



**Milwaukee
Jewish
Council**

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Background

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POSITION ON TUITION TAX CREDITS TO PRIVATE AND RELIGIOUSLY-AFFILIATED SCHOOLS

I. Preamble

The Milwaukee Jewish Council is the community relations and public affairs agency of the Jewish community in Milwaukee. Founded in 1938, our Board of Directors includes representatives of 25 local Jewish organizations. We work to promote equality, equal opportunity, religious freedom, pluralism, and freedom from bigotry.

The Milwaukee Jewish Council acknowledges that there is a division of opinion within Milwaukee generally, and the Milwaukee Jewish community in particular, on the wisdom of legislative proposals to subsidize -- directly or indirectly -- the costs of education in private institutions. Undoubtedly, some people in the Jewish community will support tuition tax credits. Similarly, there are supporters of these legislative efforts who believe that such funding is an essential element of "educational reform."

As the representative organization of the broad range of Jewish organizations we are cognizant of these differing viewpoints. Yet the historic and strong commitment of the Jewish community to separation of church and state requires opposition to such legislative efforts. The Milwaukee Jewish Council and the Jewish community must continue to resist such proposals in order to preserve the separation of religion and government which is a core value central to our security and freedom.

We believe that governmental financial aid to religiously-affiliated schools in Wisconsin in the form of tuition tax credits violates two fundamental principles of our democracy:

I. The doctrine of separation of church and state

embodied in the U.S. and the Wisconsin Constitutions which is the keystone of religious freedom in the United States.

II. Our nation's historic commitment to providing the best possible public schools to all children without regard to race, religion, national origin, economic or other protected status.

II. Separation of Church and State

We hold that any proposal requiring state taxpayers to pay for tuition tax credits to parents for a religiously-related education is in violation of both the U.S. and Wisconsin Constitutions.

1. The Federal Constitution:

Article I of the United States Constitution's Bill of Rights provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The U.S. Supreme Court historically has used three criteria to evaluate whether a governmental program violates this clause and is, therefore, unconstitutional. First, is the principal purpose of the law secular? Second, is its effect to neither enhance nor inhibit religion? Third, does it involve excessive government entanglement in religion?

We believe that all proposals to provide state tuition tax credits to parents whose children attend religiously-affiliated schools violate the Establishment Clause of the U.S. Constitution. First, the prime movers behind the Parental Choice Act of 1993 are from several religious denominations and their principal purpose is to obtain public funding for their religious schools. Their aim is the promotion of a religious, rather than secular, purpose. And this religious purpose is masked by only a thin veneer claiming a secular objective.

Second, the effect of the bill is to enhance religion by supporting religious education. Religious educational institutions and their supporters and adherents will be the primary beneficiaries of such legislation.

Third, this legislation will cause excessive government entanglement in religion. As a condition of tuition reimbursement, the proposed tax credit requires religious schools to comply with Federal and State laws prohibiting discrimination based on race, creed, color or national origin; however, it creates an exception for religion and permits preferential treatment for students of that religion. The State government could, in the enforcement of the non-discrimination provision of the tuition tax credit proposal, feel compelled to

inquire into the religious beliefs of children in attendance at a religious school. The religious beliefs of the members of any religious organization must remain free from governmental intrusion. The allocation of government funds to religious schools would impose responsibility on the State for other intrusions into the area of religious practice and belief. This practice inevitably will create the political division along religious lines, the avoidance of which is central to the Constitutions' Establishment Clauses.

2. The Wisconsin Constitution:

Wisconsin's Constitution has an even stricter and more specific prohibitions to accomplish separation of church and state. Article I, Section 18 prohibits "any preference be given by law to any religious establishments or modes of worship."

We believe that tuition tax credits for religious education constitutes a preference and support for those religious establishments which operate schools over those religious establishments which for whatever reason -- religion, doctrine, dogma or practice -- chose not to operate schools.(1)

Moreover, Article I, Section 18 specifically forbids "any money be drawn from the treasury for the benefit of religious societies or religious or theological seminaries." Tuition tax credits for parents of children in religious day schools constitutes a utilization of state funds for the benefit of religious societies and their educational institutions. Furthermore the goals of some these religiously-affiliated schools includes serving as recruiting mechanism and preparatory school for clergy.

