

Tax Expenditures and Fairness in K-12 Education

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As
American
as Public
School



Brown v. Board of Education (1954)

“Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. ... It is the very foundation of good citizenship.”





Tax benefits
undermine
equal citizenship

Economic inequality

Religious discrimination

Racial segregation

Political polarization

Tax benefits for K-12 Education

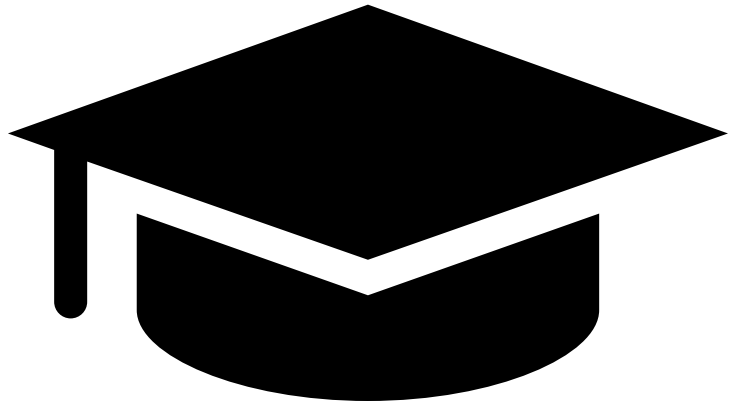


Divert public funds to private schools



Privatize public decisions about civic development of children

Private School



Educational Outcomes

- Controlling for family income eliminates all advantages of private school.
- There is no evidence to suggest that low-income children or children enrolled in urban schools benefited more from private school enrollment.

“Some colleges have more students from the top 1% than the bottom 60%.”

Economic Inequality





What does federal tax law have to do with it?

