education-related social conflict in history.***

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***Parents claiming personal use credits can spend their own money as they see fit, and no taxpayer is forced to fund those parents' choices.***

instruction.” Two separate government voucher funds could thus be maintained, one for any sort of school, and one for secular schools alone. This seemed a promising solution at the time, but I now conclude that it would not solve the problem because it underestimates the diversity of conscientious objections. Not all tendentious educational practices boil down to a question of religiosity vs. secularism.

A recent turn of events in Florida provides a real-world example of a situation not resolvable by the check box idea. In 2003, a closeted gay student at a private Christian high-school was asked by the school chaplain if he was homosexual, and the student acknowledged that he was. Though the school did not have an explicit policy against enrolling gay students, it decided to expel the boy.<sup>100</sup> As a privately financed school that does not enroll any students under Florida’s voucher programs, it is almost certainly legal for this school to discriminate against gays in its admissions policy. And, under current law, this school is almost certainly eligible to accept voucher students because the present anti-discrimination clause in the enabling legislation does not encompass sexual orientation. Were the school to accept state vouchers, however, many socially liberal citizens, both religious and secular, would strongly object and insist that it change its policy, and that the law be modified to require such a change. Many socially conservative citizens, on the other hand, might not have a problem with the school’s policy, whether or not it accepted vouchers.

There is no way that a single simple checkbox, as I previously proposed, could adequately deal with this very real scenario or many others like it. Nor does any alternative solution come to mind. In cases involving conflicting moral or religious convictions, voucher programs provide no means to satisfy all parties. Either the freedom of schools and the choices of parents will be constrained or the convictions of taxpayers will be violated. This is a recipe for the never-ending cycle of social strife that manifests itself in the world’s government-run school systems (including our own).

Since UETC programs rely entirely on private voluntary action, they do not put the wishes of parents, taxpayers, and schools into conflict with one another. Parents claiming personal use credits can spend their own money as they see fit, and no taxpayer is forced to fund those parents’ choices. Taxpayers can choose the SGO to which they make their donations in accordance with their most deeply held values. After just two years of operation, Florida’s donation tax credit program has seven different SGOs to choose from while Arizona’s has 47 and Pennsylvania’s, 150. Under a mature tax credit program, there would almost certainly be SGOs that would willingly fund scholarship students at the Florida Christian school mentioned above, and SGOs that would refuse to fund scholarships at schools that discriminate based on sexual orientation. The school, which has done nothing illegal, would be permitted to retain its religiously derived admissions policy but no one who opposed that policy would be obliged to support it. By minimizing compulsion,<sup>101</sup> UETC programs can thus make a substantial contribution to harmonious social relations among the many

different communities that make up our increasingly diverse nation. Though UETCs may not create a social utopia, they represent a tremendous improvement over the current regime, under which every citizen must pay for schools of which he or she may disapprove.

### Funding Stream Portability

Unlike education tax-credits, which must be claimed against specific state and/or local taxes, vouchers can be funded via any government revenue stream. This means that vouchers can be implemented just as easily in states that rely heavily on a sales tax as in those that rely mainly on an income tax. Tax-credits are more difficult to implement in states whose budgets are chiefly financed through sales taxes, because it would be prohibitively difficult to maintain records on precisely how much sales tax each taxpayer had paid. Vouchers can thus be easily implemented across a somewhat wider range of states than can tax-credits. It is always possible for states to revise their tax systems to make them more amenable to education tax credits, but this would present a significant hurdle.

### Funding Stream Sufficiency

The ability of tax-credits to make private schooling financially accessible to all families has long been a concern. Programs that offer only personal use credits are particularly susceptible to this criticism, as Joseph Bast has shown. Bast, president of the Chicago-based Heartland Institute, concluded that a personal use income tax credit proposed for New Jersey would have been worth only \$530 for a family earning \$40,000 per year.<sup>102</sup> For families at or below the poverty line who owe no state income taxes, it would have provided no benefit at all. Writing on the Illinois personal use tax credit, People for the American Way has claimed that “taxpayers earning more than \$80,000 annually claimed 46 percent of the entire \$61 million credit amount in 2000, or \$28.2 million. Taxpayers earning \$60,000 or more claimed almost two-thirds of the total credit. On the other hand, less than 3 percent of the total credit was claimed by taxpayers making less than \$20,000 a year.”<sup>103</sup>

One way of making personal use credits more valuable is to allow them to be applied against a wider range of taxes. Sales taxes are a difficult case, as already noted, but property tax credits might be more feasible. The national median property tax burden for owner-occupied dwellings was \$1,334 in 2003,<sup>104</sup> which, when combined with an income tax credit, would make a significant dent in high-school tuition and would cover about half the average private elementary school tuition (\$3,267 in 1999-2000).<sup>105</sup> Coming back to the New Jersey case discussed above, the benefit of adding a property tax credit would be greater still, since that state has an average property tax assessment of roughly \$4,000<sup>106</sup> — higher than the average private elementary school tuition.

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Still, the average family with children has more than one child (1.86 of them according to the 2000 Census)<sup>107</sup> so even a combined property and income tax credit would leave many families with insufficient resources to cover all their private school expenses. That, of course, is where donation credits and private scholarship granting organizations come in. The scholarships provided by SGOs can be used both by the lowest income families and those in the middle income bracket whose tax liability is insufficient to earn them a substantial personal use credit. Donation credits can, in principle, raise as much money as voucher programs. The only major tax that cannot easily have a credit applied to it is a sales tax, and sales taxes raise only about a third of state revenue nation-wide.<sup>108</sup>

The only question that remains is: will enough taxpayers make use of the credits to provide scholarships to every family that needs and seeks them? Though the answer to that question cannot be known with certainty, there is considerable reason to conclude that it will be “yes.” First and foremost, the United States had a substantial tradition of educational giving prior to the rise of modern state schooling, and that giving only ebbed in direct proportion to increases in tax spending on the public schools. Given a chance to once again control their educational giving, and acknowledging the public’s dissatisfaction with public schools, the ability of donation tax credits to raise sufficient funds does not seem in serious doubt.

