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# **A Chronology of School Choice in the U.S.**

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## Executive Summary

School choice predates American nationhood. Until the mid-19th century, families chose from among a variety of autonomous schools and home schooling. Tax-funded public schools gradually displaced tuition-charging independent schools, considerably raising the price of choice. To exercise choice, a family needed to buy a home in a neighborhood with a good school, or to pay independent school tuition in addition to taxation, which supported public schools. For more than a century, few opportunities existed for middle- and low-income families.

After a slow start at the beginning of the 20th century, new options have become available in recent years. The U.S. Supreme Court held in the landmark *Pierce v. Society of Sisters* (1925) decision that a “child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” In other words, families have a right to guide their children’s education – the core value of school choice. Thirty years later, renowned economist Milton Friedman debuted the concept of an education ‘voucher’ as a means of providing choice to families.

Public school choice grew in the late sixties when the first magnet school opened its doors. About the same time there were setbacks for school choice. In 1971 the U.S. Supreme Court set a new legal precedent for determining the constitutionality of state aid to faith-based institutions called the Lemon Test. Two years later, the Court overturned several New York independent school aid programs, including tax and tuition reimbursements.

The following decade began with the momentous *Mueller v. Allen* decision, which upheld the Minnesota education tax deduction as meeting the three-part Lemon Test. The decade also saw the first inter-district school choice law, the first dual-enrollment program, the first tax credit for education expenses, and the legalization of home schooling in most states.

During the 1990s, states across the country enacted public charter school laws, tax credits, and voucher programs. Most were upheld in state and federal court. In *Zelman v. Simmons-Harris* (2002), the U.S. Supreme Court declared vouchers constitutional. The following year, Colorado enacted a scholarship program for low-income students. The state supreme court, however, overturned the program in a 4-3 decision.

As of 2008, eligible students in eight states and the District of Columbia can receive state-funded scholarships. Parents in four states can take tax deductions or credits for independent school tuition. In six states, individuals or corporations can receive a tax credit when they give to scholarship organizations. Forty states and the District of Columbia have public charter school laws. Some states have inter-district and intra-district public school choice laws, magnet schools, or post-secondary options. Home schooling is legal in all 50 states.

Research on these programs shows parental choice in education benefits the individual, the community, and the school system. Students reap academic benefits while choice acts as an incentive for system-wide improvement. The chronology of choice is the struggle to give every child the chance to attend a good school.

## Introduction

The concept of school choice is not new. Before the mid-19th century, families chose from among a variety of autonomous schools. Choices disappeared as “free” public schooling displaced tuition-charging independent schools. Then opportunity to choose a school came at a high price. To exercise choice, a family needed to buy a home in a neighborhood with a good school or to pay independent school tuition in addition to taxation, which supported public schools. While parents with means could choose schools for their children, until recently few opportunities existed for other families. After a slow start at the beginning

of the 20th century, new options have become available in recent years. Just as the system changed over time from one of diversity to a near-monopoly, the nation’s education system is moving once again, this time toward innovation, diversity, and parental choice.

### Colonial Period to 1900

School choice predates America’s founding. Children in the colonial era and early republic were educated through a variety of independent schools financed by local communities, churches, and charity.<sup>1</sup> With this diverse system of schooling the young nation enjoyed a high rate of literacy; in 1840, 90 percent of northerners and 81 percent of southerners were literate.<sup>2</sup> Nevertheless, by the mid-19th century,

state-controlled schooling was on the rise here and in Europe. It was not without its critics. In an appeal to retain diversity in education, the 19th century English philosopher John Stuart Mill concluded the state should not control what is taught but rather should “leave to parents to obtain the education where and how they pleased, and content itself with helping to pay the school fees of the poorer classes of children, and defraying the entire school expenses of those who have no one else to pay for them.”<sup>3</sup>

The idea of compulsory, tax-supported schooling, however, came to dominate in the second half of the 19th century. Only in Maine and Ver-

mont does the government continue to pay independent school tuition for students in towns without public schools.<sup>4</sup> Until recently, students could choose faith-based schools but are now limited to secular options.<sup>5</sup>

Legal discrimination against faith-based schools began in the mid-19th century when anti-Catholic and anti-immigrant bigotry found expression in American politics.<sup>6</sup> The emerging public schools were commonly Protestant in character, requiring, for example, the reading of the Protestant King James Version of the Bible and the recitation of traditional Protestant prayers and hymns in class.<sup>7</sup> Riots ensued in Philadelphia in 1844 after Catholics petitioned to let their children read the Douai translation of the Bible in school.<sup>8</sup> Efforts to secure public funding for Catholic schools were likewise resisted.

