

# Background

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## Choices in Education: 2005 Progress Report

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School choice is in high demand and growing. Twenty years ago, few states had policies or programs allowing parents the freedom to make choices in their children's education. Today, 11 states and the District of Columbia have state-funded scholarship programs or provide tax relief for education expenses or contributions to scholarship funds. Most states have charter or magnet schools, dual enrollment programs are common, and all 50 states allow parents to home school their children.

As of April 2005:

- Students in six states—Florida, Maine, Ohio, Vermont, Utah, and Wisconsin—and the District of Columbia can receive government-funded scholarships to attend a private school of choice.
- Six states—Arizona, Florida, Illinois, Iowa, Minnesota, and Pennsylvania—offer tax credits or deductions for education expenses or contributions to scholarship programs.
- Forty states and the District of Columbia have enacted charter school laws.
- Fifteen states guarantee public school choice within or between districts. (Other states have choice programs that are optional for districts, target only specific populations, and/or require parents to pay out-of-district tuition.<sup>1</sup>)
- Twenty-one states have comprehensive dual enrollment programs that enable high school students to attend college classes for high school and postsecondary credit at minimal or no expense to the student.
- Home schooling is legal in every state.

### Talking Points

- Parental choice is growing. Six states and the District of Columbia offer government-funded scholarships to attend a private school of choice; six states offer tax credits or deductions for education expenses or contributions to scholarship programs; 40 states and D.C. have enacted charter school laws; 15 states guarantee public school choice within or between districts; 21 states have comprehensive dual enrollment programs; and home schooling is legal in every state.
- State legislatures have voted on a record number of school choice bills since January. The Utah legislature enacted a voucher program for students with special needs, making Utah the second state to have such a program.
- Congress can support parental choice by expanding federal choice programs such as the D.C. Opportunity Scholarship Program to other cities through the President's proposed \$50 million Choice Incentive Fund.

This paper, in its entirety, can be found at:  
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The parental choice movement has made progress during the state legislative sessions of 2005. On March 10, Governor John Huntsman signed the Carson Special Needs Scholarships bill, making Utah the second state to have a voucher program for students with disabilities.<sup>2</sup> Voucher and tax credit programs have been proposed in Alabama, Arizona, Florida, Indiana, Minnesota, Missouri, New Hampshire, South Carolina, and Virginia, to name a few. State legislatures voted on a record number of school choice bills.<sup>3</sup> In Arizona, the legislature passed a bill that would have offered tax credits to corporations for contributions to scholarship funds, but Governor Janet Napolitano vetoed it.

Participation in existing choice programs has likewise increased. More than 1 million families home school, and the number increases every year.<sup>4</sup> Families of over 624,000 students use vouchers, tax credits, or tax deductions to attend a

school of choice.<sup>5</sup> A record number of students are taking advantage of options to transfer from their assigned public school.<sup>6</sup> There is a growing recognition among parents that no one school, even a great school, can serve all students equally well.

Ultimately, school choice is about enabling all parents to enroll their children in the schools—public, public charter, private, or home—that best meet their individual needs. While legal and legislative obstacles remain, parents across the country have persistently demanded more educational freedom for their students.

Congress can support parental choice by expanding federal choice programs such as the D.C. Opportunity Scholarship Program and by providing choice to other cities through the \$50 million Choice Incentive Fund, which President George W. Bush has proposed in his fiscal year 2006 budget. In addition, Congress can increase parental freedom under the No Child Left Behind