The popularity of existing donation programs is a less reliable guide at this stage because of their relative youth, and because they are currently seen as (and designed to be) limited escape hatches from the public schools rather than as the cornerstones of an alternative system of mass education. Still, the early results are promising. The Florida and Pennsylvania programs, both just two years old, are already helping 15,000 or more students each—a greater number than any of the currently operating voucher programs. Most of Pennsylvania’s \$20 million donation tax credit allocation has been claimed within the first few days after applications are accepted in both years of its operation.<sup>109</sup> The Arizona program, now in its sixth year, is serving approximately 19,000 students despite its \$500 limit on individual contributions and its complete lack of corporate donation credits.

*Individualized Attention to Subsidized Families*

Donation tax credits enjoy a practical advantage over government vouchers in the greater degree of individualized attention made possible by Scholarship Granting Organizations. Under government vouchers, all parents, or at least all parents of a given income level with non-disabled children, receive the same subsidy. When scholarships are distributed by private SGOs, a much greater degree of flexibility exists. Consider the case of a low-income single mother enrolled in college or a job training program. It is easy to envision how she might have neither the time nor the funds to both continue her own education and pay a co-payment to (or perform

equivalent volunteer work at) her child's school. Under a bureaucratically administered government voucher program, there would be no way to bend the rules to waive the co-payment/volunteer requirement. An SGO, by contrast, could more easily do just that.

### Social Engineering Through the Tax Code

One criticism aimed specifically at tax credits is that they constitute social engineering through the tax code, twisting what is supposed to be a neutral system for generating government revenue to achieve social policy aims. According to the think tank Tax Analysts, for instance, Florida's business donation credit "violates the most basic principles of sound tax policy. The tax system should not be used to shape social policy."<sup>110</sup> But the belief that a UETC program would manipulate citizens' behavior more than the other education policies under discussion is not only mistaken, it is exactly backward. Schooling is one of the only industries currently dominated by a massive tax-funded government provider, and that tax-funded monopoly grossly distorts parental behavior and explicitly controls taxpayers' behavior.<sup>111</sup>

In public opinion polls, a majority of parents say they would send their children to independent schools if it were not for the substantial financial penalty associated with doing so.<sup>112</sup> Their behavior is thus wildly skewed by the "free" public schools. Taxpayers have no choice under the current system, being obligated to fund the public schools. Their behavior is utterly controlled by the system.

Voucher programs improve on the situation for parents, allowing them to choose from among government-approved independent schools with little or no financial penalty. Their education consumption is still distorted, however, given that the vouchers must be spent on tuition alone. For taxpayers, the behavioral distortion remains at the same level as under public schooling. Taxpayers must still fund education, and they have no direct control over the kind of education their taxes go to support.

An optimal UETC program would further reduce the behavioral distortions that persist under vouchers. Rather than being taxed by the state and then possibly being given back that same money in the form of a voucher, parents would simply keep the money they would have paid in education taxes, and would have more autonomy in choosing how to spend it. Taxpayers without school-aged children would also find their behavior somewhat freer than under either public schooling or vouchers, being able to choose the SGOs that accept and distribute their donations instead of having to pay taxes to the one-and-only state. Short of a completely free education market with no government involvement whatsoever, UETCs offer the minimum possible level of tax-system induced behavior manipulation.

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***Taxpayers have no choice under the current system, being obligated to fund the public schools. Their behavior is utterly controlled by the system.***

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***An optimal tax credit program would be of much greater financial help to homeschoolers than a voucher program that excludes them entirely.***

#### Timing of Fund Availability

Another tax-credit-specific criticism is that tax credited earnings may be returned to taxpayers in the spring, *after* the close of the tax year during which the educational expenses were incurred. In other words, when parents need to spend the money, they don't have it. First of all, this criticism only applies to personal use tax credits. It does not apply to donation tax credits because the timing of the donor's credit need not be linked to disbursement of the scholarships. In the case of both income taxes that are subject to withholding and property taxes that are paid from escrow accounts, taxpayers can easily avoid the timing problem simply by adjusting their withholding/escrow transfer amounts according to the size of the credit for which they qualify. In that way, taxpayers are never charged, and never pay, taxes for which they are not liable. Since they do not overpay their taxes in the first place, they do not need to wait for an excess tax payment to be returned to them.<sup>113</sup>

#### Homeschooling

In allowing homeschoolers to benefit both from personal use credits and from scholarships offered by willing SGOs, an optimal tax credit program would be of much greater financial help to homeschoolers than a voucher program that excludes them entirely. Though school choice opponents might be interested in extending additional controls over home schoolers should they benefit in any way from a tax credit program, it is almost certainly the case that those same opponents would like to increase regulation of homeschooling even without a credit. The addition of non-refundable tax credits to the homeschooling equation seems unlikely to tip the balance of power on this issue in most state legislatures. In the rare cases where it might, that could be taken into account.

## Conclusions and Recommendations

This paper has sought to build consensus around a methodical progression of questions:

- What should our precise goals be?
- Should our reform strategy be ad hoc or based on a model education system?
- How and where can we find the model system best able to meet our goals?
- What are the characteristics of that model system?
- What policy simultaneously does the best job of realizing our model system and of taking into account short and long term legal and political realities?

