

**IN THE SUPREME COURT
OF THE STATE OF GEORGIA**

RAYMOND GADDY, BARRY
HUBBARD, LYNN WALKER
HUNTLEY, and DANIEL
REINES,

Appellants,

v.

GEORGIA DEPARTMENT OF
REVENUE, and LYNNETTE T.
RILEY, in her official capacity as
STATE REVENUE COMMISSIONER
OF THE GEORGIA DEPARTMENT
OF REVENUE,

Appellees,

and

RUTH GARCIA, ROBIN LAMP,
TERESA QUINONES, and ANTHONY
SENEKER

Intervenors-Appellees.

Docket No: S17A0177

BRIEF OF AMICI CURIAE
EDCHOICE AND PROFESSOR
BENJAMIN SCAFIDI IN SUPPORT OF
INTERVENORS-APPELLEES

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Statement of Identity and Interest of *Amicus Curiae*

EdChoice (previously known as The Friedman Foundation for Educational Choice, Inc., founded in 1996 by Milton and Rose D. Friedman) is a 501(c)(3) nonprofit and nonpartisan organization. A national leader in educational choice research and fiscal analysis, policy development, and educational training and outreach, EdChoice believes that empowering all families with full and unencumbered educational choice is the best pathway to successful lives and a stronger society. EdChoice’s mission is to advance a K–12 education system in which all parents, regardless of race, origin, residence or family income, are free to choose a learning environment—public or private, near or far, religious or secular—that works best for their children.

Dr. Benjamin Scafidi, a nationally-recognized scholar on educational choice issues, is Professor of Economics and Director of the Education Economics Center at Kennesaw State University. His recent scholarship has focused on the economics of educational choice, including several publications cited in this brief.

In support of the Intervenors-Appellees, EdChoice and Dr. Scafidi offer this brief to provide an overview of social science research supporting educational choice and an analysis of the fiscal impact of Georgia’s Qualified Educational Tax Credit Program and other educational choice programs.

Introduction

EdChoice urges the Court to affirm the trial court and preserve the right of parents in Georgia—particularly those of limited economic means—to choose the best possible education for their children. As summarized in this brief, significant empirical evidence supports educational choice and the rationale behind Georgia’s Qualified Educational Tax Credit Program (the “Program”) in five key ways:

- Educational choice improves academic outcomes for participating students;
- Public schools exposed to educational choice have improved academic outcomes;
- Students utilizing educational choice move from more segregated schools to less segregated schools;
- Educational choice has a positive impact on civic values and practices; and
- Educational choice saves taxpayers and public school systems money.

EdChoice works with leading education scholars, such as Dr. Scafidi, to provide the sort of fiscal and social science research reviewed in this brief. EdChoice recently issued the fourth edition of its biannual review of empirical research of educational-choice programs. *See* Greg Forster, *A Win-Win Solution: The Empirical Evidence on School Choice*, Friedman Found. for Educ. Choice (4th ed. May 2016) (“2016 *Win-Win* Report”), available at <http://www.edchoice.org/research/win-win-solution> (last visited Dec. 8, 2016). The evidence from over 100 studies reviewed in the 2016 *Win-Win* Report continues to weigh clearly in favor of educational choice.

Critics have argued that the literature is not sufficiently clear on the benefits of educational choice, and that some studies have shown such benefits to be minimal. The gist of these arguments is that Georgia should not allow educational choice as long as any doubt

remains as to the size of the benefits, despite the significant empirical research that shows educational choice is a proven tool for increasing learning opportunities for all children, often with financial benefits for the state and local public school systems. Our fiscal analysis shows that for every student who transfers from a public school to a private school on a Program scholarship provided by a student scholarship organization (“SSO”), the state of Georgia saves over \$1,000. In addition, local public school systems realize additional savings that result in increased funding for remaining students.

Since the first school voucher program was enacted in 1990, no state that has implemented educational choice has eliminated it. At least one state has enacted a new educational choice program every year since 2003, and there are now 61 programs in 30 states and the District of Columbia. *See America’s School Choice Programs by Dates Enacted and Launched*, EdChoice, <http://www.edchoice.org/school-choice/enacted-and-launched-table/> (last visited Dec. 8, 2016). Strong empirical evidence supports educational choice.

Argument

I. Social science research shows multiple benefits of educational choice for both participating students and public schools.

As the number of educational-choice programs and participants has increased nationwide, the body of empirical research on educational choice has similarly expanded. Studies of choice programs throughout the United States overwhelmingly reflect a common conclusion: choice has led to measurable educational benefits for many students; it has been neutral for others; and it does no harm to any students or schools.

A. “Gold-standard” research demonstrates that educational choice improves academic outcomes for participating students.

While the potential for fiscal savings to the state and public school systems is significant, educational choice programs are most compelling for their proven ability to improve academic outcomes. To date, 18 empirical studies have examined the effect of educational choice on student performance using the random-assignment method, the “gold standard” of social science research.¹ 2016 *Win-Win* Report at 10. Of those, 14 found choice improves student outcomes: six found all students benefit, and eight found some students benefit while others are not affected. *Id.* Two studies found no visible effect, and two studies of Louisiana’s school voucher program—where most eligible schools chose not to participate in expectation of hostile regulatory action—found a negative effect. *Id.*; Brian Kisida, Patrick Wolf, and Evan Rhinesmith, *Views from Private Schools: Attitudes about School Choice Programs in Three States* 14 (Jan. 2015), available at <https://www.aei.org/wp-content/uploads/2015/01/Views-from-Private-Schools-7.pdf> (last visited Dec. 8, 2016).

