7

The Future of Tax Credits

MARTIN R. WEST

The turmoil surrounding school vouchers has led some lawmakers in recent years to seek out alternative means of enhancing private school choice. Derided by critics as "stealth vouchers," proposals for tax deductions and credits for private school tuition have nonetheless met with considerable political success. By the close of 2002, six states were offering tax relief for families paying private school tuition or making donations to private scholarship organizations. Each of these programs was established or significantly expanded since 1997, during which time more than twenty other states and the U.S. Congress had considered similar proposals.[1]

This flurry of legislative activity raises many questions. Where did the idea of tuition tax credits for elementary and secondary education originate, and what accounts for its recent success? Are the programs currently in place harbingers of a comprehensive federal tax credit, is the more likely course of events a gradual proliferation of state-level programs, or will

1. ECS Policy Brief, "School Choice: State Actions," Education Commission of the States, updated May 2002.

this idea wither away? What will be the impact of the Supreme Court's decision in *Zelman v. Simmons-Harris*, upholding the constitutionality of Cleveland's voucher program?

At first glance, the distinction between tuition tax credits and vouchers would appear to be as meaningless as the difference between McDonald's and Burger King. Tax expenditures—or departures from the normal tax structure favoring an activity, industry, or group—are conceptually equivalent to direct government spending.[2] Tuition tax credits and vouchers also face the same political opponents, most notably teachers unions and other public-school supporters. With considerable resources at their disposal and a clear incentive to resist increased competition, these organizations are a potent adversary for any policy that would reduce the cost of private education—even via the relatively discreet vehicle of the tax code.

Yet the apparent similarity between vouchers and tax credits for private school tuition masks important political and legal differences. For example, tuition tax credits are more popular than vouchers with the American public. When similar questions about tuition tax credits and vouchers are included on the same survey, tax credits generate higher levels of support.[3] The differences, which in recent polls range from

2. Such departures take a variety of forms. Tax credits provide a direct reduction in an individual's tax liability; a tax deduction is a reduction in taxable income made prior to the calculation of tax liability. Refundable tax credits provide individuals whose tax liabilities are less than the value of the credit with a direct cash payment. The normal tax structure used as a baseline includes existing tax rates, the personal exemption, the standard deduction, and the exemption of costs incurred to generate income. Stanley S. Surrey and Paul R. MacDonald, *Tax Expenditures* (Cambridge, Mass.: Harvard University Press, 1985).

3. For the most recent polls with questions about tuition tax credits and vouchers, see: Lowell C. Rose and Alec M. Gallup, *The 30th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes Toward the Public Schools* (Phi Delta Kappa International, 1998); Lowell C. Rose and Alec M. Gallup, *The*

8 to 14 percentage points, may reflect Americans' skepticism regarding direct government spending. Alternatively, they may reflect the fact that tuition tax credits have been spared some of the negative media coverage vouchers have received. Regardless, the pattern suggests that tuition tax credits have enjoyed at least a temporary political advantage over vouchers.

Tuition tax credits also offer lawmakers greater flexibility in program design than do vouchers. Arizona, Florida, and Pennsylvania, for example, all now offer tax credits not to tuition-paying parents but rather to individuals or corporations making donations to organizations granting scholarships for private education. By expanding the segment of the population with a stake in the policy, this approach has the potential to increase support for school choice beyond the subset of parents with a desire to move their children to private schools.

Finally, tuition tax credits have an important legal advantage over vouchers in many states. *Zelman* notwithstanding, doubts about the acceptability of vouchers continue to hinder their enactment in the majority of U.S. states whose constitutions contain more restrictive language regarding the separation of church and state. Tuition tax credits, which have generally not been construed as "public money," largely avoid this concern.

But until recently these advantages had not been sufficient to yield legislative success. As the following section documents, Congress has considered proposals to use the federal tax code to compensate families for tuition expenses intermittently for more than three decades. Originally devised as a strategy to aid struggling private schools, these proposals have

31st Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes Toward the Public Schools (Phi Delta Kappa International, 1999).

consistently failed to gain enough support to become law.[4] Congressional debates over tuition tax credits underscore a persistent obstacle confronting any school choice proposal at the federal level—their budgetary impact. The federal government spends so little on public education that financial support for private school choice inevitably amounts to substantial expenditure with little in the way of potential savings, suggesting the prospects for the expansion of school choice are most favorable in the states.

Federal Tuition Tax Credits: A Political History

Origins

The tax credit movement took off in the early 1970s in response to a fiscal crisis afflicting the nation's private schools. Foremost among the causes were the increasing cost of teachers' labor and steady reductions in class size in the public sector, with which private schools competed for students.[5] The problem of rising costs was aggravated for the Catholic schools that served more than 80 percent of all private school students by a decline in the number of nuns and priests serving as teachers.[6] With

4. An exception that proves the rule was the tentative expansion of Coverdell Education Savings Accounts in 2001 to include elementary and secondary school tuition expenses. H.R. 1836, P.L. 107–16.

5. For trends in teachers' wages and class size, and a discussion of the relationship between them, see Darius Lakdawalla, "Quantity Over Quality," *Education Next* 2, no. 3 (Fall 2002): 67–72. For trends in per-pupil spending, see Eric A. Hanushek, "School Resources and Student Performance," in Gary Burtless, ed., *Does Money Matter? The Effect of School Resources on Student Achievement and Adult Success* (Washington, D.C.: Brookings Institution Press, 2002), pp. 43–73.