The answers it proposes are that:

- Our chief goal should be to serve the diverse educational needs of *all families*, not selective subsets of the population, while preserving social cohesion and assuring academic quality.
- To fulfill our goals we should identify a comprehensive, coherent, empirically grounded model school system and implement a policy that works toward it.
- The application of natural experiments to the historical and international data on education system performance is the most reliable tool for identifying a system that is effective, generalizable, scalable, and sustainable.
- The model system best able to fulfill our goals is an education market driven by the unfettered choices of parents, in which both for-profit and non-profit schools compete freely and vigorously to attract and retain students.
- A Universal Education Tax Credit program is the ideal vehicle for instantiating an effective education market, and for resisting debilitating regulatory encroachment.

While it isn't expected that we will now suddenly all agree on every one of these points, the analysis presented here will hopefully allow us to better identify and resolve our disagreements. Those who take issue with specific arguments or conclusions presented in this paper are encouraged to lay out their alternative views so that we can reconcile our differences to the greatest extent possible.

One thing to keep in mind is that this paper may also highlight irresolvable differences. Positions that are held out of deep ideological, religious, or political conviction are rarely subject to persuasion or compromise. To the extent that such

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***Our chief goal should be to serve the diverse educational needs of all families, not selective subsets of the population, while preserving social cohesion and assuring academic quality.***

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***The school choice movement's single most important goal should be the establishment of an optimal Universal Education Tax Credit program, and, if that proves impossible, an optimal voucher program.***

fundamental reasons underlie any of our differences, it is useful that this be recognized early to avoid needless and ultimately futile debates.

### ***Recommendations***

Based on the above set of conclusions, the school choice movement's single most important goal should be the establishment of an optimal Universal Education Tax Credit program, and, if that proves impossible, an optimal voucher program. It is not clear whether the easiest/fastest way to do that will be to table new proposals or attempt to modify existing programs.

At the very least, we should be able to agree that eliminating the aspects of existing voucher and tax-credit programs that impede the operation of market forces is an extremely high priority. Failure to do so would not only underserve families participating in these programs, it risks allowing weak programs to taint the entire market education concept. Fortunately, sustained efforts are already being made along these lines in Cleveland and Milwaukee, and those responsible should be commended for their tireless work. Cleveland's program has been recently expanded to some degree (which will have a salutary effect on competitive density). In Wisconsin, the government has blocked the passage of recent proposals to expand the Milwaukee program. Continuing efforts to expand and improve these programs should be encouraged.

Similarly, we should be able to agree that fighting off regulatory encroachment of existing voucher and tax-credit programs is crucially important. The year 2004 will see intensive campaigns to regulate, for example, the Florida donation tax-credit program, and we must rally support to protect it and other programs from counterproductive state intervention.

In parallel with the above actions, national energies should be focused on introducing and passing an optimal tax credit program in whichever state or states have the best combination of a favorable school reform climate (e.g., positive poll results and legislative interest), local activists supporting market education, and a tax-code amenable to credits (e.g., states where sales taxes don't make up the lion's share of the state's receipts). States that have a positive climate for reform but are grossly ill-suited to tax-credit proposals, (due, for instance, to heavy reliance on a sales tax), may wish to consider an optimal voucher program if a tax code revision seems unachievable. In either case, the polling data cited earlier can be consulted to identify particular states in which support for market education reforms is strongest. Once one state embraces market education, others will likely follow suit.

South Carolina may well be the flag bearer behind which the school choice community can rally in 2004. In late January, 2004, Governor Mark Sanford, Rep.

Doug Smith, and 30 co-sponsors in the legislature have proposed a UETC bill for their state.<sup>114</sup> In its draft form, this bill comes closer to an ideal tax credit program than any other current proposal of which I am aware. South Carolina, moreover, has one of the heaviest income tax burdens in the South East, making it an ideal candidate for the implementation of a tax credit. The credit would also be applicable to property taxes, giving it even more fiscal leverage.

One thing to keep in mind as this and all other proposals enter the legislative fray is that concessions adopted for reasons of political expediency must not be allowed to undermine the essential characteristics responsible for the market's success. Choice advocates must avoid passing legislation that gives lip service to markets without actually creating a competitive education marketplace. Doing so would be a disservice to current and future generations because it would poison the well for better designed measures to come. When true market education legislation is enacted, the social, individual, and economic benefits will prove well worth the effort.

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***Once one state embraces market education, others will likely follow suit.***

## Endnotes

1 Andrew J. Coulson, *Market Education: The Unknown History* (New Brunswick, New Jersey: Transaction Books, 1999).

2 Coulson, *Market Education*.

3 A curriculum movement championing the notion that 60 percent of children were suited neither to higher education nor to professional careers, and hence should be trained in the mundane activities of day to day life rather than in academic subjects. See Diane Ravitch, *The Troubled Crusade: American Education 1945-1980* (New York: Basic Books, 1983), p. 64-68.

4 Medieval “physicians” believed that the body was composed of four different humors, or liquids (blood, phlegm, yellow bile, and black bile), and that health and sickness were determined by whether or not these humors were in “balance.”

5 Yes, there are ecosystems not dependent on sunlight, deep ocean systems that depend on geothermal heat sources, for example. In those systems, however, the geothermal heat source takes the place of the sun, and removing it would lead to the collapse of the system. In either case, there is at least one (but possibly more than one) single feature on which the entire system depends.

6 See, most notably, the voucher studies of Jay P. Greene, Paul Peterson, and their colleagues, which are readily available on the Internet.