For example, a 1998 random-assignment study of a Milwaukee educational-choice program found that students who used vouchers from 1990 to 1993 scored six points higher in reading and 11 points higher in math than students in the control group, who were not offered vouchers. Greg Forster, *A Win-Win Solution: The Empirical Evidence on School Vouchers*, Friedman Found. for Educ. Choice, at 9-10 (2d ed. March 2011) (“2011 *Win-Win* Report”), available at <http://www.edchoice.org/wp-content/uploads/2015/07/3-2011-Win-Win-National->

¹ Random-assignment studies are possible where there are more applicants for a choice program than there are slots, generally resulting in a random lottery for the slots. Students who win the lottery and are offered choice can be compared to those who were not offered choice. Any systemic differences can be attributed to the offer of choice alone, because nothing separates the group but the offer of choice and randomness. 2016 *Win-Win* Report at 10.

Study.pdf (last visited Dec. 8, 2016).² In 2001, a researcher studying the effect of educational choice in a privately funded voucher program in Charlotte, North Carolina, found that after one year, voucher students scored six points higher on combined reading and math tests. *Id.* at 10.³ In 2008, another researcher reanalyzed the data from the Charlotte study, using a different method to account for students who were offered educational choice but declined to exercise it. The 2008 study found that after one year, the voucher students outperformed the control group by eight points in reading and seven points in math. *Id.*⁴

Not every random-assignment study of student achievement has concluded that *all* students offered educational choice improve academically. For example, in 2002, a random-assignment study examined the effect of choice in a privately funded voucher program in New York City. It found a nine-point increase for African-American students after three years on a combined reading and math test, but no visible effect among other students. *Id.* at 11.⁵ The New York City data were reviewed a year later by other researchers, who found that students (regardless of race) who left low-quality public schools to use vouchers gained five points on math tests after one year. *Id.*⁶ A further reanalysis of these data in 2010 confirmed the 2003 finding of academic gains from educational choice. Greg Forster, *A Win-Win Solution: The*

² Citing Jay Greene, Paul Peterson and Jiangtao Du, “School Choice in Milwaukee: A Randomized Experiment,” in *Learning from School Choice*, eds. Paul Peterson and Bryan Hassel, Brookings Institution (1998).

³ Citing Jay Greene, “Vouchers in Charlotte,” *Education Next* (Summer 2001).

⁴ Citing Joshua Cowen, “School Choice as a Latent Variable: Estimating the ‘Complier Average Causal Effect’ of Vouchers in Charlotte,” *Policy Studies Journal* (May 2008).

⁵ Citing William Howell and Paul Peterson, *The Education Gap: Vouchers and Urban Schools*, Brookings Institution, at 146 (2d ed. 2006).

⁶ Citing John Barnard, Constantine Frangakis, Jennifer Hill and Donald Rubin, “Principal Stratification Approach to Broken Randomized Experiments: A Case Study of School Choice Vouchers in New York City,” *Journal of the American Statistical Association* (June 2003).

Empirical Evidence on School Choice, Friedman Found. for Educ. Choice, at 8 (3d ed. 2013) (“2013 *Win-Win* Report”), available at <http://www.edchoice.org/wp-content/uploads/2015/07/2013-4-A-Win-Win-Solution-WEB.pdf> (last visited Dec. 8, 2016).⁷ A fourth reanalysis of the 2002 New York City data changed the way students were classified by race, using a scientifically questionable methodology, and found no visible impact on academic achievement. 2011 *Win-Win* Report at 11-12.

A long-term study of a privately funded voucher program for low-income elementary school students in New York City in the late 1990s found that African-American students who were offered vouchers in elementary school were 20% more likely to attend college within three years of their expected high-school graduation date; 25% more likely to attend college full-time; and 130% more likely to attend a selective four-year college. 2013 *Win-Win* Report at 8.⁸ Three recent random-assignment studies of New York City voucher programs found that educational choice has a positive effect on college enrollment and attainment rates for some or all participating students and no negative effect for any student group. 2016 *Win-Win* Report at 11.⁹

⁷ Citing Hui Jin, John Barnard, and Donald Rubin, “A Modified General Location Model of Noncompliance with Missing Data: Revisiting the New York City School Choice Scholarship Program Using Principal Stratification,” *Journal of Educational and Behavioral Statistics* 154-73 (April 2010).

⁸ Citing Matthew Chingos and Paul Peterson, “The Effects of School Vouchers on College Enrollment: Experimental Evidence from New York City,” Brookings Institution and Harvard University (August 2012).

⁹ Citing Paul E. Peterson and William G. Howell, “Voucher Research Controversy,” *Education Next* 4, no. 2 at 73-78 (Spring 2004); Matthew M. Chingos and Paul E. Peterson, “The Impact of School Vouchers on College Enrollment,” *Education Next* 13, no. 3, at 59-64 (Summer 2013); Matthew M. Chingos and Paul E. Peterson, “Experimentally Estimated Impacts of School Vouchers on College Enrollment and Degree Attainment,” 122 *Journal of Public Economics* at 1-12 (Feb. 2015); Marianne P. Bitler, Thurston Domina, Emily K. Penner, and Hilary W. Hoynes, “Distributional Effects of a School Voucher Program: Evidence from New York City,” 8 *Journal of Research on Educational Effectiveness* 419-50 (July-Sept. 2015).

