

A WOLF AT THE SCHOOLHOUSE DOOR

THE DISMANTLING OF PUBLIC EDUCATION
AND THE FUTURE OF SCHOOL

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Neo-Vouchers

"College and heaven," promised the Catholic school in South Florida that Betsy DeVos dropped by on one of her first official school tours as secretary of education.¹ The visit was the first of many to the Sunshine State, which DeVos often lauds as a model for her particular brand of school choice—one that rewards private, almost exclusively religious schools, with taxpayer-funded largesse, accompanied by little to no oversight.

Private schools in Florida now rake in close to \$1 billion a year in public money. The explosive growth of the state's private school choice program over the past twenty years is all the more remarkable considering that the Florida constitution prohibits public money from funding religious institutions. But as in a growing number of states, school choice advocates in Florida developed a workaround for this problem. Called tax-credit scholarships, or "neo-vouchers," these complex instruments incentivize wealthy donors and companies to direct their tax dollars to religious schools

via nonprofit organizations. It's a little bit like money laundering, and it is increasingly prevalent.

Baby Blaines

As detailed in chapter 2, the conservative dream of funding private school vouchers with public tax dollars began to take shape during the Reagan years. Proponents maintained that vouchers would empower parents and introduce market logic to education, substituting consumer choice for the heavy hand of government. Educating students in private schools, they argued, would also cost less. And, as students shifted from public schools to private ones—resulting in the closure of the former and the expansion of the latter—organized labor would be undermined.

But voucher proponents had a problem. The vast majority of private schools are religious in nature. Any private school voucher program, then, would likely channel public funds to sectarian education. And while the U.S. Constitution doesn't outlaw vouchers, at least according to a 2002 Supreme Court ruling, most state constitutions contain provisions that are far more hostile to vouchers.

What this means is that even when voucher promoters have won political victories, they've often been turned back by the courts. The Colorado Supreme Court, for example, ruled against voucher programs in 2004, and again in 2015, on the grounds that they channel public funds to religious schools. And in 2006, the Florida Supreme Court struck down that state's voucher program, ruling that the state constitution bars the use of taxpayer money to finance private alternatives to the public education system. To better understand these laws, we need to take a brief trip back to the nineteenth century and examine the rise of so-called Blaine amendments, named for the U.S. congressman who first pushed for them.

American politics in the late nineteenth century were charged with race-baiting and nativism—not unlike politics in the Trump era. Back then, the growing population of Catholic immigrants was the target, as politicians angled to align themselves with the cultural majority. Among those politicians was Congressman James G. Blaine of Maine. Seeking to pave his way for a presidential bid in 1876, he proposed an amendment to the Constitution that would bar Catholic schools from ever receiving public funds. The 1875 text of his amendment read:

No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised or lands so devoted be divided between religious sects or denominations.

The amendment had significant popular support, particularly among Protestants who viewed themselves as an increasingly embattled majority and who were strongly opposed to religious sectarianism in public education. But to Catholics, the supposed secular education of the public system looked an awful lot like Protestantism in disguise; in addition to instruction in basic academic subjects, the typical nineteenth-century school day also included scripture reading and hymn singing. Catholics in places like New York withdrew their children from public schools and enrolled them in church-run schools. As they saw it, schools for Protestant students were tax-supported, while Catholic schools were not. With the support of clergy, Catholic parents began to agitate for their share of public revenue.

Blaine's amendment, which overtly pandered to the Protestant majority, passed in the House but failed in the Senate. That, however, did not prevent states from taking action to block public funding for religious schools. In relatively rapid succession, a majority of states adopted what became known as "baby Blaine" amendments to their own constitutions.

Over the next several decades, some in the cultural majority continued to agitate for an outright ban on sectarian education—a project chiefly aimed at Catholic schools. But the rights of parents to educate their children in accordance with their own faith consistently won out, including at the Supreme Court.²

Still, the controversy led to serious and generally successful efforts to remove religion from public schools. One observer, writing in 1912, argued that religious instruction had by that date been "either entirely eliminated or else reduced to the barest and most formal elements."³ Legal efforts across the next half-century completed the secularization of public education by removing the last of those formal elements—school prayer, Bible study, and the posting of the Ten Commandments.

For many years, Blaine amendments remained on the books without any real need to implement them. According to a 2003 article in the *Fordham Law Review*, "the State Blaines have simply lacked occasion for robust application."⁴ Neo-voucher programs changed that.

