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Report on Ballot Measure 11 School Choice System, Tax Credit for Education Outside Public Schools

City Club of Portland (Portland, Or.)

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Report on

**BALLOT MEASURE 11
SCHOOL CHOICE SYSTEM,
TAX CREDIT FOR EDUCATION OUTSIDE PUBLIC SCHOOLS**

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The City Club membership will vote on this report on October 26, 1990. Until the membership vote, the City Club does not have an official position on this report. The outcome of the membership vote will be reported in the City Club Bulletin (Vol. 71, No. 24) dated November 9, 1990.

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SCHOOL CHOICE SYSTEM,
TAX CREDIT FOR EDUCATION OUTSIDE PUBLIC SCHOOLS

To the Board of Governors,
 City Club of Portland:

I. INTRODUCTION

Educational choice is a reform movement that promotes the ability of families to choose the schooling their children will receive. In the past this choice has been limited primarily to private education and the more affluent families who can afford to pay for it. Educational choice seeks to expand the availability of choice in both public and private education.

In Oregon the educational choice movement has produced Measure 11, placed on the November 6, 1990 ballot by initiative petition. If approved, Measure 11 would create the most comprehensive program of educational choice implemented in the country to date. Your Committee has considered the measure with the awareness of its far reaching implications for education in Oregon and elsewhere.

The ballot language of Measure 11 is as follows:

Question: Should Constitution provide choice of public schools, tax credit for education outside public schools, voter approval of certain education laws?

Explanation: Amends Oregon Constitution. Requires open enrollment plan allowing students to attend public schools outside their districts, with legislative standards for financing, and acceptance and rejection of applications. Provides state income tax credit for expenses of educating students outside public schools. Credit equally available for secular, religious, institutional, home basic education. Establishes Educational Choice Fund, funded by school districts and state, which may cover costs of tax credit, impact aid to districts, tax relief. Requires voter approval of new, more restrictive laws on nongovernment basic education.

II. DESCRIPTION OF BALLOT MEASURE 11

Ballot Measure 11 would amend the Oregon Constitution, making changes that can be broken into three components.

A. Open Enrollment Plan

The first component requires the Oregon Legislature to enact an open enrollment plan for public schools by the 1991-92 school year. This plan would allow parents to choose any public school within the state for their children, regardless of school district lines. The Legislature would be responsible for enacting standards for acceptance of students and rules for financing the plan.

B. Tax Credit for Nonpublic Education

The second component provides a personal income tax credit of up to \$2,500 per year for basic education expenses of a student age 5 to 18 living in Oregon who is educated outside the public schools. For a student's expenses to be eligible for the credit, notice would have to be given to the school district in which the student resides that the student will not attend public school. This notice would be due by the preceding May 1 for the coming school year or within 30 days after the student moves into the district. The tax credit would apply to tuition expenses and any good or service provided by a majority of Oregon public schools free of charge. It would cover expenses of home schooling as well as private schools.

The tax credit first would be available for calendar year 1991, with a \$1,200 maximum per student. Starting in 1992, the full \$2,500 credit would apply. Any person who pays eligible education expenses could claim the credit. A family with several eligible children could claim up to \$2,500 for each. A person could receive a refund if the tax credit exceeded the personal income tax due from that person.

The tax credit would be financed out of an Educational Choice Fund. For each student residing in the district who uses the tax credit, that student's local public school district would pay into the Fund \$3,000 minus the amount of state and federal funds the district would have received for the student. The state would pay into the Fund a proportion of state basic school support equal to the proportion of students using the tax credit. Any monies in the Fund in excess of the tax credit cost would be used "to provide impact aid to school districts or for tax relief."

C. Limit on Further Regulation of Nonpublic Education

The third component of the measure prohibits state or local governments from creating new laws or rules that regulate nonpublic education, or changing existing laws or rules to make them more restrictive, without a referral to the voters at a general election. There is no indication in the language of the measure that local regulations could be applied by approval of the voters of a local jurisdiction. Apparently, therefore, any further regulation of nonpublic education would require a statewide vote.

III. ARGUMENTS FOR AND AGAINST THE MEASURE

A. Arguments Made for the Measure

The following arguments were advanced by proponents of Ballot Measure 11:

1. School drop-out rates, achievement test scores and poor standings in academic comparisons with other Western industrialized countries indicate that our public education system is not working.
2. The competition created by parents with the ability to choose will force schools to improve and will attract innovators and new talent to the fields of education.
3. Schools will offer diverse special programs in order to attract students, increasing parents' and students' educational options.