6. Statement of the National Catholic Educational Association, U.S. Congress, United States Senate, Subcommittee on Education of the Committee on Labor and Public Welfare, *Hearings on Aid to Nonpublic Education*, 92d Congress, 2d sess., December 2, 1971, and January 11, 1972, p. 258.

no relief from these pressures in sight, many observers concluded that the days of a robust Catholic school system were "numbered."[7]

President Nixon's initial response to what he described as the "potential collapse" of the private sector was to designate a panel within the President's Commission on School Finance to study the problems of nonpublic schools. Nixon offered Congress a long list of reasons to justify his concern, claiming that private schools "give a spur of competition to the public schools," "give parents the opportunity to send their children to a school of their own choice and of their own religious denomination," increase "experimentation," and create "special opportunities for minorities." He placed particular emphasis on the dire fiscal consequences should the nonpublic sector be allowed to collapse. "If most or all private schools were to close or turn public," he said, "the added burden on public funds by the end of the 1970s would exceed $4 billion per year on operations, with an estimated $5 billion more needed for facilities."[8]

Eighteen months later Nixon reiterated his concern, this time before an enthusiastic audience of 1,500 Catholics gathered at a Knights of Columbus dinner: "At a time when we see those private and parochial schools . . . closing at the rate of one a day, we must resolve to stop that trend and turn it around. You can count on my support to do that."[9] Quite

7. "Catholic Schools: Their Days May be Numbered," *New York Times*, November 28, 1971.

8. Richard Nixon, "Education for the 1970s, Renewal and Reform." Reprinted in *Hearings on Aid to Nonpublic Education*, p. 62.

9. Richard Nixon, "The President's Remarks to the 89th Annual International Meeting of the Knights of Columbus in New York City," *Weekly Compilation of Presidential Documents, August 23, 1971*, p. 1179. For media coverage of the address, see "Nixon Vows to Help Parochial Schools; Cardinal Calls Government Aid a Right," *New York Times*, August 18, 1971.

clearly Nixon saw the issue as one popular with a pivotal group of voters in the period leading up to the 1972 election.

Many prominent Democrats shared the Nixon administration's interest in the continued viability of private education. In late 1971, for example, the Senate Committee on Labor and Public Welfare's Subcommittee on Education, chaired by Democratic Senator Claiborne Pell of Rhode Island, held a series of public hearings to devise strategies to allocate government funds to private schools.

Any proposal Pell's committee devised would inevitably raise doubts regarding its constitutionality. In June of 1971 the Supreme Court in *Lemon v. Kurtzman* struck down a Pennsylvania statute that reimbursed private and parochial schools for the cost of providing education in secular subjects. The *Lemon* decision established a more stringent constitutional standard to be applied to statutes providing aid to religious schools. Previous decisions had relied exclusively on the "purpose test" (does the statute reflect a legitimate secular purpose?) and the "primary effect test" (is the primary effect of the statute to advance or inhibit religion?). Without dismissing these guidelines, the *Lemon* court added a third that asked whether the administration of the statute would lead to "excessive entanglement" of government with religion. The Pennsylvania statute failed this test by requiring that the state monitor instruction in religious schools to ensure that it was conducted in accordance with statutory restrictions.

The court's reasoning in *Lemon* created something of a dilemma for those seeking to channel government funds into failing private schools. As Stephen Kurzman of the Department of Health, Education, and Welfare explained to Pell and his committee:

> [T]he government may not, in giving assistance to sectarian schools, permit that assistance to be used to promote religion. But if the government takes steps to see to it that the assistance is not used for that purpose, the government is likely to become "excessively," and therefore unconstitutionally, "entangled" with religion.[10]

The fact that tax credits did not involve actual government expenditures minimized constitutional concerns. In fact, the same criteria applied to strike down the Pennsylvania tuition reimbursement program in *Lemon* had been fashioned in a 1970 ruling *upholding* the constitutionality of property tax exemptions for religious institutions in New York.[11] It was therefore predictable that Nixon's special Panel on Nonpublic Education would include among its recommendations, issued on April 14, 1972, the "prompt enactment by Congress of legislation to authorize Federal income tax credit to parents for part of tuition payments to nonpublic elementary and secondary schools."[12]

Despite the panel's report, it was not until 1976 that a measure offering direct tax relief for private school parents received a floor vote in either chamber of Congress. In that year,

10. Statement of Assistant Secretary for Legislation Stephen Kurzman, *Hearings on Aid to Nonpublic Education*, p. 13. The severity of this constraint should not be overstated; the Supreme Court had previously found constitutional a variety of government programs providing financial assistance to religious schools for legitimate secular purposes, such as the transportation of pupils and the purchase of textbooks. Yet discussions in both Congress and the media indicate that there was a great deal of uncertainty about what was currently permissible and how precedent was likely to evolve in the future.

11. *Walz v. Tax Commission of New York*, 397 U.S. 664 (1970).

12. The President's Panel on Nonpublic Education, *Nonpublic Education and the Public Good*, April 1972. Reprinted in U.S. Congress, House of Representatives, Committee on Ways and Means, *Hearings on Tax Credits for Nonpublic Education*, 92d Congress, 2d sess., August 1972, pp. 107–71.

Senator James Buckley, a Catholic Republican from New York initially elected as a member of the Conservative Party, offered a floor amendment to the 1976 Tax Reform Bill that would have made all taxpayers eligible for a modest tax credit of up to $1,000 annually for tuition payments to institutions of higher education, vocational schools, and elementary and secondary schools. The measure was defeated by a 52–37 vote, with Republicans voting 18–16 in favor, and Democrats 19–36 opposed.[13] Although unsuccessful, Buckley's proposal set the stage for a more extended debate just two years later.