Overall, the empirical evidence using “gold-standard” studies demonstrates a largely positive effect of educational choice on participating students, with 14 of 18 studies showing positive effects for some or all students. *Id.* at 14. Apart from the anomalous results of the flawed Louisiana program, the research shows that some, if not all, students offered educational choice improve their academic performance, while none is negatively affected. Such outcomes are the hallmark of responsible public policy. The empirical evidence as a whole supports Georgia’s decision to offer educational choice to families who believe they are not well served by their public school system.

B. Public schools exposed to educational choice have improved academic outcomes.

Theoretically, educational choice should improve both public and private school educations due to the increased competition it fosters. There is now sufficient rigorous academic research to support this theory. Empirical studies show that the positive effect of educational choice on public school performance is at least as strong as the effect on children who are offered choice. Of the 33 total studies, 31 found educational choice improves public schools, one found no visible effect, and one found a negative effect.¹⁰ *Id.* at 16.

The majority of these studies examined Milwaukee’s voucher program or Florida’s voucher and tax-credit scholarship programs, three of the nation’s longest running programs. Several recent studies have provided intriguing, always positive, results. For example, a study of Florida’s tax-credit scholarship program used new variables to measure private school

¹⁰ These studies did not use the random-assignment method discussed above. But this presents less of a problem when studying the effect of choice on public schools, because those studies only need to compare schools whose students are offered a choice with schools whose students are not, “which is usually an easier methodological barrier to overcome.” 2016 *Win-Win* Report at 16.

competition (e.g., using the number of nearby houses of worship as a proxy for private school competition). It found a positive effect on public schools in both reading and math for all five separate measures of private school competition. *Id.* at 17.¹¹ Another study found that when low-performing schools became eligible for vouchers, changes in the schools' institutional practices resulted in improved student performance. *Id.*¹²

Twelve studies have analyzed educational choice in places other than Milwaukee or Florida, and eleven of them found improvements in public schools' academic outcomes. *Id.* at 17-18. Thus, the overwhelming majority of the studies continue to find that educational choice positively impacts the academic performance of public schools exposed to choice. *Id.* at 19 (showing 31 of 33 such studies indicated educational choice had positive effects).

C. Educational choice moves students from more segregated schools to less segregated schools.

Studying the effect of educational choice on segregation is more complex than studying fiscal impact and academic results, because many factors influence segregation levels, and there are many ways of measuring segregation. *Id.* at 26. However, public schools have grown more racially segregated in recent decades, even as residential segregation has declined. Benjamin Scafidi, *The Integration Anomaly: Comparing the Effects of K-12 Education Delivery Models on Segregation in Schools*, Friedman Found. for Educ. Choice, at 1 (2015), available at <https://www.edchoice.org/research/the-integration-anomaly/> (last visited Dec. 8, 2016).

¹¹ Citing David N. Figlio and Cassandra M.D. Hart, "Does Competition Improve Public Schools? New Evidence from the Florida Tax-Credit Scholarship Program," *Education Next* 11, no. 1, at 74-80 (Winter 2011).

¹² Citing Cecilia E. Rouse, Jane Hannaway, Dan Goldhaber, and David N. Figlio, "Feeling the Florida Heat: How Low Performing Schools Respond to Voucher and Accountability Pressure," *American Economic Journal: Economic Policy* 5, no. 2, at 251-81 (May 2013).

Therefore any indication that educational choice can have a remedial effect on this troubling trend is important.

The 2016 edition of *Win-Win* cites a total of 10 studies that have used valid empirical methods to examine educational choice and racial segregation. 2016 *Win-Win* Report at 26-28. Of those studies, nine found educational choice moves students to less racially segregated classrooms, while one found no visible effect. No studies have shown that educational choice increases racial segregation. As with fiscal impact, opponents of educational choice often raise the peril of increased racial segregation despite the absence of empirical evidence for their position.

For example, two recent studies of educational choice and racial segregation examined Louisiana's voucher program. The first found that, as a result of student transfers from public to private schools under the voucher program, both public and private schools moved closer to the racial composition of the surrounding metropolitan area. *Id.* at 28. The second study found a significant net reduction in segregation in affected public schools, with a small net increase in segregation in participating private schools. *Id.* The overall net effect on racial segregation was therefore positive.

While racial segregation studies are not conclusive due to the many variables that affect segregation, the available empirical data shows an overall reduction in segregation where educational choice is offered. It is therefore likely that the Program has increased school integration of Georgia's racially and culturally diverse communities.

D. Educational choice has a positive impact on civic values and practices.

Another area of educational-choice research examines the impact of educational choice on civic values and practices. To date, eight studies find educational choice has a positive impact, three studies show no visible impact, and no study has shown educational choice to have a negative effect. 2016 *Win-Win* Report at 30. In a recent study, researchers found higher levels of political tolerance, civic skills, future political participation, and volunteerism in participants in Milwaukee’s voucher program when compared to public school students. *Id.* at 31.¹³ The study found the positive effect to be significantly stronger in religious schools than in other private schools. *Id.*

A second new study analyzed the long-term impact of Milwaukee’s educational-choice program on students’ criminal records. *Id.*¹⁴ The study found that participation in the voucher program was correlated to decreased criminal activity, especially for men. *Id.* The longer students remained in the voucher program, the stronger the correlation across multiple measures of criminal records. *Id.* at 31-32. Males who remained in the program throughout high school had better outcomes than their peers in public schools on all measures, including a 79% reduction in felonies, a 93% reduction in drug offenses, and an 87% reduction in theft. *Id.* at 32.