1. In these states, laws require districts to allow students to enroll in other schools within (intradistrict choice) or outside of (interdistrict choice) their home district. Capacity, racial balance policies, and other rules may limit transfers. In other states, state law allows public school choice, but districts are not required to participate. See Todd Ziebarth, "School Choice: State Laws," Education Commission of the States, updated May 2003, at [www.ecs.org/clearinghouse/13/75/1375.htm](http://www.ecs.org/clearinghouse/13/75/1375.htm) (April 13, 2005).
2. H.B. 249, Utah Legislature, 2005 General Legislative Session, at [www.le.state.ut.us/~2005/htmldoc/hbillhtm/HB0249.htm](http://www.le.state.ut.us/~2005/htmldoc/hbillhtm/HB0249.htm) (March 3, 2005), and Ronnie Lynn, "State School-Voucher Program Is Under Way," *The Salt Lake Tribune*, March 11, 2005, at [www.sltrib.com/utah/ci\\_2604538](http://www.sltrib.com/utah/ci_2604538) (April 13, 2005).
3. See The Heritage Foundation, "Choices in Education" Web site, at [www.heritage.org/schoolchoice](http://www.heritage.org/schoolchoice).
4. U.S. Department of Education, National Center for Education Statistics, National Household Survey Data, 1994 and 1996; National Household Education Survey, 1999; and Parent and Family Involvement in Education Survey, in National Household Education Survey, 2003.
5. In the 2003–2004 school year, the Milwaukee Parental Choice Program enrolled 14,000 students, the Cleveland Scholarship and Tutoring Program enrolled more than 5,000 students, Florida's McKay Scholarships for Children with Disabilities enrolled approximately 13,000 students, Florida's A+ Opportunity Scholarship Program enrolled more than 650 students, Florida's Step-Up for Students Scholarship Program enrolled approximately 13,000 students, Washington, D.C.'s Opportunity Scholarship Program enrolled more than 1,000 students, Arizona's Tuition Tax Credit Program benefited more than 19,000 students, and Pennsylvania's Education Improvement Tax Credit Program benefited more than 15,000 students. Alliance for School Choice, "School Choice Facts," at [www.allianceforschoolchoice.org/facts.php](http://www.allianceforschoolchoice.org/facts.php) (April 11, 2005). An estimated 7,147 students attended private schools under Vermont's tuitioning program, and more than 5,900 attended private schools under Maine's tuitioning program during the 2001–2002 school year. Marya DeGrow, "Educational Vouchers and Tax Credits," *School Reform News*, February 1, 2003, at [www.heartland.org/Article.cfm?artId=11498](http://www.heartland.org/Article.cfm?artId=11498) (April 7, 2005). In 2000, 141,500 Iowa families took an education tax credit. In 2001, 189,055 Illinois families took a tax credit for education purposes and 200,000 Minnesota families took a deduction. Nina Manzi and Lisa Larson, "Income Tax Deductions and Credits for Public and Nonpublic Education in Minnesota," Minnesota House of Representatives Research Department, December 2003.
6. U.S. Department of Education, National Center for Education Statistics, National Household Education Surveys Program, "Trends in the Use of School Choice 1993–1999," May 2003.

Act. Under the act, children attending schools that have failed to make adequate yearly progress toward state standards for two consecutive years are eligible to transfer to better-performing schools within the district.

However, even this limited school choice option has not been fully implemented. A recent Government Accountability Office report found that only 1 percent of eligible students have taken advantage of their transfer options. The study said that many districts are not providing parents with timely, clear information.<sup>7</sup> Congress should ensure that districts inform parents about all of their options under federal law. Meanwhile, it should pursue policy changes that will allow additional options for parents across the country.

### Types of Educational Choice Available

School choice has always been available to those who can move their family to an area with a desirable school or afford to pay for private schooling. While new choice programs continue to grow, residential choice (buying a home in a public school district of choice) and paying tuition continue to be the primary methods by which families choose schools. According to the U.S. Department of Education, 11 percent of students are enrolled in private schools.<sup>8</sup> Families exercising residential choice account for 24 percent of public school students.<sup>9</sup> In both cases, families must have the financial means to accommodate their choices, and families without such resources do not have these options.

**Public School Choice.** In the late 1960s, magnet schools were developed to draw students of different ethnic backgrounds to improve desegregation. Mag-

net schools offer students a special academic focus or thematic environment. The most recent U.S. Department of Education data indicate that there are 1,736 magnet schools in 28 states. Illinois and California have the most magnet schools (420 and 456, respectively), and 15 percent of Illinois students (the highest percentage of any state) attend magnet schools.<sup>10</sup>

The first magnet school created to reduce segregation was McCarver Elementary School in Tacoma, Washington, founded in 1968. A performing and visual arts school in Houston, Texas, coined the term “magnet school” in the mid-1970s to describe how it attracted students. Bolstered by desegregation orders and federal funding, magnet schools opened in urban areas across the country.<sup>11</sup> While other forms of choice have developed over the years, magnet schools continue to provide families with education options.

In the 1980s, lawmakers began to enact laws to enable families to choose schools within (intradistrict) or outside (interdistrict) their district. Statewide open enrollment laws allow families to choose any school in the state. In some states, the policy is voluntary, and districts may or may not participate. In others, interdistrict choice is mandatory, and all districts must allow transfers. Arkansas, Iowa, Minnesota, Nebraska, Oklahoma, and Wisconsin have mandatory interdistrict choice laws, while California, Illinois, and Ohio have mandatory intradistrict choice laws. Arizona, Colorado, Delaware, South Dakota, Utah, and Washington have mandatory statewide open enrollment laws.

