

# The Case for Tuition Tax Credits

by Daniel Patrick Moynihan

*The issue is not the future of public schools but whether public education will soon have a monopoly in the U.S., says Senator Moynihan. He maintains that "the public sector is slowly but steadily vanquishing the private."*

*The tuition tax credit idea has a 15-year history at the federal level. Its appeal to certain elements of the voting public is such that various versions of the idea came near translation into law in the session of Congress that adjourned early Sunday morning, October 16. In the end, the massed opposition of interest groups, a strong threat of veto by President Carter, and astute maneuvering by such opposition leaders as Senator Ernest Hollings defeated even the college and university version. Public school educators were most fearful of the Packwood-Moynihan Bill that would have granted tax credits to parents of elementary and secondary schools as well as college students.*

*Senator Moynihan has reportedly abandoned hope of securing passage of a tuition tax credit bill in the next session of Congress. However, he speaks of a decline in opposition "in the context of a Presidential campaign." Hence we may expect revival of the bill in 1980. In any case, we believe the two articles that follow will be of considerable interest to Kappan readers who have followed newspaper accounts of congressional debate but may have had no opportunity to study detailed arguments for and against the tuition tax credit concept. — The Editors*

**T**he central issue before the Senate this week [August 7-11] is whether it is to be U.S. policy to foster state monopoly in the field of education or to help individuals obtain for themselves and their children the education they prefer at the schools and colleges they select.

The issue is *not* the future of the public schools. They now enroll more than 90% of all primary and secondary students and more than 75% of all postsecondary stu-

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*This article is a slightly edited version of a statement prepared by Senator Moynihan for floor delivery on August 11, 1978, when the Senate began debate on the Packwood-Moynihan tuition tax credit bill.*

dents. Although they do not lack for problems, their future is secure and is not the least threatened by our proposal.

In no small part, this security is due to two decades of federal provision for public education. In the fiscal year about to begin, federal expenditures will average \$352 per public school student and \$1,227 per college student. These sums are the product of literally hundreds of laws and provisions, including aid to institutions, aid to individual students, and tax expenditures. (Let no one be misled by the claim that tuition tax credits represent the first involvement of the Internal Revenue Code — or the Committee on Finance — with federal education policy. Existing tax expenditures for education will total \$7.7 billion in fiscal year 1979.)

The sponsors of tuition tax credits have been steadfast and ardent supporters of these measures. Many of us have participated in their inception. As a member of the Kennedy and Johnson administrations, I took part in the creation of the Head Start and college work-study programs in 1963. In 1964 I helped negotiate

the agreements that broke the deadlock over federal aid to education and led directly to passage of the Elementary and Secondary Education Act of 1965. In 1970 I drafted the Presidential message to Congress that led to the Basic Educational Opportunity Grants program, the National Institute of Education, and the Fund for the Improvement of Post-Secondary Education. In the Senate I have voted for every major education authorization and appropriation bill that has come before us.

I have done this — and my colleagues have similar records — because of an absolute conviction that the federal government should support education, and that its first responsibility is to the public institutions in which the vast majority of students receive their education.

Let there be no mistake about it. The public schools come first. We have provided for them, and we shall continue to provide for them and for their students. There is no conflict whatsoever between continued federal support for public education and the proposal now before us. And there is no truth to the accusation that in providing limited aid through the tax system to families who patronize nongovernment schools we will do any harm whatsoever to government schools.

Far the more important policy question before the Senate is whether non-public schools are to have a future or whether the national government is to aid and abet those who would not mind in the least if they were to shut down entirely.

Let there be no mistake about this either: In the field of education, the public sector is slowly but steadily vanquishing the private.

A quarter century ago private colleges and universities enrolled half of all postsecondary students. Today they account for just 22%.

In 1959-60, 14 out of every 100 American schoolchildren attended private and parochial schools. By 1975-76 the

figure had declined to nine in 100. Between 1965 and 1975 nonpublic schools lost 1.8 million students, some 28% of their enrollment. In 1976 there were 2,246 fewer private schools in existence than there had been one decade earlier.

This decline has been especially acute among schools affiliated with the Roman Catholic Church. They lost 39% of their students — some 2.16 million pupils — between 1965 and 1975.

The public schools gained almost the same number of students — 2.66 million — during this period.

**T**he question cannot be avoided: Is the national government to ignore these unmistakable trends? Is it to feign neutrality, all the while providing significant amounts of aid only to public schools as the schools of the nongovernment sector decline and crumble?