After the Civil War, a new wave of anti-Catholicism found an ally in U.S. Representative James Blaine of Maine, who hoped to prevent the funding of “sectarian” institutions through the adoption of a federal constitutional amendment.<sup>9</sup> Although he failed, his efforts and those of similarly-minded individuals secured constitutional provisions in 37 states (but not Maine) prohibiting the funding of faith-based institutions.<sup>10</sup>

In recent years, opponents of school choice have attempted to use Blaine and other constitutional provisions to strike down voucher programs. Some, like the Cleveland and Milwaukee voucher programs and the Arizona and Illinois tax credits, have survived court battles.<sup>11</sup> Others, like the Colorado Opportunity Contract Program and the private school scholarship provision of Florida’s A-Plus Program, have not.<sup>12</sup>

### The First Half of the 20th Century

The 20th century brought a series of legal precedents, some favoring parents and others state schooling. In 1923, the U.S. Supreme Court affirmed the right of parents to direct their children’s schooling. The first case involved a state statute forbidding public and independent school teachers from instructing students in languages other than English. In *Meyer v. State of Nebraska* (1923), the Court ruled that the law conflicted

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with the Fourteenth Amendment and infringed upon both the teacher's rights and the rights of parents "to control the education of their own."<sup>13</sup> Two years later, in *Pierce v. Society of Sisters*, the Court struck down an Oregon law requiring all children attend public schools. In this decision, Justice James Clark McReynolds wrote for the Court:

Under the doctrine of *Meyer v. Nebraska*...we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. ...The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.<sup>14</sup>

In 1947, the U.S. Supreme Court considered aid to independent schools and the First Amendment's Establishment Clause in *Everson v. Board of Education of Ewing Township*.<sup>15</sup> The case involved a New Jersey law allowing school districts to refund bus fare to school children who used public transportation to attend religious schools. In the ruling, the Court upheld the district's practice, acknowledging that the aid was not religious in nature and that the same aid was available to all students. Writing for the majority, Justice Hugo Black stated that the First Amendment "requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions, than it is to favor them."<sup>16</sup> *Everson* set an important school choice precedent. For example, the Court upheld the loan of textbooks to parochial students on similar grounds in *Board of Education v. Allen* in 1968.<sup>17</sup>

At mid-century, the concept of a 'voucher' for parents first appeared in 1955 in the article "The Role of Government in Education" by economist Milton Friedman, who would later win the Nobel Prize in economics.<sup>18</sup> In the same year, Minnesota enacted the nation's first tax deduction for education expenses, providing some relief to parents who pay twice for their children's education — once through their taxes for a service they do not use and once through their pocketbook for one they do.<sup>19</sup>

## The 1970s: Legal Setbacks and New Options

The 1971 landmark case *Lemon v. Kurtzman* created a new legal standard for determining the constitutionality of state aid to religious institutions, called the Lemon Test. Before this decision, Pennsylvania and Rhode Island provided salary support for independent school teachers. The U.S. Supreme Court ended the practice in *Lemon v. Kurtzman*, which set the precedent that state actions "must have a secular legislative purpose... its principal or primary effect must be one that neither advances nor inhibits religion...[and] the statute must not foster 'an excessive government entanglement with religion.'"<sup>20</sup>

Two years later, the U.S. Supreme Court overturned several programs in New York that provided facility maintenance funding to independent schools serving low-income students, and also provided tax deductions and tuition reimbursements for low-income parents who sent their children to non-public schools. The laws were enacted, in part, to prevent overcrowding in public schools by helping poor students attend an independent school. The Court struck down the programs in the 1973 *Committee for Public Education v. Nyquist* decision. The Court determined that because most of the schools involved in the New York choice program were religious schools, public assistance promoted religion — thereby violating the First Amendment. Future attempts to create public aid for independent schools would have to be clearly "neutral" in nature.<sup>21</sup>

