

Council for American Private Education

# CAPE outlook

Voice of America's private schools

## CAPE Joins Brief in Arizona School Choice Case

Setting the stage for a critical ruling on school choice, the U.S. Supreme Court will hear oral arguments the first Wednesday in November on the constitutionality of an Arizona program that provides tax credits for donations to private school scholarship organizations. CAPE has joined an amicus brief, developed and filed by the Cato Institute, urging the court to uphold the program.

The matter will be the first major K-12 school choice case heard by the high court since *Zelman v. Simmons-Harris*, a 5-4 decision in 2002 upholding Ohio's Pilot Project Scholarship Program. And the ruling, likely to be rendered sometime next year, will carry significant consequences for choice programs across the nation.

### Paving the Way

Arizona allows citizens who donate to school tuition organizations (STOs) to take a dollar-for-dollar tax credit for the contribution up to \$500 for individual taxpayers and up to \$1000 for taxpayers filing jointly. The program, established in 1997 as the nation's first scholarship tax credit initiative, has paved the way for similar programs in six other states: Florida, Georgia, Indiana, Iowa, Pennsylvania, and Rhode Island.

### Profound Repercussions

The Cato brief notes that because the number of students served by these programs has grown and has the potential for growing even more in the future, the case will have profound repercussions. An adverse ruling "would not only curtail this growth, but likely reverse it, as existing and potential donors would fear the tax

implications of claiming credits that are subsequently struck down." The brief goes on to state that "the educational choices of tens of thousands of students in six states depend on the resolution of this case, as do the prospective choices of many more students in coming years."



### Genuine Choice

In 2009, the U.S. Court of Appeals for the Ninth Circuit in effect ruled that the Arizona program might not provide genuine opportunity for parents to choose secular schools because the majority of schools served by STOs are religious schools. The brief argues that the Arizona statute indeed provides the "genuine and independent choice" that Supreme Court precedent requires of such programs. Whether it's the private choice of individuals who create the STO, or taxpayers who contribute to the STO, or parents who apply for the scholarship, there are several layers of "genuine and independent private choice insulating the program from any Establishment Clause challenge."

Moreover, states the brief, far from pressuring parents to select religious schools, Arizona provides citizens a "broad range of academic options, only one of which is to obtain an STO scholarship to attend a religious school." Not only that, the state actually discourages the selection of religious schools by maintaining "a substantial financial disincentive" to do so. "Parents receiving aid from an STO are typically required to spend several thousand dollars of their own money to send their children to religious schools," according to the brief. "In contrast, tuition at both charter and regular public schools is free. Parents thus have a strong inducement not to choose a

private religious institution over the secular, tuition-free public system."

The brief also argues that "a taxpayer's choice of which STO to donate to—and whether to donate at all—is wholly within the discretion of that taxpayer." Accordingly, "Any benefit to religious institutions is merely incidental to that choice."

### Credits and Deductions

The Ninth Circuit ruling distinguished the Arizona tax credits from federal tax deductions for charitable donations, which have long been held acceptable under the Establishment Clause. Addressing that unfounded distinction, the Cato brief argues that the Arizona program resembles charitable deduction programs "in all the particular features essential to their constitutionality under the Establishment Clause." Indeed, if the Ninth Circuit's analysis were upheld, it could yield "the absurd and untenable result of invalidating federal charitable tax deductions." The brief elaborates on the potentially harmful consequences: "If left uncorrected, the Ninth Circuit's error will be widely cited and potentially invalidate not only the numerous education tax credit programs enjoyed by tens of thousands of students around the country, but also charitable tax deduction programs that serve millions of beneficiaries. The Ninth Circuit's faulty reasoning and plain misreading of this Court's jurisprudence jeopardizes each of these programs."