4. The tax credit for each student will enable lower income families to afford private schools.
5. Parents who have choice will become more involved in their children's education and individual performance.
6. The proposed system of funding the measure could save taxpayers money if enough students leave the public schools.
7. Students will perform better in schools designed to focus on their interests, career goals or value systems.
8. The measure allows parents to send their children to schools that will instill the values that the parents feel are important.
9. Private schools and home educators are protected from further regulation from government agencies by the measure.
10. The measure protects weaker school districts by providing impact aid with funds remaining from the educational choice tax credit program.
11. The new system will benefit public school teachers by reducing the number of students in the classroom and by raising the public image of teachers through the elimination of unnecessary bureaucracy.

B. Arguments Made Against the Measure

The following arguments were advanced by opponents of Ballot Measure 11:

1. While other states have tested educational choice in some limited form, this would be by far the most extreme educational choice program in the country.
2. It is unwise to put such an untested program in the Oregon Constitution, where it will be extremely difficult to change.
3. The measure increases the financial burden on public education in order to pay for tax credits to parents of the children who are already out of the system.
4. Schools interested in competing for students will have to devote funds to slick advertising campaigns rather than to the education of the children.
5. The competitive system will create a class of "have not" schools which will be too poor to compete for good students, leaving only those children who are regarded as undesirable or whose education is too expensive (due to handicaps or other special needs) for private schools to accept.
6. The measure will lead to greater socioeconomic stratification and segregation of minorities.
7. The opportunity for private education for low income families is illusory because the annual cost is often greater than \$2,500 and the tax credit is not recovered until the following year.
8. Sending state tax dollars to parochial schools is a violation of the constitutionally required separation of church and state.

9. The measure allows parents, providers of nonpublic education and others who claim to have paid educational expenses to defraud the system.
10. By restricting government regulation of private and home schools, the measure prevents accountability to the taxpayers for their money.
11. The measure will promote the existence of ideologically extreme schools, which could discriminate in their admissions policies.
12. Some private educators oppose the measure on the ground that it will create pressure for regulation of their institutions.

IV. DISCUSSION

A. Educational Choice

1. Free Market Concept

The concept of educational choice recently has gained considerable national attention. The bibliography to this report cites numerous newspaper and magazine articles from the past year on educational choice. According to the concept, the families of students in primary and secondary education should be given a choice of the schools the students will attend. Proponents argue that this freedom to choose would promote competition among schools to keep or draw students. The concept posits that poor quality schools would have to improve and become more responsive to the needs of their students to prevent a loss of enrollment.

Private education has always involved choice. Furthermore, choice among schools has been a feature of some public education programs for a number of years. For example, the magnet school programs developed in the 1970s typically provide enhanced offerings in inner city schools to attract students from outside their normal attendance area. An objective of these programs has been to achieve desegregation without mandatory busing.

The new educational choice movement, however, is different. It seeks to introduce free market economic principles into public education. Schools that provide their consumers (the students and their families) with a valuable service (a good education) will flourish. Those that do not satisfy the consumers will decline just as a noncompetitive business fails in the free market.

The concept of educational choice is supported by many political conservatives, but draws support from other quarters as well. The Brookings Institute (a liberal public policy think tank) published a book earlier this year calling for a restructuring of American education based on principles of choice. Moreover, some minority group members are pressing for choice as a means of escaping low quality inner city schools.

2. Existing Educational Choice Programs

The new free market concept of educational choice has been implemented in a few programs elsewhere in the country. These programs are far more limited than Measure 11.

Minnesota has adopted a version of educational choice that allows parents to send their children to any public school—even across school district lines. This open enrollment policy extends only within the existing public school system.

In *East Harlem, New York*, large inner city schools have been broken down into smaller, specialized schools, focusing on subjects such as mathematics, vocational education and ballet. Several different schools operate within an existing school facility. Historically poor achievement levels improved after development of the program.

Milwaukee, Wisconsin has initiated a voucher plan this fall which will allow 1,000 low-income students to attend any private non-sectarian school of their choice. The state of Wisconsin pays up to \$2,500 of their tuition from the state's support of Milwaukee's public schools.

3. Conclusions on Educational Choice

Your Committee believes the concept of educational choice has the potential to be a positive force within public education. There is compelling logic in the argument that schools chosen rather than assigned will be more responsive to student needs and draw more support and involvement from the students and their families. Accordingly, your Committee believes that open enrollment, in some form, could improve public education in Oregon. However, the Committee finds serious flaws in Measure 11's version of educational choice, as discussed below.