An increasing number of families are taking advantage of public school choice programs. A May

7. U.S. Government Accountability Office, *No Child Left Behind Act: Education Needs to Provide Additional Technical Assistance and Conduct Implementation*, GAO-05-7, December 2004, p. 14, at [www.gao.gov/new.items/d057.pdf](http://www.gao.gov/new.items/d057.pdf) (April 13, 2005).
8. Thomas D. Snyder, *Digest of Education Statistics, 2002*, U.S. Department of Education, National Center for Education Statistics, NCES 2003-060, 2003, p. 12, Table 3, at [nces.ed.gov/pubs2003/2003060a.pdf](http://nces.ed.gov/pubs2003/2003060a.pdf) (April 13, 2005).
9. U.S. Department of Education, National Center for Education Statistics, *The Condition of Education 2004*, NCES 2004-076, 2004, Indicator 25, at [nces.ed.gov/pubs2004/2004077.pdf](http://nces.ed.gov/pubs2004/2004077.pdf) (April 18, 2005).
10. Lee McGraw Hoffman, “Overview of Public Elementary and Secondary Schools and Districts: School Year 2001-02,” U.S. Department of Education, National Center for Education Statistics, Institute of Education Sciences, NCES 2003-411, May 2003, at [nces.ed.gov/pubs2003/2003411.pdf](http://nces.ed.gov/pubs2003/2003411.pdf) (April 18, 2005).
11. See Dr. Donald Waldrip, “A Brief History of Magnet Schools,” Magnet Schools of America, at [www.magnet.edu/about.htm](http://www.magnet.edu/about.htm) (April 7, 2005).

2003 survey by the U.S. Department of Education found that more families, particularly those with lower incomes, are participating in public school choice by sending their children to schools other than those assigned by their district. The number of students attending a public school of choice rose from 11 percent in 1993 to 14 percent in 1996 and 1999, and the National Center for Education Statistics found that parents of students in private schools or public schools of choice were “more likely to say they were ‘very satisfied’ with their children’s schools, teachers, academic standards, and order and discipline” than were parents of students attending an assigned public school.<sup>12</sup>

States have enacted laws that enable high school juniors and seniors to take college courses at two-year and four-year higher education institutions and receive high school and/or college credit. These programs provide access to rigorous course work and ease the transition between high school and college. According to the Education Commission of the States, 47 states have dual enrollment programs.<sup>13</sup>

**Public Charter Schools.** In the 1990s, lawmakers conceived of a new form of parental choice: the charter school. Since the first charter school law was enacted in Minnesota in 1991, the number of charter schools has grown to 3,400.<sup>14</sup>

A charter school is a public school sponsored by a local school board, university, state board of education, or other state governing body and operated by parents, teachers, other individuals, or a private organization. Charter schools are granted more autonomy from district policies than traditional public schools, but they also are

more accountable for student performance. (A charter school must close if it does not meet the standards specified in its charter.) Because they are granted greater flexibility, charter schools can differentiate themselves from traditional public schools by employing a curriculum that is different from the district curriculum, adopting a thematic approach (arts and humanities, business, mathematics and science, etc.), instituting a longer school day, requiring parental involvement, or using innovative technology. Like other public schools, charter schools are open to all students and are funded through tax receipts.

Forty states and the District of Columbia have enacted charter school laws. The degree of flexibility afforded to charter schools varies by state. Some states, such as Arizona and Minnesota, allow charter schools significant freedom, while other states, such as Kansas and Mississippi, are less accommodating.<sup>15</sup> Alabama, Kentucky, Maine, Montana, Nebraska, North Dakota, South Dakota, Vermont, Washington, and West Virginia do not have charter school laws.

In general, charter schools appear to have a positive effect on the academic achievement of their students and the students of neighboring public schools. A recently published study using data from nearly 99 percent of elementary charter school students in the U.S. found that charter students are 5.2 percent more likely to be proficient in reading and 3.2 percent more likely to be proficient in math on state tests compared to their peers in the traditional public schools that they would have most likely attended.<sup>16</sup> The author’s earlier research tracked the competitive effects of charter

12. Stacey Bielick and Christopher Chapman, “Trends in the Use of School Choice, 1993–1999,” U.S. Department of Education, National Center for Education Statistics, NCES 2003–031, May 2003, at [nces.ed.gov/pubs2003/2003031.pdf](http://nces.ed.gov/pubs2003/2003031.pdf) (April 18, 2005).

13. See Education Commission of the States, “Choice,” at [www.ecs.org/ecsmain.asp?page=/html/issue.asp?issueID=22](http://www.ecs.org/ecsmain.asp?page=/html/issue.asp?issueID=22) (April 7, 2005).

14. Center for Education Reform, “Charter Schools,” at [www.edreform.com/index.cfm?fuseAction=stateStats&pSectionID=15&cSectionID=44](http://www.edreform.com/index.cfm?fuseAction=stateStats&pSectionID=15&cSectionID=44) (March 30, 2005).