7 Jared Diamond, *Guns, Germs and Steel: The Fates of Human Societies* (New York: W. W. Norton & Company, 1999), p. 424.

8 Coulson, *Market Education*.

9 Comprehensive attempts at applying natural experimentation to the comparative analysis of school systems are rare. I offer a sample of my own work in this field, along with E.G. West’s groundbreaking study of 19th century Britain. Readers should also anticipate the publication of a four country comparison of private and state schools serving the poor being conducted by James N. Tooley and colleagues. The citations for the published works are:

Coulson, *Market Education*. And:

E. G. West, *Education and the State: A Study in Political Economy* (Indianapolis: Liberty Fund, 1994). And:

Andrew J. Coulson, “Implementing Education for All: Moving from Goals to Action,” paper presented at the Fondazione Liberal’s Second International Education Conference, Milan, Italy, May 17th, 2003. Available online at: [[http://www.schoolchoices.org/roo/coulson\\_milan-\(2003\).pdf](http://www.schoolchoices.org/roo/coulson_milan-(2003).pdf)]. And:

Andrew J. Coulson, “How Markets Affect Quality,” Cato Institute, forthcoming.

10 Both historically and in modern times, the schools selected voluntarily by even the poorest families tend to offer more practical, effective, and efficient instruction than schools operated by the state. See the sources cited in the previous note.

11 Pliny the Younger, *Letters and Panegyricus [of] PlinyI*, with an English Translation by Betty Radish (London: William Heinemann, 1969).

12 In addition to the evidence reported for this relationship at the elementary and secondary education levels (see endnote 9), there are similar findings for higher education. See “Clive R. Belfield and Celia A. Brown, “Markets in the Provision of Lifetime Learning: Evidence from the United Kingdom,” Occasional Paper no. 25, National Center for the Study of Privatization in Education, July 2001. Ob-

tained online at: [[http://www.ncspe.org/publications\\_files/764\\_OP25.pdf](http://www.ncspe.org/publications_files/764_OP25.pdf)].

13 Coulson, *Market Education*, Chapter 8.

14 Coulson, *Market Education*, p. 178-191.

15 National Center for Education Statistics (NCES), "Condition of America's Public School Facilities: 1999," Statistical Analysis Report, June 2000, p. 13, 14, and B-29.

16 For brief discussions of Indian education see: Andrew J. Coulson, "How Markets Affect Quality," Cato Institute, forthcoming. And:

Andrew J. Coulson, "Implementing Education for All: Moving from Goals to Action," paper presented at the Fondazione Liberal's Second International Education Conference, Milan, Italy, May 17th, 2003. Available online at: [[http://www.schoolchoices.org/roo/coulson\\_milan-\(2003\).pdf](http://www.schoolchoices.org/roo/coulson_milan-(2003).pdf)].

For a discussion of Japanese juku, see: Coulson, *Market Education*, p. 219-229.

17 Francisco A. Gallego, "School Choice, Incentives, and Academic Outcomes: Evidence for Chile," Massachusetts Institute of Technology, forthcoming.

18 Herbert J. Walberg and Joseph L. Bast, *Education and Capitalism* (Stanford: Hoover Institution Press, 2004), p. 301.

19 Joseph L. Bast, "The Heartland Plan for Illinois: Model School Voucher Legislation," Heartland Institute, Heartland Policy Study No. 98, May 2002. Obtained online at: [<http://www.heartland.org/archives/studies/hlplan-ps.htm>].

20 The Constitution of the Netherlands, Article 23, Paragraph 1. Obtained online at: [[http://www.minbzk.nl/contents/pages/00012485/grondwet\\_UK\\_6-02.pdf](http://www.minbzk.nl/contents/pages/00012485/grondwet_UK_6-02.pdf)].

21 Frans J. de Vijlder, "Dutch Education: a closed or an open system?" undated government report, Ministry of Education, Culture and Science, The Netherlands. Obtained online at: [<http://www1.oecd.org/els/pdfs/EDSFLDOCA019.pdf>].

22 Juku are private, for-profit supplemental schools attended by most Japanese students in addition to their regular (usually government provided) elementary and secondary schooling. Juku flourish in large measure because they allow parents to obtain the specific services their children require, whereas the Japanese public school system is among the most rigid, uniform, and unresponsive in the world.

23 de Vijlder, "Dutch Education: a closed or an open system?"

24 Heleen Verhage, "Reference levels in School Mathematics Education in Europe: The Netherlands," European Mathematical Society, Committee on Mathematics Education, March 2001. Obtained online at: [[http://www.emis.de/projects/Ref/doc\\_ems\\_pdf/EMS\\_NATIONAL\\_PRESENTATIONS/EMS\\_THE%20NETHERLANDS.pdf](http://www.emis.de/projects/Ref/doc_ems_pdf/EMS_NATIONAL_PRESENTATIONS/EMS_THE%20NETHERLANDS.pdf)].