B. Ballot Measure 11

Measure 11 goes much further in shifting education to a free market economy than any of the other educational choice programs reviewed. Thus, the measure would make Oregon schools a laboratory for testing untried reforms. Furthermore, the measure would mandate these reforms in the Oregon Constitution, from which they could be removed or changed only by a vote of the people. Your Committee believes that a constitutional amendment is an inappropriate method for experimenting with a new educational theory. In addition, the Committee found flaws in each of the three components of Measure 11.

1. Open Enrollment

Open enrollment is not entirely new to Oregon. The Portland Public Schools, the largest school system in the state, allows open enrollment among its schools. Preference is given to students within a school's attendance area. Schools with a high proportion of poor and minority students in their attendance area tend to be undersubscribed and those with higher income families tend to be oversubscribed. The Portland Public Schools have used magnet programs in schools that tend to be undersubscribed in order to enhance enrollment.

Your Committee is not impressed with Ballot Measure 11's approach to open enrollment. Any open enrollment plan involves hard questions, such as the extent of priority to be given to students already enrolled and to district residents. Furthermore, an open enrollment plan in Oregon must deal with the great disparity in funding levels among school districts. The measure sidesteps these hard questions, simply directing the Legislature to answer them. In view of the Legislature's past inability to solve the broader problems of school finance, it is unlikely that an effective open enrollment plan will be developed by the 1991-92 school year, the time line prescribed in the measure.

2. Tax Credit for Nonpublic Education

a. Fiscal Impact

In considering the fiscal impact of the tax credit, a distinction can be drawn between one highly predictable set of impacts and a second, highly speculative set of impacts. The Legislative Revenue Office has projected the former based on the 33,085 Oregon students currently outside the public school system and an assumed average tax credit of \$2,025 for those students for the 1991-92 school year. For each of those students, the local school district would pay \$1,514 (\$3,000 minus \$1,486 in state and federal funds) and the state would make up the remaining cost of the tax credit. Based on the Legislative Revenue Office's projection, the total cost to public education of providing a tax credit for students currently outside public schools can be summarized as follows:

Cost To Local School Districts and State 1991-92

Students now outside public schools	33,085
Assumed tax credit per student	<u>X \$2,025</u>
Public funds diverted to nonpublic education	\$67.0 million
School districts pay (\$1,514 x 33,085)	<u>\$50.1 million</u>
State pays remaining	\$16.9 million

Another set of fiscal impacts of the tax credit is far less predictable. The average cost of public education per pupil per year in Oregon is about \$5,000. School districts will lose \$3,000 for each additional student who leaves the public schools for a private alternative. Assuming local school districts could save the average per student cost for each additional student who leaves the public schools, net savings of \$2,000 would result from each departure. Based on that assumption, the public schools eventually could reach a break-even point where savings from new departures fully offset the credit for existing students outside the public schools. According to some witnesses, the measure would save money for public schools.

However, other evidence indicates that the average per student cost of public education would not be saved by each departure. The average cost includes capital investments already made and programs that cannot easily be reduced in size. Furthermore, the students most likely to depart the public schools may be those with fewer special needs whose cost is below the average. Your Committee heard testimony that a break-even point would never be reached through additional departures from the public schools.

Evidence on this second set of fiscal impacts of the tax credit is inconclusive. At the same time, the impact of diverting \$67 million from public to private education for students already outside public education is highly predictable. Therefore, the most probable impact is that the tax credit would reduce the per student funding available to public schools.

b. Relationship to Measure 5 (Property Tax Limitation)

Total expenditures for public education in Oregon are currently about \$2 billion per year. Thus, the predictable diversion of \$67 million to nonpublic education would represent about 3 to 4 percent of the total. However, if the property tax limitation contained in Measure 5 on the November 6, 1990 ballot is enacted, this proportion could change. Measure 11's tax credit of up to \$2,500 per student per year and cost to local school districts of \$3,000 per student per year would be fixed in the Oregon Constitution even if the funding resources for public schools are greatly reduced. Thus, if Measure 5 is enacted, the diversion of funding to nonpublic education could become a higher proportion of the total. Furthermore, if average per student expenditures by public schools decline, the possibility of achieving a break-even point through additional departures from the public schools would become more remote.

c. Separation of Church and State

An argument advanced against Measure 11 is that the availability of a tax credit for religious education violates constitutional prohibitions on public support for religion. These prohibitions appear in both the Federal and Oregon Constitutions.

Measure 11 is an amendment to the Oregon Constitution and states that it supersedes all conflicting constitutional provisions. This statement appears designed to eliminate an attack on the measure based on the Oregon constitution. The issue under the Federal Constitution is not as readily avoided.