1978: Victory in the House

The 1978 struggle over tax credits for elementary and secondary school tuition began as part of a broader debate over similar credits for higher education. Like most tax measures, discussion of tuition tax credits began in the House Ways and Means Committee. Arguments for including elementary and secondary school tuition expenses centered on the still precarious financial situation of private and parochial schools. Organizations representing these schools lobbied extensively on the Hill and committee members from heavily Catholic districts were inundated with mail from constituents. Three such members, each of them senior Democrats, emerged as leading supporters of elementary and secondary credits: Daniel D. Rostenkowski of Illinois, James A. Burke of Massachusetts, and Charles A. Vanik of Ohio, also the bill's sponsor.[14]

The efforts of interest groups representing private schools

13. "College Tuition," *1976 Congressional Quarterly Almanac* (Washington, D.C.: Congressional Quarterly, 1976), p. 21, 66-S.

14. "Tuition Tax Credit Fails Under Veto Threat," *1978 Congressional Quarterly Almanac* (Washington, D.C.: Congressional Quarterly, 1978), p. 249.

were more than matched by opposition from others claiming to represent the interests of public schools. The newly formed National Coalition to Save Public Education gathered 500 lobbyists in Washington, and the nation's largest teachers union, the National Education Association, had 170 members on Capital Hill with "their energies focused in one place."[15] The National Congress of Parents and Teachers brought in operatives from each of the states represented by a member of the Ways and Means Committee. This pressure initially proved effective, as a 20–16 majority on the committee voted to remove the elementary and secondary tax credits from the bill.

Nonetheless, the Democratic leadership on the House Rules Committee agreed to allow the entire House to vote on the issue, in part because influential opponents of tuition tax credits for higher education believed the bill would be less likely to be enacted if the elementary and secondary credits were included. Their expectations were realized, though not immediately. After narrowly adopting a new amendment from Vanik to reinsert the credits for elementary and secondary education, the House on June 1 passed the bill by a 237–158 vote.

Opposition lobbyists attributed their failure in the House to their relatively late engagement with the issue; many members had declared their support for elementary and secondary credits before the opposition coalesced. Regardless, they were buoyed by the fact that support for the bill remained substantially shy of the two-thirds majority that would be necessary, should President Carter follow through on his threat to veto. Whether or not Carter would face that decision depended on events in the Senate.

15. The quote is from NEA president John Ryor in the *1978 Congressional Quarterly Almanac*, p. 249.

1978: Defeat in the Senate

On August 3 the Senate Finance Committee reported its own tuition tax credit bill. William V. Roth (R-Del.), Robert W. Packwood (R-Ore.), and Daniel Patrick Moynihan (D-N.Y.) co-sponsored the proposal, which closely matched the House-passed bill in its basic structure. While Roth had long advocated tuition tax credits for higher education, Packwood and Moynihan were strong proponents of elementary and secondary credits.

Earlier that year, Packwood and Moynihan had put forward another, more generous tuition tax credit proposal. Their initial proposal offered credits with a maximum value of $500 per child, as opposed to $250 in the House-passed bill, and were fully refundable for families without tax liabilities. The refundability provision, which would have necessitated a $117 million appropriation in fiscal year 1979, led the bill to be referred to multiple committees. In Appropriations, Ernest F. Hollings (D-S.C.) vigorously opposed the bill. After an initial attempt to prevent the bill from even reaching the floor, he moved to report it with a negative recommendation. The following day the Budget Committee, too, reported its requisite waiver resolution unfavorably, leaving the bill little chance of success. Suitably chastened, Packwood and Moynihan withdrew their prefered proposal and adopted an approach more in line with the provisions of the House-passed bill.

As in the House, the status of elementary and secondary school tuition expenses dominated the Senate's discussion of the broader tuition tax credit legislation. Some of the most vocal critics of the elementary and secondary credits worried about their implications for segregation and the quality of education available to black students. Kaneaster Hodges (D-Ark.), for example, complained that the bill would "cause resegregation, and give aid and comfort to those who are trying to avoid integrated schools in the South."[16] To forestall such concerns, Packwood and Moynihan had included provisions excluding tuition at schools found to be discriminatory and mandating the creation of a cabinet-level committee to study the credits' impact on segregation. A last-minute Moynihan amendment went further, explicitly designating the maintenance of diversity a fundamental educational goal. The amendment was adopted with unanimous support.

Other opponents of the bill questioned whether the credits were constitutional. Packwood and Moynihan readily admitted that the issue was not clear-cut, but argued that the only way to settle the matter was to pass the bill and let the courts decide. Moynihan ultimately offered another amendment that wrote this uncertainty into the bill itself in an attempt to placate those who felt Congress was overstepping its bounds. The amendment deleted from the preamble of the bill a clause declaring the credits to be constitutional, substituting in its place language indicating that this was an issue for the courts to decide. The Senate adopted this final amendment with a 56–42 vote.

Yet despite these efforts, Moynihan was ultimately unable to navigate the bill safely through the full Senate. The public school lobby again coordinated opposition, arguing that the measure would undermine support for public education, leading to massive funding cuts. When Senator Hollings offered an amendment deleting the elementary and secondary credits, the Senate adopted the measure by a 56–41 vote.

16. Ibid., p. 254.

The House-Senate Conference: No Common Ground

On September 28, the House-Senate conference committee formed to iron out differences between the two chambers' bills approved a compromise version without the controversial elementary and secondary credits. House conferees Vanik, Rostenkowski, and Burke, apparently uninterested in college tax credits that would not also benefit private and parochial elementary and secondary schools, declined to sign the conference report. While dropping the elementary and secondary credits clearly diminished the enthusiasm of supporters, opposition to the bill remained fierce. The National Coalition to Save Public Education argued that tax credits for higher education would set a harmful precedent that could later be expanded to encompass compulsory schooling.