The administration says yes. Despite solemn promises by the President and pious pronouncements by the U.S. commissioner of education, the executive branch remains the property of a public bureaucracy that abhors that which it does not control. At the policy-making level it is dominated by persons who appear to have succumbed to a form of statism that they still, unaccountably, equate with liberalism. They have striven mightily to brand our proposal as illiberal but have succeeded only in further distorting public discourse in this area. For their arguments reduce to a single essential: the argument for state monopoly in the education of American children.

An element of liberty is at stake in this debate. A historic manifestation of American pluralism and diversity is at stake. The civil rights of the American people are involved — not just of those who happen to favor nongovernment schools for their own children but also of those millions more who would defend the right of their neighbors to make such a choice.

It has been said that this is a Catholic issue, and insofar as Catholic schools still comprise the largest single part of the nongovernment education system, that is true. But it is also a serious oversimplification that fails to take account of the 166,000 students in schools run by the Missouri Lutheran Synod, the 76,000 in Seventh-Day Adventist schools, the 241,000 in evangelical Christian schools, the 90,000 in Jewish day schools, the 77,000 in Episcopal schools, the 14,000 in Quaker schools, or the 277,000 in independent private schools, as well as many other religious and nonsectarian groups enrolling significant numbers in their schools.

It has also been said that our proposal would benefit only the middle class. This is untrue. No less an authority than Thomas Sowell, the distinguished black economist, has said: "Few groups have so

much at stake in the fate of this bill as ghetto blacks."

Four hundred thousand black and other minority-group members now attend nongovernment schools. Many more would be able to do so with the assistance of tuition tax credits. Sowell writes: "One of the great untold success stories of contemporary American education is the extent to which Catholic schools, left behind in ghettos by the departure of their original white clientele, are successfully educating black youngsters there at low cost."



*Senator Daniel P. Moynihan*

In one state and city after another, a distinguishing characteristic of nonpublic schools is their high degree of racial integration. In the archdiocese of New York (which extends up the Hudson Valley and into the Catskill Mountains), 37% of elementary school students are black, Hispanic, or Asian. In Chicago 55% of the students in 82 Catholic schools are black. In Philadelphia 45% are black or Spanish-surnamed; in New Orleans the figure is 38%. In the Roman Catholic schools of South Carolina, 28% of the students are black, and two-thirds of those are not even Catholic.

At our hearings last January the Finance Committee heard eloquent pleas for tuition tax credits made by black parents whose children attend the Our Lady of Perpetual Help school in Anacostia, D.C., just a few miles from this chamber. The Reverend George Clements sent an urgent letter from the Holy Angels Parish of Chicago, which operates the largest black Catholic school in the nation, enrolling 1,300 students. "Our school," he writes, "has a very long waiting list because of its high academic quality. This school is located in the lowest socioeconomic area of the City of Chicago. We have an extremely difficult time raising the necessary funds to keep our school alive."

To deny this reality is worse than over-

sight. It verges on willful blindness on the part of those who have decided that to aid such persons and, indirectly, such schools is illiberal. I submit that the opposite is true: To deny aid to such persons and thereby make it more difficult for them to obtain the education they seek for their families is to submit to paternalism and to statism.

It has been said that our proposal would result in support for segregated private schools. In order to believe this, one must believe that the Internal Revenue Service is not willing to enforce the tax code or is not competent to do so. For under our proposal no elementary or secondary student may receive a tax credit unless the IRS has certified that the school the student attends is nondiscriminatory. Our committee report explains these provisions and procedures in some detail. Commissioner Jerome Kurtz has personally assured me that the IRS is determined to enforce these standards scrupulously, and that within a few weeks it will promulgate even more precise standards and procedures. He has also made clear that the IRS will investigate any and every private school about which a complaint or allegation of discrimination is brought. To insure the adequacy of these procedures, our bill directs the attorney general, the secretary of HEW, and the secretary of the treasury jointly to monitor the enforcement of civil rights provisions by the Internal Revenue Service and to report to the Congress, with the first such report due well before the elementary and secondary tax credit takes effect. Should any shortcomings be found, we pledge ourselves to direct the attention of the Congress to them and to propose the necessary remedies.

**I**t has been said that our proposal would be struck down by the Supreme Court. If so, that will be the end of it. We seek only our day in court and think of it as a matter of right that we should be given such a hearing. It is, after all, the task of the U.S. Supreme Court to make such determinations.