As the dismantling agenda began to take shape in the 1980s, many conservatives viewed vouchers as a natural policy tool. But most private schools, being religious in nature, could not receive public funds. Coupled with low levels of public support for policies that would reduce funding for public schools, it seemed that vouchers were at an impasse.⁵ For conservatives, then, it was time to get creative.

A Laundromat for Tax Dollars

An inventive solution emerged in Barry Goldwater's home state of Arizona, which in 1997 passed the nation's very first tax-credit scholarship program. A school voucher in all but name, the program was, in the words of conservative congressman Trent Franks, "easier to pass and easier to uphold."⁶

The tax-credit scholarship program relied on a clever work-around. Instead of the state paying the tab, individuals would donate to nonprofit organizations, which would then provide private school scholarships to students. The individuals making the donations would then receive a dollar-for-dollar state tax credit, effectively reimbursing them for their "gifts." While the state wasn't sending money directly to private schools, the impact on the treasury was the same: funds were diverted from tax collection and sent to private schools.

The end result was a transaction that had more in common with money laundering than with charitable giving, as the program was set up to conceal the fact that money was coming from the state. But because revenue was never collected in the first place, the state stepped neatly around any constitutional prohibitions on support for private or sectarian education. When challenged legally, the program was upheld not only by the Arizona Supreme Court, but also by the U.S. Supreme Court, which ruled that because tax-credit funds had not "come into the tax collector's hands," they could not be viewed as "public money."⁷

Such "neo-vouchers" are complex by design. Just explaining the funding arrangements behind them requires a football-play style diagram. As Kevin Welner, co-founder of the National Education Policy Center, has observed: "People's eyes get bleary and

they tune out when people start talking about tax credits. That helps to avoid a situation where they respond to it the same way they respond to a voucher proposal.”⁸ Polls indicate that this strategy is effective. Americans are more likely to say they approve of “tax credit-funded scholarships” than “universal vouchers.”⁹

By obscuring the funding of neo-voucher programs and burying their purpose—using public money for private religious schooling while reducing the funding available for public education—proponents have steadily advanced their core ideological aims, largely without inciting public confrontation. Quietly flying under the radar, they have created tax-credit programs in state after state, typically limiting vouchers to specific populations at first—foster children, students with special needs, victims of bullying—then pushing relentlessly for expansion toward their ultimate goal: vouchers for all.

A Legal Loophole

During the past decade, tax-credit scholarships have emerged as the most popular solution for voucher proponents. Eighteen states now run twenty-three of these programs, including Illinois, which enacted a massive version in 2017. Modeled on the same idea that was pioneered in Arizona, these scholarship programs never directly transfer public monies to private schools. Instead, wealthy taxpayers and corporations receive hefty tax credits—usually dollar-for-dollar credits against any state tax liability they would have incurred—in exchange for donating to nonprofit scholarship organizations.

This is entirely legal, but it is also unquestionably a loophole. In most states with Blaine amendments, a dollar cannot legally

flow directly from the state to a private school. But a dollar *can* go from an individual or corporation to a nonprofit organization, and then from that organization to a private school. Walmart, then, might give \$1 million to 123TaxCredit.com, a certified School Tuition Organization in Arizona. After covering its own costs, 123TaxCredit.com would then use those funds to pay private school tuition for students enrolled in its program. Meanwhile, the Arizona Department of Revenue would subtract \$1 million from Walmart's end-of-year state tax bill.

When it was first created in 1997, Arizona's tax-credit scholarship program was forecast to cost \$4.5 million a year. Currently, it tops \$140 million annually—a figure far smaller than the \$3 billion that the state contributes to public schools, but which has nevertheless undergone a thirty-fold increase. Additionally, it appears that much of that money has gone to families with children who were already enrolled in private schools, despite rhetoric focused on empowering public school families with choice. While supporters of the program like to cite freedom and markets, critics like former state senator Steve Farley have pointed out that Arizona's program has also demonstrated “how you strip a budget bare.”¹⁰ By draining funds from public education, tax-credit scholarships are also a vehicle for “starving the beast.”

In Florida, the story is much the same. Corporations receive dollar-for-dollar tax credits for their donations to private school scholarship organizations. With little to no state oversight, the program has ballooned to nearly a billion dollars a year. And while participation was initially limited to low-income students enrolled in the public schools, the program is now open to middle-class families who have never enrolled their children in public schools—essentially reimbursing them for the private school tuition they were already paying.