In 1972, the federal government launched the first modern voucher program. The federal Office of Economic Opportunity initiated a voucher program in schools serving predominately low-income, minority students in Alum Rock, California. Christopher Jencks at Harvard University's Center for the Study of Public Policy designed the program to give poor students vouchers they could use at any participating public or independent school. The school would have to accept the voucher as full funding and would have to provide parents information about the school's programs

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and academic performance. Ardently opposed by the teachers unions, the program withered into a limited public school choice program.<sup>22</sup>

The late sixties and seventies also brought the first magnet schools. Magnet schools were developed to draw students of differing ethnic backgrounds on a voluntary basis for the purpose of reducing segregation. Then as now, these schools offer students a special academic focus or thematic environment. McCarver Elementary School in Tacoma, Washington, was the first school of choice opened to reduce segregation. Opening in 1968, it was followed a year later by Trotter Elementary in Boston, Massachusetts. Bolstered by desegregation orders and federal funding, magnet schools opened in urban areas across the country and provided families with new choices.<sup>23</sup>

## The 1980s: The Birth of the Modern School Choice Movement

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The 1980s witnessed the dawn of the modern school choice movement. The decade began with the momentous *Mueller v. Allen* decision and ended with the creation of the first interdistrict school choice law, the first dual-enrollment program, the first tax credit for education expenses, and the legalization of home schooling in most states.

Prior to the 1980s, only a few states had established a right to teach one's children at home. By 1989, home schooling was legal in all but three states – Iowa, North Dakota, and Michigan. By 1993, it was legal in all 50 states.<sup>24</sup> Today it is one of the fastest-growing forms of school choice.<sup>25</sup>

In 1983, the U.S. Supreme Court set a significant precedent in *Mueller*.<sup>26</sup> More than two decades after enactment of the Minnesota statute that allowed deductions for independent school expenses, opponents sued in federal district court, contending that the state education tax deduction violated the Establishment Clause of the U.S. Constitution by providing funds to sectarian institutions. In 1981, the district court held that the law was “neutral on its face and in its application and does not have a pri-

mary effect of either advancing or inhibiting religion.” The Eighth Circuit Court of Appeals affirmed the district court’s opinion a year later. On June 29, 1983, the U.S. Supreme Court upheld the Minnesota tax deduction in *Mueller*, ruling that the program met the three-part constitutional test established in *Lemon v. Kurtzman*.

Two years later, Minnesota enacted the first dual-enrollment program to grant high school students an opportunity to attend college courses during their junior and senior year.<sup>27</sup> In 1987, the state began offering a Graduation Incentive Program, which is a “second chance” program for students who have dropped out of school or are at risk of dropping out. Students enrolled in this program may attend a public school or a nonsectarian independent school that has an approved program.<sup>28</sup>

In 1988, Minnesota enacted the first statewide public school choice law to allow students to transfer to schools in other districts.<sup>29</sup> Since then, other states have enacted similar interdistrict school choice laws. Still others have enacted intradistrict school choice, guaranteeing students the right to transfer to other schools within the district. Some states, like Colorado, have open enrollment laws that enable students to choose schools either inside or outside of their district.<sup>30</sup>

During the mid-80s the high court made two conflicting rulings. In 1985, a divided U.S. Supreme Court in *Aguilar v. Felton* struck down the use of Title I funds for public school teachers who assisted independent school students.<sup>31</sup> However, in 1986, the Court ruled in favor of a disabled Washington student in *Witters v. Washington Department of Services for the Blind*. The student was a blind individual who wanted to use his state assistance to attend a religious college. The Court ruled that public funding of his college tuition did not breach the First Amendment’s Establishment Clause since the money did not go directly from the state to the religious institution but to an individual who decided its use.<sup>32</sup>