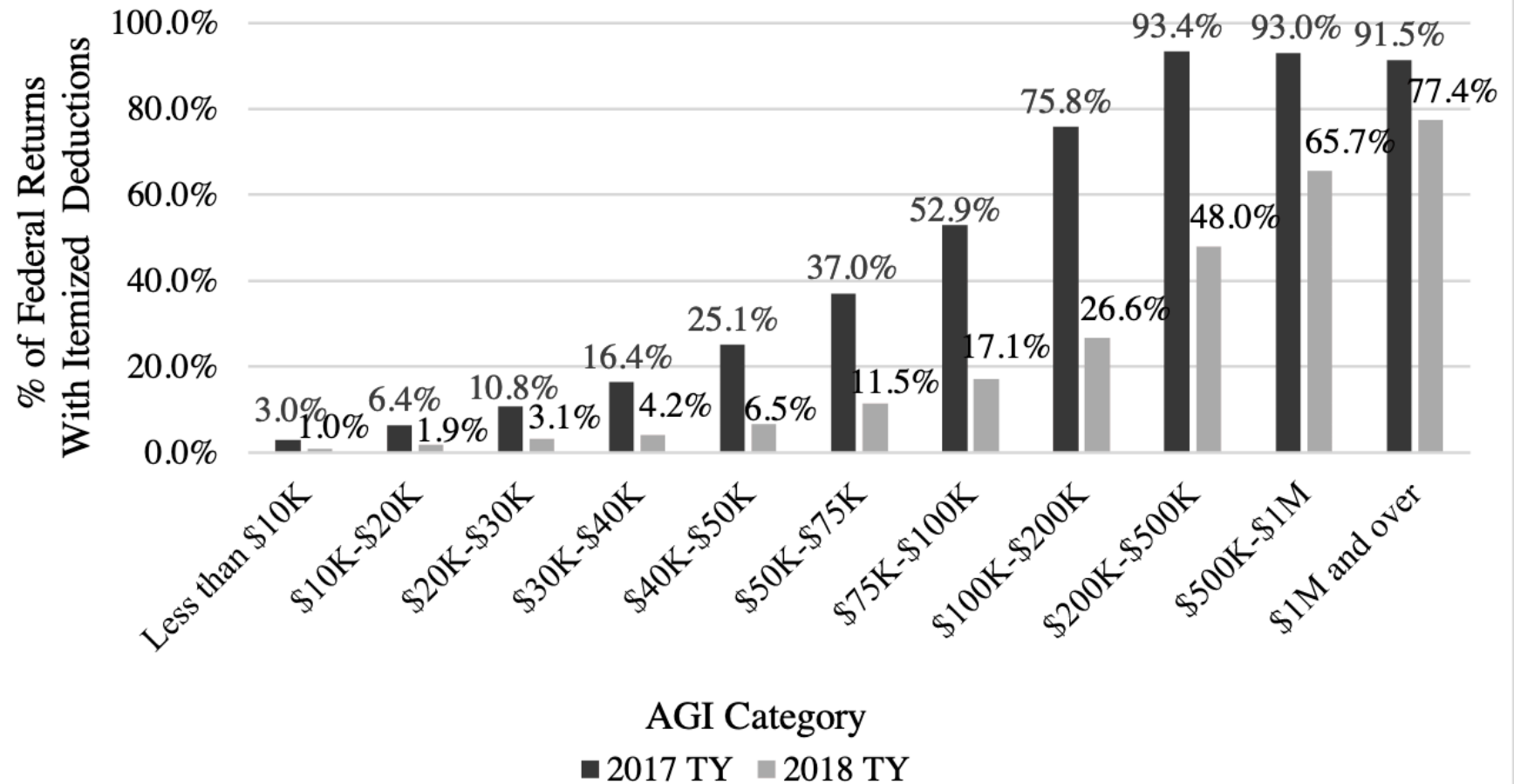
IRC §170 Deduction

- Private schools
 - Non-tuition payments
- Public Schools
 - PTAs and auxiliary organizations



Post-TCJA
Itemizers

Figure 1. Federal Itemization Rates by AGI & Tax Year



Heather Field, Taxpayer Choices, Itemized Deductions, and the Relationship between the Federal & State Tax Systems, 13 Colum. J. Tax L. __ (2021):

Legally distinct payments for §170

Tuition

purchase price is not deductible

Gifts

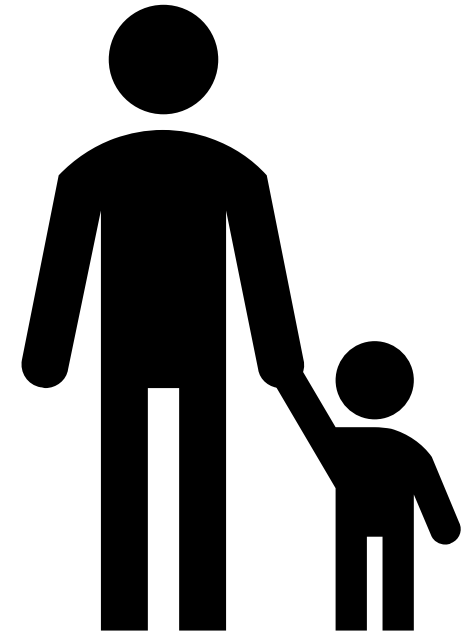
other payments are deductible

The law's bright line is imaginary

Parental
payments
should not be
deductible

Return benefits to
payor extinguishes
donative intent.

Parental payments
exacerbate
inequality within
and across schools.