25 Verhage, "Reference levels in School Mathematics Education in Europe: The Netherlands."

26 Verhage, "Reference levels in School Mathematics Education in Europe: The Netherlands."

27 Verhage, "Reference levels in School Mathematics Education in Europe: The Netherlands."

28 Verhage, "Reference levels in School Mathematics Education in Europe: The Netherlands," p. 4.

29 Benjamin P. Vermeulen, "Islamic Schools In The Netherlands," working paper, Vrije University, December 2003.

- 30 Vermeulen, "Islamic Schools In The Netherlands."
- 31 Geoffrey Walford, "Funding for Private Schools in England and the Netherlands. Can the Piper Call the Tune?" Occasional Paper No. 8, National Center for the Study of Privatization in Education, Teachers College, Columbia University, November 2000.
- 32 Estelle James, "The Netherlands: Benefits and Costs of Privatized Public Services—Lessons from the Dutch Education system." In: Geoffrey Walford (ed.), *Private Education in Ten Countries: Policy and Practice* (London: Routledge, 1999), pp. 179-99.
- 33 de Vijlder, "Dutch Education: a closed or an open system?"
- 34 Marina Brouwer, "Concern About Muslim Schools," Radio Netherlands. February 20, 2002. Obtained online at: [<http://www.rnw.nl/hotspots/html/netherlands020220.html>].
- 35 [No author given], "Islamschool niet te controleren," Het Parool (Dutch news site), October 25, 2002. Obtained online at: [<http://www.parool.nl/1035522058940.html>].
- 36 The original 1991 Educational Statute was revised on at least two occasions (in 1993 and 1996). The 1996 version of the law is: "Decreto Con Fuerza De Ley N° 1, De 1996" ("Legal Decree No. 1, 1996"). Obtained online at: [<http://www.munitel.cl/Upload/normajuri/docs/DFL1.pdf>].
- 37 "Decreto Con Fuerza De Ley N° 1, De 1996," Title IV, Paragraph II, Article 85. See also article 83.
- 38 "Decreto Con Fuerza De Ley N° 1, De 1996," Title IV, Paragraph II, Article 79.
- 39 "Decreto Con Fuerza De Ley N° 1, De 1996," Title IV, Paragraph II, Article 79(c).
- 40 "Decreto Con Fuerza De Ley N° 1, De 1996," Title IV, Paragraph II, Article 79.
- 41 "Decreto Con Fuerza De Ley N° 1, De 1996," Title IV, Paragraph II, Article 80.
- 42 Claudio Sapelli and Bernardita Vial, "Evaluating The Chilean Education Voucher System," Instituto de Economia Pontificia Universidad Catolica de Chile, working paper, April, 2002, p. 3. Obtained on-line at: [<http://www.msu.edu/~herrer20/documents/ec823/papers/paper4.pdf>].
- 43 One exception is the refundable Minnesota education tax credit introduced in 1998. Because it is refundable, this program could be classified as a voucher, except that it is usable for everything except private school tuition. Because it cannot be used for tuition, this program does not constitute a market education policy and is not discussed here.
- 44 Herbert Walberg and Joseph Bast trace the origins of this idea back to 1980 in: Walberg and Bast, *Education and Capitalism*, p. 281, footnote 56.
- 45 See: Coulson, *Market Education*, p. 277-279. And Coulson, "How Markets Affect Quality."
- 46 Francisco A. Gallego, "School Choice, Incentives, and Academic Outcomes: Evidence for Chile," Massachusetts Institute of Technology, forthcoming.
- 47 Coulson, *Market Education*, p. 90-92.
- 48 This is a fact repeatedly demonstrated by the comparative international and historical education survey presented in: Coulson, *Market Education*.
- 49 Bas Braams, "Mathematics in the OECD PISA Assessment," published correspondence, July 2002. Obtained online at: [<http://www.math.nyu.edu/mfdd/braams/links/pisa0207.html>].
- 50 David Nohara, "A Comparison of the National Assessment of Educational Progress (NAEP), the

Third International Mathematics and Science Study Repeat (TIMSS-R), and the Programme for International Student Assessment (PISA),” National Center for Education Statistics, U.S. Department of Education, Working Paper no. 2001-07, June 2001. Obtained online at: [<http://nces.ed.gov/pubs2001/200107.pdf>].

51 One source collecting a large amount of comparative academic achievement data for fee-charging and other private schools versus public schools is: Coulson, “Testing a Theory of Market Education.”

It should be noted that the comparative analysis of public and private school performance on the PISA test by Jaap and Dronkers (citation follows), has methodological issues. Specifically, the authors make questionable assumptions about which school and family factors are truly exogenous (i.e., are unaffected by school type) and which are not. Controlling statistically for factors that are not truly exogenous can lead to biased (incorrect) estimates of the relative performance of the different school types. Unfortunately, there is not the space to discuss these issues in detail here. The study is:

Jaap Dronkers and Peter Robert, “The Effectiveness of Public and Private Schools from a Comparative Perspective,” European University Institute (EUI, Florence), EUI Working Paper SPS No. 2003/13. Obtained online at: [<http://www.iue.it/PUB/sps2003-13.pdf>].

52 For the role of direct payment of fees by parents in preserving parental choice, see: Coulson, Market Education. For evidence on the superior effectiveness and efficiency of fee-charging over government subsidized schools, see: Coulson, “Implementing Education for All: Moving from Goals to Action,” and: Coulson, “How Markets Affect Quality.”

53 Between 1919-20 and 2001-02, inflation adjusted per-pupil spending rose by a factor of either 15.6 or 19.5, depending on whether you use the average daily attendance or fall enrollment figures (respectively) for the pupil count. Computed from table 166 in: Thomas D. Snyder, Digest of Education Statistics, 2002, document no. NCES 2003E060 (Washington, DC: U.S. Department of Education, National Center for Education Statistics, 2003), p. 194.

54 Glen Y. Wilson, “The Equity Impact of Arizona’s Education Tax Credit Program: A Review of the First Three Years (1998-2000),” research report, March 2002. Obtained online at: [<http://www.asu.edu/educ/eps/EPRU/documents/EPRU%202002-110/epru-0203-110.htm>].

55 This has been suggested, among others, by Eric O’Keefe of the Lead Foundation.

56 On pages 301 and 302 of Walberg and Basts’ Education and Capitalism, the Heartland Plan’s voucher surplus accounts seem to be mistakenly conflated with, and referred to as, Education Savings Accounts. The authors write that “ESAs avoid the pitfall of relying too much on third parties (government in the current system or scholarship-granting entities under the tuition tax-credit option) to pay for schooling.” That is of course only true of traditional ESAs. It is not true of the Heartland Plan’s voucher surplus accounts, as the authors seem to imply.