Schools Without Rules

In 2018, the *Orlando Sentinel* published the results of an extensive investigation into Florida's neo-voucher program. Many of the eye-popping details pertained to the lack of state oversight and the weak enforcement of the few existing rules. The three-part series described a system "so weakly regulated that some schools hire teachers without college degrees, hold classes in aging strip malls and falsify fire-safety and health records."¹¹

But for proponents of private school choice, the absence of oversight is a feature, not a bug. Unregulated by design, these programs are intended to undermine the apparatus of the state, not expand it. In Florida, for instance, the state is only allowed to pay ten visits a year to schools receiving tax-credit scholarship funds—a tiny fraction of participating schools. The vast majority of private schools aren't accredited, and the schools are exempt from the state's accountability system. Conservatives argue that oversight and accountability is provided by parents themselves, through the choices they make. As Foundation for Excellence in Education CEO Patricia Levesque, who also served as an education official under former Florida governor Jeb Bush, put it: "The goals of choice are not to turn private schools into public schools."¹² Reality, however, paints a more complex picture.

Freedom from "red tape" allows private schools to skirt any number of laws and regulations, including those pertaining to civil rights, anti-discrimination, and the rights of children with special needs. Even as they accept public funds, voucher schools enjoy wide latitude over who they serve and who they don't. The *Sentinel's* investigation found eighty-three schools that accept taxpayer-funded scholarships but refuse to admit gay students. Additional schools refused to educate students with gay parents, or to hire

teachers or school staff who are gay. "Students don't need to go to that school if they feel that is going to be a problem for their families and their lifestyles," an advocate for the scholarship program told reporters.¹³

One religious school in Florida that Betsy DeVos visited during her school choice tour stated openly on its website that students with special needs need not apply. Parents who find a private school that accepts special education students are often shocked to find that the protections that federal law requires under the Individuals with Disabilities Education Act don't extend to private schools. Meanwhile, parents who end up at odds with their private school on the provision of necessary accommodations are left with little to no recourse.

When the parent of a special needs student was told by a Florida private school that her daughter was no longer welcome at the school, the parent first complained to the nonprofit group through which she'd received the tax-credit scholarship—to no avail. Investigating such complaints was beyond the group's charge as a scholarship-granting organization, a spokesman for Step Up For Students later told *Education Week*. When the parent took her complaint to the state, she was similarly stonewalled. Private schools, a state education official responded, have complete discretion over "student regulation, dismissal, and expulsion policies." No laws or rules had been broken.¹⁴

A "cottage industry of fraud and chaos" is how Gus Garcia-Roberts described Florida's tax-credit scholarship program for special needs students in an award-winning investigation for the *Miami New Times*.¹⁵ As one former investigator for the Florida Department of Education told Garcia-Roberts, the agency was unable to uncover "even a significant fraction" of wrongdoing.

The story has been similar in Arizona, where no state agency

has the authority to prevent or penalize programmatic misconduct. According to Lisa Graham Keegan, Arizona's school superintendent when the tax-credit program passed, "the point was in part to ensure that these were not government-run programs."¹⁶ Such lax oversight has allowed the powerful to use public education as a cash machine. Steve Yarbrough, the president of the State Senate, opened his own scholarship-granting organization—the Arizona Christian School Tuition Organization—and began taking an annual salary of \$125,000. The organization also outsourced work to a company, HY Processing, that was also owned by Yarbrough, paying out millions of dollars over the course of a decade.

Enterprising donors in a number of states, meanwhile, have identified loopholes in the tax code that they can exploit to their advantage. In eight states, donors can take a state tax credit *and* a federal tax deduction, double-dipping their way to a profit. Donors in those states are reimbursed for their contributions with dollar-for-dollar tax credits; they are also allowed to deduct the full amount of those contributions from their federal taxable income, reducing what they owe in end-of-year taxes. As Carl Davis of the Institute on Taxation and Economic Policy has observed, a quirk in tax law makes such profits available only to high-income taxpayers. As a result, the rich "enjoy a profit" by "spending on the state's behalf."¹⁷

Advocates of the tax credits even highlight their profitability to potential donors. In Georgia, Whitefield Academy, which promotes itself as "a Christ-centered preparatory school," noted on its website that donors subject to the alternative minimum tax "actually stand to make money on this program." The school later removed the tax advice, one of many examples of questionable practices associated with neo-vouchers highlighted in a 2017 report by the School Superintendents Association titled *Public Loss Private*

Gain. The report characterized the tax-credit programs as “get rich schemes for shrewd taxpayers,” warning that “the potential for wealthy individuals to turn a profit by claiming these credits is accelerating the diversion of critical resources away from public schools.”¹⁸