### Preserving True Choice

In a critical closing point, the brief concludes that programs like the one in Arizona "are necessary across the country to preserve parents' true choice in the education of their children." The scholarships and the freedom to direct those scholarships to certain schools provide opportunities to attend a broad range of schools "that many children would otherwise be

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## CAPE member organizations:

- Agudath Israel of America
- American Montessori Society
- Association Montessori International—USA
- Association of Christian Schools International
- Association of Christian Teachers and Schools
- Association of Waldorf Schools of N.A.
- Christian Schools International
- Evangelical Lutheran Church in America
- Friends Council on Education
- Lutheran Church—Missouri Synod
- National Association of Episcopal Schools
- National Association of Independent Schools
- National Catholic Educational Association
- National Christian School Association
- Oral Roberts University Educational Fellowship
- Seventh-day Adventist Board of Education
- United States Conference of Catholic Bishops
- Wisconsin Evangelical Lutheran Synod Schools
- 33 Affiliated State Organizations

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## Vouchers Bring Higher Graduation Rates

Graduation rates for minority students are grim. A report in August from The Schott Foundation for Public Education showed that the rate for black males in the U.S. was a shocking 47 percent. At the centennial celebration this summer of the National Urban League, Education Secretary Arne Duncan similarly reported that roughly 50 percent of African-American and Latino students drop out of high school, putting themselves and the nation at risk.

But amid the grim news comes reason to hope. A random-assignment study commissioned by the Education Department has found that students who attended private schools through the Opportunity Scholarship Program (OSP) in the District of Columbia were more likely—by 21 percentage points—to receive a high school diploma than a control group that did not take part in the program.

A University of Arkansas research team described the study as the first in the United States “to use rigorous experimental methods to determine the effect of school vouchers on graduation rates.”

The university reported that the mere offer to participate in the OSP “raised a student’s probability of completing high school by 12 percentage points, from 70 percent to 82 percent, based on parent reports.” Further, actual use of the scholarship to attend a private school “increased graduation rates by 21 percentage points.”

Research leader Patrick Wolf said, “These results are important, because high school graduation is strongly associated with a large number of important life outcomes such as lifetime earnings, longevity, avoiding prison and out-of-wedlock births, and marital stability.”

Wolf added: “The Obama administration has, quite correctly, made increasing high school graduation rates a top education priority, especially for disadvantaged students. Fortunately, we now know of an initiative that has done exactly that.”

### Program Phase-Out

Congress and the Obama administration decided to phase out the program last year by preventing new students from participating. As a result, some religious schools in the nation’s capital that participate in the program will likely close, denying opportunities for lifelong success to an even wider scope of students, scholarship

and non-scholarship alike.

If the goal is to expand graduation rates and college-prep opportunities for minority students, one might wonder why policymakers would want to kill a program that demonstrates remarkable success in achieving just that.

And here’s the kicker, it achieves the success at substantial savings to taxpayers. The scholarships are worth a maximum of \$7,500 per student, far less than the per-pupil cost in DC public schools. With government spending out of control and voters demanding that budgets be balanced, a program’s ability to deliver results at lower costs is an important attribute.



Former D.C. City Councilman Kevin P. Chavous, a champion of the program, said, “It is clear that the time has come for President Obama and his Congressional allies to reauthorize the program and empower thousands of additional, low-income DC schoolchildren with the opportunity to graduate from high school and achieve their dreams.”

### Washington Post Editorial

In an editorial following the report’s release, *The Washington Post* wrote: “Few things are more critical to future success than graduation, so it’s hard to discount the difference that vouchers made for the low-income students participating in the program. It’s also hard for those blessed with the resources to choose among good schools to truly appreciate the dilemma of parents powerless to affect their children’s education.” Calling on Congress and the Administration to reconsider the DC vouchers, the editorial said the latest findings “underscore the value of this program and show how wrong-headed it is to deny future students this opportunity.”

*The Congressionally mandated evaluation of the voucher program is available at <<http://ies.ed.gov/nceel/pubs/20104018/index.asp>>.*

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## Students Safer in Private Schools

“No student should feel unsafe in school.” That’s what Education Secretary Arne Duncan said at a high-profile summit this summer on school bullying and violence. Calling school safety “a moral issue, and a practical one,” Duncan said children cannot get a quality education “if they don’t first feel safe at school.”