Finally, that section of the Wisconsin Constitution states:

"nor shall any person be compelled to...support any place of worship or maintain any ministry, without consent."

Distributing tax revenue -- which taxpayers are compelled to pay -- to religiously-affiliated schools where worship occurs as part of the school day and where the faculty often includes clergy, constitutes a violation of this clause in the state's constitution.

3. Inherent Constitutional Problems:

We do not believe that it is possible to draw a clear line between the religious and secular elements of a religious

Footnote (1): Some contend that the historic property tax exemption granted to all religious institutions, including religious schools, also constitutes a taxpayer subsidy to religious schools. We disagree, and support the consistent governmental policy that the continuation of the tax exemption is justified by the need to avoid church-state entanglement. Hence, the purpose of the property tax exemption is to implement the separation of church and state.

school. Leaders of those faiths which support such schools have made clear that the religious purpose of the religious school is an integral part of the total educational experience. Accordingly, proposals to make tax credits directly to religious school children or their parents are merely transparent maneuvers to avoid the State and Federal Constitutional prohibitions against providing public funds for religious purposes.

Such legislation also raises a host of difficult questions of the type sought to be avoided by the Establishment Clauses of both Constitutions. For example:

What are the rights with respect to mandatory prayer services of children who are not of the religious faith of the host religious school? Since religious symbols are banned from classrooms in public schools, would religious schools also be required to remove religious symbols from their classrooms in which the public subsidized "secular" instruction takes place?

Does it not create a conflict in religious identity and is it not an assault on religious pluralism to require religious schools of a particular faith to accept children of all faiths or suffer loss of state funds?

These questions highlight the open invitation to governmental interference into the religious affairs of our people that such legislation entails. This can only threaten the constitutional doctrines of separation of church and state which have been central to our republic.

We recognize and support the right of parents to provide religiously related educations for their children. Indeed, Milwaukee's Jewish community has created its own religious schools. But we believe that such schools, which serve a private religious purpose, are the responsibility not of the government, but of the parents and members of the sponsoring religious community.

Our constitutional heritage requires government neutrality toward religion. This obviously precludes governmental hostility toward religion. It also forecloses the opposite side of that same coin, namely, government subsidies for religious practices.

III. Public Education

1. Educational Policy:

It is the function of government to provide a strong and forward-looking educational system open to all children without regard to race, creed, disability, or other protected characteristics. For more than 150 years, the public school

system has been the primary vehicle for providing our society's youth with socialization and a sense of shared purpose and values. The public schools in our state, however, are now experiencing financial and social crises. They daily are finding it more difficult to provide the kind of education students will need to become contributing citizens of our society.

2. Educational Funding:

The public schools of the cities are today faced with profound social and economic problems which have been exacerbated by the erosion of the tax base due to the departure of middle class families for the suburbs. These public schools desperately need adequate funding. We believe that tuition tax credits for private and religiously-affiliated schools would inevitably divert public funding from public education.

We are aware that there is support for non-public schools because there are many who feel that public education has failed. This is especially true of parents of central city minority group children for whom these public schools were becoming "grim, oppressive and joyless" in the words of the Carnegie Report on Education issued over twenty years ago. It is true that there must be a spirit of educational innovation and a willingness to involve parents in educational decision making. In particular, greater resources must be made available to public education. Tuition tax credits to religiously-affiliated schools, however, will inevitably and inexorably drain funding and commitment from this critical task, leaving tomorrow's children heir to tragedies of greater racial and economic segregation.

3. Tax Policy:

Finally, tuition tax credits for religiously-affiliated schools inevitably misallocates tax funds by subsidizing the affluent. The tax break would be available to every family, rich or poor, regardless of income, regardless of need, and regardless of ability-to-pay. Thus, its financial impact is to drain scarce funding from the public education system to provide a questionable tax break to many who don't need it.

IV. Conclusion

Therefore, in the interest of both religious freedom and public education the Milwaukee Jewish Council opposes all legislative proposals providing tuition tax credits to taxpayers whose children attend religiously-affiliated schools.