On October 12, the House voted to recommit the conference report with clear instructions to reinsert the elementary and secondary credits. Their insistence sealed the fate of the entire tax credit bill, which only six months earlier had been expected to sail through Congress without a hitch. The conference committee made one last attempt to design a bill acceptable to both houses, but the Senate rejected the compromise version offering credits for college and secondary (but not elementary) school tuition by voice vote.

Equity and Cost

In addition to issues of race and constitutionality, the 1978 defeat of tuition tax credits also reflected concerns regarding equity and cost. President Carter justified his opposition to higher-education tax credits on the grounds that they would go disproportionately to wealthy families and exclude entirely low-income families who did not pay income taxes. Joseph A.

Califano, Carter's Secretary of Health, Education, and Welfare, told the Ways and Means Committee that the administration was convinced that "many middle income families will invest the same amount of money in higher education regardless of the credit," making the tax credit nothing more than a "general form of tax relief."[17] As an alternative, the administration proposed an increase in the size of Basic Educational Opportunity Grants (BEOG) for higher education available to low-income students.

Several members of Congress attempted to address Carter's concerns within the tax credit framework. Howard M. Metzenbaum (D-Ohio), for example, offered an amendment to the Senate bill that would have phased out the credits for families with annual incomes above $30,000, with families earning more than $40,000 completely ineligible. However, Metzenbaum's amendment failed after opponents argued that the increasing cost of higher education affected families with incomes well above $40,000. Rep. Michael J. Harrington (D-Mass.), who had recently retired from public office on the grounds that he could not afford to send his children to college on his $57,500 congressional salary, poignantly illustrated their claim.[18]

Limiting eligibility for tuition tax credits would also have reduced the program's total cost. Supporters of the Metzenbaum amendment claimed that it would reduce expenses by more than $2 billion. But many budget hawks worried less about the credits' immediate fiscal impact than about their long-term consequences. Budget Committee Chairman Edmund S. Muskie (D-Maine) called the tuition tax credit bill

17. Testimony of Secretary of Health, Education, and Welfare Joseph A. Califano, Jr., before the U.S. Congress, House of Representatives, Committee on Ways and Means, *Hearings on Tax Credits for Nonpublic Education*, 92d Congress, 2d sess., August 1972.

18. *1978 Congressional Quarterly Almanac*, pp. 254–55.

a "Trojan Horse," that "would unleash our worst domestic enemies—more deficit spending, more inflation and more unbalanced budgets."[19] Equally colorful language was heard in the House, where George E. Danielson (D-Calif.) warned his colleagues that the idea of tuition tax credits "is only the nose of the camel under the flap of the tent, and once this idea gets in, it will grow and grow."[20]

To avoid such concerns regarding universal tuition tax credits, Senator Moynihan in 1980 opened a new front in the battle for government aid for nonpublic schools. Moynihan proposed to make BEOG grants available to students in private elementary and secondary schools, with eligible families receiving a grant of up to $750 a year for each child in private school. "Baby BEOGs," as he called them, would be restricted to parents earning less than $20,000 annually. Moreover, unlike most previous tax credit proposals, the grants would have benefited even families without tax liabilities. The new strategy, similar in structure to subsequent voucher schemes, failed to win new converts and was defeated by a large majority.

1981: New Faces, Same Result

In retrospect, the decision of Moynihan—long the most outspoken proponent of tuition tax credits for elementary and secondary education in either body of Congress—to propose an alternative foreshadows their later withdrawal from the policy agenda. Yet tuition tax credits continued to generate legislative interest well into the 1980s. In fact, the combination of Ronald Reagan's election as president and the Republican takeover of the Senate in 1980 led to considerable optimism among tax

19. Quoted in ibid., p. 254.
20. Ibid., p. 252.

credit proponents. The Senate's new composition led Moynihan to declare his "impression . . . that we now have a majority for the bill."[21] Sheldon E. Steinbach, general counsel for the American Council on Education and a member of the President-elect's task force on education policy, was more emphatic, calling the election results "a mandate for tuition tax credits."[22] In early 1981 Moynihan and Packwood attempted to capitalize on the opportunity by co-sponsoring another bill offering families a tax credit of up to $250 for each student enrolled in a private school.

Yet the strengthened position of credit advocates only served to increase the sense of urgency among their opponents. On June 8, a coalition of 400 organizations delivered 100,000 letters to the offices of Moynihan and the junior senator from New York, Republican Alfonse D'Amato. American Federation of Teachers (AFT) president Albert Shanker left reporters at the scene with no doubts as to what he believed to be at stake: "This is not a teacher issue," he asserted. "The issue is the future of public education."[23] Though rabbis, Roman Catholic bishops, and leaders of the Moral Majority all testified before the Finance Committee in favor of the bill, no action was taken once the bill reached the Senate floor.

1982–1983: Reagan and Tax Credits

In 1982 the Reagan administration assumed a more active role in support of tuition tax credits. Reagan announced his administration's proposal in a speech delivered on April 15 to a

21. Quoted in Marjorie Hunter, "Proponents of Tuition Tax Credits Optimistic as a Result of Election," *New York Times*, Novermber 17, 1980, p. D11.

22. Quoted in Dan Morgan, "GOP Victory Greatly Aids Chances of Enacting Tuition Tax Credits," *Washington Post*, November 8, 1980, p. A5.

23. Quoted in "2 Senators Given 100,000 Letters Opposing Tuition Tax-Credit Plan," *New York Times*, June 9, 1981, p. B14.

Chicago gathering of the National Catholic Educational Association: "I believe that Americans are over-taxed and under-appreciated and I have come to Chicago to offer relief."[24] Reagan's comments suggest his administration viewed tuition tax credits as a useful weapon in their ongoing struggle with Democrats for the allegiances of Catholic and blue-collar voters. The Democrats, their hands tied by their increasingly close relationship with the teachers unions, were unable to respond.