57 Omitting restrictions on how parents can spend their credited earnings would be desirable for several reasons. First, it would ensure that parents are just as deliberate and thoughtful about how they spend the credited funds as they are about how they spend the rest of their money. People are most careful about how they spend their money when they have to weigh the value of alternative expenditures against one another. We evaluate how good a deal one purchase is by comparing it to what other goods or services we could buy with the same money. Restricting the credit so that it can only be spent on one thing (e.g., full day tuition) short-circuits that evaluative process. Second, narrow use restrictions limit the range of services that parents can consume, stifling specialization and innovation in educational services. Finally, an unrestricted credit would provide less of a toe-hold for future regulatory encroachment. If the credit can only be used, say, for tuition and tutoring fees, then it would not be a great stretch for a subsequent legislature to add provisions limiting which kinds of instruction and tutoring are covered. If the credit can be used for any purpose, by contrast, it would be a significant leap to add any such limits.

58 Walberg and Bast, *Education and Capitalism*, p. 309.

59 *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Obtained online at: [<http://www.michaelariens.com/ConLaw/cases/pierce.htm>].

60 The entire point of a UETC program, or of any policy mechanism for promoting universal access to market education, is to treat parents in a special way—i.e., for other taxpayers to make it easier for them to pay for their children’s education. Under a UETC program, parents can take a personal-use credit against the cost of their own children’s education whereas non-parents must use donation credits for the benefit of other people’s children. Nevertheless, the two different sorts of credits can have the same value, so that, at least from the standpoint of credit size, parents and non-parents are treated equivalently.

61 Public Agenda, “On Thin Ice,” report on public poll findings, November 1999. Obtained online at: [<http://www.publicagenda.org/specials/vouchers/voucherfinding1.htm>].

62 These data were compiled by Joseph G. Lehman, of the Mackinac Center for Public Policy. Note that the sources disagree on whether the Colorado tax credit plan received 41 or 40 percent of the popular vote, but 41 percent is the modal figure. The data were drawn from the following sources:

Robert C. Johnston, “Status Quo Prevails on State Ballots,” *Education Week*, November 11, 1998. Obtained online at: [<http://www.edweek.org/ew/vol-18/11init.h18>].

And: People for the American Way Foundation, “History of Failed Vouchers and Tax Credits: Voucher Referenda,” undated report. Obtained online at: [<http://www.pfaw.org/pfaw/general/default.aspx?oid=2969>].

And: People for the American Way Foundation, “History of Failed Vouchers and Tax Credits: Tax Credit Referenda,” undated report. Obtained online at: [<http://www.pfaw.org/pfaw/general/default.aspx?oid=2970>].

And: Amy K. Frantz, “Initiative [sic] and Referendum [sic] in the States,” *Limits On Power and the Use of Power*, vol. 3, no. 4, December 1998, p. 6. Obtained online at: [<http://www.limitedgovernment.org/publications/pubs/limits/limdec98.pdf>].

63 George A. Clowes, “Hope Tax Credits Bring Increased Regulation,” *School Reform News*, March 1, 2002. Obtained online at: [<http://www.heartland.org/Article.cfm?artId=4>].

64 Unless they are the only avenue. In Michigan, for example, the only way to expand school choice is by a vote of the people. Michigan’s constitution expressly prohibits any form of voucher or education tax credit, making a constitutional amendment necessary, and in Michigan, constitutional amendments require a vote of the people. Thanks to Lawrence Reed and Joseph Lehman of the Mackinac Center for Public Policy for this observation.

65 The surveyed states were: Arkansas, Indiana, Florida, Louisiana, Maine, Maryland, Michigan, Nebraska, Nevada, and Wisconsin. The survey was performed by Basswood Research of Washington, DC. To inquire about the detailed results, please contact the Mackinac Center for Public Policy at: [[www.Mackinac.org](http://www.Mackinac.org)].

66 The questions were as follows:

- Would you support or oppose giving Arkansas taxpayers an individual income tax credit for contributions to scholarship funds that help parents send their children to the public, private, or religious school of their choice?

- Would you support or oppose giving local businesses a state corporate income tax credit for charitable contributions to scholarship funds that help parents send their children to the public, private, or religious school of their choice?

- Would you prefer that all students in all public schools be eligible to receive the tax-credit scholarship funds, or would you prefer that tax-credit scholarship funds only go to low-income students in poorly performing schools?

- Would you support or oppose education vouchers, which provide parents with state funds that they can use to help pay the costs at the school of their choice?

- Would you support or oppose education vouchers, which provide parents with state funds that they can use to help pay the costs at the school of their choice, if only low-income students in poorly performing schools were eligible to receive the vouchers?

67 Respondents were not asked about personal use tax credits.

68 Zelman v. Simmons-Harris (00-1751) 234 F.3d 945, reversed. Obtained online at: [<http://supct.law.cornell.edu/supct/html/00-1751.ZS.html>].

69 Joan Biskupic, "Maine School Voucher Law Stands," The Washington Post, October 13, 1999, p. A2. Obtained online at: [<http://www.washingtonpost.com/wp-srv/national/longterm/supcourt/stories/court101399.htm>]. And:

David M. Ackerman, "Education Vouchers: Constitutional Issues and Cases," Congressional Research Service, CRS Report for Congress no. RL30165, November 15, 2001. Obtained online at: [<http://carper.senate.gov/acrobat%20files/r130165.pdf>].