The constitutional issue will be discussed at length in the course of this debate, and I shall have more to say about it. For now, I would simply cite the testimony of Antonin Scalia of the University of Chicago, immediate past assistant U.S. attorney general, Office of Legal Counsel:

It is impossible, within the time allotted, to describe with any completeness the utter confusion of Supreme Court pronouncements in the church-state area. . . . I urge you, then, to approach this issue as a question of what the constitutional law "should be" rather than vainly seeking to determine what "is" under the decisions of the Court.

I believe that is an appropriate charge

to the Congress and that it sets the proper context for this debate. I would note that Professor Scalia was the immediate predecessor at the Department of Justice of John M. Harmon, on whose memorandum to the attorney general the opponents of tuition tax credits have relied so heavily. I think it is of more than passing significance that two successive occupants of the subcabinet position with primary responsibility for constitutional opinions within the executive branch should have come to opposite conclusions. That would, at the very least, seem to call for the attention of the Supreme Court.

It is apparent by now that the principal controversy surrounding our proposal relates to its elementary and secondary school provisions. But it is essential to recall that three-quarters of the benefit from the bill before the Senate would accrue to college and university students and their families.

Tuition tax credits at the postsecondary level are by now a familiar concept in this chamber. Time and again, we have overwhelmingly endorsed that concept, only to meet with a chilly response from the other body. This time the situation is entirely different. The House has given tuition tax credits a powerful vote of support, and the time would seem to be at hand to complete action.

By now the case for federal aid to middle-income college students has been exhaustively made. I will rely on a single pair of statistics: Between 1967 and 1976

college tuitions rose more than 93%, while the median after-tax income of families with college-age children rose 66.8%.

Once the problem has been recognized, the issue is, What solution should we select? And at the postsecondary level we have in fact been presented with various alternatives: an expansion of need-based grant aid to include some middle-income students; a massive federally sponsored tuition advance or loan program, possibly one repaid through the income tax system; or tax credits for college tuitions.

In favoring tax credits, I do not reject the other ideas. I shall continue to support the basic grants program, and I favor its expansion. Although 10 years old, the tuition advance (or "loan bank") idea bears renewed scrutiny when the Ninety-sixth Congress reexamines the Higher Education Act. But that is no reason to delay another day in adopting the tax credit proposal, which would provide a modest amount of urgently needed aid to practically every postsecondary student in the land and would do so in a manner that does not conflict or overlap at all with existing programs. In fact, we have tailored our proposal to insure that every dollar of basic grant or supplementary grant aid a student receives is actually subtracted from the tax credit for which he or she would otherwise be eligible. For some students this will permit a choice between two forms of assistance. For some, particularly those with very low incomes, the

grant programs will be more useful. But for millions not eligible for grant aid the tax credit will be available.

**T**ax credits are a particularly appealing form of financial assistance, for they do not require an individual to come as a supplicant to the federal bureaucracy asking to be declared suitably needy. All the tax credits do is allow individuals and families to retain a bit more of their own income during that period of their lives when they are singularly oppressed by college costs. No complex procedures are involved and no new forms. It is simple; it is direct; it is reasonable; and it maintains an exemplary relationship between the citizen and his government.

It has been charged that students and families will not retain the benefit of these tax credits, the theory apparently being that colleges and universities will boost their tuition charges so as to "capture" the additional resources.

Apart from the fact that practically every campus in the land is forced to raise its tuition almost every year simply in order to keep its books balanced in an inflationary era — this without tax credits or other middle-income student aid — this allegation betrays scant understanding of the market economics of higher education. With the 18-year-old population shrinking by 25% between 1979 and 1992, all but the most selective colleges are already finding it necessary to work to attract enough students to remain in operation. Institutions that seek to exploit tuition tax credits by boosting their tuitions will find it that much more difficult to locate enough students willing to pay those tuitions, whereas colleges shrewd enough to hold down the "net price" they charge their customers will improve their competitive position. I have confidence in the workings of this competitive marketplace as the surest possible safeguard against widespread "passing through" of tax credits to the institution. But there is a further safeguard built into our proposal: The fact that the credits are calculated at a 50% rate means that the student must still pay half of any tuition increases out of his own pocket. This will sharply inhibit enrollment-conscious administrators and trustees from untoward increases in their tuition and fees.

In conclusion, let me say that our proposition has been fully heard and exhaustively examined. In response to the major practical objections that were brought to our attention, the Finance Committee has modified its original proposal, sharply cutting the cost and making a number of important changes and improvements. The bill now before us, which the committee reported by a vote of 15 to 1, is one that deserves the support of every member of the Senate. □



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