E. Educational choice saves money.

Milton Friedman’s revolutionary idea for public education in the United States was to have the government pay for a child’s compulsory education without actually providing it.

Milton Friedman, *Capitalism and Freedom* 89 (U. Chicago Press 1962). Friedman believed that

¹³ Citing David J. Fleming, William Mitchell, and Michael McNally, “Can Markets Make Citizens? School Vouchers, Political Tolerance, and Civic Engagement,” *Journal of School Choice* 8, no. 2, at 213-36 (2014).

¹⁴ Citing Corey DeAngelis and Patrick J. Wolf, “The School Choice Voucher: A ‘Get Out of Jail’ Card?” EDRE Working Paper 2016-03 (2016).

choice would both deliver a better education and save money. Parents would be able to determine the best educational setting for their children, and public schools would improve as a result of the competition from other educational options.

Studies nationwide have shown that educational choice programs save money, which benefits both the public schools and taxpayers. Educational choice saves taxpayers money because the funds made available to parents to choose their child's educational services are typically less than the funds the state would otherwise pay to educate the child in a public school. Similarly, as explained in detail in Part II, *infra*, the Program significantly increases the amount of money per pupil available to public schools, giving them more resources to educate students who remain.

EdChoice sponsored an empirical study in 2007 that assessed the fiscal impact of state educational-choice programs. *See* Susan Aud, "School Choice by the Numbers: The Fiscal Effect of School Choice Programs, 1990-2006," Friedman Found. for Educ. Choice, at 8 (April 2007) (hereinafter "Aud Study"), *available at* <http://www.edchoice.org/wp-content/uploads/2015/09/Education-by-the-Numbers-Fiscal-Effect-of-School-Choice-Programs.pdf> (last visited Dec. 8, 2016). The study found that:

- Every existing educational-choice program was at least fiscally neutral, and most programs produce substantial savings.
- In nearly every educational-choice program, the dollar value of the voucher or scholarship was less than or equal to the state's formula spending per student, meaning states were spending less on students in educational-choice programs than they would have spent if the same students had attended public schools.

- Educational choice produced a positive fiscal impact for school districts and state budgets, because reduced costs exceeded the lost per-student revenue.

Id. at 5.

A subsequent study sponsored by EdChoice looked specifically at the fiscal impact of educational choice on the students who remain in public schools. Benjamin Scafidi, *The Fiscal Effects of School Choice Programs on Public School Districts*, Friedman Found. for Educ. Choice (March 2012) (hereinafter “Scafidi Study”), available at <http://www.edchoice.org/wp-content/uploads/2015/07/The-Fiscal-Effects-of-School-Choice-Programs.pdf> (last visited Dec. 8, 2016). The Scafidi Study estimated that, of the \$12,450 average spending per student in the United States in 2008-09, in the short term, 36% of these costs (\$4,482) were fixed and the remaining 64% (\$7,967) were variable (meaning they go up or down based on enrollment). *Id.* at 15.¹⁵ The Scafidi Study concluded that, when a voucher or tax credit scholarship student transfers out of a public school, there is no adverse fiscal impact on that school as long as the amount transferred to the school-of-choice is less than the public school’s *variable* cost of educating that student. *Id.*

The Aud and Scafidi Studies are not isolated findings. The latest edition of *Win-Win* reviewed 28 empirical studies of the fiscal impact of educational choice. 2016 *Win-Win* Report at 21. Twenty-five of those studies found that educational choice saves money, and just three found

¹⁵ Based on the experience of four Georgia school systems that had lost students, the Scafidi Study found that expenditures on capital, interest, general administration, school administration, operations and maintenance, transportation, and other support services were fixed costs in the short run (all costs being variable in the long run). Scafidi Study at 14. The study further found that both large and small school systems managed to effectively reduce their instructional and support expenses at a rate greater than the percentage decline in students. *Id.* at 9-12.

that such programs are revenue neutral due to unusual aspects of those particular programs. *Id.*¹⁶ The latest comprehensive study examined ten educational choice programs from 1990 to 2011. Jeff Spalding, *The School Voucher Audit: Do Publicly Funded Private School Choice Programs Save Money?*, Friedman Found. for Educ. Choice (2014), available at <http://www.edchoice.org/wp-content/uploads/2015/07/The-School-Voucher-Audit-Do-Publicly-Funded-Private-School-Choice-Programs-Save-Money.pdf> (last visited Dec. 8, 2016). The study looked at aggregate savings to state and local government by subtracting the per-student cost of an educational choice program from the per-student reduction in variable educational costs. It found that all ten programs saved taxpayers money—a total of \$1.7 billion from 1990 through 2011. 2016 *Win-Win* Report at 23. What is remarkable is not only the aggregate savings, but also the fact that every program independently had a net fiscal benefit for public schools and taxpayers combined.

Opponents of educational choice continue to raise the specter of financial ruin for public schools, but no evidence supports their assertions. With over two decades of results now in, most studies show that educational choice has a net positive effect on public school funding, and no study has found a net negative effect. 2016 *Win-Win* Report at 21. As discussed next, available evidence strongly suggests that the fiscal results of Georgia’s Program are consistent with these studies.