Two reports issued by the federal government in recent months suggest that students are more likely to be safe in private schools than in public schools.

The National Center for Education Statistics (NCES) in July issued the report *Student*

*Victimization in U.S. Schools*, which provides results from the 2007 School Crime Supplement to the National Crime Victimization Survey.

According to the report, “The percentage of public school students who reported being victims of any crime (4.6 percent) and theft (3.2 percent) was higher than that of private school students (1.1 percent each for any crime and theft).” Put another way, four times as many students in public schools than private schools reported being a crime victim at school, and three times as many reported being a victim of theft.

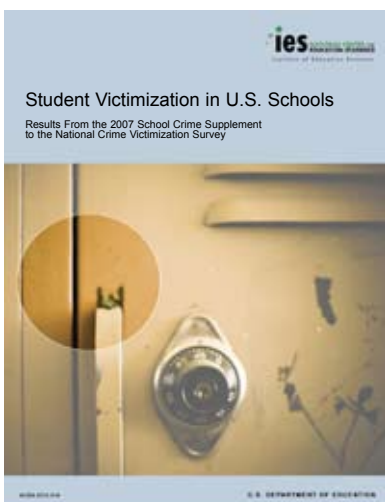
The report covers students ages 12 to 18. Its definition of terms is quite specific. “Any crime” refers to violent crime and theft. “Violent” refers to “rape, sexual assault, robbery, aggravated assault, and simple assault.” “Theft” means “attempted and completed purse snatching, completed pickpocketing, and all attempted and completed thefts, excluding motor vehicle theft.” “Theft” does not cover robbery, “in which the threat or use of force is involved.”

### Bullying, Conflict, Disrespect

In June, NCES issued a report tracking the mobility and attrition of school principals. But the report contained information on certain working conditions and school characteristics that administrators faced in the 2007-08 school year, including whether the following problems

had occurred “at least once a month or more often: physical conflicts among students, student bullying, student acts of disrespect for teachers.”

It turns out that public school principals were over four times more likely to report occurrences of physical conflicts than private school administrators (31 percent vs. 7 percent) and nearly three times more likely to report occurrences of bullying (42 and 16 percent) and disrespect for teachers (25 and 9 percent).



At the anti-bullying summit held in Washington August 11 and 12, Duncan asked and answered the question, “What does a safe school look like?” He said one gets a sense of whether a school is safe the minute one walks in the door. “A safe school is one where students feel like they belong. The students feel secure, valued, and are surrounded by adults that they trust. Safe schools also cultivate a culture of respect and caring—and have little tolerance for disruptiveness. At a safe school, students don’t curse or threaten teachers. They don’t spend most of their class time texting other students or tune out on their iPods. Students don’t roam the hallways.”

Administrators in religious and independent schools are likely to relate immediately and completely to what the secretary is talking about.

### Anti-Bullying Web Site

In connection with the summit, the federal government launched a new Web site, [www.bullyinginfo.org](http://www.bullyinginfo.org), which provides “an easy, more centralized and accessible one-stop site” for resources on understanding and preventing bullying.

“As educators, as state and local officials, and at the federal level, we simply have not taken the problem of bullying seriously enough,” said Duncan. “It is an absolute travesty of our educational system when students fear for their safety at school.”

Choice (formerly the Friedman Foundation), the American Federation for Children, and the Center for Education Reform.

Several member organizations of CAPE have filed or joined other briefs in the case. Briefs are available at <<http://www.abanet.org/publicized/preview/briefs/nov2010.shtml#christian>>.

## CAPE on YouTube

To help mark the back-to-school season, CAPE has a new YouTube video on how religious and independent schools promote the public good and provide a path to a promising future.

Hitting the theme that private schools are good for students, good for families, and good for America, the four-minute video notes that parents choose such schools for many reasons: “quality academics, an education that focuses on the whole person, spiritual and ethical values, caring teachers, a safe environment, supportive communities, individualized attention, and much more.”