15. *Ibid.*

16. Caroline M. Hoxby, “Achievement in Charter Schools and Regular Public Schools in the United States: Understanding the Differences,” Harvard University and National Bureau of Economic Research, December 2004, at [www.heritage.org/research/education/upload/hoxbycharter\\_dec2.pdf](http://www.heritage.org/research/education/upload/hoxbycharter_dec2.pdf) (April 18, 2005).



schools on surrounding schools and found that increased school choice raises school productivity and student achievement within the public school system. The report found that competition from charter schools in Michigan and Arizona, and from Milwaukee's voucher program, has compelled public schools to be more productive as measured by students' achievement gains.<sup>17</sup>

**Private School Choice Options.** Laws that support private education options take several forms: vouchers, tuitioning, contracting, tax credits, tax deductions, and education savings accounts.

Publicly funded scholarships (vouchers) are certificates with a designated dollar value that may be applied toward tuition or fees at a public or private educational institution of choice. Vouchers are similar to the federal government's Pell Grant program in that a student receives a voucher to apply toward tuition at a chosen public, private, or religious college or university of choice. Elementary and secondary education voucher programs are available to eligible students in Florida; Cleveland, Ohio; Utah; Milwaukee, Wisconsin; and Washington, D.C.

Voucher-like "tuitioning" laws in Maine and Vermont enable school districts or towns without public schools to pay for the cost of sending students to private or public schools in another district or state.

Contracting with private schools to serve at-risk students or students with disabilities occurs across the country. When services are unavailable in a public school, students with disabilities are educated at private schools with public funding under the Individuals with Disabilities Education Act. Private schools are also used to educate high school dropouts and other at-risk students, as well as to alleviate overcrowding.<sup>18</sup>

A growing body of evidence shows that students participating in public and privately funded voucher programs—especially at-risk students—can improve their academic performance; that parents of these students are more satisfied with their child's education; and that voucher programs foster accountability within public school systems.<sup>19</sup>

## Vouchers

Six states and the District of Columbia have voucher and tuitioning programs.

**District of Columbia.** Congress passed legislation creating the District's first publicly funded scholarship program on January 22, 2004. Similar to a program proposed in 2003 (H.R. 684 and S. 4) by Representative Jeff Flake (R-AZ) and Senator Judd Gregg (R-NH),<sup>20</sup> the \$13 million program provides low-income students with vouchers to attend a private school of choice. Every student from a family with an annual income at or below 185 percent of the federal poverty line is eligible. The vouchers are worth up to \$7,500, a little more than half of the approximately \$12,000 spent per pupil in District public schools.

Researchers from Georgetown University and Westat, who will evaluate the District's program over the next five years, found in the baseline study that parents of children attending private schools were much more satisfied with their children's school than were public school parents.<sup>21</sup> In September 2004, 1,027 students were placed in 53 private schools through the voucher program.<sup>22</sup>

**Florida.** Florida has two voucher programs, one for children with disabilities and one for children in poorly performing schools. The A+ Plan provides Opportunity Scholarships to students in schools that have failed to achieve state assessment bench-

17. Caroline Hoxby, "School Choice and School Productivity (Or, Could School Choice Be a Tide That Lifts All Boats?)," National Bureau of Economic Research *Working Paper* No. 8873, April 2002.

18. For more information, see The Heritage Foundation, "Minnesota" and "Texas," in "Choices in Education" Web site, at [www.heritage.org/Research/Education/SchoolChoice/Minnesota.cfm](http://www.heritage.org/Research/Education/SchoolChoice/Minnesota.cfm) and [www.heritage.org/Research/Education/SchoolChoice/texas.cfm](http://www.heritage.org/Research/Education/SchoolChoice/texas.cfm).

19. See The Heritage Foundation, "Research," in "Choices in Education" Web site, at [www.heritage.org/Research/education/schoolchoice/schoolchoice\\_research.cfm](http://www.heritage.org/Research/education/schoolchoice/schoolchoice_research.cfm).