In 1987, the Iowa legislature enacted a tax deduction enabling families earning less than \$45,000 to deduct up to \$1,000 per child for education expenses from their state income tax liability.<sup>33</sup> For taxpayers who used the standard deduction, the

law allowed them a credit of up to \$50 for each child for education expenses. In 1998, the legislature amended the law to enable families to take a tax credit of 25 percent of the first \$1,000 spent on their children's education.<sup>34</sup>

## The 1990s: the School Choice Movement Leaps Forward

Maine and Vermont aside, the first voucher program was established in 1990 for low-income students in Milwaukee, Wisconsin.<sup>35</sup> After the program grew to include religious schools, the teachers union and other interest groups filed a lawsuit contending that the program violated both the First Amendment and the Wisconsin Constitution. The Wisconsin Supreme Court, however, upheld the voucher program in 1998.<sup>36</sup>

Specifically, the court decided that the program does not violate the First Amendment because it has a secular purpose and does not advance religion or create an excessive entanglement between the state and religious institutions. Regarding the state constitution, which states that no person shall be compelled to support religious institutions and that no "money [shall] be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries,"<sup>37</sup> the court declared:

In this context, this court has held that public funds may be placed at the disposal of third parties so long as the program on its face is neutral between sectarian and nonsectarian alternatives and the transmission of funds is guided by the independent decisions of third parties...and that public funds generally may be provided to sectarian educational institutions so long as steps are taken not to subsidize religious functions.<sup>38</sup>

Today, under the Milwaukee Parental Choice Program, more than 17,000 low-income students use the voucher to attend independent schools of choice.<sup>39</sup>

While courts and legislatures continue to argue policy, concerned individuals have provided more than 100,000 children the opportunity to attend an independent school over the past decade and a half. Starting in 1991, J. Patrick Rooney, then-

chairman of the Golden Rule Insurance Company in Indianapolis, Indiana, created the nation's first privately-funded scholarship organization: the Educational CHOICE Charitable Trust. While reformers work to establish public voucher programs, the Educational CHOICE Charitable Trust and other private programs continue to enable thousands of children to attend an independent school of their choice.

In 1992, Minnesota opened the first charter school.<sup>40</sup> Charter schools are independent public schools of choice operated by teachers, parents, community leaders, or other groups under a charter agreement with a sponsor—usually a school district, state, or university. While freed from many state and district statutes, regulations, and rules, these independent schools are accountable to the sponsor to fulfill the terms of the charter and raise achievement. Most significantly, charter schools are closed when they fail to meet the terms of their charter.<sup>41</sup>

Since Minnesota's first charter school opened, 40 states and the District of Columbia have enacted laws to establish charter schools. Today, there are over 4,000 such schools serving over a million students.<sup>42</sup> Charter schools have the flexibility to innovate and respond to the needs of their student bodies. In some states, for example, charter schools may use their own standards to hire teachers and are not bound by state certification or district oversight. Other schools have implemented a longer school year or school day. Some have adopted a back-to-basics or project-based curriculum not available in other schools in the district. Still others have adopted an arts or science focus.

In 1993, the U.S. Supreme Court supported public aid to a disabled student attending a religious school in the case of *Zobrest v. Catalina Foothills School District*. The case concerned a deaf child whose parents sought a sign-language interpreter under provisions of the Individuals with Disabilities Education Act (IDEA). Several lower courts ruled with the school district that the parents' request violated the Establishment Clause of the U.S. Constitution. In the end, however, the U.S. Supreme Court ruled that the aid to the student (by

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providing the interpreter) did not conflict with the Constitution. Chief Justice William Rehnquist, writing for the majority, found that IDEA creates a neutral government program dispensing aid not to schools but to individual children. If a child chooses to enroll in an independent, faith-based school, “we hold that the Establishment Clause does not prevent the school district from furnishing him with a sign-language interpreter there in order to facilitate his education.”<sup>43</sup>

In 1995, the Ohio legislature enacted the Cleveland Scholarship and Tutoring Program, which allows parents to use vouchers worth up to \$3,450 for independent school tuition.<sup>44</sup> Today, the program serves nearly 6,000 students.<sup>45</sup>

In 1997, Minnesota enacted a law that allows low- and middle-income families to take a refundable tax credit for education expenses, excluding tuition. The 1997 law also raised the maximum deduc-

tion to \$1,625 for expenses associated with elementary school, including tuition, and up to \$2,500 for middle and high school expenses.<sup>46</sup>

