Tax Expenditures and Fairness in K-12 Education

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“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**
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
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

$500K +
12 States

$200K - $299K
3 States

$400K - $499K
19 States

$300K - $399K
16 States
• Deductions
• Exclusions
• Credits
State Tax Credits

- Subsidize private schools
- Divert resources from public schools
- Privatize educational decisions
• **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

https://www.edchoice.org
State Tax Credits

- Religion
- Discrimination
- Segregation
• 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.
• 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-level statutory anti-discrimination protections for students in U.S. private schools and voucher programs

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
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<tbody>
<tr>
<td>Race</td>
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<tr>
<td>Religion</td>
<td>15</td>
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<td>Sexual orientation</td>
<td>7</td>
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<td>Gender identity</td>
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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

Race

Politics

Religion
Public Education is a Civic Good

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