Reagan's plan, which he submitted to Congress on June 23, called for tax credits equal to 50 percent of tuition up to a maximum of $100 in 1983, $300 in 1984, and $500 in subsequent years. Families with gross incomes of more than $75,000 would be ineligible for the credit, which would begin to be phased out for families with incomes above $50,000. The Senate Finance Committee reported a modified version of this proposal to the Senate floor on September 23.

In spite of its measured approach, the proposal's cost still left Reagan with a formidable political challenge. With budget deficits growing in the wake of his 1981 tax cut, the president had already called for a reduction in federal spending on education. A simultaneous increase in funding for private education could only be interpreted as a slap in the face of the nation's public schools. As National Education Association (NEA) president Willard McGuire put it, "There can be no justification for spending billions of dollars for private and church-related schools at a time when the Reagan administration says it can't afford to support the public schools."[25] With

24. Quoted in Herbert H. Denton, "Tuition Tax Credit Plan Is Outlined; Reagan Urges Cut as 'Equity' for Working Families," *Washington Post*, April 16, 1982, p. A1.

25. Quoted in "Tuition Tax Credit" *1982 Congressional Quarterly Almanac* (Washington, D.C.: Congressional Quarterly, 1978), p. 489.

Hollings threatening to organize a filibuster, no action was taken on the bill.

The fact that fiscal concerns remained an obstacle to the enactment of tuition tax credits even when they were broken off from aid for college students is initially puzzling. As economists pointed out at the time, by inducing additional families to move from the public to private schools, tuition tax credits can actually *reduce* total government spending on education.[26] But any benefits associated with reductions in expenditures as a result of pupil migration would have accrued primarily to the states and localities, which were responsible for the bulk of spending on public education. The short-run implications for the federal budget were undeniably negative.

Two outside events caused the 1983 debate over tuition tax credits to differ from previous renditions. The first was the April release of *A Nation at Risk*, the heavily publicized report of Secretary of Education T. H. Bell's National Commission on Excellence in Education.[27] *A Nation at Risk* mentioned neither tuition tax credits nor any other form of choice-based reform. Yet by drawing attention to the deteriorating performance of American high schools, the report increased interest in the policy's implications—both good and bad—for the quality of

26. E. G. West, "The real costs of tuition tax credits." *Public Choice* 46 (1985): 61–70. West estimated that in the case of the $300 tax credit the Reagan administration proposed in 1983 only 1 percent of public school students would have to transfer to private schools in order for the government to "break even." This estimate rested on a number of dubious assumptions. Specifically, West assumed that the elasticity of supply for private education was infinite, that the marginal costs of public education were equal to average costs per student, and that the public schools would not be able to use their political influence to maintain current expenditure levels despite falling enrollments. Still, the proposals "real" costs would clearly have been less than contemporary estimates indicated.

27. National Commission on Excellence in Education, *A Nation at Risk* (Washington, D.C.: Government Printing Office, 1983).

public education. Advocates spoke more frequently about the salubrious effects of competition, while the NEA and the AFT warned that tuition tax credits would jeopardize the nascent excellence movement by diverting resources from the public schools.

The second external shock was the Supreme Court's June 29 decision in *Mueller v. Allen* upholding a relatively small Minnesota state income tax deduction for tuition, textbooks, and transportation expenses available to both public and private school students.[28] Senator Moynihan cautiously welcomed the *Mueller* decision as a "message to Congress that such tax relief measures to help parents educate their children are not *de facto* unconstitutional," and even Albert Shanker admitted that "the Supreme Court decision will provide some new life to tax credit supporters," enabling them to "pick up a few votes" in Congress.[29]

Yet speculation in the press that tuition tax credits might "go further this time" proved mistaken as fiscal considerations were again decisive.[30] The Reagan administration's proposal offered tax credits rather than tax deductions and did not include public school students, leaving the relevance of the *Mueller* decision unclear. Extending the credits to include public school students would have substantially increased their expected cost, making it politically infeasible. Ultimately, an amendment from Senator Robert Dole (R-Kan.) to attach tuition tax credits to a minor tariff bill was defeated 59–

28. 463 U.S. 756 (1973).

29. Quoted in Felicity Barringer, "Tuition Tax Credit Advocates Sing Muted Hosannas," *Washington Post*, June 30, 1983, p. A13; see also Robert Pear, "Ruling Touches Off New Debate on Prospects of Tuition Tax Credits," *New York Times*, June 30, 1983, p. D23.

30. Curtis J. Sitomer, "Why the Tuition Tax Credit Push May Go Further This Time," *Christian Science Monitor*, May 11, 1983, p. 3.

38, a margin of defeat wide enough to generate widespread doubts about their future political viability.[31]

From Tax Credits to Vouchers

The close of the 1983 legislative session would prove to be the last time for nearly two decades that Congress would devote sustained attention to tuition tax credits for elementary and secondary education. The disappearance of tuition tax credits from the legislative agenda is closely associated with the emergence of school vouchers as a credible policy proposal. Secretary of Education William J. Bennett entered office in 1985 as a vocal supporter of both policies.[32] But tuition tax credits were notably absent from the administration's 1986 budget proposal. The administration instead put forward a plan to convert Title I, the existing federal compensatory education program for disadvantaged students in public schools, into a program that would give low-income families the option of a $600 voucher to help send their children to private schools.