It's not just savvy donors who have figured out how to benefit from a largely unregulated system. Neo-vouchers have also proven ripe for gaming by schools and parents. In Arizona, for example, many parents began using tax-credit scholarships to pay tuition bills at the private schools their children were already attending. Knowing that parents had previously paid tuition out of pocket, a number of schools responded by raising prices. In effect, Arizona's neo-vouchers simply subsidized private schools. Parents have gamed the system in another way: by badgering friends to “earmark” scholarship donations for their children, trading donations with other families, and collecting multiple scholarships. A 2009 investigation of the program concluded that, far from making private school education more accessible for Arizonans who couldn't afford it, neo-vouchers had “fostered a rigged system that keeps private education a privilege for the already privileged.”¹⁹

Indeed, the Arizona program was so rife with abuse that even its architects seemed horrified by what they'd wrought. “This is horrible . . . this is not the program I fought for,” reflected Clint Bolick, founder of the Goldwater Institute and an attorney for the tax-credit program in court, to the *East Valley Tribune*. Bolick had recently learned that leaders at his son's private Montessori school, along with a number of parents, had figured out a way to game the system. The school paired up families so they could exchange tax-credit donations to benefit each other's children. “My jaw dropped,” Bolick said.²⁰

What Gets Taught

In a photograph that accompanied the inaugural story in the *Orlando Sentinel*'s "Schools Without Rules" series, six students from TDR Learning Academy sit tucked in a row of cubicles, hunched over worksheets. The picture neatly captures an unregulated education in action. The school's principal, who bends down to assist a young charge, lacks a college degree. The worksheets come courtesy of Accelerated Christian Education, a popular Christian curriculum based on a literal interpretation of the Bible. The curriculum instructs students that humans and dinosaurs once lived side by side, that homosexuality is a sin, and that slaves who "knew Christ" were better off than free men who weren't Christian.²¹

In a review of seven thousand schools across the country that accept public money via traditional school vouchers or neo-vouchers, reporter Rebecca Klein determined that a third of them were using a curriculum provided by one of three popular—and ideologically extreme—Christian textbook companies: Accelerated Christian Education, Abeka, and Bob Jones University. "The ideas in these textbooks often flout widely accepted science and historical fact," wrote Klein. "That means there are thousands of kids receiving an extremist and ultra-conservative education at the expense of taxpayers."²²

With no power to regulate the curricula of private schools, states with tax-credit scholarship programs are channeling funds to schools like Florida's Clearwater Academy International, which uses learning materials based on the ideas of L. Ron Hubbard, the founder of Scientology.²³ While critics of public education have made a case against the current state and national standards in math, English, and science, perhaps more troubling is the total

freedom of voucher schools to teach anything at all, no matter how dubious the pedagogy and how ideological the curricula.

Another review of curricula used by voucher schools in Florida found materials steeped in religious and political opinions about such topics as gay rights, abortion, and government programs, including the Endangered Species Act, which was referred to as advancing “a radical social agenda.” As the *Orlando Sentinel* investigative team concluded: “They disparage religions other than Protestant Christianity and cultures other than those descended from white Europeans”—a deeply concerning finding given that six of ten recipients of tax-credit scholarships in Florida are either black or Hispanic.²⁴

Critics of constitutional prohibitions that keep public funding from going to religious schools often attribute them to nineteenth-century anti-Catholic bias. “There’s hope that Blaine amendments won’t be around much longer,” Betsy DeVos said in a 2018 speech to an organization affiliated with the Catholic Archdiocese of New York. “These amendments should be assigned to the ash heap of history.”²⁵ However, reviews of popular curricula used by voucher schools have, ironically, identified a profound anti-Catholic bias, including the message that “God’s intervention prevented Catholics from dominating North America.”²⁶

How many schools accepting public funds are passing such “facts” onto students? We may never know: Florida law prohibits state education officials from even asking about what gets taught in private schools accepting tax-credit scholarships.

The Education Debit Card

Tax-credit scholarships are hardly the only neo-voucher around. Education savings accounts (ESAs) have proliferated in Arizona,

Nevada, and Florida, as well as in Mississippi, North Carolina, and Tennessee. ESAs allow parents to withdraw children from the public schools and receive money in a state-approved account, often attached to a debit card. Families can then spend the funds on private school tuition, tutoring, materials, or even save the money to spend on college down the road. Sometimes they simply pocket it.