Arizona lawmakers created a new kind of tax credit in 1997. The law allows individuals to take a tax credit of up to \$500 for donations to organizations that provide scholarships to students in independent schools. Individuals contributing to public school extracurricular activities can receive a tax credit of up to \$200.<sup>47</sup> In 2005 (the most recent year for which statistics are available), individual donors gave more than \$42 million, creating more than 22,000 scholarships, the majority of which were based on financial need.<sup>48</sup>

The credit has survived two legal challenges. The Arizona Education Association, Arizona School Boards Association, People for the American Way, and Americans United for Separation of Church and State filed a lawsuit, alleging the credit violated the religious establishment provisions of the Arizona and U.S. Constitutions. On January 26, 1999, the Arizona Supreme Court upheld the tax credit.<sup>49</sup> On First Amendment grounds, the majority stated that the program met the test established

in *Lemon v. Kurtzman*. The court compared the Arizona tax credit program to the Minnesota program upheld in *Mueller v. Allen*, stating:

In both, parents are free to participate or not, to choose the schools their children will attend, and to take advantage of all other available benefits under the state tax scheme. Moreover, these programs will undoubtedly bring new options to many parents. Basic education is compulsory for children in Arizona, A.R.S. § 15-802(A), but until now low-income parents may have been coerced into accepting public education. These citizens have had few choices and little control over the nature and quality of their children’s schooling because they have been unable to afford a private education that may be more compatible with their own values and beliefs. Arizona’s tax credit achieves a higher degree of parity by making private schools more accessible and providing alternatives to public education.<sup>50</sup>

The court held that the program did not violate the state constitution, which provides that 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”<sup>51</sup> because the court did not consider money raised by the tax credit to be “public money.” Opponents lost a second suit in 2005.<sup>52</sup>

In 1997, the U.S. Supreme Court reversed the 1985 *Aguilar v. Felton* decision in *Agostini v. Felton*. The Court determined that allowing public school teachers to provide Title I services in independent schools did not violate the First Amendment.<sup>53</sup>

In 1999, the Illinois legislature approved an education tax credit, which gives families an annual credit of up to 25 percent of education-related expenses (including tuition, book fees, and lab fees) that exceed \$250, up to a maximum of \$500 per family.<sup>54</sup> After enactment, the Illinois Federation of Teachers filed a lawsuit contending the credit conflicted with religious establishment provisions in the Illinois Constitution. Judge Loren Lewis of the Franklin County Circuit Court dismissed the suit, declaring the tax credit constitutional, citing the U.S. Supreme Court decision in *Mueller v. Allen*. In 2001, the Fifth District Appellate Court of Illinois

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upheld the circuit court opinion. Justice Rarick stated, “The credit at issue here does not involve any appropriation or use of public funds.... Funds become available to schools only as the result of private choices made by individual parents.”<sup>55</sup>

Florida enacted two statewide voucher programs in 1999: Opportunity Scholarships for students in schools that have failed state assessment benchmarks in two out of four years, and McKay Scholarships for disabled students.<sup>56</sup> In 2006, the Florida Supreme Court struck down the independent school transfer option, ruling it violated the state constitution’s “uniformity clause.”<sup>57</sup> Since then students have only the option of attending higher-performing public schools. The ruling had no impact on the McKay Scholarship Program, which enables more than 17,000 students with disabilities to attend a school of choice.<sup>58</sup>

On June 28, 2000, the U.S. Supreme Court upheld the practice of lending educational equipment, including computers and books, to independent schools for nonreligious purposes. Using federal funds under Chapter 2 of the Elementary and Secondary Education Act of 1965, the school district, Jefferson Parish, provided materials to public and private schools.<sup>59</sup> Opponents filed suit arguing that the practice of lending equipment to independent schools violated the Establishment Clause of the U.S. Constitution.<sup>60</sup>

## The New Century Unfolds

The new century has brought important legal precedents and an unprecedented expansion of new programs.