20. Spencer S. Hsu, "How Vouchers Came to D.C.," *Education Next*, Fall 2004.

marks twice in a four-year period. During the 2003–2004 school year, more than 650 students received vouchers worth an average of \$3,900.<sup>23</sup> During the same year, approximately 13,000 students with disabilities used McKay Scholarships to attend another public or private school.<sup>24</sup> The McKay Scholarship program, enacted as a pilot program by the Florida legislature in 1999 and expanded statewide in 2001, provides vouchers to special-needs students.<sup>25</sup>

**Maine.** Maine has been paying for students to attend private schools for over 200 years. A century ago, the state enacted a tuitioning law that is still in place. Under the law, school districts without public schools allow students to attend public schools in other districts or nonsectarian private schools.<sup>26</sup> In 1981, the legislature enacted a law preventing students from selecting religious schools.<sup>27</sup>

**Ohio.** Enacted in 1995, the Cleveland Scholarship and Tutoring Program provides elementary school students with vouchers worth up to \$3,000 for tuition at a private elementary school or \$2,700 for a high school of choice.<sup>28</sup>

**Vermont.** Since 1869, Vermont has operated a tuitioning program for students in school districts without a public school.<sup>29</sup> Students may attend a public school in another district or an approved nonsectarian private school. As in Maine, Vermont students could attend religious schools during the program's first 100 years, but this provision was overturned by the state supreme court. An estimated 7,147 students participated in the program during the 2001–2002 school year.<sup>30</sup>

**Wisconsin.** More than 14,000 students participated in the Milwaukee Parental Choice Program during the 2003–2004 school year.<sup>31</sup> Established in 1990 and expanded in 1995, the program provides vouchers to Milwaukee families with incomes that are at or below 175 percent of the poverty level to enable their children to attend private or religious schools of choice. The Wisconsin Supreme Court upheld the program in 1998, and the U.S. Supreme Court has declined to review the Wisconsin court's decision.<sup>32</sup>

**Utah.** On March 10, 2005, Governor John Huntsman signed H.B. 249, the Carson Special Needs Scholarships bill, making Utah the second state with a

21. Press release, "Scholars Help Evaluate DC School Choice Program," *University News*, August 2, 2004, at [lumen.georgetown.edu/explore/documents/?DocumentID=1033](http://lumen.georgetown.edu/explore/documents/?DocumentID=1033) (September 20, 2004); Patrick Wolf, Babette Gutmann, Nada Eissa, Michael Puma, and Marsha Silverberg, "Evaluation of the DC Opportunity Scholarship Program: First Year Report on Participation," U.S. Department of Education/Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, April 2005, at [www.ed.gov/rschstat/eval/choice/dcchoice-yearone/choice.pdf](http://www.ed.gov/rschstat/eval/choice/dcchoice-yearone/choice.pdf) (April 18, 2005).
22. Wolf *et al.*, "Evaluation of the DC Opportunity Scholarship Program," p. xiv.
23. Alliance for School Choice, "School Choice Facts," at [www.allianceforschoolchoice.org/facts.php](http://www.allianceforschoolchoice.org/facts.php) (April 18, 2005).
24. Marya DeGrow, "Educational Vouchers and Tax Credits," *Heartland Institute School Reform News*, February 1, 2003, at [www.heartland.org/Article.cfm?artId=11498](http://www.heartland.org/Article.cfm?artId=11498) (April 7, 2005), and Alliance for School Choice, "School Choice Facts."
25. Lisa Fine, "Florida's 'Other' Voucher Program Taking Off," *Education Week*, August 8, 2001.
26. Institute for Justice, "The Case for School Choice: Raymond, Maine," *Litigation Background*, 1997, at [www.ij.org/schoolchoice/maine/background.html](http://www.ij.org/schoolchoice/maine/background.html) (April 18, 2005).
27. John Gehring, "Legal Battle Over School Vouchers Returns to Maine," *Education Week*, September 25, 2002.
28. Alliance for School Choice, "School Choice Facts."
29. Libby Sternberg, "Lessons from Vermont: 132-Year-Old Voucher Program Rebutts Critics," *Cato Institute Briefing Paper No. 67*, September 10, 2001, at [www.cato.org/pubs/briefs/bp67.pdf](http://www.cato.org/pubs/briefs/bp67.pdf) (April 18, 2005).
30. DeGrow, "Educational Vouchers and Tax Credits."
31. Alliance for School Choice, "School Choice Facts."
32. *Jackson v. Benson*, 578 N.W.2d 602 (Wis. S. Ct. 1998), *cert. denied*, 525 U.S. 997 (1998). See also Institute for Justice, "Milwaukee School Choice: *Jackson v. Benson*, Wisconsin Supreme Court Upholds Expanded Milwaukee School Choice Program," at [www.ij.org/schoolchoice/milwaukee/index.html](http://www.ij.org/schoolchoice/milwaukee/index.html) (April 18, 2005), and DeGrow, "Educational Vouchers and Tax Credits."

voucher program for students with disabilities.<sup>33</sup> The program will provide vouchers of up to up to \$5,700, beginning in the 2005–2006 school year.<sup>34</sup>

## Tax Incentives

Tax incentives date back to 1955, when Minnesota enacted the first tax deduction for educational expenses. Tax credits and deductions allow parents to claim a credit or deduction against their taxes for approved educational expenses (e.g., private school tuition, books, tutors, and transportation) or give individuals or corporations a tax credit for contributions to tuition scholarship organizations.