As these programs have taken off, groups like the Friedman Foundation have pushed for a wider array of policy mechanisms to advance their agenda. And they now advocate for almost no limit on how public dollars can be spent. In *The Education Debit Card*, a 2013 Friedman Foundation publication, author Lindsey Burke writes that states “should make ESA dollars universal and available for any education-related purpose, including private school tuition, private tutoring, online learning courses, or education-related services.”²⁷

Arizona enacted its ESA program in 2011. And, similar to the way neo-vouchers are often introduced, participation was initially restricted to disadvantaged students—in this case, children with disabilities. Families participating in the Arizona Empowerment Scholarship Account program could withdraw their children from the public system and keep 90 percent of what the state would have spent, using the funds at their discretion for educational purposes. Eligibility was soon expanded to military families, foster children, and parents with children in low-performing schools.

Even as legislators continued to expand the ESA program, oversight remained lax and accountability minimal. A 2017 investigation found that the program was rife with fraud. Some parents withdrew scholarship funds and deposited them into 529 college savings accounts to be used down the road, then left the program and returned to their public schools. Others used their education debit cards to make purchases that they then returned for gift cards

that could be spent on anything. Still others claimed the scholarship funds, but then sent their children to public schools. And in cases where money was misspent, the state lacked both the means and the authority to recover any of it.²⁸

In 2017, Arizona legislators gave a stamp of approval to one of the nation's most ambitious neo-voucher programs to date, effectively making every student in the state eligible for an ESA. "All children are different, and they learn in different educational environments," declared Debbie Lesko, the former state senator who sponsored the legislation. "We shouldn't force them to be in the same educational model we've used for the last 150 years."²⁹ Betsy DeVos chimed in too, saluting Arizona and its Republican governor for enacting what she described as "a big win for kids." While the legislation limited initial participation to thirty thousand students, the conservative Goldwater Institute revealed that it planned to begin pushing for elimination of the cap.

In 2018, voters in Arizona overwhelmingly defeated a ballot measure that would have made every K-12 student in the state eligible for an ESA. As one columnist put it, voters didn't just say "no" to Proposition 305, "they stoned the thing, then they tossed it into the street and ran over it."³⁰ And yet the 2018 midterm results had barely been announced before voucher proponents in the state, allied with powerful school choice lobby groups, proclaimed their intention to fight on. Since the measure failed at the polls, Republican lawmakers have attempted to expand the program via piecemeal legislation, including a bill that would let students on Native American reservations use their voucher funds at schools out of state.³¹

When given the opportunity to vote on sending public money to private schools, voters have always responded with an emphatic thumbs-down. And yet, as part of the push to "unbundle" schooling

from the institutions of public education, there is powerful political momentum behind neo-vouchers in all of their forms. In 2016, the influential American Legislative Exchange Council adopted the Education Savings Account Act as a model bill to disseminate to state legislators. A recent investigation by *USA Today*, the Center for Public Integrity, and the *Arizona Republic* found that ESA proposals had been introduced in nineteen states, copied from ALEC's fill-in-the-blank bills.³² The Koch network has likewise committed to putting its political heft and financial might behind the expansion of ESAs—investing in “idea generation, leadership training, election campaigning and policy advocacy.”³³

Meanwhile, traditional voucher programs have come roaring back in recent years, expanding dramatically in states like Wisconsin, Indiana, and Ohio. Unlike the small-scale voucher programs of the 1990s, which came clad in the rhetoric of social justice, the most recent incarnations are targeted at more affluent families whose children have never attended public schools—the sorts of families who have taken advantage of tax-credit scholarships.

The Supreme Court has also set the table for voucher crusaders. In 2017, the court ruled on *Trinity Lutheran Church of Columbia, Inc. v. Comer*, identifying no inherent separation between government and religious organizations. In a 7–2 ruling (with Justices Sonia Sotomayor and Ruth Bader Ginsburg dissenting), the court found that the state of Missouri had violated the rights of Trinity Lutheran Church by denying it an otherwise available public benefit on account of its religious status.

Three years later, the Supreme Court took up *Espinoza v. Montana Department of Revenue*, which concerned the legality of a tax-credit scholarship used primarily for religious education in the state. In questioning, Trump appointee Brett Kavanaugh made clear the slippery slope that conservatives had worked so hard to design.

Wasn't the case simply a "straight violation" of Trinity Lutheran, he asked? Ultimately, his four conservative colleagues agreed. As Chief Justice John Roberts observed in his majority opinion, once a state decides to subsidize private education "it cannot disqualify some private schools solely because they are religious."