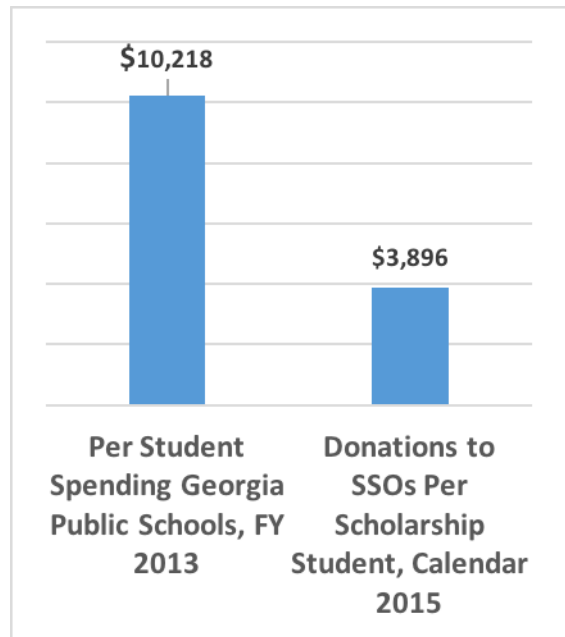
¹⁶ Two of the revenue-neutral programs are century-old “town tuitioning” programs in Maine and Vermont, designed to cover school tuition for children living in small towns that do not have public schools. Scafidi Study at 22-23. Because the local entities have no public schools, these programs are naturally savings- and revenue-neutral. The third revenue-neutral program was a small Utah voucher program for students with special needs that directs 100% of the revenue for each student into the voucher program. *Id.* at 23.

II. Georgia’s Program has a positive fiscal impact.

Consistent with the national studies discussed in the preceding section, the Program has a positive fiscal impact. Several different methods of analyzing the Program, outlined below, find likely overall savings to the state and to local public school systems. This section summarizes a fiscal analysis by EdChoice and Dr. Scafidi, compares it to two other studies of Georgia’s Program, and finally notes the small size of the Program relative to Georgia’s overall educational expenditures.

A. Georgia’s Program has financial benefits for both public schools and the state.

For each student who transfers from a public school to a private school under the Program, the public schools save the variable cost of educating that student. A transfer is likely to have a net positive fiscal effect because the average amount of an SSO scholarship is less than half of the overall average cost per student to attend a public school (\$10,218 in 2013, combining federal, state, and local expenditures).¹⁷



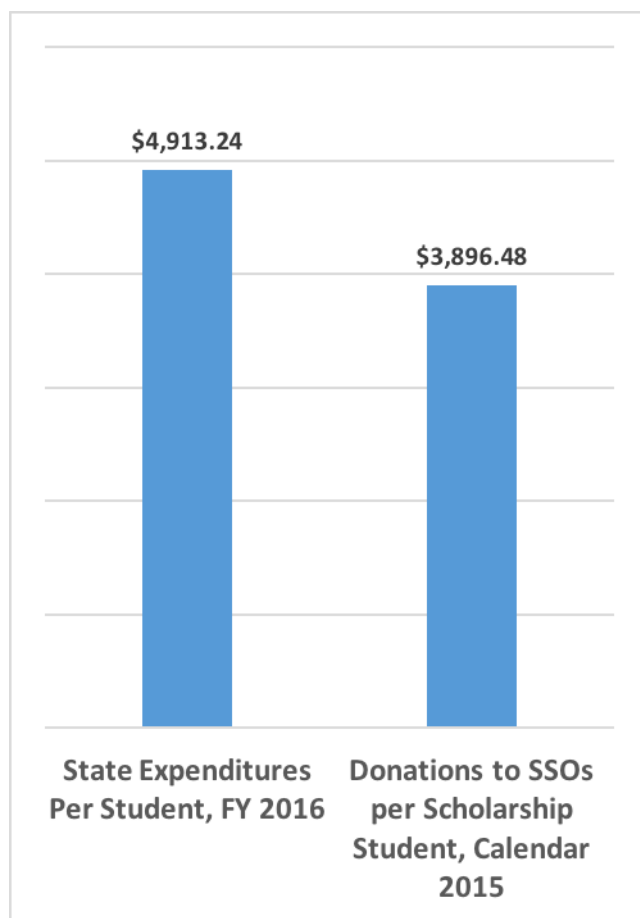
Estimates of these savings can be broken down into savings to the state and savings to the local public school systems, as explained below.

¹⁷ \$10,218 figure is from Table 236.80, Total and current expenditures per pupil in fall enrollment in public elementary and secondary schools, by function and state or jurisdiction: 2012-13, Dig. of Educ. Stat., http://nces.ed.gov/programs/digest/d16/tables/dt16_236.80.asp?current=yes (last visited Dec. 8, 2016).

1. Data suggest the Program has provided fiscal savings to the state.

The state of Georgia saves money for each public school student who accepts an SSO scholarship and transfers to a private school. According to the Georgia Department of Education, state expenditures per public school student were \$4,913 in FY 2016.¹⁸ The average tax credit per scholarship awarded in 2015 was \$3,896.¹⁹ Therefore, for each scholarship recipient who would have otherwise attended a Georgia public school, the Program saved the state at least \$1,017 per student in taxpayer money. If all of the 13,555 scholarships in 2015 went to students who would have otherwise attended a public school, the direct state savings would be over \$13 million.

However, the savings to the state are limited by two primary factors. First, if a scholarship recipient would have attended a private school (or been homeschooled) even without a scholarship, then the scholarship tax credit represents an expense to the state



¹⁸ Ga. Dep't of Educ., School System Financial Reports, https://app3.doe.k12.ga.us/ows-bin/owa/fin_pack_revenue.entry_form (select "2016" and "All Districts" and click on "Revenue Report") (last visited Dec. 8, 2016).