Although ultimately unsuccessful, the idea of converting Title I money into portable vouchers had much to recommend it politically, especially in view of the administration's disappointing experience with tuition tax credits. First, Title I vouchers would be restricted to students from low-income families, making it impossible for the program to be criticized as welfare for the rich. Furthermore, since the Title I proposal essentially amounted to a change in how an existing program

31. A similar proposal introduced in the House Ways and Means Committee by Bill Gradison (R-Ohio) failed even to make it out of committee. Among the leading opponents of Gradison's bill was Democratic committee chairman Dan Rostenkowski, who since 1978 had adopted his party's stated position on the issue.

32. William J. Bennett, *The De-valuing of America* (New York: Summit Books, 1992).

was administered, it would not require an increase in federal spending on education (although it would surely have attracted attention in the courts if it included religious schools).

The withdrawal of Republican support for tuition tax credits continued under Reagan's successor. George H. W. Bush initially distanced himself from the issue, choosing not to discuss it during the 1988 campaign.[33] Then, in a May 1989 appearance with a group of seventy-five high school students invited to the White House, a private school student from Hawaii asked the President if his parents should receive a tax break. "No they shouldn't," Bush replied, and proceeded to elaborate on his position. "I think everyone should support the public school system and then if on top of that your parents think they want to shell out, in addition to the tax money, tuition money, that's their right."[34]

Tuition Tax Credits and the Politics of Tax Expenditures

A variety of factors make it a commonplace among political scientists that tax expenditures are more easily passed than

33. Barbara Vobejda, "New ABCs for Campaigning on Education; Bush Quiet on School Prayer, Tuition Tax Credits; Dukakis Urges Modest Programs," *Washington Post*, September 18, 1988, p. A11.

34. Quoted in "Bush Comes Out Against Private-Tuition Tax Credits," *St. Louis Post-Dispatch*, May 30, 1989, p. 4B. While rejecting tuition tax credits, Bush continued to press Congress to accept school vouchers. His budget proposal for 1992 included a $500 million voucher plan, the "GI Bill for Kids," that would have provided $1,000 vouchers for low- and middle-income families. Lynn Olson and Julie A. Miller, "Self-Styled 'Education President' President Places His Case Before Voters," *Education Week* (February 12, 1992).

direct government spending programs.[35] During much of the twentieth century legislators simply "had better information about the costs of direct expenditures than about the costs of tax expenditures." Moreover, while the creation of a direct spending program typically requires new legislation, "tax expenditures can be tucked away in must-pass revenue bills." Tax expenditures also often lend themselves to "strategic representation"—that is, they can be defended on a variety of different grounds, broadening their appeal. Because tax expenditures are authorized and funded by the same committee in Congress, "[t]he number of possible veto points in Congress is . . . cut in half."[36] Finally, it is notable that the committees with jurisdiction over tax policymaking, the House Ways and Means Committee and the Senate Finance Committee, are among the most influential in their respective chambers.

In the case of tuition tax credit proposals in the 1970s and 1980s, however, these advantages proved insufficient to deliver legislative success, calling into question the usefulness of the tax expenditure framework as the primary lens through which to view this issue. Tuition tax credits did not reach the legislative agenda until after the 1969 publication of the first official budget for tax expenditures had revealed the scope of this previously "hidden" component of American social pol-

35. Christopher Howard, *The Hidden Welfare State: Tax Expenditures and Social Policy in the United States* (Princeton, N.J.: Princeton University Press, 1997), p. 178. Howard's thorough study is only the latest piece of research to reach this conclusion, and also the most relevant given its focus on tax expenditures as an instrument of social policy. Earlier works include Theodore J. Eismeier, "The Power Not to Tax: A Search for Effective Controls," *Journal of Policy Analysis and Management* 1, no. 3 (1982): 333–45; John F. Witte, *The Politics and Development of the Federal Income Tax* (Madison: University of Wisconsin Press, 1985).

36. Howard, *Hidden Welfare State*, pp. 178–80.

icy. Meanwhile, the Budget and Impoundment Control Act of 1974 ensured that most subsequent House revenue bills would be considered under rules allowing amendments deleting and modifying specific provisions on the House floor. By reducing the revenue committees' dominance, these two changes opened tax policymaking to greater involvement on the part of interest groups.

Unlike most tax expenditures, the way the cost of tuition tax credits was calculated actually made them an especially easy target for criticism. By ignoring the potential implications of pupil migration from the public to the private sector, the official reports produced by Congress and later by the Reagan administration typically *over*estimated their costs, at least for the government as a whole. Moreover, the policy's immediate costs were not alone in attracting close scrutiny. Oft-expressed fears that tuition tax credits, if enacted, would grow more expensive over time suggest that many members of Congress had been burned in the past by tax expenditures and were disinclined to let that happen again. The salience of these concerns is evident from the fact that the tuition tax credit bills passed by each chamber in 1978 were slated to expire within three years, a rarity for tax expenditures.[37]

At various points, proponents of tuition tax credits did attempt to facilitate their passage by attaching them to other legislative vehicles. A case in point is Senator Buckley's unsuccessful effort to add them to the 1976 Tax Reform Bill. Similar strategic considerations explain the decision of Senators Packwood and Moynihan in 1978 to fold their proposal into Senator Roth's tax credit bill for higher education, a bill expected to generate widespread popular support. But as the latter example demonstrates, tuition tax credits for elementary

37. Howard, *Hidden Welfare State*, p. 90.

and secondary education were controversial enough to bring down otherwise popular pieces of legislation.