A key message in the video is that private schools help parents provide their children with lasting treasures: “love, values, purpose, responsibility, a sense of being rooted in life and connected to its source.” As the narrator states, “Children only get one education. It should focus on what really counts.”

At a time when many public schools, including public charter schools, are zeroing in on two components of education, reading and math, another theme in the video is that a fully rounded person is more than the sum of those skills. “The goal of education is the formation of the whole person—moral, spiritual, cultural, academic, aesthetic, physical.”

Of course private schools expect students to master reading and math, but those schools also cover art, music, science, social studies, physical education, and, in most of them, religion. “Why are we here? What is our responsibility to others and society? What is our ultimate destiny? Those are some of the issues tackled in religious and independent schools.”

The video, which may be viewed at [capenet.org](http://capenet.org), invites parents to visit a private school and find out how they “help parents provide their children with a lasting treasure.”

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unable to attend.” In short, the program “fundamentally broadens the educational choice of Arizona parents and the educational opportunities of their children.”

Besides CAPE, other parties that joined the Cato brief are the Foundation for Educational

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## CAPE notes

★ Last December, New Jersey Democratic Governor Corzine established a commission to recommend actions the state could take to preserve and improve opportunities for children attending religious and independent schools. This summer, current Republican Governor Chris Christie released the final report of the Governor's Study Commission on New Jersey's Nonpublic Schools, saying he would "take its recommendations under consideration."

Noting that private schools save residents about \$4 billion annually while pumping hundreds of millions of dollars in goods, salaries, and services into the economy, the commission said there are many "sound and compelling reasons that the state should preserve and enhance support to nonpublic school students." Among those reasons: "All schools serve the public good. All children are part of the public. Not every school is right for every child."

The loss of private schools "would burden the taxpayers with billions of dollars of additional costs," wrote the commission. "It makes sense for the state to ensure a vigorous, diverse, and healthy system of schools that ensures opportunity for all."

The commission's recommendations include enhanced support for current programs serving private school students, but also new initiatives like scholarship tax credits, which Christie especially welcomed. "Many states provide such tax credits, and we support providing them here in New Jersey, as well," he

said. "They would immediately expand the scholarship assistance available to poor and working families, and with it the educational opportunities available to their children." The report is available at [http://nj.gov/governor/news/reports/pdf/20100720\\_np\\_schools.pdf](http://nj.gov/governor/news/reports/pdf/20100720_np_schools.pdf).

★ Just across the Jersey border, a breakthrough has unfolded in Pennsylvania, where both the Republican and Democratic candidates for governor now support genuine school choice. Republican Tom Corbett and Democrat Dan Onorato not only back an expansion of the state's popular Educational Improvement Tax Credit, which allows corporations to get a tax break for contributions to private school scholarship organizations, but also support scholarships that would allow low-income children in failing public schools to attend religious and independent schools.

According to the American Federation for Children, "having two major party candidates on the ballot with similar views on educational choice is a significant turn of events."

"We have clearly turned a corner in our country," said Kevin P. Chavous, a Federation board member. "We're pleased that in a growing number of states across this country, the debate is no longer about whether we should have school choice, but instead about what is the best way to provide high-quality, accountable school choice programs to disadvantaged children."

★ Two governors signed special-needs scholarship initiatives into law this June, bringing to seven the number of states that offer such programs.

Louisiana's Republican Governor Bobby Jindal put his signature on the *School Choice Pilot Program for Certain Students with Exceptionalities Act*, establishing a two-year trial in designated parishes. "This new program is a significant victory for Louisiana's children," said Betsy DeVos of the American Federation for Children.

Meanwhile, Oklahoma's Governor Brad Henry, a Democrat, signed the *Lindsey Nicole Henry Scholarships for Students with Disabilities Act*, named after his daughter who succumbed as an infant to Werdnig-Hoffman Disease. "Because of the governor's and legislature's courageous acts, Oklahoma's children with special needs have been afforded a new, better chance to succeed in life," said Robert Enlow of the Foundation for Educational Choice.

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