Parents in Illinois, Iowa, and Minnesota benefit from the first type of credit, while families in Arizona, Florida, and Pennsylvania can use the second type. Parents in all 50 states may take advantage of education savings accounts to save up to \$2,000 annually in tax-free accounts for K–16 educational expenses. Six states have education tax credits.

**Arizona.** A 1997 Arizona law allows a tax credit of up to \$500 for individuals and \$625 to married couples for donations to private tuition scholarship programs. Individuals can also receive a credit of up to \$200 for donations to public school extracurricular activities.<sup>35</sup>

On January 26, 1999, the Arizona Supreme Court upheld the tax credit plan, finding that it was neutral with regard to religion and beneficial to low-income families who have been “coerced into accepting public education.”<sup>36</sup>

Approximately 19,000 students attend schools of choice with support from this program.<sup>37</sup> More than 80 percent of the scholarship recipients are from lower-income families. A Cato Institute report found that the credit is revenue-neutral because the scholarships cost less than the per-pupil expenditure at the public schools. The system saves money when students transfer to less costly private schools, offsetting the revenue loss of the tax credit.<sup>38</sup>

**Florida.** Under this program, which the state legislature passed in 2001, corporations can receive tax credits of up to 75 percent of their corporate income tax bill for donations to scholarship funds. Tuition scholarship organizations can provide low-income students with tuition scholarships worth up to \$3,500 to attend a private school or a \$500 voucher to attend a public school in another school district.<sup>39</sup> During the 2003–2004 school year, approximately 13,000 students received scholarships under this program.<sup>40</sup>

**Illinois.** In 1999, the Illinois legislature approved a tax credit plan for education expenditures that provides an annual tax credit of up to 25 percent of education-related expenses (e.g., tuition, book fees, and lab fees) in excess of \$250, up to a maximum of \$500 per family.<sup>41</sup> In 2001, 189,055 families took this education tax credit.<sup>42</sup>

Opponents have brought two lawsuits against the credit. The plaintiffs lost in both circuit and appellate courts, and in 2001, the Illinois Supreme

33. H.B. 249, Utah Legislature, and Lynn, “State School-Voucher Program Is Under Way.”

34. Tiffany Erikson, “Huntsman Signs Special-Needs Bill,” *The Deseret News*, March 11, 2005, at [deseretnews.com/dn/view/0,1249,600117819,00.html](http://deseretnews.com/dn/view/0,1249,600117819,00.html) (April 18, 2005).

35. DeGrow, “Educational Vouchers and Tax Credits.”

36. *Kotterman v. Killian*, 972 P. 2d 606, 615 (1999).

37. See Alliance for School Choice, “School Choice Facts.”

38. Carrie Lips and Jennifer Jacoby, “The Arizona Scholarship Tax Credit: Giving Parents Choices, Saving Taxpayers Money,” Cato Institute *Policy Analysis* No. 414, September 17, 2001, at [www.cato.org/pubs/pas/pa414.pdf](http://www.cato.org/pubs/pas/pa414.pdf) (April 18, 2005).

39. Manhattan Institute for Policy Research, Education Research Office, “Corporate Tax Credit Scholarships,” 2003, at [www.miedresearchoffice.org/corporatetaxscholarships.htm](http://www.miedresearchoffice.org/corporatetaxscholarships.htm) (April 18, 2005).

40. Alliance for School Choice, “School Choice Facts.”

41. S.B. 1075, Illinois Senate, 91st General Assembly.

42. Manzi and Larson, “Income Tax Deductions and Credits for Public and Nonpublic Education in Minnesota.”

Court upheld the credit by refusing to review the lower court rulings.<sup>43</sup>

**Iowa.** In 1987, the Iowa legislature enacted a law providing tax credits and deductions for education expenses. Under the original law, families earning less than \$45,000 could deduct up to \$1,000 per child from their state income taxes for education expenses. Taxpayers using the standard deduction could take a tax credit of up to \$50 for education expenses for each child.<sup>44</sup> The law was amended in 1996 and 1998 to allow all families to take a tax credit of 25 percent of the first \$1,000 spent on their children's education.<sup>45</sup> In 2000, 141,500 families took an education tax credit.<sup>46</sup>

**Minnesota.** Since 1955, Minnesota families have been able to deduct education expenses from their state taxes.<sup>47</sup> In 1997, the legislature enacted a measure giving Minnesota families who earn \$33,500 or less a refundable tax credit of up to \$1,000 per student (up to \$2,000 per family) for education expenses, excluding tuition. The law increased the maximum deduction to \$1,625 for expenses associated with elementary school education, including tuition, and up to \$2,500 for junior high school and senior high school expenses.<sup>48</sup> In 2001, 200,000 families took the deduction, and 56,414 families took the education tax credit.<sup>49</sup>