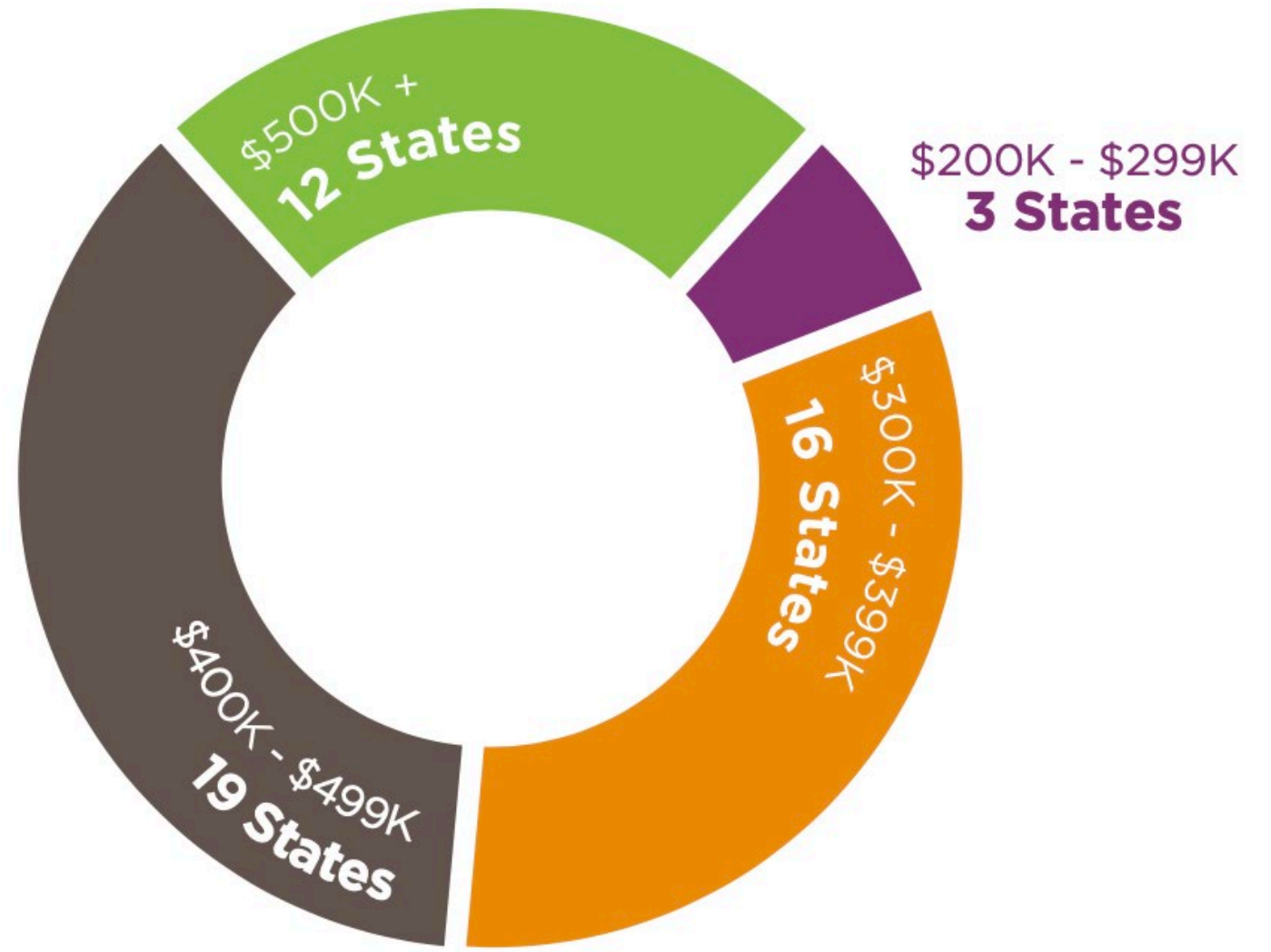




Section 529 Plans

2017 TCJA

Maximum
529
Amounts



$$1 + 1 =$$

$$2 + 2 =$$

- Deductions
- Exclusions
- Credits

State Tax Credits



Subsidize private schools



Divert resources from
public schools

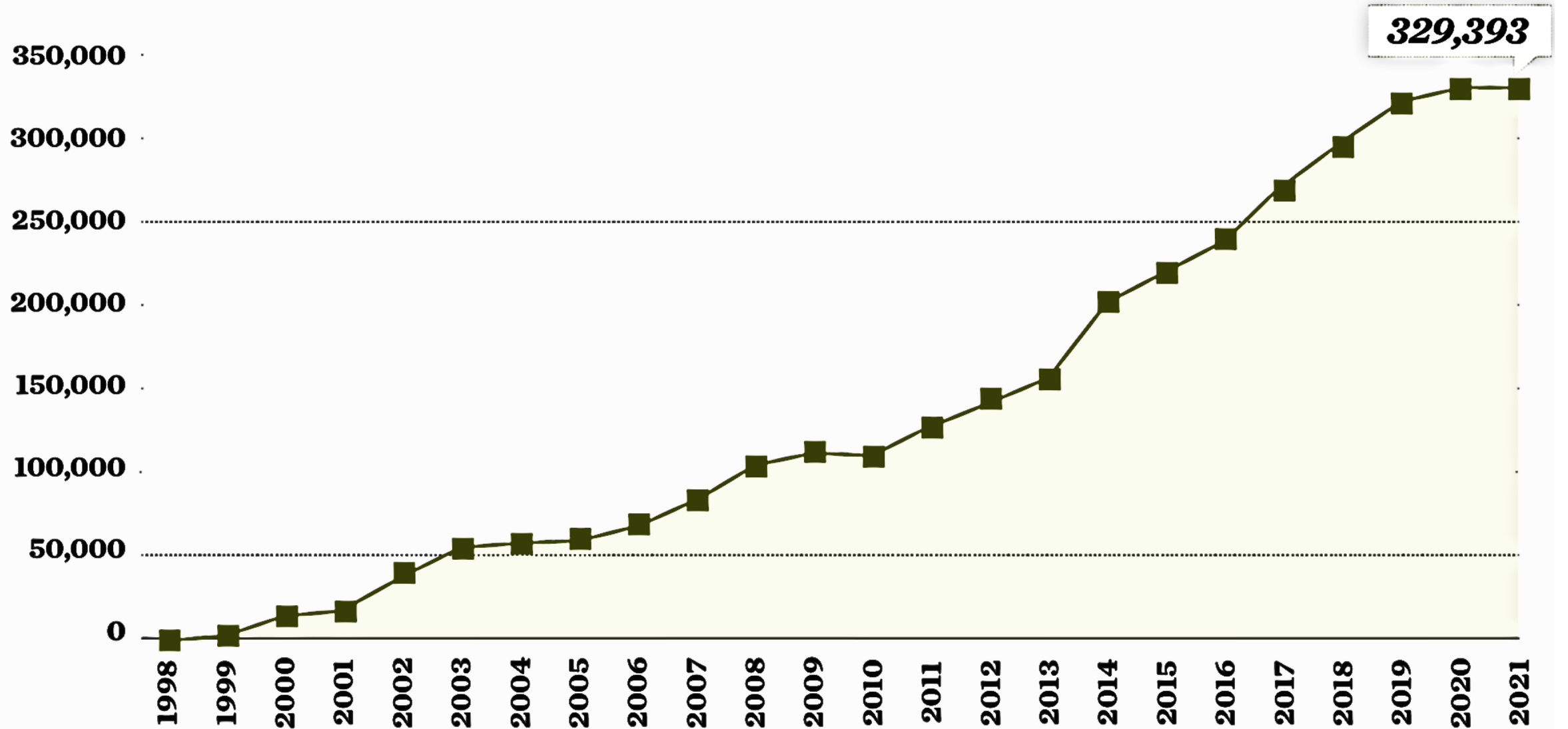


Privatize educational
decisions

State Tax Credits

- **21 states:** tax-credit scholarships
 - Scholarship nonprofit organizations
 - States reimburse donations with tax credits, up to 100%
 - Families receive scholarships for private school expenses
- **9 states:** credits or deductions for private school/homeschool expenses
- **2 states:** tax-credit education savings accounts

Number of Students Using Tax-Credit Scholarships



State Tax Credits

- Religion
- Discrimination
- Segregation



Religion

- Tax-based benefits for religion are Constitutionally permitted where direct spending would not be.
- Legal distinction between economically equivalent tax benefits and direct spending.

Arizona Christian Schools v. Winn (2011)

- Tax credit = tax cut.
- Legislative abstention is not state action.
- Private taxpayer spending, despite 100% tax credit.



