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Taxpayer rights matter in school choice debate

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The U.S. Supreme Court's recent ruling in *ACSTO v. Winn* has been acclaimed, or denounced, as a victory for private school choice and taxpayer rights.

In upholding an Arizona choice program based on tax credits, the court held that money spent and claimed as a credit against one's taxes is private money, not government spending. Other taxpayers aren't harmed by the choice of those claiming credits because the government isn't spending collective tax revenue. In other words, the taxpayer, not the state, is presumed to own the fruits of his own labor.

Unfortunately, most discussions of the case seem to miss its larger importance: *ACSTO v. Winn* is a landmark victory for taxpayer rights in the pursuit of educational freedom.

Headlines and articles have trumpeted a win for "vouchers" in support of educational choice. And yet the court could not have reached any of its major conclusions had one of the nation's many voucher programs been at issue. Vouchers are grants of government funds to families for tuition in a private school.

Tax credits, unlike vouchers, respect the rights and values of the taxpayers who earned the money being spent on education. Education tax credits are the most principled means of expanding education freedom. They are also the most practical.

As Justice Kennedy explained, "a dissenter whose tax dollars are 'extracted and spent' knows that he has in some small measure been made to contribute to an establishment in violation of conscience. [By contrast,] awarding some citizens a tax credit allows other citizens to retain control over their own funds in accordance with their own consciences."

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The challenge to this education tax credit program failed because only private funds are involved. Taxpayers donate money to an education scholarship-granting organization and then claim a credit that reduces their state tax liability for every dollar they donate.

The court was explicit in the first sentence: "Because respondents challenge a tax credit as opposed to a governmental expenditure, they lack Article III standing under *Flast v. Cohen*."

No public funds were expended in the first place, and that is a necessary precondition for taxpayers to bring

suit, because that would have established that they had been harmed as taxpayers.

A taxpayer challenging a voucher program would have standing under this decision. The court would be forced to recognize, in the words of the majority, that the plaintiff "has in some small measure been made to contribute to an establishment in violation of conscience" and therefore had standing in court to proceed with the litigation.

The composition of the U.S. Supreme Court and its precedent on school choice make it unlikely that a voucher program would be overturned in any case. At the state level, however, there is no shortage of dangers rooted in the use of government money to fund school choice.

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The most recent and bracing example comes, once again, from Arizona.

In 2009, the state supreme court ruled in *Caine v. Horne* that voucher programs for disabled and foster children violated a state constitutional ban on aid to private schools because it was an expenditure of government funds. That same court previously upheld a state tax credit program on the grounds that the credits did not constitute an expenditure of government funds.

The status of vouchers as government funds was key to the decisions overturning Colorado's voucher program in 2004 and Florida's in 2006.

Many other states have constitutional language and legal precedents that are likely to render voucher, but not tax credit, programs unconstitutional. More than 30 states, at least, look hostile or uncertain on these grounds.

And where voucher programs have been passed and still survive, they are more highly regulated because they use government, rather than private, funds.

Taxpayers, after all, are compelled to finance in some small part all choices made under the program. The desire to control and constrict those choices is therefore stronger and the rationale more persuasive to legislators and citizens.

Regulations are the always imperfect and often counterproductive means demanded by interest groups and citizens attempting to ensure that their tax dollars are spent in ways they approve.

Supporters of school choice have an important choice of their own following this Supreme Court decision. Will we respect the values and preferences of taxpayers by giving them control over how their education dollars are spent?

Only education reform through tax credits can expand freedom for everyone: children, parents — and even the too-often overlooked taxpayers who foot the bill.

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