**Pennsylvania.** In 2001, the Pennsylvania legislature passed an education tax credit program that permits corporations to receive credits of up to \$200,000 for contributions to organizations that provide scholarships to private schools or grants to public schools for innovative programs. Scholarship recipients must meet income eligibility guidelines.<sup>50</sup> During the 2003–2004 school year, more than 15,000 students received support through this program.<sup>51</sup>

## Home Schooling

Home schooling is the fastest growing form of school choice. From 1994 to 2003, the number of home-schooled students tripled, from 345,000 to 1,100,000.<sup>52</sup> On average, home school students have higher academic achievement than students in public or private schools. Home-schooled elementary school students tend to perform one grade level higher than their peers in traditional schools. By high school, they are four grade levels above the national average.<sup>53</sup> Nearly all home-schooled students participate in at least two extracurricular activities such as dance, sports, music, and volunteerism. In fact, the average home school student participates in five such activities.<sup>54</sup>

Although home schooling is legal in all 50 states, laws vary. Some states heavily regulate home

43. *Griffith v. Bower*, 319 Ill. App. 3d 993 (5th Dist.), *app. denied*, 195 Ill. 2d, 577 (2001); *Toney v. Bower*, 318 Ill. App. 3d, 1194 (4th Dist.), *app. denied*, 195 Ill. 2d 573 (2001).

44. Tom Mirga, "Tuition Tax Credits Are Challenged in Iowa," *Education Week*, October 28, 1987.

45. "Legislative Update," *Education Week*, June 5, 1996, and Robert C. Johnston, "Despite Talk, Lawmakers Slow to Copy Tax Credits," *Education Week*, June 3, 1998.

46. Manzi and Larson, "Income Tax Deductions and Credits for Public and Nonpublic Education in Minnesota."

47. See Minnesota House of Representatives Research Department, "Minnesota's Public School Fee Law and Education Tax Credit and Deduction," *Information Brief*, January 2003, at [www.house.leg.state.mn.us/hrd/pubs/feelaw.pdf](http://www.house.leg.state.mn.us/hrd/pubs/feelaw.pdf) (April 7, 2005).

48. *Ibid.*

49. Manzi and Larson, "Income Tax Deductions and Credits for Public and Nonpublic Education in Minnesota."

50. DeGrow, "Educational Vouchers and Tax Credits."

51. Alliance for School Choice, "School Choice Facts."

52. U.S. Department of Education, National Center for Education Statistics, National Household Survey Data, 1994, 1996, 1999, and 2003; National Household Education Survey, 1999; and Parent and Family Involvement in Education Survey, in National Household Education Survey, 2003.

53. Lawrence M. Rudner, Ph.D., "The Scholastic Achievement and Demographic Characteristics of Home School Students in 1998," Home School Legal Defense Association, 1999, at [www.hslda.org/docs/study/rudner1999/FullText.asp](http://www.hslda.org/docs/study/rudner1999/FullText.asp) (April 18, 2005).



schooling. In others, there is no contact between the state and the parents.

### Remaining Challenges

Despite the growing popularity of parental choice programs, legal barriers remain.

Although the U.S. Supreme Court ruled that voucher programs do not violate the Constitution, even when participating schools are overwhelmingly religious, some state provisions, such as Blaine Amendments, threaten choice programs.<sup>55</sup>

Blaine Amendments have an anti-Catholic and anti-immigrant history. After the Civil War, the emerging public schools were predominantly Protestant in character, often requiring that the King James Version of the Bible be read in classrooms. U.S. Representative James Blaine (R-ME) attempted to prevent the funding of non-Protestant, “sectarian” institutions, many of which were founded by Catholics, with a constitutional amendment.<sup>56</sup> Although he failed, he and similarly minded individuals successfully promoted the adoption of constitutional provisions in 37 states prohibiting the funding of faith-based institutions.

As choice programs have developed in the 20th century, opponents have attempted to strike them down under Blaine and other constitutional provisions. In the past two years, opponents of choice prompted the Colorado Supreme Court to nullify its nascent voucher program. Other programs—like those in Wisconsin, Ohio, and Arizona—have survived legal scrutiny.

The fate of others, like the Florida A+ Program and Maine’s tuitioning program, remains undecided. In August 2004, the Florida First District Court of Appeal ruled by a vote of two to one that

Florida’s program was unconstitutional. The full 15-member court also ruled against the program. The program continues while the state Supreme Court is reviewing the case.<sup>57</sup> The decision could affect Florida’s other school choice options, as well as higher education scholarships and faith-based state social services programs.