¹⁹ \$52,816,728 in total donations divided by the 13,555 scholarships awarded. Ga. Dep't of Revenue, Calendar Year 2015 Qualified Education Expense Credit Report, <https://dor.georgia.gov/documents/calendar-year-2015-qualified-education-expense-credit-report> (last visited Dec. 8, 2016).

without a corresponding cost saving. Second, some students may receive multiple scholarships from different SSOs. For example, if a single student receives two \$2,500 scholarships, then the total cost of the tax credits for those scholarship donations exceeds the \$4,913 the state otherwise would have paid a local public school system for that single student.

For the Program to have a net neutral or positive fiscal effect on state educational funding, the total of these two categories must be less than 20% of the total scholarship recipients.²⁰ In other words, if at least 80% of the scholarships go to a student who would have attended a public school if he or she had not received a scholarship (with the remainder going to students who would have otherwise attended a private school, would have been homeschooled, or received multiple scholarships), the Program saves the state money. Data from the Georgia Department of Education and Department of Revenue do not reveal precisely the number of scholarship students who meet these two criteria, but there is evidence to suggest the true figure to be significantly lower than 20%.

First, the Program is designed to attract students that want to leave a public school. Under the Program, first-time recipients must meet one of the following criteria to be scholarship-eligible:

- 1) Students who have been enrolled and attended a Georgia public school for at least the prior six-week period;
- 2) Students who are attending a public school that is deemed 'low-performing' by the state's Office of Student Achievement;
- 3) Students who were documented victims of school-based bullying;
- 4) Students entering pre-K, kindergarten, or first grade;
- 5) Students who were homeschooled for the prior year.

²⁰ This 20% figure is calculated by subtracting the average tax credit per SSO scholarship (\$3,896) from the average state expenditure per student (\$4,913) and dividing the difference (\$1,017) by the average per-student expenditure ($\$1,017/\$4,913 = 20.7\%$). See bar graph, *supra*.

O.C.G.A § 20-2A-1. Applicants in the first three categories all would be currently attending public schools. Applicants in the fourth and fifth categories may have otherwise attended public or private school, or may have continued being homeschooled. But based on these eligibility categories, we know that none of the first-time scholarship recipients was enrolled in a private school immediately before receiving a scholarship.

Second, there is no reason to believe a significant number of students receive multiple scholarships. An EdChoice analysis of tax-credit scholarships relied on a conservative estimate of 10% of scholarships going to multiple-scholarship students. *See* Martin Lueken, *Addendum to Tax-Credit Scholarship Audit*, EdChoice (2016), http://www.goalscholarship.org/docLib/20161118_201611AddendumtoTaxCreditScholarshipAudit.pdf (last visited Dec. 8, 2016). But this estimate was conservative by design and is likely higher than the actual amount of students receiving multiple scholarships.

Third, there is no reason to believe that scholarship recipients would have attended private schools at a higher rate than the general population. Only 8% of K-12 students in Georgia attend a private school.²¹ Furthermore, based on national statistics, private-school attendance rates vary significantly depending on family income. Unsurprisingly, children from higher-income families attend private school at a significantly higher rate than children from lower-income families. Most Program scholarship students are from families with incomes that

²¹ In 2014, there were 1,723,909 students enrolled in Georgia public schools and 150,360 students enrolled in private schools in Georgia. See Table 203.20, Enrollment in public elementary and secondary schools, by region, state, and jurisdiction: Selected years, fall 1990 through fall 2025, Dig. of Educ. Stat., http://nces.ed.gov/programs/digest/d15/tables/dt15_203.20.asp?current=yes and Table 205.80, Private elementary and secondary schools, enrollment, teachers, and high school graduates, by state: Selected years, 2003 through 2013, Dig. of Educ. Stat., http://nces.ed.gov/programs/digest/d15/tables/dt15_205.80.asp?current=yes (last visited Dec. 8, 2016).

correspond to significantly lower rates of private school attendance,²² with at least 70% of scholarship recipients coming from families with income levels that (on a national level) have private-school attendance rates of 3% to 5.2%.²³ In the absence of Program scholarships, those families would be expected to attend private schools at the same or lower rate, meaning at least 95% to 97% of them would have attended a public school without a scholarship. Those numbers are significantly higher than the rate required for the Georgia Program to be at least revenue neutral to the state.

Finally, the participating private schools have clear market incentives to have scholarships offered to new students who would not have attended without one. Private school enrollment has been in decline for decades, both nationally and in Georgia.²⁴ To fill excess

²² Nationally, 10.6% of families with annual incomes over \$75,000 per year send their children to private school, compared to 5.2% of families with annual incomes between \$20,000 and \$74,999 and 3% of families with annual incomes below \$20,000. U.S. Bureau of the Census, October 2015 Current Population Survey, <http://www.census.gov/hhes/school/data/cps/2015/tables.html> (follow “Table 8” hyperlink) (last visited Dec. 8, 2016).

