

## AFHE Statement on S.B. 1493 - Tuition Tax Credit

February 8, 2005

Senator Ron Gould from Lake Havasu, Arizona recently introduced a Tuition Tax Credit bill for homeschoolers (S.B. 1493). Arizona Families for Home Education (AFHE) has met with Senator Gould and expressed our concern over the effect that a tax credit law would have upon homeschooling in our state. While AFHE appreciates the effort by Senator Gould to support homeschooling families in Arizona, we cannot support S.B. 1493 at this time because we are observing pending litigation in a related case.

Presently, Arizona law provides a tax credit for tuition expenditures to a private school (ARS 43-1089) and for extra-curricular activities at public schools (ARS 43-1089.01.) This law was passed in 1997 and immediately a lawsuit was filed challenging its constitutionality under Arizona law. The basis for the suit was that by diverting money owed the state in the form of state income tax to private religious schools, the state was, in essence, promoting a religious purpose and therefore in violation of the State Constitution and the Establishment Clause of the Federal Constitution. Known as Kotterman v. Killian, 193 Ariz. 273, 972 P.2d 606, the Arizona Supreme Court upheld the tax credit law with regard to the question of state constitutionality. The initiators of the Kotterman suit were individuals who work for four organizations: the Arizona Education Association (state branch of the National Education Association), the American Civil Liberties Union (ACLU,) People for the America Way, and Americans United for Separation of Church and State.

Though disappointed by the favorable ruling in Kotterman, these same entities were not deterred, and filled another suit, this time in the Arizona District Court (which is a federal court) soon thereafter. Known as Hibbs v. Winn this suit was brought primarily by the ACLU on behalf of an Arizona taxpayer (Winn) against the director of the Arizona Department of Revenue (Hibbs.) The basis of this case was two-fold. First, that the tax-credit is an unconstitutional tax-scheme by a state, and therefore the federal courts may review it and test its legality. Second, that the law violates the Establishment Clause of the U.S. Constitution. The District Court upheld the tax-credit, but on appeal to the 9<sup>th</sup> Circuit Court of Appeals, their decision was reversed thus siding with the ACLU viewpoint (307 F.2d. 1011.) The State of Arizona appealed the case to the U.S. Supreme Court and last June, they ruled upholding the Court of Appeals ruling and remanding the case back to the Arizona District Court where it sits now with a Motion to Dismiss pending.

Though wrapped up in a question of states' rights, this case also re-ignites the Establishment Clause issue which will not be addressed until the tax question is decided. Arizona Families for Home Education believes it is prudent to observe the outcome of this litigation challenging the now 7 year-old private school tax credit law before we initiate new legislation expanding Arizona law into our educational choice of homeschooling via the same avenue of a tax credit. There is no doubt that the fate and course of the tax credit law for private schools will influence the success or failure of a homeschooling tax credit.

Arizona Families for Home Education has always supported all efforts to empower parents in the choice of their child's education. The private school tax credit has furthered choice in our state which we view as a positive outcome. However, homeschooling and private schools are very different. Our past 25 year history in this state is one of fighting for the legal right to homeschool, facing the attempts to dissuade parents by imposing certification requirements to teach our children, refusing to accept mandatory testing of our students using an imposed measuring standard rather than one of our choice, and addressing recurring yearly legislative challenges that attempt to chip away at our autonomy or make things more difficult for our children due to our educational choice.

Although willing to explore new ways of supporting parents, we are not eager to revisit any of the regulatory shackles or legitimacy debates of the past. Thus, we take a conservative stance at this point in time regarding Senator Gould's bill and though we thank him for thinking of ways in which homeschooling can be furthered in our state, we do not urge that S.B. 1493 be passed. We wish to observe the outcome of the Hibbs v. Winn case and any subsequent litigation before taking any action on the question of a tax credit for homeschooling in Arizona.