On March 24, 2005, a federal district court dismissed a suit by the Arizona Civil Liberties Union challenging the state’s education tax credit. The case was dismissed initially under the federal Tax Injunction Act, which requires that such cases be adjudicated in state court. However, the U.S. Supreme Court ruled that the case must be heard in federal court. The program has already been upheld by the Arizona Supreme Court.<sup>58</sup>

In Georgia and Maine, parents have gone on the offensive to gain options. In January 2005, three parents sued the state of Georgia, arguing that its education system is unconstitutional because it does not provide equal educational opportunities for families who are not wealthy. The plaintiffs suggest several solutions, including statewide public school choice and publicly funded vouchers, although the suit does not use the term “vouchers.”<sup>59</sup>

In March 2005, the Institute for Justice presented oral arguments before the Maine Supreme Judicial Court on behalf of Maine families seeking to overturn a 1981 law that bars parents from choosing faith-based schools under the state’s voucher-like tuitioning program.<sup>60</sup> The case was filed shortly after the U.S. Supreme Court ruled in *Zelman v. Simmons-Harris* that voucher programs do not violate the Constitution, even when participating schools are overwhelmingly religious.

54. Home School Legal Defense Association, “Home Education Across the United States: Family Characteristics, Student Achievement, & Longitudinal Traits,” at [www.hsllda.org/docs/study/ray1997/17.asp](http://www.hsllda.org/docs/study/ray1997/17.asp) (April 18, 2005).

55. *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

56. See Becket Fund for Religious Liberty, “Blaine Amendments,” at [www.blaineamendments.org](http://www.blaineamendments.org) (April 7, 2005).

57. See Institute for Justice, “Florida School Choice: *Holmes v. Bush*, Institute for Justice and Parents Defend Florida’s Ground-breaking Statewide School Choice Program,” at [www.ij.org/schoolchoice/florida/index.html](http://www.ij.org/schoolchoice/florida/index.html) (April 7, 2005).

58. See Institute for Justice, “Arizona School Choice: *Winn v. Hibbs*, Arizona Tax Credits (Federal Court Case),” at [www.ij.org/schoolchoice/az\\_taxcredits2/index.html](http://www.ij.org/schoolchoice/az_taxcredits2/index.html) (April 7, 2005).

59. Paul Donsky, “Fed-Up Father Joins Suit for Better Schools,” *The Atlanta Journal-Constitution*, January 28, 2005, p. D1.

## What Congress Should Do

The 109th Congress will have the opportunity to allow parents more freedom to make choices for their children's education. Members can build on the D.C. Opportunity Scholarship Program by supporting President Bush's Choice Incentive Fund proposal, a \$50 million fund included in the President's budget that enables cities to create innovative parental choice programs.<sup>61</sup>

In March, the Washington Scholarship Fund (WSF), which administers the District's program, the first federally funded voucher program in the United States, announced that 2,702 families have applied for scholarships for the 2005–2006 school year. Over half of these applicants currently attend schools in need of improvement under the federal No Child Left Behind Act or will be enrolling in kindergarten in the 2005-2006 school year. The WSF expects to double the previous year's program participation of 1,000 students.<sup>62</sup>

Specifically, Congress should:

- Support the \$50 million Choice Incentive Fund. This would enable other cities to create

innovative programs like the D.C. Opportunity Scholarship program.

- Support the D.C. Opportunity Scholarship program, which is increasingly popular with D.C. residents, in 2006 appropriations legislation.
- Hold hearings and enact legislation to improve and expand implementation of the choice provisions of the No Child Left Behind Act.

## Conclusion

Parental choice programs are spreading throughout the country. Eleven states and the District of Columbia have publicly funded voucher or tax credit programs, and 40 states and the District of Columbia have charter school laws. Other states and Congress may yet adopt parental choice legislation before the end of the year. The principles of parental empowerment and educational opportunity are shaping the education policy debate as more policymakers realize the benefits that choice holds for the nation's children.

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60. See Institute for Justice, "Maine School Choice: *Anderson v. Town of Durham*, Institute for Justice and Maine Parents Challenge State Law Barring Religious Options from School Choice Program," at [www.ij.org/schoolchoice/maine2/index.html](http://www.ij.org/schoolchoice/maine2/index.html) (April 7, 2005).

61. Office of Management and Budget, "FY 06 Budget Priorities: Department of Education," at [www.whitehouse.gov/omb/budget/fy2006/education.html](http://www.whitehouse.gov/omb/budget/fy2006/education.html) (April 7, 2005).

62. Press release, "High Demand for School Choice," Washington Scholarship Fund, March 23, 2005.