²³ The Georgia Department of Revenue collects data on the quartile of adjusted gross income (AGI) of scholarship recipient families, which can be compared with the private school attendance rates noted in footnote 21. *See* Ga. Dep’t of Revenue, 2015 Qualified Education Expense Tax Credit Instructions, https://dor.georgia.gov/sites/dor.georgia.gov/files/related_files/document/TSD/Instructions/2015%20QUALIFIED%20EDUCATION%20EXPENSE%20TAX%20CREDIT%20-%20Cap%20Reached%20-%20DOR%20Website%2012-3-15.pdf (last visited Dec. 8, 2016) *and* Ga. Dep’t of Revenue, Calendar Year 2015 Qualified Education Expense Credit Report, <https://dor.georgia.gov/documents/calendar-year-2015-qualified-education-expense-credit-report> (last visited Dec. 8, 2016). SSOs reported income for 91.6% of scholarship recipients in 2015. To produce conservative estimates, this brief assumes that all scholarship students who do not have a reported income quartile were in the highest income quartile.

²⁴ A Census Bureau paper on private school enrollments over time estimated that Georgia’s private school enrollment declined by 6.8% from 2008 to 2010. Stephanie Ewert, *The Decline in Private School Enrollment*, U.S. Census Bureau, at 21, *available at* http://www.census.gov/hhes/school/files/ewert_private_school_enrollment.pdf (last visited Dec. 8, 2016). Another estimate from the U.S. Department of Education shows a 4.5% decline in Georgia private school enrollments from 2008 to 2013. Table 205.80, Private elementary and secondary schools, enrollment, teachers, and high school graduates, by state: Selected years,

capacity, private schools need to attract students who would not have otherwise enrolled. In effect, the Program design serves as an incentive to attract new students from public schools to fill empty seats, rather than students who would have attended a private school even without an SSO scholarship.

All of these factors—the national rates of private school attendance, the income levels of scholarship recipients, the lack of evidence of significant numbers of multiple-scholarship students, and the private-school incentive to recruit scholarship students from public schools—support the conclusion that the percentage of scholarship recipients who would have otherwise attended public schools is well above the fiscally-neutral figure of 80%. Therefore it is fair to conclude that the state of Georgia saved a significant amount of taxpayer funding, up to \$13 million in 2016 alone, depending on the percentage of scholarship recipients who transfer from public schools.

2. The Program likely results in fiscal savings for Georgia public school systems, providing additional resources for students who remain in public schools.

Georgia public schools spent \$10,218 per student in FY 2013, and a study by Dr. Scafidi estimated that an average of \$6,693 of Georgia public school costs are variable costs, while \$3,525 are fixed costs.²⁵ So, when a student leaves a public school for any reason, short-run variable costs decrease by approximately \$6,693.

2003 through 2013, Dig. of Educ. Stat., http://nces.ed.gov/programs/digest/d15/tables/dt15_205.80.asp?current=yes (last visited Dec. 8, 2016).

²⁵ Table 236.75, Total and current expenditures per pupil in fall enrollment in public elementary and secondary education, by function and state or jurisdiction: 2012-13, Dig. of Educ. Stat., http://nces.ed.gov/programs/digest/d15/tables/dt15_236.75.asp?current=yes (last visited Dec. 8, 2016); Dr. Scafidi analyzed four Georgia school systems who experienced decreases in their student populations from one year to the next and found that 65.5% of public school expenditures were short-run variable costs and the remaining 34.5% were short-run fixed costs. Scafidi Study at 15; *see also* Robert Bifulco and Randall Reback, *Fiscal Impacts of Charter*

The public school of course loses state funds when a student leaves. However, the school also receives local and federal funds. Federal education funds are mostly retained by the local public school system because federal funding streams have complicated hold-harmless provisions.²⁶ Local funds are also generally not tied to enrollment and therefore are retained by the school. These two funding streams amount to an average of \$5,796 in funds that remain with the local public school if a student leaves. Scafidi Study at 15.

Thus, when a student takes a Program scholarship and leaves a public school, the school generally loses an average of \$4,474²⁷ in state funds and possibly a portion of the \$1,094 in federal funds. The average fixed costs of \$3,525 can still easily be covered by the local funds and remaining federal funds. Using these average calculations, a Georgia public school retains somewhere between \$1,125 and \$2,219 above its fixed costs for a student who is no longer enrolled. Those funds are available for other educational expenses, thereby increasing the per-capita funding available to remaining students in the public schools.²⁸

Schools: Lessons from New York, 9 Educ. Finance & Policy 86 (2014) (applying a different methodology and finding a similar split of fixed costs and variable costs in public school expenses).

²⁶ The two largest federal K–12 education programs are Title I and the Individuals with Disabilities Education Act (IDEA). Title I grants are based largely on census poverty estimates and education costs in each state and IDEA allocations are based on characteristics of the general population rather than public school enrollment. Martin Lueken, *Addendum to Tax-Credit Scholarship Audit*, EdChoice (2016), at 16; *see also* U.S. Dep’t of Educ. Overview of Title I at <http://www2.ed.gov/programs/titleiparta/index.html> and U.S. Dep’t of Educ. Overview of IDEA at <http://www2.ed.gov/programs/osepgts/index.html> (last visited Dec. 8, 2016).

²⁷ This uses the FY 2013 calculations from the Scafidi Study. As stated on page 14, *supra*, that figure has now risen to \$4,913.

²⁸ These calculations are based on dividing public school expenditures into fixed and variable costs in the short run. Of course in the long run all costs are variable, as public schools can adjust the staffing of school administrators and teachers, the number of schools and school systems, and other “fixed” costs.