Establishment Clause

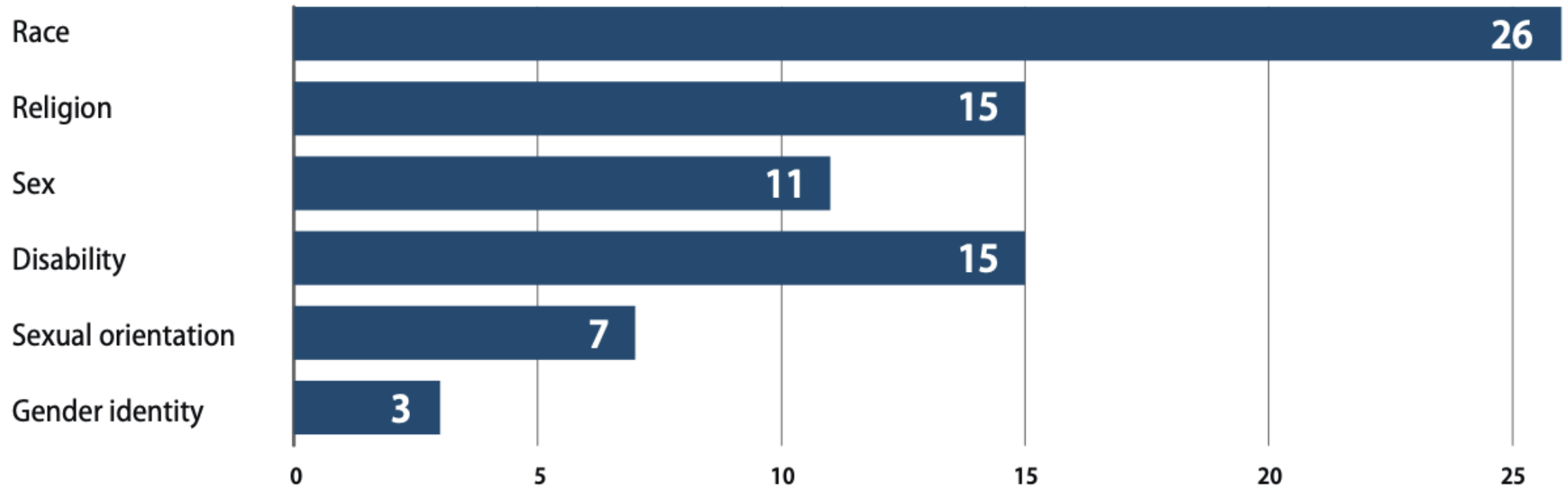
- Recent challenges to state funding of religion have lost on free exercise grounds.
- This term: *Carson v. Makin*.
 - Can Maine exclude sectarian schools from funding under a program that guarantees education to rural children?
- Tax-based funding is not a back-door workaround to unconstitutional direct funding of religion (anymore).

What about other rights?

- Is there state action if STO scholarships fund private schools that discriminate on the basis of race, sex, gender identity, or sexual orientation?
- Can students who are victims of discrimination complain?

State-law protections for private school students

State-level statutory anti-discrimination protections for students in U.S. private schools and voucher programs



Note: Some programs are counted in more than one category, as some states provide multiple protections.

Source: Center for American Progress review of state voucher and private school statutes and regulations.