70 Ackerman, "Education Vouchers: Constitutional Issues and Cases."

71 Jackson v. Benson, 218 Wis.2d 835, 578 N.W.2d 602. Obtained online at: [<http://www.courts.state.wi.us/html/sc/97/97-0270.HTM>].

72 Justice Steinmetz wrote for the court that they chose not to consider whether taxpayers were compelled to support religious practices under the voucher program because they had already considered another clause prohibiting state funding programs that benefit religious institutions.

73 Richard Komer and Clint Bolick, "School Choice: The Next Step, The State Constitutional Challenge," Institute for Justice website editorial, July 1, 2002. Obtained online at: [[http://ij.org/editorial/choice\\_next.shtml](http://ij.org/editorial/choice_next.shtml)].

74 The Associated Press, "Lawmakers say some school districts balking at vouchers," The Associated Press, November 11, 2003. Obtained online at: [[http://www.schoolchoiceinfo.org/news/index.cfm?action=detail&news\\_id=651](http://www.schoolchoiceinfo.org/news/index.cfm?action=detail&news_id=651)].

75 Locke, Governor Of Washington, Et Al. V. Davey, certiorari to the united states court of appeals for the ninth circuit, No. 02-1315. Argued December 2, 2003--Decided February 25, 2004. Available online at: [<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=02-1315>].

76 PFAW Foundation, "Supreme Court Upholds State Religious Liberty Provisions," press release, February 25, 2004. Obtained online at: [<http://www.pfaw.org/pfaw/general/default.aspx?oID=14069>].

77 Quote in: Melanie Hunter, "Supreme Court Overturns Religious Discrimination Ruling," CNSNews.com (Cybercast News Service), February 25, 2004. Obtained online at: [<http://www.cnsnews.com/ViewCulture.asp?Page=%5CCulture%5Carchive%5C200402%5CCUL20040225d.html>].

78 Emphasis added. See note 73 for Locke v. Davey decision citation.

79 Kotterman v. Killian, Arizona Supreme Court, No. CV-97-0412-SA. Obtained online at: [<http://www.supreme.state.az.us/opin/pdf99/cv970412.pdf>]. That ruling read, in part, as follows:

30 Petitioners argue that this tax credit channels public money to private and sectarian schools

in violation of the state constitution. Specifically, they charge that the law offends article II, § 12 and article IX, § 10 (the “religion clauses”), as well as article IX, § 7 (the “anti-gift clause”). . .

32 Article II, § 12 states in part: “No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment.” Article IX, § 10 says, “No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation . . .”

33 The parties are in considerable disagreement over the meaning of “public money or property.” No definition of these words appears in the Arizona Constitution or in our statutes. We must therefore look to their “natural, obvious and ordinary meaning. . . .” [Author’s note: Paragraphs 34 and 35 of the decision list numerous court cases that define the term public money. By these definitions, the taxcredit in question did not constitute public money. The court then continued:]

36 According to Black’s Law Dictionary, “public money” is “[r]evenue received from federal, state, and local governments from taxes, fees, fines, etc.” Black’s Law Dictionary 1005 (6th ed. 1990). As respondents note, however, no money ever enters the state’s control as a result of this tax credit. Nothing is deposited in the state treasury or other accounts under the management

80 Clive R. Belfield and Amy L. Wooten, “Education Tax Credits for America’s Schools,” National Center for the Study of Privatization in Education, NCSPE Policy Briefing #3, February 2003. Obtained online at: [[http://www.ncspe.org/publications\\_files/PB03.pdf](http://www.ncspe.org/publications_files/PB03.pdf)].

81 John Humphreys, “Funding School Choice: Vouchers or Tax Credits: A Response to Buckingham,” Policy (Australia), Autumn 2002. Obtained online at: [<http://www.cis.org.au/Policy/aut2002/polaut02-3.htm>].

82 Stephen Hegarty, “Education commissioner concedes voucher failings,” St. Petersburg Times, November 19, 2003. Obtained online at: [[http://www.sptimes.com/2003/11/19/State/Education\\_commissione.shtml](http://www.sptimes.com/2003/11/19/State/Education_commissione.shtml)]. And:

“Come fall, the heat is off,” St. Petersburg Times, editorial, November 6, 2003. Obtained online at: [[http://www.sptimes.com/2003/11/06/Opinion/Come\\_fall\\_the\\_heat\\_i.shtml](http://www.sptimes.com/2003/11/06/Opinion/Come_fall_the_heat_i.shtml)].

83 Kimberly Miller, “Money To Terror-Tied School Halted,” Palm Beach Post, July 19, 2003. Obtained online at: [<http://www.palmbeachpost.com/news/content/news/vouchers0719a.html>].

84 No by-line, “Education: Steady state,” The Milwaukee Journal Sentinel, July 26, 2001. Obtained online at: [<http://www.jsonline.com/news/editorials/jul01/schools-edit072601.asp>].

85 Humphreys, “Funding School Choice: Vouchers or Tax Credits: A Response to Buckingham.”

86 For a discussion of all these cases except India, see: Coulson, Market Education. For a survey of the relevant evidence from modern developing countries, including India, see:

Coulson, “How Markets Affect Quality.”

87 Duraisamy, P., Estelle James, Julia Lane, and Jee-Peng Tan (Undated). “Is There A Quantity-Quality Trade-Off As Enrollments Increase? Evidence from Tamil Nadu, India,” World Bank research report, ([undated], late 1990s?). Available on-line at: [[www.worldbank.org/html/dec/Publications/Workpapers/WPS1700series/wps1768/wps1768.pdf](http://www.worldbank.org/html/dec/Publications/Workpapers/WPS1700series/wps1768/wps1768.pdf)].