B. Two other fiscal analyses of the Program also found a likelihood of overall savings.

Two other studies have conducted fiscal analysis of the Program. The first study used an approach similar to that used in this brief and found substantial savings to Georgia taxpayers. Martin Lueken, *Addendum to Tax-Credit Scholarship Audit*, EdChoice, at 2 (2016), http://www.goalscholarship.org/docLib/20161118_201611AddendumtoTaxCreditScholarshipAudit.pdf (last visited Dec. 8, 2016). According to Lueken’s study, taxpayers likely saved an average of \$2,132 per scholarship recipient between 2010 and 2014, combining potential savings to both the state and public school systems. *Id.* Lueken found that the fiscal break-even point for the Program is 68%, meaning that if 68% of scholarships went to students who would have otherwise attended a public school, the Program saves money for the state and the public school system. *Id.* Given the analysis in Part II.C.1, *supra*, and Georgia’s overall private school attendance rate of 8%, the Program is highly likely to be fiscally neutral or beneficial to taxpayers under Lueken’s analysis.

The second study found that the Program has fiscal benefits for public school systems under a wide range of assumptions and a modest fiscal cost for the state. Robert Buschman & David Sjoquist, *Georgia’s Tax Credit Scholarship Program*, FRC Report No. 268 at 12-23 (Nov. 2014), *available at* http://frc.gsu.edu/files/2014/06/Georgia-Tax-Credit-Scholarship_Nov2014.pdf (last visited Dec. 8, 2016) (“Buschman & Sjoquist”). Although this study had two major flaws that biased the results toward finding a net cost to the state,²⁹ it still found that the Program could result in overall cost savings. *Id.* at 17. In its worst case scenario,

²⁹ First, the study relied on a calculation of state spending on public schools that excluded significant amounts of funding, resulting in estimated state expenditures per student of between \$3,587 and \$4,066, well below the actual FY 2016 expenditure of \$4,913. Buschman & Sjoquist at 14. Second, this study uses implausible assumptions about the percentage of scholarship students who would have enrolled in a private school even without a scholarship, estimating that it could be as high as 25%. *Id.* This figure implies that scholarship recipients are five to eight times more likely to have enrolled in private schools than other Georgia students from families with similar incomes. *Compare supra*, pages 18-19.

the study found that the program would cost the state no more than \$951 per student. *Id.* Even in that scenario Buschman and Sjoquist found, consistent with the other studies cited here, that the Program saves local public school systems \$1,272 for each student who switches to a private school. *Id.* at 20. This is because it reduces variable costs for each student who switches to a private school while the public school still receives the same amount of local taxes. *Id.* Therefore under most scenarios, this study ultimately found the Program had a positive net fiscal effect. *Id.* at 17.

While the exact amount of savings is difficult to determine, the available data suggests that the Program has a net positive fiscal effect on the state and local public schools combined. Furthermore, under what seems the most likely scenario—that over 80% of scholarships resulted in a student moving from a public school to a private school—the Program has significant financial savings for both state taxpayers and local public school systems.

C. The scale of Georgia’s Program is relatively modest, so is unlikely to have dramatic financial impact in any direction.

The Program is capped by law to a statewide total of \$58 million in tax credits for donations to SSOs. O.C.G.A. § 48-7-29.16(f)(1). In 2015, the total amount of tax credits was slightly less than the \$58 million maximum—according to the Georgia Department of Revenue, tax-credit qualified donations to SSOs totaled \$52,816,728.³⁰ This is only a small fraction of the state’s total revenue for public schools. In fiscal year 2013—the most recent year for which figures are available—Georgia public schools received \$17,492,816,000 in federal, state, and

³⁰ This figure is obtained by adding donations made to all SSOs in 2015, which are reported by the Georgia Department of Revenue. *See* Ga. Dep’t of Revenue, Calendar Year 2015 Qualified Education Expense Credit Report, <https://dor.georgia.gov/documents/calendar-year-2015-qualified-education-expense-credit-report> (last visited Dec. 8, 2016).

local government funds.³¹ Comparing calendar year 2015 SSO tax credits to FY 2013 revenue, the Program's tax credits were approximately 0.3% of government spending on Georgia public schools. Therefore no matter what the fiscal effects (and as discussed above, they are likely to be positive), the Program cannot do material harm to public school budgets. Indeed, expanding the cap would lead to additional savings while increasing the number of children receiving a quality education.

Conclusion

Recognizing the need for significant education reform, Georgia's legislature adopted the Program to give families greater control over their children's education. This decision is supported by strong empirical evidence of the educational and fiscal benefits of educational choice. The extensive social science research now available supports educational choice as wise public policy that saves money, improves academic outcomes for both students exercising that choice and students choosing to remain in public school, and has a positive effect on racial integration and civil values. Furthermore, Georgia's Program has been designed in a manner that saves money, benefitting both Georgia's taxpayers and the public school systems.

Respectfully submitted this 15th day of December, 2016.

/s/ Darren Summerville
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³¹ The FY 2013 data on Georgia public school revenues were reported by the Georgia Department of Education to the National Center for Education Statistics at the U.S. Department of Education. *See* Table 235.20, Revenues for public elementary and secondary schools, by source of funds and state or jurisdiction: 2012-13, Dig. of Educ. Stat., http://nces.ed.gov/programs/digest/d15/tables/dt15_235.20.asp?current=yes (last visited Dec. 8, 2016)

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CERTIFICATE OF SERVICE

This is to certify that I have this day filed a true and correct copy of the foregoing **Amici Curiae Brief** with the Clerk of Court using the SCED electronic filing system, and have served a copy of the same in the United States Mail, proper postage prepaid, addressed as follows:

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