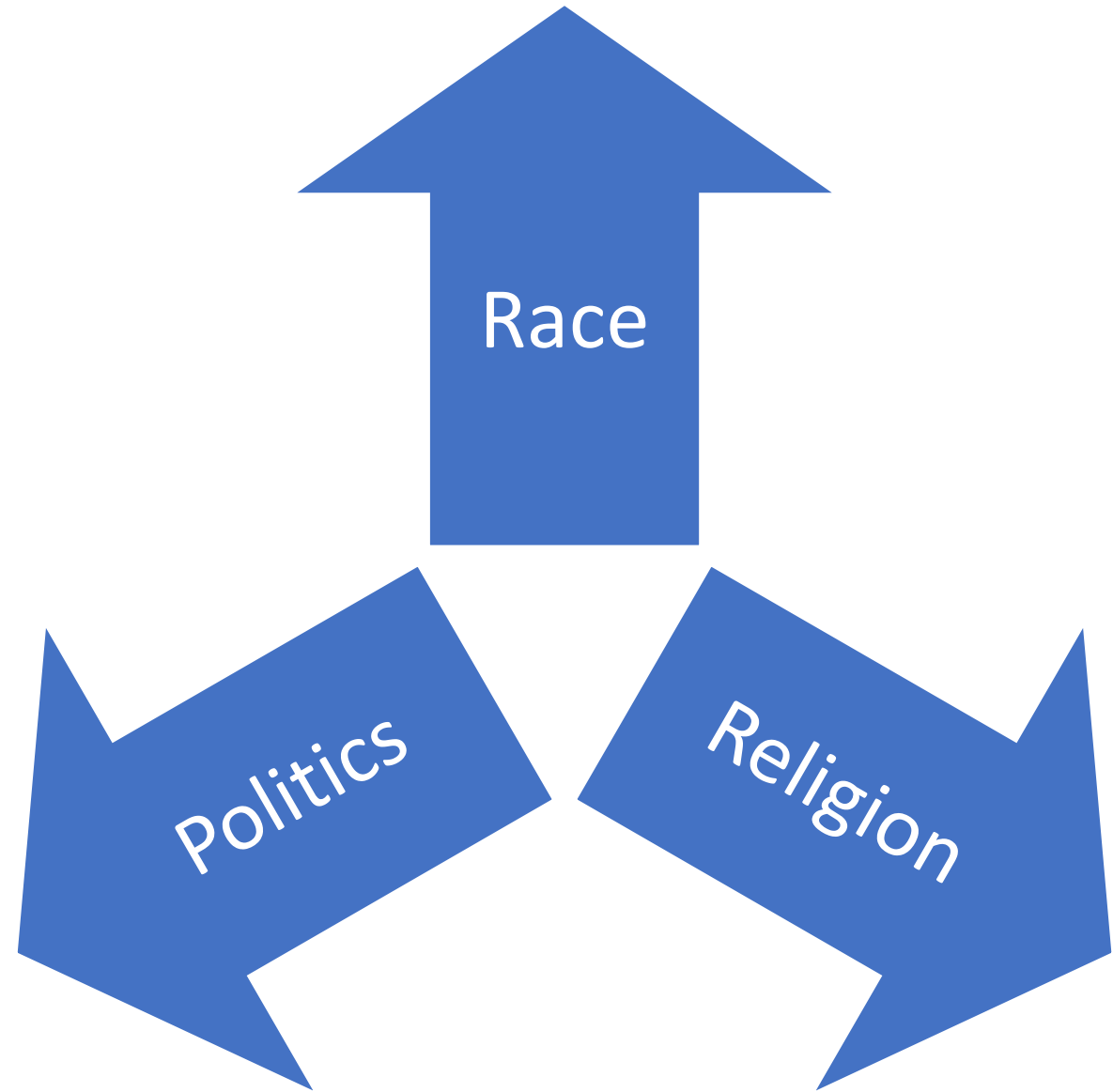
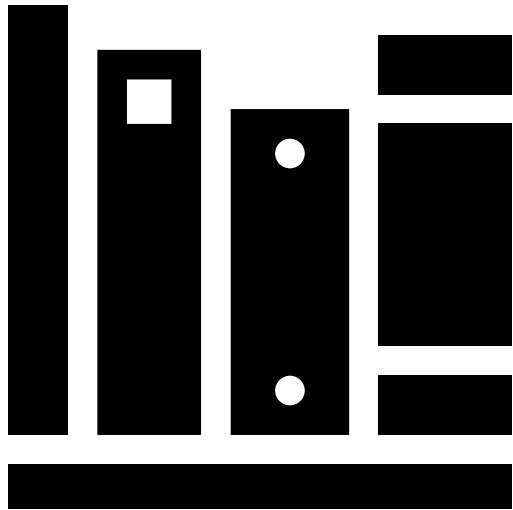
What are state tax credits subsidizing?

If they receive no federal funding, federal nondiscrimination rules don't apply to private schools.

§501(c)(3) organizations cannot discriminate on the basis of race, but not all nonprofit organizations under state law are federally tax-exempt.

How much discrimination?

Educational Segregation



A photograph of the Statue of Liberty on Liberty Island, New York. The statue is green and stands on a stone pedestal. In the background, the New York City skyline is visible, including the Freedom Tower. The sky is blue with some clouds. The water of the harbor is in the foreground.

Public Education is a Civic Good

“[P]ublic schools [inculcate] fundamental values necessary to the maintenance of a democratic political system.”

Ambach v. Norwick, 441 U.S. 68 (1979)