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## **More benefits from credits than vouchers**

By Adam B. Schaeffer

Pennsylvania endured a bruising battle over education vouchers in the last legislative session, and the next round seems to be in the offing. But a recent court injunction halting a Colorado program should give pause to voucher promoters in the Keystone State.

Part of the reason Colorado's voucher program was stopped in its tracks is a state constitutional provision that reads:

"No appropriation shall be made for charitable, industrial, educational, or benevolent purposes to any person, corporation, or community not under the absolute control of the state, nor to any denominational or sectarian institution or association."

Pennsylvania's constitution has a nearly identical provision, though it makes an explicit exception for higher education, stating that:

"No appropriation shall be made for charitable, educational, or benevolent purposes to any person or community nor to any denominational and sectarian institution, corporation, or association: Provided, that appropriations may be made for . . . loans for higher educational purposes...."

This exception, of course, would not apply to K-12 vouchers. As a result, any voucher program enacted in the commonwealth will face the same daunting legal hurdles that are likely to kill the Colorado program.

A court in Indiana recently denied an injunction against that state's new voucher law, but the Hoosier State lacks the restrictive constitutional language found in Colorado and Pennsylvania. Unless the Pennsylvania legislature intends to enact a voucher program in Indiana, what happens there is irrelevant.

Fortunately, the existing Education Investment Tax Credit Program (EITC), which opens access to good private schools by allowing businesses to claim a tax credit for donations to scholarship funds for low-income children, has the potential to offer even freer educational choice than a voucher program. The EITC has gone unchallenged for more than a decade, is popular, uncontroversial, and ripe for a huge expansion.

Unlike vouchers, education tax-credit programs have withstood every state and federal challenge advanced against them over the last two decades. Major credit programs in Indiana, Florida, Georgia, and Pennsylvania - to name a few - have yet to be challenged. And for good reason; they are on solid constitutional ground at both the state and federal level.

Why? Vouchers are grants of government funds, while tax credits are private funds. The recent U.S. Supreme Court ruling in *Arizona Christian School Tuition Organization v. Winn* highlights the vital importance of this distinction.

The court held that money spent and claimed as a credit against one's taxes is private money, not government spending like education vouchers. Other taxpayers aren't harmed by the choice of those claiming credits because the government isn't spending collective tax revenue.

As Justice Anthony M. 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."

The challenge to this education tax-credit program failed because only private funds are involved. A taxpayer challenging a voucher program would have standing under this decision. The composition of the U.S. Supreme Court and its precedent on school choice make it unlikely that a voucher program would be overturned on federal constitutional grounds, but at the state level, there are many constitutional threats to voucher programs. Colorado's court ruling, for instance, identified five separate legal problems with the Douglas County voucher program.

However, the most recent and bracing conclusion comes, again, from Arizona. In 2009, the Arizona 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 earlier voucher program in 2004 and Florida's in 2006.

Pennsylvanians shouldn't roll the dice on vouchers, and they don't need to. Expanding the Education Investment Tax Credit program is the most pragmatic, principled, and certain means of expanding school choice and educational freedom.

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