This controversy often reflected genuine substantive concerns regarding their implications for segregation and public school quality, as well as doubts about their constitutionality. But these anxieties were transformed into effective political influence largely by the highly coordinated efforts of a diverse coalition of interest groups under the leadership of the teachers unions. The unions' opposition to tuition tax credits is entirely understandable. By threatening to increase the number of students attending private schools (or at least to stave off its decline), tuition tax credits were in conflict with the unions' basic goal of expanding their ranks and limiting competition. Moreover, the sheer volume of economic and electoral resources at their disposal made politicians receptive to their concerns.[38] Significantly, the only bill containing tuition tax credits for elementary and secondary education to survive a floor vote in Congress came up at a time when the opposition admitted it had been caught off guard and was late in beginning its lobbying efforts.

The interests and influence of the public school lobby also help account for the failure of strategic representation to placate opposition to tuition tax credits sufficiently for them to gain passage. Advocates of tuition tax credits certainly defended them on multiple grounds, often simultaneously. The credits were presented as aid to private and parochial schools, tax relief for the families who attended them, and—especially following the 1983 release of *A Nation at Risk*—a

38. On the interests of teachers unions, see Terry M. Moe, "The Future of School Vouchers," this volume; on their political resources, including their capacity to turn out voters, see Moe's "Political Control and the Power of the Agent," Annual Meeting of the Midwest Political Science Association, April 2003, Chicago.

way to generate quality improvement in the public sector. Yet none of these justifications could change the mind of the suppliers of public education, who remained "unalterably opposed" to legislation providing tax credits for private school tuition expenses.[39]

Finally, most of the tuition tax credit proposals taken up in Congress during this period offered credits to all families with students in private schools. Owing to budget constraints, these credits were necessarily small in size. This approach made it difficult for politicians to mobilize intense support for the programs among any one segment of the population. It also subjected the policies to criticism on the grounds that too large a portion of the benefits would go to the relatively wealthy, and that they were too small to allow the relatively poor to gain access to the private sector.

Moreover, by benefiting only those families with positive tax liabilities, most tuition tax credit proposals excluded altogether the most disadvantaged segment of the population, including many of those with the greatest interest in moving their child to a private school. Making the credits refundable would have allowed them to reach much of this group. However, as Senators Packwood and Moynihan learned in 1978, adopting this tactic meant forgoing the advantage of approval and funding from a single Congressional committee. Proponents of tuition tax credits therefore faced a catch-22: designing tuition tax credits that were both equitable and large enough to make a substantive difference to parents' educational choices decreased the likelihood of legislative success.

In short, by the mid-1970s tax expenditures had become such an important and expensive part of American social pol-

39. National Education Association, *Tuition Tax Credits* (NEA Government Relations, 1982).

icy that their costs were no longer ignored. Indeed, they may even have been subjected to additional scrutiny. The fact that the tuition tax credits under consideration were to be offered by a level of government with little financial responsibility for public education meant that the expected costs were not insubstantial. Equally important was the existence of an established universal system of government-provided services in competition with the private providers who would benefit from the tax break, a challenge that has not confronted most other tax expenditures. Regardless of how politicians presented tuition tax credits and the legislative vehicle they chose, the public school lobby remained opposed, quite simply because it was in their interests to do so. This structural opposition, deeply rooted in the electoral incentives and partisan ties of legislators, repeatedly gave the lie to brief moments of optimism among the policy's supporters following favorable election results or encouraging news from the courts.

State Tuition Tax Credits: The Political Future

Yet tuition tax credits have reappeared on the agenda, with new programs already established in several states and discussions under way in others and in Congress. The state-level programs now in place in Minnesota, Illinois, and Iowa resemble earlier federal proposals—that is, they reduce the tax liabilities of all eligible families with children in private schools. The greater degree of success tax credit legislation has achieved at the state level is consistent with the observation that the states are better positioned than the federal government to reap any fiscal gains from students switching to the private sector.[40]

40. The extent to which states and districts would gain fiscally from a reduction in the number of pupils enrolled in public schools is a matter of

Three other states have been more innovative, designing tax credit programs in such a way as to increase their effectiveness and political support. In 1998 Arizona introduced a nonrefundable state income tax credit of up to $625 for contributions to Student Tuition Organizations that disburse scholarships to families with children in private schools. Although there are no statutory restrictions on eligibility for the scholarships, the majority of participating organizations claim to distribute their scholarships according to need.[41]

By providing awards concurrent with actual enrollment in a private school, the scholarship approach has a significant advantage in targeting low-income students even over refundable tax credits, which typically require families to wait up to a year after making a tuition payment to receive their subsidy. Moreover, the use of scholarship organizations may give the program an edge over voucher systems that do not provide families with assistance in choosing a private school or securing a place for their child: scholarship organizations may come to see the placement of students as part of their mission.[42]

The scholarship organization approach also expands the number of potential participants in the program, since even families without children are eligible to claim the credit. This alone may lead to enhanced popular support, assuming that people value the opportunity to donate money to a scholarship

considerable debate. It is unlikely that spending would decrease by the full value of average per-pupil expenditures, at least in the short run. But the long-run productivity gains from increased competition could be substantial, leading to even larger spending reductions.

41. Carrie Lips and Jennifer Jacoby, "The Arizona Scholarship Tax Credit: Giving Parents Choices, Saving Taxpayers Money," *Cato Institute Policy Analysis*, no. 414, p. 1.