Your Committee is not equipped to resolve the constitutional issues presented by Measure 11. The Committee, however, was able to arrive at conclusions based on public policy considerations. Accordingly, the constitutional issues were not a factor in the recommendation.

d. Conclusions on the Tax Credit

There was disagreement within your Committee regarding the tax credit. A majority of Committee members concluded that the tax credit is undesirable for a number of reasons:

- The diversion of funding from public to private education is unlikely to be offset by cost savings, thereby leaving public education with less funding.
- The best students, who are least expensive to educate, would leave the public schools, removing positive peer influence from the classroom and driving up the average cost to educate students.
- The public schools are unlikely to be improved by competition with private schools because they must accept anyone, no matter how bad the behavior or expensive to educate.
- Poorer families are less likely to use tax credit financed private education, leaving the overall educational system (both public and private) with more socioeconomic stratification.

Two Committee members believe the tax credit is a desirable feature of the measure. They are persuaded that increased competition would improve the quality of public as well as private education. However, they do not believe the positive effects of the tax credit are sufficient to overcome other problems with the measure.

3. Limit on Further Regulation of Nonpublic Schools

Currently, the educational programs of private schools (including parochial schools) are not subject to mandatory regulation. There is no required curriculum nor must teachers be certified, although many nonpublic schools voluntarily comply with state prescribed standards. According to witnesses, there also are no regulations on home schools beyond annual testing of students. To continue in home schooling a student must take an annual test and score better than the lowest 15 percent of public school students.

Measure 11 would require approval by the voters for new regulation of nonpublic education. Meeting this requirement would be very cumbersome and expensive. Therefore, the likely effect of requiring voter approval would be to preserve the status quo in which nonpublic education is essentially unregulated. Furthermore, it would impose a restriction on regulation of nonpublic education in Oregon that has never existed in the past.

Your Committee found the limit on further regulation of nonpublic education a serious flaw in Measure 11. There would be increased potential for fraud and abuse. There also would be greater potential for schools operated by ideological fringe groups that espouse antisocial or extremist views. These risks might not involve a large part of educational spending. However, they exacerbate the most significant problem with the limit on further regulation. It would prevent public accountability by nonpublic education.

The taxpayers need to know that their support for education is not being spent irresponsibly. One dramatic instance of fraud and abuse with public funds can seriously damage an entire program area though the amount involved is not large. The receipt of public funds should be accompanied by public responsibility.

V. SUMMARY OF CONCLUSIONS

In summary, your Committee has concluded that educational choice is a worthwhile concept and has produced healthy debate within the educational community. However, your Committee found Measure 11 too untested to be placed in the Constitution, too vague in its approach to open enrollment, too ambitious in diverting funding from public to private education and too restrictive of further regulation of nonpublic education.

VI. RECOMMENDATION

The Research Committee on Ballot Measure 11 recommends a "no" vote.

Respectfully submitted,

Anne Marie Claire
John Donovan
J. Richard Forester
Catherine Holland
Mary Overgaard
Eric Weber
Gregory Macpherson, Chair

Approved by the Research Board on October 3, 1990 for transmittal to the Board of Governors. Approved by the Board of Governors on October 8, 1990 for publication and distribution to the membership, and for presentation and vote on October 26, 1990.

APPENDIX A

PERSONS INTERVIEWED

Robert Barr, Dean, School of Education, Oregon State University

Richard Brown, Rainbow Coalition

Steve Buckstein, Oregonians for Educational Choice

Robert J. Castagna, Oregon Catholic Conference

William Connerly, Economist, First Interstate Bank, Oregonians for Educational Choice

Rich Denman, Economist, United States National Bank, Oregonians for Educational Choice

Robert D. Gilberts, Dean, College of Education, University of Oregon

Dale Hess, Policy Coordinator, Oregon Office of Educational Policy and Planning

Ellen Lowe, Ecumenical Ministries of Oregon

Jan Mihara, Rainbow Coalition

Jackie Ellenz, Rainbow Coalition

Ed Marihart, Oregonians for Educational Choice

Stevie Remington, Executive Director, American Civil Liberties Union

Jim Scherzinger, State of Oregon Legislative Revenue Officer

Alan Tresidder, Senior Legislative Advocate, Oregon School Boards Association (also representing Conference of Oregon School Administrators)

NOTE: Several organizations with an interest in the measure were invited to send representatives to be interviewed and declined. Some of these sent written material which is listed in the bibliography. The Oregon Education Association, a major opponent of the measure, did not respond to the invitation to be interviewed and did not provide written material.

APPENDIX B

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