88 Andrew J. Coulson, Market Education: The Unknown History (New Brunswick, NJ: Transaction Books, 1999), p. 110-111.

89 Herbert J. Walberg and William J. Fowler, Jr., "Expenditure and Size Efficiencies of Public School Districts," research report, 1986, ERIC document no. ED274471.

90 Coulson, "How Markets Affect Quality."

91 Performance-based grouping means assigning students to classes based on what they know and can do, rather than on their physical age. Under performance based-grouping, children who have mastered arithmetic, for example, can immediately proceed to the study of algebra, regardless of their age. See: Coulson, *Market Education*, p. 359-362.

92 Estelle James, Elizabeth M. King, and Ace Suryadi, "Finance, Management, and Costs of Public and Private Schools in Indonesia," *Economics of Education Review*, vol. 15 (1996), no. 4, pp. 387-398.

93 Walberg and Bast, *Education and Capitalism*, p. 289.

94 Joseph L. Bast, "Why Conservatives and Libertarians Should Support School Vouchers," *The Independent Review*, vol. 7, no. 2 (Fall 2002), p. 269. Obtained online at: [[http://www.independent.org/tii/content/pubs/review/tir72\\_bast.html](http://www.independent.org/tii/content/pubs/review/tir72_bast.html)]. Emphasis added.

95 Martin Carnoy and Patrick J. McEwan, "The Effectiveness and Efficiency of Private Schools in Chile's Voucher System," *World Bank Report*, 1999. Obtained online at: [<http://www.worldbank.org/education/economicssed/tools/seminars/92999.doc>].

96 Lydia G. Segal, *Battling Corruption in America's Public Schools* (Boston: Northeastern University Press, 2004).

97 Coulson, *Market Education*, p. 211-214.

98 S.V. Date, "Bush aides considered fabricating voucher explanations," *Palm Beach Post*, November 12, 2003.

99 Komer and Bolick, "School Choice: The Next Step, The State Constitutional Challenge."

100 Elizabeth Clarke, "High school senior came 'out' - and was expelled," *Palm Beach Post*, October 25, 2003.

101 Under an education tax credit program, citizens and businesses are still taxed if they choose not to make a donation to an SGO or to send their children to a private school (and hence claim a credit). There is thus still a degree of compulsion in the funding of education, though it is a less confining and morally tendentious one.

102 Walberg and Bast, *Education and Capitalism*.

103 [no author], "Misplaying the Angles: A Closer Look at the Illinois Tuition Tax Credit Law," *People for the American Way (PFAW) report*, September 17, 2002. According to this report, the data on tax credit usage by income bracket were provided by the Illinois Department of Revenue. Obtained online at: [[http://www.pfaw.org/pfaw/dfiles/file\\_146.pdf](http://www.pfaw.org/pfaw/dfiles/file_146.pdf)].

104 G. Scott Thomas, "Property tax analysis puts Dayton mid-range," *Dayton Business Journal*, March 31, 2003. Obtained online at: [<http://www.bizjournals.com/dayton/stories/2003/03/31/story7.html>].

105 Snyder, "Digest of Education Statistics, 2002," table 61, p. 73.

106 Judith C. Cambria, "New Jersey's Patchwork Property Tax Relief: How to Make A Bad System Better," *New Jersey Policy Perspective* (state think tank), 2000. Obtained online at: [[http://www.njpp.org/archives/cambria\\_proptax.html](http://www.njpp.org/archives/cambria_proptax.html)].

107 U.S. Bureau of the Census "Average Number of Children Per Family and Per Family With Chil-

dren, by State: 2000 Census,” Table ST-F1-2000 of Census 2000 Summary File 1 (SF 1), released online June 12, 2003. Obtained online at: [<http://www.census.gov/population/socdemo/hh-fam/tabST-F1-2000.pdf>].

108 Computed from table data in: [No author], “State Government Tax Collections by Type of Tax: Fiscal Years 1991Ð 2001,” the Tax Foundation, 2003. Obtained online at: [<http://www.taxfoundation.org/collectionsbytype10years.html>].

109 Sheila Boughner-Blair, “Children’s Scholarship Fund established in Clarion,” *The Derrick* (Pennsylvania newspaper), October 26, 2003. Obtained online at: [<http://www.thederrick.com/stories/10272003-1008.shtml>].

110 David Brunori, “Vouchers Masquerading as Tax Credits,” *State Tax Notes*, undated. Obtained online at: [<http://www.taxanalysts.com/www/readingsintaxpolicy.nsf/0/8B09336E11A5E89585256B8200802569?OpenDocument>].

111 Some proponents of a flat-rate income tax oppose tuition tax credits because they view them as a corruption of the tax code. A full discussion is outside the scope of this paper, but tuition tax credits are uniquely distinguished from other tax credits (e.g. child tax credits, solar panel tax credits) in at least two ways. First, the education marketplace, unlike other marketplaces, is dominated by a government-run school monopoly. Second, education is, unlike the subjects of other tax credits, a compulsory activity. Not only must everyone fund the public school system, everyone is subject to compulsory attendance laws. Because few, if any, other types of tax credits will share these features, flat-tax proponents need not fear that tuition tax credits will create a “slippery slope” toward a proliferation of other tax credits. Thank you to Lawrence Reed and Joseph Lehman, of the Mackinac Center for Public Policy, for this observation.

112 Coulson, *Market Education*, p. 21.

113 Thanks to Eric O’Keefe of the Lead Foundation for suggesting this point.

114 Associated Press, “Gov. Mark Sanford speaks to South Carolina,” Associated Press, January 22, 2004. Obtained online at: [<http://www.wistv.com/Global/story.asp?S=1611222&nav=0RaPKL7M>].

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