42. The fact that the Arizona legislation requires credit-eligible organizations to distribute at least 90 percent of their revenues each year as scholarships may hinder their ability to pursue this goal effectively.

organization. That they do seems apparent from the growing number of taxpayers participating in the program. In 1998, the first year of the program, 4,247 taxpayers made contributions to fifteen different scholarship organizations; by 2000, 37,368 taxpayers made contributions to thirty-four organizations.[43]

Similar programs established by Pennsylvania and Florida in 2001 offer corporations rather than individual taxpayers tax credits for donations to scholarship organizations.[44] Pennsylvania allocates its credits on a first-come, first-served basis, up to a maximum of $20 million each year for the entire state. Despite the fact that the program does not allow businesses to recover the full value of their donation, the upper limit was easily reached during the program's first year. Apparently Pennsylvania businesses place a substantial positive value on the ability to contribute money to local scholarship organizations rather than send it to Harrisburg, perhaps because of the positive media coverage generated. The establishment of a reasonable upper limit on donations goes a long way toward eliminating uncertainty regarding the amount of scholarship funds that will be available each year. Both Pennsylvania and Florida also set strict limits on eligibility for the funds distributed by participating scholarship organizations, making it difficult to charge that scholarship recipients are not in need of assistance.[45]

43. Lips and Jacoby, "Arizona Scholarship Tax Credit," p. 4.

44. In Florida, businesses can receive a dollar-for-dollar tax credit for donations to scholarship organizations up to 75 percent of their corporate income taxes, with an aggregate limit of $50 million for the state as a whole. In Pennsylvania, businesses receive a tax credit equal to 75 percent of the value of their donation, with a maximum credit for a single company $100,000 annually. The value of the credit grows to 90 percent if they are willing to make a two-year commitment.

45. Eligibility for scholarships in Pennsylvania is limited to families with a household income level of $50,000 or less, with an additional allowance of $10,000 for each eligible student and dependent member of the household.

A final design innovation has been the strategic packaging of tuition tax credits with similar programs benefiting public schools and their employees. Arizona legislators paired tax credits for donations to scholarship organizations with smaller credits of up to $200 for cash contributions to local public schools or fees paid for extracurricular activities. Scholars have since criticized these credits on equity grounds, since the schools with the least disadvantaged students receive the lion's share of the donations.[46] Nevertheless, they played a key role in securing the program's passage. Pennsylvania's tax credit program similarly provides $10 million in credits for donations to public school foundations funding "innovative educational programs." The enthusiastic response of scattered superintendents to the windfalls generated for their districts has helped to offset criticism of the program from the state teachers union.[47]

Although the distribution of responsibility for funding education of education finance suggests that the outlook for school choice programs is most promising at the state level, constitutional issues suggest caution. As if to illustrate this point, only weeks following the *Zelman* decision a Florida Circuit Court judge struck down his state's voucher program, citing the state constitution's "clear and unambiguous" prohibition on the use of public money to attend sectarian schools.[48] The

Florida limits eligibility to students eligible for the national free or reduced-price school lunch under the National School Lunch Act.

46. Glen Y. Wilson, "The Equity Impact of Arizona's Education Tax Credit Program: A Review of the First Three Years (1998–2000)," Education Policy Studies Library, Arizona State University.

47. Jan Murphy, "Public Schools Give Tax Program an 'A'," *The Patriot-News*, June 17, 2002.

48. *Holmes v. Bush*, No. CV 99-370, slip op. (Fla. Cir. Ct. August 5, 2002.). Quoted in Michael A. Fletcher, "Florida's Voucher Law Is Struck Down;

constitutions of forty-seven states contain establishment provisions that are more restrictive than the federal establishment clause.[49] Although some of these provisions have been interpreted narrowly, the Florida decision confirms that others remain a substantial obstacle to future voucher programs.

Tuition tax credits largely avoid this difficulty. Consider the argument of the Arizona Supreme Court in *Kotterman v. Killian*, its 1999 ruling upholding the Arizona Tax Credit for Education Program:

> 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 or possession of governmental agencies or public officials. Thus, under any common understanding of the words, we are not here dealing with "public money."[50]

As the majority goes on to explain, a court ruling that a tax credit constitutes public money would effectively be forced to argue that all money is the government's, and that individuals are allowed to keep a certain portion of it for their own private use.[51] The constitutional status of tuition tax credits is therefore quite favorable and seems likely to remain so, if only because of the difficulty of coming up with a defensible legal standard that would define them as public money.

This legal difference has important political implications. Private schools may be less fearful of the threat of government regulation following the establishment of tuition tax credits than they are for vouchers, and therefore more likely to mobilize to support the policy. And surely state legislators are more

Court Says States Constitution Bars Public Support of Parochial Schools," *Washington Post*, August 6, 2002.

49. Clint A. Bolick, "Sunshine Replaces the Cloud," this volume.
50. 193 Ariz. 273, 972 P.2d 606 (1999), p. 21.
51. Ibid., p. 23.

likely to give their support to a school choice program they do not expect to face a legal challenge. School choice proponents have already filed test cases in multiple states in the hopes of a Supreme Court ruling that state constitutional provisions forbidding the use of public funds in religious schools are unconstitutional under the free exercise clause.[52] Until such a ruling, however, tuition tax credits will continue to have a considerable advantage over vouchers in a number of states.

Conclusion

Small in size, broad in scope, and originating from a level of government with minimal fiscal responsibility for public education, the tuition tax credit programs proposed and debated in Congress in the 1970s and 1980s had crucial flaws that recent state-level programs have managed to address. With a state income tax in place in all but seven states and a corporate income tax in all but three, the administrative structure for similar programs to be enacted in a large number of states is already in place. Moreover, the budget difficulties currently facing the states should make the possibility of reducing public expenditure on education especially attractive.

The most likely course of events therefore may be a gradual proliferation of state-level tuition tax credit programs, varied in their features as states continue to experiment with alternative policy designs. The process will undoubtedly be measured, as experiments with vouchers continue and opponents of school choice continue to exert considerable political influence. Yet it is also likely to be steady, as new tuition tax credit programs build support among beneficiaries, making them difficult to repeal.

52. Bolick, "Sunshine Replaces the Cloud."