In 2002, the U.S. Supreme Court set the most important school choice precedent since *Lemon v. Kurtzman* in its ruling regarding the Cleveland Scholarship and Tutoring Program. The *Zelman v. Simmons-Harris* decision concluded that the use of public money to fund tuition at independent and religious schools does not violate the Establishment Clause of the Constitution as long as parents decide where the scholarship is used. Given the range of options and the responsibility of the parent to choose from among them, the Court concluded that the Cleveland program is neutral with

regard to religion—even though most voucher recipients chose faith-based schools. In the majority’s decision, Chief Justice William Rehnquist wrote, “We believe that the program challenged here is a program of true private choice, consistent with *Mueller, Witters, and Zobrest*, and thus constitutional. As was true in those cases, the Ohio program is neutral in all respects toward religion.”<sup>61</sup>

Like voucher programs, charter school programs have surmounted legal challenges. For example, in 2001, the Utah Supreme Court upheld Utah’s charter school law, dismissing a challenge by the Utah School Boards Association as “unreasonable.”<sup>62</sup> The lawsuit challenged the charter school statute on the grounds that the state constitution authorizes the state board of education to control one uniform system. The court ruled that the state constitution allows the state school board to oversee charter schools, as it grants the board authority over “such other schools and programs that the Legislature may designate.”<sup>63</sup> In Colorado, a Denver District Court judge rejected a suit in 2006 brought by three school districts challenging the constitutionality of the statewide charter authorizer, the Charter School Institute.<sup>64</sup>

In the new century, students secured more victories in statehouses than in court-houses. In 2001, Florida and Pennsylvania approved similar tax credits for corporations.<sup>65</sup> Under the Florida program, approved by the state legislature in 2001, corporations can receive tax credits against their corporate income tax bill for donations to scholarship organizations. The donations provide low-income students scholarships worth \$3,750 or the full cost of tuition, whichever is less, to attend an independent school; or a \$500 voucher to attend a public school in another school district.<sup>66</sup> According to the most recent statistics, 19,416 students attended schools of choice with scholarships from this program.<sup>67</sup>

Pennsylvania’s tax credit program enables corporations to receive a credit for contributions to non-profit organizations that provide scholarships or to organizations that provide grants to public schools

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for innovative programs. Scholarship recipients must meet income eligibility guidelines. Currently the program serves roughly 41,000 students.<sup>68</sup>

In 2003, the Ohio legislature enacted a pilot voucher program for students with autism.<sup>69</sup> The legislature made the program permanent in 2005 and increased the scholarship amount from \$15,000 to \$20,000.<sup>70</sup>

A year later, the U.S. Congress passed legislation to provide low-income students in the District of Columbia with a voucher worth up to \$7,500. In the 2007-2008 school year, 1,903 students received scholarships.<sup>71</sup>

The Utah legislature initiated in 2005 the Carson Smith Special Needs Scholarship to help students with disabilities attend schools that best meet their needs.<sup>72</sup> In the 2007-2008 school year, 484 students were served under this program.<sup>73</sup>

The year 2006 saw the largest number of parental choice programs enacted in a year. Ohio's governor signed the Educational Choice Scholarship Pilot

Program (EdChoice) to enable 14,000 students in poor-performing schools the opportunity to attend an independent school.<sup>74</sup> Iowa's governor signed the Individual School Tuition Organization Tax Credit law, which gives individuals an income tax credit of 65 percent for donations to School Tuition Organizations.<sup>75</sup> Rhode Islanders gained the Cor-

porate Scholarship Tax Credit Program, which gives businesses a credit for their donations to scholarship organizations.<sup>76</sup> Arizona also passed a corporate tax credit program as well as the Arizona Scholarship for Pupils with Disabilities and the Displaced Pupils Choice Grant Program, which provides scholarships for students in foster care.<sup>77</sup>

In May 2007, Georgia Governor Sonny Perdue signed into law a scholarship program for special needs students. The voucher is worth the cost to educate the student at a public school or the independent school's tuition, whichever is less.<sup>78</sup> A year later, he signed a tax credit program that enables individuals and corporations to receive a tax credit for contributions to scholarship organizations.<sup>79</sup>

Also in 2008, Louisiana parents gained a tax deduction for tuition, fees, school supplies, and textbooks.<sup>80</sup>

Legal and legislative victories notwithstanding, there have been setbacks. Maine families lost their suit challenging a law that prevents them from choosing religious schools under the state's tuitioning program. The state's high court upheld the 1982 law that excluded religious schools from the state's voucher-like tuitioning program whereby towns without public schools pay students' tuition at independent schools.<sup>81</sup>

Utah children also experienced a setback when school choice opponents defeated the state's nascent universal voucher program. Signed into law in 2007, the Parent Choice in Education Act provided scholarships ranging from \$500 to \$3,000,<sup>82</sup> Opponents placed it on the ballot in November 2007 where it was defeated.<sup>83</sup>

In February 2008, a California appellate court ruled that only parents with teaching credentials could home school their children. After a month a public consternation, the court agreed to rehear the case.<sup>84</sup>

Special interests challenged Arizona's Scholarship for Pupils with Disabilities and the Displaced Pupils Choice Grant Program in 2007. Although the Maricopa County Superior Court upheld the programs as constitutional, the Arizona Court of Appeals overturned the decision. The case is being appealed to the Arizona Supreme Court.<sup>85</sup>

Colorado students experienced a loss when the state supreme court overturned a statewide voucher program enacted in 2003 for low-income students in poorly-performing school districts. The decision said the program, which was never implemented, violated the "local control" provision of the Colorado constitution. Writing in dissent of a 4-3 decision, Justice Rebecca Kourlis stated, "Because the school district loses no control whatsoever over the education provided in its public schools, but merely loses some revenue that it would otherwise have, I do not view the program as unconstitutional."<sup>86</sup> The legal challenge against the Colorado Opportunity Contract Pilot Program was spearheaded by the Colorado Parent Teacher Association and the Colorado Education Association.

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Florida students lost their fight when the state supreme court ruled the Opportunity Scholarship Program violated the state's "uniformity" clause. The ruling put an end to the six-year-old program enabling students in poor-performing schools to transfer to public or independent schools. Because of the ruling, students and their families may only choose from among public schools.<sup>87</sup>

## The Road Ahead

Thirty years after renowned economist Milton Friedman proposed vouchers, legislatures began to consider the value of parental choice in education. Then as now, education reformers know that parental choice in education benefits the individual, the community, and the school system. Students reap academic benefits while choice acts as an incentive for system-wide improvement. These benefits, however, are secondary to the primary virtue of education choice — freedom. In the words of the *Pierce v. Society of Sisters* decision, a "child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." Families have a right to guide their children's education.

Although not fully realized, the nation has taken steps toward freedom. As of 2008, eligible students in eight states (AZ, FL, GA, ME, OH, UT, VT, WI) and the District of Columbia can receive state-funded scholarships to attend schools that best meet their needs. In four states (IA, IL, LA, MN), parents can take tax deductions or credits for independent school tuition. In three states (AZ, IA, GA), individuals can receive a tax credit for contributions to scholarship organizations, and in five states (AZ, FL, GA, PA, RI) corporations can get a credit for such contributions. Forty states and the District of Columbia have laws allowing for the creation of independent public charter schools. Other states have interdistrict and intradistrict public school choice laws allowing students to transfer to schools of choice. Still others have magnet schools or post-secondary options. Additionally, parents may educate their children at home in all 50 states.

Every year reformers propose new innovative programs. Supported by research and enthusiastic parents and students who benefit from such programs, the number of school choice programs continues to grow. There will be setbacks and disappointments, but as the history of school choice shows, the unwavering desire for freedom will prevail.

## Notes

- <sup>1</sup> Matthew J. Brouillette, "The Case for Choice in Schooling: Restoring Parental Control of Education: A Comprehensive Guide for Advancing Parents' Rights and Responsibilities to Direct the Education of Their Children," Mackinac Center for Public Policy, February 2001, [www.mackinac.org/archives/2001/s2001-01.pdf](http://www.mackinac.org/archives/2001/s2001-01.pdf)
- <sup>2</sup> Barry Dean Simpson, "'Free' Education and Literacy," Ludwig von Mises Institute, January 28, 2004, [www.mises.org/story/1425](http://www.mises.org/story/1425)
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